

Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations
Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations 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 (NCCD) 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 Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum being to satisfy specific PREA standards requirements.

It is recommended that the Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations 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 whole, does not guarantee that an auditor will find that a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

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:
Responding to Sexual Abuse of Inmates in Custody:
Addressing the Needs of Men, Women and Gender Non-Conforming
Populations**

**Module 8:
State Laws**

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

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.

NATIONAL
PREA
RESOURCE
CENTER

Copyright © 2014 American University Washington College of Law

All rights reserved. The Bureau of Justice Assistance retains a license to reproduce, publish, or otherwise use, and to allow others to use, this material for federal purposes. Otherwise, no part of this publication may be produced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the Project on Addressing Prison Rape.

Requests for permission to make copies of any part of this publication can be made to:

*The Project on Addressing Prison Rape
American University Washington College of Law
4801 Massachusetts Ave, NW
Washington, DC 20016
202-274-4385
endsilence@wcl.american.edu*

Objective

Review state criminal laws regarding sexual abuse of adults and youth under custodial supervision and how laws are interpreted and applied based on gender or sexual orientation/gender identity.

State Laws

Sexual assault laws (including sodomy)

Child exploitation

Staff sexual misconduct laws

Sex offender registration

Vulnerable adult statutes

Mandatory reporting

Sexual Assault

Historically aimed at protecting only women, men not contemplated as victims of sexual assault

Then

- Penetration requirement
- Women had to “fight back” in order to prove assault

Now

- Lack of consent is element of crime
- Complainant credibility is an issue

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.

Sexual Assault Law: Indiana

Rape

Ind. Code Ann § 35-42-4-1 (West 2011).

(a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with a member of the opposite sex when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse is occurring; or,
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given; commits rape, a Class B felony.

Sodomy

Prohibits certain sexual practices, traditionally aimed at same-sex sexual acts

Still have these laws on the books:

- 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: Maryland

MD. CODE. ANN. CRIM. LAW. § 3-321 (West 2011).
Sodomy

A person who is convicted of sodomy is guilty of a felony and is subject to imprisonment not exceeding 10 years.

Sodomy Law: Alabama

ALA. CODE § 13A-6-63 (West 2011)

Sodomy in the first degree

(a) A person commits the crime of sodomy in the first degree if:

(1) He engages in **deviate sexual intercourse** with another person by forcible compulsion; or

(2) He engages in **deviate sexual intercourse** with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years old or older, engages in **deviate sexual intercourse** with a person who is less than 12 years old.

Child Exploitation/ Statutory Rape

Traditionally these laws were meant to protect only female youth

Michael M. v. Superior Court of Sonoma County, 450 U.S. 464 (1981)

Seventeen year old boy raped a sixteen year old girl and was prosecuted under CA statute:

- "an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under the age of 18 years."

Child Exploitation/ Statutory Rape

Michael sued under equal protection, claiming only men could be held criminally liable

Supreme Court upheld the law, citing CA's interest in preventing pregnancies

- “We are satisfied not only that the prevention of illegitimate pregnancy is at least one of the “purposes” of the statute, but also that the State has a strong interest in preventing such pregnancy.”

Child Exploitation Law: California

CAL. PENAL CODE § 261.5 (West 2011): Unlawful sexual intercourse with person under 18; age of perpetrator; civil penalties

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

Child Exploitation/ Statutory Rape

After passage of Adam Walsh Act encompasses more than intercourse

Generally covers 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: Iowa

Sexual abuse in the first degree

Sexual abuse in the second degree

Sexual abuse in the third degree

Indecent exposure

Child Exploitation Law: Iowa

IOWA CODE § 709.8 (West 2011): Lascivious acts with a child

It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent **unless married** to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.
2. Permit or cause a child to fondle or touch the person's genitals or pubes.
3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.
4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "C" felony. Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.

