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### Fifty State Survey of Official Misconduct Statutes

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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Alabama</b>	
<b>Statute</b> <i>(Alabama)</i>	N/A. Alabama repealed its “willful neglect of official duty or malfeasance in office” law (§ 36-10-9) in 1979.  Alabama amended its statute providing for municipal officer or employee removal (§ 11-43-160) in 2009. <sup>1</sup>
<b>Definitions</b> <i>(Alabama)</i>	N/A.
<b>Procedure</b> <i>(Alabama)</i>	<p>ALA.CODE § 36-11-03 (West 2008). <u>Investigations of alleged misconduct or incompetency of public officers by grand juries; disposition of grand jury reports.</u></p> <p>It shall be the duty of every grand jury to investigate and make diligent inquiry concerning any alleged misconduct or incompetency of any public officer in the county which may be brought to its notice; and, if, on such investigation and inquiry, it finds that such officer, for any cause mentioned in this chapter, ought to be removed from office, it shall so report to the court, setting forth the facts, which report shall be entered on the minutes of the court. If the officer so reported against is one of those included in Section 174, Article 7, of the constitution, the clerk of the court shall transmit a certified copy of such report to the Attorney General. If the officer so reported against is the presiding judge of the court, the report must not be made to the court or entered on the minutes; and, in such cases, the report of the grand jury must be signed by the foreman and countersigned by the district attorney, who must transmit the same to the Attorney General.</p> <p>ALA.CODE § 36-11-18 (West 2008). <u>Execution of process, etc., where sheriff or clerk of court subject to impeachment proceedings.</u></p> <p>In cases against a sheriff or clerk of the court alleging misfeasance, malfeasance, or nonfeasance, all process for proceedings are determined by the county coroner or if there is no coroner, by any appointment made by the court or judge filling vacancy.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Criminal Penalty</b> <i>(Alabama)</i>	N/A.
<b>Administrative Penalty</b> <i>(Alabama)</i>	N/A.
<b>Alaska</b>	
<b>Statute</b> <i>(Alaska)</i>	<p>ALASKA STAT. § 11.56.850 (West 2008). <u>Official misconduct.</u></p> <p>(a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant</p> <p style="padding-left: 40px;">(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or</p> <p style="padding-left: 40px;">(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.</p>
<b>Definitions</b> <i>(Alaska)</i>	<p>ALASKA STAT. § 12.55.135 (West 2008). <u>Sentences of imprisonment for misdemeanors.</u></p> <p>(3) “medical professional” means a person who is an anesthesiologist, dentist, dental hygienist, health aide, nurse, nurse aid, nurse practitioner, mental health counselor, physician, physician assistant, chiropractor, psychiatrist, osteopath, psychologist, psychological associate, radiologist, surgeon, or x-ray technician, or who holds a substantially similar position.</p>
<b>Procedure</b> <i>(Alaska)</i>	N/A.

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (Alaska)</p>	<p>ALASKA STAT. § 11.56.850 (West 2008). <u>Official misconduct.</u></p> <p>(b) Official misconduct is a class A misdemeanor.</p> <p>ALASKA STAT. § 12.55.035 (West 2008).<sup>2</sup> <u>Fines.</u></p> <p>(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.</p> <p>(b) (5) \$10,000 for a class A misdemeanor;</p> <p>(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.</p> <p>ALASKA STAT. § 12.55.135 (West 2008). <u>Sentences of imprisonment for misdemeanors.</u></p> <p>(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.</p> <p>(1) a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder or medical professional who was engaged in the performance of official duties at the time of the assault or harassment shall be sentenced to a minimum term of imprisonment of</p> <p>(A) 60 days if the defendant violated AS 11.41.230(a)(1) or (2) or AS 11.61.118;</p> <p>(B) 30 days if the defendant violated AS 11.41.230(a)(3);</p> <p>(e) If a defendant is sentenced under (c), (d), or (h) of this section,</p> <p>(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> <i>(Alaska)</i></p>	<p>has been served;</p> <p>(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and</p> <p>(3) the minimum term of imprisonment may not otherwise be reduced.</p>
<p><b>Administrative Penalty</b> <i>(Alaska)</i></p>	<p>N/A.</p>
<p><b>Arizona</b></p>	
<p><b>Statute</b> <i>(Arizona)</i></p>	<p>ARIZ. REV. STAT. ANN. § 38-443 (West 2008). <u>Nonfeasance in public office; classification.</u></p> <p>A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.</p> <p>ARIZ. REV. STAT. ANN. § 38-231 (West 2008). <u>Officers and employees required to take loyalty oath; form; classification; definition.</u></p> <p>A. In order to ensure the statewide application of this section on a uniform basis, each board, commission, agency and independent office of this state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution, shall completely reproduce this section so that the form of written oath or affirmation required in this section contains all of the provisions of this section for use by all officers and employees of all boards, commissions, agencies and independent offices.</p> <p>B. Any officer or employee who fails to take and subscribe to the oath or affirmation provided by this section within the time limits prescribed by this section is not entitled to any compensation until the officer or employee does so take and subscribe to the form of</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Statute Cont'd</b> (Arizona)	<p>oath or affirmation prescribed by this section.</p> <p>C. Any officer or employee having taken the form of oath or affirmation prescribed by this section, and knowingly at the time of subscribing to the oath or affirmation, or at any time thereafter during the officer's or employee's term of office or employment, does commit or aid in the commission of any act to overthrow by force, violence or terrorism as defined in § 13-2301 the government of this state or of any of its political subdivisions, or advocates the overthrow by force, violence or terrorism as defined in § 13-2301 of the government of this state or of any of its political subdivisions, is guilty of a class 4 felony and, on conviction under this section, the officer or employee is deemed discharged from the office or employment and is not entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to the office or employment.</p> <p>D. Any of the persons referred to in article XVIII, § 10, Constitution of Arizona, as amended, relating to the employment of aliens, are exempted from any compliance with this section.</p> <p>E. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:</p> <p>State of Arizona, County of _____ I, _____</p> <p>do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of _____ (name of office) _____ according to the best of my ability, so help me God (or so I do affirm).</p>
<b>Definitions</b> (Arizona)	<p>ARIZ. REV. STAT. ANN. § 38-1101 (West 2008).</p> <p><u>Law enforcement officers; probation officers; right to representation; right to evidence on appeal; change of hearing officer or administrative law judge; burden of proof; definitions.</u></p> <p>L. For the purposes of this section:</p> <p>1. "Appeal" means a hearing before a state or local merit board, a civil service board, an administrative law judge or a hearing officer.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Arizona)</p>	<p>2. "Disciplinary action" means the dismissal, demotion or suspension for more than twenty-four hours of a law enforcement officer or probation officer that is authorized by statute, charter or ordinance and that is subject to a hearing or other procedure by a local merit board, a civil service board, an administrative law judge or a hearing officer.</p> <p>3. "Investigative file" means the law enforcement agency's complete report and any attachments detailing the incidents leading to the disciplinary action.</p> <p>4. "Law enforcement officer" means:</p> <p>(a) An individual, other than a probationary employee, who is certified by the Arizona peace officer standards and training board, other than a person employed by a multi-county water conservation district.</p> <p>(b) A detention officer or correction officer, other than a probationary employee, who is employed by this state or a political subdivision of this state.</p> <p>5. "Probation officer" means a probation officer or surveillance officer, other than a probationary employee, who is employed by this state or a political subdivision of this state.</p> <p>ARIZ. REV. STAT. ANN. § 38-231 (West 2008). <u>Officers and employees required to take loyalty oath; form; classification; definition.</u></p> <p>F. For the purposes of this section, "officer or employee" means any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution.</p>
<p><b>Procedure</b> (Arizona)</p>	<p>ARIZ. REV. STAT. ANN. § 38-341 (West 2008). <u>Removal of County and Precinct Officers. Accusation by grand jury.</u></p> <p>A. An accusation, in writing, against a county, district or precinct officer for wilful or corrupt misconduct in office may be presented by a grand jury of the county for or in which the officer accused is elected or appointed.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Arizona)</p>	<p>B. The accusation shall state the offense charged in ordinary and concise language, and without repetition.</p> <p>ARIZ. REV. STAT. ANN. § 38-1101 (West 2008). <u>Law enforcement officers; probation officers; right to representation; right to evidence on appeal; change of hearing officer or administrative law judge; burden of proof; definitions</u></p> <p>A. If an employer interviews a law enforcement officer or probation officer and the employer reasonably believes that the interview could result in dismissal, demotion or suspension:</p> <p>1. The law enforcement officer or probation officer may request to have a representative of the officer present at no cost to the employer during the interview. The law enforcement officer or probation officer shall select a representative who is available on reasonable notice so that the interview is not unreasonably delayed. The representative shall participate in the interview only as an observer. Unless agreed to by the employer, the representative shall be from the same agency and shall not be an attorney. The law enforcement officer or probation officer shall be permitted reasonable breaks of limited duration during any interview for telephonic or in person consultation with others, including an attorney, who are immediately available. An employer shall not discipline, retaliate against or threaten to retaliate against a law enforcement officer or probation officer for requesting that a representative be present or for acting as the representative of a law enforcement officer or probation officer pursuant to this paragraph.</p> <p>2. Before the commencement of any interview described in this section, the employer shall provide the law enforcement officer or probation officer with a written notice informing the officer of the specific nature of the investigation, the officer's status in the investigation, all known allegations of misconduct that are the reason for the interview and the officer's right to have a representative present at the interview.</p> <p>3. The employer may require the law enforcement officer or probation officer to submit to a polygraph examination if the officer makes a statement to the employer during the investigation that differs from other information relating to the investigation that is known to the employer and reconciling that difference is necessary to complete the investigation. If a polygraph examination is administered pursuant to this paragraph, the employer or the person administering the polygraph examination shall make an audio recording of the complete polygraph procedure and provide a copy of the recording to the law enforcement officer or probation officer.</p> <p>B. Subsection A does not require the employer to either:</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Arizona)</p>	<ol style="list-style-type: none"><li>1. Stop an interview to issue another notice for allegations based on information provided by the employee during the interview.</li><li>2. Disclose any fact to the employee or the employee's representative that would impede the investigation.</li></ol> <p>C. Subsection A, paragraphs 1 and 2 do not apply to an interview of a law enforcement officer or probation officer that is:</p> <ol style="list-style-type: none"><li>1. In the normal course of duty, counseling or instruction or an informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other law enforcement officer or probation officer.</li><li>2. Preliminary questioning to determine the scope of the allegations or if an investigation is necessary.</li><li>3. Conducted in the course of a criminal investigation.</li><li>4. Conducted in the course of a polygraph examination.</li></ol> <p>D. In any appeal of a disciplinary action by a law enforcement officer or probation officer, the parties shall exchange copies of all relevant documents and a list of all witnesses pursuant to the following time periods and requirements:</p> <ol style="list-style-type: none"><li>1. Within three business days after the employer's receipt of a written request from the law enforcement officer or probation officer for a copy of the investigative file that is accompanied by a copy of the filed notice of appeal, the employer shall provide a complete copy of the investigative file as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation.</li><li>2. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than twenty days after the notice of appeal, no later than ten business days before the appeal hearing, the employer and the law enforcement officer or probation officer shall exchange copies of any documents that may be introduced at the hearing and that have not previously been disclosed.</li><li>3. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than twenty days after the notice of appeal, no later than ten business days before the appeal hearing, the employer and the law enforcement officer or probation officer shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An employer shall not discipline, retaliate against or threaten to retaliate against any witness for agreeing to be interviewed or for testifying or providing</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Arizona)</i></p>	<p>evidence in the appeal.</p> <p>E. It is unlawful for a person to disseminate information that is disclosed pursuant to subsection D to any person other than the parties to the appeal and their lawful representatives for purposes of the appeal of the disciplinary action. This subsection does not prohibit the use of the information in the hearing or disclosure pursuant to title 39, chapter 1, article 2.</p> <p>F. The employer or the law enforcement officer or probation officer may seek a determination by the hearing officer, administrative law judge or appeals board hearing the appeal regarding any evidence that the employer or the law enforcement officer or probation officer believes should not be disclosed pursuant to subsection D because the risk of harm involved in disclosure outweighs any usefulness of the disclosure in the hearing. In determining whether evidence will be disclosed, the hearing officer, administrative law judge or appeals board may perform an in camera review of the evidence and may disclose the material subject to any restriction on the disclosure, including the closing of the hearing or the sealing of the records, that the hearing officer, administrative law judge or appeals board finds necessary under the circumstances.</p> <p>G. In any appeal of a disciplinary action by a law enforcement officer or probation officer in which a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, the law enforcement officer or probation officer or the employer may request a change of hearing officer or administrative law judge. In cases before the office of administrative hearings, or where the employer is a county with a population of two hundred fifty thousand or more persons or a city with a population of sixty-five thousand or more persons, on the first request of a party, the request shall be granted. All other requests, including any subsequent requests in cases before the office of administrative hearings, or where the employer is a county with a population of two hundred fifty thousand or more persons or a city with a population of sixty-five thousand or more persons, may be granted only on a showing that a fair and impartial hearing cannot be obtained due to the prejudice of the assigned hearing officer or administrative law judge. The supervisor or supervising body of the hearing officer or administrative law judge shall decide whether a showing of prejudice has been made.</p> <p>H. A party who violates subsection D or E, unless the violation is harmless, shall not be permitted to use that evidence at the hearing, except on a showing of good cause. The hearing officer or administrative law judge, on a showing of good cause, may grant the opposing party a continuance, otherwise limit the use of the evidence or make such other order as may be appropriate.</p> <p>I. The burden of proof in an appeal of a disciplinary action by a law enforcement officer or probation officer shall be on the employer.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Arizona)</i></p>	<p>J. If the employer amends, modifies, rejects or reverses the decision of a hearing officer, administrative law judge or board, the employer shall state the employer's reasons for the amendment, modification, rejection or reversal.</p> <p>K. This section does not preempt agreements that supplant, revise or otherwise alter the provisions of this section, including preexisting agreements between the employer and the law enforcement officer or probation officer or the law enforcement officer's or probation officer's lawful representative association.</p>
<p><b>Criminal Penalty</b> <i>(Arizona)</i></p>	<p>ARIZ. REV. STAT. ANN. § 13-802 (West 2008). <u>Fines for misdemeanors.</u></p> <p>B. A sentence to pay a fine for a class 2 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than seven hundred fifty dollars.</p> <p>E. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.</p> <p>ARIZ. REV. STAT. ANN. § 13-707 (West 2008). <u>Imprisonment. Misdemeanors; sentencing.</u></p> <p>A. A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:</p> <ol style="list-style-type: none"> <li>2. For a class 2 misdemeanor, four months.</li> </ol> <p>B. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which the person currently is convicted. Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced shall not be included in the two years required to be free of convictions.</p> <p>C. If a person is convicted of a misdemeanor offense and the offense requires enhanced punishment because it is a second or subsequent offense, the court shall determine the existence of the previous conviction. The court shall allow the allegation of a prior conviction to be made in the same manner as the allegation prescribed by § 28-1387, subsection A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Arizona)</p>	<p>D. A person who has been convicted in any court outside the jurisdiction of this state of an offense that if committed in this state would be punishable as a misdemeanor or petty offense is subject to this section. A person who has been convicted as an adult of an offense punishable as a misdemeanor or petty offense under the provisions of any prior code in this state is subject to this section.</p> <p>E. The court may direct that a person who is sentenced pursuant to subsection A of this section shall not be released on any basis until the sentence imposed by the court has been served.</p>
<p><b>Administrative Penalty</b> (Arizona)</p>	<p>N/A.</p>
<p><b>Arkansas</b></p>	
<p><b>Statute</b> (Arkansas)</p>	<p>ARK. CODE ANN. § 14-14-1311 (West 2008). <u>Removal.</u></p> <p>The circuit court shall have jurisdiction, upon information, presentment, or indictment, to remove any county or township officer from office for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office.</p> <p>ARK. CODE ANN. § 21-12-302 (West 2008).<sup>3</sup> <u>Removal or suspension of local officers.</u> <u>Conviction of officer; removal.</u></p> <p>(a) Upon conviction of any county or township officer for an offense involving incompetency, corruption, gross immorality, criminal conduct amounting to a felony, malfeasance, misfeasance, or nonfeasance in office, a part of the sentence of the circuit court having jurisdiction shall be to remove such officer from office.</p> <p>(b) The clerk of the court at the close of the term shall transmit to the Governor a certified transcript of the information or indictment, with the judgment of the court thereon.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute</b> (Arkansas)</p>	<p>(c) The vacancy shall be filled as may be prescribed by law at the time the vacancy occurs.</p>
<p><b>Definitions</b> (Arkansas)</p>	<p>ARK. CODE ANN. § 14-52-302 (West 2008). <u>Bill of Rights for Law Enforcement Officers.</u> <u>Definitions.</u></p> <p>As used in this subchapter:</p> <p>(1) “Law enforcement officer” means any public servant vested by law with a duty to maintain order or to make arrests for offenses;</p> <p>(2) “Complainant” means the person or persons providing the information constituting the basis for official departmental charges alleging improper conduct;</p> <p>(3) “Official departmental charges” means a written document from the chief of police, or other lawful authority, notifying the accused law enforcement officer that charges of misconduct have been made and setting forth the specifics of the alleged misconduct;</p> <p>(4) “Formal proceeding” means a proceeding heard before any officer, committee, or other body of city government with the authority to take disciplinary action against a law enforcement officer.</p>
<p><b>Procedure</b> (Arkansas)</p>	<p>ARK. CODE ANN. § 14-52-303 (West 2008). <u>Bill of Rights for Law Enforcement Officers.</u> <u>Disciplinary action and procedure.</u></p> <p>Whenever a law enforcement officer is under investigation for alleged improper conduct with a possible result of termination, demotion, or other disciplinary action causing loss of pay or status, the following minimum standards may apply:</p> <p>(1) No adverse inference shall be drawn and no punitive action taken from a refusal of the law enforcement officer being investigated to participate in such investigation or be interrogated other than when such law enforcement officer is on duty, or is otherwise fully compensated for such time spent in accordance with city and departmental overtime policy and state and federal law.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

**Procedure Cont'd**  
*(Arkansas)*

- (2) Any interrogation of a law enforcement officer shall take place at the office of those conducting the investigation, the place where such law enforcement officer reports for duty, or such other reasonable place as the investigator may determine.
- (3) The law enforcement officer being investigated shall be informed, at the commencement of his or her interrogation, of:
- (A) The nature of the investigation;
  - (B) The identity and authority of the person or persons conducting the investigation; and
  - (C) The identity of all persons present during the interrogation.
- (4) During the interrogation of the law enforcement officer, questions will be posed by or through only one (1) interrogator at a time.
- (5) Any interrogation of a law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of such law enforcement officer.
- (6) No threat, harassment, promise, or reward shall be made to any law enforcement officer in connection with an investigation in order to induce the answering of any questions that the law enforcement officer has a legal right to refrain from answering, but immunity from prosecution may be offered to induce such response.
- (7) All interrogations of a law enforcement officer in connection with an investigation against him or her shall be recorded in full. The law enforcement officer shall be allowed to make his or her own independent recording of his or her interrogation and have one (1) witness of his or her choosing present. The witness must be an attorney or a member of the police department that is in no way related to the matter under investigation.
- (8) No formal proceeding which has the authority to administer disciplinary action against a law enforcement officer may be held except upon official departmental charges.
- (9) Official departmental charges shall contain the specific conduct that is alleged to be improper, the date and the time of the alleged misconduct, the witnesses whose information provided the basis for the charges, and the specific rules, regulations, orders, or laws alleged to have been violated.
- (10) Any law enforcement officer under official departmental charges shall be entitled to a predisciplinary hearing before the chief of police if the disciplinary action is being considered. At such hearing, the law enforcement officer shall have the opportunity to

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Arkansas)</i></p>	<p>have a person of his or her choosing present.</p> <p>(11) No formal proceeding which has authority to penalize a law enforcement officer may be brought except upon charges signed by the person making those charges.</p>
<p><b>Criminal Penalty</b> <i>(Arkansas)</i></p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> <i>(Arkansas)</i></p>	<p>ARK. CODE ANN. § 14-14-1311 (West 2008). <u>Removal.</u></p> <p>The circuit court shall have jurisdiction, upon information, presentment, or indictment, to remove any county or township officer from office for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office.</p> <p>ARK. CODE ANN. § 21-12-302 (West 2008).<sup>4</sup> <u>Removal or suspension of local officers.</u> <u>Conviction of officer; removal.</u></p> <p>(a) Upon conviction of any county or township officer for an offense involving incompetency, corruption, gross immorality, criminal conduct amounting to a felony, malfeasance, misfeasance, or nonfeasance in office, a part of the sentence of the circuit court having jurisdiction shall be to remove such officer from office.</p> <p>(b) The clerk of the court at the close of the term shall transmit to the Governor a certified transcript of the information or indictment, with the judgment of the court thereon.</p> <p>(c) The vacancy shall be filled as may be prescribed by law at the time the vacancy occurs.</p> <p>ARK. CODE ANN. § 14-52-307 (West 2008). <u>Bill of Rights for Law Enforcement Officers.</u> <u>Penalties and remedies.</u></p> <p>(a) There shall be no penalty nor threat of any penalty for the exercise by a law enforcement officer of his rights under this Bill of Rights.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty Cont'd</b> <i>(Arkansas)</i>	(b) Nothing in this Bill of Rights shall disparage or impair any other legal remedy any law enforcement officer shall have with respect to any rights under this Bill of Rights.
<b>California</b>	
<b>Statute</b> <i>(California)</i>	CAL. GOV. CODE § 19572 (West 2008). <u>State Civil Service.</u> <u>Causes for discipline.</u>  “Conviction of a felony or conviction of a misdemeanor involving moral turpitude,” “immorality,” or §19990 (a) “using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.”
<b>Definitions</b> <i>(California)</i>	CAL. GOV. CODE § 19572 (West 2008). <u>State Civil Service.</u> <u>Causes for discipline.</u>  “Conviction” includes a plea or verdict of guilty or a conviction following a plea of nolo contendere (no contest).
<b>Procedure</b> <i>(California)</i>	N/A.
<b>Criminal Penalty</b> <i>(California)</i>	N/A.
<b>Administrative Penalty</b> <i>(California)</i>	CAL. GOV. CODE § 19572 (West 2008). <u>State Civil Service.</u> <u>Causes for discipline.</u>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> (California)</p>	<p>“Conviction of a felony or conviction of a misdemeanor involving moral turpitude,” “immorality,” or §19990 (a) “using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.”</p>
<p><b>Colorado</b></p>	
<p><b>Statute</b> (Colorado)</p>	<p>COLO. REV. STAT. ANN. § 18-8-403 (West 2008). <u>Official oppression.</u></p> <p>(1) A public servant, while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, commits official oppression if, with actual knowledge that his conduct is illegal, he:</p> <ul style="list-style-type: none"> <li>(a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, or lien; or</li> <li>(b) Has legal authority and jurisdiction of any person legally restrained of his liberty and denies the person restrained the reasonable opportunity to consult in private with a licensed attorney-at-law, if there is no danger of imminent escape and the person in custody expresses a desire to consult with such attorney.</li> </ul> <p>COLO. REV. STAT. ANN. § 18-8-404 (West 2008). <u>First degree official misconduct.</u></p> <p>(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:</p> <ul style="list-style-type: none"> <li>(a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or</li> <li>(b) Refrains from performing a duty imposed upon him by law; or</li> <li>(c) Violates any statute or lawfully adopted rule or regulation relating to his office.</li> </ul> <p>COLO. REV. STAT. ANN. § 18-8-405 (West 2008). <u>Second degree official misconduct.</u></p> <p>(1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously:</p> <ul style="list-style-type: none"> <li>(a) Refrains from performing a duty imposed upon him by law; or</li> <li>(b) Violates any statute or lawfully adopted rule or regulation relating to his office.</li> </ul>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> (Colorado)</p>	<p>COLO. REV. STAT. ANN. § 18-1-4901 (West 2008). <u>Definitions.</u></p> <p>(1) Definitions set forth in any section of this title apply wherever the same term is used in the same sense in another section of this title unless the definition is specifically limited or the context indicates that it is inapplicable.</p> <p>(2) The terms defined in section 18-1-104 and in section 18-1-501, as well as the terms defined in subsection (3) of this section, are terms which appear in various articles of this code. Other terms which need definition but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear.</p> <p style="padding-left: 40px;">(i) “Government” includes the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function.</p> <p style="padding-left: 40px;">(o) “Public servant” means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.</p>
<p><b>Procedure</b> (Colorado)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (Colorado)</p>	<p>COLO. REV. STAT. ANN. § 18-8-403 (West 2008). <u>Official oppression.</u></p> <p>(2) Official oppression is a class 2 misdemeanor.</p> <p>COLO. REV. STAT. ANN. § 18-8-404 (West 2008). <u>First degree official misconduct.</u></p> <p>(2) First degree official misconduct is a class 2 misdemeanor.</p> <p>COLO. REV. STAT. ANN. § 18-8-405 (West 2008).</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Colorado)</p>	<p><u>Second degree official misconduct.</u></p> <p>(2) Second degree official misconduct is a class 1 petty offense.</p> <p>COLO. REV. STAT. ANN. § 18-1.3-501 (West 2008). <u>Misdemeanors classified—penalties.</u></p> <p>(1)(a) Misdemeanors are divided into three classes which are distinguished from one another by the following penalties which are authorized upon conviction except as provided in subsection (1.5) of this section:</p> <table style="margin-left: 40px; border-collapse: collapse; width: 80%;"> <thead> <tr> <th style="text-align: left; padding-right: 20px;"><b>Class</b></th> <th style="text-align: left; padding-right: 40px;"><b>Minimum Sentence</b></th> <th style="text-align: left;"><b>Maximum Sentence</b></th> </tr> </thead> <tbody> <tr> <td style="padding-top: 10px;">2</td> <td style="padding-top: 10px;">Three months imprisonment, or two hundred fifty dollars fine, or both</td> <td style="padding-top: 10px;">Twelve months imprisonment, or one thousand dollars fine, or both</td> </tr> </tbody> </table> <p>(b) A term of imprisonment for conviction of a misdemeanor shall not be served in a state correctional facility unless served concurrently with a term for conviction of a felony.</p> <p>COLO. REV. STAT. ANN. § 18-1.3-503 (West 2008). <u>Petty offenses classified—penalties.</u></p> <p>(1) A violation of a statute of this state is a “petty offense” if specifically classified as a class 1 or class 2 petty offense. The penalty for commission of a class 1 petty offense, upon conviction, is a fine of not more than five hundred dollars, or imprisonment for not more than six months other than in state correctional facilities, or both. The penalty for commission of a class 2 petty offense is a fine specified in the section defining the offense. The penalty assessment procedure of section 16-2-201, C.R.S., is available for the payment of fines in class 2 petty offense cases.</p> <p>(2) Every sentence entered under this section shall include consideration of restitution as required by part 6 of this article and by article 18.5 of title 16, C.R.S.</p>	<b>Class</b>	<b>Minimum Sentence</b>	<b>Maximum Sentence</b>	2	Three months imprisonment, or two hundred fifty dollars fine, or both	Twelve months imprisonment, or one thousand dollars fine, or both
<b>Class</b>	<b>Minimum Sentence</b>	<b>Maximum Sentence</b>					
2	Three months imprisonment, or two hundred fifty dollars fine, or both	Twelve months imprisonment, or one thousand dollars fine, or both					

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty</b> <i>(Colorado)</i>	N/A.
<b>Connecticut</b>	
<b>Statute</b> <i>(Connecticut)</i>	<p>CONN. GEN. STAT. ANN. § 5-240 (West 2008).  <u>State Personnel Act.</u>  <u>State Employees. Reprimand, suspension, demotion, dismissal. Layoffs. Notice period pay.</u></p> <p>(a) An appointing authority, subject to any regulations issued by the Secretary of the Office of Policy and Management, may reprimand or warn an employee in the classified service under the appointing authority's jurisdiction or suspend such an employee without pay or with reduced pay for an aggregate period not exceeding sixty calendar days in any calendar year. For any employee not included in any collective bargaining unit of state employees, any written reprimand or warning shall be included in the employee's personnel file and, if not merged in the next service rating, shall be expunged after twelve months from the date of reprimand or warning. Any such written reprimand or warning may be reviewed in accordance with the procedures established in subsections (h) and (i) of § 5-202.</p> <p>CONN. GEN. STAT. ANN. § 6-32 (West 2008).  <u>Judicial and State Marshals.</u>  <u>Duties.</u></p> <p>Each state marshal shall receive each process directed to such marshal when tendered, execute it promptly and make true return thereof; and shall, without any fee, give receipts when demanded for all civil process delivered to such marshal to be served, specifying the names of the parties, the date of the writ, the time of delivery and the sum or thing in demand. If any state marshal does not duly and promptly execute and return any such process or makes a false or illegal return thereof, such marshal shall be liable to pay double the amount of all damages to the party aggrieved.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> (Connecticut)</p>	<p>CONN. GEN. STAT. ANN. § 5-196 (West 2008). <u>State Personnel Act.</u> <u>Definitions.</u></p> <p>As used in this chapter, unless the context otherwise requires:</p> <p>(3) “Appointing authority” means a board, commission, officer, commissioner, person or group of persons having the power to make appointments by virtue of a statute or by lawfully delegated authority.</p> <p>(6) “Classified service” means every office or position in the state service, whether full-time or part-time, for which compensation is paid, except those offices and positions specified in section 5-198 or otherwise expressly provided by statute.</p> <p>(7) “Compensation” means the salary, wages, benefits and other forms of valuable consideration earned by and provided to an employee in remuneration for services rendered.</p> <p>(8) “Compensation schedule” or “compensation plan” means a list or lists specifying a series of compensation steps and ranges.</p> <p>(10) “Employee” or “state employee” means any person holding a position in state service subject to appointment by an appointing authority.</p> <p>(14) “Good standing” means the status of an employee whose employment in the state service has been terminated other than as a result of disciplinary action or during a period when disciplinary action was pending.</p> <p>(15) “Grade” or “pay grade” means a relative level, numerically expressed, to which one or more classes may be assigned according to the degree of their complexity, importance and value, and which refers to a single pay range in the compensation schedule.</p> <p>(17) “Officer” or “state officer” means any person appointed to a state office established by statute, including appointing authorities.</p>
<p><b>Procedure</b> (Connecticut)</p>	<p>CONN. GEN. STAT. ANN. § 7-419 (West 2008).<sup>5</sup> <u>Municipal Employees. Removal of officers or employees.</u></p> <p>No officer or employee in the classified civil service shall be removed, discharged or reduced in rank or pay because of religious or</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Connecticut)</p>	<p>political opinion or affiliation. No removal from the classified civil service, except at the expiration of the period of probation, shall be made by any appointing power except for reasons given in writing to the board, and a copy of such reasons shall be furnished to the person removed. Such person may thereupon file with the board in writing any proper answer to such reasons. A copy of such reasons and answer and of the order of removal shall be made a part of the records of the board and of the proper department or office; and the reasons for any change in rank or compensation within the classified service shall also be made a part of the records of the board and of the proper department or office. Nothing contained in this chapter shall be so construed as to require the examination of witnesses or any trial or hearing before or after reduction or removal.</p> <p>CONN. GEN. STAT. ANN § 5-240 (West 2008). <u>State Employees. Reprimand, suspension, demotion, dismissal. Layoffs. Notice period pay.</u></p> <p>(b) An appointing authority, subject to any regulations issued by the Secretary of the Office of Policy and Management, may demote an employee in the classified service under the appointing authority's jurisdiction from a position in any given class or grade to a position in a lower class or grade. The appointing authority shall give the Secretary of the Office of Policy and Management or the secretary's designated representative written notice of the authority's intention to effect any such demotion not less than two weeks before the date it is intended to become effective. The Secretary of the Office of Policy and Management may transfer such an employee whose record is otherwise satisfactory to a position under the jurisdiction of another appointing authority, with the approval of such other appointing authority.</p> <p>(c) An appointing authority may dismiss any employee in the classified service when the authority considers the good of the service will be served thereby. A permanent employee shall be given written notice of such dismissal at least two weeks in advance of the employee's dismissal, except as hereinafter provided, and a copy of the same shall be filed with the Secretary of the Office of Policy and Management or the secretary's designated representative. Such notice shall set forth the reasons for dismissal in sufficient detail to indicate whether the employee was discharged for misconduct, incompetence or other reasons relating to the effective performance of the employee's duties and shall be prepared in such form and given in such manner as the Secretary of the Office of Policy and Management prescribes. The Secretary of the Office of Policy and Management may provide by regulation for the waiving of advance notice in cases of serious misconduct by an employee affecting the public, the welfare, health or safety of patients, inmates or state employees or the protection of state property. Such regulation shall provide for written notice to a permanent employee who has attained permanent status and shall not preclude whatever rights any employee may have to appeal. The name of any such employee dismissed for incompetence or other reasons relating to the effective performance of the employee's duties shall be immediately removed from the eligible list in the office of the Commissioner of Administrative Services. No appointing authority shall pay any dismissed employee notice period pay or any other separation pay at a rate that exceeds the dismissed employee's rate</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Connecticut)</p>	<p>of compensation, at the time of dismissal, for two weeks, or the amount of notice period provided for in an applicable collective bargaining agreement.</p> <p>(d) An appointing authority, subject to any regulations issued by the Secretary of the Office of Policy and Management, may lay off any employee in the classified service as provided in § 5-241.</p>
<p><b>Criminal Penalty</b> (Connecticut)</p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> (Connecticut)</p>	<p>CONN. GEN. STAT. ANN. § 5-240 (West 2008). <u>State Employees. Reprimand, suspension, demotion, dismissal. Layoffs. Notice period pay.</u></p> <p>(a) An appointing authority, subject to any regulations issued by the Secretary of the Office of Policy and Management, may reprimand or warn an employee in the classified service under the appointing authority's jurisdiction or suspend such an employee without pay or with reduced pay for an aggregate period not exceeding sixty calendar days in any calendar year. For any employee not included in any collective bargaining unit of state employees, any written reprimand or warning shall be included in the employee's personnel file and, if not merged in the next service rating, shall be expunged after twelve months from the date of reprimand or warning. Any such written reprimand or warning may be reviewed in accordance with the procedures established in subsections (h) and (i) of § 5-202.</p>
<p><b>Delaware</b></p>	
<p><b>Statute</b> (Delaware)</p>	<p>DEL. CODE ANN. tit. 11 § 1211 (West 2008). <u>Official misconduct; class A misdemeanor.</u></p> <p>A public servant is guilty of official misconduct when, intending to obtain a personal benefit or to cause harm to another person:</p> <ul style="list-style-type: none"> <li>(1) The public servant commits an act constituting an unauthorized exercise of official functions, knowing that the act is unauthorized;</li> <li>(2) The public servant knowingly refrains from performing a duty which is imposed by law or is clearly inherent in the nature of the office; or</li> </ul>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>Delaware</i>)</p>	<p>(3) The public servant performs official functions in a way intended to benefit the public servant's own property or financial interests under circumstances in which the public servant's actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions; or</p> <p>(4) The public servant knowingly performs official functions in a way intended to practice discrimination on the basis of race, creed, color, sex, age, handicapped status or national origin.</p>
<p><b>Definitions</b> (<i>Delaware</i>)</p>	<p>DEL. CODE ANN. tit. 11 § 222 (West 2008). <u>General Definitions.</u></p> <p>When used in this Criminal Code:</p> <p>(14) “Law” includes statutes and ordinances. Unless the context otherwise clearly requires, “law” also includes settled principles of the common law of Delaware governing areas other than substantive criminal law.</p> <p>(16) “Lawful” means in accordance with law or, where the context so requires, not prohibited by law.</p> <p>(21) “Oath or affirmation”, for the purpose of warrants, can be made via videophone, telephone, secure electronic means or in person.</p> <p>(22) “Person” means a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an unincorporated association, a partnership, a government or a governmental instrumentality.</p> <p>(28) “Unlawful” means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral.</p>
<p><b>Procedure</b> (<i>Delaware</i>)</p>	<p>N/A.</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (<i>Delaware</i>)</p>	<p>DEL. CODE ANN. tit. 11 § 1211 (West 2008). <u>Official misconduct; class A misdemeanor.</u></p> <p>Official misconduct is a class A misdemeanor.</p> <p>DEL. CODE ANN. tit. 11 § 4206 (West 2008). <u>Sentence for misdemeanors.</u></p> <p>(a) The sentence for a class A misdemeanor may include up to 1 year incarceration at Level V and such fine up to \$2,300, restitution or other conditions as the court deems appropriate.</p> <p>(d) The court may suspend any sentence imposed under this section for probation or any of the other sanctions set forth in § 4204 of this title.</p> <p>(j) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.</p>
<p><b>Administrative Penalty</b> (<i>Delaware</i>)</p>	N/A.
<p><b>District of Columbia</b></p>	
<p><b>Statute</b> (<i>D.C.</i>)</p>	N/A.
<p><b>Definitions</b> (<i>D.C.</i>)</p>	N/A.
<p><b>Procedure</b> (<i>D.C.</i>)</p>	<p>D.C. CODE § 1-606.03 (2008). <u>Office of Employees' Appeals. Appeal procedures.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

#### Procedure Cont'd

(D.C.)

