

**The Prison Rape Elimination  
Act of 2003 and  
Law Enforcement Agencies:  
What Every Law Enforcement  
Executive Needs to Know  
[draft]**

# Objectives

- Educate law enforcement executives about PREA and its relevance to agencies who manage short term prisoner holding facilities and court holding.
- Overview legal issues
- Provide recommendations re:
  - arrestee and detainee safety from sexual violence, and
  - staff sexual misconduct with arrestees and detainees
- Highlight prevention activities
- Identify resources

# Logistics and Introductions

# Module One

## PREA Overview

# Definitions

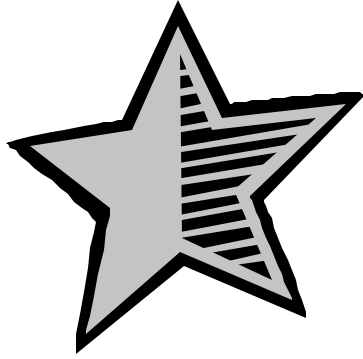
- For the purposes of this training the term “prison” applies to all federal, state, and local prisons, jails, police lock-ups, temporary holding cells, private facilities, and community settings such as residential facilities. The term “inmate” applies to any person held in a custodial setting for any length of time by any of the facility types mentioned above.

Quiz!

What Do You Know?

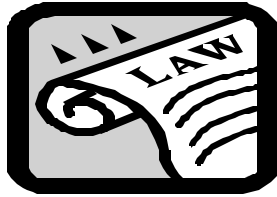
# Overview of the 2003 Prison Rape Elimination Act (PREA)

These materials were developed by The Moss Group, Inc. under cooperative agreement #03P21G1Y4 awarded by the National Institute of Corrections.



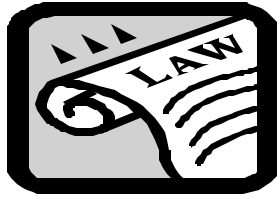
# Highlights of the Act

- Supports the elimination, reduction and prevention of sexual assault within the corrections system
- Mandates several national data collection activities
- Provides funding for program development and additional research
- Creates a national commission to develop standards and accountability measures



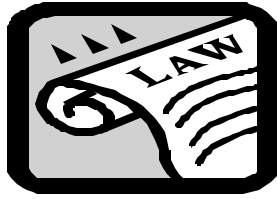
# The Law

- Public Law 108–79 signed by President Bush on September 4, 2003
- Applies to all federal and state prisons, jails, police lock-ups, private facilities and community correctional settings such as residential facilities (includes adult and juvenile agencies)
- “Safe communities” has implications for probation, parole and other types of non-residential supervision
- Authorization is \$60 million annually. Appropriations for 2004 at \$40 million – no guarantee that funding will continue at full level (2004 through 2010)



# Current Activities Under the Law

- BJS to collect prison rape statistics
- NIJ to provide grants for research
- NIC to offer training, technical assistance, and clearinghouse functions
- AG's Office authorized to provide grants to corrections to prevent, investigate, and punish (BJA); and create review panel
- National Prison Rape Elimination Commission appointed



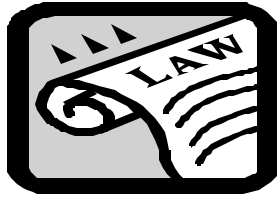
# The Law Findings

- The PREA law describes a variety of research findings and data, such as:
  - In 1999, there were over 10,000,000 admissions to and discharges from prisons and jails in US
  - Estimates of sexual assault rates and total number of assaulted inmates vary widely
- Discusses the impact of rape and prison sexual assault on:
  - Public safety
  - Public health
  - Institutional violence



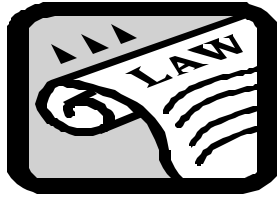
# The Law Purposes

1. Establish a zero-tolerance standard for the incidence of rape in correctional facilities in the United States.
2. Make the prevention a top priority in each correctional system.
3. Develop and implement national standards for the *detection, prevention, reduction, and punishment* of rape in correctional facilities.
4. Increase available data and information on the incidence of rape facilities.



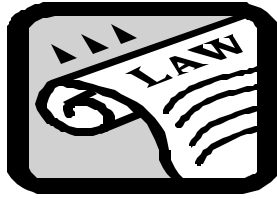
# The Law Purposes

5. Standardize the definitions used for collecting data on the incidence Increase the accountability of prison officials who fail act to *detect, prevent, reduce, and punish* arrestee sexual assault
6. Protect the Eighth Amendment rights of federal, state, and local prisoners.