Child Exploitation Law: Iowa

IOWA CODE § 709.12 (West 2011): Indecent Contact with a Child

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

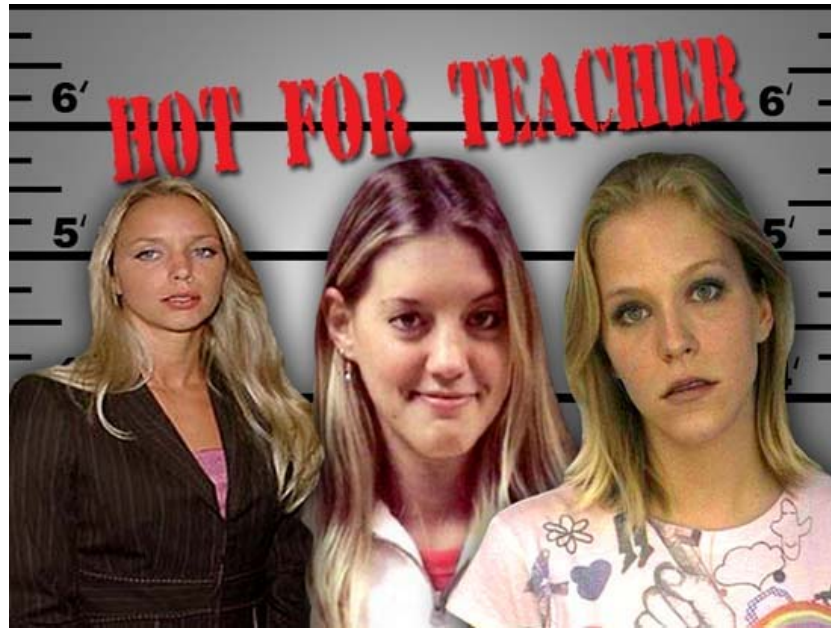
Child Exploitation Law: Iowa

IOWA CODE § 709.14 (West 2011): Lascivious conduct with a minor

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

Lascivious conduct with a minor is a serious misdemeanor.

Child Exploitation Laws



<http://coedmagazine.com/2008/02/26/hot-for-teacher-top-18-sexiest-sex-offenders/>

Staff Sexual Misconduct

Felony in most states

Consent may be 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

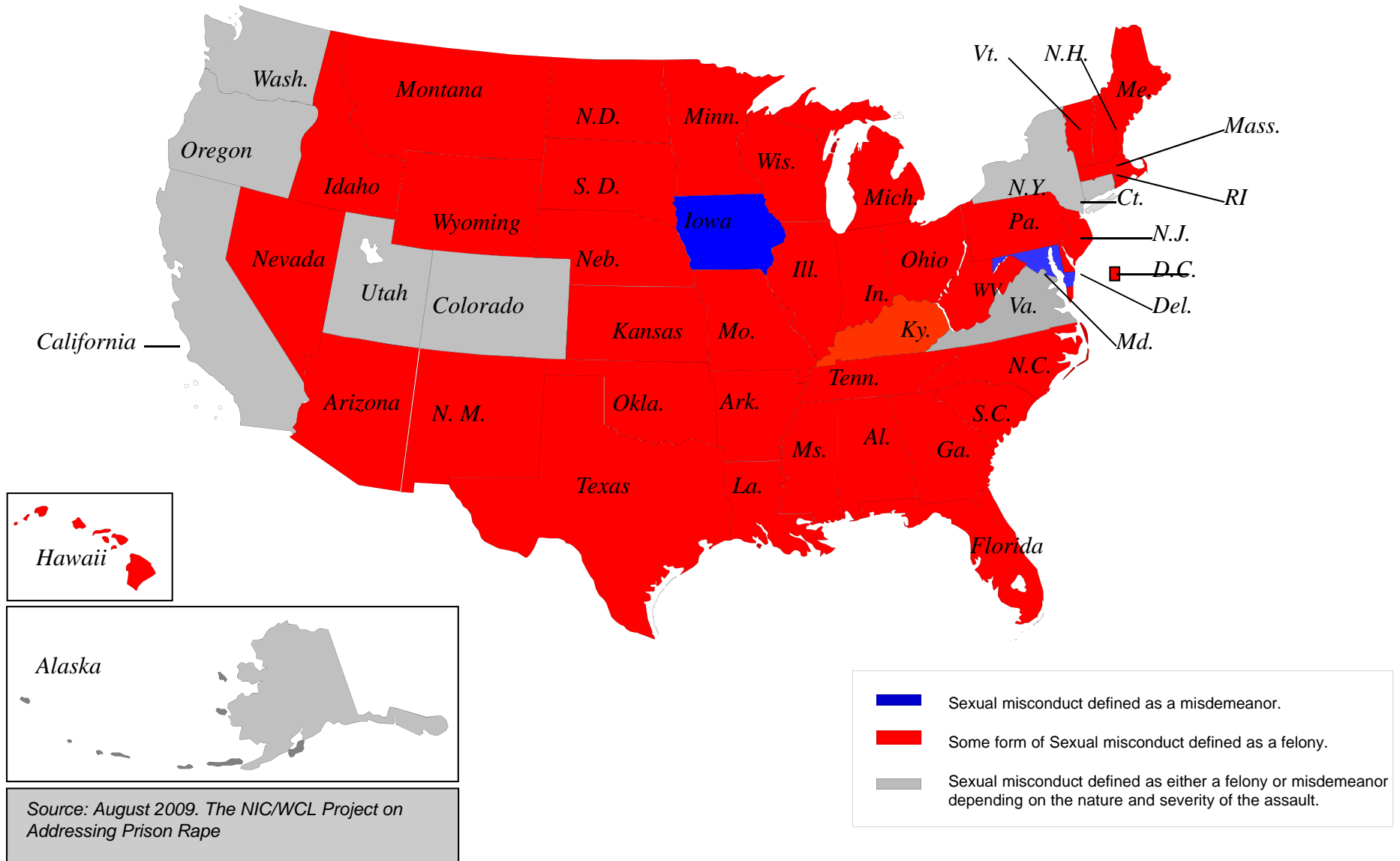
Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9

