

**Legal Responses to Sexual Violence in Custody:
Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual
Violence in Correctional Settings**

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This publication builds on important work done by Professor Brenda V. Smith in researching legal responses for sexual violence in institutional settings. *Legal Responses to Sexual Violence in Custody: Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual Violence in Correctional Settings* addresses rapidly developing areas of law and practice in the United States. The information in this publication is current as of May 2012. As law and policies rapidly change, we will remain abreast of those changes but encourage readers to contact us with new information as it becomes available

Foreword

In 1999, The American University, Washington College of Law (WCL) entered into a cooperative agreement with the National Institute of Corrections (NIC) to provide training to high level correctional decision makers on key issues in addressing and investigating staff sexual misconduct. With the enactment of the Prison Rape Elimination Act in 2003, WCL's focus shifted to addressing prison rape – both staff sexual misconduct with offenders and offender on offender sexual violence and abuse.

This publication is the first in a series that forms the basis of a legal “tool kit” of laws to address sexual violence against persons under correctional supervision. This publication as well as the others in the toolkit are a critical part of NIC's response to its obligation to provide training, education, information and assistance under § 5 of the Prison Rape Elimination Act of 2003.¹

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I. Introduction

This publication provides an introduction to mandatory reporting laws, and how these laws can help corrections officials respond to sexual abuse in custodial settings, both offender-on-offender and staff sexual misconduct. The importance of mandatory reporting laws cannot be overstated, given recent scandals involving the abuse of vulnerable populations, including youth.² The public hostility towards those who fail to report indicates that strict adherence to mandatory reporting laws and clear internal policies are essential to an agency's reputation within the community.

This publication provides insight into the utility of mandatory reporting laws, in light of the enactment of the Prison Rape Elimination Act of 2003 (PREA).³ Further, this publication highlights distinctions and similarities between the reporting requirements for juveniles and vulnerable adults, giving special attention to gaps in the law, and other ways in which institutions with lax reporting standards may leave themselves open to liability. Finally, this publication highlights other important topics in addressing sexual abuse in custodial settings, including the practical implementations of reporting procedures and protecting staff and offenders from retaliation. This publication should be read together with the *Fifty State Survey of Mandatory Reporting Statutes*,⁴ which is available at

http://www.wcl.american.edu/endsilence/documents/FiftyStateSurveyofMandatoryReporting_2012Update.pdf.

As mandatory reporting laws are constantly evolving, readers should check this document for periodic updates. Together, both publications serve as additional tools in corrections officials' arsenal of laws, policies, and practices to deter sexual abuse in custodial settings.

Correctional administrators can supplement the information in this publication by reading “Legal Responses to Sexual Violence in Custody: Protections Provided by Vulnerable Persons Statutes.” This publication outlines the coverage provided by vulnerable person statutes across the fifty states, and the criminal penalties imposed on those who abuse a vulnerable person. For further information on how the culture of a correctional facility can affect attitudes towards reporting, administrators can refer to: “Addressing the Code of Silence in Correctional Settings: Cases and Recommendations.” This publication addresses the “code of silence” that prevents correctional officers from reporting abuse, and provides recommendations for combatting this familiar problem.

White Paper

II. Background: Prison Rape Elimination Act

In September 2003, the United States Congress unanimously passed PREA as a culmination of a collaborative effort between human rights, faith-based, and prison advocacy groups. As enacted, PREA establishes a “zero-tolerance standard” for sexual assault in custodial settings,⁵ requires data collection and research on the incidence of rape in each state, and provides grants to assist states to reduce, prevent, and prosecute prison rape. While PREA does not create a private right of action for prisoners,⁶ it does create a system of incentives for states, correctional agencies, and correctional accrediting organizations to comply with its provisions. Each year, the three states with the highest incidence and the two states with the lowest incidence of prison rape must appear before the Review Panel on Prison Rape to explain their designations as states with either the highest or lowest incidence of prison rape.⁷

PREA established the National Prison Rape Elimination Commission (NPREC), to issue a report on the causes and consequences of prison rape,⁸ and to develop national standards on the prevention, detection, and punishment of prison rape.⁹ The NPREC released its proposed standards to address prison rape on June 23, 2009.¹⁰ On May 17, 2012, the Department of Justice (DOJ) released the final PREA standards. Under the PREA standards, correctional facilities have three different reporting duties which vary slightly depending on whether the facility is a jail or prison, lock-up, community confinement facility, or juvenile facility.

Correctional facilities’ first duty is to create a method by which inmates can self-report sexual abuse. For adult prison and jails, facilities must provide multiple internal

methods for inmates to privately report abuse, and access to at least one reporting entity that is not part of the agency.¹¹ Juvenile facilities must provide multiple internal methods to report, as well as at least one external method.¹² Additionally, facilities must provide juvenile residents with reasonable access to their attorney and parent or legal guardian.¹³

The second reporting duty under the standards requires facilities to report abuse of inmates or residents to appropriate authorities. Adult prisons and jails must instruct 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.”¹⁴ Juvenile agencies have the same reporting duties as adult prisons or jails with regard to reporting suspicions of sexual abuse.¹⁵ Furthermore, juvenile facilities must also comply with state mandatory child abuse reporting laws.¹⁶

PREA therefore creates reporting duties consistent with agencies’ pre-existing statutory obligations. PREA does not abrogate the duty that states already have under mandatory reporting laws, but does allow facilities to create higher standards for reporting abuse. The PREA standards create a floor, not a ceiling; facilities are encouraged to exceed existing standards. Facilities can elect to adopt stricter reporting schemes than the mandatory reporting laws currently available in their jurisdictions. For example, an agency policy can extend to all inmates and residents, not only juveniles or vulnerable persons. Correctional facilities should be mindful of their obligations under both PREA and state mandatory reporting statutes, and develop or revise their agency policies accordingly.

The third reporting duty is to collect data regarding all sexual misconduct in the facility. Each correctional agency must, upon request by the Bureau of Justice Statistics

(BJS), report the number of instances of sexual violence in its facilities.¹⁷ Both adult and juvenile facilities must collect data on each instance of sexual abuse, and must aggregate the data on at least an annual basis.¹⁸

While PREA does not substantially change the traditional definition of rape,¹⁹ it recognizes that sexual assault can be accomplished not only by actual force, but by the “exploitation of the fear or threat of physical violence or bodily injury.”²⁰ Additionally, PREA gave BJS the authority to create other definitions of sexual violence for purposes of conducting its annual statistical analysis and review.²¹ Consistent with that mandate, BJS collects data on a broader range of sexual conduct – nonconsensual acts, abusive sexual contact, staff sexual misconduct, and staff sexual harassment.²² The BJS data collection includes offender-on-offender conduct and staff-on-inmate conduct from a variety of sources: records, reviews of correctional agencies, victim self-reports while in custody, and surveys of former and soon to be released inmates.²³ Under PREA, correctional agencies must collect data on all reported instances of sexual misconduct. In addition to instances of traditionally defined rape (between offenders or offenders and staff), BJS will require states to report other types of nonconsensual sexual acts, abusive sexual acts, staff sexual misconduct, and staff sexual abuse.²⁴

Facilities must be aware that their reporting duties under mandatory reporting laws and PREA may differ. The definition of sexual abuse may be less expansive under a state’s mandatory reporting laws than PREA. Furthermore, many mandatory reporting laws require reports of instances of neglect or exploitation in addition to abuse, while PREA data collection focuses on abuse only. **Facilities should be cognizant that their**

responsibilities to report under state law may be greater or lesser than their duty to report to BJS.

