



**Legal Responses to Staff  
Sexual Misconduct with  
Youth:  
Elements of Good State Laws**

**Addressing Staff Sexual Misconduct  
with Youth in Custody  
Kentucky Department of Juvenile Justice**

**November 7-9, 2005**

**Lexington, KY**

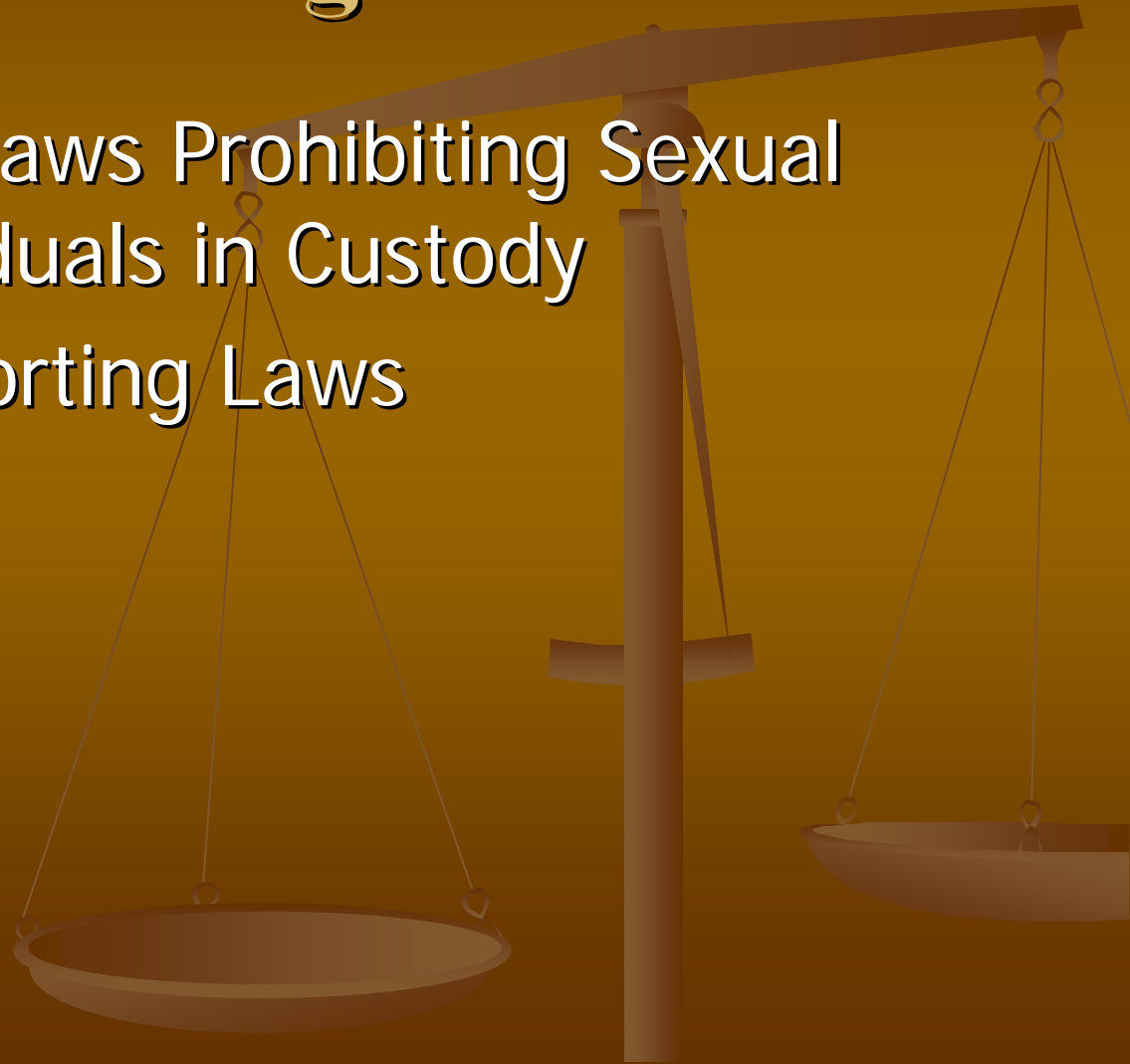
# Training Objectives



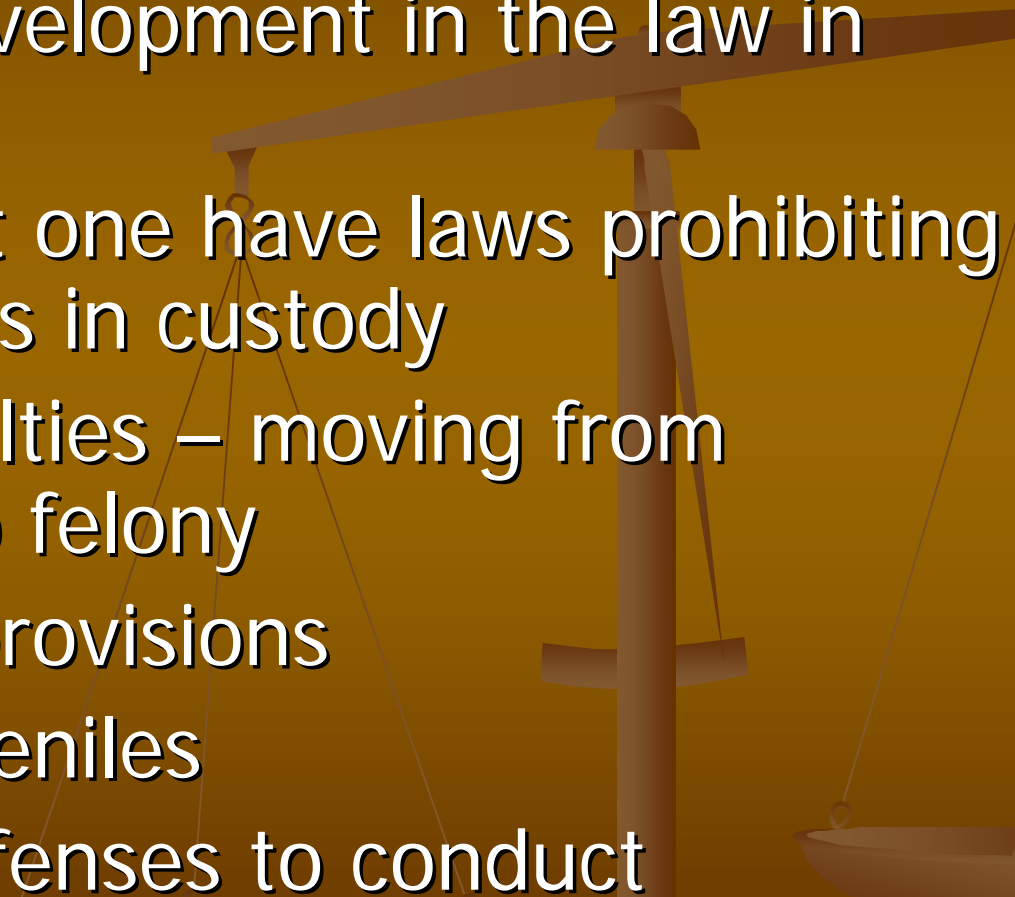
- To understand the basic elements of state criminal law prohibiting the sexual abuse of juveniles under correctional supervision
- To compare and contrast the statutory rape and mandatory reporting laws in Kentucky to other states
- To understand the impact of state laws on eradicating sexual misconduct in youth facilities

# Legal Tools in the Juvenile Setting

- State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody
- Mandatory Reporting Laws
- Statutory Rape