Sex of perpetrator of staff sexual misconduct

Gender	Prison		Jail	
	Male Victims	Female Victims	Male Victims	Female Victims
Male Perpetrator	14.9%	71.8%	18.2%	62.6%
Female Perpetrator	68.8%	9.3%	64.3%	27.7%
Both Male and Female Perpetrators	16.3%	18.9%	17.5%	9.8%

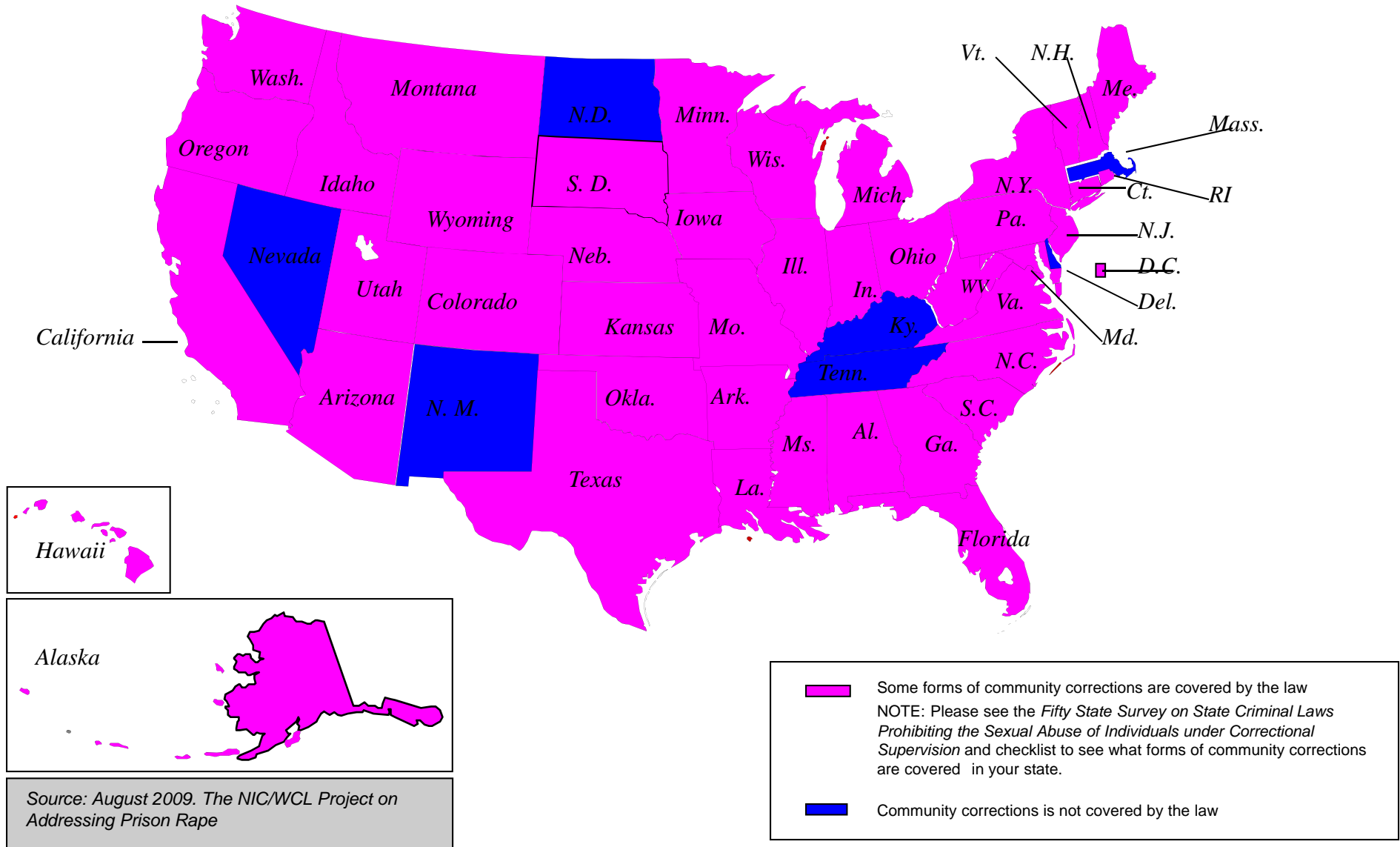
State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