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

(b) In any appeal taken pursuant to this section, the Office shall review the record and uphold, reverse, or modify the decision of the agency. The Office may order oral argument, on its own motion or on motion filed by any party within 15 days, and provide such other procedures or rules and regulations as it deems practicable or desirable in any appeal under this section.

(c) All decisions of the Office shall include findings of fact and a written decision, as well as the reasons or basis for the decision upon all material issues of fact and law presented on record, and order; provided, however, that the Office may affirm a decision without findings of fact and a written decision. Such decisions shall be published in accordance with the rules and regulations of the Office, and shall be published in the District of Columbia Register. Any decision by a Hearing Examiner shall be made within 120 days, excluding Saturdays, Sundays, and legal holidays, from the date of the appellant's filing of the appeal with the Office. Within 45 days, excluding Saturdays, Sundays, and legal holidays, after the appeal is filed with the Office, the Office shall determine whether, in accordance with this section and the Office own rules, the Office has jurisdiction. Any decision shall include a statement of any further process available to the appellant including, as appropriate, a petition for review or a petition for enforcement and judicial review. Copies of the decision shall be immediately transmitted to the Office and all parties to the appeal, including named parties and intervenors. The initial decision of the Hearing Examiner shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period. In accordance with § 1-604.04, the Office may promulgate rules to allow a Hearing Examiner a reasonable extension of time if extraordinary circumstances dictate that an appeal cannot be decided within the 120-day period. After issuing the initial decision, the Hearing Examiner shall retain jurisdiction over the case only to the extent necessary to correct the record, rule on a motion for attorney fees, or process any petition for enforcement filed under the authority of the Office. If the Office denies all petitions for review, the initial decision shall become final upon the issuance of the last denial. If the Office grants a petition for review, the subsequent decision of the Office shall be the final decision of the Office unless the decision states otherwise. Administrative remedies are considered exhausted when a decision becomes final in accordance with this section.

(d) Any employee or agency may appeal the decision of the Office to the Superior Court of the District of Columbia for a review of the record and such Court may affirm, reverse, remove, or modify such decision, or take any other appropriate action the Court

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (D.C.)</p>	<p>may deem necessary.</p> <p>D.C. CODE § 5-1107 (2008). <u>Authority of the Office and processing of complaint.</u></p> <p>(a) The Office shall have the authority to receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the MPD, and any other agency pursuant to subsection (j) of this section that alleges abuse or misuse of police powers by such member or members, including:</p> <ul style="list-style-type: none"><li>(1) Harassment;</li><li>(2) Use of unnecessary or excessive force;</li><li>(3) Use of language or conduct that is insulting, demeaning, or humiliating;</li><li>(4) Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, physical disability, matriculation, political affiliation, source of income, or place of residence or business;</li><li>(5) Retaliation against a person for filing a complaint pursuant to this chapter; or</li><li>(6) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.</li></ul> <p>(b) If a complaint alleges misconduct that is not within the authority of the Office to review, the Executive Director shall refer the allegation to the Police Chief for further processing by the MPD, as appropriate.</p> <p>(c) Any individual having personal knowledge of alleged police misconduct may file a complaint with the Office on behalf of a victim.</p> <p>(d) To be timely, a complaint must be received by the Office within 45 days from the date of the incident that is the subject of the complaint. The Executive Director may extend the deadline for good cause.</p> <p>(e) Each complaint shall be reduced to writing and signed by the complainant.</p> <p>(f) Complaint forms shall conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (D.C.)</p>	<p>(g) The Executive Director shall screen each complaint and may request additional information from the complainant. Within 7 working days of the receipt of the complaint, or within 7 working days of the receipt of additional information requested from the complainant, the Executive Director shall take one of the following actions:</p> <ol style="list-style-type: none"> <li>(1) Dismiss the complaint, with the concurrence of one member of the Board;</li> <li>(2) Refer the complaint to the United States Attorney for the District of Columbia for possible criminal prosecution;</li> <li>(3) Attempt to conciliate the complaint;</li> <li>(4) Refer the complaint to mediation; or</li> <li>(5) Refer the complaint for investigation.</li> </ol> <p>(h) The Executive Director shall notify in writing the complainant and the subject police officer or officers of the action taken under subsection (g) of this section. If the complaint is dismissed, the notice shall be accompanied by a brief statement of the reasons for the dismissal, and the Executive Director shall notify the complainant that the complaint may be brought to the attention of the Police Chief who may direct that the complaint be investigated and that appropriate action be taken.</p> <p>(i) For purposes of § 1-616.01, the receipt by the Office of an oral or written complaint shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such complaint. For purposes of § 1-616.01, the MPD shall be deemed to know or have cause to know of the acts, occurrences, or allegations in a complaint received by the Office at the time the MPD receives written notice from the Office that an allegation in a complaint processed by the Office has been sustained.</p> <p>(j) This subchapter shall also apply to the District of Columbia Housing Authority Police Department and to any federal law enforcement agency that, pursuant to Chapter 3 of this title, has a cooperative agreement with the MPD that requires coverage by the Office; provided, that the Chief of the respective law enforcement department or agency shall perform the duties of the MPD Chief of Police for the members of their respective departments.</p>
<p><b>Criminal Penalty</b> (D.C.)</p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> (D.C.)</p>	<p>N/A.</p>

# Fifty State Survey of Official Misconduct Statutes

## NIC/WCL Project on Addressing Prison Rape

<b>Florida</b>	
<b>Statute</b> <i>(Florida)</i>	<p>FLA. STAT. ANN. § 838.022 (West 2008). <u>Official misconduct.</u></p> <p>(1) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to:</p> <ul style="list-style-type: none"><li>(a) Falsify, or cause another person to falsify, any official record or official document;</li><li>(b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or</li><li>(c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.</li></ul> <p>FLA. STAT. ANN. § 112.534 (West 2008). <u>Failure to comply; official misconduct.</u></p> <p>(1) If any law enforcement agency or correctional agency fails to comply with the requirements of this part, a law enforcement officer or correctional officer employed by or appointed to such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part.</p> <p>(2) All the provisions of § 838.022 shall apply to this part.</p> <p>FLA. STAT. ANN. § 112.51 (West 2008). <u>Municipal officers; suspension; removal from office.</u></p> <p>(1) By executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness,</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Florida)</i></p>	<p>incompetence, or permanent inability to perform official duties.</p> <p>FLA. STAT. ANN. § 112.51 (West 2008). <u>Municipal officers; suspension; removal from office.</u></p> <p>(1) By executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.</p>
<p><b>Definitions</b> <i>(Florida)</i></p>	<p>FLA. STAT. ANN. § 838.022 (West 2008). <u>Official misconduct.</u></p> <p>(2) For the purposes of this section:</p> <p style="padding-left: 40px;">(a) The term “public servant” does not include a candidate who does not otherwise qualify as a public servant.</p> <p style="padding-left: 40px;">(b) An official record or official document includes only public records.</p>
<p><b>Procedure</b> <i>(Florida)</i></p>	<p>FLA. STAT. ANN. § 112.51 (West 2008). <u>Municipal officers; suspension; removal from office.</u></p> <p>(2) Whenever any elected or appointed municipal official is arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor, the Governor has the power to suspend such municipal official from office.</p> <p>(3) The suspension of such official by the Governor creates a temporary vacancy in such office during the suspension. Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law. If no provision for filling a permanent vacancy in such office is provided by law, the temporary appointment shall be made by the Governor.</p> <p>(4) No municipal official who has been suspended from office under this section may perform any official act, duty, or function</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Florida)</i></p>	<p>during his or her suspension; receive any pay or allowance during his or her suspension; or be entitled to any of the emoluments or privileges of his or her office during suspension.</p> <p>(5) If the municipal official is convicted of any of the charges contained in the indictment or information by reason of which he or she was suspended under the provisions of this section, the Governor shall remove such municipal official from office. If a person was selected to fill the temporary vacancy pursuant to subsection (3), that person shall serve the remaining balance, if any, of the removed official's term of office. Otherwise, any vacancy created by the removal shall be filled as provided by law. For the purposes of this section, any person who pleads guilty or nolo contendere [no contest] or who is found guilty shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.</p> <p>(6) If the municipal official is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest, indictment, or information by reason of which he or she was suspended under the provisions of this section, then the Governor shall forthwith revoke the suspension and restore such municipal official to office; and the official shall be entitled to and be paid full back pay and such other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension. If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated.</p>
<p><b>Criminal Penalty</b> <i>(Florida)</i></p>	<p>FLA. STAT. ANN. § 838.022 (West 2008). <u>Official misconduct.</u></p> <p>(3) Any person who violates this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.<sup>6</sup></p> <p>FLA. STAT. ANN. § 775.083 (West 2008). <u>Fines.</u></p> <p>(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in § 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775. 082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> <i>(Florida)</i></p>	<p>(a) \$15,000, when the conviction is of a life felony.</p> <p>(b) \$10,000, when the conviction is of a felony of the first or second degree.</p> <p>(c) \$5,000, when the conviction is of a felony of the third degree.</p>
<p><b>Administrative Penalty</b> <i>(Florida)</i></p>	<p>FLA. STAT. ANN. § 112.51 (West 2008). <u>Municipal officers; suspension; removal from office.</u></p> <p>(1) By executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.</p> <p>FLA. STAT. ANN. § 112.51 (West 2008). <u>Municipal officers; suspension; removal from office.</u></p> <p>(1) By executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.</p>
<p><b>Georgia</b></p>	
<p><b>Statute</b> <i>(Georgia)</i></p>	<p>GA. CODE ANN. § 16-10-1 (West 2008). <u>Violation of oath by public officer.</u></p> <p>Any public officer who willfully and intentionally violates the terms of his oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.</p> <p>GA. CODE ANN § 35-9-11 (West 2008). <u>Special Policemen. Termination and revocation of appointment.</u></p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Georgia)</p>	<p>(a) The appointment of any special policeman under Code §§35-9-2 through 35-9-10, this Code section, and Code § 35-9-12 shall terminate and his authority thereunder shall cease whenever the governor of the state requesting his appointment shall file a notice in the office of the appointing authority, in such form as the latter may prescribe, to the effect that his services are no longer required.</p> <p>(b) The appointing authority shall also have power, on its own motion at any time and for any reason or cause deemed sufficient by the appointing authority, to revoke the appointment of any special policeman by filing a revocation thereof in its office and mailing a notice of such filing to the governor of the state requesting his appointment and also to the person whose appointment is revoked at his address as it appears in the application for appointment or the latest statement thereof on file.</p> <p>GA. CODE ANN § 36-8-2 (West 2008). <u>County Police. Terms of office; removal.</u></p> <p>The terms for which county police shall be elected or appointed shall be left to the discretion of the county governing authority. Such county police or any member thereof may be removed from office at any time, at the will of the county governing authority, with or without cause. A resolution or ordinance authorizing the creation of a county police force adopted by a county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of Code § 36-8-1 shall not affect the power of the county governing authority to abolish a county police force at any time.</p> <p>GA. CODE ANN. § 45-11-4 (West 2008). <u>Malpractice, oppression, tyrannical partiality, etc.</u></p> <p>(b) A public officer may be charged under this Code section for:</p> <ol style="list-style-type: none"><li>(1) Malpractice, misfeasance, or malfeasance in office;</li><li>(2) Using oppression or tyrannical partiality in the administration or under the color of his or her office;</li><li>(3) When required by law, willfully refusing or failing to preside in or hold his or her court at the regular terms thereof, or when it is his or her duty under the law to do so;</li><li>(4) Using any other deliberate means to delay or avoid the due course or proceeding of law; or</li><li>(5) Willfully and knowingly demanding more cost than he or she is entitled to by law in the administration and under color of his or her office.</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Georgia)</p>	<p>(d) This Code section shall only apply to a public officer charged under subsection (b) of this Code section. This Code section shall not apply when a public officer is charged with any other crime alleged to have occurred while such official was in the performance of an official duty.</p> <p>(e) This Code section shall only apply to a public officer holding office at the time of indictment and not to former office holders.</p> <p>(f) Any indictment brought pursuant to subsection (b) of this Code section shall specially set forth the merits of the complaint against the accused public officer. A copy of the proposed bill of indictment shall be served on the accused public officer at least 15 days before it is presented to the grand jury.</p> <p>GA. CODE ANN. § 45-10-1 (West 2008). <u>Code of ethics for government service.</u></p> <p>There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows: <b>CODE OF ETHICS FOR GOVERNMENT SERVICE</b> Any person in government service should:</p> <p>I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.</p> <p>II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.</p> <p>III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.</p> <p>IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.</p> <p>V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.</p> <p>VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Georgia)</p>	<p>which can be binding on public duty.</p> <p>VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.</p> <p>VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.</p> <p>IX. Expose corruption wherever discovered.</p> <p>X. Uphold these principles, ever conscious that public office is a public trust.</p>
<p><b>Definitions</b> (Georgia)</p>	<p>GA. CODE ANN. § 45-11-4 (West 2008). <u>Malpractice, oppression, tyrannical partiality, etc.</u></p> <p>(a) As used in this Code section, the term:</p> <p>(1) “County officer” shall mean any elected county officer, including the judge of the probate court, clerk of the superior court, tax receiver, tax collector, and tax commissioner where such office has replaced the tax receiver and tax collector, and any county commissioner.</p> <p>(2) “Municipal officer” shall mean any mayor or elected member of any municipal governing authority.</p> <p>(3) “Public officer” shall mean a county officer, a municipal officer, and state officials as provided in Code § 45-15-11.</p> <p>GA. CODE ANN. § 16-1-3 (West 2008). <u>Crimes and Offenses. Definitions.</u></p> <p>(9) “Misdemeanor” and “misdemeanor of a high and aggravated nature” mean any crime other than a felony.</p>
<p><b>Procedure</b> (Georgia)</p>	<p>GA. CODE ANN. § 35-8-7.2 (West 2008). <u>Proceedings to issue certificate or discipline peace officer.</u></p> <p>(a) Except as otherwise provided in subsection (b) of this Code section, proceedings of the council in the exercise of its authority</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Georgia)</p>	<p>to issue any certificate or discipline any peace officer under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings the council shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor. In any hearing in which the fitness of a peace officer or applicant is in question, the council may exclude all persons from its deliberation of the appropriate action and may, when it deems necessary, speak to the peace officer or applicant in private. All final determinations, findings, and conclusions of the council under this chapter are final and conclusive decisions of the matters involved.</p> <p>(b) Proceedings for review of a final decision of the council shall be instituted by filing a petition within 30 days after the service of the final decision of the council or, if a rehearing is requested, within 30 days after the decision thereon. The petition shall be filed in the superior court of the county of residence of the petitioner.</p> <p>GA. CODE ANN. § 45-11-4 (West 2008). <u>Malpractice, oppression, tyrannical partiality, etc.</u></p> <p>(g) The accused shall have the right to appear before the grand jury to make such sworn statement as he or she shall desire at the conclusion of the presentation of the state's evidence. The accused shall not be subject to examination, either direct or cross, and shall not have the right individually or through his or her counsel to examine the state's witnesses. The accused and his or her counsel shall have the right to be present during the presentation of all evidence and alleged statements of the accused on the proposed indictment, presentment, or accusation, after which the accused and his or her counsel shall retire instanter from the grand jury room to permit the grand jury to deliberate upon the indictment.</p> <p>(h) At any time during the presentation of evidence or during deliberations, the grand jury may amend the indictment or instruct the district attorney to cause a new indictment to be drawn as in any other case. In such case, a copy of the amendment or new indictment, if it relates to the accused public official, shall be provided to the accused public official and his or her counsel.</p> <p>(i) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be published in open court and shall be placed on the superior court criminal docket of cases to be tried by a petit jury.</p> <p>GA. CODE ANN. § 45-10-4 (West 2008). <u>Hearing; removal from office; vacancies.</u></p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Georgia)</p>	<p>Upon formal charges being filed with the Governor relative to a violation of Code § 45-10-3 on the part of a member of any such board, commission, or authority, the Governor or his designated agent shall conduct a hearing for the purpose of receiving evidence relative to the merits of such charges. The member so charged shall be given at least 30 days' notice prior to such hearing. If such charges are found to be true, the Governor shall forthwith remove such member from office and the vacancy shall be filled as provided by law. Such hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and judicial review of any such decision shall be in accordance with such chapter.</p>
<p><b>Criminal Penalty</b> (Georgia)</p>	<p>GA. CODE ANN. § 16-10-1 (West 2008). <u>Violation of oath by public officer.</u></p> <p>Any public officer who willfully and intentionally violates the terms of his oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.</p> <p>GA. CODE ANN. § 45-11-4 (West 2008). <u>Malpractice, oppression, tyrannical partiality, etc.</u></p> <p>(c) A conviction for violating subsection (b) of this Code section shall be punished as for a misdemeanor and, upon conviction in a court of competent jurisdiction, the accused shall be removed from office.</p> <p>GA. CODE ANN. § 17-10-3 (West 2008). <u>Misdemeanors, how punished.</u></p> <p>(a) Except as otherwise provided by law, every crime declared to be a misdemeanor shall be punished as follows:</p> <ol style="list-style-type: none"> <li>(1) By a fine not to exceed \$ 1,000.00 or by confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates, for a total term not to exceed 12 months, or both;</li> <li>(2) By confinement under the jurisdiction of the Board of Corrections in a state probation detention center or diversion center pursuant to Code §§ 42-8-35.4 and 42-8-35.5, for a determinate term of months which shall not exceed a total term of 12 months; or</li> <li>(3) If the crime was committed by an inmate within the confines of a state correctional institution, by confinement under</li> </ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Georgia)</p>	<p>the jurisdiction of the Board of Corrections in a state correctional institution or such other institution as the Department of Corrections may direct for a term which shall not exceed 12 months.</p>
<p><b>Administrative Penalty</b> (Georgia)</p>	<p>GA. CODE ANN § 35-9-11 (West 2008). <u>Special Policemen.</u> <u>Termination and revocation of appointment.</u></p> <p>(a) The appointment of any special policeman under Code §§35-9-2 through 35-9-10, this Code section, and Code § 35-9-12 shall terminate and his authority thereunder shall cease whenever the governor of the state requesting his appointment shall file a notice in the office of the appointing authority, in such form as the latter may prescribe, to the effect that his services are no longer required.</p> <p>(b) The appointing authority shall also have power, on its own motion at any time and for any reason or cause deemed sufficient by the appointing authority, to revoke the appointment of any special policeman by filing a revocation thereof in its office and mailing a notice of such filing to the governor of the state requesting his appointment and also to the person whose appointment is revoked at his address as it appears in the application for appointment or the latest statement thereof on file.</p> <p>GA. CODE ANN § 36-8-2 (West 2008). <u>County Police.</u> <u>Terms of office; removal.</u></p> <p>The terms for which county police shall be elected or appointed shall be left to the discretion of the county governing authority. Such county police or any member thereof may be removed from office at any time, at the will of the county governing authority, with or without cause. A resolution or ordinance authorizing the creation of a county police force adopted by a county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of Code § 36-8-1 shall not affect the power of the county governing authority to abolish a county police force at any time.</p>
<p><b>Guam</b></p>	

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute</b> (Guam)</p>	<p>GUAM CODE ANN. tit. 9, § 49.90 (2008). <u>Official Misconduct; Defined &amp; Punished.</u></p> <p>A public servant commits a misdemeanor if, with intent to benefit himself or another person or to harm another person or to deprive another person of a benefit;</p> <p>(a) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or</p> <p>(b) he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.</p> <p>GUAM CODE ANN. tit. 9, § 49.50 (2008). <u>Unlawful Influence by Extortion; Defined &amp; Punished.</u></p> <p>A person is guilty of a felony of the third degree if he influences or attempts to influence the performance of an official function by a public servant by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property.</p>
<p><b>Definitions</b> (Guam)</p>	<p>GUAM CODE ANN. tit. 9, § 49.10 (2008). <u>Governmental Bribery, Other Unlawful Influence and Related Offenses.</u> <u>Definitions.</u></p> <p>As used in this Chapter:</p> <p>(a) <i>benefit</i> means any gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested other than the beneficiary's lawful compensation.</p> <p>(b) <i>official function</i> means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.</p> <p>(c) <i>pecuniary benefit</i> means benefit in the form of money, property, commercial interests or anything else the primary</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Guam)</p>	<p>significance of which is economic gain.</p> <p>(d) <i>public servant</i> means any officer, member, or employee of the legislative, executive, or judicial branches of the Territory or of any governmental instrumentality within the Territory, any juror, any persons exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of a juror, a person who has been drawn, empaneled, or designated to attend as a prospective grand or petit juror.</p>
<p><b>Procedure</b> (Guam)</p>	<p>GUAM CODE ANN. tit. 5, § 9201 (2008). <u>Hearing: Initiation.</u></p> <p>A hearing to determine whether an authority, license privilege or right should be conditioned, limited, suspended or revoked shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and the statutes and regulations which the respondent is alleged to have violated.</p> <p>9 GUAM CODE ANN. tit. 4, § 4403 (2008).<sup>7</sup> <u>Duties of the Commission.</u></p> <p>The Commission has the following duties, powers and responsibilities:</p> <p>(b) it shall hear appeals from the adverse actions taken to suspend, demote or dismiss an employee from the classified service if such right of appeal to the Commission is established in the personnel rules governing the employee; however, it may not hear any appeal of an action taken to suspend, demote or dismiss an employee of the government of Guam who has not been hired through the competitive hiring procedures of the personnel rules of the government of Guam, as such personnel rules required at the time of the hiring of the employee, nor any unclassified employee;</p> <p>(d) All personnel actions regarding the classified service <i>shall</i> be filed with the Commission within twenty (20) days after their effective date. The Commission may set aside and declare null and void any personnel action if the Commission finds that it was taken in violation of personnel laws or rules, provided, however, that this Section <i>shall not</i> be deemed to permit appeals by employees from adverse actions not covered by Subsection (b) above. Prior to declaring any personnel action null and void, the Commission <i>shall</i> provide written notice of the alleged violation to the agency head. The agency head <i>shall</i> respond within ten</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Guam)</p>	<p>(10) days after receipt of the notice to the Commission's proposed action. All actions taken by the Commission pursuant to this Section <i>shall</i> be taken within one hundred twenty (120) days after the personnel action is filed with the Commission. The Civil Service Commission <i>shall</i> submit its final decision to <i>I Liheslatura</i>. The Commission's decision <i>shall</i> be final but subject to judicial review.</p> <p>(g) the provisions of this Section shall not apply to the Judiciary or <i>I Liheslaturan Guåhan</i> [Legislature] in compliance with the doctrine of Separation of Powers, unless such separate Branch opts to make them applicable by submitting to the jurisdiction of the Commission; and all reference to classified employees will be deemed to mean classified employees of the Executive Branch, including agencies and authorities; and</p> <p>(h) the jurisdiction of the Commission shall not extend to academic personnel of the Guam Community College, the University of Guam, all personnel of the Guam Memorial Hospital Authority, and certified, technical and professional personnel of the Guam Power Authority and the Guam Waterworks Authority, except upon mutual consent by the governing board of the respective institution or public corporation and the Commission, nor to any position or person, appeal or proceeding of whatever kind or description if the position is denominated "unclassified" in this Title, except to the extent explicitly permitted in this Section, nor shall such jurisdiction extend to the determination of whether it is practicable to place a position in the classified service.</p>
<p><b>Criminal Penalty</b> (Guam)</p>	<p>GUAM CODE ANN. tit. 9, § 80.34 (2008) <u>Misdemeanor &amp; Petty Misdemeanor Sentences.</u></p> <p>Except as otherwise provided by § 80.36, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment, as follows:</p> <ul style="list-style-type: none"> <li>(a) in the case of a misdemeanor, the court shall set a maximum term not to exceed one (1) year;</li> <li>(b) in the case of a petty misdemeanor, the court shall set a definite term not to exceed sixty (60) days.</li> </ul> <p>GUAM CODE ANN. tit. 9, § 80.30 (2008) <u>Duration of Imprisonment.</u></p> <p>Except as otherwise provided by law, a person who has been convicted of a felony may be sentenced to imprisonment as follows:</p> <ul style="list-style-type: none"> <li>(c) In the case of a felony of the third degree, the court may impose a sentence of not more than five (5) years.</li> </ul> <p>GUAM CODE ANN. tit. 9, § 80.50 (2008)</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Guam)</p>	<p><u>Fines &amp; Restitution as Sentence Allowed: Limited.</u></p> <p>A person who has been convicted of an offense may be sentenced to pay a fine or to make restitution not exceeding:</p> <ul style="list-style-type: none"><li>(a) Ten Thousand Dollars (\$10,000.00), when the conviction is of a felony of the first or second degree;</li><li>(b) Five Thousand Dollars (\$5,000.00), when the conviction is of a felony of the third degree;</li><li>(c) One Thousand Dollars (\$1,000.00), when the conviction is of a misdemeanor;</li><li>(d) Five Hundred Dollars (\$500.00), when the conviction is of a petty misdemeanor or violation;</li><li>(e) Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this Section, the term "gain" means the amount of money or the value of the property derived by the offender and the term "loss" means the amount of value separated from the victim;</li><li>(f) Any amount specifically authorized by statute.</li></ul> <p>The restitution ordered paid to the victim shall not exceed his loss.</p> <p>GUAM CODE ANN. tit. 9, § 80.60 (2008) <u>Standards for Imposing or Withholding Probation.</u></p> <ul style="list-style-type: none"><li>(a) When Sentence May Not Require Prison Term. The court, in its discretion, may make disposition in respect to any person who has been convicted of a crime without imposing sentence of imprisonment unless a minimum term is made mandatory by a provision of [sic] Guam Codes.</li><li>(b) Notwithstanding Subsection (a) the court shall not suspend imposition of sentence or place an offender on probation if, having due regard to the nature and circumstances of the crime and the history, character and condition of the offender, the court finds that imprisonment is necessary for the protection of the public because:<ul style="list-style-type: none"><li>(1) there is undue risk that during the period of a suspended sentence or probation the offender would commit another crime;</li><li>(2) the offender is in need of correctional treatment that can be provided most effectively by commitment to an institution; or</li><li>(3) a lesser sentence would depreciate the seriousness of the offender's crime.</li></ul></li></ul>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Guam)</p>	<p>(c)The following factors, while not controlling, shall be accorded weight in determining whether to suspend imposition of sentence or to place the offender on probation whether:</p> <ol style="list-style-type: none"> <li>(1) The offender's criminal conduct neither caused nor threatened serious harm.</li> <li>(2) The offender did not contemplate that his criminal conduct would cause or threaten serious harm.</li> <li>(3) There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish a defense.</li> <li>(4) The offender has compensated or will compensate the victim of his criminal conduct for the damage or injury which was sustained.</li> <li>(5) The offender has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime.</li> <li>(6) The offender is particularly likely to respond affirmatively to probationary treatment.</li> </ol> <p>(d) If a person who has been convicted of a crime is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance or direction that probation can provide.</p>
<p><b>Administrative Penalty</b> (Guam)</p>	<p>See 9 GUAM CODE ANN. tit. 4, § 4403 (2008) in "Procedure" section.</p>
<p><b>Hawaii</b></p>	
<p><b>Statute</b> (Hawaii)</p>	<p>HAW. REV. STAT. ANN. § 78-2.8 (West 2008). <u>Public employees; termination.</u></p> <p>(a) If a public employee is convicted of a felony for conduct related to the public employee's duties, the public employee shall be terminated from the public employee's position.</p> <p>(b) If the felony conviction that results in the termination of a public employee pursuant to subsection (a) is overturned on appeal, the public employee shall receive back pay and be returned to the position the public employee held prior to conviction, or an equivalent position if the public employee's position was filled; provided that the employee is not terminated from the employee's position in accordance with any other provision of law.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Hawaii)</p>	<p>2) Employees covered by chapter 89 shall be entitled to a grievance procedure culminating in a final and binding decision; and</p> <p>3) A rebuttable presumption shall arise that the criminal conviction is just and proper cause for the employee's termination.</p> <p>HAW. REV. STAT. ANN. § 76-1 (West 2008). <u>Civil Service Law. Purposes; merit principle.</u></p> <p>It is the purpose of this chapter to require each jurisdiction to establish and maintain a separately administered civil service system based on the merit principle. The merit principle is the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance. It is also the purpose of this chapter to build a career service in government, free from coercive political influences, to render impartial service to the public at all times, according to the dictates of ethics and morality and in compliance with all laws.</p> <p>In order to achieve these purposes, it is the declared policy of the State that the human resource program within each jurisdiction be administered in accordance with the following:</p> <p>1) Equal opportunity for all in compliance with all laws prohibiting discrimination. No person shall be discriminated against in examination, appointment, reinstatement, reemployment, promotion, transfer, demotion, or removal, with respect to any position when the work may be efficiently performed by the person without hazard or danger to the health and safety of the person or others;</p> <p>2) Impartial selection of individuals for public service by means of competitive tests which are fair, objective, and practical;</p> <p>3) Incentives for competent employees within the service, whether financial or promotional opportunities and other performance based group and individual awards that encourage continuous improvement to achieve superior performance;</p> <p>4) Reasonable job security for competent employees and discharge of unnecessary or inefficient employees with the right to grieve and appeal personnel actions through the:</p> <p>(A) Contractual grievance procedure for employees covered by chapter 89; or</p> <p>(B) Internal complaint procedures and the merit appeals board for employees excluded from coverage under chapter 89;</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Hawaii)</i></p>	<p>5) Equal pay for equal work shall apply between classes in the same bargaining unit among jurisdictions for those classes determined to be equal through systematic classification of positions based on objective criteria and adequate job evaluation, unless it has been agreed in accordance with chapter 89 to negotiate the repricing of classes; and</p> <p>6) Harmonious and cooperative relations between government and its employees, including employee organizations representing them, to develop and maintain a well-trained, efficient, and productive work force that utilizes advanced technology to ensure effective government operations and delivery of public services.</p> <p>HAW. REV. STAT. ANN. § 78-2.7 (West 2008). <u>Criminal history record checks.</u></p> <p>(a) The State or any of its branches, political subdivisions, or agencies shall develop standards and procedures to ensure the reputable and responsible character of applicants and employees, which shall include criminal history record checks in accordance with § 846-2.7.</p> <p>(b) The State or any of its branches, political subdivisions, or agencies shall obtain criminal history information through the Hawaii criminal justice data center on an applicant for a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment; provided that:</p> <ol style="list-style-type: none"><li>1) The information obtained shall be used exclusively for the purpose of determining whether a person is suitable for working in close proximity with children, dependent adults, or persons committed to a correctional facility;</li><li>2) The use of the information shall be subject to those federal laws and regulations as may be now or hereafter adopted; and</li><li>3) The Hawaii criminal justice data center may assess applicants a reasonable fee for each criminal history record check conducted.</li></ol> <p>(c) The State or any of its branches, political subdivisions, or agencies may deny employment on the basis of criminal conviction in accordance with applicable laws and regulations as follows:</p> <ol style="list-style-type: none"><li>1) For positions with contact with children or dependent adults, if it finds that the applicant has been convicted of a crime and</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Hawaii)</p>	<p>that by reason of the nature and circumstances of the crime, the applicant poses a risk to the health, safety, or well-being of children or dependent adults; and</p> <p>2) For positions with contact with persons committed to a correctional facility, if it finds that the applicant has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and because of the nature of the conviction, the applicant poses a risk to the health, safety, security, or well-being of persons committed to a correctional facility, the correctional facility's staff, or the public at large.</p> <p>Nothing in this subsection prohibits the State or any of its branches, political subdivisions, or agencies from denying employment for other reasons as permitted by applicable laws and regulations.</p> <p>(d) For purposes of implementing this section:</p> <p>1) For employees holding positions with contact with children or dependent adults on May 28, 2003, no employee who has been continuously employed on a salaried basis prior to July 1, 1990, shall be subject to a criminal history record check for the position held on May 28, 2003;</p> <p>2) For employees holding positions with contact with persons committed to a correctional facility on May 28, 2003, no employee shall be terminated based on convictions in the criminal history record check except those convictions occurring after July 1, 1990, or under circumstances in which the employee is a fugitive from justice; and</p> <p>3) Nothing in this section shall abrogate an employee's rights under collective bargaining to appeal a termination of employment.</p>
<p><b>Definitions</b> (Hawaii)</p>	<p>HAW. REV. STAT. ANN. § 76-11 (West 2008). <u>Civil Service Law. Definitions.</u></p> <p>As used in this chapter, unless the context clearly requires otherwise:</p> <p>“Appointing authority” means a department head or designee having the power to make appointments or changes in the status of employees.</p>