This publication examines two groups often covered by mandatory reporting statutes, juveniles and vulnerable persons, and offers an in-depth analysis of basic requirements for compliance with the law and how these mandatory reporting laws can be a tool in addressing sexual violence in custodial settings. **While reviewing this document, facilities should keep in mind that PREA requires a level of reporting apart from what mandatory reporting laws require.** The obligations under mandatory reporting laws as they pertain to correctional officers are often unclear. **To the extent that the responsibilities under a mandatory reporting law are not readily apparent, PREA provides clear direction for reporting sexual abuse for all inmates, including vulnerable persons and juveniles.**

III. Mandatory Reporting and Juveniles

a. Who is a Juvenile?

Most mandatory reporting statutes define a child as anyone less than eighteen years of age.²⁵ This differs from the age of majority,²⁶ which many jurisdictions have set at eighteen.²⁷ Some states have excluded emancipated children from coverage by mandatory reporting statutes.²⁸ Other states, including Florida, Illinois, and Louisiana, define a child as an unmarried person under eighteen, who has not been emancipated by the courts.²⁹

There is some disagreement as to whether a child is covered under a mandatory reporting statute if that child is convicted as an adult and held in an adult correctional setting. This argument stems from the idea that when an individual under the age of majority is convicted as an adult, that individual loses their status as a minor.³⁰ Upon a plain reading of the statutory text, however, it would appear that where a mandatory reporting statute otherwise covers an individual, it is irrelevant whether the individual is under the supervision of a juvenile or adult corrections agency.³¹ Mandatory reporting statutes specifically refer to “child,” rather than “juvenile” or “minor,” and this provides a basis for the argument that mandatory reporting statutes cover all individuals who meet the definition of “child” under the statute, regardless of where that child is held. An individual does not lose the designation of “child” under a mandatory reporting statute, (meaning anyone under the age of eighteen), simply because he or she is considered an adult for the limited purpose of a criminal conviction.

Conversely, mandatory reporting statutes may exclude those under the age of eighteen who have been adjudicated as an adult and legally emancipated. Therefore, in a

state where an individual under age eighteen who has been judicially emancipated is not considered a child within the meaning of the mandatory reporting statute, that individual would likely not be subject to mandatory reporting requirements.³²

b. Who is a Mandatory Reporter?

Many states have enacted broad mandatory reporting statutes, which require “any person” who either suspects or has reason to suspect that a child is being abused to report such abuse to appropriate authorities.³³ Courts have interpreted these statutes to require anyone in the jurisdiction with reasonable cause to suspect abuse to make a report as specified in the reporting guidelines.³⁴ Thus, in a jurisdiction that has enacted a statute that compels “any person” to report suspicions of child abuse, a juvenile corrections worker must file a report in accordance with state guidelines.

Other states employ the “any person” language, but limit the reporting duty to information gathered in the reporter’s official capacity,³⁵ or “in the scope of employment.”³⁶ Such a limitation imposes a duty only when a reporter receives information regarding suspected child abuse while acting within his or her work capacity. The statutory duty to report is, therefore, not applicable when a juvenile corrections worker is not engaged in work-related activities when the suspicion arises. Some statutes that include an “official capacity” limitation will permit a reporter to file a report regarding information gathered outside of his official capacity if he so chooses.³⁷

The majority of states, however, do not include the “any person” language, but instead confine mandatory reporters to those specifically identified in the statute.³⁸ These reporters include: law enforcement agents, peace officers, clergymen, probation officers, teachers, counselors, mental health workers, guardians, social workers, financial workers,

nurses, athletic coaches, parks and recreation employees, chiropractors, and judges.³⁹ This list is not exhaustive. Seven states specifically include “corrections officials” as mandatory reporters in enumerated lists.⁴⁰ Additionally, three states explicitly identify staff of juvenile detention centers as mandatory reporters.⁴¹ Furthermore, several states include probation and parole officers within the list of those required to report.⁴² Finally, a significant number of states classify “police officers,” “peace officers,” or “law enforcement officers” as mandatory reporters.⁴³

Still other mandatory reporting statutes contain language referring to one who has “responsibility for the care and treatment of a minor, or child,”⁴⁴ which presumably extends to corrections officers in juvenile detention centers. Other states have defined mandatory reporters as an “administrator or employee of a public or private children services agency;”⁴⁵ or “any person paid to care for or work with a child in any public or private facility.”⁴⁶ It is reasonable to conclude that juvenile detention employees would fall under these expansive definitions.

In spite of the language outlined above in the various models, it remains unclear whether certain jurisdictions would include correctional officers under their definitions of mandatory reporters.⁴⁷ This uncertainty arises primarily where a statute does not include “corrections officers” within its enumerated list of mandatory reporters.⁴⁸ Generally, whether mandatory statutes intended corrections officers to be mandatory reporters, when these statutes specifically name only police officers, policemen, law enforcement officers, or peace officers, will depend on individual state law. Under these circumstances, agencies should seek clarification about their statutes’ coverage, since correctional agencies’ policies may vary from coverage provided under state statutes.

Where statutes exclude corrections officers from the above-mentioned terms, states should contact their legislatures to amend the statutory language to reflect corrections officers' status as mandatory reporters of sexual abuse.

Many of these states still permit any person to make a report of child abuse, even if the state's statute does not consider that individual as a mandatory reporter.⁴⁹ Therefore, a correctional officer who is not required to report abuse under the reporting statute may nonetheless enjoy immunity for reports of sexual abuse made in good faith.

c. What is the Standard of Proof?

