

Addressing Sexual Abuse of Youth in Custody

Criminal Law Responses to Sexual Abuse of Youth in Custody

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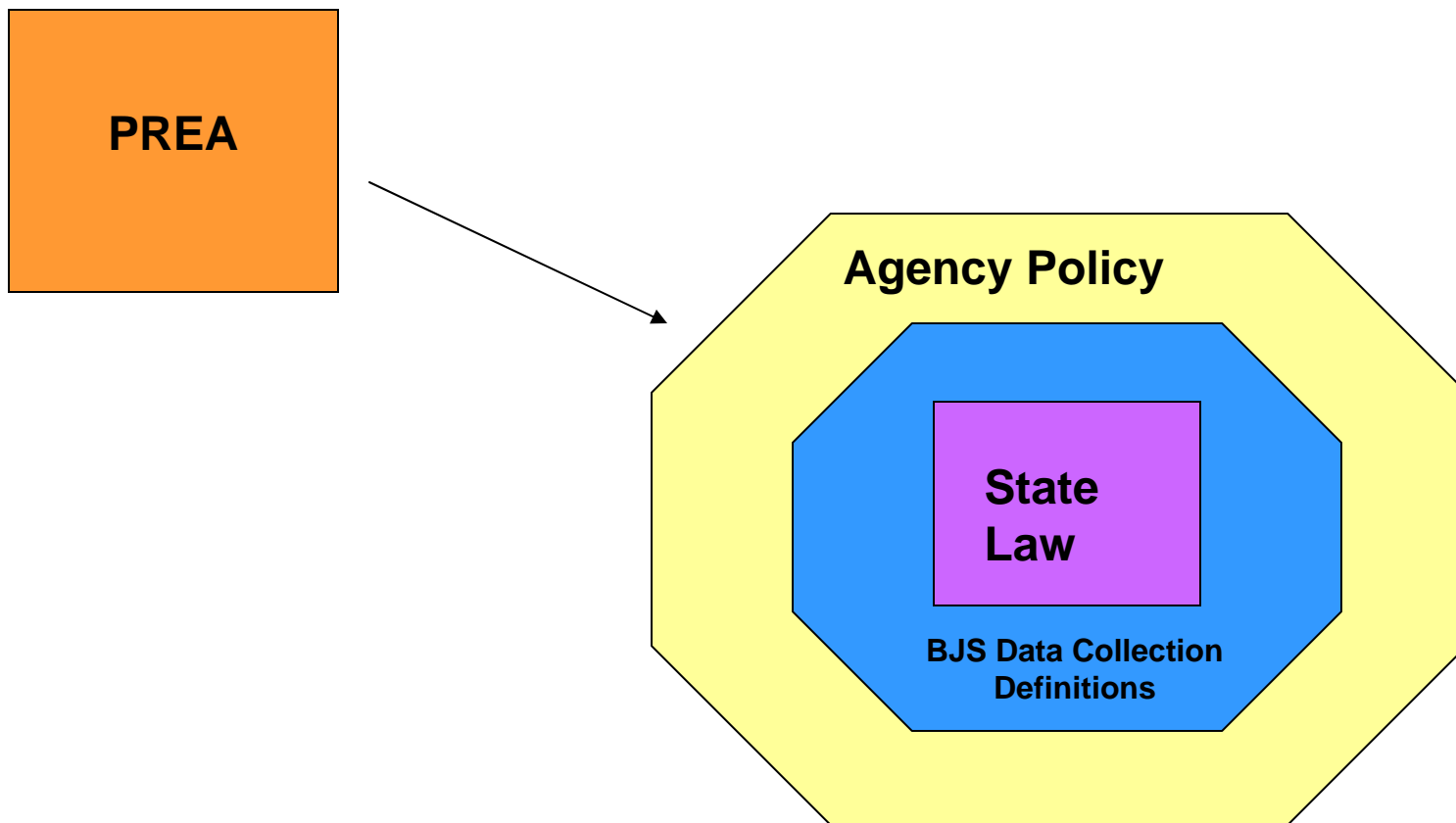
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Objective

Review the legal tools for prosecuting sexual violence in juvenile settings –their content, importance and impact.

