

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>Alabama</b> Custodial Sexual Misconduct ALA. CODE § 14-11-31 (2006).		✓	Volunteers not covered	✓	✓		✓		✓ <sup>1</sup>			✓	✓
<b>Alaska</b> Sexual assault in the first degree. ALASKA STAT. § 11.41.410 (2006).  Sexual assault in the second degree. ALASKA STAT. § 11.41.420 (2006).	✓	✓	Volunteers not covered	✓		✓ <sup>2</sup>	✓ <sup>3</sup>						✓

\* The requirements for sex offender registration vary from state to state. For more detailed information concerning both adult and juvenile sex offender registration, please refer to NIC/WCL Project's "Fifty State Survey of Sex Offender Registration Laws and Registrable Offenses", "Fifty State Summary of Juvenile Sex Offender Registration and Community Notification Requirements", "Summary of State Sex Offender Registration Requirements for Adults" developed under NIC Cooperative Agreement 06S20GJJ1.

\* Facilities which are covered explicitly in the language of the statute include closed confinement facilities such as prisons or jails, juvenile facilities, community corrections and contract facilities.

\* Employees which are covered explicitly include correctional officers and administrators, any paid employees, volunteers, and contract employees. Note, however, that all employees may not be covered under the sexual assault law.

\* All forms of sexual misconduct would include sexual penetration by a body part or an object, regardless of the sex of the parties or what part of the body the penetration occurred, and sexual touching or contact.

\* Community corrections vary from place to place and while staff sexual misconduct laws generally cover probation and/or parole, the law may not cover other community settings or supervision (ie. half-way houses, pre-release centers, therapeutic etc.). It is important to check how community corrections is organized in your state and locally. Please refer to NIC/WCL Project's "Fifty State Survey of Community Corrections Agencies" developed under NIC Cooperative Agreement 06S20GJJ1 for an overview of the structure of community corrections' agencies in each state.

<sup>1</sup> In Alabama, contract employees are covered. ALA. CODE § 14-11-30(b)(2) (2006).

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<b>Alaska con't</b> Sexual assault in the third degree. ALASKA STAT. § 11.41.425 (2006).  Sexual assault in the fourth degree. ALASKA STAT. § 11.41.427 (2006).													
<b>Arizona</b> Unlawful sexual conduct; correctional employees; prisoners; classification ARIZ. REV. STAT. ANN. § 13-1419. (2006).		✓	Volunteers not covered	✓ <sup>4</sup>	✓			✓ <sup>5</sup>	✓		✓		✓ <sup>6</sup>
<b>Arkansas</b>	✓	✓	Volunteers not covered	✓ <sup>7</sup>	✓		✓		✓ <sup>8</sup>			✓	✓

<sup>2</sup> In Alaska, juveniles are implicitly covered under the law. The law applies to victims who by “authority of law” are under the care of the offender. ALASKA STAT. §§ 11.41.410(a) & 11.41.420(a).

<sup>3</sup> In Alaska, the definition of “position of authority” includes probation officers. ALASKA STAT. § 11.41.470(5).

<sup>4</sup> In Arizona, masturbatory contact is covered. ARIZ. REV. STAT. ANN. § 13-1401 (2006).

<sup>5</sup> In Arizona, the law covers individuals under the supervision of the department, city or county and an offender who is on release status and who is under the supervision of the state department of corrections. ARIZ. REV. STAT. ANN. §§ 13-1419A & 13-1419B (2006).

<sup>6</sup> In Arizona, the inmate is also penalized for the misconduct. ARIZ. REV. STAT. ANN. § 13-1419B (2006).

<sup>7</sup> In Arkansas, sexual contact is only punishable if the victim is less than 18. ARK. CODE ANN. § 5-14-124(a)(1) (2006).

<sup>8</sup> In Arkansas, contactors are only covered when the victim is less than 18. ARK. CODE ANN. § 5-14-124(a)(1) (2006).

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<b>Arkansas con't</b> Sexual assault in the first degree. ARK. CODE ANN. § 5-14-124 (2006).  Sexual Assault in the second degree ARK. CODE ANN. § 5-14-125 (2006).  Sexual assault in the third degree ARK. CODE ANN. § 5-14-126 (2006).													
<b>California</b> Employee or officer of detention facility; Engaging in sexual activity with consenting adult confined in	✓	✓ <sup>9</sup>	✓ <sup>10</sup>	✓			✓		✓		✓	✓	✓

<sup>9</sup> California also covers rooms used for holding persons for interviews, interrogations, or investigations, court holding facilities and during transport of confined persons. CAL. PENAL CODE § 289.6(3)(c) (2006).