# Fifty State Survey of Official Misconduct Statutes

## NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> <i>(Hawaii)</i></p>	<p>“Chief executive” means the governor, the respective mayors, the chief justice of the supreme court, and the chief executive officer of the Hawaii health systems corporation. It may include the superintendent of education and the president of the University of Hawaii with respect to their employees on any matter that applies to employees in general, including employees who are not covered by this chapter.</p> <p>“Civil service” includes all positions within a jurisdiction that are not exempted by §§ 46-33, § 76-16, or § 76-77, or by other law and must be filled through civil service recruitment procedures based on merit.</p> <p>“Civil service employee” means an employee who has met all requirements for membership in the civil service under § 76-27.</p> <p>“Class” means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and the same pay range may apply to each position allocated to the class.</p> <p>“Classification system” means classes of positions arranged in a logical and systematic order.</p> <p>“Day” means a calendar day unless otherwise specified.</p> <p>“Department” means any department, board, commission, or agency of a jurisdiction.</p> <p>“Director” means the head of the central personnel agency for a jurisdiction regardless of title, whether it is the director of human resources development, director of personnel, director of personnel services, or personnel director.</p> <p>“Employee” or “public employee” means any person holding a position in the service of a jurisdiction, irrespective of status or type of appointment; provided that, if the context clearly applies only to an employee who is a member of the civil service, “employee” means a civil service employee.</p> <p>“Employer” or “public employer” means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of the employers or acts in their interest in dealing with public employees. In the case of the judiciary, the administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> <i>(Hawaii)</i></p>	<p>“Exclusive representative” means the employee organization certified by the board under § 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.</p> <p>“Jurisdiction” means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation.</p> <p>“Legislative body” means the legislature in the case of the State, including the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation; the city council in the case of the city and county of Honolulu; and the respective county councils in the case of the counties of Hawaii, Maui, and Kauai.</p> <p>“Merit appeals board” means a jurisdiction's appellate body for purposes of § 76-14 regardless of whether it is named merit appeals board, civil service commission, or appeals board.</p> <p>“Position” means a specific job requiring the full or part-time employment of one person.</p> <p>HAW. REV. STAT. ANN. § 78-2.8 (West 2008). <u>Public employees; termination.</u></p> <p>(c) For purposes of this section: 1) “Public employee” means any public employee of the State or any county, and the political subdivisions and agencies thereof, any employees under contract with the State or county, any civil service employees, and any probationary or provisional employees of the State or county;</p> <p>HAW. REV. STAT. ANN. § 78-2.7 (West 2008). <u>Criminal history record checks.</u></p> <p>(e) As used in this section:</p> <p>“Applicant” means a person who is applying for a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Hawaii)</p>	<p>who hold positions that are authorized by law to require a criminal history record check as a condition of employment.</p> <p>“Employee” means a person holding a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.</p> <p>“Public employees who hold positions that are authorized by law” means a public employee whose position requires a criminal history record check as a condition of employment and the authorization for the criminal history record check is not provided by this section.</p>
<p><b>Procedure</b> (Hawaii)</p>	<p>HAW. REV. STAT. ANN. § 76-42 (West 2008). <u>Civil Service Law. Internal complaint procedures.</u></p> <p>(a) The director shall promulgate a uniform plan for the creation of internal complaint procedures in the various departments that shall apply to matters within the jurisdiction of the merit appeals board. The internal complaint procedures may also be used for other matters, such as, when a complaint procedure is required by law to be available or when a jurisdiction deems it would be beneficial to avoid the time and expense of litigation; provided that matters subject to collective bargaining grievance procedures shall not be processed under the internal complaint procedures. The rules relating to internal complaint procedures shall conform to the following:</p> <ol style="list-style-type: none"><li>1) The procedures shall encourage informal discussions and expeditious resolution of all complaints. Informal resolution includes the use of any administrative review process available. A written decision shall be issued to the complainant on the outcome of any efforts to resolve the complaint informally and, if not resolved, the decision shall be accompanied by information on the filing of a formal complaint with the department or the merit appeals board, as applicable.</li><li>2) In presenting a complaint, the complainant shall be assured freedom from coercion, discrimination, or reprisal.</li><li>3) The complainant shall have the right to be represented by a person or persons of the complainant's own choosing at any stage in the presentation of the complaint.</li><li>4) To minimize confusion and possible loss of rights, the time and manner for filing a formal complaint shall be as uniform and easily understandable as possible to the employees or general public. Complaint forms, instructions, and the complaint procedures</li></ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Hawaii)</i></p>	<p>should be easily accessible to the employees or general public and the procedures should allow for complaints to be filed at central locations convenient to the public. The complaint shall be referred to the appropriate individual at the lowest level of the internal complaint procedures who has the authority to act on the complaint and who shall be responsible for contacting the complainant. If it is discovered after filing of the complaint that the matter complained of is not within the authority of a department to act, the department shall notify the complainant accordingly and refer the complaint to the appropriate agency, if known. The deadline for filing a formal complaint under the internal complaint procedures shall be tolled after receipt of a reply to the informal complaint if efforts were made to resolve the complaint informally.</p> <p>5) All proceedings relating to the handling of a complaint by a person who is not an employee shall as far as practicable be conducted during office hours at times convenient to the complainant. All proceedings relating to the handling of employee complaints shall so far as practicable be conducted during the employee's work hours to permit the employee time off from work with pay.</p> <p>6) The departmental complaint procedure shall culminate in a written decision by the chief executive or the chief executive's designee, whether the director or other appropriate authority who is assigned responsibility for making the final decision on the action being complained of.</p> <p>(b) The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. If the appeal is not under the jurisdiction of the merit appeals board, but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedures under this section are used.</p> <p>HAW. REV. STAT. ANN. § 76-14 (West 2008). <u>Merit appeals board; duties, and jurisdiction.</u></p> <p>(a) The merit appeals board of each jurisdiction shall decide appeals from any action under this chapter taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:</p> <ol style="list-style-type: none"><li>1) Recruitment and examination;</li><li>2) Classification and reclassification of a particular position, including denial or loss of promotional opportunity or demotion due to reclassification of positions in a reorganization;</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Hawaii)</i></p>	<p>3) Initial pricing of classes; and</p> <p>4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under § 89-6.</p> <p>(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.</p> <p>(c) The rules adopted by the merit appeals board shall provide for the following:</p> <p>1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;</p> <p>2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;</p> <p>3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and</p> <p>4) The merit appeals board shall use the conditions listed in § 76-41(b) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit.</p> <p>(d) Notwithstanding the provisions of this section, the merit appeals board shall have the authority to hear and decide appeals pending before the state civil service commission as of June 30, 2002, in accordance with the jurisdictional requirements and procedures applicable to the state civil service commission as of June 30, 2002.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Procedure Cont'd</b> <i>(Hawaii)</i>	(e) This section shall be construed liberally to determine whether the appeal falls within the jurisdiction of the merit appeals board.
<b>Criminal Penalty</b> <i>(Hawaii)</i>	N/A.
<b>Administrative Penalty</b> <i>(Hawaii)</i>	<p>HAW. REV. STAT. ANN. § 78-2.8 (West 2008). <u>Public employees; termination.</u></p> <p>(a) If a public employee is convicted of a felony for conduct related to the public employee's duties, the public employee shall be terminated from the public employee's position.</p>
<b>Idaho</b>	
<b>Statute</b> <i>(Idaho)</i>	<p>IDAHO CODE ANN. § 67-5309 (West 2008). <u>Rules of the division of human resources and the personnel commission.</u></p> <p>(n) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:</p> <ol style="list-style-type: none"> <li>1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes and rules of the employee's department, or rules of the administrator or the division.</li> <li>2. Inefficiency, incompetency, or negligence in the performance of duties, or job performance that fails to meet established performance standards.</li> <li>3. Physical or mental incapability for performing assigned duties.</li> <li>4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.</li> <li>5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.</li> <li>6. Intoxication on duty.</li> <li>7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.</li> </ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Statute Cont'd</b> <i>(Idaho)</i>	<ol style="list-style-type: none"><li>8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.</li><li>9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.</li><li>10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.</li><li>11. Habitual pattern of failure to report for duty at the assigned place and time.</li><li>12. Habitual improper use of sick leave privileges.</li><li>13. Unauthorized disclosure of confidential information from official records.</li><li>14. Absence without leave.</li><li>15. Misstatement or deception in the application for the position.</li><li>16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.</li><li>17. 17. Prohibited participation in political activities.</li></ol>
<b>Definitions</b> <i>(Idaho)</i>	<p>IDAHO CODE ANN. § 67-5302 (West 2008). <u>Definitions.</u></p> <p>As used in this chapter, and other applicable sections of the Idaho Code, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context. Such terms and their definitions are:</p> <p>(5) “Classified officer or employee” means any person appointed to or holding a position in any department of the state of Idaho which position is subject to the provisions of the merit examination, selection, retention, promotion and dismissal requirements of chapter 53, title 67, Idaho Code.</p> <p>(17) “Nonclassified employee” means any person appointed to or holding a position in any department of the state of Idaho, which position is exempted from the provisions of chapter 53, title 67, Idaho Code, as provided for in section 67-5303, Idaho Code.</p> <p>(23) “Personnel system” means the procedure for administering employees in accordance with this chapter.</p> <p>(26) “Position” means a group of duties and responsibilities legally assigned or delegated by one (1) or more appointing authorities and requiring the employment of one (1) person.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> <i>(Idaho)</i></p>	<p>(27) “Professional employee” means any person, nonclassified or classified, appointed to a position which meets the criteria set forth in the federal fair labor standards act, 29 U.S.C. section 201, et seq. Final designation of a classified position as “professional” within this definition shall be made by the administrator. Exceptions to this designation which do not violate the federal fair labor standards act, 29 U.S.C. section 201, et seq., may be made by the administrator.</p>
<p><b>Procedure</b> <i>(Idaho)</i></p>	<p>IDAHO CODE ANN. § 19-4101 (West 2008). <u>Presentation of accusation.</u></p> <p>An accusation in writing against any district, county, precinct, or municipal officer, for wilful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.</p>
<p><b>Criminal Penalty</b> <i>(Idaho)</i></p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> <i>(Idaho)</i></p>	<p>IDAHO CODE ANN. § 67-5309 (West 2008). <u>Rules of the division of human resources and the personnel commission.</u></p> <p>(n) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:</p> <ol style="list-style-type: none"> <li>1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes and rules of the employee's department, or rules of the administrator or the division.</li> <li>2. Inefficiency, incompetency, or negligence in the performance of duties, or job performance that fails to meet established performance standards.</li> <li>3. Physical or mental incapability for performing assigned duties.</li> <li>4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.</li> <li>5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.</li> <li>6. Intoxication on duty.</li> <li>7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.</li> <li>8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for</li> </ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Idaho)</i></p>	<p>individual advantage.</p> <p>9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.</p> <p>10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.</p> <p>11. Habitual pattern of failure to report for duty at the assigned place and time.</p> <p>12. Habitual improper use of sick leave privileges.</p> <p>13. Unauthorized disclosure of confidential information from official records.</p> <p>14. Absence without leave.</p> <p>15. Misstatement or deception in the application for the position.</p> <p>16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.</p> <p>17. Prohibited participation in political activities.</p>
<p><b>Illinois</b></p>	
<p><b>Statute</b> <i>(Illinois)</i></p>	<p>720 ILL. COMP. STAT. ANN. 280/1 (West 2008). <u>Conviction of infamous crime; reversal and reinstatement; compensation.</u></p> <p>Any person holding office under the Constitution of the State of Illinois and every elected official of local government or of any school district who is convicted in any court of the State of Illinois or of the United States of a felony, bribery, perjury, or other infamous crime<sup>8</sup>, as understood in Section 1 of Article XIII of the Constitution of 1970, shall be, upon conviction, ineligible to continue in such office.</p> <p>720 ILL. COMP. STAT. ANN. 5/3-14023 (West 2008). <u>Officers and employees in Cook County; Removals from classified service.</u></p> <p>No officer or employee in the classified service of the county, who shall have been appointed under said rules and after said examination, shall be removed or discharged or suspended for a period of more than 30 days, except for cause, upon written charges to be filed in the office of the Civil Service Commission by the executive head of the department, institution, or office in which such officer or employee is then employed, or by the appointing officer, and after an opportunity to be heard in his own defense.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Definitions</b> <i>(Illinois)</i>	N/A.
<b>Procedure</b> <i>(Illinois)</i>	<p>720 ILL. COMP. STAT. ANN. 5/3-14023 (West 2008).  <u>Officers and employees in Cook County.</u>  <u>Removals from classified service.</u></p> <p>Such charges shall be investigated or heard by or before the Civil Service Commission, or by or before some officer or board appointed by the Commission to conduct such investigation or hearing. The Commission, after receipt of such charges, shall set a date for a hearing on or investigation of such charges, which date shall be within 30 days from the date of the suspension of such officer or employee on such charges pending such investigation or hearing. The hearing shall be public, and the officer or employee shall be entitled to call witnesses in his own defense and to have the aid of counsel. The finding and decision of such Commission or officer or board appointed by it to conduct such investigation when approved by said Commission shall be certified to the appointing officer, and shall be forthwith enforced by such officer. In making its finding and decision, or in approving the finding and decision of some officer or board appointed by it to conduct such investigation or hearing, the Civil Service Commission may, for disciplinary purposes, suspend an officer or employee for a period of time not to exceed 90 days, and in no event to exceed a period of 120 days from the date of any suspension of said officer or employee, pending investigation of such charges.</p> <p>Nothing in this Division shall limit the authority of the appointing officer or the executive head of any department, institution or office to suspend a subordinate for a reasonable period not exceeding 30 days. Any officer or employee serving his or her probationary period fixed by the Commission may be discharged by the appointing officers or the executive head of the department, institution, or office in which such officer or employee is then employed, without reference to the provisions of this Section.</p> <p>720 ILL. COMP. STAT. ANN. 5/3-14046 (West 2008).  <u>Officers and employees in Cook County.</u>  <u>Prosecution for violations.</u></p> <p>Prosecutions for violations of this Division may be instituted either by the Attorney General, the State's attorney for the county in which the offense is alleged to have been committed, or by the commission acting through special counsel. Such suits shall be conducted and controlled by the prosecuting officers who institute them, unless they request the aid of other prosecuting officers.</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Illinois)</i></p>	<p>720 ILL. COMP. STAT. ANN. 280/1 (West 2008). <u>Conviction of infamous crime; reversal and reinstatement; compensation.</u></p> <p>If, subsequently, a final order reverses the conviction, eligibility to hold the office, to the extent of the original term then remaining, is restored, and the officer shall be reinstated, for the duration of the term of office remaining. Each such officer shall be promptly repaid all compensation withheld from him as a result of his removal. No rights of an officer under any pension plan subject to the jurisdiction of this State, of which the officer is a member at the time of his ineligibility for office, shall be abridged if the officer is returned to office by this Act.</p> <p>After conviction and until a final order of reversal, there shall be no payment of compensation to any such officer. Upon the conviction and ineligibility of any person under this Act, a successor shall be chosen according to law. This successor shall hold office for the remainder of the term or until a final order reversing the conviction is entered.</p>
<p><b>Criminal Penalty</b> <i>(Illinois)</i></p>	<p>720 ILL. COMP. STAT. ANN. 1/55-37 (West 2008). <u>Qualification and Tenure of Township Officer.</u> <u>Misconduct of officers; penalty.</u></p> <p>Every township officer who is guilty of a palpable omission of duty, or who is guilty of willful and corrupt oppression, malconduct, or misfeasance in discharging the duties of the office, shall be guilty of a business offense and, on conviction, shall be fined not more than \$1,000. The court in which the conviction occurs shall enter an order removing the convicted officer from office.</p>
<p><b>Administrative Penalty</b> <i>(Illinois)</i></p>	<p>720 ILL. COMP. STAT. ANN. 280/1 (West 2008). <u>Conviction of infamous crime; reversal and reinstatement; compensation.</u></p> <p>Any person holding office under the Constitution of the State of Illinois and every elected official of local government or of any school district who is convicted in any court of the State of Illinois or of the United States of a felony, bribery, perjury, or other infamous crime, as understood in Section 1 of Article XIII of the Constitution of 1970, shall be, upon conviction, ineligible to continue in such office.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Indiana</b>	
<b>Statute</b> <i>(Indiana)</i>	<p>IND. CODE ANN. § 35-44-1-2 (West 2008). <u>Official misconduct.</u></p> <p>A public servant who:</p> <ul style="list-style-type: none"><li>(1) knowingly or intentionally performs an act that the public servant is forbidden by law to perform;</li><li>(2) performs an act the public servant is not authorized by law to perform, with intent to obtain any property for himself or herself;</li><li>(3) knowingly or intentionally solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;</li><li>(4) knowingly or intentionally acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated;</li><li>(5) knowingly or intentionally fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies; or</li></ul> <p>IND. CODE ANN. § 5-8-1-1 (West 2008). <u>Officers; judges; prosecuting attorney; liability to impeachment.</u></p> <p>Sec. 1. (a) Under Article 6, §§ 7 and 8 of the Constitution of the State of Indiana, all state officers other than justices of the supreme court or judges of the court of appeals of Indiana or the Indiana tax court, all other judges, prosecuting attorneys, and all county, city, town, and township officers are liable to impeachment for any misdemeanor in office.</p> <p>(b) A justice of the supreme court or a judge of the court of appeals of Indiana or of the Indiana tax court is subject to removal from office under Article 7, § 11 of the Constitution of the State of Indiana.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> (Indiana)</p>	<p>N/A.</p>
<p><b>Procedure</b> (Indiana)</p>	<p>IND. CODE ANN. § 5-8-1-2 (West 2008). <u>Method of impeachment.</u></p> <p>Sec. 2. All impeachments must be by resolution, adopted, originated in and conducted by managers elected by the house of representatives, who must prepare articles of impeachment, present them at the bar of the senate and prosecute the same, and the trial must be had before the senate sitting as a court of impeachment.</p>
<p><b>Criminal Penalty</b> (Indiana)</p>	<p>IND. CODE ANN. § 35-44-1-2 (West 2008). <u>Official misconduct.</u></p> <p>(6) knowingly or intentionally violates IC 36-6-4-17(b); commits official misconduct, a Class D felony.</p> <p>IND. CODE ANN. § 35-50-2-7 (West 2008). <u>Class D felony.</u></p> <p>Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2 ) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).</p> <p>(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:</p> <p>(1) the court finds that:</p> <p style="padding-left: 40px;">(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and</p> <p style="padding-left: 40px;">(B) the prior felony was committed less than three (3) years before the second felony was committed;</p> <p>(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or</p> <p>(2) the offense is possession of child pornography (IC 35-42-4-4(c)).</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (Indiana)</p>	<p>IND. CODE ANN. § 5-8-1-13 (West 2008). <u>Impeachment and Removal from Office. Suspension or removal from office.</u></p> <p>Sec. 13. The judgment may be that the defendant be suspended or that he be removed from office and disqualified to hold any office of honor, trust or profit, under the state.</p> <p>The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.</p>
<p><b>Iowa</b></p>	
<p><b>Statute</b> (Iowa)</p>	<p>IOWA CODE ANN. § 66.1A (West 2008). <u>Public Officers and Employees.</u> <u>Removal by court.</u></p> <p>Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:</p> <ol style="list-style-type: none"> <li>1. For willful or habitual neglect or refusal to perform the duties of the office.</li> <li>2. For willful misconduct or maladministration in office.</li> <li>3. For corruption.</li> <li>4. For extortion.</li> <li>5. Upon conviction of a felony.</li> <li>6. For intoxication, or upon conviction of being intoxicated.</li> <li>7. Upon conviction of violating the provisions of chapter 68A.</li> </ol>
<p><b>Definitions</b> (Iowa)</p>	<p>IOWA CODE ANN. § 66.1 (West 2008). <u>Public Officers and Employees.</u> <u>Removal from Office.</u> <u>Definitions.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Definitions Cont'd</b> (Iowa)	As used in this chapter, unless the context otherwise requires, “book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1. <sup>9</sup>
<b>Procedure</b> (Iowa)	N/A.
<b>Criminal Penalty</b> (Iowa)	N/A.
<b>Administrative Penalty</b> (Iowa)	<p>IOWA CODE ANN. § 66.1A (West 2008).  <u>Public Officers and Employees.</u>  <u>Removal by court.</u></p> <p>Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:</p> <ol style="list-style-type: none"> <li>1. For willful or habitual neglect or refusal to perform the duties of the office.</li> <li>2. For willful misconduct or maladministration in office.</li> <li>3. For corruption.</li> <li>4. For extortion.</li> <li>5. Upon conviction of a felony.</li> <li>6. For intoxication, or upon conviction of being intoxicated.</li> <li>7. Upon conviction of violating the provisions of chapter 68A.</li> </ol>
<b>Kansas</b>	
<b>Statute</b> (Kansas)	<p>KAN. CRIM. CODE ANN. § 21-3902 (West 2008).  <u>Official misconduct.</u></p> <p>(a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Kansas)</p>	<p>(1) Using or authorizing the use of any aircraft, as defined by K.S.A. 3- 201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another.</p> <p>(2) Knowingly and willfully failing to serve civil process when required by law.</p> <p>(3) Using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to maliciously cause harm to another. As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.</p> <p>(4) Except as authorized by law, knowingly, willfully and with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract: (A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract; (B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or (C) altering any bid or proposal submitted by a bidder on a contract or proposed contract.</p> <p>(5) Except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime.</p> <p>(6) Knowingly and willfully submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.</p> <p>(b) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:</p> <p>(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or</p> <p>(2) constitutes misuse of public funds, as defined in K.S.A. 21-3910 and amendments thereto.</p> <p>KAN. STAT. ANN. § 19-816 (West 2008). <u>Default or misconduct of deputy after death, resignation or removal of sheriff.</u></p> <p>Any default or misconduct in the office of deputy sheriff or jailer, after the death, resignation or removal of any sheriff by whom</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>Kansas</i>)</p>	<p>he was appointed, shall be adjudged a breach of the bond of such sheriff.</p> <p>KAN. STAT. ANN. § 19-817 (West 2008). <u>Action for default or misconduct of sheriff or deputy.</u></p> <p>Any action for default or misconduct of any sheriff, his undersheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.</p> <p>KAN. STAT. ANN. § 19-2609. Removal of county officer.</p> <p>If any board of county commissioners, or any commissioner, or any other county officer, shall neglect or refuse to perform any act which it is his duty to perform, or shall corruptly or oppressively perform any such duty, he shall forfeit his office, and shall be removed therefrom by civil action in the manner provided in the code of civil procedure.</p>
<p><b>Definitions</b> (<i>Kansas</i>)</p>	<p>KAN. STAT. ANN. § 21-3845 (West 2008). <u>Crimes Affecting Governmental Functions.</u> <u>Definitions.</u></p> <p>(b) "Benefit" means the receipt of money, goods, items, facilities, accommodations or anything of pecuniary value.</p>
<p><b>Procedure</b> (<i>Kansas</i>)</p>	<p>KAN. STAT. ANN. § 60-1205 (West 2008). Grounds for forfeiture of public office.</p> <p>Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully engage in misconduct while in office, (2) willfully neglect to perform any duty enjoined upon such person by law, (3) demonstrate mental impairment such that the person lacks the capacity to manage the office held, or (4) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such person's office and shall be ousted from such office in the manner hereinafter provided.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (<i>Kansas</i>)</p>	<p>KAN. CRIM. CODE ANN. § 21-3902 (West 2008). <u>Official misconduct.</u></p> <p>(c)(1) Official misconduct as defined in subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor.</p> <p>(2) Official misconduct as defined in subsection (a)(5) is: (A) A severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and (B) a class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor.</p> <p>(3) Official misconduct as defined in subsection (a)(6) is: (A) A severity level 7, nonperson felony if the claim is for \$25,000 or more; (B) a severity level 9, nonperson felony if the claim is for at least \$1,000 but less than \$25,000; and (C) a class A nonperson misdemeanor for a claim of less than \$1,000.</p> <p>(4) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.</p> <p>KAN. CRIM. CODE ANN. § 21-4501 (West 2008).<sup>10</sup> <u>Classes of felonies and terms of imprisonment; crimes committed prior to July 1, 1993.</u></p> <p>(e) Class E, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be one year and the maximum of which shall be fixed by the court at not less than two years nor more than five years.</p> <p>(f) Unclassified felonies, which shall include all crimes declared to be felonies without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime. If no sentence is provided in the statute, the offender shall be sentenced as for a class E felony.</p> <p>KAN. CRIM. CODE ANN. § 21-4502 (West 2008). <u>Classification of misdemeanors and terms of confinement; possible disposition.</u></p> <p>(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Criminal Penalty Cont'd</b> <i>(Kansas)</i>	<p>(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.</p> <p>(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503 and amendments thereto, instead of or in addition to confinement, as provided in this section.</p>
<b>Administrative Penalty</b> <i>(Kansas)</i>	<p>See KAN. STAT. ANN. § 60-1205 (West 2008) in “Procedure” section.</p>
<h3>Kentucky</h3>	
<b>Statute</b> <i>(Kentucky)</i>	<p>KY. CONST. § 227 (West 2008).  <u>Prosecution and removal of local officers for misfeasance, malfeasance, or neglect.</u></p> <p>Judges of the County Court, Justices of the Peace, Sheriffs, Coroners, Surveyors, Jailers, Assessors, County Attorneys and Constables shall be subject to indictment or prosecution for misfeasance or malfeasance in office, or willful neglect in discharge of official duties, in such mode as may be prescribed by law, and upon conviction his office shall become vacant, but such officer shall have the right to appeal to the Court of Appeals. Provided, also, that the General Assembly may, in addition to the indictment or prosecution above provided, by general law, provide other manner, method or mode for the vacation of office, or the removal from office of any sheriff, jailer, constable or peace officer for neglect of duty, and may provide the method, manner or mode of reinstatement of such officers.</p>
<b>Definitions</b> <i>(Kentucky)</i>	<p>N/A.</p>
<b>Procedure</b> <i>(Kentucky)</i>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (Kentucky)</p>	<p>KY. REV. STAT. § 61.170 (West 2008). <u>Malfeasance or neglect of county officers; penalty.</u></p> <p>1) County judges/executive, justices of the peace, sheriffs, coroners, surveyors, jailers, county attorneys, and constables may be indicted in the county in which they reside for misfeasance or malfeasance in office, or willful neglect in the discharge of official duties, and if convicted they shall be fined not less than one hundred (\$100) nor more than one thousand dollars (\$1,000), and the judgment of conviction shall declare the office held by such person vacant.</p> <p>2) Any sheriff, deputy sheriff, policeman, or other peace officer who fails to enforce any provision of KRS Chapter 242 after receiving information of a violation thereof, or having knowledge of a violation thereof and failing to act thereon, may be indicted for nonfeasance or malfeasance in office, and if convicted shall be fined not less than fifty (\$50) nor more than two hundred dollars (\$200), and the judgment of conviction shall declare the office held by such person vacant.</p> <p>3) In the absence of good cause shown, a member of the fiscal court who fails to attend fifty percent (50%) of the regular terms of the fiscal court within a six (6) month period or who fails to attend two (2) consecutive terms of the fiscal court shall be charged with neglect of office and upon conviction shall forfeit his office.</p>
<p><b>Administrative Penalty</b> (Kentucky)</p>	<p>KY. CONST. § 227 (West 2008). <u>Prosecution and removal of local officers for misfeasance, malfeasance, or neglect.</u></p> <p>Judges of the County Court, Justices of the Peace, Sheriffs, Coroners, Surveyors, Jailers, Assessors, County Attorneys and Constables shall be subject to indictment or prosecution for misfeasance or malfeasance in office, or willful neglect in discharge of official duties, in such mode as may be prescribed by law, and upon conviction his office shall become vacant, but such officer shall have the right to appeal to the Court of Appeals. Provided, also, that the General Assembly may, in addition to the indictment or prosecution above provided, by general law, provide other manner, method or mode for the vacation of office, or the removal from office of any sheriff, jailer, constable or peace officer for neglect of duty, and may provide the method, manner or mode of reinstatement of such officers.</p> <p>KY. CONST. § 68 (West 2008). <u>Civil officers liable to impeachment; judgment; criminal liability.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (<i>Kentucky</i>)</p>	<p>The Governor and all civil officers shall be liable to impeachment for any misdemeanors in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial and punishment by law.</p>
<p><b>Louisiana</b></p>	
<p><b>Statute</b> (<i>Louisiana</i>)</p>	<p>LA. CODE OF CRIM. LAW AND PROC. § 14:134.1 (2009).  <u>Malfeasance in office; sexual conduct prohibited with persons sentenced to the custody and supervision of the Department of Public Safety and Corrections.</u></p> <p>A. It shall be unlawful and constitute malfeasance in office for any person who is a law enforcement officer, officer of the Department of Public Safety and Corrections or employee of any prison, jail or correctional institution, or persons employed by entities operating work-release facilities of the Department of Public Safety and Corrections, to engage in sexual intercourse or any other sexual conduct with a person who is under their supervision and who is confined in a prison, jail, work-release facility, correctional institution, or who is under the supervision of the Department of Probation and Parole.</p>
<p><b>Definitions</b> (<i>Louisiana</i>)</p>	<p>LA. REV. STAT. ANN. § 15:1181 (West 2008).  <u>Prison Litigation Reform Act.</u>  <u>Definitions.</u></p> <p>In this Part the terms enumerated have the following meanings:</p> <p>(1) Prison means any state or local jail, prison, or other correctional facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for violation of criminal law.</p> <p>(2) Prisoner means any person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program. Status as a “prisoner” is determined as of the time the cause of action arises. Subsequent events, including post trial judicial action or release from custody, shall not affect such status.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Louisiana)</p>	<p>LA. REV. STAT. ANN. § 15:742 (West 2008). <u>Private Correctional Facilities.</u> <u>Definitions.</u></p> <p>(1) Correctional facility employee means any employee of any jail, prison, or correctional facility. (2) Private correctional facility means a correctional facility owned and operated by a private entity.</p>
<p><b>Procedure</b> (Louisiana)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (Louisiana)</p>	<p>LA. REV. STAT. ANN. § 14:134.1 (West 2008). <u>Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions.</u></p> <p>B. Whoever violates a provision of this section shall be fined not more than \$10,000, or imprisoned for a term not to exceed 10 years, or both.</p>
<p><b>Administrative Penalty</b> (Louisiana)</p>	<p>N/A.</p>
<p><b>Maine</b></p>	
<p><b>Statute</b> (Maine)</p>	<p>Maine repealed its “malfeasance in office” law (§ 3101) in 1975.<sup>11</sup></p> <p>ME. REV STAT ANN. tit. 17-A, § 608 (West 2008). <u>Official oppression.</u></p> <p>1. A person is guilty of official oppression if, being a public servant and acting with the intention to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Maine)</p>	<p>ME. REV STAT ANN. tit. 30-A, § 383 (West 2008).  <u>Sheriffs and Officers.</u>  <u>Chief deputy.</u></p> <p>1. Appointment. As soon as possible after taking office, the sheriff in each county shall appoint a chief deputy to serve under the sheriff. The appointment must be in writing, signed by the sheriff and recorded in the office of the county commissioners in the county. The appointment is not valid until recorded, except by operation of law or by vacancy in the office of sheriff.</p> <p>2. Tenure. The chief deputy serves at the will of the sheriff.</p> <p>3. Powers and duties. The chief deputy has all the powers and duties of a deputy sheriff and is subject to the direction of the sheriff in the administration of that office.</p> <p>4. Sheriff responsible for misconduct. The sheriff is responsible for the official misconduct or neglect of the chief deputy.</p>
<p><b>Definitions</b> (Maine)</p>	<p>N/A.</p>
<p><b>Procedure</b> (Maine)</p>	<p>ME. REV STAT ANN. tit. 34-A, § 3011 (West 2008).  <u>Correctional Facilities.</u>  <u>Administrative Provisions. Investigative officers.</u></p> <p>1. Exercise of law enforcement powers. Investigative officers who are certified by the Board of Trustees of the Maine Criminal Justice Academy as law enforcement officers may exercise the powers of other law enforcement officers with respect to offenses relating to the security or orderly management of a facility administered by the department, if authorized to exercise these powers by the commissioner. Investigative officers may issue administrative subpoenas with respect to offenses relating to the security or orderly management of a facility administered by the department, if authorized to exercise these powers by the commissioner and by the Attorney General or the Attorney General's designee. Investigative officers may not exercise law enforcement or subpoena powers against other employees of the department. These powers are in addition to any powers the officers may otherwise have as employees of the department. Internal investigations of employees of the department must be conducted pursuant to any applicable</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maine)</i></p>	<p>collective bargaining agreement.</p> <p>2. Working agreement. The commissioner shall negotiate a working agreement with the Department of the Attorney General concerning procedures and respective responsibilities for the exercise of law enforcement powers by investigative officers pursuant to subsection 1.</p>
<p><b>Criminal Penalty</b> <i>(Maine)</i></p>	<p>ME. REV STAT ANN. § 608 (West 2008). <u>Official oppression.</u></p> <p>2. Official oppression is a Class E crime.</p> <p>ME. REV STAT ANN. § 1301 (West 2008). <u>Amounts authorized.</u></p> <p>1-A. A natural person who has been convicted of a Class A, Class B, Class C, Class D or Class E crime may be sentenced to pay a fine, unless the law that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized in that law. Subject to these sentences and to section 1302, the fine may not exceed:</p> <p style="padding-left: 40px;">E. \$1,000 for a Class E crime; and</p> <p style="padding-left: 40px;">F. Regardless of the classification of the crime, any higher amount that does not exceed twice the pecuniary gain derived from the crime by the defendant.</p> <p>ME. REV STAT ANN. § 1252 (West 2008). <u>Imprisonment for crimes other than murder.</u></p> <p>1. In the case of a person convicted of a crime other than murder, the court may sentence to imprisonment for a definite term as provided for in this section, unless the statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to imprisonment and required to pay the fine authorized therein. Except as provided in subsection 7, the place of imprisonment must be as follows.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Criminal Penalty Cont'd</b> <i>(Maine)</i>	A. For a Class D or Class E crime the court must specify a county jail as the place of imprisonment. E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.
<b>Administrative Penalty</b> <i>(Maine)</i>	N/A.
<b>Maryland</b>	
<b>Statute</b> <i>(Maryland)</i>	<p>MD. CODE ANN. § 11-104 (West 2008). <u>Disciplinary Actions, Layoffs, and Employment Terminations in State Personnel Management System</u> <u>Disciplinary actions.</u></p> <p>An appointing authority may take the following disciplinary actions against any employee:</p> <ol style="list-style-type: none"> <li>(1) give the employee a written reprimand;</li> <li>(2) direct the forfeiture of up to 15 work days of the employee's accrued annual leave;</li> <li>(3) suspend the employee without pay;</li> <li>(4) deny the employee an annual pay increase;</li> <li>(5) demote the employee to a lower pay grade; or</li> <li>(6) with prior approval of the head of the principal unit:             <ol style="list-style-type: none"> <li>(i) terminate the employee's employment, without prejudice; or</li> <li>(ii) if the appointing authority finds that the employee's actions are egregious to the extent that the employee does not merit employment in any capacity with the State, terminate the employee's employment, with prejudice.</li> </ol> </li> </ol> <p>MD. CODE ANN. § 11-304 (West 2008). <u>Disciplinary Actions, Layoffs, and Employment Terminations in State Personnel Management System.</u> <u>Demotion of probationary employee.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Maryland)</i></p>	<p>(a)(1) This section applies to employees on probation following a promotion or reinstatement to a position in the skilled service or professional service. (2) This section does not apply to probationary employees in the management service.</p> <p>(b) If, in the appointing authority's judgment, a probationary employee subject to this section is unable or unwilling to satisfactorily perform the duties or responsibilities of the position, the appointing authority shall:     (1) return the employee to the employee's former position if it is vacant; or     (2) demote the employee to a position comparable to the employee's position within the appointing authority's jurisdiction.</p> <p>(c) A probationary employee may appeal a demotion under this section as a disciplinary action.</p>
<p><b>Definitions</b> <i>(Maryland)</i></p>	<p>MD. CODE ANN. § 1-101 (West 2008). <u>State and Personnel Pensions.</u> <u>Definitions.</u></p> <p>(a) In this Division I of this article the following words have the meanings indicated.</p> <p>(b) "Appointing authority" means an individual or a unit of government that has the power to make appointments and terminate employment.</p> <p>(c) "Class" means a category of one or more similar positions, as established by the Secretary in accordance with this article.</p> <p>(d) "Contractual employee" means an individual described in § 13-101 of this article.</p> <p>(e) "County" means a county of this State and, unless expressly provided otherwise, Baltimore City.</p> <p>(f) Unless expressly provided otherwise, "Department" means the Department of Budget and Management.</p> <p>(g) "Executive service" means the employment category in the State Personnel Management System that is described in § 6-404 of this article.</p> <p>(h) "Management service" means the employment category in the State Personnel Management System that is described in § 6-</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> <i>(Maryland)</i></p>	<p>403 of this article.</p> <p>(i) (1) “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity. (2) Unless expressly provided otherwise, “person” does not include a governmental entity or a unit or instrumentality of a governmental entity.</p> <p>(j) “Position” means an employment assignment of duties and responsibilities that requires the full-time employment of one individual or less than full-time employment of one or more individuals.</p> <p>(k) “Principal unit” means: (1) a principal department or other principal independent unit of State government; or (2) for an employee of a county board of elections whose employees are covered by this article, the county board of elections.</p> <p>(l) “Professional service” means the employment category in the State Personnel Management System that is described in § 6-402 of this article.</p> <p>(m) “Secretary” means the Secretary of Budget and Management.</p> <p>(n) “Skilled service” means the employment category in the State Personnel Management System that is described in § 6-401 of this article.</p> <p>(o) “State” means: (1) a state, possession, territory, or commonwealth of the United States; or (2) the District of Columbia.</p> <p>(p) “State Personnel Management System” means the personnel system established under § 6-101 of this article.</p> <p>(q) “Temporary employee” includes: (1) a contractual employee; and (2) an emergency employee.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> <i>(Maryland)</i></p>	<p>MD. CODE ANN. § 11-101 (West 2008). <u>Disciplinary Actions, Layoffs, and Employment Terminations in State Personnel Management System</u> <u>Definition of “employee.”</u></p> <p>In this title, “employee” includes a former State employee.</p>
<p><b>Procedure</b> <i>(Maryland)</i></p>	<p>MD. CODE ANN. § 11-106 (West 2008). <u>Disciplinary Actions, Layoffs, and Employment Terminations in State Personnel Management System</u> <u>Investigation and imposition of disciplinary action.</u></p> <p>(a) Before taking any disciplinary action related to employee misconduct, an appointing authority shall:</p> <ol style="list-style-type: none"> <li>(1) investigate the alleged misconduct;</li> <li>(2) meet with the employee;</li> <li>(3) consider any mitigating circumstances;</li> <li>(4) determine the appropriate disciplinary action, if any, to be imposed; and</li> <li>(5) give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.</li> </ol> <p>(b) Except as provided in subsection (c) of this section, an appointing authority may impose any disciplinary action no later than 30 days after the appointing authority acquires knowledge of the misconduct for which the disciplinary action is imposed.</p> <p>(c)(1) An appointing authority may suspend an employee without pay no later than 5 workdays following the close of the employee's next shift after the appointing authority acquires knowledge of the misconduct for which the suspension is imposed. (2) Saturdays, Sundays, legal holidays, and employee leave days are excluded in calculating the 5-workday period under this subsection.</p> <p>MD. CODE ANN. § 10-701 (West 2008). <u>Department of Corrections.</u> <u>Internal investigative unit.</u></p> <p>(a)(1) There is an Internal Investigative Unit in the Department. (2) The Secretary shall appoint the Director of the Internal Investigative Unit. (3) Subject to the authority of the Secretary, the Internal Investigative Unit shall:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maryland)</i></p>	<p>(i) investigate:</p> <ol style="list-style-type: none"><li>1. alleged criminal violations committed by employees of the Department while on duty;</li><li>2. alleged criminal violations committed by inmates, visitors, and other individuals that affect the safety or security of the Department's facilities or programs; and</li><li>3. alleged professional misconduct by employees of the Department; and</li></ol> <p>(ii) adopt regulations for the conduct of its investigations.</p> <p>(b) An investigator in the Internal Investigative Unit may exercise the powers of a peace or police officer in the State on property that is owned, leased, operated by, or under the control of the Department.</p> <p>(c)(1) An investigator in the Internal Investigative Unit may exercise the powers of a peace or police officer in the State on property that is not owned, leased, operated by, or under the control of the Department when:</p> <ol style="list-style-type: none"><li>(i) engaged in fresh pursuit of a suspected offender;</li><li>(ii) requested or authorized to do so by the chief executive officer or chief police officer of a county;</li><li>(iii) necessary to facilitate the orderly flow of traffic to and from property owned, leased, operated by, or under the control of the Department;</li><li>(iv) necessary to investigate and protect property that is owned, leased, operated by, or under the control of the Department;</li><li>(v) engaged in an active and official investigation of the conduct of an employee of the Department when the employee's alleged conduct will compromise the safety or security of the Department's facilities or programs;</li><li>(vi) engaged in an active and official investigation of an inmate in the custody of the Commissioner of Correction or the Commissioner of Pretrial Detention and Services, an inmate subject to the jurisdiction of the Patuxent Institution, or an individual sentenced to probation or released on parole or mandatory supervision; or</li><li>(vii) ordered to do so by the Governor.</li></ol> <p>(2) When acting under the authority granted in this subsection in connection with an investigation or enforcement action, the Internal Investigative Unit shall notify the following persons:</p> <ol style="list-style-type: none"><li>(i) when in an incorporated municipality, the chief of police, if any, or the chief's designee;</li><li>(ii) when in a county that has a county police department, the chief of police or the chief's designee;</li><li>(iii) when in a county without a police department, the sheriff or the sheriff's designee;</li><li>(iv) when in Baltimore City, the Police Commissioner or the Police Commissioner's designee;</li><li>(v) when on any property owned, leased, operated by, or under the control of the Department of Natural Resources, the Secretary of Natural Resources or the Secretary's designee;</li><li>(vi) when on any property owned, leased, operated by, or under the control of the Maryland Transportation Authority, the</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maryland)</i></p>	<p>Maryland Aviation Administration, or the Maryland Port Administration, the respective chief of police or the chief's designee; and (vii) unless there is an agreement otherwise with the Department of State Police, the Department of State Police barrack commander or designee.</p> <p>(3) The notification required under paragraph (2) of this subsection shall be made: (i) in advance, if practicable; or (ii) if advance notification is not practicable, as soon as possible after the exercise of the powers.</p> <p>(4) When acting under the authority granted in this subsection, a member of the Internal Investigative Unit shall have all the immunities from liability and exemptions as that of a State Police officer in addition to any other immunities and exemptions to which the member may otherwise be entitled.</p> <p>(5) A member of the Internal Investigative Unit who uses the authority granted in this subsection shall at all times and for all purposes remain an employee of the Internal Investigative Unit.</p> <p>(d) An individual who is employed as an investigator in the Internal Investigative Unit shall meet the minimum qualifications required and satisfactorily complete the training prescribed by the Maryland Police Training Commission.</p> <p>MD. CODE ANN. § 11-1005 (West 2008). <u>Correctional Officers' Bill of Rights.</u> <u>Investigation or interrogation of correctional officer.</u></p> <p>(a) The investigation or interrogation by an internal investigation unit of a correctional officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.</p> <p>(b) For purposes of this section, the investigating officer or interrogating officer shall be a sworn law enforcement or correctional official or an individual with former law enforcement or corrections experience.</p> <p>(c)(1) A complaint against a correctional officer that alleges brutality in the execution of the correctional officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by: (i) the aggrieved individual; (ii) a member of the aggrieved individual's immediate family; (iii) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident; or</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maryland)</i></p>	<p>(iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.</p> <p>(2) Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated.</p> <p>(d)(1) The correctional officer under investigation shall be informed of the name, rank, and command of:</p> <ul style="list-style-type: none"><li>(i) the law enforcement or correctional official or other individual in charge of the investigation;</li><li>(ii) the interrogating official; and</li><li>(iii) each individual present during an interrogation.</li></ul> <p>(2) Before an interrogation, the correctional officer under investigation shall be informed in writing of the nature of the investigation.</p> <p>(e) If the correctional officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the correctional officer shall be informed completely of all of the correctional officer's rights before the interrogation begins.</p> <p>(f) Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the correctional officer is on duty.</p> <p>(g)(1) The interrogation shall take place:</p> <ul style="list-style-type: none"><li>(i) at the office of the command of the investigating officer or at the office of the managing official of the correctional facility in which the incident allegedly occurred, as designated by the investigating official; or</li><li>(ii) at another reasonable and appropriate place.</li></ul> <p>(2) The correctional officer under investigation may waive the right described in paragraph (1)(i) of this subsection.</p> <p>(h)(1) All questions directed to the correctional officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with paragraph (2) of this subsection.</p> <p>(2) Each session of interrogation shall:</p> <ul style="list-style-type: none"><li>(i) be for a reasonable period; and</li><li>(ii) allow for personal necessities and rest periods as reasonably necessary.</li></ul> <p>(i) The correctional officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.</p> <p>(j) (1)(i) On request, the correctional officer under interrogation has the right to be represented by counsel or another responsible</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maryland)</i></p>	<p>representative of the correctional officer's choice who shall be present and available for consultation at all times during the interrogation; (ii) The correctional officer may waive the right described in subparagraph (i) of this paragraph.</p> <p>(2)(i) The interrogation shall be suspended for a period not exceeding 10 days until representation is obtained; (ii) Within the 10-day period described in subparagraph (i) of this paragraph, the managing official, for good cause shown, may extend the period for obtaining representation.</p> <p>(3) During the interrogation, the correctional officer's counsel or representative may:</p> <ul style="list-style-type: none"><li>(i) request a recess at any time to consult with the correctional officer;</li><li>(ii) object to any question posed; and</li><li>(iii) state on the record outside the presence of the correctional officer the reason for the objection.</li></ul> <p>(k)(1) A complete record shall be kept of the entire interrogation, including all recess periods, of the correctional officer.</p> <p>(2) The record may be written, taped, or transcribed.</p> <p>(3) On completion of the investigation, and on request of the correctional officer under investigation or the correctional officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.</p> <p>(l)(1) The internal investigation unit may order the correctional officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.</p> <p>(2) If the internal investigation unit orders the correctional officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the correctional officer refuses to do so, the internal investigation unit may commence an action that may lead to a punitive measure as a result of the refusal.</p> <p>(3) If the internal investigation unit orders the correctional officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the correctional officer.</p> <p>(m)(1) If the internal investigation unit orders the correctional officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the internal investigation unit and the correctional officer agree to the admission of the results.</p> <p>(2) The correctional officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygrapher if:</p> <ul style="list-style-type: none"><li>(i) the questions to be asked are reviewed with the correctional officer or the counsel or representative before the administration of the examination;</li></ul>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maryland)</i></p>	<p>(ii) the counsel or representative is allowed to observe the administration of the examination; and (iii) a copy of the final report of the examination by the certified polygrapher is made available to the correctional officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.</p> <p>(n)(1) On completion of an investigation and at least 10 days before a hearing, the correctional officer under investigation shall be: (i) notified of the name of each witness and of each charge and specification against the correctional officer; and (ii) provided with a copy of the investigatory file and any exculpatory information, if the correctional officer and the correctional officer's representative agree to:</p> <ol style="list-style-type: none"><li>1. execute a confidentiality agreement with the internal investigation unit not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the correctional officer; and</li><li>2. pay a reasonable charge for the cost of reproducing the material.</li></ol> <p>(2) The internal investigation unit may exclude from the exculpatory information provided to a correctional officer under this subsection: (i) the identity of confidential sources; (ii) nonexculpatory information; and (iii) recommendations as to charges, disposition, or punishment.</p> <p>(o)(1) The internal investigation unit may not insert adverse material into a file of the correctional officer, except the file of the internal investigation, unless the correctional officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.</p> <p>(3) The correctional officer may waive the right described in paragraph (1) of this subsection.</p> <p>MD. CODE ANN. § 11-1011 (West 2008). <u>Correctional Officers' Bill of Rights.</u> <u>Expungement of records.</u></p> <p>On written request, a correctional officer may have expunged from any file the record of a formal complaint made against the correctional officer if:</p> <p>(1) (i) the internal investigation unit that investigated the complaint: 1. exonerated the correctional officer of all charges in the complaint; or</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Maryland)</i></p>	<p>2. determined that the charges were unsustainable or unfounded; or (ii) a hearing board acquitted the correctional officer, dismissed the action, or made a finding of not guilty; and</p> <p>(3) at least 3 years have passed since the final disposition by the correctional facility or hearing board.</p>
<p><b>Criminal Penalty</b> <i>(Maryland)</i></p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> <i>(Maryland)</i></p>	<p>MD. CODE ANN. § 11-104 (West 2008). <u>Disciplinary Actions, Layoffs, and Employment Terminations in State Personnel Management System</u> <u>Disciplinary actions.</u></p> <p>An appointing authority may take the following disciplinary actions against any employee:</p> <p>(1) give the employee a written reprimand; (2) direct the forfeiture of up to 15 work days of the employee's accrued annual leave; (3) suspend the employee without pay; (4) deny the employee an annual pay increase; (5) demote the employee to a lower pay grade; or (6) with prior approval of the head of the principal unit:     (i) terminate the employee's employment, without prejudice; or     (ii) if the appointing authority finds that the employee's actions are egregious to the extent that the employee does not merit employment in any capacity with the State, terminate the employee's employment, with prejudice.</p> <p>MD. CODE ANN. § 11-304 (West 2008). <u>Disciplinary Actions, Layoffs, and Employment Terminations in State Personnel Management System.</u> <u>Demotion of probationary employee.</u></p> <p>(a) (1) This section applies to employees on probation following a promotion or reinstatement to a position in the skilled service or professional service.     (2) This section does not apply to probationary employees in the management service.</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Maryland)</i></p>	<p>(b) If, in the appointing authority's judgment, a probationary employee subject to this section is unable or unwilling to satisfactorily perform the duties or responsibilities of the position, the appointing authority shall:</p> <ul style="list-style-type: none"><li>(1) return the employee to the employee's former position if it is vacant; or</li><li>(2) demote the employee to a position comparable to the employee's position within the appointing authority's jurisdiction.</li></ul> <p>(c) A probationary employee may appeal a demotion under this section as a disciplinary action.</p> <p>MD. CODE ANN. § 11-1012 (West 2008). <u>Correctional Officers' Bill of Rights.</u> <u>Summary punishments.</u></p> <p>(a) This subtitle does not prohibit summary punishment by higher-ranking correctional officers as designated by the managing official.</p> <p>(b)(1) Summary punishment may be imposed for minor violations of correctional facility rules and regulations if:</p> <ul style="list-style-type: none"><li>(i) the facts that constitute the minor violation are not in dispute;</li><li>(ii) the correctional officer waives the hearing provided under this subtitle; and</li><li>(iii) the correctional officer accepts the punishment imposed by the highest-ranking correctional officer, or individual acting in that capacity, of the unit to which the correctional officer is attached.</li></ul> <p>(2) Summary punishment imposed under this subsection may not exceed suspension of 3 days without pay or a fine of \$150.</p> <p>(c)(1) If a correctional officer is offered summary punishment in accordance with subsection (b) of this section and refuses:</p> <ul style="list-style-type: none"><li>(i) the managing official may convene a hearing board of one or more members; and</li><li>(ii) the hearing board has only the authority to recommend the sanctions provided in this section for summary punishment.</li></ul> <p>(2) If a single member hearing board is convened:</p> <ul style="list-style-type: none"><li>(i) the member need not be of the same rank as the correctional officer; but</li><li>(ii) all other provisions of this subtitle apply.</li></ul>
<p><b>Massachusetts</b></p>	