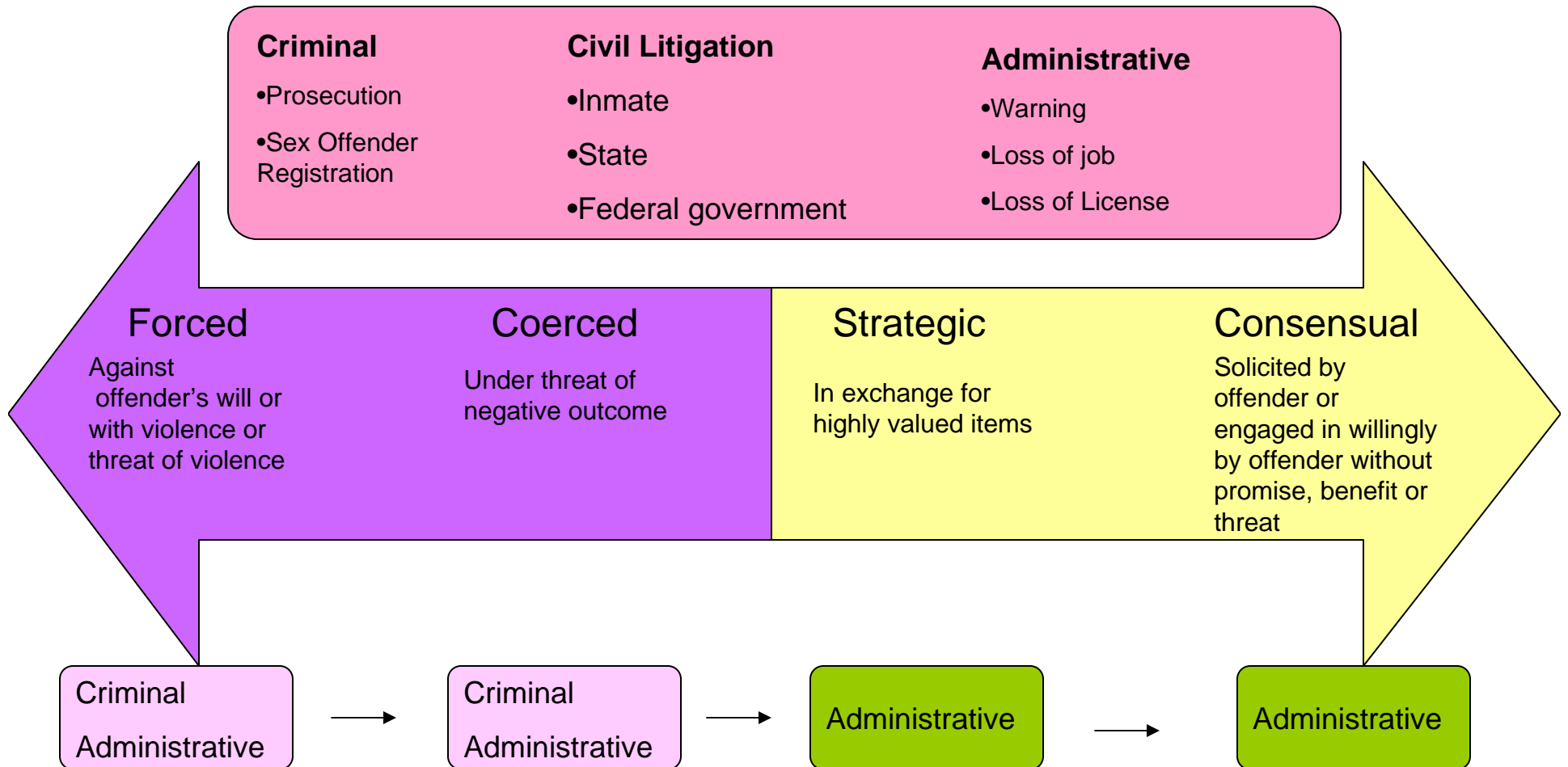
Governmental Limits on Sexual Activity in Institutional Settings