<sup>10</sup> In California, the statute covers persons over the age of consent housed in juvenile facilities. Thus, the statute covers sexual activity with a “consenting adult” in a juvenile facility, not juveniles in juvenile facilities. Presumably, sexual offenses involving juveniles under the age of consent can be prosecuted under statutory rape or other sexual assault laws. The legislative history of the statute also suggests that the California Assembly was concerned with sexual activity with “consenting adults.” No mention was made to juvenile victims, presumably because legislators knew that ANY sex between staff and juvenile inmates was already proscribed by law. Therefore, it was unnecessary to enact additional legislation criminalizing sexual activity between staff and juvenile inmates in their charge.

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<b>California</b> con't detention facility. CAL. PENAL CODE § 289.6 (2006).													
<b>Colorado</b> Unlawful Sexual Contact. COLO REV. STAT. § 18-3-404 (2006).  Sexual Conduct in Penal Institutions. COLO REV. STAT. § 18-7-701 (2006).	✓		✓			✓ <sup>11</sup>			✓		✓		✓
<b>Connecticut</b> Sexual assault in the second degree: Class C or B felony. CONN. GEN. STAT. § 53a-71 (2006).  Sexual assault in the fourth degree: Class A misdemeanor or Class D felony. CONN. GEN. STAT. § 53a-73a (2006).	✓		Volunteers not covered <sup>12</sup>	✓		✓ <sup>13</sup>		✓ <sup>14</sup>			✓ <sup>15</sup>		✓

<sup>11</sup> In Colorado, the statute implicitly covers juveniles. The statute applies to those in the “custody of law” or “detained in an institution.” Note however that the offending staff must have supervisory or disciplinary authority over the victim. COLO REV. STAT. § 18-3-404 (2006).

<sup>12</sup> In Connecticut, the offender must have supervisory or disciplinary authority over the victim. CONN. GEN. STAT. § 53a-71(a)(5) & 53a-73a(a)(1)(E) (2006).

<sup>13</sup> In Connecticut, the statute implicitly covers juveniles because the law protects those in the “custody of law” or “detained in an institution.” CONN. GEN. STAT. § 53a-71(a)(5) & 53a-73a(a)(1)(E) (2006).

<sup>14</sup> See State v. Straub, 1999 Conn. Super LEXIS 746 (holding that the statutory phrase “in custody of law” covered persons beyond those confined and included persons committed by the court to supervision by the probation department, and that the alleged victims were therefore in custody while on probation).

<sup>15</sup> In Connecticut, the law covers “other institutions.” CONN. GEN. STAT. § 53a-71 (2006) & CONN. GEN. STAT. § 53a-73a (2006).

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<b>Delaware</b> Sexual relations in detention facility; Class G felony DEL. CODE ANN. tit. 11, § 1259 (2006).			Volunteers and contractors are not covered	Sexual contact is not covered	✓							✓	✓ <sup>16</sup>
<b>District of Columbia</b> First degree sexual abuse of a ward. D.C. CODE ANN. § 22-3013 (LexisNexis 2006).  Second degree sexual abuse of a ward. D.C. CODE ANN. § 22-3014 (2006).	✓	✓ <sup>17</sup>	Volunteers not covered <sup>18</sup>	✓	✓		✓			✓ <sup>19</sup>		✓	✓
<b>Florida</b> Authorized use of	✓	✓	Volunteers not covered	Sexual contact is not covered	✓		✓				✓ <sup>20</sup>	✓	✓

<sup>16</sup> In Delaware, the inmate is penalized for the misconduct. DEL. CODE ANN. tit. 11, § 1259 (2006).

<sup>17</sup> D.C. includes sexual misconduct that occurs during transportation, medical diagnosis or treatment, court appearances, work and recreation. D.C. CODE § 22-3001(6)(b) (2006).

<sup>18</sup> In D.C., the offender must have “supervisory or disciplinary authority” over the victim. D.C. CODE § 22-3013 & 22-3014 (2006).

<sup>19</sup> In D.C., contractors are implied because the statute covers those individuals in “official custody” or in an “institution.” D.C. CODE § 22-3013 & 22-3014 (2006).