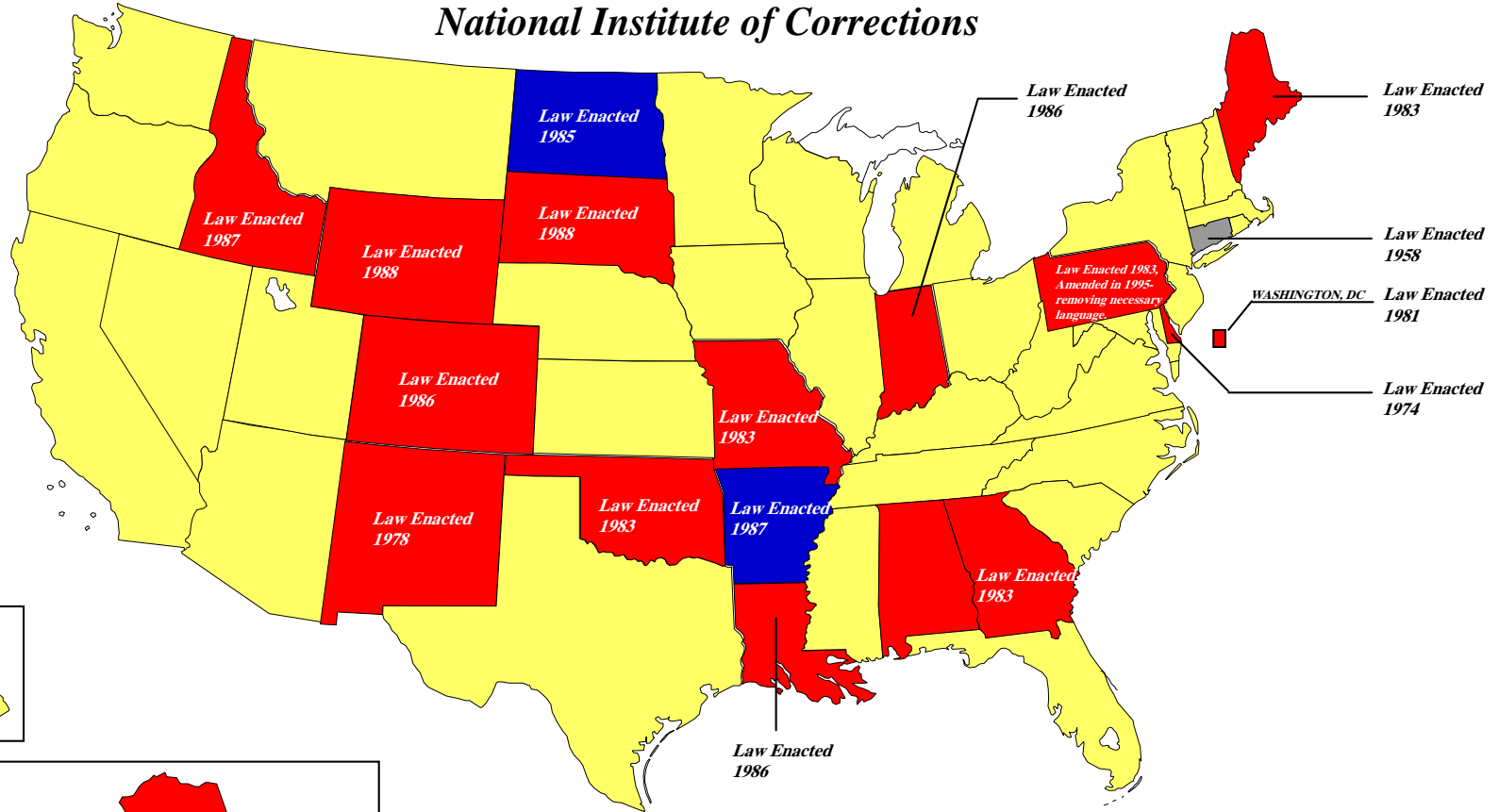


# State Criminal Laws Prohibiting the Abuse of Individuals in Custody

- Tremendous development in the law in the past decade
  - All states except one have laws prohibiting abuse of persons in custody
  - Enhanced Penalties – moving from misdemeanor to felony
  - Duty to report provisions
  - Coverage of juveniles
  - Limitation of defenses to conduct
- 