Developed by Brenda V. Smith Under NIC Cooperative Agreement 06S20GJJ1

Continuum of Sexual Activity Involving Adult Offenders

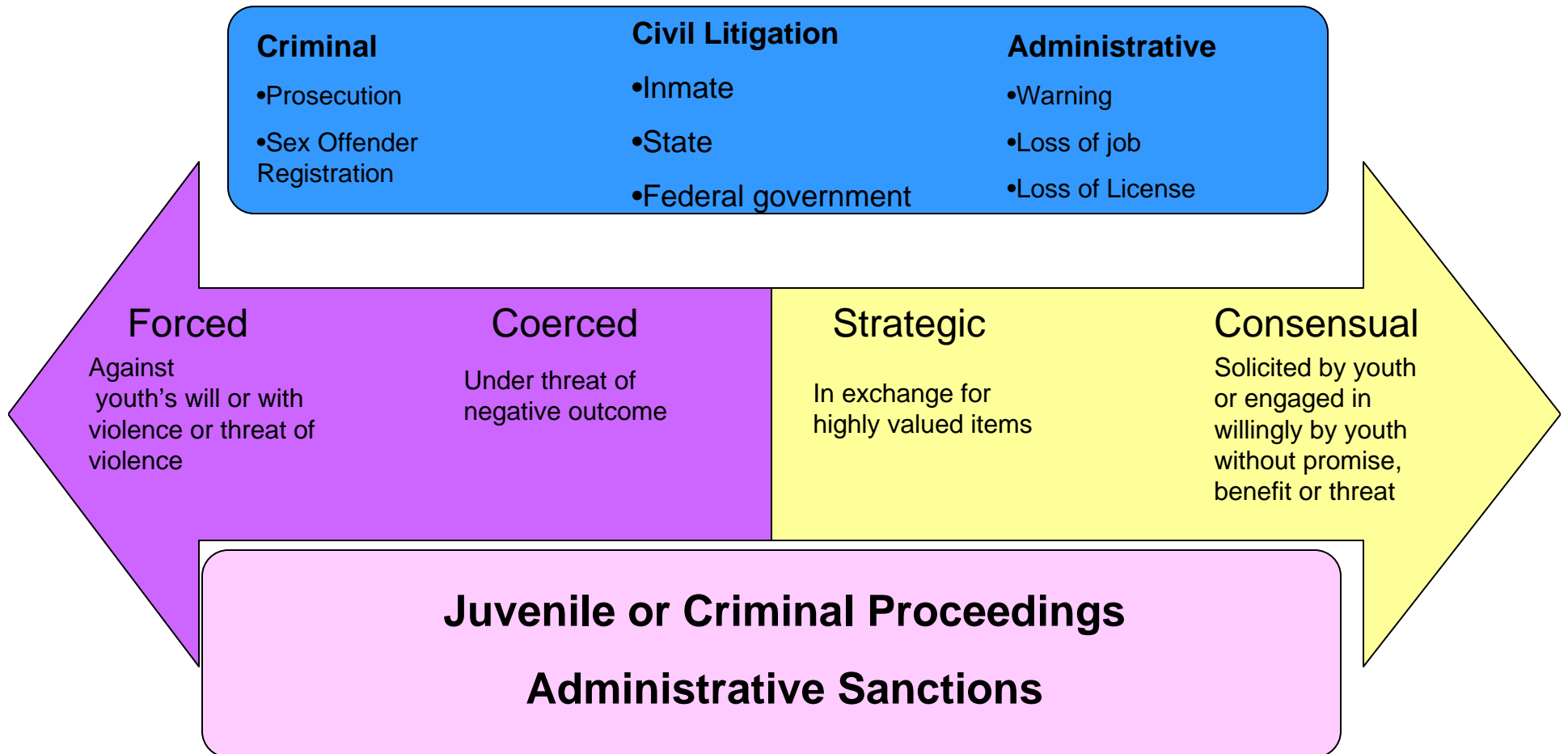
Staff on Inmate Sanctions



Inmate on Inmate Sanctions

Continuum of Sexual Activity Involving Youth

Staff on Youth Sanctions



Youth on Youth Sanctions*

NOTE: Sanctions for youth on youth sexual activity may depend on a state's mandatory reporting statutes and age of consent

Important Questions

- What are the legal tools for punishing staff for sexual abuse of youth?
- What are reporting requirements for sexual violence against youth?

