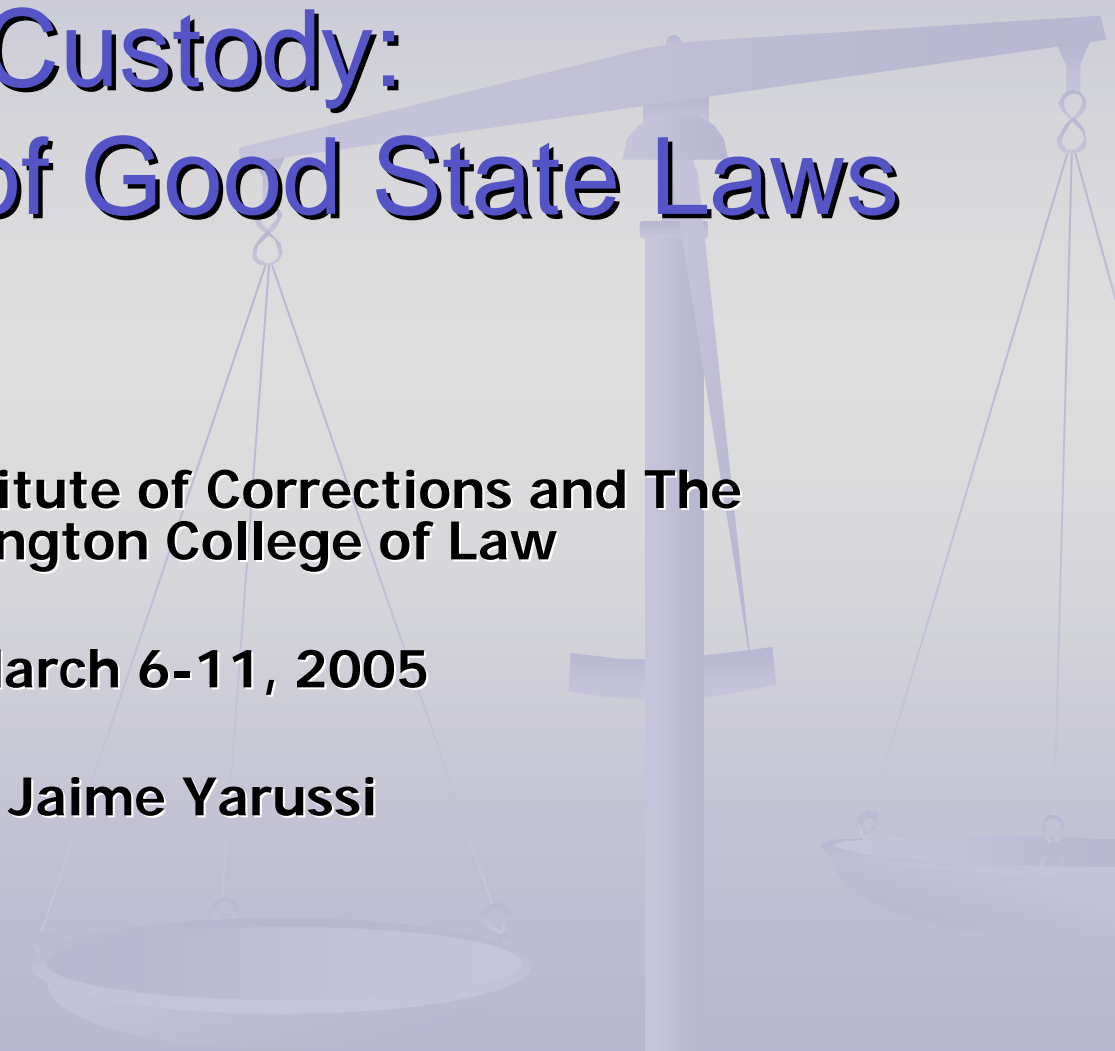


# Legal Responses to Staff Sexual Misconduct with Individuals in Custody: Elements of Good State Laws



**National Institute of Corrections and The  
Washington College of Law**

**March 6-11, 2005**

**Jaime Yarussi**

# Enacting a Law

- Context
- Climate
- Proponent

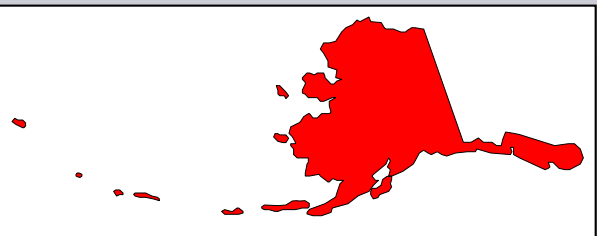
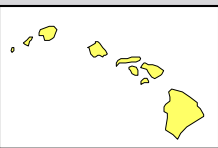


# State Criminal Laws Prohibiting Sexual Misconduct with Offenders in 1990

National Institute of Corrections



	Sexual misconduct in prisons is defined as a misdemeanor.
	Sexual misconduct in prisons is defined as a felony.
	Sexual misconduct in prisons is defined as a felony or misdemeanor, according to the nature and severity of the assault.
	No laws criminalizing sexual misconduct in prisons.



