

Responding to Inmate on Inmate Sexual Violence



Criminal Law Responses to Inmate on Inmate Sexual Violence

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Objective

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



Important Questions

- What are the legal tools for punishing inmate and staff for inmate on inmate sexual violence?
- Are correctional staff mandatory reporters of sexual violence against adults?
- Are inmates considered vulnerable adults?
- What about juveniles in adult settings?



Legal Tools for Prosecuting Inmate on Sexual Violence?

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



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. Consent is not an issue in alleged violations of sub. (2) (c), (cm), (d), (g), (h), and (i) The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):
 - (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. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.
- (b) A person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years. A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by imprisonment for not less than ten nor more than 30 years.
- (c) When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the person who is the victim of the alleged crime, the law enforcement agency investigating the alleged crime shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.



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.



Vulnerable Adult Statutes

- New York
- Michigan



Vulnerable Adult Law-- Maine

- Endangering welfare of dependent person
 - 1. A person is guilty of endangering the welfare of a dependent person if:
 - A. The person recklessly endangers the health, safety or mental welfare of a dependent person who is unable to perform self—care because of advanced age or physical or mental disease, disorder or defect. Violation of this paragraph is a Class D crime; or
 - B. The person intentionally or knowingly endangers the health, safety or mental welfare of a dependent person who is unable to perform self--care because of advanced age or physical or mental disease, disorder or defect. Violation of this paragraph is a Class C crime.



Vulnerable Adult Law— West Virginia

- Abuse or neglect of incapacitated adult; abuse or neglect of elder person; misappropriation or misuse of assets or funds of elder person; misappropriation or misuse of assets or funds of elder person through deception, intimidation, coercion, bodily injury or threats of bodily injury; penalties. (W. Va. Code § 61-2-29 (2006)).
 - (4) "Incapacitated adult" means any person who by reason of physical, mental or other infirmity is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health;
 - (5) "Elder" means a person age sixty-five years or older;



Statutory Rape

- How does this apply to juveniles with adult charges?



Mandatory Reporting Laws

- Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.
- In 20 states correctional staff are mandatory reporters.
 - In 2 states correctional staff are explicitly named
 - In 18 states correctional staff are implicitly covered by the statute using phrases such as “any person”
- In 3 states correctional staff are required to report staff sexual misconduct.
- Often, there is a criminal penalty for the failure to report.



Mandatory Reporting-- California

- **Cal. Welf. & Inst. Code § 15630 (West 2006).**
 - (b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse (includes sexual assault).

- **Cal. Welf. & Inst. Code § 15610.23 (West 2006).**
 - (a) Dependent adult means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.



Mandatory Reporting-- California

- Cal. Welf. & Inst. Code § 15630 (West 2006).
 - (a) Any person who has assumed full or intermittent **responsibility for the care or custody** of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency **or a local law enforcement agency**.



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?



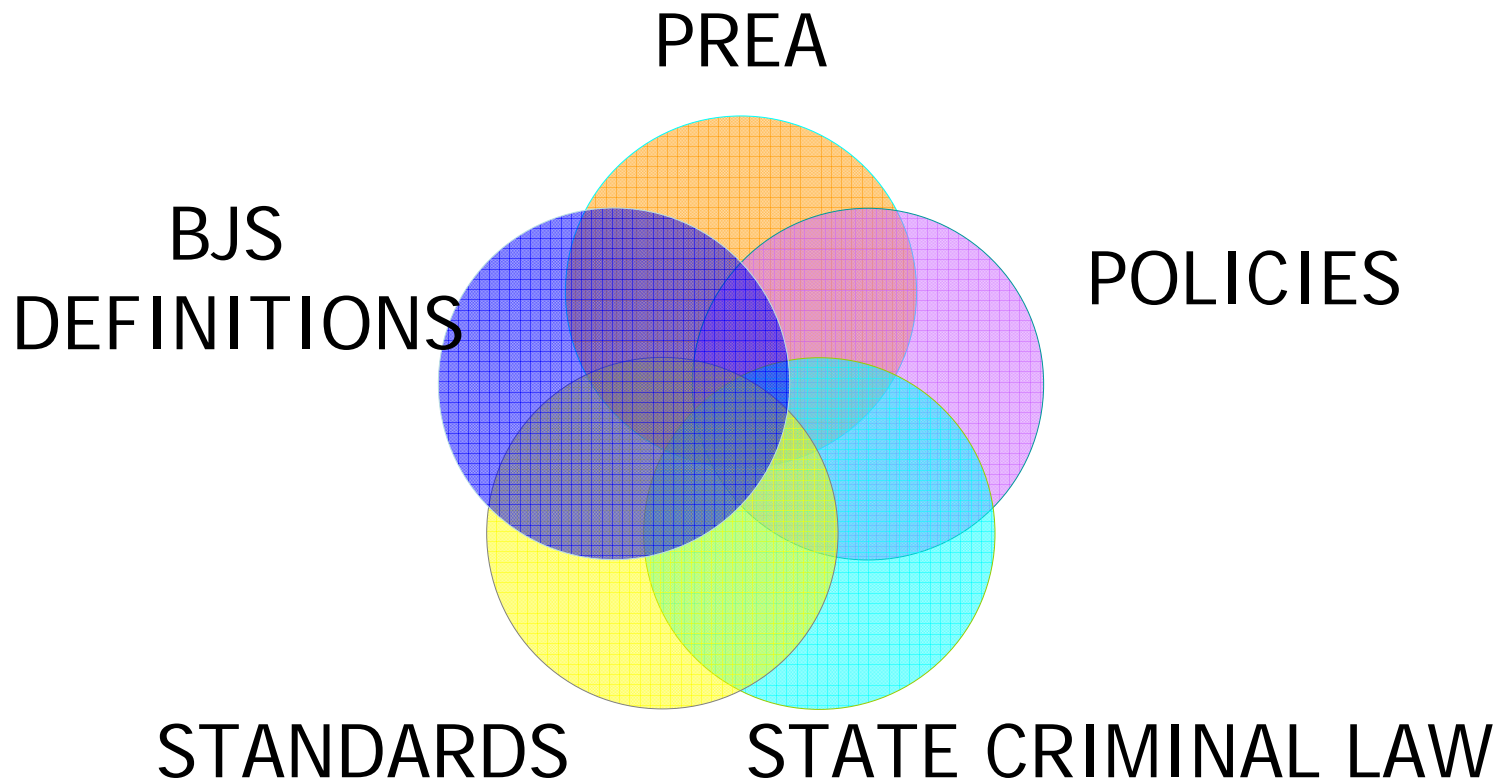
Sex Offender Registration

- Not considered a penalty
- Registration available for both youth and adults
- Many other requirements come with it depending on state



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
- Connect to Jim/AJ/Angela's presentation about language