Legal Tools for Prosecuting Staff Sexual Misconduct?

- Staff sexual misconduct laws
- Sexual assault laws (including sodomy)
- Vulnerable person statutes
- Statutory Rape
- Mandatory reporting
- HIV Statutes
- Sex Offender registration
- Assault and battery

Staff Sexual Misconduct

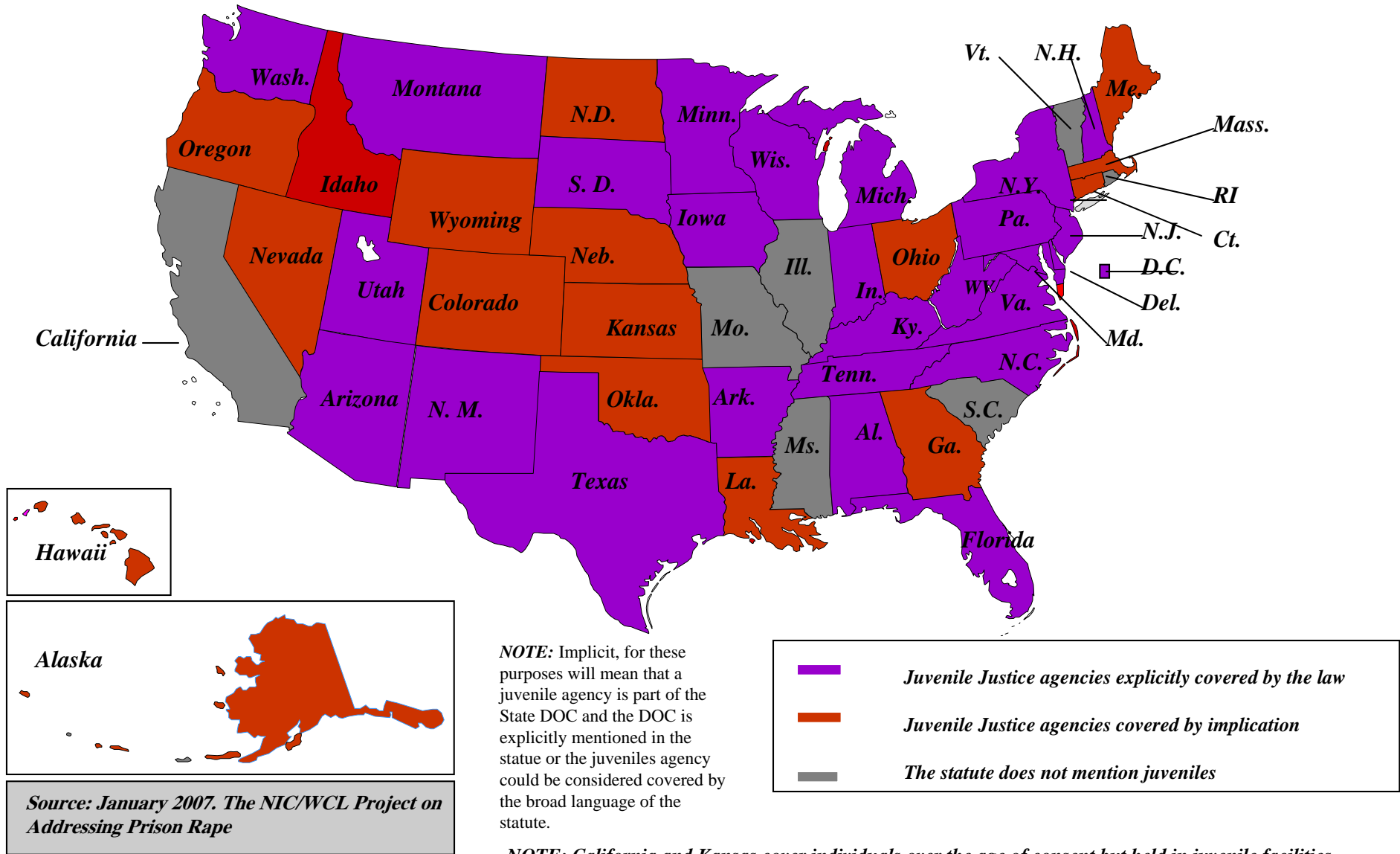
- Felony in most states
- Consent is an issue for prosecution
- Victim credibility is an issue
- Code of Silence/ Lack of corroboration
- Lack of Physical Evidence and timely reporting