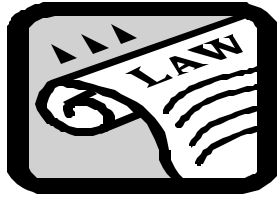
# The Law Purposes

8. Increase the efficiency and effectiveness of federal expenditures *through grant programs* such as health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness.
9. Reduce the costs imposed on interstate commerce.



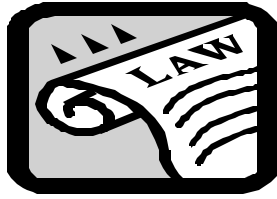
# The Law Statistics, Data, Research

- Bureau of Justice Statistics (BJS)  
“shall carry out...a comprehensive statistical review and analysis of the incidence and effects of prison rape.”
- Includes national inmate survey and administrative data collection.
- Data collection from lock-ups – administrative record reviews



# The Law Grants

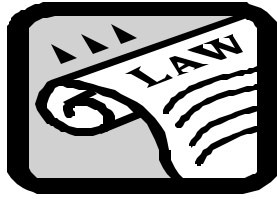
- Grants are available to help states implement the PREA law.
  - Police/sheriffs not directly eligible for grants – work through state DOC
- Grants provide funds for:
  - Personnel
  - Training
  - Technical assistance
  - Data collection
  - Equipment to prevent and prosecute prisoner rape



# The Law NPREC

## National Prison Rape Elimination Commission

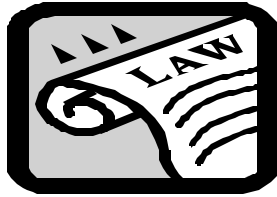
- Nine-member commission appointed by the President and Congress
- Commission reports to AG:
  - Findings and conclusions
  - Recommendations for national standards to reduce prison rape



# The Law NPREC

Additionally, the National Prison Rape Elimination Commission will:

- Consult with accrediting organizations in developing its recommendations.
- Conduct public hearings whenever deemed necessary or appropriate.
- Collect any information from federal or state agencies deemed necessary to carry out duties.



# The Law

## National Standards

One year after receiving the Commission report, the Attorney General shall publish a final rule adopting national standards for the *detection, prevention, reduction, and punishment* of prison rape.

# Development of Standards

- Now underway
  - Law enforcement professional membership organizations involved
- Draft due in Federal Register 2008
- Approve by NPREC in 08
- Forward to AG in late 08



# The Law Requirement to Adopt Standards

- An organization responsible for the accreditation of federal, state, local, or private prisons, jails, or other penal facilities *may not receive any new federal grants* during any period in which such organization *fails* to meet any of these requirements.

# What Does the Law Say About the Costs if We Don't Implement PREA?

- Higher levels of violence in facilities
- Health care expenditures, inside and outside of corrections systems
- Reduces the effectiveness of disease prevention programs by increasing the spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases
- Increases mental health care expenditures, inside and outside of corrections systems
- Increases the rate of post-traumatic stress disorder, depression, suicide, and exacerbates existing mental illnesses among current and former inmates/arrestees

# What Does the Law Say About the Costs if We Don't Implement PREA?

- Liability – lawsuits from arrestees who have been sexually assaulted
- Public relations risk – bad press creates ill will in the community and the organization
- Risks of recidivism, civil strife, and violent crime by arrestees/inmates who have been victimized

# What Does the Law Say about the Benefits of Implementing PREA?

- Reduced liability exposure to litigation
- Reduced costs in administration, medical, and mental health
- Safer environment for arrestees and staff
- Protects *public health* from sexually transmitted diseases arrestees may contract
- Protects *public safety* by releasing arrestees into the community who have not been sexually assaulted

# Measuring Sexual Violence

## ***Nonconsensual sexual acts***

- Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
- Contact between the penis and the vagina or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vagina, or anus; or
- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

# Measuring Sexual Violence

## ***Abusive sexual contacts***

- Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.
- Excluding incidents in which the intent of the sexual contact is to harm or debilitate rather than sexually exploit.

# Measuring Sexual Violence

## ***Staff sexual misconduct***

- Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, official visitor, or agency representative. Romantic relationships
- between staff and inmates are included. Consensual or nonconsensual sexual acts include:
  - Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire; or
- Completed, attempted, threatened, or requested sexual acts; or
- Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

# Measuring Sexual Violence

## ***Staff sexual harassment***

- Repeated verbal statements or comments of a sexual nature to an inmate by an employee, volunteer, official visitor, or agency representative, including:
  - Demeaning references to gender or derogatory comments about body or clothing;  
or
  - Profane or obscene language or gestures.

# Why Now for Law Enforcement?

- Why is PREA relative unknown in law enforcement circles?
- Emphasis on institutional corrections
- Title of law
- Confusion in the field
- Lack of data about lock-ups
  - 2003, BJS 12,666 local police departments in the United States 26% (N=3,293 agencies) indicated that they operated a lock-up.