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute</b> (Massachusetts)</p>	<p>MASS. ANN. LAWS ch. 127, § 12 (West 2008). <u>Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons.</u> <u>Removal of unfaithful or incompetent officers or employees.</u></p> <p>Any officer or employee in any correctional institution of the commonwealth who is unfaithful or incompetent, or uses intoxicating liquor to excess, shall be forthwith removed by the commissioner.</p> <p>MASS. ANN. LAWS ch. 127, § 13 (West 2008). <u>Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons.</u> <u>Removal of incompetent jailers or keepers of houses of correction.</u></p> <p>The jailer, superintendent or keeper of a jail or house of correction, except in Suffolk county, may be removed by the superior court for neglect of duty or for wasteful or extravagant use of supplies, upon complaint of the county commissioners, after notice to the sheriff and the person complained of and a hearing.</p> <p>MASS. ANN. LAWS ch. 37, § 2 (West 2008). <u>Oath and bond.</u></p> <p>A sheriff, before performing any official act, shall be sworn and prior to being sworn, and thereafter, at intervals of not more than one year, so long as he continues to hold such office, shall give to the state treasurer a bond in such amount and with such sureties as the superior court shall order and approve, conditioned to perform faithfully his own duties and to be responsible for the official acts of his deputies. A default, malfeasance or misfeasance in office of a deputy sheriff or jailer after the death, removal or resignation of the sheriff by whom he was appointed, shall be a breach of the bond of such sheriff.</p>
<p><b>Definitions</b> (Massachusetts)</p>	<p>MASS. ANN. LAWS ch. 127, § 1 (West 2008). <u>Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons.</u> <u>Definitions.</u></p> <p>As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-- “Commissioner”, the commissioner of correction.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure</b> (Massachusetts)</p>	<p>MASS. ANN. LAWS ch. 268A, § 25 (West 2008). <u>Suspension of persons under indictment for misconduct in office; notice; compensation and fringe benefits; temporary replacements; reinstatement.</u></p> <p>An officer or employee of a county, city, town or district, howsoever formed, including, but not limited to, regional school districts and regional planning districts, or of any department, board, commission or agency thereof may, during any period such officer or employee is under indictment for misconduct in such office or employment or for misconduct in any elective or appointive public office, trust or employment at any time held by him, be suspended by the appointing authority, whether or not such appointment was subject to approval in any manner. Notice of said suspension shall be given in writing and delivered in hand to said person or his attorney, or sent by registered mail to said person at his residence, his place of business, or the office or place of employment from which he is being suspended. Such notice so given and delivered or sent shall automatically suspend the authority of such person to perform the duties of his office or employment until he is notified in like manner that his suspension is removed. A copy of any such notice together with an affidavit of service shall be filed as follows: in the case of a county, with the clerk of the superior court of the county in which the officer or employee is employed; in the case of a city, with the city clerk; in the case of a town, with the town clerk; in the case of a regional school district, with the secretary of the regional school district; and in the case of all other districts, with the clerk of the district.</p> <p>Any person so suspended shall not receive any compensation or salary during the period of suspension, nor shall the period of his suspension be counted in computing his sick leave or vacation benefits or seniority rights, nor shall any person who retires from service while under such suspension be entitled to any pension or retirement benefits, notwithstanding any contrary provisions of law, but all contributions paid by him into a retirement fund, if any, shall be returned to him, subject to § 15 of chapter 32. The employer of a person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.</p> <p>A suspension under this section shall not, in any way, be used to prejudice the rights of the suspended person either civilly or criminally. During the period of any such suspension, the appointing authority may fill the position of the suspended officer or employee on a temporary basis, and the temporary officer or employee shall have all the powers and duties of the officer or employee suspended.</p> <p>Any such temporary officer or employee who is appointed as a member of a board, commission or agency may be designated as chairman.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Massachusetts)</i></p>	<p>If the criminal proceedings against the person suspended are terminated without a finding or verdict of guilty on any of the charges on which he was indicted, his suspension shall be forthwith removed, and he shall receive all compensation or salary due him for the period of his suspension, and the time of his suspension shall count in determining sick leave, vacation, seniority and other rights, and shall be counted as creditable service for purposes of retirement.</p>
<p><b>Criminal Penalty</b> <i>(Massachusetts)</i></p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> <i>(Massachusetts)</i></p>	<p>MASS. ANN. LAWS ch. 127, § 12 (West 2008). <u>Removal of unfaithful or incompetent officers or employees.</u></p> <p>Any officer or employee in any correctional institution of the commonwealth who is unfaithful or incompetent, or uses intoxicating liquor to excess, shall be forthwith removed by the commissioner.</p> <p>MASS. ANN. LAWS ch. 127, § 13 (West 2008). <u>Removal of incompetent jailers or keepers of houses of correction.</u></p> <p>The jailer, superintendent or keeper of a jail or house of correction, except in Suffolk county, may be removed by the superior court for neglect of duty or for wasteful or extravagant use of supplies, upon complaint of the county commissioners, after notice to the sheriff and the person complained of and a hearing.</p>
<p><b>Michigan</b></p>	
<p><b>Statute</b> <i>(Michigan)</i></p>	<p>Michigan repealed its “Standards of Conduct for Public Employees” laws (§§ 15.341 to 15.348).<sup>12</sup></p> <p>MICH. COMP. LAWS Const. Art. 5 §10 (West 2008). <u>Removal or suspension of officers; grounds, report.</u></p> <p>The governor shall have power and it shall be his duty to inquire into the condition and administration of any public office and the acts of any public officer, elective or appointive. He may remove or suspend from office for gross neglect of duty or for corrupt conduct in office, or for any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Michigan)</i></p>	<p>judicial, and shall report the reasons for such removal or suspension to the legislature.</p> <p>MICH. COMP. LAWS Const. Art. 7, §33 (West 2008). <u>Local government. Removal of elected officers.</u></p> <p>Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law.</p> <p>MICH. COMP. LAWS ch. 168, 168.327 (West 2008). <u>City officers; removal; eligibility for election or appointment to office.</u></p> <p>The governor shall remove all city officers chosen by the electors of a city or any ward or voting district of a city, when the governor is satisfied from sufficient evidence submitted to the governor that the officer has been guilty of official misconduct, wilful neglect of duty, extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it appears by a certified copy of the judgment of a court of record of this state that a city officer, after the officer's election or appointment, has been convicted of a felony. The governor shall not take action upon any charges made to the governor against a city officer until the charges have been exhibited to the governor in writing, verified by the affidavit of the party making them, that he or she believes the charges to be true. But a city officer shall not be removed for misconduct or neglect until charges of misconduct or neglect have been exhibited to the governor as provided in this section and a copy of the charges served on the officer and an opportunity given the officer of being heard in his or her defense. The service of the charges upon the officer complained against shall be made by personal service to the officer of a copy of the charges, together with all affidavits or exhibits which may be attached to the original petition, if the officer can be found; and if not, by leaving a copy at the last known place of residence of the officer, with a person of suitable age, if a person of suitable age can be found; and if not, by posting the copy of the charges in a conspicuous place at the officer's last known place of residence. An officer who has been removed from office pursuant to this section shall not be eligible for election or appointment to any office for a period of 3 years from the date of the removal. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being § 38.412a of the Michigan Compiled Laws, shall not be eligible for election or appointment to an elective or appointive city office for a period of 20 years after conviction.</p> <p>MICH. COMP. LAWS ch. 168, 168.207 (West 2008). <u>County officers; removal.</u></p> <p>The governor may remove any and all county officers named in section 200 of this chapter when he shall be satisfied from</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Michigan)</i></p>	<p>sufficient evidence submitted to him, as hereinafter provided, that such officer has been guilty of official misconduct, or of wilful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this state that such officer, after his election or appointment, shall have been convicted of a felony; but the governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true. But no such officer shall be removed for such misconduct or neglect until charges thereof shall have been exhibited to the governor as above provided and a copy of the same served on such officer and an opportunity given him of being heard in his defense: Provided, That the service of such charges upon the person or persons complained against shall be made by handing to such person or persons a copy of such charges, together with all affidavits or exhibits which may be attached to the original petition if such person or persons can be found; and if not, by leaving a copy at the last place of residence of such person or persons, with some person of suitable age, if such person can be found; and if not, by posting it in some conspicuous place upon his last known place of residence. No officer who has been removed in accordance with the provisions of this section shall be eligible to election or appointment to any office for a period of 3 years from the date of such removal.</p> <p>MICH. COMP. LAWS ch. 168, 168.369 (West 2008). <u>Township officers; removal.</u></p> <p>The governor shall remove a township officer chosen by the electors of any township, when the governor is satisfied from the evidence submitted that the officer has been guilty of official misconduct, wilful neglect of duty, extortion, habitual drunkenness, or has been convicted of being drunk, or when it appears by a certified copy of the judgment of a court of record of this state that the officer, after the officer's election or appointment, was convicted of a felony. The governor shall not take action upon the charges made against the officer until the charges are exhibited in writing, verified by the affidavit of the party making the charges that the party believes the charges to be true. The officer shall not be removed for misconduct or neglect until charges of the misconduct or neglect are exhibited to the governor as provided in this section, a copy of the charges served on the officer, and an opportunity given to the officer of being heard in his defense. The service of the charges upon the officer shall be made by handing to the officer a copy of the charges, together with the affidavits or exhibits which may be attached to the original petition if the officer can be found; if the officer cannot be found a copy shall be left at the last place of residence of the officer with a person of suitable age, if a person can be found. If a person cannot be found, a copy shall be posted in a conspicuous place upon the officer's last known place of residence. An officer who has been removed in accordance with this section shall not be eligible for election or appointment to an office for a period of 3 years after the date of removal from office.</p> <p>MICH. COMP. LAWS ch. 168, 168.383 (West 2008).</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Michigan)</p>	<p><u>Village officers; removal.</u></p> <p>The governor shall remove all village officers chosen by the electors of a village when the governor is satisfied from sufficient evidence submitted to the governor that the officer has been guilty of official misconduct, wilful neglect of duty, extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it appears by a certified copy of the judgment of a court of record of this state that a village officer, after the officer's election or appointment, has been convicted of a felony. The governor shall not take action upon any charges made to the governor against a village officer until the charges have been exhibited to the governor in writing, verified by the affidavit of the party making them, that the party believes the charges to be true. A village officer shall not be removed for misconduct or neglect until charges of misconduct or neglect have been exhibited to the governor as provided in this section and a copy of the charges served on the officer and an opportunity given the officer of being heard in his or her defense. The service of the charges upon the person or persons complained against shall be made by personal service to the officer of a copy of the charges, together with all affidavits or exhibits which may be attached to the original petition, if the officer can be found; and if not, by leaving a copy of the charges at the last known place of residence of the officer with a person of suitable age, if a person of suitable age can be found; and if not, by posting the copy of the charges in a conspicuous place at the officer's last known place of residence. An officer who has been removed from office pursuant to this section shall not be eligible for election or appointment to any office for a period of 3 years from the date of the removal from office. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being § 38.412a of the Michigan Compiled Laws, shall not be eligible for election or appointment to an elective or appointive village office for a period of 20 years after conviction.</p> <p>MICH. COMP. LAWS ch. 38, 38.514 (West 2008).</p> <p><u>Firefighters and Police Officers Civil Service System. Tenure of employees; removals, suspension, discharges, etc., for cause, procedure, appeals; reductions in force.</u></p> <p>(1) The tenure of each person holding an office, place, position, or employment under this act shall be only during good behavior and efficient service, and any person may be removed or discharged, suspended without pay, and deprived of vacation privileges or other special privileges by the civil service commission for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, a violation of this act or of the rules of the commission, or for any other failure of good behavior, or for any other acts of misfeasance, malfeasance, or nonfeasance in office. However, a member of any fire or police department encompassed by this act shall not be removed, discharged, reduced in rank or pay, suspended, or otherwise punished except for cause, and in no event until he or she has been furnished with a written statement of the charges and the reasons for the actions. In addition, all charges shall be void unless filed within 90 days after the date the</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Michigan)</p>	<p>violation occurred, except in the case of a probationer, whose violations may accumulate for the probationary period.</p> <p>(2) If for reasons of economy it shall be deemed necessary by any city, village, or municipality to reduce the number of full-time paid members of any fire or police department, the municipality shall follow the following procedure: Removals shall be accomplished by suspending in numerical order, commencing with the last employee appointed to the fire or police department, all recent appointees to the fire or police department until the reductions are made. However, if the fire or police department increases in numbers to the strength existing before the reductions were made, the fire fighters or police officers suspended last under this act shall be reinstated before any new appointments to the fire or police department are made.</p> <p>MICH. COMP. LAWS ch. 51, 51.362 (West 2008). <u>Tenure, removal, discharge, reduction, or suspension of civil service employees.</u></p> <p>The tenure of everyone holding an office, place, position or employment under the provisions of this act shall be only during good behavior and efficient service; and any such person may be removed or discharged, suspended without pay, or deprived of vacation privileges or other special privileges by the appointing officer for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any acts of misfeasance, malfeasance, or nonfeasance in office. No member of any department within the terms of this act shall be removed, discharged, reduced in rank or pay or suspended, or otherwise punished, except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions. All charges shall be void unless filed within 90 days of the date of the violation. If for any reason of economy it shall be deemed necessary by any county to reduce the number of paid members of any department, then the county shall follow the following procedure:</p> <p>The removals shall be accomplished by suspending in numerical order, commencing with the last man appointed to the department, all recent appointees to the department until such reductions shall have been accomplished. If the department again is increased in number to the strength existing prior to the reduction of members, the members suspended last under the terms of this act shall be first reinstated before any new appointments to the department shall be made.</p>
<p><b>Definitions</b> (Michigan)</p>	<p>None of the Election Law definitions in chapter 167 were applicable to this survey.</p> <p>MICH. COMP. LAWS ch. 38, 38.517 (West 2008). <u>Fire Fighters and Police Officers Civil Service System.</u></p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> <i>(Michigan)</i></p>	<p><u>Definitions.</u></p> <p>Sec. 17. As used in this act:</p> <p>(a) “Appointing power” means each person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position, or employment subject to civil service.</p> <p>(b) “Appointment” means selection, promotion, appointing, or employing any person to hold any office, place, or position of employment subject to civil service.</p> <p>(c) “City” means a city, village, or other municipality that has a full-time paid fire or police department, or both.</p> <p>(d) “Commission” means the civil service commission created by this act.</p> <p>(e) “Commissioner” means any 1 of the 3 commissioners of the commission.</p> <p>(f) “Examination” means any test, process, evaluation, or any other procedure used to determine a candidate's merit, suitability, or fitness for the position for which he or she is applying.</p> <p>(g) “Full-time paid member” means an officer, fire fighter, or police officer who is paid regularly by the city and devotes his or her whole time to fire fighting, law enforcement, or related activities.</p> <p>(h) “Municipality” means a township, charter township, city, or incorporated village.</p> <p>MICH. COMP. LAWS ch. 51, 51.365 (West 2008). <u>Civil Service Commission.</u> <u>Definitions.</u></p> <p>Sec. 15. As used in this act:</p> <p>(1) “Commission” means the civil service commission herein created.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Michigan)</p>	<p>(2) “Commissioner” means any one of the 3 commissioners of that commission. (3) “Appointment” means all means of selection, promotion, appointing or employing any person to hold any office, place or position of employment subject to civil service.</p>
<p><b>Procedure</b> (Michigan)</p>	<p>MICH. COMP. LAWS ch. 38, 38.514 (West 2008). <u>Firefighters and Police Officers Civil Service System. Tenure of employees; removals, suspension, discharges, etc., for cause, procedure, appeals; reductions in force.</u></p> <p>In each case where charges have been made a copy of the statement of the reasons for the charges and the answers thereto, if the person sought to be removed desires to file a written answer, shall be furnished to the civil service commission and entered upon its records. The answer shall be filed by the member within 5 days after service of the charges upon him or her. If the person sought to be removed or reduced demands it, the civil service commission shall grant him or her a public hearing, which hearing shall be held within a period of 10 days after the filing of the charges in writing and a written answer thereto. Pending the period between the making of the charges as a basis for removal and the decision thereon by the commission, the member shall remain in office. At the hearing, the burden shall be upon the removing officer to justify his or her action. If the removing officer fails to make charges to the satisfaction of a member or members of a fire or police department in a city, village, or municipality, the member or members of the fire or police department may present the information to the civil service commission. If the civil service commission fails to justify the action of the removing officer, then the person sought to be removed shall be reinstated with full pay for the entire period during which time he or she may have been prevented from performing his or her usual employment, and no charges shall be officially recorded against his or her record. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be made available for public inspection if an appeal is not taken from the action of the commission. If the civil service commission sustains the action of the removing officer, the person removed shall have an immediate right of appeal to the circuit court of the county in which the city, village, or municipality is situated. The appeal shall be taken within 90 days after the date the civil service commission enters its final order. If an appeal is made, the circuit court shall hear the appeal upon the original record, and additional proof shall not be offered into evidence. The circuit court's decision shall be final. However, the employee has the right to petition the supreme court for a review of the court's decision. The removing officer and the person sought to be removed at all times, both before the civil service commission and upon appeal, may employ counsel to represent either of them before the civil service commission and, upon appeal, before the circuit court.<sup>13</sup></p> <p>MICH. COMP. LAWS ch. 51, 51.362 (West 2008). <u>Tenure, removal, discharge, reduction, or suspension of civil service employees.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Michigan)</i></p>	<p>1) In every case of charges having been made, a copy of the statement of reasons therefor and the answer thereto, if the person sought to be removed desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. The answer shall be filed by the member within 5 days after service of the charges upon him. If the person sought to be removed or reduced shall demand it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of 10 days from the filing of the charges in writing and a written answer thereto. Pending the period between the making of the charges as a basis for removal and the decision thereon by the commission, the member shall remain in office, but shall be suspended from duty without pay. At the hearing the burden shall be upon the person sought to be removed to prove that the removal is not justified. If the civil service commission shall determine that the action of the removing officer was not justified, then the person sought to be removed shall be reinstated with full pay for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearings shall be kept and preserved by the civil service commission, which record shall be sealed and not be available for public inspection, if no appeal is taken from the action of the commission. If the civil service commission sustains the action of the removing officer the person removed shall have an immediate right of appeal on certiorari to the circuit court of the county. The appeal shall be taken within 90 days from the entry by the civil service commission of its final order. Upon such an appeal being taken and docketed with the clerk of the circuit court, the circuit court shall proceed to hear the appeal upon the original record taken therein and no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, saving to the employee, however, the right to petition the supreme court for a review of the court's decision. The removing officer and the person sought to be removed at all times, both before the civil service commission and upon appeal, may employ counsel to represent either of them before the civil service commission and upon appeal.</p> <p>MICH. COMP. LAWS ch. 51, 51.79 (West 2008). <u>Survival of action against sheriff or deputies.</u></p> <p>Any action for the malfeasance, misfeasance, or nonfeasance of a sheriff or any of his deputies, may be prosecuted against the executors or administrators of such sheriff, in like manner as if the cause of action survived at common law.</p>
<p><b>Criminal Penalty</b> <i>(Michigan)</i></p>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (Michigan)</p>	<p>MICH. COMP. LAWS Const. Art. 5 §10 (West 2008). <u>Removal or suspension of officers; grounds, report.</u></p> <p>The governor shall have power and it shall be his duty to inquire into the condition and administration of any public office and the acts of any public officer, elective or appointive. He may remove or suspend from office for gross neglect of duty or for corrupt conduct in office, or for any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and shall report the reasons for such removal or suspension to the legislature.</p> <p>MICH. COMP. LAWS Const. Art. 7, §33 (West 2008). <u>Local government. Removal of elected officers.</u></p> <p>Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law.</p> <p>MICH. COMP. LAWS ch. 168, 168.207 (West 2008). <u>County officers; removal.</u></p> <p>The governor may remove any and all county officers named in section 200 of this chapter when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer has been guilty of official misconduct, or of wilful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this state that such officer, after his election or appointment, shall have been convicted of a felony; but the governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true. But no such officer shall be removed for such misconduct or neglect until charges thereof shall have been exhibited to the governor as above provided and a copy of the same served on such officer and an opportunity given him of being heard in his defense: Provided, That the service of such charges upon the person or persons complained against shall be made by handing to such person or persons a copy of such charges, together with all affidavits or exhibits which may be attached to the original petition if such person or persons can be found; and if not, by leaving a copy at the last place of residence of such person or persons, with some person of suitable age, if such person can be found; and if not, by posting it in some conspicuous place upon his last known place of residence. No officer who has been removed in accordance with the provisions of this section shall be eligible to election or appointment to any office for a period of 3 years from the date of such removal.</p> <p>MICH. COMP. LAWS ch. 168, 168.369 (West 2008).</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Michigan)</i></p>	<p><u>Township officers; removal.</u></p> <p>The governor shall remove a township officer chosen by the electors of any township, when the governor is satisfied from the evidence submitted that the officer has been guilty of official misconduct, wilful neglect of duty, extortion, habitual drunkenness, or has been convicted of being drunk, or when it appears by a certified copy of the judgment of a court of record of this state that the officer, after the officer's election or appointment, was convicted of a felony. The governor shall not take action upon the charges made against the officer until the charges are exhibited in writing, verified by the affidavit of the party making the charges that the party believes the charges to be true. The officer shall not be removed for misconduct or neglect until charges of the misconduct or neglect are exhibited to the governor as provided in this section, a copy of the charges served on the officer, and an opportunity given to the officer of being heard in his defense. The service of the charges upon the officer shall be made by handing to the officer a copy of the charges, together with the affidavits or exhibits which may be attached to the original petition if the officer can be found; if the officer cannot be found a copy shall be left at the last place of residence of the officer with a person of suitable age, if a person can be found. If a person cannot be found, a copy shall be posted in a conspicuous place upon the officer's last known place of residence. An officer who has been removed in accordance with this section shall not be eligible for election or appointment to an office for a period of 3 years after the date of removal from office.</p> <p>MICH. COMP. LAWS ch. 168, 168.383 (West 2008).</p> <p><u>Village officers; removal.</u></p> <p>The governor shall remove all village officers chosen by the electors of a village when the governor is satisfied from sufficient evidence submitted to the governor that the officer has been guilty of official misconduct, wilful neglect of duty, extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it appears by a certified copy of the judgment of a court of record of this state that a village officer, after the officer's election or appointment, has been convicted of a felony. The governor shall not take action upon any charges made to the governor against a village officer until the charges have been exhibited to the governor in writing, verified by the affidavit of the party making them, that the party believes the charges to be true. A village officer shall not be removed for misconduct or neglect until charges of misconduct or neglect have been exhibited to the governor as provided in this section and a copy of the charges served on the officer and an opportunity given the officer of being heard in his or her defense. The service of the charges upon the person or persons complained against shall be made by personal service to the officer of a copy of the charges, together with all affidavits or exhibits which may be attached to the original petition, if the officer can be found; and if not, by leaving a copy of the charges at the last known place of residence of the officer with a person of suitable age, if a person of suitable age can be found; and if not, by posting the copy of the charges in a conspicuous place at the officer's last known place of residence. An officer who has been removed from office pursuant to this</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Michigan)</i></p>	<p>section shall not be eligible for election or appointment to any office for a period of 3 years from the date of the removal from office. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being § 38.412a of the Michigan Compiled Laws, shall not be eligible for election or appointment to an elective or appointive village office for a period of 20 years after conviction.</p> <p>MICH. COMP. LAWS ch. 51, 51.362 (West 2008). <u>Tenure, removal, discharge, reduction, or suspension of civil service employees.</u></p> <p>The tenure of everyone holding an office, place, position or employment under the provisions of this act shall be only during good behavior and efficient service; and any such person may be removed or discharged, suspended without pay, or deprived of vacation privileges or other special privileges by the appointing officer for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any acts of misfeasance, malfeasance, or nonfeasance in office. No member of any department within the terms of this act shall be removed, discharged, reduced in rank or pay or suspended, or otherwise punished, except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions. All charges shall be void unless filed within 90 days of the date of the violation. If for any reason of economy it shall be deemed necessary by any county to reduce the number of paid members of any department, then the county shall follow the following procedure:</p> <p>The removals shall be accomplished by suspending in numerical order, commencing with the last man appointed to the department, all recent appointees to the department until such reductions shall have been accomplished. If the department again is increased in number to the strength existing prior to the reduction of members, the members suspended last under the terms of this act shall be first reinstated before any new appointments to the department shall be made.</p>
<p><b>Minnesota</b></p>	
<p><b>Statute</b> <i>(Minnesota)</i></p>	<p>MINN. STAT. ANN. § 603 (West 2008). <u>Misconduct of public officer or employee.</u></p> <p>A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Minnesota)</p>	<p>(1) intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law; or</p> <p>(2) in the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or</p> <p>(3) under pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights; or</p> <p>(4) in the capacity of such officer or employee, makes a return, certificate, official report, or other like document having knowledge it is false in any material respect.</p>
<p><b>Definitions</b> (Minnesota)</p>	<p>MINN. STAT. ANN. § 609.415 (West 2008). <u>Crimes Affecting Public Officer or Employee.</u> <u>Definitions.</u></p> <p>Subdivision 1. Definitions. As used in sections 609.415 to 609.465, and 609.515,</p> <p>(1) "Public officer" means:</p> <ul style="list-style-type: none"> <li>(a) an executive or administrative officer of the state or of a county, municipality or other subdivision or agency of the state;</li> <li>(b) a member of the legislature or of a governing board of a county, municipality, or other subdivision of the state, or other governmental instrumentality within the state;</li> <li>(c) a judicial officer;</li> <li>(d) a hearing officer;</li> <li>(e) a law enforcement officer; or</li> <li>(f) any other person exercising the functions of a public officer.</li> </ul> <p>(2) "Public employee" means a person employed by or acting for the state or a county, municipality, or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a public officer. Public employee includes a member of a charter commission.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Minnesota)</p>	<p>(3) “Judicial officer” means a judge, court commissioner, referee, or any other person appointed by a judge or court to hear or determine a cause or controversy.</p> <p>(4) “Hearing officer” means any person authorized by law or private agreement to hear or determine a cause or controversy who is not a judicial officer.</p> <p>(5) “Political subdivision” means a county, town, statutory or home rule charter city, school district, special service district, or other municipal corporation of the state of Minnesota.</p> <p>Subd. 2. Deemed officer or employee. A person who has been elected, appointed, or otherwise designated as a public officer or public employee is deemed such officer or employee although the person has not yet qualified therefor or entered upon the duties thereof.</p>
<p><b>Procedure</b> (Minnesota)</p>	<p>MINN. STAT. ANN. § 44.08 (West 2008). <u>Municipal Civil Service.</u> <u>Employees, dismissal.</u></p> <p>Subdivision 1. Just cause; notice, charges filed. No permanent employee in the classified service shall be dismissed or suspended without pay for more than 30 days, except for just cause, which shall not be religious, racial, or political. No such action shall be taken except after the employee has been given notice of the action in writing. A copy of the notice shall be transmitted to the board. Upon written request made by the employee within 15 days after receipt of such notice, the appointing authority shall file the charges of inefficiency or misconduct on which the dismissal or suspension is based with the employee concerned and with the secretary of the board and a hearing shall be held by the board thereon after 10 days' written notice to the employee of the time and place of the hearing. Action of the appointing authority shall be final if no such written request is made within 15 days after receipt of the notice of dismissal or suspension.</p> <p>Subd. 2. Public hearing, witnesses. The hearing on the charges shall be open to the public and each member of the board shall have the power to issue subpoenas, to administer oaths, and to compel the attendance and testimony of witnesses and the production of books and papers relevant to the investigation. The board shall require by subpoena the attendance of any witness requested by the employee who can be found in the county. The board may make complaint to the district court of disobedience of its subpoenas or orders and the court shall prescribe notice to the person accused and require obedience to the board's subpoena and order and punish disobedience as a contempt of court. Witnesses shall be entitled to the same fees and mileage as for attendance upon the district court, except that any officer, agent, or employee of the municipality who receives compensation shall</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Minnesota)</p>	<p>not be entitled to fees or mileage.</p> <p>Subd. 3. Determination. If, after the hearing, the board finds that the charges are sustained, the dismissal or suspension shall be final unless an appeal to the courts is taken under § 44.09. If the board finds that the charges are not sustained, the employee, if suspended pending investigation, shall be immediately reinstated and shall be paid all back pay due for the period of suspension; if not suspended, the employee shall be continued in the position as though the action had not been brought, subject to the right of the appointing authority to appeal as provided in § 44.09.</p> <p>Subd. 4. Findings; filing, notice. Findings hereunder and orders sustaining disciplinary actions or compelling reinstatement shall be in writing and shall be filed within three days after the completion of the hearing among the records of the secretary of the board. The secretary shall give written notice of the decision to any employee concerned and to the appointing authority.</p>
<p><b>Criminal Penalty</b> (Minnesota)</p>	<p>MINN. STAT. ANN. § 603 (West 2008). <u>Misconduct of public officer or employee.</u></p> <p>A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both:</p> <p>(1) intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law; or</p> <p>(2) in the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or</p> <p>(3) under pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights; or</p> <p>(4) in the capacity of such officer or employee, makes a return, certificate, official report, or other like document having knowledge it is false in any material respect.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty</b> <i>(Minnesota)</i>	<p>MINN. STAT. ANN. § 44.08 (West 2008).  <u>Municipal Civil Service.</u>  <u>Employees, dismissal.</u></p> <p>Subd. 3. Determination. If, after the hearing, the board finds that the charges are sustained, the dismissal or suspension shall be final unless an appeal to the courts is taken under § 44.09. If the board finds that the charges are not sustained, the employee, if suspended pending investigation, shall be immediately reinstated and shall be paid all back pay due for the period of suspension; if not suspended, the employee shall be continued in the position as though the action had not been brought, subject to the right of the appointing authority to appeal as provided in § 44.09.</p>
<b>Mississippi</b>	
<b>Statute</b> <i>(Mississippi)</i>	<p>MISS. CODE ANN. § 19-25-9 (West 2008).  <u>Incapable sheriff, performance of duties.</u></p> <p>If the sheriff be a party to or interested in any suit, or for other cause be incapable or unfit to execute his office in any particular case, or if the sheriff shall have outstanding against him a warrant for his arrest, duly executed by any justice court judge, mayor or municipal judge in the county in which he is sheriff, and where there is no vacancy in the office of sheriff, the circuit judge or chancellor of the district in which said county is located, upon being informed of all the conditions and circumstances with reference thereto, may appoint some qualified elector of the county to execute, do and perform the duties of the sheriff.</p>
<b>Definitions</b> <i>(Mississippi)</i>	N/A.
<b>Procedure</b> <i>(Mississippi)</i>	N/A.
<b>Criminal Penalty</b> <i>(Mississippi)</i>	N/A.