National Institute of Corrections/American University, Washington College of Law – August 2009



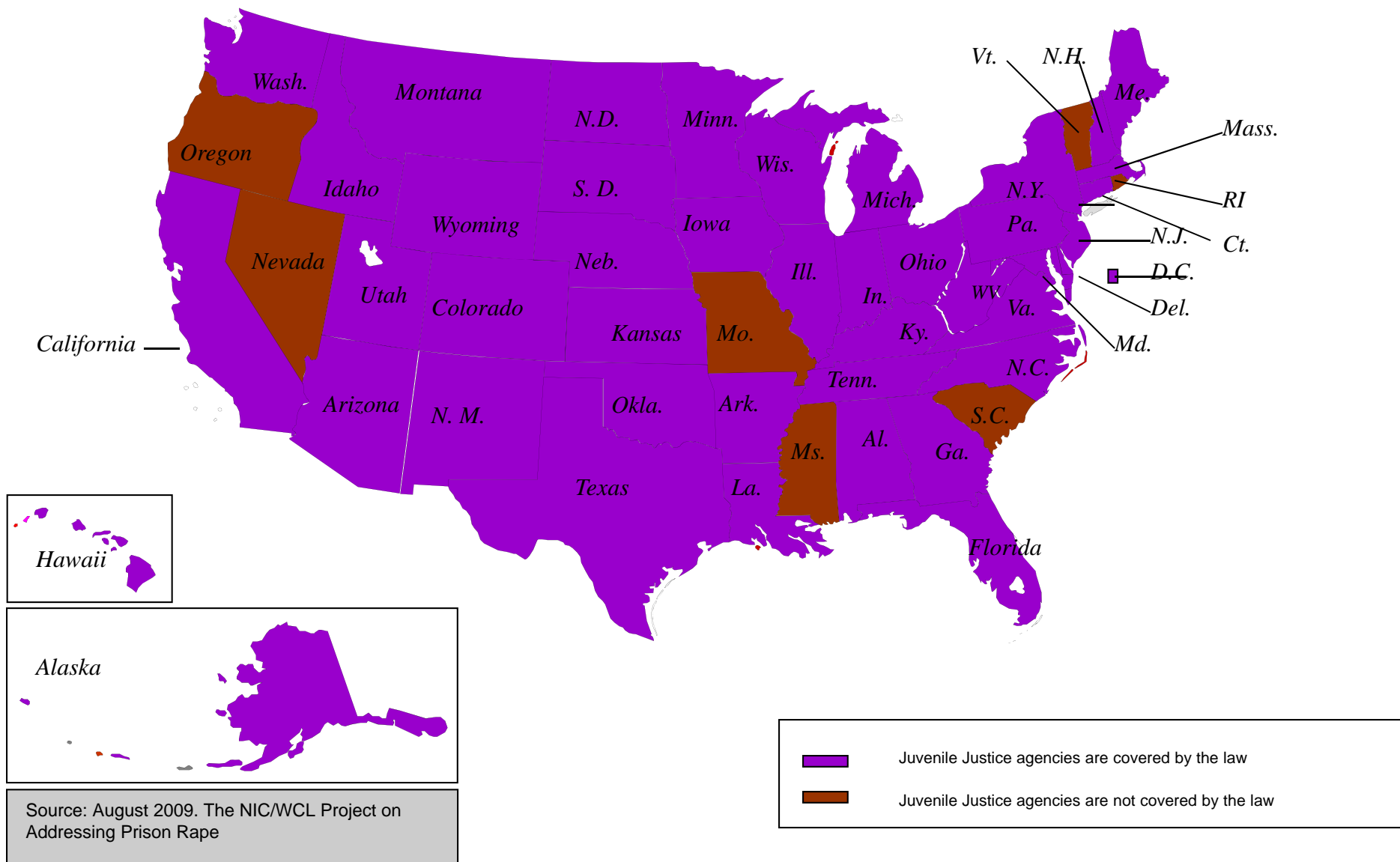
State Criminal Laws Prohibiting Sexual Abuse of Individuals Under Community Corrections Supervision