<sup>20</sup> In Florida, private facilities are implicitly covered in the law because § 794.011(g) covers misconduct that occurs in a “similar setting” which could include private facilities. FLA. STAT. ANN. § 794.011(4)(g) (2006). Also, employing agency is defined as “any private entity which has contracted with the state or county for the operation and maintenance of a non-juvenile detention facility.” FLA. STAT. ANN. § 943.10(4) (2006).

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<b>Florida</b> con't Force; malicious battery & sexual misconduct prohibited; reporting required; penalties FLA. STAT. ANN. § 944.35 (2006).  Sexual battery. FLA. STAT. ANN. § 794.011 (2006).													
<b>Georgia</b> Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against patient. GA. CODE ANN. § 16-6-5.1 (2006).			Volunteers not covered <sup>21</sup>	✓		✓ <sup>22</sup>	✓			✓ <sup>23</sup>		✓	✓

<sup>21</sup> In Georgia, the offender must have “supervisory or disciplinary authority” over the victim. GA. CODE ANN. § 16-6-5.1(c) (2006).

<sup>22</sup> In Georgia, an offender can be guilty of staff sexual misconduct if they have supervisory or disciplinary authority over the victim and the victim is in the custody of law. Youths are referred to the Georgia Department of Juvenile Justice by the juvenile courts and thus under the custody of law. GA. CODE ANN. § 16-6-5.1(b) & (c) (2006).

<sup>23</sup> In Georgia, contractors can be implicitly covered under the law because the statute covers individuals under the “custody of law”, regardless of the employment status of the actor. GA. CODE ANN. § 16-6-5.1(c) (2006).

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<b>Hawaii</b> Sexual assault in the second degree. Haw. Rev. Stat. Ann. HAW. REV. STAT. ANN. § 707-731 (2006).  Sexual assault in the third degree. HAW. REV. STAT. ANN. § 707-732 (2006).	✓	✓	Volunteers not covered	✓		✓ <sup>24</sup>			✓		✓		✓
<b>Idaho</b> Sexual contact with a prisoner. IDAHO CODE ANN. § 18-6110 (2006).	✓	Not cover juveniles facilities	Volunteers not covered	Sexual contact is not covered			✓				✓		✓
<b>Illinois</b> Custodial Sexual Misconduct 720 ILL. COMP. STAT. ANN. 5/11-9.2 (2006).	✓		Volunteers not covered	✓ <sup>25</sup>			✓		✓			✓	✓
<b>Indiana</b> Sexual misconduct by service provider with detainee		✓	✓		✓		✓			✓ <sup>26</sup>		✓	✓

<sup>24</sup> In Hawaii, juveniles are implicitly covered under the statute because Hawaii places juveniles in youth correctional facilities. The language of the statute covers individuals in any state correctional facility. HAW. REV. STAT. §§ 707-731 & 707-732 (2006).

<sup>25</sup> Illinois notes that the “[e]vidence of emission of semen is not required to prove sexual penetration.” 720 ILL. COMP. STAT. ANN. 5/12-12(F) (2006).

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<b>Indiana con't</b> IND. CODE ANN. § 35-44-1-5 (2006).													
<b>Iowa</b> Sexual misconduct with offenders and juveniles IOWA CODE § 709.16 (2006).	✓	✓	✓	✓ <sup>27</sup>	✓			✓ <sup>28</sup>	✓				
<b>Kansas</b> Unlawful sexual relations. KAN. STAT. ANN. § 21-3520 (2006).	✓	✓	Volunteers not covered <sup>29</sup>	✓	✓ <sup>30</sup>		✓		✓			✓	✓
<b>Kentucky</b> Sexual Abuse in the Second Degree. KY. REV. STAT. ANN. § 510.120 (2006).	✓	Community Corrections facilities are not covered	Community Corrections employees are not covered	✓	✓				✓		✓		
<b>Louisiana</b> Malfeasance in office; sexual conduct prohibited with persons		Contract facilities and community corrections	Volunteers not covered  Contract employees	✓		✓ <sup>31</sup>							✓

<sup>26</sup> In Indiana, the statute covers all entities who “provides goods or services.” IND. CODE ANN. § 35-44-1-5(a) (2006).

<sup>27</sup> In Iowa, sexual contact of the breasts is not covered. IOWA CODE § 702.17 (2006).

<sup>28</sup> In Iowa, the statute covers all “agents of the Department of Corrections.” Probation and parole are under the Department of Corrections. IOWA CODE § 709.16 (2006).

<sup>29</sup> In Kansas, a community corrections officer will be liable if the inmate is under direct supervision and control of the offending officer. KAN. STAT. ANN. § 21-3520 (2006).