Staff Sexual Misconduct Laws– Optimal Elements

- Coverage
 - Conduct
 - Defenses
 - Reporting
 - Sanctions
- 

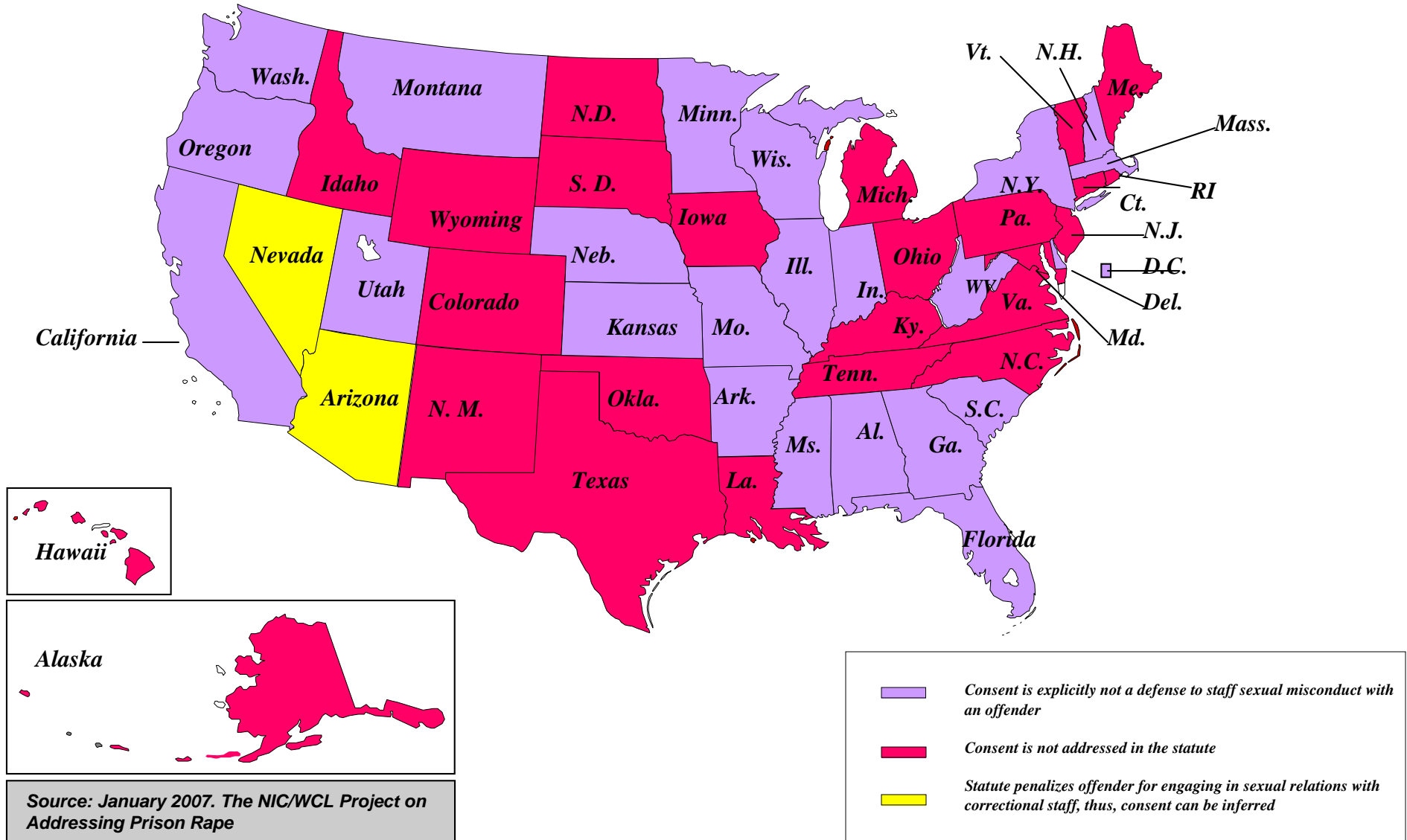
State Criminal Laws Prohibiting Sexual Abuse of Juveniles Under Correctional Supervision