# State Criminal Laws Prohibiting Sexual Misconduct with Offenders in 1990

National Institute of Corrections



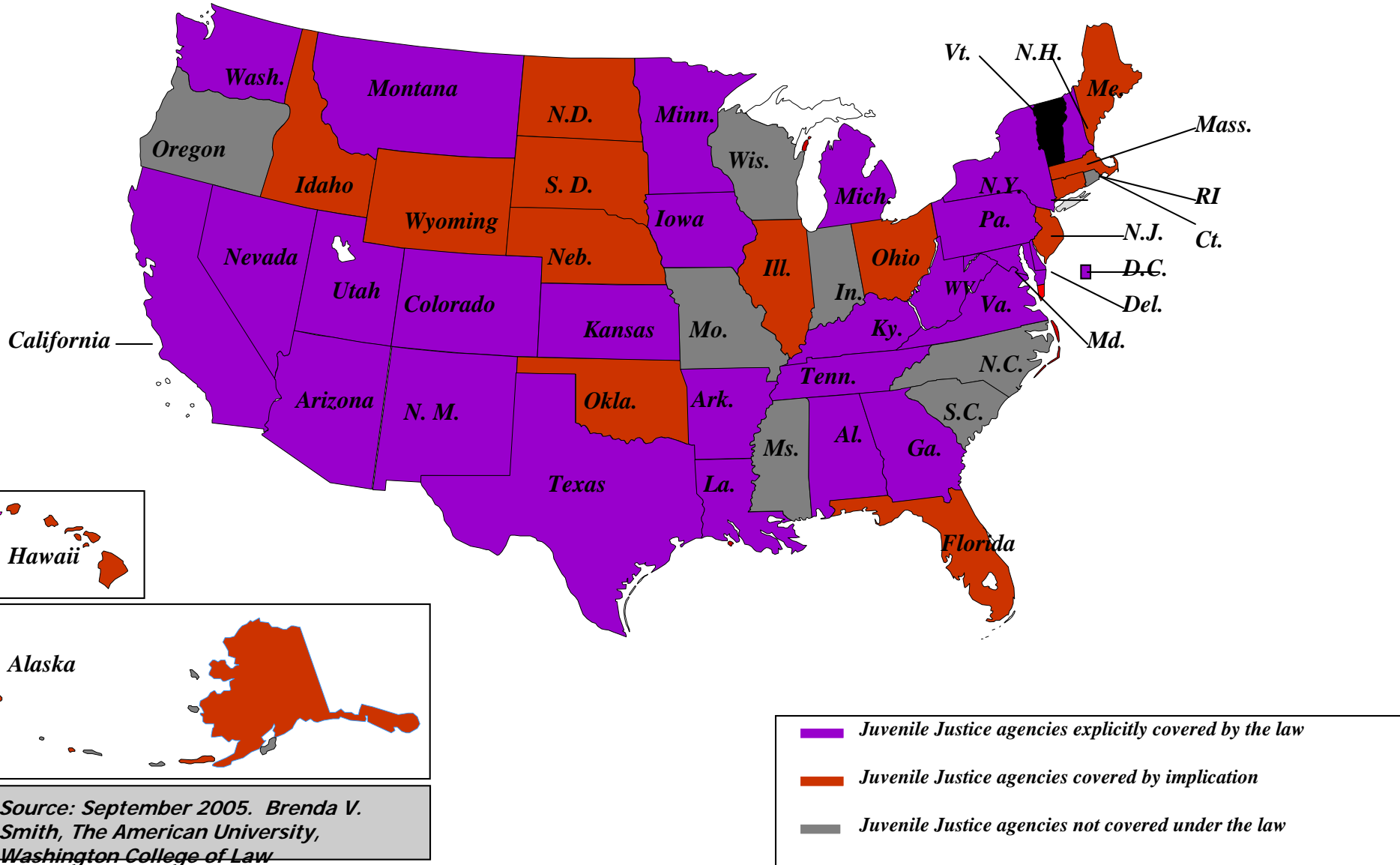
	Sexual misconduct in prisons is defined as a misdemeanor.
	Sexual misconduct in prisons is defined as a felony.
	Sexual misconduct in prisons is defined as a felony or misdemeanor, according to the nature and severity of the assault.
	No laws criminalizing sexual misconduct in prisons.

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



# State Criminal Laws Prohibiting Sexual Abuse of Juveniles Under Correctional Supervision

National Institute of Corrections/American University, Washington College of Law September 2005