<sup>30</sup> See *State v. Fike*, 243 Kansas 365 (1988)(stating that a number of sexual assault statutes indicate 16 as the age of consent). Thus, the staff sexual misconduct statute in Kansas covers juvenile facilities but not juveniles. This law is similar to California’s. See KAN. STAT. ANN. § 21-3520 (6)(B) (2006).

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<b>Louisiana</b> con't confined in correctional institutions. LA. REV. STAT. ANN. § 14:134.1 (2006).		facilities are not covered	not covered  Community Corrections employees not covered										
<b>Maine</b>  Gross sexual assault. ME. REV. STAT. ANN. tit. 17-A, § 253 (2006).  Unlawful sexual contact ME. REV. STAT. ANN. tit. 17-A, § 255-A 1.E (2006).  Unlawful sexual touching ME. REV. STAT. ANN. tit. 17-A, § 260.1-E (2006).	✓	✓	Volunteers not covered <sup>32</sup>	✓		✓ <sup>33</sup>	✓			✓ <sup>34</sup>			✓

<sup>31</sup> In Louisiana, the Youth Services department is within the Department of Public Safety and Corrections. Therefore, the language of the law implicitly covers juvenile facilities. LA. REV. STAT. ANN. § 14:134.1(A) (2006).

<sup>32</sup> In Maine, the offender must have supervisory or disciplinary authority over the victim. ME. REV. STAT. ANN. tit. 17-A, § 253(2)(E) & 17-A, § 260(1)(E) (2006).

<sup>33</sup> In Maine, the law covers victims who are detained in an institution and offenders who have supervisory or disciplinary authority over the victim. Thus, juvenile institutions may be implicitly included in the coverage of the law. ME. REV. STAT. ANN. tit. 17-A, § 253(2)(E) & 17-A, § 260(1)(E) (2006).

<sup>34</sup> In Maine, the statute implicitly covers contractors because the law punishes staff sexual misconduct in "other institutions." ME. REV. STAT. ANN. tit. 17-A, § 253(2)(E) & 17-A, § 260(1)(E) (2006).

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<b>Maryland</b> Sexual conduct between correctional or Department of Juvenile Services employee and inmate or confined child. MD. CODE ANN., CRIM. LAW § 3-314 (2006).		✓	Volunteers not covered  Contractors not covered	✓	✓		✓						
<b>Massachusetts</b> Punishments for sexual relations with inmate. MASS. ANN. LAWS ch. 268, § 21A (2006).		Juvenile facilities and community corrections facilities are not covered	Volunteers not covered	✓		✓ <sup>35</sup>			✓			✓	✓
<b>Michigan</b> Criminal sexual conduct in the second degree; felony. MICH. COMP. LAWS SERV. § 750.520c (2006).	✓	✓	✓	✓ <sup>36</sup>	✓		✓		✓		✓ Covers private vendors that operate youth correctional facilities. <sup>37</sup>		✓

<sup>35</sup> In Massachusetts, juveniles can be placed in correctional institutions. Correctional institutions are covered under the law and thus the law implicitly covers juveniles. MASS. ANN. LAWS ch. 268, §21A (2006).

<sup>36</sup> In Michigan, the law specifically addresses inappropriate sexual contact that occurs during medical examination or treatment. MICH. COMP. LAWS SERV. § 750.520b(1)(f)(iv) (2006).

<sup>37</sup> See § 750.520c(1)(f)-(k) (2006).

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<b>Minnesota</b> Criminal sexual conduct in the third degree. MINN. STAT. § 609.344 (2006).  Criminal sexual conduct in the fourth degree. MINN. STAT. § 609.345 (2006).	✓	✓	✓	✓	✓			✓ <sup>38</sup>	✓		✓	✓	✓
<b>Mississippi</b> Crime of sexual activity between law enforcement or correctional personnel and prisoners; sanctions. MISS. CODE ANN. § 97-3-104 (2006).		Juvenile detention facilities not covered  Community Corrections not covered	✓	Sexual contact is not covered							✓	✓	✓
<b>Missouri</b> Sexual contact with an inmate, penalty -- consent not a defense MO. REV. STAT. § 566.145 (amended 2006) (current version at 2006 Mo.	✓	Juvenile detention facilities not covered	✓ <sup>39</sup>	✓			✓			✓ <sup>40</sup>		✓	✓

<sup>38</sup> In Minnesota, the statute covers specific facilities, but also adds that the statute is “not limited” to those institutions. The statute also covers “work release” and individuals “under supervision.” MINN. STAT. § 609.344(a)(m) & 609.345(1) (2006).