National Institute of Corrections/American University, Washington College of Law – August 2009



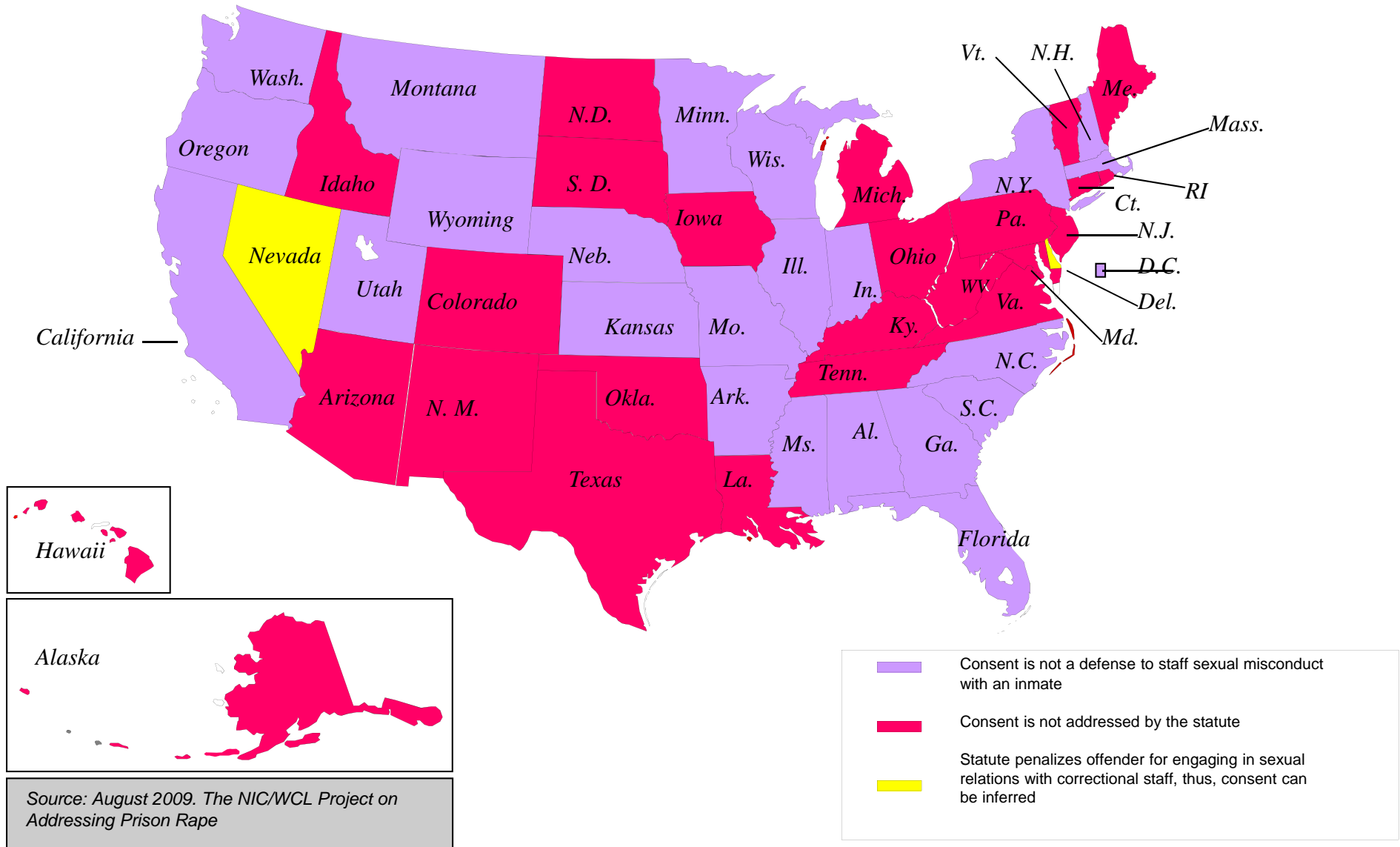
State Criminal Laws Prohibiting Sexual Abuse of Youth Under Correctional Supervision