In the majority of jurisdictions, the standard of proof that triggers a mandatory report is "reasonable cause,"⁵⁰ "reasonable suspicion,"⁵¹ or when one "reasonably believes,"⁵² "reasonably suspects,"⁵³ or has "reason to suspect"⁵⁴ that a juvenile has been abused. There is no consistent formula for reasonable suspicion; rather, the inquiry is fact-sensitive, derived from the totality of the circumstances surrounding the suspicion, cause or belief.⁵⁵ For example, the standard of reasonable cause is satisfied when looking at the totality of the circumstances from an objective standpoint, "the information available at the time would lead a reasonable person in the position of the reporter to suspect abuse."⁵⁶ The case law determining whether the standard of proof has been satisfied primarily involves doctors, rape crisis center counselors, and social workers, rather than those in corrections settings.⁵⁷

Courts have interpreted reasonable cause broadly, and are willing to find reasonable cause to report exists in minimal circumstances. Reporters have reasonable cause to suspect abuse based solely upon an accuser's statements; reasonable cause is not defeated even where an accused offers a neutral explanation for his or her conduct.⁵⁸ One court

has held that knowledge of an offender's history of sexual abuse can serve as the basis for reasonable cause.⁵⁹ Physical evidence can also create a reasonable suspicion sufficient to prompt a report. For example, a diagnosis of a sexually transmitted disease could be enough to create reasonable cause.⁶⁰ Additionally, the presence of sperm in a child's urine sample is adequate grounds to justify a report.⁶¹

An explanation from the accused does not relieve a mandatory reporter of his or her duty to report.⁶² The common explanation proffered to rebut sexual abuse allegations in juvenile facilities - that the accuser made up the abuse in order to curry favor or gain extra privileges within the facility - should not inform the decision to report. Moreover, a later determination after the report was made (e.g., subsequent to an internal investigation) that the allegations were false does not "remove the taint," nor absolve the corrections staff of their duty to report.

d. Consequences for Failing to Report

Nearly all mandatory reporting statutes contain punitive measures for those who fail to report. A majority of states classify a failure to report suspected child abuse as a misdemeanor;⁶³ only two states consider the failure to report a felony.⁶⁴ Finally, a number of states regard a first offense as a misdemeanor, while subsequent offenses will result in a felony charge.⁶⁵ Only North Carolina has declined to sanction the failure to report.⁶⁶ Maryland does not assign a criminal penalty, but instead revokes licensing for those who fail to report.⁶⁷

Applicable punishments involve fines, imprisonment, or a combination of the two. Of the states who have implemented fines, the range spans between \$100⁶⁸ and \$10,000.⁶⁹ For states who punish a failure to report with a term of imprisonment, the

range extends from 10⁷⁰ to 360 days.⁷¹ A number of states impose a fine and imprisonment.⁷²

Some states impose a fine and require participation in educational training programs,⁷³ others impose licensing penalties.⁷⁴ In the cases where mandatory statutes impose licensing penalties, such penalties are generally associated with the professions of doctors, dentists and dental assistants. These staff may be reprimanded, disciplined, or lose their licenses, as determined by state licensing boards.⁷⁵

Many states that provide for imprisonment for failure to reporting require a finding that the violation was either “knowing” or “willful.”⁷⁶ In a New York case, a physician who was assured by a teen’s mother that the teen was no longer in the presence of her abuser, and was seeing another doctor for support, did not knowingly violate the mandatory reporting statute.⁷⁷

When correctional officers make reports of suspected abuse in good faith, they will be immune from liability for reports that are later proven false. Where there is reasonable cause to suspect abuse, courts will presume a reporter acted in good faith.⁷⁸ This immunity insulates a reporter from liability for filing a report in good faith, and fear of retaliation should not dissuade corrections officers from making reports.⁷⁹

IV. Mandatory Reporting Specific to Custodial Supervision

Florida, Maine, Missouri and South Carolina have separate mandatory reporting statutes that explicitly require corrections staff to report abuse of juveniles and adults. In Florida, “employees” must report any abuse of “inmates” or “offenders.”⁸⁰ Because the statute does not make a distinction between juvenile and adult correctional settings, it encompasses both. Similarly, South Carolina has enacted a statute requiring anyone with “knowledge of sexual misconduct . . . [who] received information in the person's professional capacity” to report such information to appropriate law enforcement authorities.⁸¹ In Missouri, two separate statutes apply to juvenile and adult facilities.⁸² In the former, “jail or detention center personnel” and “juvenile officers” must report all instances of child abuse, while the latter states that “any employee of the department of corrections” must report when there is reasonable cause to believe an “offender in a correctional center” has been abused.⁸³

V. Mandatory Reporting and Other Vulnerable Persons

a. Who is a Vulnerable Person?

In addition to statutes protecting children, most states have enacted mandatory reporting statutes to protect certain adults from exploitation, abuse, and neglect.⁸⁴ These statutes are generally known as “vulnerable person” statutes, and protect an adult based on age, mental incapacity, or physical disability. “Vulnerable person” encompasses several terms, including “protected person,”⁸⁵ “at-risk adult,”⁸⁶ “infirm adult,”⁸⁷ “dependent adult,”⁸⁸ “disabled adult,”⁸⁹ and “endangered person.”⁹⁰ Collectively, these terms refer to individuals over age eighteen who are unable to report abuse without assistance due to physical or mental impairment.

Many vulnerable person statutes focus on the adult’s capacity to care for him or herself, whether that capacity was diminished by mental or physical defect. Some statutes are expansive, and cover any adult who lacks sufficient capacity to defend or protect himself or herself, without limitation.⁹¹ In a South Carolina case, a woman who was over the age of eighteen, unable to care for herself, and living in a residential facility was considered a vulnerable person.⁹² Other statutes are more specific, requiring that the adult suffer from a mental disease or defect that prevents him or her from protecting himself or herself from abuse.⁹³ Mental retardation and autism are examples of mental defects that commonly satisfy the disability requirement.⁹⁴ Additionally, many vulnerable person statutes cover physical impairments that preclude an adult from protecting himself or herself.⁹⁵ For example, a Delaware court found that a woman who had suffered a stroke that left her with limited mobility and a speech impediment was a vulnerable person within the meaning of the reporting statute.⁹⁶

Other states have opted to require mandatory reporting only for adults who have reached a certain age.⁹⁷ Legislatures designed these statutes to protect the elderly, regardless of any physical or mental defect. Many statutes cover adults who have reached sixty years of age,⁹⁸ while others cover those aged sixty-five years or older.⁹⁹

Vulnerable persons comprise a significant percentage of individuals in custody. A 2005 study from the Bureau of Justice Statistics found that nearly half of all prison and jail inmates suffered from some form of mental disorder.¹⁰⁰ Furthermore, as the prison population ages,¹⁰¹ these elderly person statutes will cover more inmates. Correctional facilities will need to pay special attention to identify inmates included as vulnerable persons under their jurisdictions' mandatory reporting statutes.

b. Who is a Reporter?

Only three states specifically identify corrections officers as mandatory reporters of abuse of vulnerable persons.¹⁰² Fifteen states require "any person" or "any other person" to report when they have reasonable cause to believe abuse is committed against a vulnerable adult.¹⁰³ In these eighteen jurisdictions, correctional officers must report abuse of vulnerable persons. Many of the statutes that do not explicitly mention correctional officers, or do not use "any person" language, **do** refer to "peace officer," "police officer," or "law enforcement officer." As with mandatory reporting statutes concerning children, corrections agencies should refer to agency policy to determine whether corrections officers are intended to be included within these more generic terms.

At least eight jurisdictions implicitly exclude correctional officers from their mandatory reporting statutes for vulnerable persons. New York State does not have a vulnerable persons statute, while North Dakota's statute permits, but does not require a

reporter to file a report.¹⁰⁴ Alabama, New Jersey, and Vermont only require certain professionals to report, and do not extend the duty to report to correctional officers.¹⁰⁵ Although these statutes would exclude correctional officers, clergy, physicians, nurses, dentists and social workers may be required to report. Corrections agencies must understand that non-security staff, volunteers, and contract employees may also have independent, mandatory reporting obligations inherent in their professions. Agencies should make sure that these employees are aware of these legal responsibilities.