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<b>Missouri con't</b> HB 1698 (2006).													
<b>Montana</b> Sexual assault MONT. CODE ANN. § 45-5-502 (2006).	✓	Community Corrections facilities not covered	✓ <sup>41</sup>	✓	✓				✓			✓	✓
<b>Nebraska</b> Sexual abuse of an inmate or parolee. NEB. REV. STAT. ANN. § 28-322.01 (2006).  Sexual abuse of an inmate or parolee in the first degree; penalty NEB. REV. STAT. 28-322.02 (2006).  Sexual abuse of an inmate or parolee in the second degree; penalty NEB. REV. STAT. § 28-322.03 (2006).		✓	Volunteers not covered	✓ <sup>42</sup>		✓ <sup>43</sup>	✓		✓			✓	✓

<sup>39</sup> In Missouri, the law implicitly covers volunteers because the law covers those “assigned to work.” 2006 Mo. HB 1698 (2006).

<sup>40</sup> In Missouri, the law implicitly covers contractors because the definition of offender includes any person in the custody of a correctional facility. 2006 Mo. HB 1698 (2006).

<sup>41</sup> In Montana, the individual must have supervisory or disciplinary authority over the victim. MONT. CODE ANN. § 45-5-502(5)(a) (2006).

<sup>42</sup> In Nebraska, the emission of semen is not required to satisfy the act of sexual penetration. NEB. REV. STAT. ANN. § 28-318(6) (2006).

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<b>Nevada</b> Voluntary sexual conduct between prisoner and another person; penalty. NEV. REV. STAT. ANN. § 212.187 (2006).		Community corrections is not covered <sup>44</sup>	Community Corrections is not covered	✓ <sup>45</sup>		✓ <sup>46</sup>				✓ <sup>47</sup>			✓ <sup>48</sup>
<b>New Hampshire</b> Aggravated Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A2: (2006).  Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A3: (2006).	✓	✓	<sup>49</sup> Volunteers not covered	✓ <sup>50</sup>	✓		✓			✓ <sup>51</sup>		✓	✓

<sup>43</sup> In Nebraska, the statute covers those individuals confined in a correctional institution. Juveniles are confined in the Nebraska Correctional Youth Facility under the Nebraska Department of Corrections. Thus, juveniles are implicitly covered under the statute. NEB. REV. STAT. ANN. § 28-322.01 (2006).

<sup>44</sup> In Nevada, community corrections is explicitly excluded from the coverage of the law. NEV. REV. STAT. ANN. § 212.187 (2006).

<sup>45</sup> In Nevada, the law covers masturbation. NEV. REV. STAT. ANN. § 212.187(3)(a) (2006).

<sup>46</sup> In the Nevada code, the Juvenile Correctional Institutions section (Chapter 210), falls under correctional Institutions (Title 16), along with the Offenses relating to Prisons and Prisoners (chapter 212) and the Department of Corrections (209), and that Prisoner is defined for all of Title 16.

<sup>47</sup> In Nevada, contractors are implicitly covered under the law because the statute punishes “a person” who engages in sexual misconduct, regardless of the employment status of that person. NEV. REV. STAT. ANN. § 212.187(2) (2006).

<sup>48</sup> In Nevada, the inmate is penalized for the misconduct. NEV. REV. STAT. ANN. § 212.187(2) (2006).

<sup>49</sup> In New Hampshire, the actor must be in a position of authority over the victim and have direct supervisory or disciplinary authority over the victim. The law makes no distinction between employees or contractors. N.H. REV. STAT. ANN. § 632-A:2(n)(1) & (2) (2006).

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<b>New Jersey</b> Sexual assault N.J. STAT. ANN. § 2C:14-2 (2006).	✓	✓	<sup>52</sup> Volunteers not covered	Sexual contact is not covered	✓		✓			✓ <sup>53</sup>			✓
<b>New Mexico</b> Criminal sexual penetration. N.M. STAT. ANN. § 30-9-11 (2006).	✓	Community corrections is not covered	Volunteers not covered	Sexual contact is not covered <sup>54</sup>	✓					✓ <sup>55</sup>			✓
<b>New York</b> Sexual misconduct. NY PENAL LAW § 130.20 (2006).  Rape in the third degree. NY PENAL LAW § 130.25 (Consol. 2006).  Forcible touching. NY PENAL LAW § 130.52 (2006).		✓ <sup>56</sup>	<sup>57</sup> Volunteers not covered  Health care contractors are covered.  Other contracted employees are not.	✓	✓		✓					✓	✓

<sup>50</sup> In New Hampshire, the emission of semen is not required to complete the act of sexual assault. N.H. REV. STAT. ANN. § 632-A:1(v)(h) (2006).