# What Other Chiefs/Sheriffs Say

- Need to divert persons with mental illness/homeless – pose challenges as victims or predators
- Definitions of staff sexual misconduct with arrestees are vague.
- Employees are fearful of false allegations of misconduct
- Lack of knowledge about PREA and lack of coordination/collaboration with the state's department of corrections who may have received funding under PREA.
- Inexperienced staff are assigned to lock-ups.
- Training for police/law enforcement officers doesn't include information on the pathways of women and other vulnerable victims into the justice system.

# Chiefs/Sheriffs, continued

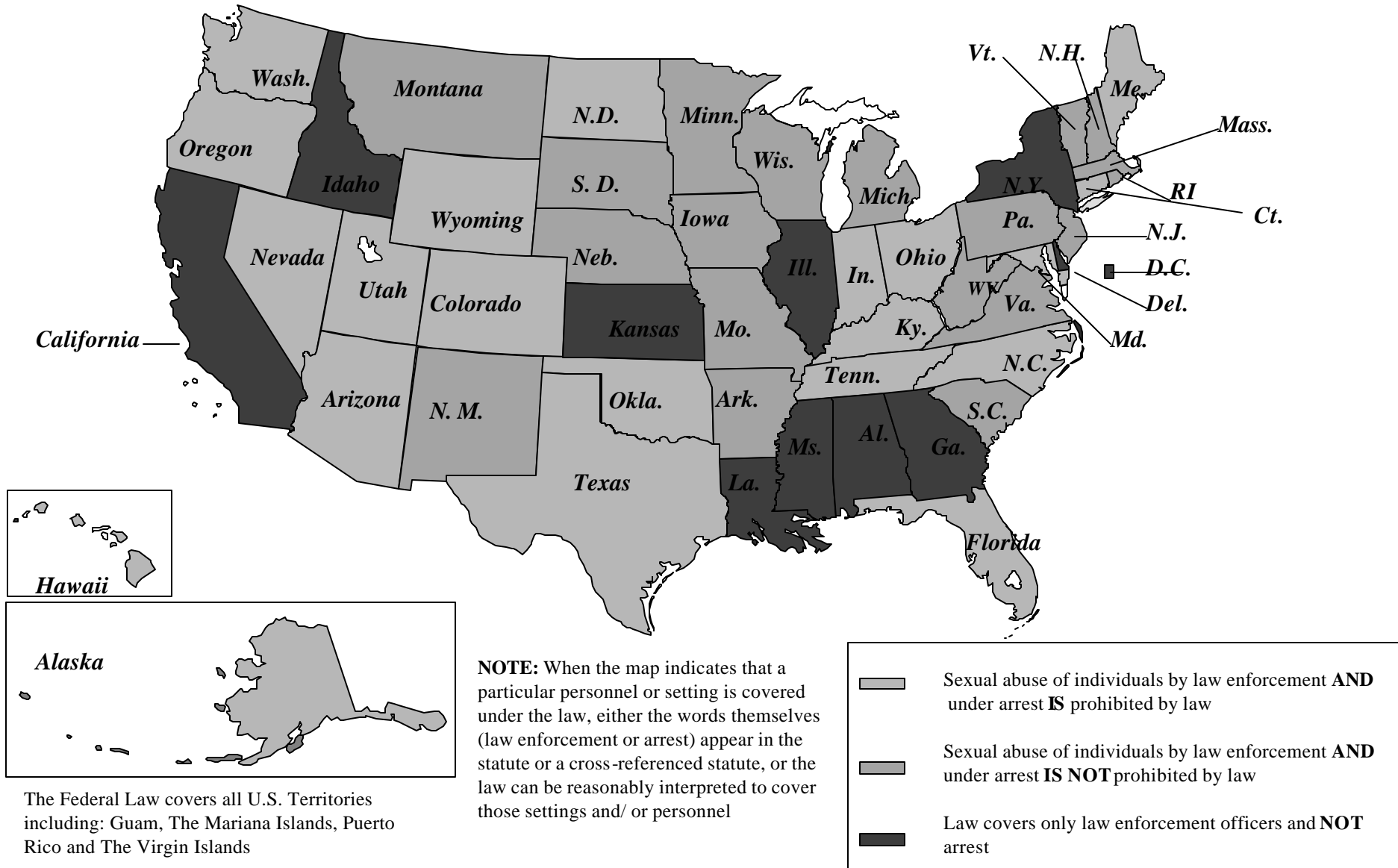
- Policies and procedures, along with risk assessment need updating, and in some cases, need to be written
- Link CALEA and PREA.
- Operating short-term holding facilities, lock-ups, are not the primary mission of law enforcement.
- Funds are scarce for improving or implementing risk assessments for arrestees, providing medical/mental health/pharmaceuticals for arrestees, improving the physical plant, and upgrading training and supervision of employees who work in lock-ups.

