

Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth 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 Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum being to satisfy specific PREA standard requirements.

It is recommended that the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth 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 a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

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**Training Curriculum:
Responding to Sexual Abuse of Youth in Custody:
Addressing the Needs of Boys, Girls and Gender Non-Conforming Youth**

Module 8: State Criminal Laws

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

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Objectives

- Review state criminal laws regarding sexual abuse of youth under custodial supervision.
- Describe 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

Mandatory reporting



Sexual Assault

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

- Then
 - Penetration requirement (still applicable in some places)
 - 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: Maine

Gross Sexual Assault

ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2013).

A **person** is guilty of gross sexual assault if that **person** engages in a sexual act with another **person** and:

- The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E. Violation of this paragraph is a Class A crime;
- The other person, not the actor's spouse, has not in fact attained the age of 14 years. Violation of this paragraph is a Class A crime; or
- The other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.



Sexual Assault Law: Maine

ME. REV. STAT. ANN. tit. 17-A, § 251 (West 2013): Sexual Act

(1) Any act **between 2 persons** involving direct physical contact between the **genitals of one and the mouth or anus of the other**, or direct physical contact between the **genitals of one and the genitals of the other**;

(2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or

(3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.



Sexual Assault Law: Indiana

Ind. Code Ann § 35-42-4-1 (West 2013): Rape

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 do not define oral and anal sex as intercourse
- Many states do not define same sex/sex as intercourse – even if it involves penetration



Sodomy Law: Maryland

MD. CODE. ANN. CRIM. LAW. § 3-321 (West 2013): 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 2013) 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 2013): 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: Ohio

OHIO REV. CODE ANN. § 2907.02 (West 2013): Rape

OHIO REV. CODE ANN. § 2907.03 (West 2013): Sexual Battery

OHIO REV. CODE ANN. § 2907.05 (West 2013): Gross Sexual Imposition

OHIO REV. CODE ANN. § 2907.06 (West 2013): Sexual Imposition

OHIO REV. CODE ANN. § 2907.09 (West 2013): Public Indecency

OHIO REV. CODE ANN. § 2907.07 (West 2013): Importuning



Child Exploitation Law: Ohio

OHIO REV. CODE ANN. § 2907.04 (West 2013): Unlawful sexual conduct with a minor

OHIO REV. CODE ANN. § 2907.311 (West 2013): Displaying matter harmful to juveniles

OHIO REV. CODE ANN. § 2907.321 (West 2013): Pandering obscenity involving a minor

OHIO REV. CODE ANN. § 2907.322 (West 2013): Pandering sexually oriented matter involving a minor

OHIO REV. CODE ANN. § 2907.323 (West 2013): Illegal use of a minor in nudity-oriented material or performance



Child Exploitation Law: Ohio

OHIO REV. CODE ANN. § 2907.04 (West 2013): Unlawful sexual conduct with a minor

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows **the other person is thirteen years of age or older but less than sixteen years of age**, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.



Child Exploitation Law: Ohio

OHIO REV. CODE ANN. § 2907.322 (West 2013): Pandering sexually oriented matter involving a minor

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

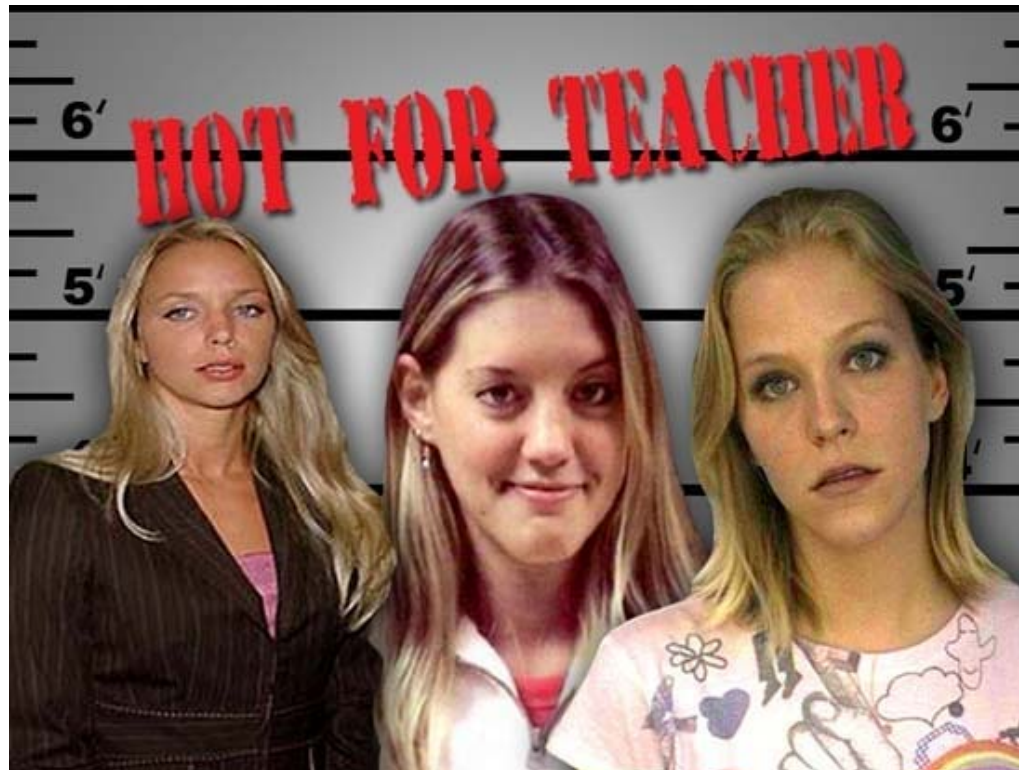
(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality



Child Exploitation Laws



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



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Staff Sexual Misconduct

Felony in most states

Consent typically not an issue, especially in juvenile context

Victim credibility is an issue

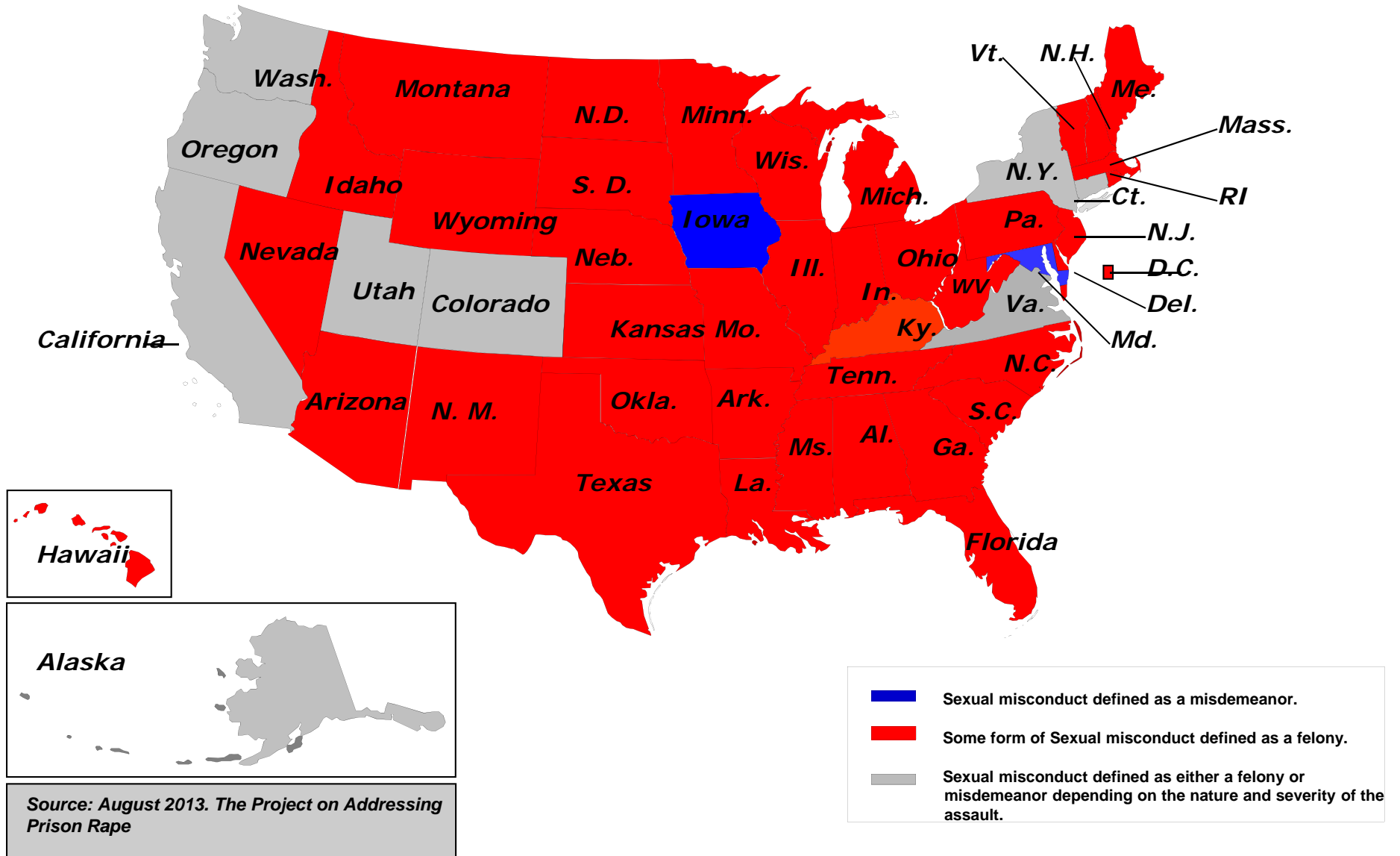
Code of Silence/Lack of corroboration

Lack of physical evidence and timely reporting (delays)



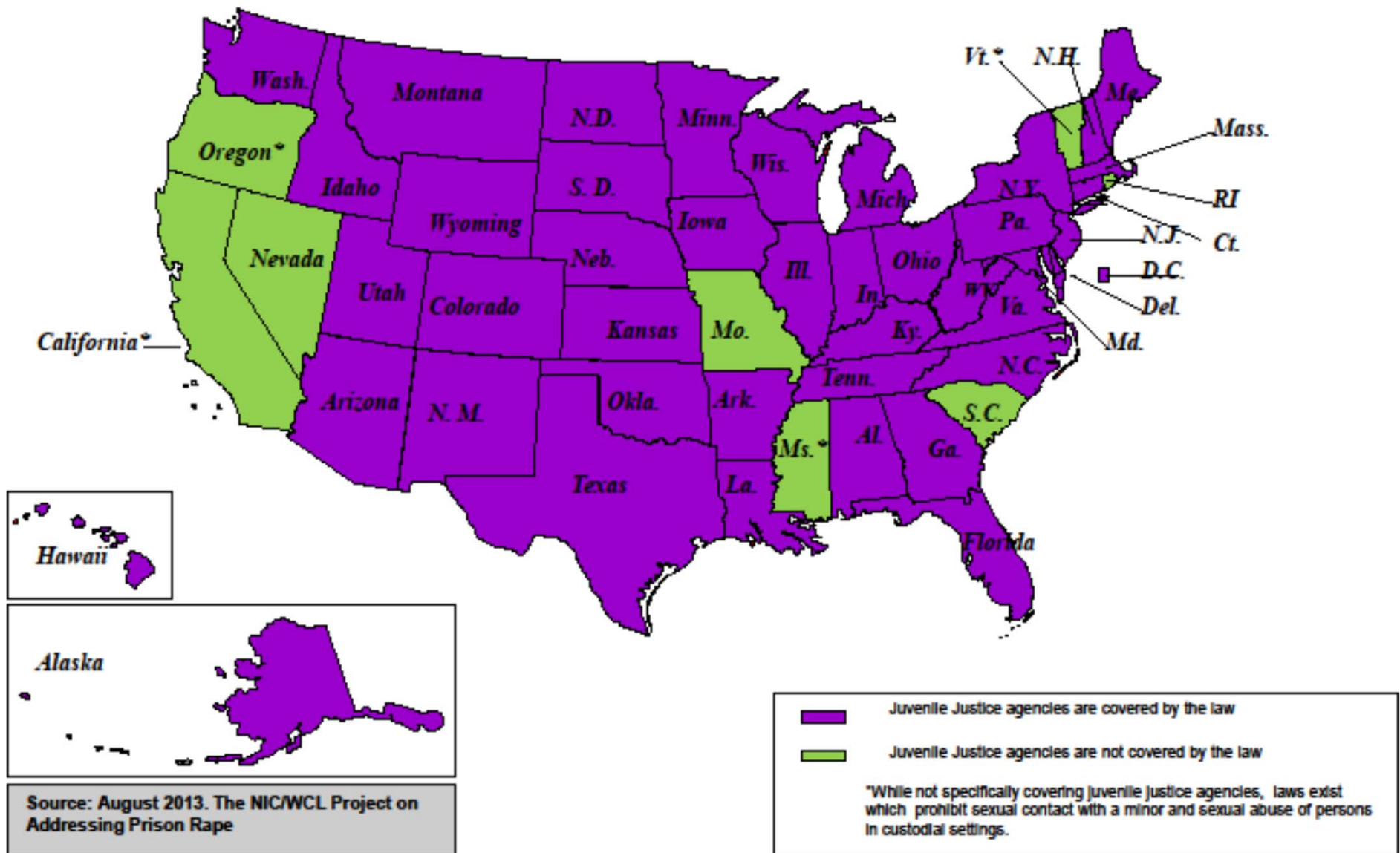
State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