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty</b> <i>(Mississippi)</i>	N/A.
<b>Missouri</b>	
<b>Statute</b> <i>(Missouri)</i>	<p>MO. ANN. STAT. § 576.040 (West 2008). <u>Official misconduct.</u></p> <p>1. A public servant, in his public capacity or under color of his office or employment, commits the crime of official misconduct if:</p> <ul style="list-style-type: none"> <li>(1) He knowingly discriminates against any employee or any applicant for employment on account of race, creed, color, sex or national origin, provided such employee or applicant possesses adequate training and educational qualifications;</li> <li>(2) He knowingly demands or receives any fee or reward for the execution of any official act or the performance of a duty imposed by law or by the terms of his employment, that is not due, or that is more than is due, or before it is due;</li> <li>(3) He knowingly collects taxes when none are due, or exacts or demands more than is due;</li> <li>(4) He is a city or county treasurer, city or county clerk, or other municipal or county officer, or judge of a municipal or county commission, and knowingly orders the payment of any money, or draws any warrant, or pays over any money for any purpose other than the specific purpose for which the same was assessed, levied and collected, unless it is or shall have become impossible to use such money for that specific purpose;</li> <li>(5) He is an officer or employee of any court and knowingly charges, collects or receives less fee for his services than is provided by law;</li> <li>(6) He is an officer or employee of any court and knowingly directly or indirectly buys, purchases or trades for any fee taxed or to be taxed as costs in any court of this state, or any county warrant, at less than par value which may be by law due or to become due to any person by or through any such court;</li> </ul>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Missouri)</p>	<p>(7) He is a county officer, deputy or employee and knowingly traffics for or purchases at less than the par value or speculates in any court warrant issued by order of the county commission of his county, or in any claim or demand held against such county.</p> <p>MO. ANN. STAT. § 576.050 (West 2008). <u>Misuse of official information.</u></p> <p>1. A public servant commits the crime of misuse of official information if, in contemplation of official action by himself or herself or by a governmental unit with which he or she is associated, or in reliance on information to which he or she has access in his or her official capacity and which has not been made public, he or she knowingly:</p> <p>(1) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or</p> <p>(2) Speculates or wagers on the basis of such information or official action; or</p> <p>(3) Aids, advises or encourages another to do any of the foregoing with purpose of conferring a pecuniary benefit on any person.</p> <p>2. A person commits the crime of misuse of official information if he or she knowingly or recklessly obtains or discloses information from the Missouri uniform law enforcement system (MULES) or the National Crime Information Center System (NCIC), or any other criminal justice information sharing system that contains individually identifiable information for private or personal use, or for a purpose other than in connection with their official duties and performance of their job.</p> <p>3. Misuse of official information is a class A misdemeanor.</p> <p>MO. ANN. STAT. § 590.080 (West 2008). <u>Peace Officers, Selection, Training and Discipline.</u> <u>Cause for discipline.</u></p> <p>1. The director shall have cause to discipline any peace officer licensee who:</p> <p>(1) Is unable to perform the functions of a peace officer with reasonable competency or reasonable safety as a result of a mental condition, including alcohol or substance abuse;</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Missouri)</i></p>	<p>(2) Has committed any criminal offense, whether or not a criminal charge has been filed;</p> <p>(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person;</p> <p>(4) Has caused a material fact to be misrepresented for the purpose of obtaining or retaining a peace officer commission or any license issued pursuant to this chapter;</p> <p>(5) Has violated a condition of any order of probation lawfully issued by the director; or</p> <p>(6) Has violated a provision of this chapter or a rule promulgated pursuant to this chapter.</p> <p>2. When the director has knowledge of cause to discipline a peace officer license pursuant to this section, the director may cause a complaint to be filed with the administrative hearing commission, which shall conduct a hearing to determine whether the director has cause for discipline, and which shall issue findings of fact and conclusions of law on the matter. The administrative hearing commission shall not consider the relative severity of the cause for discipline or any rehabilitation of the licensee or otherwise impinge upon the discretion of the director to determine appropriate discipline when cause exists pursuant to this section.</p> <p>3. Upon a finding by the administrative hearing commission that cause to discipline exists, the director shall, within thirty days, hold a hearing to determine the form of discipline to be imposed and thereafter shall probate, suspend, or permanently revoke the license at issue. If the licensee fails to appear at the director's hearing, this shall constitute a waiver of the right to such hearing.</p> <p>4. Notice of any hearing pursuant to this chapter or section may be made by certified mail to the licensee's address of record pursuant to subdivision (2) of subsection 3 of § 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver such certified mail shall be evidence that required notice has been given. Notice may be given by publication.</p> <p>5. Nothing contained in this section shall prevent a licensee from informally disposing of a cause for discipline with the consent of the director by voluntarily surrendering a license or by voluntarily submitting to discipline.</p> <p>6. The provisions of chapter 621, RSMo, and any amendments thereto, except those provisions or amendments that are in conflict</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>Missouri</i>)</p>	<p>with this chapter, shall apply to and govern the proceedings of the administrative hearing commission and pursuant to this section the rights and duties of the parties involved.</p> <p>MO. ANN. STAT. § 590.090 (West 2008). <u>Peace Officers, Selection, Training and Discipline.</u> <u>Cause for suspension.</u></p> <p>1. The director shall have cause to suspend immediately the peace officer license of any licensee who:</p> <ul style="list-style-type: none"><li>(1) Is under indictment for, is charged with, or has been convicted of the commission of any felony;</li><li>(2) Is subject to an order of another state, territory, the federal government, or any peace officer licensing authority suspending or revoking a peace officer license or certification; or</li><li>(3) Presents a clear and present danger to the public health or safety if commissioned as a peace officer.</li></ul> <p>2. At any time after the filing of a disciplinary complaint pursuant to § 590.080, if the director determines that probable cause exists to suspend immediately the peace officer license of the subject of the complaint, the director may, without notice or hearing, issue an emergency order suspending such license until final determination of the disciplinary complaint. Such order shall state the probable cause for the suspension and shall be served upon the licensee by certified mail at the licensee's address of record pursuant to subdivision (2) of subsection 3 of § 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver such certified mail shall be evidence that required notice has been given. The director shall also notify the chief executive officer of any law enforcement agency currently commissioning the officer. The director shall have authority to dissolve an emergency order of suspension at any time for any reason.</p> <p>3. A licensee subject to an emergency order of suspension may petition the administrative hearing commission for review of the director's determination of probable cause, in which case the administrative hearing commission shall within five business days conduct an emergency hearing, render its decision, and issue findings of fact and conclusions of law. Sworn affidavits or depositions shall be admissible on the issue of probable cause and may be held sufficient to establish probable cause. The administrative hearing commission shall have no authority to stay or terminate an emergency order of suspension without a hearing pursuant to this subsection. Findings and conclusions made in determining probable cause for an emergency suspension shall not be binding on any party in any proceeding pursuant to § 590.080.</p> <p>4. Any party aggrieved by a decision of the administrative hearing commission pursuant to this section may appeal to the circuit court of Cole County as provided in § 536.100, RSMo.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> <i>(Missouri)</i></p>	<p>MO. ANN. STAT. § 556.061 (West 2008). <u>Preliminary Provisions (Criminal Code)</u> <u>Code definitions.</u></p> <p>In this code, unless the context requires a different definition, the following shall apply:</p> <p>(23) “Public servant” means any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;</p>
<p><b>Procedure</b> <i>(Missouri)</i></p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> <i>(Missouri)</i></p>	<p>MO. ANN. STAT. § 576.040 (West 2008). <u>Official misconduct.</u></p> <p>2. Official misconduct is a class A misdemeanor.</p> <p>MO. ANN. STAT. § 576.050 (West 2008). <u>Misuse of official information.</u></p> <p>3. Misuse of official information is a class A misdemeanor.</p> <p>MO. ANN. STAT. § 560.016 (West 2008). <u>Fines for misdemeanors and infractions.</u></p> <p>1. Except as otherwise provided for an offense outside this code, a person who has been convicted of a misdemeanor or infraction may be sentenced to pay a fine which does not exceed:</p> <p style="padding-left: 40px;">(1) For a class A misdemeanor, one thousand dollars;</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> <i>(Missouri)</i></p>	<p>2. In lieu of a fine imposed under subsection 1, a person who has been convicted of a misdemeanor or infraction through which he derived "gain" as defined in section 560.011, may be sentenced to a fine which does not exceed double the amount of gain from the commission of the offense. An individual offender may be fined not more than twenty thousand dollars under this provision.</p> <p>MO. ANN. STAT. § 558.011 (West 2008). <u>Sentence of imprisonment, terms--conditional release.</u></p> <p>1. The authorized terms of imprisonment, including both prison and conditional release terms, are:</p> <ul style="list-style-type: none"><li>(5) For a class A misdemeanor, a term not to exceed one year;</li><li>(2) A sentence of imprisonment for a misdemeanor shall be for a definite term and the court shall commit the person to the county jail or other authorized penal institution for the term of his or her sentence or until released under procedure established elsewhere by law.</li></ul>
<p><b>Administrative Penalty</b> <i>(Missouri)</i></p>	<p>MO. ANN. STAT. § 590.080 (West 2008). <u>Peace Officers, Selection, Training and Discipline.</u> <u>Cause for discipline.</u></p> <p>1. The director shall have cause to discipline any peace officer licensee who:</p> <ul style="list-style-type: none"><li>(1) Is unable to perform the functions of a peace officer with reasonable competency or reasonable safety as a result of a mental condition, including alcohol or substance abuse;</li><li>(2) Has committed any criminal offense, whether or not a criminal charge has been filed;</li><li>(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person;</li><li>(4) Has caused a material fact to be misrepresented for the purpose of obtaining or retaining a peace officer commission or any license issued pursuant to this chapter;</li></ul>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Missouri)</i></p>	<p>(5) Has violated a condition of any order of probation lawfully issued by the director; or</p> <p>(6) Has violated a provision of this chapter or a rule promulgated pursuant to this chapter.</p> <p>2. When the director has knowledge of cause to discipline a peace officer license pursuant to this section, the director may cause a complaint to be filed with the administrative hearing commission, which shall conduct a hearing to determine whether the director has cause for discipline, and which shall issue findings of fact and conclusions of law on the matter. The administrative hearing commission shall not consider the relative severity of the cause for discipline or any rehabilitation of the licensee or otherwise impinge upon the discretion of the director to determine appropriate discipline when cause exists pursuant to this section.</p> <p>3. Upon a finding by the administrative hearing commission that cause to discipline exists, the director shall, within thirty days, hold a hearing to determine the form of discipline to be imposed and thereafter shall probate, suspend, or permanently revoke the license at issue. If the licensee fails to appear at the director's hearing, this shall constitute a waiver of the right to such hearing.</p> <p>4. Notice of any hearing pursuant to this chapter or section may be made by certified mail to the licensee's address of record pursuant to subdivision (2) of subsection 3 of § 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver such certified mail shall be evidence that required notice has been given. Notice may be given by publication.</p> <p>5. Nothing contained in this section shall prevent a licensee from informally disposing of a cause for discipline with the consent of the director by voluntarily surrendering a license or by voluntarily submitting to discipline.</p> <p>6. The provisions of chapter 621, RSMo, and any amendments thereto, except those provisions or amendments that are in conflict with this chapter, shall apply to and govern the proceedings of the administrative hearing commission and pursuant to this section the rights and duties of the parties involved.</p> <p>MO. ANN. STAT. § 590.090 (West 2008). <u>Peace Officers, Selection, Training and Discipline.</u> <u>Cause for suspension.</u></p> <p>1. The director shall have cause to suspend immediately the peace officer license of any licensee who:</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Missouri)</i></p>	<p>(1) Is under indictment for, is charged with, or has been convicted of the commission of any felony;</p> <p>(2) Is subject to an order of another state, territory, the federal government, or any peace officer licensing authority suspending or revoking a peace officer license or certification; or</p> <p>(3) Presents a clear and present danger to the public health or safety if commissioned as a peace officer.</p> <p>2. At any time after the filing of a disciplinary complaint pursuant to § 590.080, if the director determines that probable cause exists to suspend immediately the peace officer license of the subject of the complaint, the director may, without notice or hearing, issue an emergency order suspending such license until final determination of the disciplinary complaint. Such order shall state the probable cause for the suspension and shall be served upon the licensee by certified mail at the licensee's address of record pursuant to subdivision (2) of subsection 3 of § 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver such certified mail shall be evidence that required notice has been given. The director shall also notify the chief executive officer of any law enforcement agency currently commissioning the officer. The director shall have authority to dissolve an emergency order of suspension at any time for any reason.</p> <p>3. A licensee subject to an emergency order of suspension may petition the administrative hearing commission for review of the director's determination of probable cause, in which case the administrative hearing commission shall within five business days conduct an emergency hearing, render its decision, and issue findings of fact and conclusions of law. Sworn affidavits or depositions shall be admissible on the issue of probable cause and may be held sufficient to establish probable cause. The administrative hearing commission shall have no authority to stay or terminate an emergency order of suspension without a hearing pursuant to this subsection. Findings and conclusions made in determining probable cause for an emergency suspension shall not be binding on any party in any proceeding pursuant to § 590.080.</p> <p>4. Any party aggrieved by a decision of the administrative hearing commission pursuant to this section may appeal to the circuit court of Cole County as provided in § 536.100, RSMo.</p>
<p><b>Montana</b></p>	
<p><b>Statute</b> <i>(Montana)</i></p>	<p>MONT. CODE ANN. § 45-7-401 (2008). <u>Official misconduct.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>Montana</i>)</p>	<p>(1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:</p> <ul style="list-style-type: none"> <li>(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;</li> <li>(b) knowingly performs an act in his official capacity which he knows is forbidden by law;</li> <li>(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;</li> <li>(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or</li> <li>(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.</li> </ul> <p>(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.</p>
<p><b>Definitions</b> (<i>Montana</i>)</p>	<p>N/A.</p>
<p><b>Procedure</b> (<i>Montana</i>)</p>	<p>MONT. CODE ANN. § 45-7-401 (2008). <u>Official misconduct.</u></p> <p>(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.</p>
<p><b>Criminal Penalty</b> (<i>Montana</i>)</p>	<p>MONT. CODE ANN. § 45-7-401 (2008). <u>Official misconduct.</u></p> <p>(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.</p> <p>(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (<i>Montana</i>)</p>	<p>MONT. CODE ANN. § 45-7-401 (2008). <u>Official misconduct.</u></p> <p>(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.</p>
<p><b>Nebraska</b></p>	
<p><b>Statute</b> (<i>Nebraska</i>)</p>	<p>NEB. REV. STAT. ANN. § 28-924 (West 2008). <u>Official misconduct; penalty.</u></p> <p>(1) A public servant commits official misconduct if he knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties.</p> <p>NEB. REV. STAT. ANN. § 28-911 (West 2008). <u>Abuse of public records; penalty; public record, defined.</u></p> <p>(1) A person commits abuse of public records, if:</p> <ul style="list-style-type: none"> <li>(a) He knowingly makes a false entry in or falsely alters any public record; or</li> <li>(b) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or</li> <li>(c) Knowing he lacks the authority to retain the record, he refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such record; or</li> <li>(d) He makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.</li> </ul> <p>NEB. REV. STAT. ANN. § 28-926 (West 2008).<sup>14</sup> <u>Oppression under color of office; penalty.</u></p> <p>(1) Any public servant or peace officer who, by color of or in the execution of his office, shall designedly, willfully, or corruptly injure, deceive, harm, or oppress any person, or shall attempt to injure, deceive, harm, or oppress any person, commits oppression</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Statute Cont'd</b> <i>(Nebraska)</i>	under color of office, and shall be answerable to the party so injured, deceived, or harmed or oppressed in treble damages.
<b>Definitions</b> <i>(Nebraska)</i>	NEB. REV. STAT. ANN. § 28-911 (West 2008). <u>Abuse of public records; penalty; public record, defined.</u>  (2) As used in this section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.
<b>Procedure</b> <i>(Nebraska)</i>	N/A.
<b>Criminal Penalty</b> <i>(Nebraska)</i>	NEB. REV. STAT. ANN. § 28-911 (West 2008). <u>Abuse of public records; penalty; public record, defined.</u>  (4) Abuse of public records is a Class II misdemeanor.  NEB. REV. STAT. ANN. § 28-924 (West 2008). <u>Official misconduct; penalty.</u>  (2) Official misconduct is a Class II misdemeanor.  NEB. REV. STAT. ANN. § 28-925 (West 2008). <u>Misuse of official information; penalty.</u>  (2) Misuse of official information is a Class III misdemeanor.  NEB. REV. STAT. ANN. § 28-926 (West 2008). <u>Oppression under color of office; penalty.</u>  (2) Oppression under color of office is a Class II misdemeanor.

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Nebraska)</p>	<p>NEB. REV. STAT. ANN. § 28-106 (West 2008). <u>Misdemeanors; classification of penalties; sentences; where served.</u></p> <p>(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:</p> <p style="padding-left: 40px;">Class II misdemeanor ..... Maximum--six months imprisonment, or one thousand dollars fine, or both Minimum--none</p> <p style="padding-left: 40px;">Class III misdemeanor ..... Maximum--three months imprisonment, or five hundred dollars fine, or both Minimum--none</p> <p style="padding-left: 40px;">Class IIIA misdemeanor ..... Maximum--seven days imprisonment, five hundred dollars fine, or both</p> <p>(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:</p> <p style="padding-left: 40px;">(a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor;</p> <p style="padding-left: 40px;">(b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or</p> <p style="padding-left: 40px;">(c) If the Department of Correctional Services has certified as provided in § 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.</p>
<p><b>Administrative Penalty</b> (Nebraska)</p>	<p>NEB. REV. STAT. ANN. § 28-926 (West 2008). <u>Oppression under color of office; penalty.</u></p> <p>(1) Any public servant or peace officer who, by color of or in the execution of his office, shall designedly, willfully, or corruptly injure, deceive, harm, or oppress any person, or shall attempt to injure, deceive, harm, or oppress any person, commits oppression under color of office, and shall be answerable to the party so injured, deceived, or harmed or oppressed in treble damages.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Nevada</b>	
<b>Statute</b> <i>(Nevada)</i>	<p>NEV. REV. STAT. ANN. § 283.440 (West 2008).  <u>Removal of certain public officers for malfeasance or nonfeasance: Procedure; appeal.</u></p> <p>1. Any person now holding or who shall hereafter hold any office in this State, except a justice or judge of the court system, who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.</p> <p>NEV. REV. STAT. ANN. Const. Art. 7 § 2 (West 2008).  <u>Officers subject to impeachment.</u></p> <p>The Governor and other State and Judicial Officers, except Justices of the Peace shall be liable to impeachment for Misdemeanor or Malfeasance in Office; but judgment in such case shall not extend further than removal from Office and disqualification to hold any Office of honor, profit, or trust under this State. The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.</p>
<b>Definitions</b> <i>(Nevada)</i>	<p>NEV. REV. STAT. ANN. § 289.010 (West 2008).  <u>Definitions.</u></p> <p>3. “Peace officer” means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.</p> <p>4. “Punitive action” means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for purposes of punishment.</p>
<b>Procedure</b> <i>(Nevada)</i>	<p>NEV. REV. STAT. ANN. § 283.150 (West 2008).  <u>Public Employees and Officers. All impeachments tried by Senate; Senate to be sworn.</u></p> <p>All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Nevada)</p>	<p>NEV. REV. STAT. ANN. § 283.300 (West 2008). <u>Accusation against certain public officers for willful or corrupt misconduct in office: Presentment by grand jury.</u></p> <p>An accusation in writing against any district, county, township or municipal officer, except a justice or judge of the court system, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.</p> <p>NEV. REV. STAT. ANN. § 283.440 (West 2008). <u>Removal of certain public officers for malfeasance or nonfeasance: Procedure; appeal.</u></p> <p>2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:</p> <ul style="list-style-type: none"><li>(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office;</li><li>(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or</li><li>(c) Has been guilty of any malpractice or malfeasance in office,</li></ul> <p>the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.</p> <p>3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The Governor or the board of county commissioners, as the case may be, shall appoint some person to fill the office until a successor shall be elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.</p> <p>4. If the judgment of the district court is against the officer complained of and an appeal is taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of the appeal, but the office shall be filled as in case of a vacancy.</p> <p>NEV. REV. STAT. ANN. §§ 283.150 – 283.290 outline state officer impeachment proceedings.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (Nevada)</p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> (Nevada)</p>	<p>NEV. REV. STAT. ANN. § 283.440 (West 2008). <u>Removal of certain public officers for malfeasance or nonfeasance: Procedure; appeal.</u></p> <p>1. Any person now holding or who shall hereafter hold any office in this State, except a justice or judge of the court system, who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.</p> <p>NEV. REV. STAT. ANN. Const. Art. 7 § 2 (West 2008). <u>Officers subject to impeachment.</u></p> <p>The Governor and other State and Judicial Officers, except Justices of the Peace shall be liable to impeachment for Misdemeanor or Malfeasance in Office; but judgment in such case shall not extend further than removal from Office and disqualification to hold any Office of honor, profit, or trust under this State. The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.</p> <p>NEV. REV. STAT. ANN. § 283.440 (West 2008). <u>Removal of certain public officers for malfeasance or nonfeasance: Procedure; appeal.</u></p> <p>1. Any person now holding or who shall hereafter hold any office in this State, except a justice or judge of the court system, who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.</p> <p>NEV. REV. STAT. ANN. Const. Art. 7 § 2 (West 2008). <u>Officers subject to impeachment.</u></p> <p>The Governor and other State and Judicial Officers, except Justices of the Peace shall be liable to impeachment for Misdemeanor or Malfeasance in Office; but judgment in such case shall not extend further than removal from Office and disqualification to hold any Office of honor, profit, or trust under this State. The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>New Hampshire</b>	
<b>Statute</b> <i>(New Hampshire)</i>	<p>N.H. REV. STAT. ANN. § 643:1 (West 2008). <u>Official Oppression.</u></p> <p>A public servant, as defined in RSA 640:2, II, is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.</p> <p>N.H. REV. STAT. ANN. § 104:10 (West 2008). <u>Neglect of Duty.</u></p> <p>If any such officer refuses or neglects to serve a legal precept to him directed and delivered for service, his fees therefore being first tendered, or without such tender in criminal cases when the precept is indorsed by the attorney general or solicitor, or by the clerk by order of court, he shall forfeit \$50 to any person aggrieved thereby who shall sue therefore within 3 months.</p> <p>N.H. REV. STAT. ANN. § 105:2-a (West 2008). <u>Police Chiefs; Powers; Dismissal.</u></p> <p>Subject to such written formal policies as may be adopted by the appointing authority, each chief of police, superintendent of police, or city marshal of any city or town who is appointed rather than elected, shall have authority to direct and control all employees of his or her department in their normal course of duty and shall be responsible for the efficient and economical use of all department equipment. Such chief, superintendent, or city marshal shall be subject to suspension without pay or dismissal only for cause, and after he or she has been presented with a written specification of the reasons. Upon such suspension or dismissal, he or she shall be entitled to a hearing, on the merits and reasonableness of the action, in superior court in the county in which the municipality is located, provided that he or she petitions the clerk of the superior court for such a hearing within 45 days of his or her suspension or dismissal. The court shall have the power to affirm, modify, or negate such suspension or dismissal, based upon its findings.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> (<i>New Hampshire</i>)</p>	<p>N.H. REV. STAT. ANN. § 640:2 (West 2008). <u>Bribery in Official and Political Matters</u></p> <p>(a) “Public servant” means any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position. A person is a candidate for electoral office upon his public announcement of his candidacy.</p>
<p><b>Procedure</b> (<i>New Hampshire</i>)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (<i>New Hampshire</i>)</p>	<p>N.H. REV. STAT. ANN. § 104:10 (West 2008). <u>Neglect of Duty.</u></p> <p>If any such officer refuses or neglects to serve a legal precept to him directed and delivered for service, his fees therefor being first tendered, or without such tender in criminal cases when the precept is indorsed by the attorney general or solicitor, or by the clerk by order of court, he shall forfeit \$50 to any person aggrieved thereby who shall sue therefor within 3 months.</p> <p>N.H. REV. STAT. ANN. § 651:2 (West 2008). <u>Sentences and Limitations.</u></p> <p>I. A person convicted of a felony or a Class A misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional discharge, or a fine.</p> <p style="padding-left: 40px;">(c) One year for a class A misdemeanor,</p> <p>III. A person convicted of a class B misdemeanor may be sentenced to conditional or unconditional discharge, a fine, or other sanctions, which shall not include incarceration or probation but may include monitoring by the department of corrections if deemed necessary and appropriate.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (<i>New Hampshire</i>)</p>	<p>N.H. REV. STAT. ANN. § 105:2-a (West 2008). <u>Police Chiefs; Powers; Dismissal.</u></p> <p>Subject to such written formal policies as may be adopted by the appointing authority, each chief of police, superintendent of police, or city marshal of any city or town who is appointed rather than elected, shall have authority to direct and control all employees of his or her department in their normal course of duty and shall be responsible for the efficient and economical use of all department equipment. Such chief, superintendent, or city marshal shall be subject to suspension without pay or dismissal only for cause, and after he or she has been presented with a written specification of the reasons. Upon such suspension or dismissal, he or she shall be entitled to a hearing, on the merits and reasonableness of the action, in superior court in the county in which the municipality is located, provided that he or she petitions the clerk of the superior court for such a hearing within 45 days of his or her suspension or dismissal. The court shall have the power to affirm, modify, or negate such suspension or dismissal, based upon its findings.</p>
<p><b>New Jersey</b></p>	
<p><b>Statute</b> (<i>New Jersey</i>)</p>	<p>N.J. STAT. ANN. § 2C:30-2 (West 2008).<sup>15</sup> <u>Official misconduct.</u></p> <p>A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:</p> <ul style="list-style-type: none"> <li>a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or</li> <li>b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.</li> </ul> <p>N.J. STAT. ANN. § 2C:30-6 (West 2008). <u>Official deprivation of civil rights.</u></p> <p>a. A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if,</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Statute Cont'd</b> <i>(New Jersey)</i>	knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity.  N.J. STAT. ANN. § 2C:30-7 (West 2008). <u>Pattern of official misconduct.</u>  a. A person commits the crime of pattern of official misconduct if he commits two or more acts that violate the provisions of N.J.S.2C:30-2 or section 2 of P.L.2003, c. 31 (C.2C:30-6). It shall not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.
<b>Definitions</b> <i>(New Jersey)</i>	N/A.
<b>Procedure</b> <i>(New Jersey)</i>	N/A.