# Overview of Legal Issues

# State Criminal Laws Prohibiting the Sexual Abuse of Individuals by Law Enforcement

Smith Consulting – January 2007

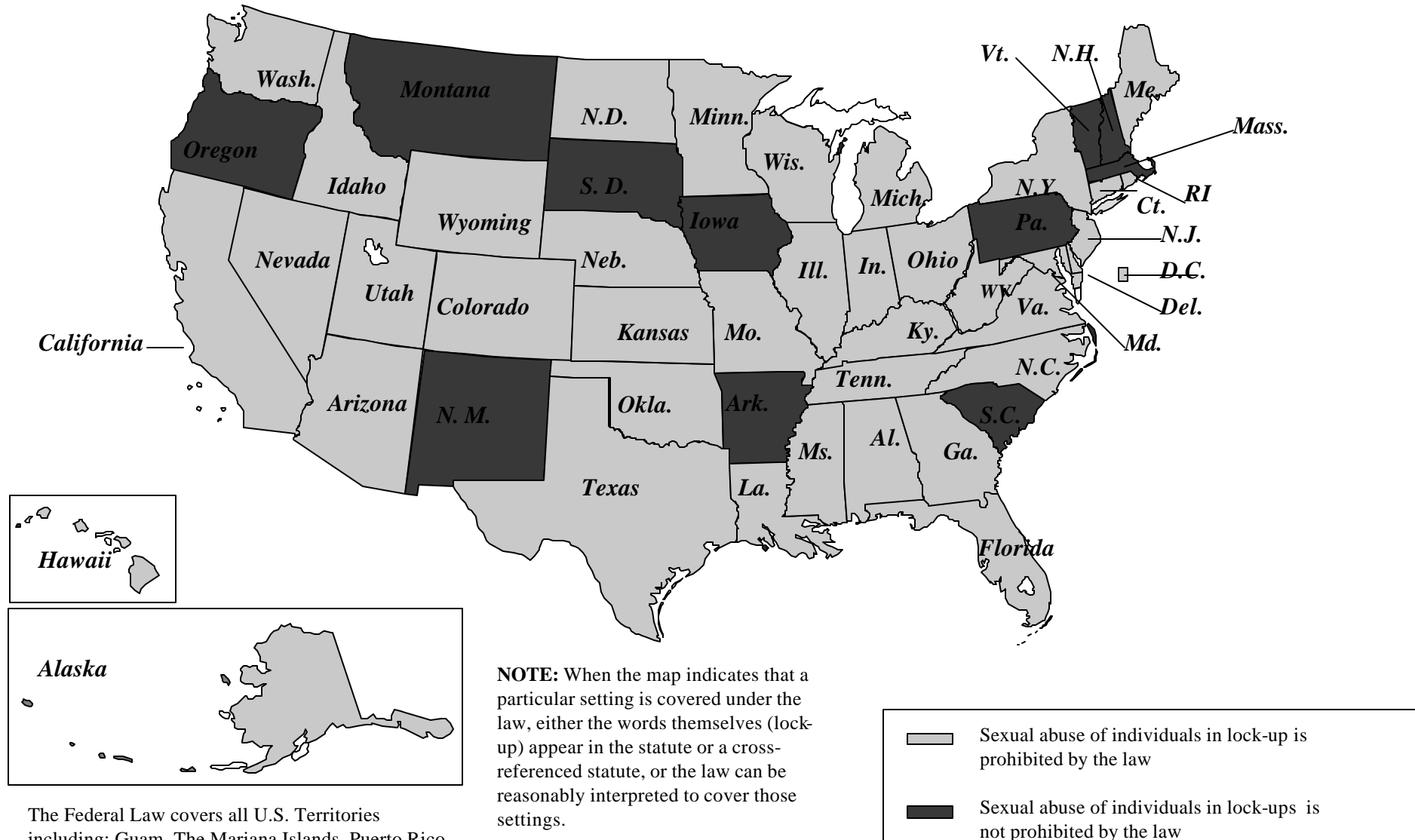
Source: The NIC/WCL Project on Addressing Prison Rape 50 State Survey of State Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody (Current as of January 2007)



# State Criminal Laws Prohibiting the Sexual Abuse of Individuals in Lock-Ups

Smith Consulting – January 2007

Source: The NIC/WCL Project on Addressing Prison Rape 50 State Survey of State Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody (Current as of January 2007)