Three other states explicitly limit mandatory reporting to abuse occurring in domestic, rather than custodial, settings. Illinois limits the statute to those aged sixty and over who are in a “domestic living situation.”¹⁰⁶ Similar language is used in the Pennsylvania and Washington statutes, which limit reporting to abuse taking place in a “assisted living facility under the control of a caretaker,”¹⁰⁷ or at the hands of “any individual who, for compensation, serves as a personal aid to a person who self-directs his or her own care in his or her home.”¹⁰⁸ Thus, in, Illinois, Pennsylvania, and Washington, correctional officials are not considered mandatory reporters, as the statutes do not contemplate abuse in a correctional setting.

c. What is the Standard of Proof?

The statutory language regarding standards of proof in the vulnerable persons statutes closely mirror that in the juvenile statutes. The standard of proof for reporting vulnerable person abuse is “reasonable cause,”¹⁰⁹ “reasonable basis,”¹¹⁰ “substantial cause,”¹¹¹ and “reason to believe.”¹¹² Some jurisdictions will limit the standard to observations made in the reporter’s professional capacity.¹¹³

The test for determining whether a reasonable belief exists is an objective one.¹¹⁴ A mandatory reporter cannot rely on his or her subjective beliefs to determine whether abuse occurred.¹¹⁵ In some circumstances however, a reporter will not be obligated to report if the allegations “are impossible, utterly fantastic, plainly fabricated, or made only in jest.”¹¹⁶ Reasonable belief can be based solely on the vulnerable adult’s statements.¹¹⁷ A vulnerable person’s diminished capacity should not prevent a reporter from taking his or her allegations seriously. A reporter must treat statements made by a vulnerable person as seriously as statements from a fully functioning adult.¹¹⁸

d. Consequences for Failing to Report

Mandatory reporters that fail to report vulnerable person abuse are subject to criminal liability in some jurisdictions. All states that criminalize the failure to report impose a misdemeanor charge on those that violate the mandatory reporting law; none have opted to subject violators to felony charges. Thirty-three states impose either a fine ranging from \$100 to \$5,000, a term of imprisonment ranging from ten days to one year, or both.¹¹⁹ Five states impose a fine only.¹²⁰ Five states do not use criminal sanctions, but instead impose civil liability for a violation of the mandatory reporting statutes.¹²¹ Nevada does not impose a fine or penalty, only community service.¹²² Finally, eight states do not impose any sanctions for a failure to report abuse of a vulnerable person.¹²³

Some statutes consider the failure to report a strict liability offense, and require no culpable mental state.¹²⁴ In a California case, a nursing home administrator who failed to report abuse was still held criminally liable, because although his actions were not malicious, he intentionally failed to make a report.¹²⁵ A Missouri court has held that someone who fails to report can still be held liable even when the vulnerable person has

died.¹²⁶ In so finding, the court reasoned that vulnerable person statutes are not only meant to protect against ongoing abuse against an individual victim, but as a method of detecting and preventing abuse facility-wide.

Many reporting statutes protect a mandatory reporter against subsequent claims for a false report, as long as the reporter acted in good faith.¹²⁷ A reporter acts in bad faith where he or she knowingly makes a false report.¹²⁸ For example, when a reporter files a report in a retaliatory fashion, a court can find that the reporter acted in bad faith. Thus, the immunity offered by mandatory reporting statutes will not shield a reporter who makes report of suspected abuse in bad faith.¹²⁹

White Paper

VI. Bringing Correctional Agencies in Line with State Mandatory Reporting Law Requirements

a. Reporting Procedures

The basics of the mandatory reporting statutes are outlined above. Equipped with this knowledge, correctional institutions must determine how to best comply with applicable mandatory reporting laws. First, regardless of whether a jurisdiction in question explicitly or implicitly identifies corrections officers as mandatory reporters, it is in every correctional facility's best interest to treat corrections officers as mandatory reporters. Policies that exceed legal requirements offer greater protection to all involved, including inmates, staff, and administrators.

Facilities with zero tolerance policies should implement proper training to communicate the zero-tolerance stance policy, provide clear reporting procedures, and initiate appropriate disciplinary action (including termination and referral to the District Attorney for criminal prosecution) for corrections staff who violate these policies. Once the zero tolerance policy has been developed and properly communicated, the agency should create a clear reporting procedure, so that employees may immediately initiate the reporting process when an incident occurs. This procedure should result in compliance with the most stringent mandatory reporting statutes, and take the "guesswork" out of deciding who to tell. For example, a reporting procedure should start with line staff, and continue up the chain of command, such that each person along the line has a responsibility to report to the next highest level, until the highest level has been notified. Those at the top of the chain of command will have the responsibility of carrying out investigations, and referring substantiated¹³⁰ cases to the District Attorney or other appropriate authorities.¹³¹

b. Other Issues to Consider

i. What to Report?

As previously mentioned, mandatory reporting statutes create a duty to report separate and apart from the data collection required by BJS.¹³² Thus, facilities must collect data regarding any sexual contact in a correctional setting, whether it be between offenders, involving offenders and staff, and aggregate this data for BJS upon request. Agencies must recognize that while staff sexual misconduct may be the most talked about issue in the context of reporting, reporting also extends to relationships between offenders, regardless of whether those relationships are non-coercive. Where mandatory reporting laws are unclear or insufficient, agencies can create policies to clarify conduct that should be reported up the chain of authority.

ii. Retaliation

A common theme in sexual misconduct incidents in correctional settings is retaliation. The fear of retaliation often keeps victims and staff from reporting abuse. Fears of retaliation exist in staff-offender and offender-offender abuse. Abusive cultures become entrenched when those committing the abuse assume that because of their positions of power (whether they are staff or offenders) and the code of silence within agencies, abusive behavior can occur without consequences. Corrections staff also fear retaliation. Most corrections staff do not condone sexual abuse, but are afraid to speak out, for fear of retaliation from coworkers or administration, up to and including a fear of being fired.¹³³

As outlined above, using mandatory reporting statutes or adopting mandatory reporting policies may increase abuse reports. First, when staff are legally required to

report abuse, and understand that there are penalties for failure to do, retaliation may decrease. Further, using mandatory reporting promotes an open and honest environment, and supports agencies zero tolerance policies.

VII. Conclusion

This publication should be read together with the *Fifty State Survey of Mandatory Reporting Statutes* to provide a background and framework for understanding mandatory reporting laws, and to highlight some of the laws' key provisions. Despite the lack of consistency across the fifty states, corrections agencies should strive to adhere to the strictest standards of reporting, as another means of deterring all types of illicit sexual behavior within their correctional setting. The mandatory reporting laws, agency policies, and PREA reporting responsibilities should therefore be regarded not as a burden, but as tools in the struggle to create healthy, open and safe environments that deter or prevent sexual abuse whenever possible.

¹ See, THE PRISON RAPE ELIMINATION ACT OF 2003, 42 U.S.C. §15604 (2003).