<sup>51</sup> In New Hampshire, contractors are implicitly covered under the language “actor.” N.H. REV. STAT. ANN. § 632-A:1(I) (2006).

<sup>52</sup> In New Jersey, the actor must have supervisory or disciplinary authority over the victim. N.J. STAT. ANN. § 2C:14-2 (2006).

<sup>53</sup> In New Jersey, the statute covers actors who have “supervisory or disciplinary power over the person by virtue of the actor’s legal professional or occupational status.” N.J. STAT. ANN. § 2C:14-2(a) & (c) (2006).

<sup>54</sup> In New Mexico, emission of semen is not required to complete the act of sexual penetration. N.M. STAT. ANN. § 30-9-11(A) (2006).

<sup>55</sup> In New Mexico, the statute implicitly covers contractors because the law holds those “in a position of authority” accountable and protects inmates “confined in a correctional facility.” N.M. STAT. ANN. § 30-9-11(D)(2) (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>New York</b> con't Sexual abuse in the second degree. NY PENAL LAW § 130.60 (2006).													
<b>North Carolina</b> Intercourse and sexual offenses with certain victims; consent no defense N.C. GEN. STAT. § 14-27.7 (2006).	✓	✓	Volunteers not covered	Sexual contact is not covered	✓						✓	✓	✓
<b>North Dakota</b> Sexual abuse of wards. N.D. CENT. CODE §	✓	Community Corrections is not covered <sup>58</sup>	Volunteers not covered <sup>59</sup>	✓		✓ <sup>60</sup>				✓ <sup>61</sup>			✓

<sup>56</sup> New York does not have contracted correctional facilities. Thus all facilities are covered under the law.

<sup>57</sup> In New York, employees who perform professional duties including providing custody, medical or mental health services, counseling services, educational programs or vocational training are covered under the statute. NY PENAL LAW § 130.05(3)(c)(i) (2006).

<sup>58</sup> In North Dakota, the statute does not implicitly cover community corrections. *See* State v. Ennis, 464 N.W. 2d 378 (1990)(holding that time on probation is not "time spent in custody" within the meaning of N.D. Cent. Code § 12.1-32-02 and time on parole, too, is not "time spent in custody" within the meaning of § 12.1-32-02).

<sup>59</sup> In North Dakota, the offender must have supervisory or disciplinary authority over the victim. N.D. CENT. CODE § 12.1-20-06 & 12.1-20-07 (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>North Dakota con't</b> 12.1-20-06 (2006).  Sexual assault. N.D. CENT. CODE § 12.1-20-07 (2006).													
<b>Ohio</b> Sexual Battery, OHIO REV. CODE ANN. § 2907.03 (2006).	✓	✓	<sup>62</sup> Volunteers not covered	Sexual contact is not covered		✓ <sup>63</sup>		✓ <sup>64</sup>		✓ <sup>65</sup>	✓		✓
<b>Oklahoma</b> Rape Defined OKLA. STAT. tit. 21, § 1111 (2005).  Rape in the first degree - second	✓	✓	Volunteers not covered	Sexual contact is not covered		✓ <sup>66</sup>		✓ <sup>67</sup>	✓		✓		✓

<sup>60</sup> In North Dakota, The Division of Juvenile Justice is a division of the Department of Corrections and Rehabilitation. Since the language of the statute covers all institutions, it can be implied that juvenile facilities are covered. N.D. CENT. CODE § 12.1-20-06 & 12.1-20-07 (2006).

<sup>61</sup> In North Dakota, contractors are implicitly covered under the language “other institution”, which could include private facilities. N.D. CENT. CODE § 12.1-20-06 & 12.1-20-07 (2006).

<sup>62</sup> In Ohio, the offender must have supervisory or disciplinary authority over the victim or be an employee of a detention facility. OHIO REV. CODE ANN. § 2907.03 (2006).

<sup>63</sup> In Ohio, the law covers victims who are in the “custody of law”. Since juveniles are in the custody of law when they are adjudicated, the law implicitly covers juveniles. The Department of Youth Services is a separate entity from the Department of Rehabilitation and Correction. OHIO REV. CODE ANN. § 2907.03 (2006).