# State Criminal Laws Prohibiting the Sexual Abuse of Individuals in Jails

Smith Consulting – January 2007

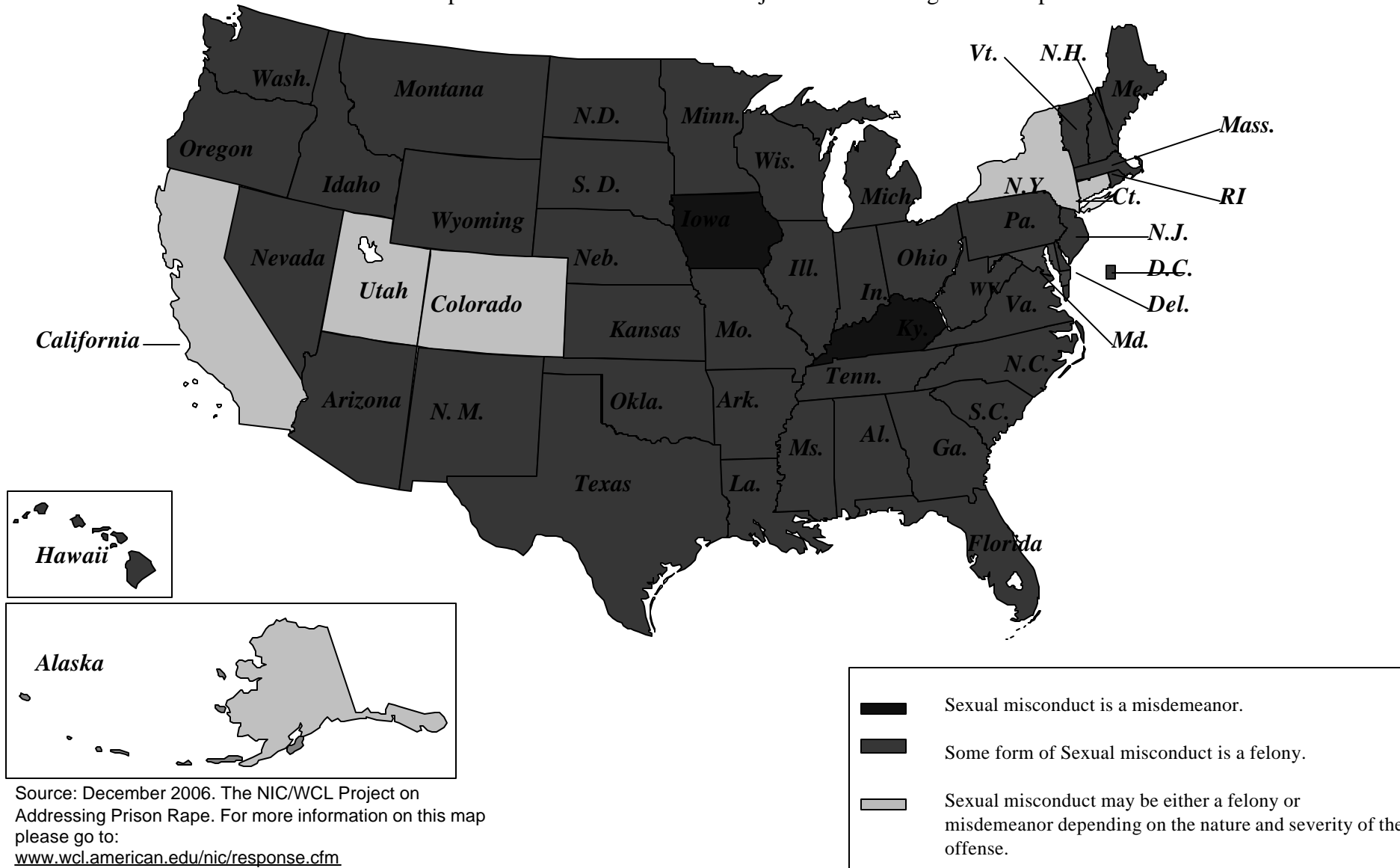
Source: The NIC/WCL Project on Addressing Prison Rape 50 State Survey of State Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody (Current as of January 2007)



# *State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody: Penalties*

*National Institute of Corrections/American University, Washington College of Law – December 2006*