² See REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD SANDUSKY, available at http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf.

³ §§ 15601-15609 (2003).

⁴ Developed under NIC/WCL Cooperative Agreement 06S20GJJ1, January 2008. [Hereinafter “50 State Mandatory Reporting Survey”]. Because this publication is to be read in conjunction with the survey, many specific references to various state laws have been omitted in the text. Rather, it is intended that corrections officials will read this publication as an introduction to the mandatory reporting issue, and then consult the survey for the language of specific state statutes.

⁵ § 15602(1). PREA applies to prisons, jails, immigration detention facilities, police lockups, and juvenile facilities. §§ 15606(3), (7).

⁶ However, PREA’s purpose section does note that one purpose of the legislation is to “protect the Eighth Amendment rights of Federal, State, and local prisoners.” § 15602(7).

⁷ § 15606(b)(3)(A). A high incidence does not necessarily mean that a state does not address prison rape. In fact, the contrary may be true. A state with a credible grievance process and aggressive investigation may have higher reporting than a state that does poor investigations and has a compromised grievance process. For a more in-depth discussion of this topic, see an article based on work done under four cooperative agreements between National Institute of Corrections and the Center for Innovative Public Policies by Susan W. McCampbell & Allen L. Ault: *Lessons Learned: Miles to Go in Preventing Staff Sexual Misconduct with Offenders*, 18 AM. JAILS, 37 (2005).

⁸ § 15606(d).

⁹ § 15606(e).

¹¹ 28 C.F.R. § 115.51 (2012).

¹² § 11.351

¹³ § 115.353

¹⁴ § 115.161

¹⁵ § 115.361

¹⁶ § 115.361

¹⁷ 42 U.S.C. § 15603(a) (2003). The Bureau of Justice Statistics produces an annual comprehensive statistical review of prison rape based on a representative sample of correctional facilities, departments of corrections, former inmates, and other experts.

¹⁸ §§ 115.87, 115.387.

¹⁹ PREA defines “rape” as: (A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against the person’s will; (B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person’s will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or (C) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury. § 15609(9).

²⁰ § 15609(9)(c).

²¹ § 15603(a)(2)(A).

²² See Allen J. Beck & Timothy A. Hughes, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004, at 3 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrca04.pdf>.

²³ See *id.* at 2.

²⁴ See *supra* note 22, and accompanying text.

²⁵ See generally, 50 State Mandatory Reporting Survey, *supra* note 4 (outlining each state’s definition of a child). Mandatory reporting statutes specifically refer to “children” rather than “juveniles.”

²⁶ The age of majority is determined by legislative statute. PATRICK GRIFFIN ET. AL., U.S. DEP’T OF JUSTICE, OFFICE OF JUV. JUSTICE & DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 21 (2011).

²⁷ See, e.g., OR. REV. STAT. § 109.510 (West 2012) (“Except as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 18 years, and thereafter shall: (1) Have

control of the person's own actions and business; and (2) Have all the rights and be subject to all the liabilities of a citizen of full age.”).

²⁸ See, e.g., CONN. GEN. STAT. ANN. § 46b-120 (West 2011) (“Child” means any person under eighteen years of age who has not been legally emancipated).

²⁹ FLA. STAT. ANN. § 39.01(12) (West 2007). See also, 325 ILL. COMP. STAT. ANN. 5/3 (West 2011) (“Child” means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services).

³⁰ GRIFFIN, *supra* note 26, at 21

³¹ A public employee may be held criminally liable for failure to report suspected abuse within a public facility. See *Capaldi v. State*, 763 P.2d 117 (Okla. 1988).

³² See, e.g., CONN. GEN. STAT. ANN. § 46b-120 (West 2011) (“Child” means any person under eighteen years of age who has not been legally emancipated).

³³ See, e.g., ARIZ. REV. STAT. ANN. § 13-3620 (West 2011) (requiring “any person who reasonably believes child abuse has occurred to report”); N.J. STAT. ANN. § 9:6-8.10 (West 2012) (“Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse.”); N.C. GEN. STAT. ANN. § 7B-301 (West 2012) (“any person or institution that has cause to suspect that any juvenile is abused or neglected”); UTAH CODE ANN. § 62a-4a-403 (West 2012) (“any person”).

³⁴ See, e.g., L.A.R. v. Ludwig, 821 P.2d 291, 292 (Ariz.App. Div. 1, 1991) (finding a therapist that could “reasonably conclude” child abuse had occurred was a mandatory reporter).

³⁵ OR. REV. STAT. § 419B.010 (West 2012) (“Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child”); R.I. GEN. LAWS § 40.1-27-2 (West 2008) (“Any person within the scope of their employment at a program or in their professional capacity who has knowledge of or reasonable cause to believe that a participant in a program has been abused, mistreated or neglected”).

³⁶ TEX. HUM. RES. CODE ANN. § 48.051(c) (Vernon 2012) (“The duty imposed applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health professional.”); CAL. PENAL CODE § 11166(a) (West 2011) (“Whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.”).

³⁷ ALASKA STAT. § 47.17.020 (2011) (“This section does not prohibit the named persons from reporting cases that have come to their attention in their non-occupational capacities”).

³⁸ See, e.g., ARK. CODE ANN. § 12-18-402 (West 2011); COLO. REV. STAT. § 19-3-304 (2012).

³⁹ See, e.g., ALA. CODE 1975 § 26-14-3 (West 2011); CAL. PENAL CODE § 11165.7 (West 2011); GA. CODE ANN § 19-7-5 (2011).

⁴⁰ ALASKA STAT. § 47.17.020 (2011); HAW. REV. STAT. § 350-1.1 (2011); 325 ILL. COMP. STAT. ANN. 5/4 (West 2011); KAN. STAT. ANN. § 38-2223 (2011); MINN. STAT. ANN. § 609.556 (West 2011); MO. REV. STAT. § 217.410 (West 2012); WASH. REV. CODE ANN. § 26.44.030 (West 2012).

⁴¹ MD CODE ANN. FAM. LAW. § 5-704 (West 2011); IOWA CODE § 232.69 (2011);

TEX. FAM. CODE ANN. § 261.101 (VERNON 2012).

⁴² COLO. REV. STAT. § 19-3-304 (2012).

⁴³ D.C. CODE § 4-1321.02 (2011); GA. CODE ANN § 30-5-4 (2011); N.H. REV. STAT. ANN. § 169-C:29 (West 2012).

⁴⁴ ARIZ. REV. STAT. ANN. § 13-3620 (2011). See also, ME. REV. STAT. ANN. tit. 22 § 4011-A (2011) (“Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation.”).

⁴⁵ OHIO REV. CODE ANN. § 2151.421 (West 2012)

⁴⁶ CONN. GEN. STAT. ANN. § 17a-101(b) (West 2011)

⁴⁷ 23 PA. CONS. STAT. ANN. § 6311 (West 2012) (including only law enforcement officers and peace officers in its list of mandatory reporters).