# Sexual Abuse of Youth in Custody

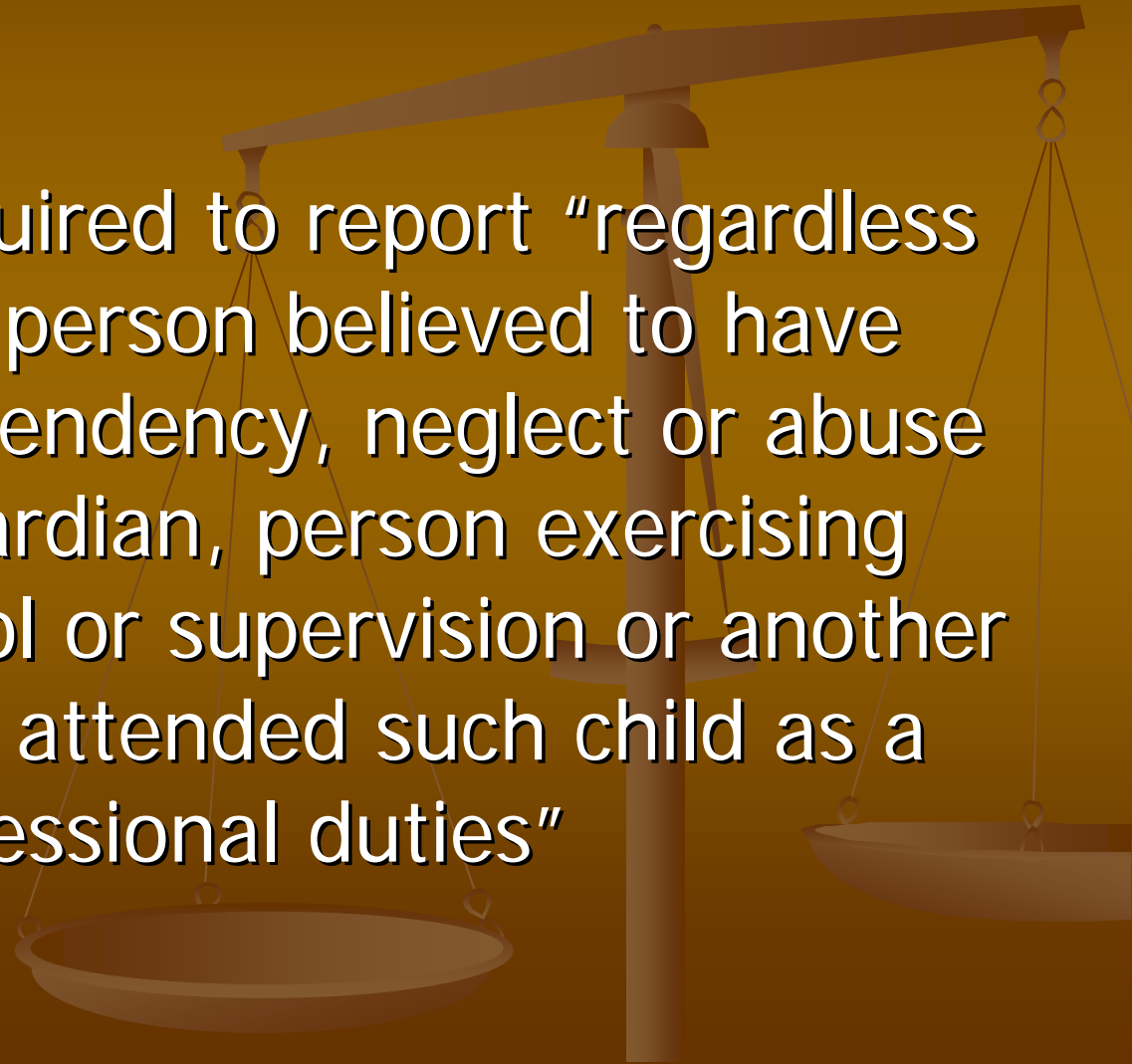
- Sexual Abuse in the Second Degree-
- (a) Subjects a person who is less than 14 years old to sexual contact AND being an employee, contractor, vendor or volunteer of the Department of Corrections, or detention facility, or an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility or the contracting entity, to sexual contact
- (b) Being 21 years old or more, he subjects another person to sexual contact who is less than 18 years old and for whom he provides a foster family home

# Kentucky Law on Mandatory Reporting –KRS 620.030 (2004)

- 
- physicians
  - osteopathic physician
  - nurse
  - teacher
  - school personnel
  - social worker
  - coroner
  - medical examiner
  - child care personnel
  - resident
  - intern
  - chiropractor
  - dentist
  - optometrist
  - emergency medical tech
  - paramedic
  - health professional
  - mental health professional
  - peace officer
  - any organization or agency for any of the above