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (New Jersey)</p>	<p>N.J. STAT. ANN. § 2C:30-2 (West 2008). <u>Official misconduct.</u></p> <p>Official misconduct is a crime of the second degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of \$200.00 or less, the offense of official misconduct is a crime of the third degree.</p> <p>N.J. STAT. ANN. § 2C:30-6 (West 2008). <u>Official deprivation of civil rights.</u></p> <p>b. (1) Except as provided in paragraphs (2) and (3) of this subsection, a public servant who violates the provisions of subsection a. of this section is guilty of a crime of the third degree.</p> <p>(2) If bodily injury results from depriving a person of a right or privilege in violation of subsection a. of this section, the public servant is guilty of a crime of the second degree.</p> <p>(3) If, during the course of violating the provisions of this section, a public servant commits or attempts or conspires to commit murder, manslaughter, kidnapping or aggravated sexual assault against a person who is being deprived of a right or privilege in violation of subsection a. of this section, the public servant is guilty of a crime of the first degree.</p> <p>c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction of official deprivation of civil rights under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense.</p> <p>d. Proof that a public servant made a false statement, prepared a false report, or, if the agency that employs the public servant, the Attorney General or the county prosecutor having supervisory authority over the agency required a report to be prepared, failed to prepare a report concerning the conduct that is the subject of the prosecution, shall give rise to an inference that the actor knew his conduct was unlawful.</p> <p>e. For purposes of this section, an act is unlawful if it violates the Constitution of the United States or the Constitution of this State, or if it constitutes a criminal offense under the laws of this State.</p> <p>N.J. STAT. ANN. § 2C:30-7 (West 2008). <u>Pattern of official misconduct.</u></p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (New Jersey)</p>	<p>b. Pattern of official misconduct is a crime of the second degree if one of the acts committed by the defendant is a first or second degree crime; otherwise, it is a crime of the third degree, provided, however, that the presumption of nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern of official misconduct shall not merge with a conviction of official misconduct, official deprivation of civil rights, or any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of N.J.S.2C:30-2 and sections 2 and 3 of P.L.2003, c. 31 (C.2C:30-6 and C.2C:30-7).</p> <p>N.J. STAT. ANN. § 2C:43-6.5 (West 2008). <u>Offenses by public officers or employees; mandatory minimum term of imprisonment for crimes that involve or touch upon the public office or employment.</u></p> <p>a. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6 and except as otherwise provided in subsection c. of this section, a person who serves or has served as a public officer or employee under the government of this State, or any political subdivision thereof, who is convicted of a crime that involves or touches such office or employment as set forth in subsection b. of this section, shall be sentenced to a mandatory minimum term of imprisonment without eligibility for parole as follows: for a crime of the fourth degree, the mandatory minimum term shall be one year; for a crime of the third degree, two years; for a crime of the second degree, five years; and for a crime of the first degree, 10 years; unless the provisions of any other law provide for a higher mandatory minimum term. As used in this subsection, “a crime that involves or touches such office or employment” means that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person.</p> <p>b. Subsection a. of this section applies to a conviction of any of the following crimes:</p> <ol style="list-style-type: none"><li>(1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal coercion;</li><li>(2) N.J.S.2C:20-4, theft by deception, if the amount involved exceeds \$10,000;</li><li>(3) Subsection d. of N.J.S.2C:20-5, theft by extortion;</li><li>(4) N.J.S.2C:20-9, theft by failure to make required disposition of property received, if the amount involved exceeds \$10,000;</li><li>(5) N.J.S.2C:21-10, commercial bribery;</li><li>(6) Section 3 of P.L.1994, c. 121 (C.2C:21-25), money laundering;</li><li>(7) Section 97 of P.L.1999, c. 440 (C.2C:21-34), false contract payment claims;</li><li>(8) N.J.S.2C:27-2, bribery in official matters;</li><li>(9) N.J.S.2C:27-3, threats and other improper influence in official and political matters;</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (New Jersey)</p>	<p>(10) Section 100 of P.L.1999, c. 440 (C.2C:27-9), unlawful official business transaction where interest is involved;</p> <p>(11) Section 5 of P.L.2003, c. 255 (C.2C:27-10), acceptance or receipt of unlawful benefit by public servant for official behavior;</p> <p>(12) Section 6 of P.L.2003, c. 255 (C.2C:27-11), offer of unlawful benefit to public servant for official behavior;</p> <p>(13) N.J.S.2C:28-1, perjury;</p> <p>(14) N.J.S.2C:28-5, tampering with witnesses;</p> <p>(15) N.J.S.2C:28-7, tampering with public records or information;</p> <p>(16) N.J.S.2C:29-4, compounding;</p> <p>(17) N.J.S.2C:30-2, official misconduct;</p> <p>(18) N.J.S.2C:30-3, speculating or wagering on official action or information; or</p> <p>(19) Section 3 of P.L.2003, c. 31 (C.2C:30-7), pattern of official misconduct.</p> <p>c. (1) On motion by the prosecutor stating that the defendant has provided substantial assistance in a criminal investigation or prosecution of another person, the court may waive or reduce the mandatory minimum term of imprisonment required by subsection a. of this section. The appropriate waiver or reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:</p> <ul style="list-style-type: none"><li>(i) the court's evaluation of the significance and usefulness of the defendant's assistance, giving substantial weight to the prosecutor's evaluation of the assistance rendered;</li><li>(ii) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;</li><li>(iii) the nature and extent of the defendant's assistance;</li><li>(iv) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;</li><li>(v) the timeliness of the defendant's assistance.</li></ul> <p>In making such a determination, the court shall give substantial weight to the prosecutor's evaluation of the extent of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.</p> <p>(2) If the court finds by clear and convincing evidence that extraordinary circumstances exist such that imposition of a mandatory minimum term would be a serious injustice which overrides the need to deter such conduct in others, the court may waive or reduce the mandatory minimum term of imprisonment required by subsection a. of this section. In making any such finding, the court must state with specificity its reasons for waiving or reducing the mandatory minimum sentence that would otherwise apply.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> <i>(New Jersey)</i></p>	<p>(3) If, pursuant to paragraph (1) or (2) of this subsection, the court waives or reduces the mandatory minimum term required by subsection a. of this section, such sentence shall not become final for 10 days in order to permit the appeal of the sentence by the prosecution.</p> <p>d. (1) A prosecutor shall not recommend the admission into or consent to the referral to a pretrial intervention program of a person who serves or has served as a public officer or employee under the government of this State, or any political subdivision thereof, who is charged with a crime that involves or touches such office or employment as set forth in subsection b. of this section, without the prior approval of the Attorney General.</p> <p>(2) A person who serves or has served as a public officer or employee under the government of this State, or any political subdivision thereof, who is convicted of a crime that involves or touches such office or employment as set forth in subsection b. of this section shall be ineligible for participation in any program of intensive supervision during any period of parole ineligibility.</p> <p>e. The Attorney General shall develop guidelines to ensure the uniform exercise of discretion in making determinations regarding the waiver or reduction of a mandatory minimum term of imprisonment pursuant to paragraph (1) of subsection c. of this section and participation in a pretrial intervention program pursuant to paragraph (1) of subsection d. of this section.</p>
<p><b>Administrative Penalty</b> <i>(New Jersey)</i></p>	<p>N/A.</p>
<p><b>New Mexico</b></p>	
<p><b>Statute</b> <i>(New Mexico)</i></p>	<p>N.M. STAT. ANN. § 10-17-12 (West 2008). <u>Public officers and employees. Malfeasance; penalty.</u></p> <p>When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor, punishable by imprisonment in the county jail for not less than ten nor more than sixty days or by a fine of not less than \$100, nor more than \$500.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>New Mexico</i>)</p>	<p>N.M. STAT. ANN. § 10-16-3 (West 2008). <u>Ethical principles of public service; certain official acts prohibited; penalty.</u></p> <p>A. A legislator, public officer or employee shall treat the legislator's, public officer's or employee's government position as a public trust. The legislator, public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.</p> <p>B. Legislators, public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.</p> <p>C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.</p> <p>N.M. STAT. ANN. § 10-4-1 (West 2008). <u>Local officers subject to removal.</u></p> <p>Any county, precinct, district, city, town or village officer elected by the people, and any officer appointed to fill out the unexpired term of any such officer, may be removed from office on any of the grounds mentioned in this chapter<sup>16</sup> and according to the provision hereof.</p>
<p><b>Definitions</b> (<i>New Mexico</i>)</p>	<p>N/A.</p>
<p><b>Procedure</b> (<i>New Mexico</i>)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (<i>New Mexico</i>)</p>	<p>N.M. STAT. ANN. § 10-17-12 (West 2008). <u>Public officers and employees. Malfeasance; penalty.</u></p> <p>When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor, punishable by imprisonment in the county jail for not less than ten nor more than</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> <i>(New Mexico)</i></p>	<p>sixty days or by a fine of not less than \$100, nor more than \$500.</p> <p>N.M. STAT. ANN. § 10-16-3 (West 2008). <u>Ethical principles of public service; certain official acts prohibited; penalty.</u></p> <p>D. No legislator, public officer or employee may request or receive, and no person may offer a legislator, public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.</p> <p>N.M. STAT. ANN. § 31-18-15 (West 2008). <u>Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions.</u></p> <p>A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:     (10) for a fourth degree felony, eighteen months imprisonment.</p> <p>B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.</p> <p>C. The court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of the Criminal Sentencing Act.</p> <p>D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (<i>New Mexico</i>)</p>	<p>period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.</p> <p>E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed: (9) for a third or fourth degree felony, five thousand dollars (\$5,000).</p>
<p><b>Administrative Penalty</b> (<i>New Mexico</i>)</p>	<p>N.M. STAT. ANN. § 10-4-1 (West 2008). <u>Local officers subject to removal.</u></p> <p>Any county, precinct, district, city, town or village officer elected by the people, and any officer appointed to fill out the unexpired term of any such officer, may be removed from office on any of the grounds mentioned in this chapter<sup>17</sup> and according to the provision hereof.</p>
<p><b>New York</b></p>	
<p><b>Statute</b> (<i>New York</i>)</p>	<p>N.Y. PENAL LAW § 195.00 (West 2008). <u>Official misconduct.</u></p> <p>A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:</p> <ol style="list-style-type: none"> <li>1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or</li> <li>2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.</li> </ol> <p>N.Y. PENAL LAW § 195.05 (West 2008). <u>Obstructing governmental administration in the second degree.</u></p> <p>A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (New York)</p>	<p>systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.</p>
<p><b>Definitions</b> (New York)</p>	<p>N.Y. PENAL LAW § 10.00 (West 2008). <u>Definitions of terms of general use in this chapter.</u></p> <p>15. "Public servant" means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.</p> <p>17. "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.</p>
<p><b>Procedure</b> (New York)</p>	<p>N.Y. PENAL LAW § 75 (West 2008). <u>Removal and other disciplinary action.</u></p> <p>2. Procedure.</p> <p>3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. Pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.</p> <p>4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (New York)</p>	<p>N.Y. PENAL LAW § 195.00 (West 2008). <u>Official misconduct.</u></p> <p>Official misconduct is a class A misdemeanor.</p> <p>N.Y. PENAL LAW § 195.05 (West 2008). <u>Obstructing governmental administration in the second degree.</u></p> <p>Obstructing governmental administration is a class A misdemeanor.</p> <p>N.Y. PENAL LAW § 70.15 (West 2008). <u>Sentences of imprisonment for misdemeanors and violation.</u></p> <p>1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.</p> <p>N.Y. PENAL LAW § 80.05 (West 2008). <u>Fines for misdemeanors and violation.</u></p> <p>1. Class A misdemeanor. A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (New York)</p>	<p>N.Y. PENAL LAW § 75 (West 2008). <u>Removal and other disciplinary action.</u></p> <p>1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.</p> <p>(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or</p> <p>(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or</p> <p>(c) an employee holding a position in the non-competitive class other than a position designated in the rules of the state or municipal civil service commission as confidential or requiring the performance of functions influencing policy, who since his last entry into service has completed at least five years of continuous service in the non-competitive class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or</p> <p>(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or</p> <p>(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>North Carolina</b>	
<b>Statute</b> <i>(North Carolina)</i>	<p>N.C. GEN. STAT. ANN. § 14-230 (West 2008).<sup>18</sup>  <u>Misconduct in Public Office. Willfully failing to discharge duties.</u></p> <p>If any clerk of any court of record, sheriff, magistrate, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.</p>
<b>Definitions</b> <i>(North Carolina)</i>	N/A.
<b>Procedure</b> <i>(North Carolina)</i>	N/A.
<b>Criminal Penalty</b> <i>(North Carolina)</i>	<p>N.C. GEN. STAT. ANN. § 15A-1340.23 (West 2008).  Punishment limits for each class of offense and prior conviction level.</p> <p>(a) <b>Offense Classification; Default Classifications.</b>--The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in <a href="#">G.S. 14-3</a>.</p> <p>(b) <b>Fines.</b>--Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars (\$200.00) for a Class 3 misdemeanor and one thousand dollars (\$1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.</p> <p>(c) <b>Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described.</b>--Unless otherwise provided</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Criminal Penalty Cont'd</b> <i>(North Carolina)</i>	<p>for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:</p> <p>1) A sentence disposition or dispositions: “C” indicates that a community punishment is authorized; “I” indicates that an intermediate punishment is authorized; and “A” indicates that an active punishment is authorized; and</p> <p>2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th colspan="4" style="text-align: center; padding: 5px;">PRIOR CONVICTION LEVELS</th> </tr> <tr> <th style="text-align: center; padding: 5px;">MISDEMEANOR</th> <th colspan="3"></th> </tr> <tr> <th style="text-align: center; padding: 5px;">OFFENSE</th> <th style="text-align: center; padding: 5px;">LEVEL I</th> <th style="text-align: center; padding: 5px;">LEVEL II</th> <th style="text-align: center; padding: 5px;">LEVEL III</th> </tr> <tr> <th style="text-align: center; padding: 5px;">CLASS</th> <th style="text-align: center; padding: 5px;">No Prior</th> <th style="text-align: center; padding: 5px;">One to Four Prior</th> <th style="text-align: center; padding: 5px;">Five or More</th> </tr> <tr> <td></td> <th style="text-align: center; padding: 5px;">Convictions</th> <th style="text-align: center; padding: 5px;">Convictions</th> <th style="text-align: center; padding: 5px;">Prior Convictions</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">A1</td> <td style="text-align: center; padding: 5px;">1-60 days C/I/A</td> <td style="text-align: center; padding: 5px;">1-75 days C/I/A</td> <td style="text-align: center; padding: 5px;">1-150 days C/I/A</td> </tr> <tr> <td style="text-align: center; padding: 5px;">1</td> <td style="text-align: center; padding: 5px;">1-45 days C</td> <td style="text-align: center; padding: 5px;">1-45 days C/I/A</td> <td style="text-align: center; padding: 5px;">1-120 days C/I/A</td> </tr> <tr> <td style="text-align: center; padding: 5px;">2</td> <td style="text-align: center; padding: 5px;">1-30 days C</td> <td style="text-align: center; padding: 5px;">1-45 days C/I</td> <td style="text-align: center; padding: 5px;">1-60 days C/I/A</td> </tr> <tr> <td style="text-align: center; padding: 5px;">3</td> <td style="text-align: center; padding: 5px;">1-10 days C</td> <td style="text-align: center; padding: 5px;">1-15 days C/I</td> <td style="text-align: center; padding: 5px;">1-20 days C/I/A.</td> </tr> </tbody> </table>	PRIOR CONVICTION LEVELS				MISDEMEANOR				OFFENSE	LEVEL I	LEVEL II	LEVEL III	CLASS	No Prior	One to Four Prior	Five or More		Convictions	Convictions	Prior Convictions	A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A	1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A	2	1-30 days C	1-45 days C/I	1-60 days C/I/A	3	1-10 days C	1-15 days C/I	1-20 days C/I/A.
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>North Dakota</b>	
<b>Statute</b> <i>(North Dakota)</i>	<p>N.D. CENT. CODE § 12.1-11-06 (West 2008).  <u>Public servant refusing to perform duty.</u></p> <p>Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.</p> <p>N.D. CENT. CODE § 44-10-02 (West 2008).  <u>Accusation by grand jury--Causes for removal<sup>19</sup>.</u></p> <p>An accusation in writing against any district, county, township, city, or municipal officer, school board member, or any state officer not liable to impeachment, except a representative in Congress and a member of the legislative assembly, for misconduct, malfeasance, crime, or misdemeanor in office, or for habitual drunkenness or gross incompetency, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed. When the proceedings are against a state officer not liable to impeachment, the accusation may be presented by the grand jury of the county in which the officer resides or in which the officer has an office for the transaction of official business.</p>
<b>Definitions</b> <i>(North Dakota)</i>	<p>N.D. CENT. CODE § 12.1-01-04 (West 2008).  <u>Criminal Code.</u>  <u>General definitions.</u></p> <p>27. “Public servant” as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.</p>
<b>Procedure</b> <i>(North Dakota)</i>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (North Dakota)</p>	<p>N.D. CENT. CODE § 12.1-32-01 (West 2008). <u>Classification of offenses—Penalties.</u></p> <p>5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.</p>
<p><b>Administrative Penalty</b> (North Dakota)</p>	<p>N.D. CENT. CODE § 44-10-02 (West 2008). <u>Accusation by grand jury--Causes for removal.</u></p> <p>An accusation in writing against any district, county, township, city, or municipal officer, school board member, or any state officer not liable to impeachment, except a representative in Congress and a member of the legislative assembly, for misconduct, malfeasance, crime, or misdemeanor in office, or for habitual drunkenness or gross incompetency, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed. When the proceedings are against a state officer not liable to impeachment, the accusation may be presented by the grand jury of the county in which the officer resides or in which the officer has an office for the transaction of official business.</p>
<p><b>Ohio</b></p>	
<p><b>Statute</b> (Ohio)</p>	<p>OHIO REV. CODE ANN. § 2921.44 (West 2008). <u>Dereliction of duty.</u></p> <p>(A) No law enforcement officer shall negligently do any of the following:              (1) Fail to serve a lawful warrant without delay;              (2) Fail to prevent or halt the commission of an offense or to apprehend an offender, when it is in his power to do so alone or with available assistance.</p> <p>(B) No law enforcement, ministerial, or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.</p> <p>(C) No officer, having charge of a detention facility, shall negligently do any of the following:              (1) Allow the detention facility to become littered or unsanitary;</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Ohio)</p>	<p>(2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter, and medical attention;</p> <p>(3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;</p> <p>(4) Allow a prisoner to escape;</p> <p>(5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.</p> <p>(D) No public official of the state shall recklessly create a deficiency, incur a liability, or expend a greater sum than is appropriated by the general assembly for the use in any one year of the department, agency, or institution of the state with which the public official is connected.</p> <p>(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to his office, or recklessly do any act expressly forbidden by law with respect to his office.</p> <p>(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.</p> <p>OHIO REV. CODE ANN. § 124.34 (West 2008). <u>Tenure of office; felony convictions; reduction, suspension, and removal; appeal.</u></p> <p>(A) The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. No officer or employee shall be reduced in pay or position, fined, suspended, or removed, or have the officer's or employee's longevity reduced or eliminated, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. The denial of a one-time pay supplement or a bonus to an officer or employee is not a reduction in pay for purposes of this section.</p> <p>This section does not apply to any modifications or reductions in pay authorized by section 124.392 of the Revised Code.</p> <p>An appointing authority may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's regular rate of pay for hours worked. The</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Ohio)</p>	<p>disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary actions and has the same effect as a suspension without pay for the purpose of recording disciplinary actions.</p> <p>A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint under section 102.06 of the Revised Code constitute a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by section 102.02 of the Revised Code may also constitute grounds for dismissal. The tenure of an employee in the career professional service of the department of transportation is subject to section 5501.20 of the Revised Code.</p> <p>Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an officer or employee, even if the officer or employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. An officer or employee may not appeal to the state personnel board of review or the commission any disciplinary action taken by an appointing authority as a result of the officer's or employee's conviction of a felony. If an officer or employee removed under this section is reinstated as a result of an appeal of the removal, any conviction of a felony that occurs during the pendency of the appeal is a basis for further disciplinary action under this section upon the officer's or employee's reinstatement.</p> <p>A person convicted of a felony immediately forfeits the person's status as a classified employee in any public employment on and after the date of the conviction for the felony. If an officer or employee is removed under this section as a result of being convicted of a felony or is subsequently convicted of a felony that involves the same conduct that was the basis for the removal, the officer or employee is barred from receiving any compensation after the removal notwithstanding any modification or disaffirmance of the removal, unless the conviction for the felony is subsequently reversed or annulled.</p> <p>Any person removed for conviction of a felony is entitled to a cash payment for any accrued but unused sick, personal, and vacation leave as authorized by law. If subsequently reemployed in the public sector, the person shall qualify for and accrue these forms of leave in the manner specified by law for a newly appointed employee and shall not be credited with prior public service for the purpose of receiving these forms of leave.</p> <p>As used in this division, "felony" means any of the following:</p> <ol style="list-style-type: none"><li>(1) A felony that is an offense of violence as defined in section 2901.01 of the Revised Code;</li><li>(2) A felony that is a felony drug abuse offense as defined in section 2925.01 of the Revised Code;</li><li>(3) A felony under the laws of this or any other state or the United States that is a crime of moral turpitude;</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Ohio)</p>	<p>(4) A felony involving dishonesty, fraud, or theft;</p> <p>(5) A felony that is a violation of section 2921.05, 2921.32, or 2921.42 of the Revised Code.</p> <p>(B) In case of a reduction, a suspension of forty or more work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of twenty-four or more work hours in the case of an employee required to be paid overtime compensation, a fine of forty or more hours' pay in the case of an employee exempt from the payment of overtime compensation, a fine of twenty-four or more hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action.</p> <p>Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state personnel board of review or the commission. For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. If an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the board or commission. The board, commission, or trial board may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal of a removal order based upon a violation of a last chance agreement, the board, commission, or trial board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority.</p> <p>In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission, and any such appeal shall be to the court of common pleas of the county in which the appointing authority is located, or to the court of common pleas of Franklin county, as provided by section 119.12 of the Revised Code.</p> <p>(C) In the case of the suspension for any period of time, or a fine, demotion, or removal, of a chief of police, a chief of a fire department, or any member of the police or fire department of a city or civil service township, who is in the classified civil service, the appointing authority shall furnish the chief or member with a copy of the order of suspension, fine, demotion, or removal, which order shall state the reasons for the action. The order shall be filed with the municipal or civil service township civil service commission. Within ten days following the filing of the order, the chief or member may file an appeal, in writing, with the commission. If an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Ohio)</p>	<p>board to hear, the appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority. An appeal on questions of law and fact may be had from the decision of the commission to the court of common pleas in the county in which the city or civil service township is situated. The appeal shall be taken within thirty days from the finding of the commission.</p> <p>(D) A violation of division (A)(7) of section 2907.03 of the Revised Code is grounds for termination of employment of a nonteaching employee under this section.</p> <p>(E) As used in this section, “last chance agreement” means an agreement signed by both an appointing authority and an officer or employee of the appointing authority that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the officer or employee without the right of appeal to the state personnel board of review or the appropriate commission.</p>
<p><b>Definitions</b> (Ohio)</p>	<p>OHIO REV. CODE ANN. § 124.34 (West 2008). <u>Tenure of office; felony convictions; reduction, suspension, and removal; appeal.</u></p> <p>As used in this division, “felony” means any of the following:</p> <ol style="list-style-type: none"> <li>(1) A felony that is an offense of violence as defined in § 2901.01 of the Revised Code;</li> <li>(2) A felony that is a felony drug abuse offense as defined in § 2925.01 of the Revised Code;</li> <li>(3) A felony under the laws of this or any other state or the United States that is a crime of moral turpitude;</li> <li>(4) A felony involving dishonesty, fraud, or theft;</li> <li>(5) A felony that is a violation of § 2921.05, 2921.32, or 2921.42 of the Revised Code.</li> </ol>
<p><b>Procedure</b> (Ohio)</p>	<p>OHIO REV. CODE ANN. § 124.34 (West 2008). <u>Tenure of office; felony convictions; reduction, suspension, and removal; appeal.</u></p> <p>An appointing authority may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's regular rate of pay for hours worked. The disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary actions and has the same effect as a suspension without pay for the purpose of recording disciplinary actions.</p> <p>A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Ohio)</i></p>	<p>under § 102.06 of the Revised Code constitute a violation of Chapter 102, § 2921.42, or § 2921.43 of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by § 102.02 of the Revised Code may also constitute grounds for dismissal. The tenure of an employee in the career professional service of the department of transportation is subject to § 5501.20 of the Revised Code.</p> <p>Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an officer or employee, even if the officer or employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. An officer or employee may not appeal to the state personnel board of review or the commission any disciplinary action taken by an appointing authority as a result of the officer's or employee's conviction of a felony. If an officer or employee removed under this section is reinstated as a result of an appeal of the removal, any conviction of a felony that occurs during the pendency of the appeal is a basis for further disciplinary action under this section upon the officer's or employee's reinstatement.</p> <p>B) In case of a reduction, a suspension of forty or more work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of twenty-four or more work hours in the case of an employee required to be paid overtime compensation, a fine of forty or more hours' pay in the case of an employee exempt from the payment of overtime compensation, a fine of twenty-four or more hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action.</p> <p>Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state personnel board of review or the commission. For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. If an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the board or commission. The board, commission, or trial board may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal of a removal order based upon a violation of a last chance agreement, the board, commission, or trial board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority.</p> <p>In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission, and any such appeal shall be to the court of</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Ohio)</i></p>	<p>common pleas of the county in which the appointing authority is located, or to the court of common pleas of Franklin county, as provided by § 119.12 of the Revised Code.</p> <p>(C) In the case of the suspension for any period of time, or a fine, demotion, or removal, of a chief of police, a chief of a fire department, or any member of the police or fire department of a city or civil service township, who is in the classified civil service, the appointing authority shall furnish the chief or member with a copy of the order of suspension, fine, demotion, or removal, which order shall state the reasons for the action. The order shall be filed with the municipal or civil service township civil service commission. Within ten days following the filing of the order, the chief or member may file an appeal, in writing, with the commission. If an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority. An appeal on questions of law and fact may be had from the decision of the commission to the court of common pleas in the county in which the city or civil service township is situated. The appeal shall be taken within thirty days from the finding of the commission.</p> <p>(D) A violation of division (A)(7) of § 2907.03 of the Revised Code is grounds for termination of employment of a nonteaching employee under this section.</p> <p>(E) As used in this section, “last chance agreement” means an agreement signed by both an appointing authority and an officer or employee of the appointing authority that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the officer or employee without the right of appeal to the state personnel board of review or the appropriate commission.</p>
<p><b>Criminal Penalty</b> <i>(Ohio)</i></p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> <i>(Ohio)</i></p>	<p>OHIO REV. CODE ANN. § 124.34 (West 2008). <u>Tenure of office; felony convictions; reduction, suspension, and removal; appeal.</u></p> <p>A person convicted of a felony immediately forfeits the person's status as a classified employee in any public employment on and after the date of the conviction for the felony. If an officer or employee is removed under this section as a result of being convicted of a felony or is subsequently convicted of a felony that involves the same conduct that was the basis for the removal, the officer or employee is barred from receiving any compensation after the removal notwithstanding any modification or disaffirmance of</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> (Ohio)</p>	<p>the removal, unless the conviction for the felony is subsequently reversed or annulled.</p> <p>Any person removed for conviction of a felony is entitled to a cash payment for any accrued but unused sick, personal, and vacation leave as authorized by law. If subsequently reemployed in the public sector, the person shall qualify for and accrue these forms of leave in the manner specified by law for a newly appointed employee and shall not be credited with prior public service for the purpose of receiving these forms of leave.</p>
<p><b>Oklahoma</b></p>	
<p><b>Statute</b> (Oklahoma)</p>	<p>OKLA. STAT. ANN. tit. 51, § 93 (West 2008). <u>Official misconduct defined.</u></p> <p>Official misconduct within the meaning of this act is hereby defined to be:</p> <ol style="list-style-type: none"> <li>1. Any willful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the laws of this state.</li> <li>2. Intoxication in any public place within the state produced by strong drink voluntarily taken.</li> <li>3. Committing any act constituting a violation of any penal statute involving moral turpitude. Such an act has been committed, in the sense of this section, when the official involved has been convicted thereof by a court of record; and suspension from office as provided by § 98 of this title shall be sought and is hereby authorized upon such conviction, even though the official so convicted has appealed such conviction.</li> </ol> <p>OKLA. STAT. ANN. tit. 21, § 581 (West 2008). <u>Willful omission of duty by public officers.</u></p> <p>Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful omission to perform such duty where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.</p> <p>OKLA. STAT. ANN. tit. 21, § 581 (West 2008). <u>Misconduct of former sheriff's deputy or jailer.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Oklahoma)</p>	<p>Any default or misconduct in the office of deputy sheriff or jailer after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.</p> <p>OKLA. STAT. ANN. tit. 22, § 1181 (West 2008). <u>Causes for removal of officers.</u></p> <p>Any officer not subject to impeachment elected or appointed to any state, county, township, city, town, or other office under the laws of the state may, in the manner provided in this article, be removed from office for any of the following causes:</p> <ul style="list-style-type: none"> <li>First. Habitual or willful neglect of duty.</li> <li>Second. Gross partiality in office.</li> <li>Third. Oppression in office.</li> <li>Fourth. Corruption in office.</li> <li>Fifth. Extortion or willful overcharge of fees in office.</li> <li>Sixth. Willful maladministration.</li> <li>Seventh. Habitual drunkenness.</li> <li>Eighth. Failure to produce and account for all public funds and property in his hands, at any settlement or inspection authorized or required by law.</li> </ul>
<p><b>Definitions</b> (Oklahoma)</p>	<p>N/A.</p>
<p><b>Procedure</b> (Oklahoma)</p>	<p>OKLA. STAT. ANN. tit. 51, § 102 (West 2008). <u>Ouster proceedings for open and notorious violation of penal laws.</u></p> <p>The Attorney General shall have power and is hereby authorized on his own initiative, when he has reason to believe that the gambling or prohibitory liquor laws, or other penal statutes of the state, are being openly and notoriously violated in any county of the state, or subdivision thereof, to institute proceedings in ouster against any and all officers mentioned and included within the terms of this act<sup>20</sup>, whose duties charge them with the enforcement of the laws of this state, as fully as he is hereinbefore authorized to do.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (Oklahoma)</p>	<p>OKLA. STAT. ANN. tit. 21, § 10 (West 2008). <u>Punishment of misdemeanor.</u></p> <p>Except in cases where a different punishment is prescribed by this chapter or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding one (1) year or by a fine not exceeding Five Hundred Dollars (\$500.00), or both such fine and imprisonment.</p>
<p><b>Administrative Penalty</b> (Oklahoma)</p>	<p>OKLA. STAT. ANN. tit. 22, § 1181 (West 2008). <u>Causes for removal of officers.</u></p> <p>Any officer not subject to impeachment elected or appointed to any state, county, township, city, town, or other office under the laws of the state may, in the manner provided in this article, be removed from office for any of the following causes:</p> <ul style="list-style-type: none"> <li>First. Habitual or willful neglect of duty.</li> <li>Second. Gross partiality in office.</li> <li>Third. Oppression in office.</li> <li>Fourth. Corruption in office.</li> <li>Fifth. Extortion or willful overcharge of fees in office.</li> <li>Sixth. Willful maladministration.</li> <li>Seventh. Habitual drunkenness.</li> <li>Eighth. Failure to produce and account for all public funds and property in his hands, at any settlement or inspection authorized or required by law.</li> </ul> <p>OKLA. STAT. ANN. tit. 22, § 1181.1 (West 2008). <u>Removal for acts of commission, omission, neglect.</u></p> <p>All elective officers in the State of Oklahoma, including elective officers of the state and elective officers in each county, city, town or school district of the State of Oklahoma, but excluding any elective officers liable to impeachment, shall be subject to removal from office in such manner and for such causes as now provided by law, or as may be provided by law passed subsequent to this act, and any such officer or officers may be removed or ousted from office for any act or acts of commission or omission or neglect which may be committed, done or omitted during the term in which such ouster or removal proceedings may be filed, and any such officer or officers, may be removed or ousted from office for any act or acts of commission, omission or neglect committed, done or omitted during a previous or preceding term in such office.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Oregon</b>	
<b>Statute</b> <i>(Oregon)</i>	<p>OR. REV. STAT. ANN. §162.415 (2008). <u>Official misconduct in the first degree.</u></p> <p>(1) A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another:</p> <ul style="list-style-type: none"><li>(a) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or</li><li>(b) The public servant knowingly performs an act constituting an unauthorized exercise in official duties.</li></ul> <p>OR. REV. STAT. ANN. §162.405 (2008). <u>Official misconduct in the second degree.</u></p> <p>(1) A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.</p> <p>OR. REV. STAT. ANN. §162.425 (2008). <u>Misuse of confidential information.</u></p> <p>(1) A public servant commits the crime of misuse of confidential information if in contemplation of official action by the public servant or by a governmental unit with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public, the public servant acquires or aids another in acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action.</p> <p>OR. REV. STAT. ANN. §181.290 (2008). <u>Grounds for removal of state police.</u></p> <p>The Superintendent of State Police may remove members of the Oregon State Police in the manner prescribed in ORS 181.290 to 181.350 for inefficiency, misfeasance, malfeasance, nonfeasance in office, violation of the criminal laws of the state or of the</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Oregon)</p>	<p>United States, willful violation of any rule or regulation of the Department of State Police, insubordination, forfeiture of license to operate a motor vehicle, or physical or mental disability not incurred in line of duty.</p>
<p><b>Definitions</b> (Oregon)</p>	<p>OR. REV. STAT. ANN. §162.005 (2008). <u>Offenses Against the State and Public Justice.</u> <u>Definitions.</u></p> <p>As used in ORS 162.005 to 162.425 , unless the context requires otherwise:</p> <p>(1) “Pecuniary benefit” means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain, but does not include a political campaign contribution reported in accordance with ORS chapter 260.</p> <p>(2) “Public servant” means:</p> <ul style="list-style-type: none"> <li>(a) A public official as defined in ORS 244.020;</li> <li>(b) A person serving as an advisor, consultant or assistant at the request or direction of the state, any political subdivision thereof or of any governmental instrumentality within the state;</li> <li>(c) A person nominated, elected or appointed to become a public servant, although not yet occupying the position; and</li> <li>(d) Jurors.</li> </ul>
<p><b>Procedure</b> (Oregon)</p>	<p>OR. REV. STAT. ANN. §240.555 (2008). <u>Unfitness; suspension, reduction, demotion or dismissal.</u></p> <p>The appointing authority in any division of the service may suspend, reduce, demote or dismiss an employee thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.</p> <p>OR. REV. STAT. ANN. §236.010 (2008). <u>Circumstances causing vacancies.</u></p> <p>(1) An office shall become vacant before the expiration of the term if:</p> <ul style="list-style-type: none"> <li>(a) The incumbent dies, resigns or is removed.</li> <li>(b) The incumbent ceases to be an inhabitant of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office of the incumbent are required to be discharged.</li> </ul>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Oregon)</i></p>	<p>(c) The incumbent is convicted of an infamous crime, or any offense involving the violation of the oath of the incumbent.            (d) The incumbent refuses or neglects to take the oath of office, or to give or renew the official bond of the incumbent, or to deposit such oath or bond within the time prescribed by law.            (e) The election or appointment of the incumbent is declared void by a competent tribunal.            (f) The incumbent is found to be a person with a mental illness by the decision of a competent tribunal.            (g) The incumbent ceases to possess any other qualification required for election or appointment to such office.            (h) Appointment of the incumbent is subject to Senate confirmation under § 4, Article III of the Oregon Constitution, and the appointment is not confirmed.</p> <p>(2) The provisions of subsection (1)(b) of this section do not apply when residence within the district, county or city for which the incumbent was elected or appointed is not required for such election or appointment.</p>
<p><b>Criminal Penalty</b> <i>(Oregon)</i></p>	<p>OR. REV. STAT. ANN. §162.415 (2008).  <u>Official misconduct in the first degree.</u></p> <p>(2) Official misconduct in the first degree is a Class A misdemeanor.</p> <p>OR. REV. STAT. ANN. §162.405 (2008).  <u>Official misconduct in the second degree.</u></p> <p>(2) Official misconduct in the second degree is a Class C misdemeanor.</p> <p>OR. REV. STAT. ANN. §161.615 (2008).  <u>Sentences for misdemeanors.</u></p> <p>Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:</p> <ol style="list-style-type: none"> <li>(1) For a Class A misdemeanor, 1 year.</li> <li>(2) For a Class B misdemeanor, 6 months.</li> <li>(3) For a Class C misdemeanor, 30 days.</li> <li>(4) For an unclassified misdemeanor, as provided in the statute defining the crime.</li> </ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Oregon)</p>	<p>OR. REV. STAT. ANN. §161.635 (2008). <u>Misdemeanors; fines.</u></p> <p>(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:</p> <ul style="list-style-type: none"> <li>(a) \$6,250 for a Class A misdemeanor.</li> <li>(b) \$2,500 for a Class B misdemeanor.</li> <li>(c) \$1,250 for a Class C misdemeanor.</li> </ul> <p>(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.</p> <p>(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.</p>
<p><b>Administrative Penalty</b> (Oregon)</p>	<p>OR. REV. STAT. ANN. §181.290 (2008). <u>Grounds for removal of state police.</u></p> <p>The Superintendent of State Police may remove members of the Oregon State Police in the manner prescribed in ORS 181.290 to 181.350 for inefficiency, misfeasance, malfeasance, nonfeasance in office, violation of the criminal laws of the state or of the United States, willful violation of any rule or regulation of the Department of State Police, insubordination, forfeiture of license to operate a motor vehicle, or physical or mental disability not incurred in line of duty.</p>
<h2 style="margin: 0;">Pennsylvania</h2>	
<p><b>Statute</b> (Pennsylvania)</p>	<p>Pennsylvania repealed its prison officer extortion law (§ 451) in 1978.</p> <p>18 PA. STAT. ANN. §5301 (West 2008). <u>Official oppression.</u></p> <p>A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Pennsylvania)</i></p>	<p>misdemeanor of the second degree if, knowing that his conduct is illegal, he:</p> <ul style="list-style-type: none"> <li>(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or</li> <li>(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.</li> </ul> <p>16 PA. STAT. ANN. §450 (West 2008). <u>Removal of county officers and appointees.</u></p> <p>(a) The county commissioners, the sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, treasurers, auditors or controllers, clerks of the courts, district attorneys and any other officers of the several counties, whether elected or duly appointed to fill a vacancy, shall be removable from office only by impeachment, or by the Governor for reasonable cause after due notice and full hearing on the advice of two-thirds of the Senate, or upon conviction of misbehavior in office, or of any infamous crime in accordance with the Constitution of this Commonwealth, but their title to office may be tried by proceedings of quo warranto as provided by law.</p> <p>(b) Appointees to county offices or positions other than to elected offices shall be subject to removal at the pleasure of the appointing power, except as otherwise expressly provided by law, and they shall also be removed on conviction of misbehavior in office or of any infamous crime.</p>
<p><b>Definitions</b> <i>(Pennsylvania)</i></p>	<p>18 PA. STAT. ANN. §103 (West 2008). <u>Crimes and Offenses; Definitions.</u></p> <p>Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this part, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:</p> <p>“Act” or “action.” A bodily movement whether voluntary or involuntary.</p>
<p><b>Procedure</b> <i>(Pennsylvania)</i></p>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (<i>Pennsylvania</i>)</p>	<p>18 PA. STAT. ANN. §5301 (West 2008). <u>Official oppression.</u></p> <p>A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:</p> <ul style="list-style-type: none"><li>(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or</li><li>(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.</li></ul> <p>18 PA. STAT. ANN. §1104 (West 2008). <u>Sentence of imprisonment for misdemeanors.</u></p> <p>A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:</p> <ul style="list-style-type: none"><li>(1) Five years in the case of a misdemeanor of the first degree.</li><li>(2) Two years in the case of a misdemeanor of the second degree.</li></ul> <p>18 PA. STAT. ANN. §1101 (West 2008). <u>Fines.</u></p> <p>A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:</p> <ul style="list-style-type: none"><li>(5) \$5,000, when the conviction is of a misdemeanor of the second degree.</li></ul>
<p><b>Administrative Penalty</b> (<i>Pennsylvania</i>)</p>	<p>18 PA. STAT. ANN. §450 (West 2008). <u>Removal of county officers and appointees.</u></p> <p>(a) The county commissioners, the sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, treasurers, auditors or controllers, clerks of the courts, district attorneys and any other officers of the several counties, whether elected or duly appointed to fill a vacancy, shall be removable from office only by impeachment, or by the Governor for reasonable cause after due notice and full hearing on the advice of two-thirds of the Senate, or upon conviction of misbehavior in office, or of any infamous crime in accordance with the Constitution of this Commonwealth, but their title to office may be tried by proceedings of quo warranto as provided by law.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty Cont'd</b> <i>(Pennsylvania)</i>	(b) Appointees to county offices or positions other than to elected offices shall be subject to removal at the pleasure of the appointing power, except as otherwise expressly provided by law, and they shall also be removed on conviction of misbehavior in office or of any infamous crime.
<b>Puerto Rico</b>	
<b>Statute</b> <i>(Puerto Rico)</i>	<p>P.R. LAWS ANN. § 601. <u>Oath of office—Form.</u><sup>21</sup></p> <p>All members of the Legislature of Puerto Rico and all executive, administrative and judicial officers, and all employees of the Government of Puerto Rico, its dependencies, boards, commissions, and organizations created by law, shall, before they enter upon the duties of their respective offices or employments, take and sign the following oath or affirmation, to wit:</p> <p>"Oath of Allegiance and of Office</p> <p style="padding-left: 40px;">"I, (Name of office or employment) (age) appointed , do solemnly swear (Name of office or employment) that I will support and defend the Constitution of the United States and the Constitution and laws of the Commonwealth of Puerto Rico against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter. So help me God."</p> <p>The violation of this oath shall be sufficient cause for the removal of the officer or employee. Every officer or employee who at the time this section takes effect is holding his office or employment shall proceed to take the oath above prescribed not later than January 31, 1953, and any officer or employee who shall refuse to take the oath shall immediately cease in his office or employment.</p> <p>P.R. LAWS ANN. § 4356. <u>Destruction or mutilation of documents-- By public officers.</u></p> <p>Every public officer or employee in charge of the custody of any original public document as defined in the "Public Documents Administration Act," §§ 1001 et seq. of Title 3, who willfully takes, destroys, removes or conceals in whole or in part, or who permits another person to do so, shall be punishable by imprisonment for a fixed term of six (6) years. If there were aggravating circumstances, the fixed penalty established may be increased up to a maximum of ten (10) years; if there were extenuating</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Puerto Rico)</i></p>	<p>circumstances it could be reduced to a minimum of four (4) years.</p> <p>P.R. LAWS ANN. § 4366. <u>Negligence in performance of duty.</u></p> <p>Every public officer who willfully neglects to perform the duties of his office or employment, or who violates any legal provision relative to his duties or those of his office or employment, for which no special provision fixing the corresponding penalty is prescribed, shall be punishable by imprisonment not exceeding six (6) months or a fine not exceeding five hundred dollars (\$500), or both, in the discretion of the court.</p>
<p><b>Definitions</b> <i>(Puerto Rico)</i></p>	<p>N/A.</p>
<p><b>Procedure</b> <i>(Puerto Rico)</i></p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> <i>(Puerto Rico)</i></p>	<p>P.R. LAWS ANN. § 4356. <u>Destruction or mutilation of documents-- By public officers.</u></p> <p>Every public officer or employee in charge of the custody of any original public document as defined in the "Public Documents Administration Act," §§ 1001 et seq. of Title 3, who willfully takes, destroys, removes or conceals in whole or in part, or who permits another person to do so, shall be punishable by imprisonment for a fixed term of six (6) years. If there were aggravating circumstances, the fixed penalty established may be increased up to a maximum of ten (10) years; if there were extenuating circumstances it could be reduced to a minimum of four (4) years.</p> <p>P.R. LAWS ANN. § 4366. <u>Negligence in performance of duty.</u></p> <p>Every public officer who willfully neglects to perform the duties of his office or employment, or who violates any legal provision relative to his duties or those of his office or employment, for which no special provision fixing the corresponding penalty is prescribed, shall be punishable by imprisonment not exceeding six (6) months or a fine not exceeding five hundred dollars (\$500), or both, in the discretion of the court.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty</b> <i>(Puerto Rico)</i>	<p>P.R. LAWS ANN. § 601.  <u>Oath of office—Form.</u></p> <p>The violation of this oath shall be sufficient cause for the removal of the officer or employee. Every officer or employee who at the time this section takes effect is holding his office or employment shall proceed to take the oath above prescribed not later than January 31, 1953, and any officer or employee who shall refuse to take the oath shall immediately cease in his office or employment.</p>
<b>Rhode Island</b>	
<b>Statute</b> <i>(Rhode Island)</i>	N/A. <sup>22</sup>
<b>Definitions</b> <i>(Rhode Island)</i>	N/A.
<b>Procedure</b> <i>(Rhode Island)</i>	<p>R.I. GEN. LAWS § 42-28.6-2 (West 2008).  <u>Law Enforcement Officials' Bill of Rights.</u>  <u>Conduct of investigation.</u></p> <p>Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for a non-criminal matter which could lead to disciplinary action, demotion, or dismissal, the investigation or interrogation shall be conducted under the following conditions:</p> <ul style="list-style-type: none"> <li>(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty.</li> <li>(b) The interrogation shall take place at an office within the department previously designated for that purpose by the chief of police.</li> <li>(c) The law enforcement officer under interrogation shall be informed of the name, rank, and command of the officer in</li> </ul>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Rhode Island)</i></p>	<p>charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.</p> <p>(d) No complaint against a law enforcement officer shall be brought before a hearing committee unless the complaint be duly sworn to before an official authorized to administer oaths.</p> <p>(e) The law enforcement officer under investigation shall, prior to any interrogating be informed in writing of the nature of the complaint and of the names of all complainants.</p> <p>(f) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.</p> <p>(g) Any law enforcement officer under interrogation shall not be threatened with transfer, dismissal, or disciplinary action.</p> <p>(h) Deleted by P.L. 1995, ch. 19, § 1.</p> <p>(i) If any law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights prior to the commencement of the interrogation.</p> <p>(j) At the request of any law enforcement officer under interrogation, he or she shall have the right to be represented by counsel of his or her choice who shall be present at all times during the interrogation. The interrogation shall be suspended for a reasonable time until representation can be obtained.</p> <p>(k) No statute shall abridge nor shall any law enforcement agency adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his or her duties as a law enforcement officer.</p> <p>(l) No law enforcement agency shall insert any adverse material into any file of the officer unless the officer has an opportunity to review and receive a copy of the material in writing, unless the officer waives these rights in writing.</p> <p>(m) No public statement shall be made prior to a decision being rendered by the hearing committee and no public statement shall be made if the officer is found innocent unless the officer requests a public statement; provided, however, that this subdivision shall not apply if the officer makes a public statement. The foregoing shall not preclude a law enforcement</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> <i>(Rhode Island)</i></p>	<p>agency, in a criminal matter, from releasing information pertaining to criminal charges which have been filed against a law enforcement officer, the officer's status of employment and the identity of any administrative charges brought against said officer as a result of said criminal charges.</p> <p>(n) No law enforcement officer shall be compelled to speak or testify before, or be questioned by, any non-governmental agency.</p>
<p><b>Criminal Penalty</b> <i>(Rhode Island)</i></p>	<p>R.I. GEN. LAWS § 42-28.6-13 (West 2008). <u>Law Enforcement Officials' Bill of Rights.</u> <u>Suspensions.</u></p> <p>(a) The provisions of this chapter are not intended to prohibit suspensions by the chief or the highest ranking officer of the law enforcement agency.</p> <p>(b) Summary punishment of two (2) days' suspension without pay may be imposed for minor violations of departmental rules and regulations. Appeals of suspension under this subsection shall be subject to the grievance provisions of any applicable collective bargaining agreement.</p> <p>(c) Suspension may be imposed by the chief or the highest ranking sworn officer of the law enforcement agency when the law enforcement officer is under investigation for a criminal felony matter. Any suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not suspended. Suspension under this subsection shall not exceed one hundred eighty (180) days.</p> <p>(d) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency when the law enforcement officer in under investigation for a misdemeanor criminal matter. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not suspended. Suspension under this subsection shall not exceed thirty (30) days; provided, however, that if an officer is charged with a misdemeanor offense the chief or highest ranking sworn officer of the law enforcement agency may continue said suspension with pay up to a total of one hundred and eighty (180) days. If the disposition of the criminal matter does not take place within one hundred eighty (180) days of the commencement of such suspension, the law enforcement officer may be suspended without pay and benefits; provided, however, that the officer's entitlement to such medical insurance, dental insurance, disability insurance and life insurance as is available to all other</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