Source: 1997, *Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners*, Brenda V. Smith, National Women's Law Center.



# Important Policy Decisions



- What conduct will the law cover?
- Which staff will the law target?
- Will you penalize offender victims?
- What agencies will the law cover?
- What will the penalties be?
- Will this be a strict liability offense?
- Will this be a separate statute?

# Coverage



## ➤ Agency

Secure Confinement  
Community Correction Agencies

## ➤ Personnel

Staff  
Volunteers  
Contractors  
Maintenance Workers

Clergy  
Medical Staff  
Food Service

**Will place matter?**

# Conduct

- **Physical**

  - Penetration
  - Contact

- **Non-Physical**

  - Harassment
  - Over-familiarity



# Reporting

- **Duty to Report**
- **False Reports**
- **Retaliation and Coercion**



# Defenses

- **Ignorance of Status**
- **Marriage**
- **Consent**



# Penalties



## ➤ Who will be penalized?

- Staff
- Offender Victims

## ➤ What will the penalty be?

- Felony
- Misdemeanor
- Graduated Sanctions
- Malfeasance in Office/ Loss of License

# Optimal Legal Elements

- Coverage
- Conduct
- Reporting
- Defenses
- Sanctions and Penalties

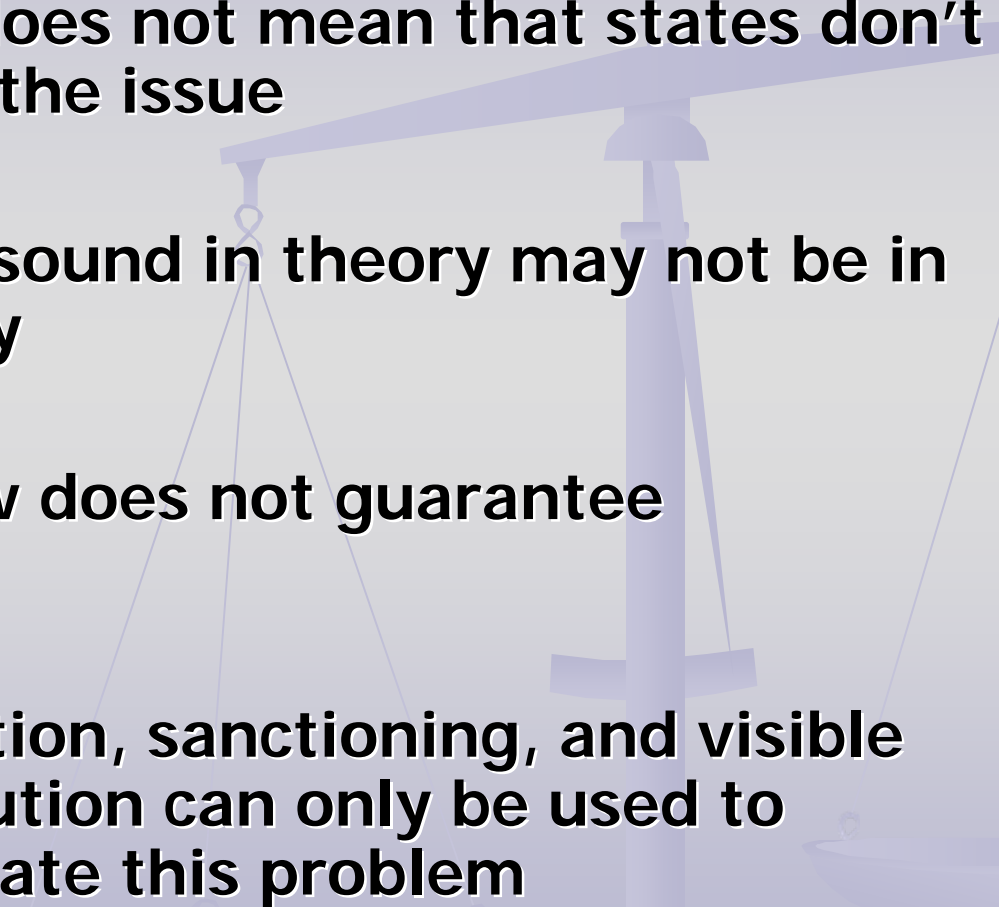


# Food for Thought



- Staff sexual misconduct is embedded in culture
- An incident polarizes staff, population, and leadership
- Policies need to be in place to direct staff to prevention
- Training is essential
- Legislation can be reinforced by internal policies

# Things to Remember...

- **Absence of a law does not mean that states don't or cannot address the issue**
  - **Laws that may be sound in theory may not be in practice and reality**
  - **Enactment of a law does not guarantee enforcement**
  - **Education, prevention, sanctioning, and visible aggressive prosecution can only be used to remedy and eradicate this problem**
- 

# State Law Activity

Coverage	Conduct	Reporting	Defenses	Penalties