# Kentucky Law on Mandatory Reporting Cont'd

- A person is required to report “regardless of whether the person believed to have caused the dependency, neglect or abuse is a parent, guardian, person exercising custodial control or supervision or another person, or who attended such child as a part of his professional duties”



# Examples of Mandatory Reporting Laws in other States



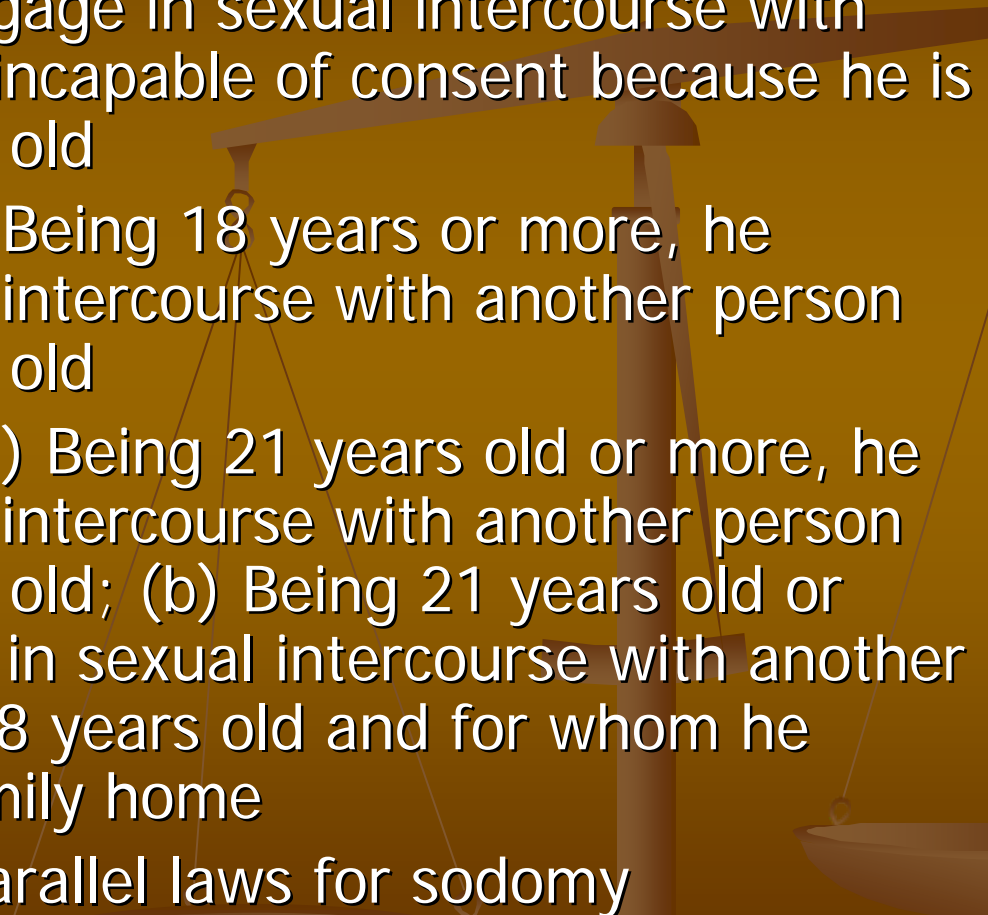
## ■ Iowa

- Prevention of further sexual assault-notification of rights: If a peace officer has reason to believe that a sexual assault has occurred, the officer shall use all reasonable means to prevent further violence including but not limited to the following (there is a list of actions they must take)

## ■ Alabama

- It shall be the duty of all employees of the Department of Corrections to report all violations of the law relating to prisons, correctional facilities and employees and inmates of the Department of Corrections, that may come to their knowledge to the investigation and inspection division of the Department of Corrections.