National Institute of Corrections/American University, Washington College of Law – January 2007



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

National Institute of Corrections/American University, Washington College of Law – January 2007



Staff Sexual Misconduct Law- Kansas

- Unlawful sexual relations. Kan. Stat. Ann. § 21-3520 (2005).
 - (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:
 - (4) the offender is a law enforcement officer, **employee of a juvenile detention facility or sanctions house, or employee of a contractor and the person is 16 years of age or older under lawful confinement;** or

Staff Sexual Misconduct Law- Kansas

- (5) the offender is an employee of the juvenile justice authority or the employee of a contractor under contract to provide services to such juvenile correctional facility and the person is 16 years of age or older under lawful confinement; or
- (6) the offender is an employee of the juvenile justice authority or employee of a contractor, and the person is 16 or older and (A) released on conditional release from a juvenile correctional facility under supervision and control of the juvenile justice authority or juvenile community supervision agency or (B) placed in custody of juvenile justice authority under direct supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching or sodomy is currently under supervision.

Sexual Assault

- Generally felony
- Lack of consent is element of crime
- Complainant credibility is an issue
- Lack of corroboration
- Sex offender registration usually required

Sexual Assault Law -- Wisconsin

➤ (1) FIRST DEGREE SEXUAL ASSAULT.

- Whoever does any of the following is guilty of a Class B felony:
 - (a) Has **sexual contact or sexual intercourse with another person without consent** of that person and causes pregnancy or great bodily harm to that person.
 - (b) Has sexual contact or sexual intercourse with another person without consent of that person **by use or threat of use of a dangerous weapon** or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.
 - (c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or **threat of force or violence**.

Sexual Assault Law -- Wisconsin

➤ (4) CONSENT.

- "Consent", as used in this section, means words or overt actions by a person who is competent to give **informed consent indicating a freely given agreement to have sexual intercourse or sexual contact**. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:
 - (b) A person suffering from a **mental illness or defect** which impairs capacity to appraise personal conduct.
 - (c) A person who is **unconscious or for any other reason is physically unable to communicate unwillingness** to an act.

Sexual Assault Law -- Wisconsin

- Abuse of residents of penal facilities.
 - Any person **in charge of or employed in a penal or correctional institution** or other place of confinement who abuses, **neglects or ill--treats any person confined in or a resident of** any such institution or place or who knowingly permits another person to do so is guilty of a Class I felony.

Sodomy

- Prohibits certain sexual practices
- Many states don't define oral and anal sex as intercourse
- Many states don't define same sex/sex as intercourse – even if it involves penetration

Sodomy Law-- Georgia

➤ Sodomy; Aggravated Sodomy

- (a) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. A person commits the offense of aggravated sodomy when **he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age.**

Sodomy Law-- Virginia

➤ Forcible Sodomy

- Forcible sodomy is a **felony punishable by confinement in a state correctional facility for life or for any term not less than five years**. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

Statutory Rape

- What is the age of consent in your state?
- What are the penalties for statutory rape?
- How does this apply to juveniles serving sentences as adults?