**Criminal Penalty  
Cont'd**  
*(Rhode Island)*

officers within the agency shall not be suspended. The law enforcement officer may petition the presiding justice of the superior court for a stay of the suspension without pay, and such stay shall be granted upon a showing that said delay in the criminal disposition was outside the law enforcement officer's control. In the event the law enforcement officer is acquitted of any misdemeanor related thereto, the officer shall be forthwith reinstated and reimbursed all salary and benefits that have not been paid during the suspension period.

(e) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency when the law enforcement officer is under investigation for a noncriminal matter. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not suspended. Suspension under this subsection shall not exceed fifteen (15) days or any other time frame established under the provisions of any applicable collective bargaining agreement.

(f) Suspension may be imposed by the chief or highest ranking sworn officer of the law enforcement agency upon receipt of notice or disciplinary action in accordance with § 42-28.6-4(b) of this chapter in which termination or demotion is the recommended punishment. Any such suspension shall consist of the law enforcement officer being relieved of duty, and he or she shall receive all ordinary pay and benefits as he or she would receive if he or she were not so suspended.

(g) Any law enforcement officer who is charged, indicted or informed against for a felony or who is convicted of and incarcerated for a misdemeanor may be suspended without pay and benefits at the discretion of the agency or chief or highest ranking sworn officers; provided, however, that the officer's entitlement to medical insurance, dental insurance, disability insurance and life insurance as is available to all other officers within the agency shall not be suspended. In the event that the law enforcement officer is acquitted of any felony related thereto, the officer shall be reinstated and reimbursed forthwith for all salary and benefits that have not been paid during the suspension period.

(h) Any law enforcement officer who is convicted of a felony shall, pending the prosecution of an appeal, be suspended without pay and benefits; provided, however, that the officer's entitlement to such medical insurance, dental insurance, disability insurance and life insurance as is available to all other officers within the agency shall not be suspended. Whenever, upon appeal, such conviction is reversed, the suspension under this subsection shall terminate and the law enforcement officer shall forthwith be paid the salary and benefits that would have been paid to him or her during that period of suspension.

(i) Any law enforcement officer who pleads guilty or no contest to a felony charge or whose conviction of a felony has, after



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Criminal Penalty Cont'd</b> <i>(Rhode Island)</i>	or in the absence of a timely appeal, become final may be dismissed by the law enforcement agency and, in the event of such dismissal, other provisions of this chapter shall not apply.
<b>Administrative Penalty</b> <i>(Rhode Island)</i>	See R.I. GEN. LAWS § 42-28.6-2 (West 2008) in “Procedure” section.
<b>South Carolina</b>	
<b>Statute</b> <i>(South Carolina)</i>	<p>S.C. CODE ANN. § 8-1-80 (2008). <u>Misconduct, habitual negligence and the like of public officer; office declared vacant.</u></p> <p>Any public officer whose authority is limited to a single election or judicial district who is guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression shall be liable to indictment and, upon conviction thereof, shall be fined not more than one thousand dollars and imprisoned not more than one year.</p> <p>The presiding judge before whom any public officer convicted under this section is tried shall order a certified copy of the indictment to be immediately transmitted to the Governor who must, upon receipt of the indictment, by executive order declare the office to be vacant. The office must be filled as in the case of the death or resignation of the officer.</p> <p>S.C. CODE ANN. § 8-1-60 (West 2008). <u>Neglect of duty.</u></p> <p>Any clerk of the court of common pleas and general sessions, sheriff, judge of probate or register of deeds in this State who shall wilfully fail or neglect to discharge all the duties and perform all the services which are required of him by law shall, in addition to his liability to the person aggrieved, be liable to be indicted as for a misdemeanor and upon conviction thereof shall be fined, at the discretion of the court, not exceeding five hundred dollars.</p> <p>S.C. CODE ANN. § 23-17-20 (West 2008).</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>South Carolina</i>)</p>	<p><u>Liabilities of Sheriffs and Deputy Sheriffs. Open contempt or breach of duty.</u></p> <p>Any sheriff shall be liable to be proceeded against in any court of record in this State for an open contempt or for a breach of official duty. For an open contempt he shall be liable to be attached forthwith. For a breach of official duty he may be required, by rule, to answer to the complaint of any suitor of the court and upon failing to answer or comply with the order of the court, made on the hearing of such rule, he shall be liable to be attached as for a contempt and committed to close custody until he shall have complied with the requisition of the court. In all cases, interrogatories may be propounded to him, which he shall answer on oath, either orally or in writing, as the court may order.</p>
<p><b>Definitions</b> (<i>South Carolina</i>)</p>	<p>S.C. CODE ANN. § 8-1-10 (West 2008). <u>“Public officers” defined.</u></p> <p>The term “<i>public officers</i>” shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.</p>
<p><b>Procedure</b> (<i>South Carolina</i>)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (<i>South Carolina</i>)</p>	<p>S.C. CODE ANN. § 8-1-60 (West 2008). <u>Neglect of duty.</u></p> <p>Any clerk of the court of common pleas and general sessions, sheriff, judge of probate or register of deeds in this State who shall wilfully fail or neglect to discharge all the duties and perform all the services which are required of him by law shall, in addition to his liability to the person aggrieved, be liable to be indicted as for a misdemeanor and upon conviction thereof shall be fined, at the discretion of the court, not exceeding five hundred dollars.</p>
<p><b>Administrative Penalty</b> (<i>South Carolina</i>)</p>	<p>S.C. CODE ANN. § 8-1-100 (West 2008). <u>Suspension of officer indicted for crime.</u></p> <p>Except as provided in Section 8-1-110, any state or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in event of suspension shall appoint another in his stead until he shall be</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty Cont'd</b> <i>(South Carolina)</i>	<p>acquitted. In case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law.</p>
<b>South Dakota</b>	
<b>Statute</b> <i>(South Dakota)</i>	<p>S.D. CODIFIED LAWS § 3-16-1 (2008).  <u>Willful failure to perform official duty as misdemeanor.</u></p> <p>Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every intentional omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is a Class 2 misdemeanor.</p> <p>S.D. CODIFIED LAWS § 3-17-3 (2008).  <u>Removal of local law enforcement officers by Governor—Grounds.</u></p> <p>The Governor shall have power, after notice and hearing, to remove from office any state's attorney, sheriff, or police officer, or any deputy or assistant state's attorney, or deputy sheriff who shall willfully fail, neglect, or refuse to perform any of the duties imposed upon him by, or to enforce any of the provisions of law relating to intoxicating liquors, or who shall willfully fail, neglect, or refuse to perform any duties imposed upon them by law, or who shall be guilty of intoxication or drunkenness, or who shall be guilty of the violation of any law, or who shall assist or connive in the violation of any law, or who shall be grossly incompetent to perform the duties of his office.</p> <p>S.D. CODIFIED LAWS § 3-17-6 (2008).  <u>Grounds for removal of local officers from office.</u></p> <p>Any officer of any local unit of government may be charged, tried, and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality.</p> <p>S.D. CODIFIED LAWS § 33-10-14 (2008).  <u>Malfeasance of court attendants—Punishment.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>South Dakota</i>)</p>	<p>Refusal or neglect by the sheriff or marshal to execute any warrant required in § 33-10-12 or to return and pay all the money collected as fines subjects the offending sheriff or marshal to double the amount of such fines and penalties. The conversion to personal use of moneys so collected by any sheriff or marshal is theft and shall be prosecuted as such in any court of the state having jurisdiction in such cases.</p>
<p><b>Definitions</b> (<i>South Dakota</i>)</p>	<p>N/A.</p>
<p><b>Procedure</b> (<i>South Dakota</i>)</p>	<p>S.D. CODIFIED LAWS § 3-17-20 (2008). <u>Suspension of certain county officials pending completion of criminal prosecution--Appointment of person to discharge duties--Restoration to office.</u></p> <p>If any officer is arrested for or charged with any offense against the laws of this state or the United States of America, and the board of county commissioners is informed that criminal proceedings are pending before any court or officer, the board of county commissioners may in the case of a Class 1 misdemeanor charge that is relevant to the responsibilities and duties of the office and shall in the case of a felony charge suspend that officer from office until such charge is prosecuted. The officer who is suspended pursuant to this section is relieved from all responsibilities provided by law which are pertinent to that office. The county commission shall appoint one of the officer's assistants or a suitable person to discharge the duties of the office during any suspension imposed in accordance with the provisions of §§ 3-17-20 to 3-17-22, inclusive. If it is determined during the criminal proceeding that the officer suspended is not guilty of the offense charged, the court shall so notify the board of county commissioners. If the term for which the officer was elected or appointed has not expired, the suspended officer shall be restored to that office by the board of county commissioners. For the purposes of §§ 3-17-20 to 3-17-22, inclusive, the term, officer, includes the county auditor, county treasurer, and county register of deeds.</p>
<p><b>Criminal Penalty</b> (<i>South Dakota</i>)</p>	<p>S.D. CODIFIED LAWS § 22-6-2 (2008). <u>Misdemeanor classes and penalties--Restitution--Misdemeanor when no penalty imposed.</u></p> <p>Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (<i>South Dakota</i>)</p>	<p>(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.</p> <p>The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.</p>
<p><b>Administrative Penalty</b> (<i>South Dakota</i>)</p>	<p>S.D. CODIFIED LAWS § 3-17-3 (2008). <u>Removal of local law enforcement officers by Governor—Grounds.</u></p> <p>The Governor shall have power, after notice and hearing, to remove from office any state's attorney, sheriff, or police officer, or any deputy or assistant state's attorney, or deputy sheriff who shall willfully fail, neglect, or refuse to perform any of the duties imposed upon him by, or to enforce any of the provisions of law relating to intoxicating liquors, or who shall willfully fail, neglect, or refuse to perform any duties imposed upon them by law, or who shall be guilty of intoxication or drunkenness, or who shall be guilty of the violation of any law, or who shall assist or connive in the violation of any law, or who shall be grossly incompetent to perform the duties of his office.</p> <p>S.D. CODIFIED LAWS § 3-17-6 (2008). <u>Grounds for removal of local officers from office.</u></p> <p>Any officer of any local unit of government may be charged, tried, and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality.</p> <p>S.D. CODIFIED LAWS § 33-10-14 (2008). <u>Malfeasance of court attendants—Punishment.</u></p> <p>Refusal or neglect by the sheriff or marshal to execute any warrant required in § 33-10-12 or to return and pay all the money collected as fines subjects the offending sheriff or marshal to double the amount of such fines and penalties. The conversion to personal use of moneys so collected by any sheriff or marshal is theft and shall be prosecuted as such in any court of the state having jurisdiction in such cases.</p>
<p><b>Tennessee</b></p>	

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute</b> (<i>Tennessee</i>)</p>	<p>TENN. CODE ANN. § 8-47-101 (West 2008). <u>Removal of officers. Who may be removed; grounds for removal.</u></p> <p>Every person holding any office of trust or profit, under and by virtue of any of the laws of the state, either state, county, or municipal, except such officers as are by the constitution removable only and exclusively by methods other than those provided in this chapter, who shall knowingly or willfully commit misconduct in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such office and shall be ousted from such office in the manner hereinafter provided.</p> <p>TENN. CODE ANN. § 39-16-402 (West 2008). <u>Official misconduct.</u></p> <p>(a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:</p> <ul style="list-style-type: none"><li>(1) Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;</li><li>(2) Commits an act under color of office or employment that exceeds the servant's official power;</li><li>(3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;</li><li>(4) Violates a law relating to the public servant's office or employment; or</li><li>(5) Receives any benefit not otherwise authorized by law.</li></ul> <p>(b) For purposes of subdivision (a)(2), a public servant commits an act under color of office or employment who acts or purports to act in an official capacity or takes advantage of the actual or purported capacity.</p> <p>(c) It is a defense to prosecution for this offense that the benefit involved was a trivial benefit incidental to personal, professional or business contact, and involved no substantial risk of undermining official impartiality.</p> <p>(d) An offense under this section is a Class E felony.</p> <p>(e) Charges for official misconduct may be brought only by indictment, presentment or criminal information; provided, that</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(Tennessee)</i></p>	<p>nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.</p> <p>TENN. CODE ANN. § 39-16-403 (West 2008). <u>Official oppression.</u></p> <p>(a) A public servant acting under color of office or employment commits an offense who:</p> <p style="padding-left: 40px;">(1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful; or</p> <p style="padding-left: 40px;">(2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful.</p> <p>(b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity.</p> <p>(c) An offense under this section is a Class E felony.</p> <p>(d) Charges for official oppression may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.</p>
<p><b>Definitions</b> <i>(Tennessee)</i></p>	<p>TENN. CODE ANN. § 39-16-401 (West 2008). <u>Misconduct Involving Public Officials and Employees. Definitions.</u></p> <p>As used in this part, unless the context otherwise requires:</p> <p>(1) “Act” means a bodily movement, whether voluntary or involuntary, and includes speech;</p> <p>(2) “Law” means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, or a rule authorized by and lawfully adopted under a statute; and</p> <p>(3) “Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one (1) of the following even if the public servant has not yet qualified for office or assumed the duties:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Definitions Cont'd</b> <i>(Tennessee)</i>	(A) An officer, employee, or agent of government; (B) A juror or grand juror; (C) An arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; (D) An attorney at law or notary public when participating in performing a governmental function; (E) A candidate for nomination or election to public office; or (F) A person who is performing a governmental function under claim of right although not legally qualified to do so.																																										
<b>Procedure</b> <i>(Tennessee)</i>	TENN. CODE ANN. § 8-47-102 (West 2008). <u>Removal of Officers. Who may institute proceedings.</u>  The attorney general and reporter has the power, on the attorney general and reporter's own initiative, and without any complaint having been made to the attorney general and reporter or request made of the attorney general and reporter, to institute proceedings in ouster against any and all state, county, and municipal officers, under the provisions of this chapter, and the district attorneys general, county attorneys, and city attorneys, within their respective jurisdictions, may institute such actions, without complaint being made to them or request made of them, as they are authorized to institute upon request made of them or complaint made to them.																																										
<b>Criminal Penalty</b> <i>(Tennessee)</i>	TENN. CODE ANN. § 40-35-101 (West 2008). <u>Tennessee Criminal Sentencing Reform Act of 1989.</u>  The following grid combines the felony classifications, range determinations, parole eligibility and incarceration locations for all of the felony offenses under the new law. <table style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th colspan="6">SENTENCE RANGES</th> </tr> <tr> <th colspan="6">RELEASE ELIGIBILITY DATES</th> </tr> <tr style="border-top: 1px solid black; border-bottom: 1px solid black;"> <th style="text-align: left;">FELONY CLASS</th> <th style="text-align: center;">MITIGATED</th> <th style="text-align: center;">STANDARD RANGE I</th> <th style="text-align: center;">MULTIPLE RANGE II</th> <th style="text-align: center;">PERSISTENT RANGE III</th> <th style="text-align: center;">CAREER</th> </tr> </thead> <tbody> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>1-6 yrs</td> <td><b>(.9 years)</b></td> <td><b>(1-2 years)</b></td> <td><b>(2-4 years)</b></td> <td><u>(4-6 years)</u></td> <td><i>(6 years)</i></td> </tr> <tr> <td>RED %</td> <td><b>(20%)</b></td> <td><b>(30%)</b></td> <td><b>(35%)</b></td> <td><u>(45%)</u></td> <td><i>(60%)</i></td> </tr> <tr style="border-bottom: 1px solid black;"> <td>RED YRS</td> <td><b>(.2 years)</b></td> <td><b>(.3-.6 yrs)</b></td> <td><b>(.7-1.4 yrs)</b></td> <td><u>(1.8-2.7 yrs)</u></td> <td><i>(3.6 yrs)</i></td> </tr> </tbody> </table>	SENTENCE RANGES						RELEASE ELIGIBILITY DATES						FELONY CLASS	MITIGATED	STANDARD RANGE I	MULTIPLE RANGE II	PERSISTENT RANGE III	CAREER	E						1-6 yrs	<b>(.9 years)</b>	<b>(1-2 years)</b>	<b>(2-4 years)</b>	<u>(4-6 years)</u>	<i>(6 years)</i>	RED %	<b>(20%)</b>	<b>(30%)</b>	<b>(35%)</b>	<u>(45%)</u>	<i>(60%)</i>	RED YRS	<b>(.2 years)</b>	<b>(.3-.6 yrs)</b>	<b>(.7-1.4 yrs)</b>	<u>(1.8-2.7 yrs)</u>	<i>(3.6 yrs)</i>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Tennessee)</p>	<p>Presumptive Sentence-minimum sentence in range R E D Release Eligibility Date</p> <p><b><i>Bold Italic</i></b> - Mandatory Continuous Confinement with the Department of Correction</p> <p><i>Italic</i> - Confinement with DOC available; alternative sentencing available if sentence 8 years or less</p> <p><u>Underscore</u> - Alternative Forms of Punishment Encouraged</p> <p><b>Bold</b> - Local Incarceration Required if County Contract</p>
<p><b>Administrative Penalty</b> (Tennessee)</p>	<p>TENN. CODE ANN. § 8-47-101 (West 2008). <u>Removal of officers. Who may be removed; grounds for removal.</u></p> <p>Every person holding any office of trust or profit, under and by virtue of any of the laws of the state, either state, county, or municipal, except such officers as are by the constitution removable only and exclusively by methods other than those provided in this chapter, who shall knowingly or willfully commit misconduct in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such office and shall be ousted from such office in the manner hereinafter provided.</p> <p>TENN. CODE ANN. § 39-16-406 (West 2008). <u>Sanctions.</u></p> <p>(a) A public servant convicted under § 39-16-402, § 39-16-403 or § 39-16-404 shall be removed from office or discharged from the position.</p> <p>(b) A public servant elected or appointed for a specified term shall be:</p> <ol style="list-style-type: none"> <li>(1) Suspended without pay immediately upon conviction in the trial court through the final disposition of the case;</li> <li>(2) Removed from office for the duration of the term during which the conviction occurred if the conviction becomes final;</li> </ol> <p>and</p> <ol style="list-style-type: none"> <li>(3) Barred from holding any appointed or elected office for ten (10) years from the date the conviction becomes final.</li> </ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (<i>Tennessee</i>)</p>	<p>(c) A public servant who serves at-will shall be discharged upon conviction in the trial court. Subsequent public service shall rest with the hiring or appointing authority, provided that the authority has been fully informed of the conviction.</p>
<p><b>Texas</b></p>	
<p><b>Statute</b> (<i>Texas</i>)</p>	<p>TEX. PENAL CODE ANN § 39.02 (Vernon 2008) <sup>23</sup> <u>Abuse of Capacity.</u></p> <p>(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:</p> <ul style="list-style-type: none"> <li>(1) violates a law relating to the public servant's office or employment; or</li> <li>(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.</li> </ul> <p>(b) An offense under Subsection (a)(1) is a Class A misdemeanor.</p> <p>(c) An offense under Subsection (a)(2) is:</p> <ul style="list-style-type: none"> <li>(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;</li> <li>(2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500 ;</li> <li>(3) a Class A misdemeanor if the value of the use of the thing misused is \$500 or more but less than \$1,500;</li> <li>(4) a state jail felony if the value of the use of the thing misused is \$1,500 or more but less than \$20,000;</li> <li>(5) a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;</li> <li>(6) a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000; or</li> <li>(7) a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.</li> </ul> <p>(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Texas)</p>	<p>TEX. PENAL CODE ANN. § 39.03 (Vernon 2008). <u>Official Oppression.</u></p> <p>(a) A public servant acting under color of his office or employment commits an offense if he:</p> <ol style="list-style-type: none"><li>(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;</li><li>(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or</li><li>(3) intentionally subjects another to sexual harassment.</li></ol> <p>(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.</p> <p>(c) In this section, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.</p> <p>TEX. PENAL CODE ANN. § 39.06 (Vernon 2008) <u>Misuse of Official Information.</u></p> <p>(a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he:</p> <ol style="list-style-type: none"><li>(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;</li><li>(2) speculates or aids another to speculate on the basis of the information; or</li><li>(3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.</li></ol> <p>(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:</p> <ol style="list-style-type: none"><li>(1) he has access to by means of his office or employment; and</li><li>(2) has not been made public.</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Texas)</p>	<p>(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:</p> <ol style="list-style-type: none"><li>(1) the public servant has access to by means of his office or employment; and</li><li>(2) has not been made public.</li></ol> <p>(d) In this section, “information that has not been made public” means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.</p> <p>(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.</p> <p>TEX. GOV CODE ANN. § 143.051 (Vernon 2008). <u>Municipal Civil Service for Firefighters and Police Officers. Cause for Removal or Suspension.</u></p> <p>A commission rule prescribing cause for removal or suspension of a fire fighter or police officer is not valid unless it involves one or more of the following grounds:</p> <ol style="list-style-type: none"><li>(1) conviction of a felony or other crime involving moral turpitude;</li><li>(2) violations of a municipal charter provision;</li><li>(3) acts of incompetency;</li><li>(4) neglect of duty;</li><li>(5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;</li><li>(6) acts showing lack of good moral character;</li><li>(7) drinking intoxicants while on duty or intoxication while off duty;</li><li>(8) conduct prejudicial to good order;</li><li>(9) refusal or neglect to pay just debts;</li><li>(10) absence without leave;</li><li>(11) shirking duty or cowardice at fires, if applicable; or</li><li>(12) violation of an applicable fire or police department rule or special order.</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Definitions</b> <i>(Texas)</i>	TEX. PENAL CODE ANN. § 39.03 (Vernon 2008). <u>Official Oppression.</u>  (c) In this section, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.
<b>Procedure</b> <i>(Texas)</i>	N/A.