<sup>64</sup> See State v. Thompson, 33 Ohio St. 3d 1 (1987)(stating that both probationers and parolees have been held to possess U.S. Const. amend. IV rights more limited than other people, because they are considered to be in the constructive, as opposed to actual or physical, custody of the state at all times during their probation or parole).

<sup>65</sup> In Ohio, the law applies to victims in “institutions”, “in the custody of law” and indicates that “no person” shall engage in sexual misconduct. Thus, contractors are implicitly covered under the statute. OHIO REV. CODE ANN. § 2907.03 (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>Oklahoma</b> con't degree OKLA. STAT. tit.21, § 1114 (2006).  Forcible sodomy OKLA. STAT. tit. 21, § 888 (2006).													
<b>Oregon</b> First Degree Custodial Sexual Misconduct OR. REV. STAT. § 163.452 (2006).  Second Degree Custodial Sexual Misconduct OR. REV. STAT. § 163.454 (2006).		Youth Detention Facilities not covered	Volunteers not covered	✓		✓ <sup>68</sup>	✓		✓			✓	✓
<b>Pennsylvania</b> Institutional sexual assault 18 PA. CONS. STAT. § 3124.2 (2006).	✓	✓	Volunteers not covered	✓	✓			✓ <sup>69</sup>	✓ <sup>70</sup>				✓

<sup>66</sup> In Oklahoma, the law applies to victims under the “legal custody or supervision” of a state agency and employees of state agencies that “exercise[] authority over the victim.” An adjudicated juvenile would be under the legal custody of the state and the state would exercise authority over them. Thus, the law implicitly includes juveniles. OKLA. STAT. tit. 21, § 1111(A)(7) (2006).

<sup>67</sup> In Oklahoma, the law applies to victims under the “legal custody or supervision” of a state agency and employees of state agencies that “exercise[] authority over the victim.” An individual on parole or probation would be under the legal supervision of the state. Thus, the law implicitly covers community corrections. OKLA. STAT. tit. 21, § 1111(A)(7) (2006).

<sup>68</sup> In Oregon, the law covers juveniles in youth correctional facilities and not detention facilities. OR. REV. STAT. § 163.452(A)(A)(B) & 163.454(1)(A)(B) (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>Rhode Island</b> Correctional employees — sexual relations with inmates felony R.I. GEN. LAWS § 11-25-24 (2006).		Juveniles not covered	Volunteers not covered	<sup>71</sup> Sexual contact is not covered				✓ <sup>72</sup>	✓				✓
<b>South Carolina</b> Sexual misconduct with an inmate, patient or offender S.C. CODE ANN. § 44-23-1150 (2006).	✓	Juveniles are not covered	✓	✓			✓ <sup>73</sup>		✓			✓	✓
<b>South Dakota</b> Sexual acts prohibited between prison employees and prisoners. S.D. CODIFIED LAWS § 24-1-26.1 (2006).		Community Corrections is not covered  Contractors are not covered	Volunteers not covered	Sexual contact is not covered	✓								✓

<sup>69</sup> In Pennsylvania, community corrections is under the Department of Corrections. Thus, community corrections' staff would be considered "employee[s] of the Department of Corrections." 18 PA. CONS. STAT. § 3124.2(a) (2006)

<sup>70</sup> In Pennsylvania, the law covers youth contract facilities. 18 PA. CONS. STAT. § 3142.2(b) (2006).

<sup>71</sup> In Rhode Island, emission of semen is not required to complete the act of sexual penetration. R.I. GEN. LAWS § 11-37-1(8) (2006).

<sup>72</sup> In Rhode Island, the Division of Rehabilitative Services includes probation and parole and is under the Department of Corrections. R.I. GEN. LAWS § 11-25-24 (2006).