⁴⁸ See, e.g., OHIO REV. CODE ANN. § 5101.61 (West 2008) (provides for peace officer but does not provide for correctional officers); N.H. REV. STAT. ANN. § 169-C-29 (2008) (provides for law enforcement official

but does not provide for correctional officers); VT. STAT. ANN. 33 § 4913 (provides for police and probation officers but does not provide for correctional officers).

⁴⁹ N.D. CENT. CODE § 50-25.2-03 (West 2012) (“a person who has reasonable cause to believe may report”); TENN. CODE ANN. § 37-1-605 (West 2012) (“neighbor, relative, friend or any other person”).

⁵⁰ VT. STAT. ANN. tit 33 § 4913 (West 2012) (“reasonable cause to believe that any child has been abused or neglected”); KY. REV. STAT. ANN. § 620.030 (West 2011) (“knowledge or reasonable cause to believe that a child is dependent, neglected, or abused”).

⁵¹ N.M. STAT. ANN. § 32A-4-3 (West 2012) (“knowledge or reasonable suspicion that a child is an abused or a neglected child”).

⁵² ARIZ. REV. STAT. ANN. § 13-3620 (2011) (“Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse”).

⁵³ CAL. PENAL CODE § 11166 (West 2011) (“whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment . . . knows or reasonably suspects [a child] has been the victim of child abuse or neglect.”).

⁵⁴ KAN. STAT. ANN. § 38-2223 (2011) (“reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse....”); N.H. REV. STAT. ANN. § 169-C:29 (West 2012) (“reason to suspect that a child has been abused or neglected”).

⁵⁵ See, e.g., *Diana G-D ex rel. Ann D. v. Bedford Cent. School Dist.*, 932 N.Y.S.2d 316 (N.Y. Sup. Ct. 2011) (finding no reasonable cause to suspect abuse where school officials received only third-hand knowledge of abuse that was not corroborated by the child in question); *Doe v. Dimovski*, 783 N.E.2d 193, 198 (Ill. 2003) (stating that once a school official suspects or should suspect, the official retains no discretion to make a determination of reasonable cause); *O’Heron v. Blaney*, 583 S.E.2d 834, 836 (Ga. 2003) (interpreting reasonable cause as requiring an objective test, where “[i]he relevant question is whether the information available at the time would lead a reasonable person in the position of the reporter to suspect abuse).

⁵⁶ See *Blaney*, 583 S.E.2d at 873 (granting immunity to a doctor after she made a report of suspected abuse which was based on children’s allegations that their grandfather abused them).

⁵⁷ See *supra* note 50.

⁵⁸ See, e.g., *Diana G-D ex rel* 932 N.Y.S. at 316. Rumors, however, were not sufficient. *Id.*

⁵⁹ *Gross v. Myers*, 229 Mont. 509, 748 P.2d 459 (1987) (ruling in favor of a social worker who reported her suspicion that a grandfather was abusing his grandchildren, based on her knowledge that he had abused his own children sixteen years prior).

⁶⁰ *Eichenberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 203 Cal.App.3d 225 (Cal.App. 3 Dist. 1988.) (finding a clinic with knowledge that a 13-year-old minor was impregnated by 21-year-old boyfriend was enough for reasonable suspicion, requiring a report).

⁶¹ *Anonymous Hosp. v. A.K.*, 920 N.E.2d 704 (Ind .App. 2010) (concluding the presence of sperm in a child’s urine was sufficient to justify a report).

⁶² See *Doe v. Dimovski*, 783 N.E. 2d 193, 198 (Ill. 2003).

⁶³ ALA. CODE 1975 § 26-14-13 (West 2011); ALASKA STAT. § 47.17.068 (2011); ARK. CODE ANN. § 12-18-201 (West 2011); CAL. PENAL CODE § 11166 (West 2011); COLO. REV. STAT. § 19-3-304 (2012); CON. GEN. STAT. ANN. § 17a-101a (West 2011); DEL. CODE ANN. tit. 16, § 914 (2011); D.C. CODE § 4-1321.07 (2011); GA. CODE ANN § 19-7-5 (2011); Haw. Rev. Stat. § 350-1.2 (2011); IDAHO CODE ANN. § 16-1605 (2011); IND. CODE ANN. § 31-33-22-1 (West 2011); IOWA CODE § 232.75 (2011); KAN. STAT. ANN. § 38-2223 (2011); LSA-Ch.C. Art. 609 (2011); LA. CHILD. CODE ANN. art. 609 (2011); ME. REV. STAT. ANN. tit. 22 § 4009 (2011); MASS. GEN. LAWS ANN. ch. 119 § 51 (West 2012); M.C.L.A. § 722.623 (West 2008); MINN. STAT. ANN. § 609.556 (West 2011); MISS. CODE ANN. § 43-21-353 (7) (West 2011); MO. REV. STAT. § 560.016 (West 2012); MONT. CODE ANN. § 41-3-207 (West 2011); NEB. REV. ST. § 28-717 (West 2008); NEV. REV. STAT. § 432B.240 (West 2011); N.H. REV. STAT. ANN. § 169-C:39 (West 2012); N.J. STAT. ANN. § 9:6-8.14 (West 2012); N.M. STAT. § 32A-4-3 (West 2012); N.Y. SOC. SERV. § 420 (West 2008); N.D. CENT CODE § 50-25.1-04 (West 2012); OHIO REV. CODE ANN. § 2151.421 (West 2012); OKLA. STAT. ANN. tit. 10 § 7103 (West 2012); OR. REV. STAT. § 419B.010 (West 2012); 23 PA. CONS. STAT. ANN. § 6319 (West 2012); R.I. GEN. LAWS § 40-11-6.1 (West 2008); S.C. CODE ANN. § 63-7-410 (West 2012); S.D. CODIFIED LAWS § 26-8A-3 (West 2012); TENN. CODE ANN. § 37-1-412 (West 2008); TEX. FAM. CODE ANN. § 261.109 (Vernon 2012); U.C.A. 1953 § 62a-4a-411 (West 2008); VT. STAT. ANN. tit 33 § 4913 (West 2012); VA. CODE ANN. § 63.2-1509 (West 2012); WASH REV. CODE ANN. § 26.44.080 (West

2012); W. VA. CODE ANN. § 49-6A-8 (West 2012); WIS. STAT. ANN. § 48.981 (West 2012); WYO. STAT. ANN. § 14-3-205 (West 2012).

⁶⁴ ARIZ. REV. STAT. ANN. § 13-3620 (2011); FLA. STAT. ANN. § 39.205 (West 2012);

⁶⁵ 325 ILL. COMP. STAT. ANN. 5/4 (West 2011); KY. REV. STAT. ANN. § 620.030 (West 2011)

⁶⁶ N.C. GEN. STAT. § 7B-301 (West 2012).

⁶⁷ MD Code Ann. Health Occ. § 19-311 (West 2011).

⁶⁸ *E.g.*, VA. CODE ANN. § 63.2-1509 (West 2012).

⁶⁹ *E.g.*, ALASKA STAT. § 47.17.068 (2011).

⁷⁰ *E.g.*, W. VA. CODE ANN. § 49-6A-8 (West 2012).