Statutory Rape- New Jersey

- Sexual Assault N.J. Stat. Ann. § 2C:14-4(b), (c) (2006).
 - b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is **less than 13 years old** and the actor is **at least four years older** than the victim.
 - c. An actor is guilty of sexual assault if he commits an act of **sexual penetration** with another person under any one of the following circumstances:

Statutory Rape- New Jersey

- (2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has **supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;**
- (3) The victim is **at least 16 but less than 18 years old** and:
 - (b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or
 - (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
 - (4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

➤ **Penalty: Up to 5-10 years in prison**

Statutory Rape- Florida

- Sexual Battery Fla Stat. Ann. § 794.011 (2005).
 - (2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person **less than 12 years of age commits a capital felony.**
 - (4) A person who commits sexual battery upon a person **12 years of age or older** without that person's consent, under any of the following circumstances, commits a felony of the first degree:
 - **When the offender is a law enforcement officer, correctional officer, or correctional probation officer**

Statutory Rape- Florida

- (8) Without regard to the willingness or **consent** of the victim, which is **not a defense to prosecution** under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:
 - (b) Engages in any act with that person **while the person is 12 years of age or older but less than 18 years of age** which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree.
- **Penalty: Life, up to 30 years, or up to 15 years**

Mandatory Reporting

- Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.
- In juvenile settings all correctional staff are mandatory reporters
- Reporting procedures differ from state to state
- Often, there is a criminal penalty for the failure to report.

Mandatory Reporting-- Texas

- Tex. Fam. Code Ann. § 261.101 (Vernon 2005).
 - (a) A person having cause to believe that a child's **physical or mental health or welfare has been adversely affected by abuse or neglect**
- Tex. Fam. Code Ann. § 100.003 (Vernon 2005).
 - (a) Child or **minor means a person under 18 years of age** who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Mandatory Reporting-- Texas

- Tex. Fam. Code Ann. § 261.101 (Vernon 2005).
 - (b) A professional shall make a report not later than the **48th hour** after the hour the professional **first suspects that the child has been or may be abused or neglected or is a victim of an offense**. A professional may not delegate to or rely on another person to make the report.

Mandatory Reporting-- Texas

- Tex. Fam. Code Ann. § 261.001 (Vernon 2005).
 - (1) Abuse includes the following acts or omissions by a person:
 - (E) **sexual conduct** harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child, sexual assault, or aggravated sexual assault;
 - (F) **failure to make a reasonable effort to prevent sexual conduct** harmful to a child;
 - (G) **compelling or encouraging the child to engage** in sexual conduct;
 - (H) causing, permitting, encouraging, engaging in, or allowing the **photographing, filming, or depicting of the child** if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene, or pornographic;

Mandatory Reporting-- Alabama

- Ala. Code § 26-14-3 (2005).
 - (a) When the child is **known or suspected to be a victim of child abuse or neglect.**
- Ala. Code § 26-14-3 (2005).
 - (a) A mandatory reporter shall be **required to report, or cause a report to be made** of the same, orally, either by telephone or direct communication immediately, followed by a written report, to a duly constituted authority.

Mandatory Reporting-- Alabama

- Ala. Code § 26-14-1 (2005).
 - (1) Abuse means harm or threatened harm to a child's health or welfare. **Harm or threatened harm to a child's health or welfare** can occur through nonaccidental physical or mental injury, **sexual abuse or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.**

Mandatory Reporting--Florida

- Fla. Stat. Ann. § 944.35 (West 2006).
 - (3)(d) Witnessing, or reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct.
- Fla. Stat. Ann. §944.35 (West 2006).
 - (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.

HIV Statutes

- Separate offense or enhancement for knowingly infecting someone with HIV?