The Project on Addressing Prison Rape, American University, Washington College of Law – August 2013



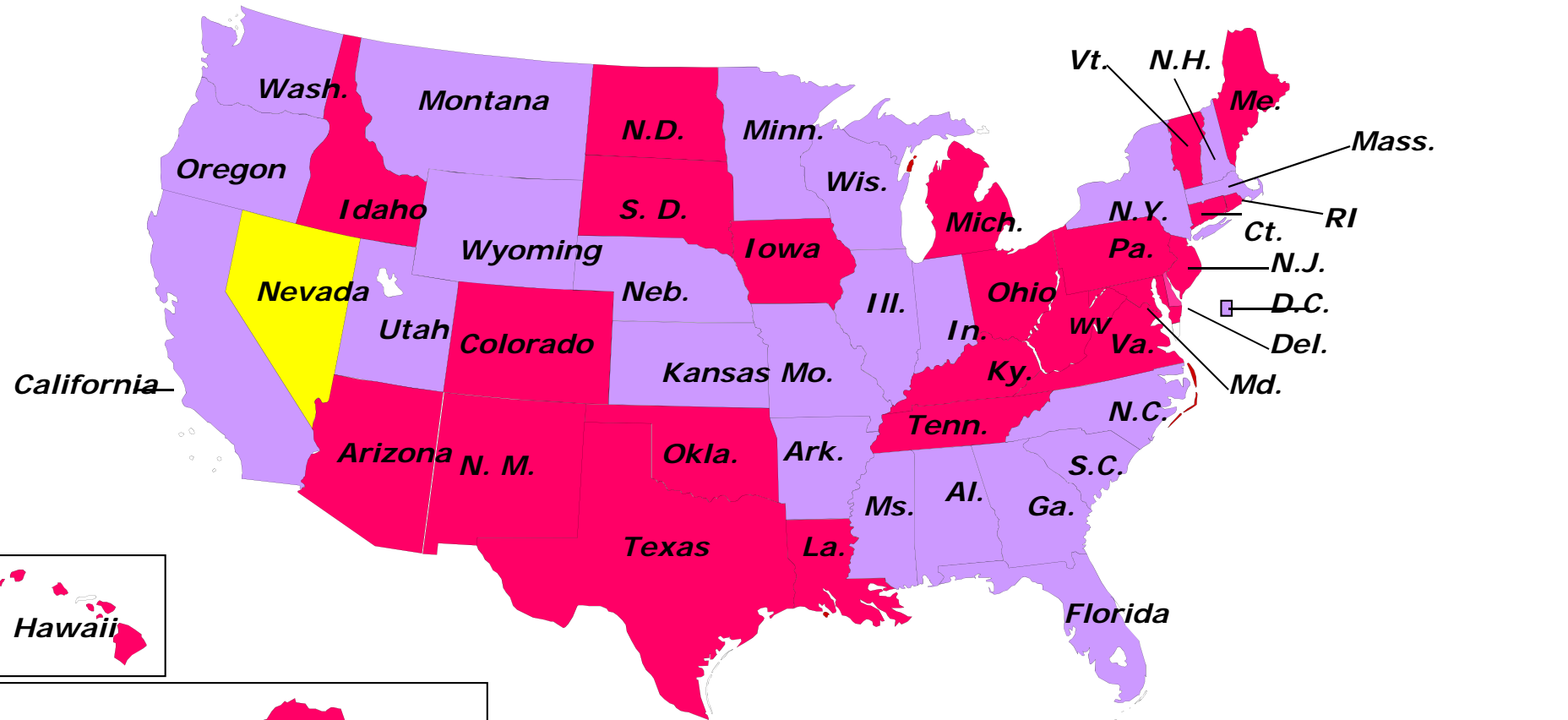
State Criminal Laws Prohibiting Sexual Abuse of Juveniles Under Correctional Supervision

National Institute of Corrections/American University, Washington College of Law – August 2013



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

American University, Washington College of Law – August 2013



	Consent is not a defense to staff sexual misconduct with an offender
	Consent is not addressed by the statute
	Statute penalizes offender for engaging in sexual relations with correctional staff, thus, consent can be inferred



Source: August 2013. The WCL Project on Addressing Prison Rape

Staff Sexual Misconduct Law: Georgia

GA. CODE ANN. § 16-6-5.1 (West 2013): Sexual assault.