National Institute of Corrections/American University, Washington College of Law – August 2009



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 2009



Staff Sexual Misconduct Law: Massachusetts

- MASS GEN. LAW. ANN. 268 § 21A (West 2012)
 - 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 2012). 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

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 of 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

Can lead to underrepresentation of women on sex offender lists

Adult Sex Offender Registration Law: Texas

The following offenses are registrable:

- Indecency with a child
- Sexual assault
- Aggravated sexual assault
- Prohibited sexual conduct
- Compelling prostitution
- Sexual performance by a child
- Possession or promotion of child pornography
- Aggravated kidnapping if the actor committed the offense or engaged in the conduct with the intent to violate or abuse the victim sexually

Adult Sex Offender Registration Law: Texas

- Burglary, if the offense or conduct is punishable under subsection (d) and the actor committed the offense or engaged in the conduct with the intent to commit indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, or aggravated kidnapping
- Unlawful restraint, if the victim was under 17 years of age
- Kidnapping, if the victim was under 17 years of age
- Aggravated kidnapping, if the victim was under 17 years of age
- Second violation for indecent exposure, unless the second violation results in a deferred adjudication • Attempt, conspiracy or solicitation to commit an offense or engage in conduct listed above.

Adult Sex Offender Registration Law: Texas

A violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed above.

Sex Offender Registration is NOT required for Staff Sexual Misconduct in Texas

Adult Sex Offender Registration Law: California

CAL. PENAL CODE § 290

A violation of CAL. PENAL CODE § 289.6 (Staff Sexual Misconduct Statute), is one of the enumerated offenses listed under section 290 and therefore does require 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).

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

§ 115.51: Inmate reporting

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

Mandatory Reporting Laws

§ 115.161: Staff and Agency Reporting Duties

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

Mandatory Reporting Laws

§ 115.87: Data Collection

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Mandatory Reporting Laws

Child Abuse Reporting Statutes – 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 – 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: Massachusetts

Mass. Gen. Laws Ann. ch. 19A, § 15 (West 2012).

(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 2012).

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 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

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.

Mandatory Reporting: Florida

Fla. Stat. Ann. § 944.35 (West 2012).

- (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 2012).

- (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.

Vulnerable Adult Statutes

Generally cover “special populations”

- Mentally ill
- Mentally retarded
- Elderly
- Youth
- Those in treatment

Gender non-conforming (LGBTI) populations

May also have civil liability consequences

Vulnerable Adult Law: Arizona

A.R.S. § 13-3623 (West 2011) Child or vulnerable adult abuse; emotional abuse; classification; exception; definitions.

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:

- If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under 15 years of age it is punishable pursuant to 13-604.01.

Vulnerable Adult Law: Florida

FL. ST. § 825.1025 (West 2011) Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person

(2)(a) "Lewd or lascivious battery upon an elderly person or disabled person" occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(3)(a) "Lewd or lascivious molestation of an elderly person or disabled person" occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

Vulnerable Adult Law: Florida

FL. ST. § 825.1025 (West 2011) Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person

(4)(a) "Lewd or lascivious exhibition in the presence of an elderly person or disabled person" occurs when a person, in the presence of an elderly person or disabled person:

1. Intentionally masturbates;
2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or
3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

Vulnerable Adult Law: Arizona

A.R.S. § 13-3623 (West 2011) Child or vulnerable adult abuse; emotional abuse; classification; exception; definitions.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care of 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 4 felony.

Summary

Why is this important?

- Describing prohibited conduct to reference in your policy development
- Tailor your criminal investigations and evidence collection
- Standards leave a number of items on the table
- Reporting for ALL offenders
- Protecting ALL survivors of sexual assault