<sup>73</sup> In South Carolina, the law covers parole, probation and other community supervision programs. S.C. CODE ANN. §44-23-1150(A)(1) (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>Tennessee</b> Sexual contact with inmates TENN. CODE ANN. § 39-16-408 (2006).  Sexual battery by an authority figure TENN. CODE ANN. § 39-13-527 (2006).	✓	Community Corrections is not covered	✓	<sup>74</sup>	✓				✓				✓
<b>Texas</b> Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with person in custody. TEX. PENAL CODE ANN. § 39.04 (2006).		✓	✓	✓	✓		✓				<sup>75</sup>		✓
<b>Utah</b> Custodial sexual relations – custodial sexual misconduct – definitions – penalties – defenses UTAH CODE ANN. § 76-5-412 (2006).		✓	✓	✓	✓		✓		✓		✓	✓	✓
<b>Vermont</b> SEXUAL EXPLOITATION		Juvenile facilities are not	✓	✓			✓		✓				✓

<sup>74</sup> In Tennessee, emission of semen is not required to complete the act of sexual penetration. TENN. CODE ANN. § 39-13-501(7) (2006).

<sup>75</sup> In Texas, the law covers only juvenile facilities. TEX. PENAL CODE ANN. § 39.04(e)(2) (2006).

State Laws Prohibiting Sexual Misconduct with Individuals in Custody  
Check-List

NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>Vermont con't</b> OF AN INMATE VT. STAT. ANN. tit. 13, § 3257 (2006).		covered											
<b>Virginia</b> Carnal knowledge of an inmate, parolee, probationer, or pretrial or post-trial offender; penalty. VA. CODE ANN. § 18.2-64.2 (2006).	✓	✓	✓	Sexual contact is not covered	✓		✓		✓				✓

State Laws Prohibiting Sexual Misconduct with Individuals in Custody  
Check-List

NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>Washington</b> Custodial sexual misconduct in the first degree WASH. REV. CODE ANN. § 9A.44.160 (2006).  Custodial sexual misconduct in the second degree WASH. REV. CODE ANN. § 9A.44.170 (2006).	✓	✓	Volunteer s not covered		✓			✓ <sup>76</sup>	✓			✓	✓

<sup>76</sup> In Washington, community corrections is implicitly covered since the statute protects those under “correctional supervision” and community corrections is under the Department of Corrections. WASH. REV. CODE ANN. § 9A.44.160 (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

STATE	Requires Sex Offender Registration*	Covers all Facilities*	Covers all Employees*	Covers all forms of Sexual Misconduct*	Juveniles covered explicitly	Juveniles covered implicitly	Community Corrections covered explicitly*	Community Corrections Covered implicitly	Contractors covered explicitly	Contractors covered implicitly	Covers private facilities	Consent is NOT a defense	Some forms are penalized as a felony
<b>West Virginia</b> Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalty W. VA. CODE ANN. § 61-8B-10 (2006).	✓	✓	Volunteers not covered	✓	✓		✓		✓			✓	✓
<b>Wisconsin</b> Second Degree Sexual Assault Wis. Stat. Ann. § 940.225 (2006).	✓	✓	✓	✓ <sup>77</sup>	✓		✓				✓	✓	✓
<b>Wyoming</b> Sexual assault in the second degree WYO. STAT. ANN. § 6-2-303 (2006).		✓	Volunteer s not covered	Sexual contact is not covered <sup>78</sup>		✓ <sup>79</sup>		✓ <sup>80</sup>		✓ <sup>81</sup>			✓

<sup>77</sup> In Wisconsin, the emission of semen is not required. Wis. Stat. Ann. § 940.225(5)(c) (2006).

<sup>78</sup> In Wyoming, the emission of semen is not required. WYO. STAT. ANN. § 6-2-301 (2006).

<sup>79</sup> In Wyoming the law covers “custodians” and those who have “significant influence over a person”. Thus, implicitly including those who correctional administrators who are employed at juvenile justice agencies. WYO. STAT. ANN. § 6-2-301(a)(iv) (2006).

<sup>80</sup> In Wyoming the law covers “custodians” and those who have “significant influence over a person”. Thus, implicitly including those who correctional administrators who are employed in community corrections. WYO. STAT. ANN. § 6-2-301(a)(iv) (2006).

<sup>81</sup> In Wyoming the law implicitly covers contractors since the language of the statute includes “any actor”. However, the offender must occupy a position of authority over the victim. WYO. STAT. ANN. § 6-2-303 (2006).

## State Laws Prohibiting Sexual Misconduct with Individuals in Custody Check-List

### NIC/WCL Project On Addressing Prison Rape

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<b>United States</b> Aggravated sexual abuse 18 U.S.C.S. § 2241 (2006).  Sexual abuse 18 U.S.C.S. § 2242 (2006).  Sexual abuse of a minor or ward 18 U.S.C.S. § 2243 (2006).  Abusive sexual contact 18 U.S.C.S. § 2244 (2006).	✓	✓	✓	✓	✓						✓		✓