# Kentucky Law on Statutory Rape

- 1. First Degree-engage in sexual intercourse with another person is incapable of consent because he is less than 12 years old
  - 2. Second Degree-Being 18 years or more, he engages in sexual intercourse with another person less than 14 years old
  - 3. Third Degree-(a) Being 21 years old or more, he engages in sexual intercourse with another person less than 16 years old; (b) Being 21 years old or more, he engages in sexual intercourse with another person less than 18 years old and for whom he provides foster family home
  - Note: There are parallel laws for sodomy
- 

# Statutory Rape

## ■ Georgia

- A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim

## ■ Washington

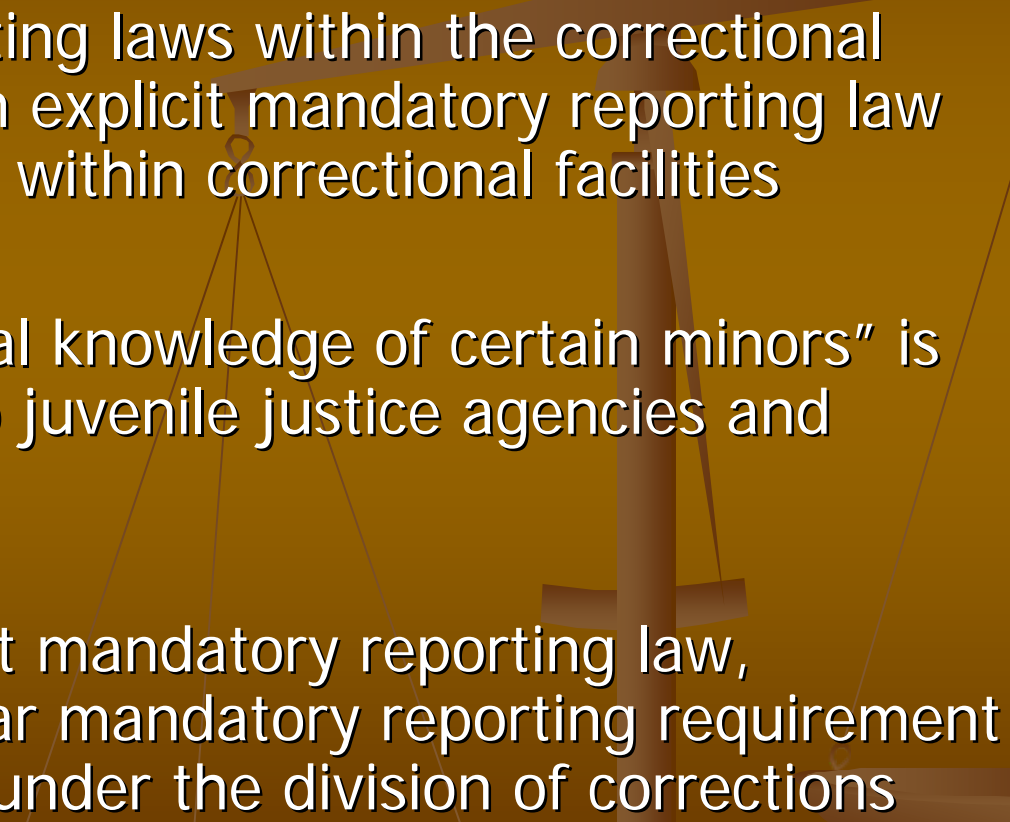
- Rape of a child in the first degree: (1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than 12 years old and not married to perpetrator and the perpetrator is at least 24 months older than the victim.
- 2. Rape of a child in the second degree: (1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least 12 years old but less than 14 years old and not married to the perpetrator and the perpetrator is at 36 months older than the victim.
- 3. Rape of a child in the third degree: (1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least 48 months older than the victim.