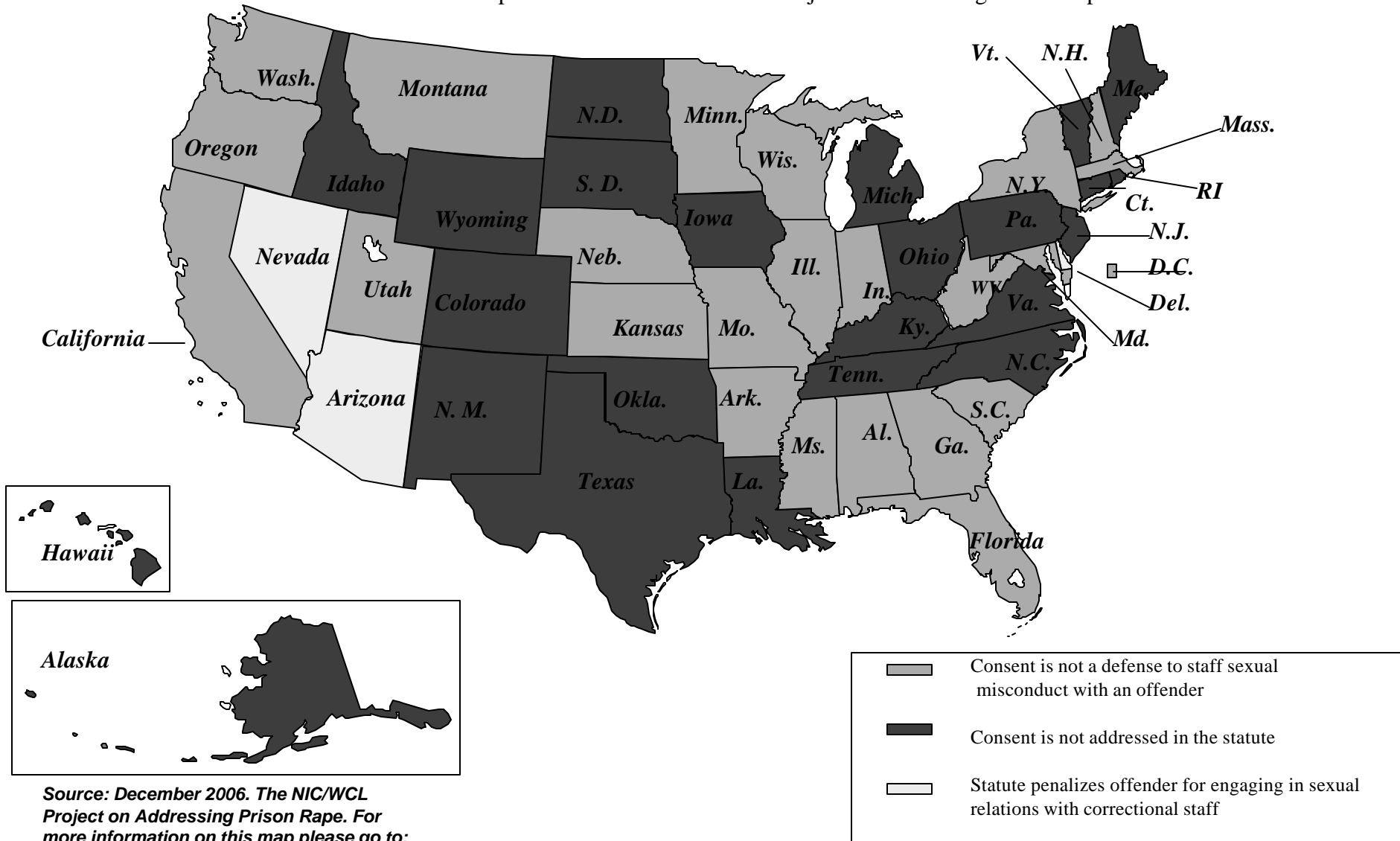
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# *State Criminal Laws Prohibiting Sexual Abuse of Individuals Under Correctional Supervision: Consent as a Defense*

*National Institute of Corrections/American University, Washington College of Law – December 2006*

~ Used with permission of the NIC/WCL Project on Addressing Prison Rape



Source: December 2006. The NIC/WCL Project on Addressing Prison Rape. For more information on this map please go to: [www.wcl.american.edu/nic/response.cfm](http://www.wcl.american.edu/nic/response.cfm)

# Need to Know:

- PREA = no new “cause of action”
- Focuses on existing duty to protect arrestees
- Need to involve prosecutors
- Arrestees cannot consent to sex with employees
- Lock-ups have duty to protect arrestees from other arrestees

# Sources of Liability

- PREA
- Agency Policy
- State statutes prohibiting the abuse of persons in custody
- Laws enacted to Implement PREA (California)
- Other State Laws
- Constitutional Law

# Sexual Misconduct Laws

- All 50 states, the federal government and DC have laws specifically covering the sexual abuse of persons in custody
- 32 states cover law enforcement officers
- 21 states cover arrests
- 39 states cover police lockups
- 49 states cover jails

# Other State Criminal Laws

- Sexual Assault
- Statutory Rape
- Sodomy
- Sex Offender Registration
  - Juveniles
  - Adults
- Vulnerable Adult Statutes
- Licensing
- Malfeasance in Office/Official Misconduct
- Obstruction of Justice
- Making False Statements to a government official
- Mandatory Reporting
- Notification

# Civil Liability -- Constitutional Claims

- Most common legal bases for challenges
  - 42 U.S.C. 1983
  - Eighth Amendment
  - Fourth Amendment
  - Fourteenth Amendment
  - State tort claims

# 42 U.S. C. 1983

- Creates a federal cause of action for the vindication of rights found elsewhere
- Key elements
  - Deprived of a right secured by the constitution or law of U.S.
  - Deprivation by a person acting under color of state law