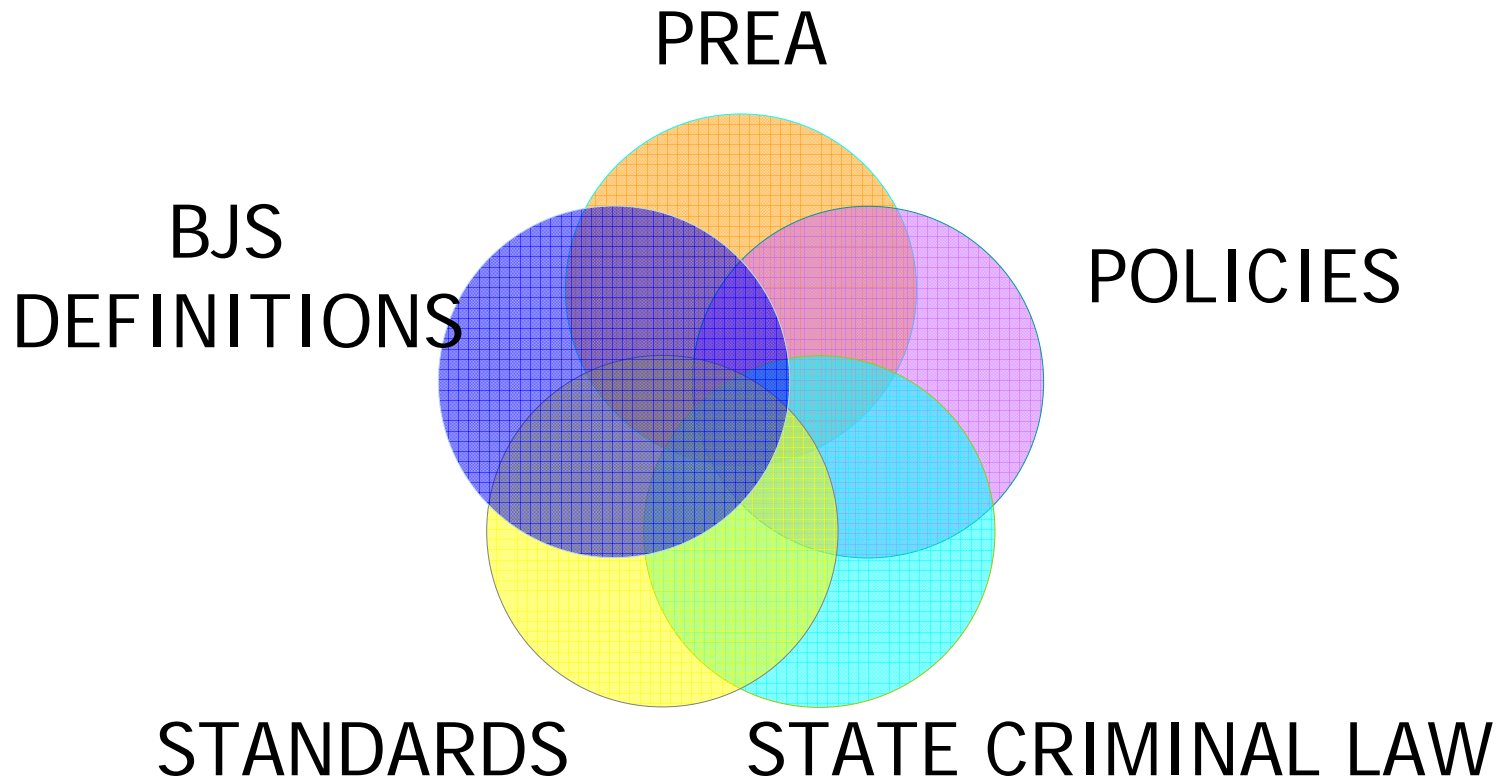
Sex Offender Registration

- Not considered a penalty
- Registration may be required for both youth and adult sex offenders
- Many other requirements come with registration depending on state
 - Community notification
 - Restrictions on employment
 - Restrictions on residency

Assault and Battery



Overlap Of: Law, Policy and Standards



Interaction Between: Law, Policy and Standards

- Different purposes
 - Law is what is politically available
 - Policies are what is optimal
 - Standards are what is ideal
- BJS definitions e.g.
 - Different purposes – data collection
 - Policy – what is going on in institution
 - State Law – what could be passed

Why is this important?

- Describing prohibited conduct
- Evidence collection
- Investigation