(b) A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person:

(2) Is an employee or agent of any probation or parole office and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee under the supervision of the same probation or parole office;

(5) Is an **employee or agent of a correctional facility, juvenile detention facility**, facility providing services to a person with a disability, as such term is defined in Code Section 37-1-1, or a facility providing child welfare and youth services, as such term is defined in Code Section 49-5-3, who engages in **sexual contact with such other individual who the actor knew or should have known is in the custody of such facility**.

(e) **Consent of the victim shall not be a defense** to a prosecution under this Code section



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



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.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the offense is committed against:

- (1) an individual in the custody of the Texas Youth Commission; or
- (2) a juvenile offender detained in or committed to a correctional facility the operation of which is financed primarily with state funds.



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 in a plea

Can lead to underrepresentation of women on sex offender lists



Adult Sex Offender Registration Law: Texas

The following offenses are registrable in Texas:

- 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).



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

Under PREA



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Mandatory Reporting Laws

§ 115.351: Inmate reporting

(a) The agency shall provide **multiple internal ways for residents to privately report** sexual abuse and sexual harassment, retaliation by other residents 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 residents 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 resident reports of sexual abuse and sexual harassment to agency officials**, allowing the resident to **remain anonymous upon request**. Residents 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.



Mandatory Reporting Laws

§ 115.351: Inmate reporting

(c) The facility shall provide residents with **access to tools necessary** to make a written report.

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

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



Mandatory Reporting Laws

§ 115.361: 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 they receive 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 residents or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) The agency shall also require **all staff to comply with any applicable mandatory child abuse reporting laws.**



Mandatory Reporting Laws

§ 115.361: Staff and Agency Reporting Duties

(c) Apart from reporting to designated supervisors or officials and designated State or local services agencies, **staff shall be prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary**, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(d)(1) Medical and mental health practitioners shall be **required to report** sexual abuse to designated supervisors and officials pursuant to paragraph (a) of this section, as well as to the designated State or local services agency where required by mandatory reporting laws.

(2) Such practitioners shall be required to **inform residents at the initiation of services of their duty to report and the limitations of confidentiality**.



Mandatory Reporting Laws

§ 115.361: Staff and Agency Reporting Duties

(e)(1) Upon receiving any allegation of sexual abuse, the facility head or his or her designee **shall promptly report the allegation to the appropriate agency office and to the alleged victim's parents or legal guardians**, unless the facility has official documentation showing the parents or legal guardians should not be notified.

(2) If the alleged victim is under the guardianship of the child welfare system, the report shall be made to the alleged **victim's caseworker** instead of the parents or legal guardians.

(3) If a juvenile court retains jurisdiction over the alleged victim, the facility head or designee shall also report the allegation to the **juvenile's attorney or other legal representative of record within 14 days** of receiving the allegation.



Mandatory Reporting Laws

§ 115.361: Staff and Agency Reporting Duties

(f) The facility shall report **all allegations** of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.



Mandatory Reporting Laws

§ 115.387: 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: Minnesota

MINN. STAT. ANN. Subd. 3 § 626.556 (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

Mo. Ann. Stat. § 217.410 (West 2013).

(1) [R]easonable 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 2013).

(1) Any employee of the department of corrections.

Mo. Ann. Stat. § 217.410 (West 2013).

(1) [I]mmediately 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 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 pursuant to this subsection shall **immediately prepare, date, and sign an independent report** specifically describing the nature of the force used or the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The report shall be delivered to the inspector general of the department with a copy to be delivered to the warden of the institution or the regional administrator. The **inspector general shall immediately conduct an appropriate investigation**, and, if probable cause is determined that a violation of this subsection has occurred, the **respective state attorney in the circuit in which the incident occurred shall be notified**.



Summary

Why is this important?

- Describes prohibited conduct to reference in your policy development
- Tailors your criminal investigations and evidence collection
- Standards leave a number of items on the table
- Reporting for ALL perpetrators of sexual abuse
- Protecting ALL survivors of sexual abuse