# Eighth Amendment

- Prohibits cruel and unusual punishment
- Legal standard is deliberate indifference
  - Established in a prison rape case Farmer v. Brennan, 511 U.S. 825 (1994)
  - Two part test
    - the injury must be objectively serious and must have caused an objectively serious injury
    - the official must have a sufficiently culpable state of mind and have acted with deliberate indifference or reckless disregard for the inmate's constitutional rights

# What the court looks for

- Deliberate indifference to inmate vulnerability -- safety or health
  - Official knew of and disregarded an excessive risk to inmate safety or health
  - Official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he must draw the inference

# Fourteenth Amendment : Substantive Due Process

- Was the individual deprived of a life, liberty or property without due process of law?
- Lower legal standard than 8<sup>th</sup> Amendment
- Depending on situation – 14<sup>th</sup> Amendment may apply – juveniles and pre-trial detainees in particular

# State Tort Law Claims

- Assault
- Battery
- Intentional infliction of emotional distress
- Negligent infliction of emotional distress
- Negligent hiring, firing, supervision, training

# Liability

- Municipal
- Official
- Individual
- Personal

# Qualified Immunity

- No violation of federal law -- constitutional or otherwise
- Rights and law not clearly established at the time of the incident
- Official's action was objectively legally reasonable in light of clearly established legal rules at time of the incident

# Lessons Learned

- Examine patterns of misconduct at department
- Same employee/officer accused many times
- Off duty conduct which reflects on work performance
- Ineffective investigative procedures
- Must lead, manage and discipline

# Conclusions

- Law enforcement officials can be held liable in their official, individual and personal capacities for sexual violence against arrestees by either staff or other offenders

# Conclusions

Knowledge and involvement of prosecutor  
important.

# Conclusions

- Municipalities can be held liable for sexual violence against arrestees if the violence is a result of a policy or custom of the county or if it follows official policy set by the Chief of Police/Sheriff

# Conclusions

- Failure to address sexual violence and misconduct has criminal, administrative and civil consequences for cities, counties, chiefs of police, sheriff, and law enforcement personnel.

# Burning Issues



# Module One - Summary

- This module has addressed:
- What is PREA
- Why now an issue for law enforcement
- Legal issues
- Burning issues (if used)

# Module Two

What Should Your Agency Be  
Doing about PREA?

Assuring Arrestee and Detainee  
Safety

# Issues

- Effective, systemic, strategies
- Policies and procedures
  - Investigations
  - Compliance/Data
  - Training
- Arrestee risk assessments
- Physical plant assessments
- Stakeholders
- Next steps - prevention

# Is there a systemic issue?

- Policies/procedures
- Training
  - Professional boundaries
- Supervision of employees
- Supervision of detainees
  - Risk assessment
- Adequate physical plant
- Modeling the expected employee behavior
- Effective investigations
- Corrective actions
- Prosecutions

# Policies and Procedures

- Administrative, Management and Operations
- Zero Tolerance
  - Definitions
    - What are prohibited behaviors?
    - What behaviors constitute staff misconduct and harassment?
  - What are reporting requirements for employees?
  - What are reporting avenues for arrestees/detainees
  - Commitment to investigate to exonerate
  - Commitment to improve operations
  - Fraternalization rules, reporting

# Policies and Procedures

- Booking Procedures
- Supervision of arrestees
- Meals
- Bedding
- Arrestee Hygiene
- Emergency Procedures
- Maintenance/Janitorial

# Policies and Procedures

- Assess to counsel
- Detainee privacy
- Searches, opposite sex
- Transferring information
- How arrestees ask for help or report allegations of misconduct
- Meth lab decontamination

# Policies and Procedures

- Weekly inspections/documentation
- Transport
- Court Holding
- Investigations
- Memoranda of Agreement
- Firearms policy, use of force, chemical spray, non-lethal force
- Pharmaceutical distribution

# Investigations

- Mechanism for complaints/allegations to reach investigators
- Mandate that all employees report allegations of arrestee/arrestee sexual violence and staff sexual misconduct with arrestees
- Commitment to fully investigate all allegations
- Commitment to refer for prosecution sustained allegations
- A means to incorporate lessons learned from investigations into agency policy, supervisory training, pre-and-in-service training, to improve arrestee risk assessment and lock-up physical plant.
- Address employees' code of silence

# BJS Definitions

- substantiated, if they were determined to have occurred
- unsubstantiated, if the evidence was insufficient to make a final determination that they occurred
- unfounded, if they were determined not to have occurred
- investigation ongoing, if a final determination had not been made at time of data collection.