# How Kentucky Compares



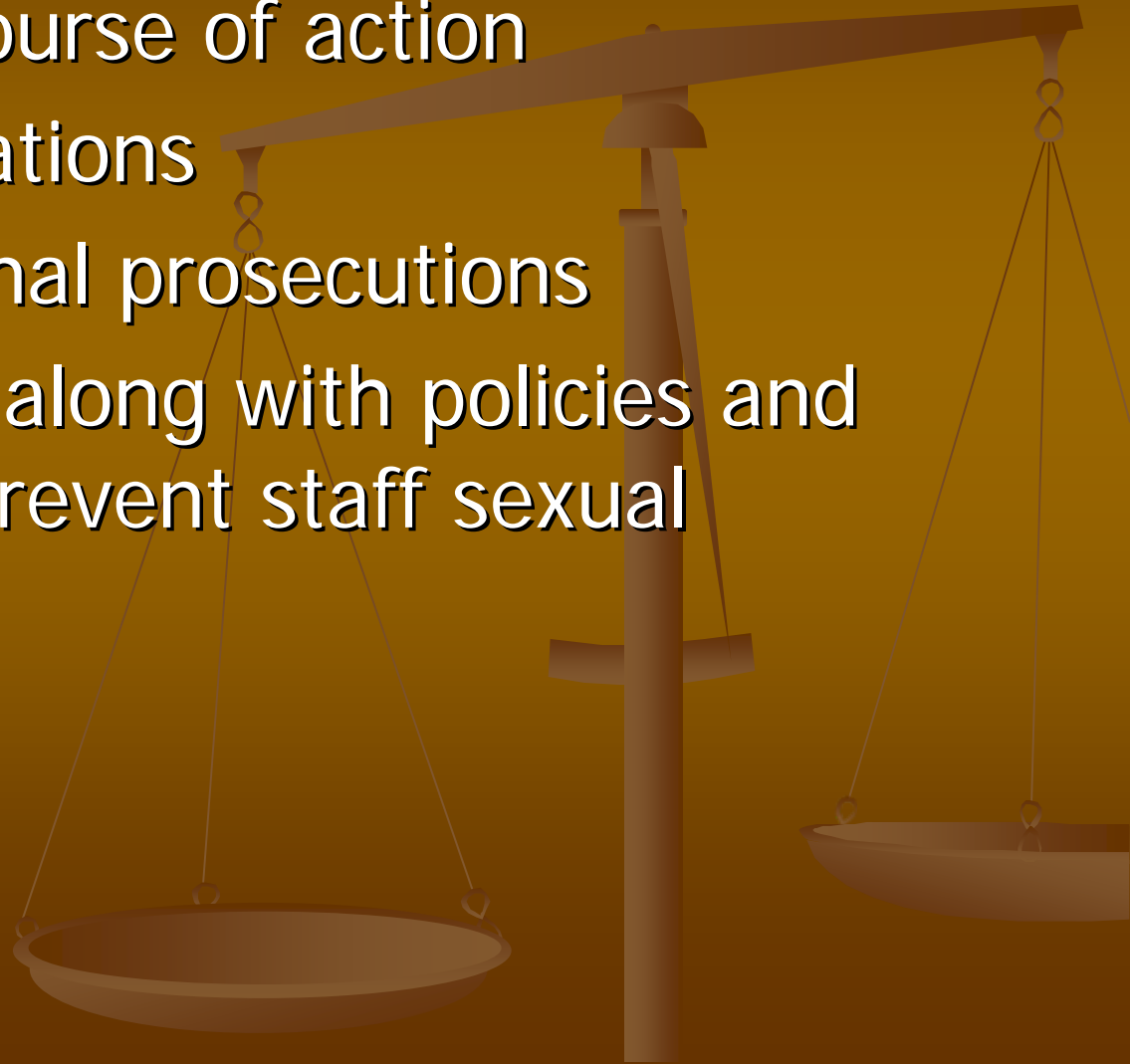
- In KY the statutory rape law appears to be strict considering that the lower in age you go the greater the offense it is
- The sexual abuse with offender law covers KY DJJ by implication
- Broad requirement for mandatory reporting

# How Kentucky Compares Cont'd

- TN has various reporting laws within the correctional context; they have an explicit mandatory reporting law for violence reporting within correctional facilities
  - VA law entitled “carnal knowledge of certain minors” is specifically tailored to juvenile justice agencies and juveniles
  - WV has a very explicit mandatory reporting law, however this particular mandatory reporting requirement is for private prisons under the division of corrections
- 

# Impact of Good State Laws

- Determines a course of action
- Guides investigations
- Allows for criminal prosecutions
- Can direct staff along with policies and procedures to prevent staff sexual misconduct



# Remember



- State criminal laws that do not include juvenile justice agencies do not mean the issue cannot be addressed by other legal avenues
- Laws that are sound in theory may not be in practice
- Enactment of a law that includes juvenile justice agencies does not mean enforcement or prosecution
- Education, prevention, sanctioning and visible aggressive prosecution can only be used to eradicate the problem of staff sexual misconduct with youth.