⁷¹ N.H. REV. STAT. ANN. § 169-C:39 (West 2012).

⁷² *E.g.*, CAL. WELF. & INST. Code § 15630 (West 2008); GA. CODE ANN. § 19-7-5 (West 2008); IND. CODE ANN. § 31-33-22-1 (West 2008); MICH. COMP. LAWS ANN. § 722.623 (West 2008); TENN. CODE ANN. § 71-6-110 (West 2011).

⁷³ *E.g.*, CONN. GEN. STAT. § 17a-101 (West 2011).

⁷⁴ *E.g.*, 325 ILL. COMP. STAT. ANN. 5/4.02 (West 2011) and 320 ILL. COMP. STAT. ANN. 20/4

(providing for a state medical board disciplinary referral upon conviction); ME. REV. STAT. ANN. tit. 22, § 3475 (2011) (providing for licensing organization, registration board or accreditation facility referral upon conviction).

⁷⁵ *See generally*, 50 State Mandatory Reporting Survey, *supra* note 4 (outlining each state's definition of a child).

⁷⁷ Page v. Monroe, 300 Fed.Appx. 71, 74 (2d Cir. 2008).

⁷⁸ Hazlett v. Evans, 943 F.Supp. 785, 787–88 (E.D. Ky. 1996).

⁷⁹ *Cf. id.* (“the intent of the immunity statutes are to ensure that health care professional and others who work with children will not be stifled and unwilling to report such abuse for fear of reprisal from upset and sometimes wrongly accused parents.”)

⁸⁰ FLA. STAT. ANN. § 944.35 (West 2011).

⁸¹ S.C. CODE ANN. § 44-23-1150 (2011).

⁸² MO. REV. STAT. § 210.115 (West 2011) and MO. REV. STAT. § 217.40 (West 2011).

⁸³ *Id.* *See also* S.C. CODE ANN. § 20-7-510 (2011) (relating to children) and S.C. CODE ANN. § 43-35-25 (2011) (relating to adults); ME. REV. STAT. ANN. § 4011-A (2008) (relating to children) and ME. REV. STAT. ANN. § 3477 (2011) (relating to adults).

⁸⁴ *See, e.g.*, ALASKA STAT. § 47.24.010 (2011) (requiring a report upon “[r]easonable cause to believe that in the performance of their professional duties a vulnerable adult suffers from abandonment, exploitation, abuse, neglect, or self-neglect); HAW. REV. STAT. § 346-224 (2011) (“A mandatory reporter in the performance of their professional or official duties who has reason to believe that a vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken.”).

⁸⁵ UTAH CODE ANN. 1953 § 62A-3-301 (West 2011).

⁸⁶ WIS. STAT. ANN. § 46.90 (West 2012) (“[A mandated reporter] who has seen an elder adult at risk in the course of the person's professional duties.”).

⁸⁷ DEL. CODE ANN. tit. 31, § 3902 (2011).

⁸⁸ IOWA CODE § 235B.2 (2011).

⁸⁹ LA. REV. STAT. ANN. § 15:1503 (2011).

⁹⁰ ARK. CODE ANN. § 12-12-1708 (West 2011).

⁹¹ ARK. CODE ANN. § 5-28-101 (West 2011) (“Endangered person” means: A person eighteen (18) years of age or older who [d]emonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition”); COLO. REV. STAT. § 26-3.1-101 (2011) (“At-risk adult” means an individual eighteen years of age or older who is susceptible to mistreatment . . . because the individual is unable to perform or obtain services necessary for the individual's health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual's person or affairs.); IND. CODE ANN. § 12-10-3-2 (West 2011) (“Endangered Adult” means an individual who is . . . incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care”).

⁹² Williams v. Watkins, 379 S.C. 530, 665 S.E.2d 243 (S.C. App. 2008)

- ⁹³ ALA. CODE 1975 § 38-9-2 (West 2011) (“Protected person” means any person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons who are senile, mentally ill, developmentally disabled, or mentally retarded, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.”); IDAHO CODE ANN. § 39-5302 (2011) (“Vulnerable adult means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person’s judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.”).
- ⁹⁴ *Cooney v. Department of Mental Retardation*, 754 N.E.2d 92 (Mass. App. Ct. 2001).
- ⁹⁵ IOWA CODE § 235B.2 (2011) (“Dependent adult” means a person eighteen years of age or older who is unable to protect the person’s own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.”).
- ⁹⁶ *Bennett v. State*, 933 A.2d 1249, 1252 (Del. Supr. 2007).
- ⁹⁷ CONN. GEN. STAT. ANN. § 17b-451 (West 2011) (“Reasonable cause to suspect or believe that any elderly person has been abused, neglected, exploited or abandoned, or is in a condition which is the result of such abuse, neglect, exploitation or abandonment, or is in need of protective services.”).
- ⁹⁸ MASS. GEN. LAWS ANN. ch. 19A, § 14 (West 2012) (Elderly person, an individual who is sixty years of age or over.)
- ⁹⁹ TEX. HUM. RES. CODE ANN. § 48.002 (Vernon 2012) (“Elderly person” means a person 65 years of age or older.).
- ¹⁰⁰ DORIS J. JAMES & LAUREN E. GLAZE, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES, (2006), available at, <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf>
- ¹⁰¹ Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* 6 (2012).
- ¹⁰² FLA. STAT. ANN. § 415.1034 (West 2012); HAW. REV. STAT. § 346-224 (2011); MO. REV. STAT. § 217.410 (West 2012).
- ¹⁰³ DEL. CODE ANN. tit. 31, § 3910 (2011), 320 ILL. COMP. STAT. ANN. 20/4 (West 2011); IND. CODE ANN. § 35-46-1-13 (West 2011); KY. REV. STAT. ANN. § 209.030 (West 2011); LA. REV. STAT. ANN. § 15:1504 (2011); MISS. CODE ANN. § 43-47-7 (West 2011); N.H. REV. STAT. ANN. § 161-F:46 (West 2012); N.M. STAT. § 27-7-30 (West 2012); N.C. GEN. STAT. § 108A-102 (West 2012); OKLA. STAT. ANN. tit. 43A § 10-104 (West 2012); R.I. GEN. LAWS § 42-66-8 (West 2012); S.C. CODE ANN. § 43-35-25 (West 2011); TENN. CODE ANN. § 71-6-103 (West 2008); UTAH CODE ANN. 1953 § 62A-3-305 (West 2008); and WYO. STAT. ANN. § 35-20-111 (West 2012).
- ¹⁰⁴ N.D. CENT CODE § 50-25.2-03 (West 2012) (“A person who has reasonable cause to believe may report.”)
- ¹⁰⁵ ALA. CODE 1975 § 38-9-8 (West 2011) (“All physicians and other practitioners of the healing arts or any caregiver”); N.J. STAT. ANN. § 52:27D-419 (West 20012) (“The county director or his designee.”); VT. STAT. ANN. tit 33 § 6903 (West 2012) (specifically mentioning professionals in the health care or caregiving fields).
- ¹⁰⁶ 320 ILL. COMP. STAT. ANN. 20/2(e) (West 2005) (“a residence where the eligible adult at the time of the report lives alone or with his or her family or a caregiver, or others, or a board and care home or other community-based unlicensed facility).
- ¹⁰⁷ 35 PA. CONS. STAT. ANN. § 10225.103 (West 2007).
- ¹⁰⁸ WASH. REV. CODE ANN. § 73-34.021(15) (West 2007).
- ¹⁰⁹ ALA. CODE 1975 § 38-9-8 (West 2011).
- ¹¹⁰ ARIZ. REV. STAT. ANN. § 46-454 (2011).
- ¹¹¹ D.C. CODE § 7-1903 (2011).
- ¹¹² IND. CODE ANN. § 35-46-1-13 (West 2011).
- ¹¹³ CAL. WEL. & INST. CODE § 15630 (West 2011).
- ¹¹⁴ *People v. Davis*, 126 Cal.App.4th 1416, 25 Cal.Rptr.3d 92 (Cal App. 4 Dist. 2005).
- ¹¹⁵ *Id.*
- ¹¹⁶ *Cooney v. Department of Mental Retardation*, 754 N.E.2d 92 (Mass. App. Ct. 2001) (finding that a speech pathologist was required to report suspected, even when the method she used to ascertain the allegation of abuse from a mentally retarded woman was later discredited).