# Compliance/Data Reporting

- BJS administrative record reviews
- Definitions
- Recording allegations
- Recording investigative outcomes

# Training

- Assess current training.
- What topics are included in pre-service training?
- What topics are in in-service training?
- Are lesson plans up to day?
- Demonstration of proficiencies?
- Supervisory training
- Assessment of what topics need to be included
- How often to train?
- Who are you trainers?
- Challenges of instructing this subject?

# Arrestee Risk Assessment

- Health
- Mental Health
- Vulnerability

# What if . . . an arrestee . . . ?

- Needs medication and/or medical care?
- Exhibits behavior indicating mental illness and/or drug or alcohol withdrawal/reactions?
- States they are a victim of sexual assault/abuse while in your custody?
- Indicates he/she is a transsexual?
- States she is pregnant or nursing?
- Indicates they are fearful of a particular other arrestee?
- Appears to staff as a potential victim?
- Appears to staff as a potential predator?
- Past criminal history indicates violence?

# Arresting Officer

- Did the arrestee exhibit any behaviors indicating mental health issues?
- Did the family, or bystanders, indicate the arrestee has any mental health issues?
- Does the arrestee appear physically injured?
- Is the arrest sober? Alcohol or legal or illegal drugs?
- Did the arrestee indicate any thoughts of self-harm or suicide?
- Did arrestee come from active meth lab?
  - Decontaminated before transport?

# Mental Health

- Appears anxious
- Hallucinating
- Hearing voices
- Unfocused
- Acting out
  - Crying
  - Withdrawing
- Psychiatric history
  - Current treatment/immediate past treatment
- Developmentally disabled, appearance of low functioning

# Suicide risk

- Nature of offense
- Shame/humiliation
- Sex offense involving minor
- Past attempts; evidence of past attempts
- First arrest
- Alcohol/drug involvement
- Voicing self-harm
- No family/friends in community

# Medical Screening

- Appearance
  - Obvious pain/swelling
  - Injury (old or new)
  - Visible trauma, bruises, lacerations
  - Infection
  - Profuse sweating
  - Sutures, bandages, cast
  - Color
  - Pupils
  - Withdrawing from substance
- Pregnant/recent delivery/breast feeding
- Allergies
- Asthma
- Diabetes
- Seizures
- Epilepsy
- Cardiac health issues
- High blood pressure
- Recent surgery
- Current drug use
- Past drug use
- Current alcohol use
- Past alcohol use
- Did arrestee come from meth lab?
  - User?
  - Decontaminated?
- Movement impaired, wheelchair, crutches
  - ADA issues
- Current medications
  - With arrestee?
- Name of physician

# Risk Assessment/Sexual Violence

- Indicates is homosexual [gay man, lesbian woman]
- Indicates is transsexual, inter-sex
- Physical stature indicates potential victimization
- Physical stature indicates potential predator
- Anger
- Fear
- Criminal charge (past and present)
- Disabled
- Young
- Old
- Developmentally disabled
- Mental Illness
- Previous sexual assault victim/perpetrator

# Medical Attention

- On-site
- Hospital
  - Criteria for transport
- Allegations of sexual assault/misconduct
  - Transporting criteria
- Supervision at the hospital; secure area
- Medical information from hospital re: arrestee
  - Precautions
  - Drug interactions
- Prescriptions, how filled
- Medical authority approves procedures (CALEA 72.6.1)

# Physical Plant Assessment

- Fire/Life Safety/Sanitation
- Sleeping provisions
- Suicide Hazards
- Meal Service
- Maintenance
- ADA Accessibility
- Secure pharmaceutical storage
- Communication ability with arrestees in the cell area

# Stakeholder Involvement

- What MOUs are Needed?
- Investigating authority
  - Same agency investigative functions
- Sexual Assault Treatment Center
- Medical/Mental Health/Pharmacies
- Prosecutors
  - Education
  - MOU
- Other MOUs?

# Next Steps

- Triage policies and procedures
  - Zero tolerance for misconduct
  - Commitment to investigations
  - Training of employees
- Review arrestee risk assessment
- Physical plant assessments regularly conducted
- Consider partnerships and options

# Summary

- PREA includes police/law enforcement lock-ups and short-term holding facilities.
- PREA focuses agencies on already existing legal obligations to protect arrestees
- A systemic approach – examining all agency operations relating to arrest and short term holding is important
  - Policies/procedures
  - Training
  - Data maintenance
  - Investigations
  - Providing information to arrestees about their rights and how to report allegations
- Arrestees are screened to keep them safe is critical
- Adequate physical plant is maintained
- There are partnerships to insure safety

# Technical Assistance is Available

- Training – contact Susan McCampbell
  - 239.597.5906
  - [cippinc@aol.com](mailto:cippinc@aol.com)
- On-Site technical assistance
  - Drew Molloy
  - [Andrew.Molloy@usdoj.gov](mailto:Andrew.Molloy@usdoj.gov)