¹¹⁷ *Williams v. Watkins*, 379 S.C. 530, 665 S.E.2d 243 (S.C. App. 2008).

¹¹⁸ *Id.*

¹¹⁹ ALA. CODE 1975 § 38-9-10 (West 2011); ALASKA STAT. § 47.24.010 (2011); ARIZ. REV. STAT. ANN. § 46-454 (2011); ARK. CODE ANN. § 5-28-110 (West 2011); CAL. WEL & INST CODE § 15630 (West 2011); CONN. GEN. STAT. ANN. § 17b-451 (West 2011); GA. CODE ANN § 30-5-8 (West 2008); HAW. REV. STAT. § 346-224 (2011); IDAHO CODE ANN. § 39-5303 (2011); 320 ILL. COMP. STAT. ANN. 20/4 (West 2011); IOWA CODE § 235B.3 (2011); KAN. STAT. ANN. § 39-1431 (2011); KY. REV. STAT. ANN. § 209.990 (West 2011); LA. REV. STAT. ANN. § 14:403.2(A); MISS. CODE ANN. § 43-47-7 (West 2011); MO. REV. STAT. § 217.410 (West 2012); MONT. CODE ANN. § 52-3-825 (West 2008); NEB. REV. ST. § 28-384 (West 2008); N.H. REV. STAT. ANN. § 161-F:50 (West 2012); N.M. STAT. § 27-7-30 (West 2012); OKLA. STAT. ANN. tit. 43A § 10-104 (West 2012); OR. REV. STAT. § 124.990 (West 2012); 35 PA. CONS. STAT. ANN. § 10225.706 (West 2012); S.C. CODE ANN. § 43-35-85 (West 2011); S.D. CODIFIED LAWS § 22-46-9 (West 2012); TENN. CODE ANN. § 71-6-110 (West 2008); TEX. HUM. RES. CODE ANN. § 48.052 (Vernon 2012); UTAH CODE ANN. 1953 § 62A-3-305 (West 2008); WASH REV. CODE ANN. § 74.34.053 (West 2012); W. VA. CODE § 9-6-14 (West 2012); WIS. STAT. ANN. § 46.90 (West 2012); WYO. STAT. ANN. § 35-20-111 (West 2012).

¹²⁰ D.C. CODE § 7-1912 (2011); FLA. STAT. ANN. § 775.083 (West 2012); MASS. GEN. LAWS ANN. ch. 19A, § 15 (West 2012); R.I. GEN. LAWS § 42-66-8 (West 2012); VT. STAT. ANN. tit 33 § 6913 (West 2012).

¹²¹ ME. REV. STAT. ANN. tit. 22 § 3475 (West 2011); M.C.L.A. § 400.11e (West 2008); MINN. STAT. ANN. § 609.557 (West 2011); N.J. STAT. ANN. § 52:27D-435 (West 2012); VA. CODE ANN. § 63.2-1606 (West 2012);

¹²² NEV. REV. STAT. § 200.5093 (West 2011).

¹²³ COLO. REV. STAT. § 26-3.1-102 (2011); DEL. CODE ANN. tit. 31, § 3910 (2011); IND. CODE ANN. § 35-46-1-13 (West 2011); MD CODE ANN. FAM. LAW § 14-302 (West 2011); N.C. GEN. STAT. § 108A-102 (West 2012); N.D. CENT CODE § 50-25.2-03 (West 2008); OHIO REV. CODE ANN. § 5101.61 (West 2012). New York does not currently have a vulnerable persons statute.

¹²⁴ *People v. Davis*, 126 Cal.App.4th 1416, 25 Cal.Rptr.3d 92 (Cal. App. 4 Dist. 2005).

¹²⁵ *Id.*

¹²⁶ *State v. Kaiser*, 139 S.W.3d 545, 556 (Mo. App. E.D. 2004) (“ the purpose of the legislation is to protect our senior citizens from abuse and to punish those that would do them harm. Thus the duty to report abuse does not terminate with the death of the victim because a report of abuse may nevertheless operate to ameliorate the circumstances of another similarly-situated senior citizen or to bring the abuser to justice”).

¹²⁷ *Evance v. Trumann Health Services, LLC* 2012 WL 2282555 (E.D.Ark.,2012).

¹²⁸ *Northport Health Services, Inc. v. Owens*, 356 Ark. 630, 158 S.W.3d 164 (Ark. 2004).

¹²⁹ *Id.*

¹³⁰ Investigating allegations of sexual misconduct once the abuse has been reported is beyond the scope of this publication. A comprehensive training curriculum for investigating allegations has been developed by the National Institute of Corrections and is available for free at their online library, at <http://www.nicic.org/Library/016804> (last visited June 14, 2008).

¹³¹ For an example of a reporting procedure, see the Texas Department of Criminal Justice publication entitled “Sexual Misconduct with Offenders.” There, the chain starts with an employee, who notifies the supervisor, who in turn notifies the warden, who in turn notifies the Office of Inspector General. In addition, the policy stipulates that any employee, supervisor, or any other individual who becomes aware of sexual misconduct may ignore the chain of command, and make a report directly to the Office of the Inspector General. It is the Office of Inspector General who is responsible for referring cases to the District Attorney’s Office. See SEXUAL MISCONDUCT WITH OFFENDERS, at 4-5 (Oct. 1, 2007), available at tdjc.state.tx.us/vacancy/hr-policy/pd-29.pdf (last visited June 3, 2008).

¹³² See discussion, *supra* at Section II, and accompanying notes.

¹³³ *Baron v. Hickey*, 242 F. Supp. 2d 66 (2003) (holding that a correctional officer who reported a fellow officer and was subjected to harassment could have a viable claim for retaliation based on the “code of silence” culture within the facility).