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (Texas)</p>	<p>TEX. PENAL CODE ANN. § 39.03 (Vernon 2008) <u>Official Oppression.</u></p> <p>(d) An offense under this section is a Class A misdemeanor.</p> <p>TEX. PENAL CODE ANN. § 12.21 (Vernon 2008). <u>Class A Misdemeanor.</u></p> <p>An individual adjudged guilty of a Class A misdemeanor shall be punished by:</p> <ul style="list-style-type: none"><li>(1) a fine not to exceed \$4,000;</li><li>(2) confinement in jail for a term not to exceed one year; or</li><li>(3) both such fine and confinement.</li></ul> <p>TEX. PENAL CODE ANN. § 12.22 (Vernon 2008). <u>Class B Misdemeanor.</u></p> <p>An individual adjudged guilty of a Class B misdemeanor shall be punished by:</p> <ul style="list-style-type: none"><li>(1) a fine not to exceed \$2,000;</li><li>(2) confinement in jail for a term not to exceed 180 days; or</li><li>(3) both such fine and confinement.</li></ul> <p>TEX. PENAL CODE ANN. § 12.23 (Vernon 2008). <u>Class C Misdemeanor.</u></p> <p>An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.</p> <p>TEX. PENAL CODE ANN. § 12.32 (Vernon 2008).<sup>24</sup> <u>First Degree Felony Punishment.</u></p> <p>(a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the institutional division for</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Texas)</p>	<p>life or for any term of not more than 99 years or less than 5 years.</p> <p>TEX. PENAL CODE ANN § 39.02 (Vernon 2008) <sup>25</sup> <u>Abuse of Capacity.</u></p> <p>(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:</p> <ul style="list-style-type: none"><li>(1) violates a law relating to the public servant's office or employment; or</li><li>(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.</li></ul> <p>(b) An offense under Subsection (a)(1) is a Class A misdemeanor.</p> <p>(c) An offense under Subsection (a)(2) is:</p> <ul style="list-style-type: none"><li>(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;</li><li>(2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500 ;</li><li>(3) a Class A misdemeanor if the value of the use of the thing misused is \$500 or more but less than \$1,500;</li><li>(4) a state jail felony if the value of the use of the thing misused is \$1,500 or more but less than \$20,000;</li><li>(5) a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;</li><li>(6) a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000; or</li><li>(7) a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.</li></ul> <p>(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.</p> <p>(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN. § 12.33 (Vernon 2008). <u>Second Degree Felony Punishment.</u></p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Texas)</p>	<p>(a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years.</p> <p>(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN. § 12.34 (Vernon 2008). <u>Third Degree Felony Punishment.</u></p> <p>(a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years.</p> <p>(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN. § 12.35 (Vernon 2008). <u>State Jail Felony Punishment.</u></p> <p>(a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.</p> <p>(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.</p> <p>(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:</p> <ul style="list-style-type: none"><li>(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or</li><li>(2) the individual has previously been finally convicted of any felony:<ul style="list-style-type: none"><li>(A) under Section 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or</li><li>(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.</li></ul></li></ul>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty</b> (Texas)</p>	<p>TEX. GOV CODE ANN. § 143.051 (Vernon 2008). <u>Municipal Civil Service for Firefighters and Police Officers. Cause for Removal or Suspension.</u></p> <p>A commission rule prescribing cause for removal or suspension of a fire fighter or police officer is not valid unless it involves one or more of the following grounds:</p> <ul style="list-style-type: none"> <li>(1) conviction of a felony or other crime involving moral turpitude;</li> <li>(2) violations of a municipal charter provision;</li> <li>(3) acts of incompetency;</li> <li>(4) neglect of duty;</li> <li>(5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;</li> <li>(6) acts showing lack of good moral character;</li> <li>(7) drinking intoxicants while on duty or intoxication while off duty;</li> <li>(8) conduct prejudicial to good order;</li> <li>(9) refusal or neglect to pay just debts;</li> <li>(10) absence without leave;</li> <li>(11) shirking duty or cowardice at fires, if applicable; or</li> <li>(12) violation of an applicable fire or police department rule or special order.</li> </ul>
<p><b>Utah</b></p>	
<p><b>Statute</b> (Utah)</p>	<p>UTAH CODE ANN. § 76-8-201 (West 2008). <u>Official misconduct--Unauthorized acts or failure of duty.</u></p> <p>A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.</p> <p>UTAH CODE ANN. § 10-3-826 (West 2008). <u>Municipal administration. Official neglect and misconduct class A misdemeanor--Removal from office.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Utah)</p>	<p>In case any municipal officer shall at any time willfully omit to perform any duty, or willfully and corruptly be guilty of oppression, malconduct, misfeasance, or malfeasance in office, the person is guilty of a class A misdemeanor, shall be removed from office, and is not eligible for any municipal office thereafter.</p> <p>UTAH CODE ANN. § 17-16-10.5 (West 2008). <u>Failure to perform duties constitutes malfeasance in office--Felony charges arising from official duties--Paid administrative leave--Reassignment of duties.</u></p> <p>(1) The failure of an elected county or prosecution district officer substantially to perform the officer's official duties constitutes malfeasance in office under Section 77-6-1.</p> <p>UTAH CODE ANN. § 17-22-2 (West 2008).<sup>26</sup> <u>Sheriff--General duties.</u></p> <p>(1) The sheriff shall:</p> <ul style="list-style-type: none"><li>(a) preserve the peace;</li><li>(b) make all lawful arrests;</li><li>(c) attend in person or by deputy the Supreme Court and the Court of Appeals when required or when the court is held within his county, all courts of record, and court commissioner and referee sessions held within his county, obey their lawful orders and directions, and comply with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;</li><li>(d) upon request of the juvenile court, aid the court in maintaining order during hearings and transport a minor to and from youth corrections facilities, other institutions, or other designated places;</li><li>(e) attend county justice courts if the judge finds that the matter before the court requires the sheriff's attendance for security, transportation, and escort of jail prisoners in his custody, or for the custody of jurors;</li><li>(f) command the aid of as many inhabitants of his county as he considers necessary in the execution of these duties;</li><li>(g) take charge of and keep the county jail and the jail prisoners;</li><li>(h) receive and safely keep all persons committed to his custody, file and preserve the commitments of those persons, and record the name, age, place of birth, and description of each person committed;</li><li>(i) release on the record all attachments of real property when the attachment he receives has been released or discharged;</li></ul>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Utah)</p>	<p>(j) endorse on all process and notices the year, month, day, hour, and minute of reception, and, upon payment of fees, issue a certificate to the person delivering process or notice showing the names of the parties, title of paper, and the time of receipt;</p> <p>(k) serve all process and notices as prescribed by law;</p> <p>(l) if he makes service of process or notice, certify on the process or notices the manner, time, and place of service, or, if he fails to make service, certify the reason upon the process or notice, and return them without delay;</p> <p>(m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public land within his county;</p> <p>(n) perform as required by any contracts between the county and private contractors for management, maintenance, operation, and construction of county jails entered into under the authority of § 17-53-311;</p> <p>(o) for the sheriff of a first class county that enters into an interlocal agreement for law enforcement service under Title 11, Chapter 13, Interlocal Cooperation Act, as authorized in § 17-50-324:</p> <p style="padding-left: 20px;">(i) provide law enforcement service as provided in the interlocal agreement; or</p> <p style="padding-left: 20px;">(ii) provide law enforcement service to an unincorporated area of the county to the extent that the law enforcement service is not provided to the area by a local district or interlocal entity, as defined in § 11-13-103, established to provide law enforcement service or extended police protection to the area;</p> <p>(p) manage search and rescue services in his county;</p> <p>(q) obtain saliva DNA specimens as required under § 53-10-404;</p> <p>(r) on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender; and</p> <p>(s) perform any other duties that are required by law.</p> <p>(2) Violation of Subsection (1)(j) is a class C misdemeanor. Violation of any other subsection under Subsection (1) is a class A misdemeanor.</p> <p>UTAH CODE ANN. § 52-1-8 (West 2008). <u>Official bonds--Actions on—Parties.</u></p> <p>When a public officer by official misconduct or neglect of duty shall forfeit his official bond or render his sureties liable thereon, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.</p>
<p><b>Definitions</b> (Utah)</p>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure</b> (Utah)</p>	<p>UTAH CODE ANN. § 17-16-10.5 (West 2008). <u>Failure to perform duties constitutes malfeasance in office--Felony charges arising from official duties--Paid administrative leave--Reassignment of duties.</u></p> <p>(2)(a) If an elected county or prosecution district officer is charged with the commission of a felony arising from conduct related to the officer's official duties, the officer shall be placed on paid administrative leave by the county legislative body until:</p> <ul style="list-style-type: none"><li>(i) the charges are dismissed or the officer is acquitted, at which time the officer shall be entitled to return to office, unless the officer's term of office has in the meantime expired; or</li><li>(ii) the officer is convicted of a felony or attempt to commit a felony arising from conduct related to the officer's official duties, in which case the sentencing judge shall order the officer removed from office.</li></ul> <p>(b) A conviction or a plea of guilty or nolo contendere, relating to a felony charge described in Subsection (2)(a), constitutes malfeasance in office for purposes of Section 77-6-1.</p> <p>(c) Entry of a plea in abeyance is the equivalent of a conviction for purposes of Subsection (2)(a)(ii), even if the charge is later dismissed pursuant to a plea in abeyance agreement.</p> <p>(d) The provisions under this Subsection (2) for the removal of a county or prosecution district officer are in addition to and do not replace or supersede the removal provisions under Title 77, Chapter 6, Removal by Judicial Proceedings.</p> <p>(3)(a) During the time that an elected county or prosecution district officer is on paid administrative leave under Subsection (2), the officer's duties may, except as provided in Subsection (3)(c), be temporarily:</p> <ul style="list-style-type: none"><li>(i) reassigned to another officer by the county legislative body; or</li><li>(ii) performed by a person employed for that purpose.</li></ul> <p>(b) For purposes of Subsection (3)(a) with respect to a prosecution district officer in a multi-county prosecution district, "county legislative body" means the legislative bodies of all counties included in the prosecution district.</p> <p>(c) A reassignment under Subsection (3)(a) may not result in the same person exercising the duties of:</p> <ul style="list-style-type: none"><li>(i) both a county legislative body member or county treasurer and county auditor; or</li><li>(ii) both a county executive and county auditor.</li></ul> <p>UTAH CODE ANN. § 77-6-9 (West 2008). <u>Appeal--Suspension from office.</u></p> <p>From a judgment of removal an appeal may be taken to the Supreme Court in the same manner as from a judgment in a civil action; but from entry of judgment and until the judgment is reversed, the defendant shall be suspended from his office. Pending</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Utah)</p>	<p>the appeal, the office shall be filled as in the case of a vacancy.</p>
<p><b>Criminal Penalty</b> (Utah)</p>	<p>UTAH CODE ANN. § 76-3-301 (West 2008). <u>Fines of persons.</u></p> <p>(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:</p> <ul style="list-style-type: none"> <li>(a) \$10,000 for a felony conviction of the first degree or second degree;</li> <li>(b) \$5,000 for a felony conviction of the third degree;</li> <li>(c) \$2,500 for a class A misdemeanor conviction;</li> <li>(d) \$1,000 for a class B misdemeanor conviction;</li> <li>(e) \$750 for a class C misdemeanor conviction or infraction conviction; and</li> <li>(f) any greater amounts specifically authorized by statute.</li> </ul> <p>(2) This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.</p> <p>UTAH CODE ANN. § 76-3-204 (West 2008). <u>Misdemeanor conviction--Term of imprisonment.</u></p> <p>A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:</p> <ul style="list-style-type: none"> <li>(1) In the case of a class A misdemeanor, for a term not exceeding one year;</li> <li>(2) In the case of a class B misdemeanor, for a term not exceeding six months;</li> <li>(3) In the case of a class C misdemeanor, for a term not exceeding ninety days.</li> </ul>
<p><b>Administrative Penalty</b> (Utah)</p>	<p>UTAH CODE ANN. § 77-6-1 (West 2008). <u>Officers subject to removal.</u></p> <p>All justices of the peace and all officers of any city, county or other political subdivision of this state not liable to impeachment shall be subject to removal as provided in this chapter for high crimes and misdemeanors or malfeasance in office.</p> <p>UTAH CODE ANN. § 10-3-826 (West 2008).</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty Cont'd</b> <i>(Utah)</i>	<p><u>Municipal administration. Official neglect and misconduct class A misdemeanor--Removal from office.</u></p> <p>In case any municipal officer shall at any time willfully omit to perform any duty, or willfully and corruptly be guilty of oppression, malconduct, misfeasance, or malfeasance in office, the person is guilty of a class A misdemeanor, shall be removed from office, and is not eligible for any municipal office thereafter.</p>
<b>Vermont</b>	
<b>Statute</b> <i>(Vermont)</i>	<p>VT. STAT. ANN. tit. 24, § 307 (West 2008).  <u>County officers; Powers and Duties.</u>  <u>Deputy sheriffs; appointments and revocation.</u></p> <p>(a) A sheriff may appoint deputies, one or more of whom shall be a woman. With the approval of the attorney general, a sheriff may appoint special deputies, who need not be legal residents of the state. The duties of such special deputy sheriffs shall be the same as those imposed by law on sheriffs and other peace officers in the enforcement of the criminal law. No action for official malfeasance or neglect of such special deputy sheriff, or for a cause affecting his administration of the office, shall be sustained against the sheriff. A deputy or such special deputy shall not perform an official act until his deputation and oath are filed for record in the office of the county clerk. A sheriff may dismiss a deputy or such special deputy and revoke his deputation. Such revocation shall be recorded in the office of the county clerk and shall take effect from the day of such record.</p> <p>(b) A sheriff may appoint persons as deputy sheriffs to serve civil process whom he shall train and supervise. Such deputies need not be qualified law enforcement officers, but if not so qualified shall not have arrest powers, and shall not carry firearms in performance of their duties in serving civil process.</p> <p>(c) The powers of deputy sheriffs and special deputy sheriffs with respect to criminal matters and the enforcement of the law may be exercised statewide.</p>
<b>Definitions</b> <i>(Vermont)</i>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure</b> (Vermont)</p>	<p>VT. STAT. ANN. tit. 24, § 294 (West 2008). <u>Sheriff imprisoned.</u></p> <p>If a sheriff is confined in prison by legal process, his functions as sheriff shall be suspended. When he is released from imprisonment during his term of office, he shall file a certificate of his discharge signed by one of the judges of the superior court, in the office of the county clerk, and deliver a like certificate to the high bailiff. Thereupon he shall resume the powers and execute the duties of sheriff.</p> <p>VT. STAT. ANN. tit. 24, § 1932 (West 2008). <u>Police officers; negligence of officer; suspension; hearing.</u></p> <p>(a) Whenever it appears to the appointing authority by its own knowledge or when informed by a written petition signed by one or more responsible persons that any regular officer has become negligent or derelict in his official duty, or is guilty of conduct unbecoming an officer, the appointing authority shall set a date for a hearing before the legislative body upon the complaint, and shall give at least seven and not more than 15 days written notice to the accused officer stating particularly the complainant, the charges against the officer and the time and place of hearing. The legislative body may suspend such officer from duty pending a hearing.</p> <p>(b) The officer is entitled to be represented by counsel, to answer the complaint and to be heard on the charges. He may waive in writing his right to a hearing.</p> <p>(c) The officer may file with the district court having territorial jurisdiction of such municipality and with the legislative body, at least 24 hours before the time set for said hearing, a notice of election to have the cause heard before said court. If such notice is duly filed, the district court shall set the matter for hearing within ten days from the filing of said notice and shall give at least five days written notice to the legislative body and the officer of the time and place of hearing. The court shall determine the facts and certify its findings, which shall be final, to the legislative body.</p> <p>(d) If the legislative body or the district court, as the case may be, finds after considering all the evidence offered in such hearing, that the officer is guilty of the charges as offered, the legislative body shall have the power by majority vote to remove said officer or to suspend him without pay for a period of time not to exceed 60 days.</p> <p>(e) Any officer found not guilty of the charges offered against him by either the district court or the legislative body shall have</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Procedure Cont'd</b> <i>(Vermont)</i>	restored to him pay lost through suspension.
<b>Criminal Penalty</b> <i>(Vermont)</i>	N/A.
<b>Administrative Penalty</b> <i>(Vermont)</i>	<p>VT. STAT. ANN. tit. 24, § 307 (West 2008). <u>County officers; Powers and Duties. Deputy sheriffs; appointments and revocation.</u></p> <p>(a) A sheriff may appoint deputies, one or more of whom shall be a woman. With the approval of the attorney general, a sheriff may appoint special deputies, who need not be legal residents of the state. The duties of such special deputy sheriffs shall be the same as those imposed by law on sheriffs and other peace officers in the enforcement of the criminal law. No action for official malfeasance or neglect of such special deputy sheriff, or for a cause affecting his administration of the office, shall be sustained against the sheriff. A deputy or such special deputy shall not perform an official act until his deputation and oath are filed for record in the office of the county clerk. A sheriff may dismiss a deputy or such special deputy and revoke his deputation. Such revocation shall be recorded in the office of the county clerk and shall take effect from the day of such record.</p>
<b>Virginia</b>	
<b>Statute</b> <i>(Virginia)</i>	<p>VA. CODE ANN. § 15.2-1707 (West 2008). <u>Decertification of law-enforcement officers.</u></p> <p>Upon written notification from the sheriff, chief of police or agency administrator that any certified law-enforcement or jail officer has (i) been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in Virginia, (ii) failed to comply with or maintain compliance with mandated training requirements, or (iii) refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employing agency, where the positive result cannot be explained to the agency administrator's satisfaction, which notification, where appropriate, shall be accompanied by a copy of the judgment of conviction, the Criminal Justice Services Board shall decertify such law-enforcement or jail officer. Such officer shall not have the right to serve as a law-enforcement officer within this Commonwealth until his certification has been reinstated by the Board.</p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Virginia)</p>	<p>The clerk of any court in which a conviction of a felony is made who has knowledge that a law-enforcement or jail officer has been convicted shall have a duty to report these findings promptly to the employing agency.</p> <p>When a conviction has not become final, the Board may decline to decertify the officer until the conviction becomes final, after considering the likelihood of irreparable damage to the officer if such officer is decertified during the pendency of an ultimately successful appeal, the likelihood of injury or damage to the public if the officer is not decertified, and the seriousness of the offense.</p>
<p><b>Definitions</b> (Virginia)</p>	<p>N/A.</p>
<p><b>Procedure</b> (Virginia)</p>	<p>VA. CODE ANN. § 15.2-1607 (West 2008). <u>Providing legal fees and expenses for sheriffs and deputies.</u></p> <p>If any sheriff or deputy sheriff is arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, and such charge is subsequently dismissed or there is rendered a verdict of not guilty, such sheriff or deputy sheriff may submit to the governing body of the locality in which he was elected or appointed a statement of legal fees and expenses incurred in his defense of such charge. The governing body may authorize that such legal fees and expenses, or any portion thereof, be paid from the treasury of such locality. If the affected sheriff or deputy sheriff disagrees with the action of the governing body, the officer may petition the circuit court for the county or city to award the fees and cost. The circuit court, sitting without a jury, shall hold a hearing on the matter. The court for good cause shown may order the governing body to pay all or any appropriate portion of the fees and cost.</p> <p>VA. CODE ANN. § 52-11 (West 2008) <u>Defense of police officers.</u></p> <p>If any police officer appointed by the Superintendent of State Police shall be brought before any regulatory body, summoned before any grand jury, investigated by any other law-enforcement agency, or arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Superintendent may employ special counsel approved by the Attorney General to defend such officer. Upon a finding that (i) the officer did not violate a law or regulation resulting from the act which was the subject of the investigation and (ii) the officer will not be terminated from employment as the</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (Virginia)</p>	<p>result of such act, the Superintendent shall pay for the special counsel employed. The compensation for special counsel employed, pursuant to this section, shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the administration of the Department of State Police.</p> <p>VA. CODE ANN. § 53.1-17 (West 2008) <u>Defense of Department of Corrections employees.</u></p> <p>If any employee of the Department shall be brought before any regulatory or administrative body, summoned before any regular or special grand jury, or, arrested, indicted, or prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Director may, with the approval of the Governor, pay in whole or in part, counsel employed by such employee to represent him, provided he is neither convicted nor terminated from his employment. Such compensation shall be paid from funds appropriated to the Department.</p> <p>VA. CODE ANN. § 2.2-3007 (West 2008). Certain employees of the Departments of Corrections and Juvenile Justice.</p> <p>A. Employees of the Departments of Corrections and Juvenile Justice who work in institutions or juvenile correctional centers or have client, inmate, or resident contact and who are terminated on the grounds of client, inmate, or resident abuse, criminal conviction, or as a result of being placed on probation under the provisions of § 18.2-251, may appeal their termination only through the grievance resolution steps.</p> <p>B. If no resolution is reached by the conclusion of the last grievance step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54.1-3904.</p> <p>C. A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or policy.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Criminal Penalty</b> <i>(Virginia)</i>	N/A.
<b>Administrative Penalty</b> <i>(Virginia)</i>	See VA. CODE ANN. § 15.2-1707 (West 2008) in “Statutes” section.
<b>Virgin Islands</b>	
<b>Statute</b> <i>(Virgin Islands)</i>	<p>V.I. CODE ANN. tit. 14, § 703 (West 2008). <u>Oppression.</u></p> <p>Whoever, being a public officer, or person pretending to be a public officer, and under the pretense or color of any process or other legal authority-</p> <ul style="list-style-type: none"> <li>(1) arrests any person or detains him against his will;</li> <li>(2) seizes or levies upon any property;</li> <li>(3) dispossesses any one of any lands or property; or</li> <li>(4) does any other act, whereby another person is injured in his person, property or rights-</li> </ul> <p>without a regular process or other lawful authority therefore, commits oppression and shall be fined not more than \$200 or imprisoned not more than 1 year, or both.</p> <p>V.I. CODE ANN. tit. 79, § 1582 (West 2008). <u>Oppression of prisoners.</u></p> <p>Whoever is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.</p> <p>V.I. CODE ANN. tit. 81, § 1102 (West 2008). <u>Action by person injured.</u></p> <p>When a public officer, by official misconduct or neglect of duty, shall forfeit his official undertaking or other security, or render</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Statute Cont'd</b> <i>(Virgin Islands)</i>	<p>his sureties therein liable upon such undertaking or other security, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in his own name against the officer and his sureties to recover the amount to which he may be entitled by reason thereof.</p>
<b>Definitions</b> <i>(Virgin Islands)</i>	<p>N/A.</p>
<b>Procedure</b> <i>(Virgin Islands)</i>	<p>N/A.</p>
<b>Criminal Penalty</b> <i>(Virgin Islands)</i>	<p>V.I. CODE ANN. tit. 14, § 703 (West 2008).  <u>Oppression.</u></p> <p>Whoever, being a public officer, or person pretending to be a public officer, and under the pretense or color of any process or other legal authority-</p> <ul style="list-style-type: none"> <li>(1) arrests any person or detains him against his will;</li> <li>(2) seizes or levies upon any property;</li> <li>(3) dispossesses any one of any lands or property; or</li> <li>(4) does any other act, whereby another person is injured in his person, property or rights-</li> </ul> <p>without a regular process or other lawful authority therefore, commits oppression and shall be fined not more than \$200 or imprisoned not more than 1 year, or both.</p> <p>V.I. CODE ANN. tit. 79, § 1582 (West 2008).  <u>Oppression of prisoners.</u></p> <p>Whoever is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.</p>
<b>Administrative Penalty</b> <i>(Virgin Islands)</i>	<p>N/A.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Washington</b>	
<b>Statute</b> <i>(Washington)</i>	<p>WASH. REV. CODE ANN. § 9A.80.010 (West 2008) <u>Official misconduct.</u></p> <p>(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:</p> <ul style="list-style-type: none"><li>(a) He intentionally commits an unauthorized act under color of law; or</li><li>(b) He intentionally refrains from performing a duty imposed upon him by law.</li></ul> <p>(2) Official misconduct is a gross misdemeanor.</p> <p>WASH. REV. CODE ANN. § 41.12.080 (West 2008) <u>Tenure of employment--Grounds for discharge, reduction, or deprivation of privileges.</u></p> <p>The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:</p> <ul style="list-style-type: none"><li>(1) Incompetency, inefficiency or inattention to or dereliction of duty;</li><li>(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;</li><li>(3) Mental or physical unfitness for the position which the employee holds;</li><li>(4) Dishonest, disgraceful, immoral or prejudicial conduct;</li><li>(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;</li><li>(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;</li></ul>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Washington)</p>	<p>WASH. REV. CODE ANN. § 41.14.110 (West 2008) <u>Police Civil Service. Tenure--Grounds for deprivation.</u></p> <p>The tenure of every person holding an office, place, position, or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:</p> <ol style="list-style-type: none"><li>(1) Incompetency, inefficiency, or inattention to, or dereliction of duty;</li><li>(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other wilful failure on the part of the employee to properly conduct himself; or any wilful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;</li><li>(3) Mental or physical unfitness for the position which the employee holds;</li><li>(4) Dishonest, disgraceful, or prejudicial conduct;</li><li>(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;</li><li>(6) Conviction of a felony, or a misdemeanor involving moral turpitude;</li><li>(7) Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.</li></ol> <p>WASH. REV. CODE ANN. § 42.20.080 (West 2008) <u>Other violations by officers.</u></p> <p>Every officer or other person mentioned in RCW 42.20.0700<sup>27</sup>, who shall wilfully disobey any provision of law regulating his official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor.</p> <p>WASH. REV. CODE ANN. § 42.20.100 (West 2008) <u>Failure of duty by public officer a misdemeanor.</u></p> <p>Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilful</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Washington)</p>	<p>neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor.</p>
<p><b>Definitions</b> (Washington)</p>	<p>WASH. REV. CODE ANN. § 9A.04.110 (West 2008)  <u>Washington Criminal Code</u>  <u>Definitions.</u></p> <p>In this title unless a different meaning plainly is required:</p> <p>(1) “Acted” includes, where relevant, omitted to act;</p> <p>(2) “Actor” includes, where relevant, a person failing to act;</p> <p>(3) “Benefit” is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;</p> <p>(8) “Government” includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;</p> <p>(9) “Governmental function” includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;</p> <p>(13) “Officer” and “public officer” means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;</p> <p>(14) “Omission” means a failure to act;</p> <p>(15) “Peace officer” means a duly appointed city, county, or state law enforcement officer;</p> <p>(16) “Pecuniary benefit” means any gain or advantage in the form of money, property, commercial interest, or anything else the</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions Cont'd</b> (Washington)</p>	<p>primary significance of which is economic gain;</p> <p>(17) “Person”, “he”, and “actor” include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;</p> <p>(20) “Prisoner” includes any person held in custody under process of law, or under lawful arrest;</p> <p>(23) “Public servant” means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;</p>
<p><b>Procedure</b> (Washington)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (Washington)</p>	<p>WASH. REV. CODE ANN. § 9.92.020 (West 2008) <u>Punishment of gross misdemeanor when not fixed by statute.</u></p> <p>Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.</p> <p>WASH. REV. CODE ANN. § 9.92.020 (West 2008) <u>Punishment of misdemeanor when not fixed by statute.</u></p> <p>Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine.</p>
<p><b>Administrative Penalty</b> (Washington)</p>	<p>WASH. REV. CODE ANN. § 41.12.080 (West 2008) <u>Tenure of employment--Grounds for discharge, reduction, or deprivation of privileges.</u></p>



## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> <i>(Washington)</i></p>	<p>The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:</p> <ol style="list-style-type: none"><li>(1) Incompetency, inefficiency or inattention to or dereliction of duty;</li><li>(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;</li><li>(3) Mental or physical unfitness for the position which the employee holds;</li><li>(4) Dishonest, disgraceful, immoral or prejudicial conduct;</li><li>(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;</li><li>(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;</li></ol> <p>WASH. REV. CODE ANN. § 41.14.110 (West 2008) <u>Police Civil Service. Tenure--Grounds for deprivation.</u></p> <p>The tenure of every person holding an office, place, position, or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:</p> <ol style="list-style-type: none"><li>(1) Incompetency, inefficiency, or inattention to, or dereliction of duty;</li><li>(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other wilful failure on the part of the employee to properly conduct himself; or any wilful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;</li><li>(3) Mental or physical unfitness for the position which the employee holds;</li><li>(4) Dishonest, disgraceful, or prejudicial conduct;</li><li>(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the</li></ol>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Administrative Penalty Cont'd</b> (Washington)</p>	<p>employee from properly performing the function and duties of any position under civil service; (6) Conviction of a felony, or a misdemeanor involving moral turpitude; (7) Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.</p> <p>WASH. REV. CODE ANN. § 41.12.080 (West 2008) <u>Tenure of employment--Grounds for discharge, reduction, or deprivation of privileges.</u></p> <p>(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.</p>
<p><b>West Virginia</b></p>	
<p><b>Statute</b> (West Virginia)</p>	<p>W. VA. CODE ANN. Const. Art. 9 § 4 (West 2008) <u>Malfeasance and Misfeasance in Office.</u></p> <p>The presidents of the county courts, the justices of the peace, sheriffs, prosecuting attorneys, clerks of the circuit and of the county courts, and all other county officers shall be subject to indictment for malfeasance, misfeasance, or neglect of official duty and upon conviction thereof, their office shall become vacant.</p> <p>W. VA. CODE ANN. § 5-10-49 (West 2008) <u>West Virginia Public Employees Retirement Act. Removal from office.</u></p> <p>Any member of the retirement system who has been removed from office or his office shall have been vacated for official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, or misfeasance shall immediately have his membership in the retirement system terminated permanently by the board of trustees and shall never become eligible for an annuity; however, any such member so terminated by virtue of this section shall be entitled to a refund of his contributions with regular interest as provided in section thirty hereof.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> (West Virginia)</p>	<p>W. VA. CODE ANN. § 7-14C-1 (West 2008) <u>Deputy Sheriffs; Procedure for Investigation</u> <u>Definitions.</u></p> <p>Unless the context clearly indicates otherwise, as used in this article:</p> <p>(1) “Deputy sheriff” means any person appointed by a sheriff as his or her deputy whose primary duties as deputy are within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners. This definition may not be construed to include any person or persons whose sole duties are the service of civil process and subpoenas as provided in section fourteen, article one, chapter fifty of this code, but the exclusion does not preclude the service of civil process or subpoenas by deputy sheriffs covered by the provisions of this code.</p> <p>(2) “Under investigation” or “under interrogation” means any situation in which any deputy sheriff becomes the focus of inquiry regarding any matter which may result in punitive action.</p> <p>(3) “Punitive action” means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.</p> <p>(4) “Hearing board” means a board which is authorized by the sheriff to hold a hearing on a complaint against a deputy sheriff and which consists of three members, all to be selected from deputy sheriffs within that agency, or law-enforcement officers or firefighters of another agency with the approval of the sheriff and who have had no part in the investigation or interrogation of the deputy sheriff under investigation. One of the members of the board shall be appointed by the sheriff, one shall be appointed by the deputy sheriff’s association and these two members of the board shall, by mutual agreement, appoint the third member of the board: Provided, That if the first two members of the board fail to agree upon the appointment of the third member of the board within five days, they shall submit to the sheriff’s civil service commission a list of four qualified candidates from which list the commission shall appoint the third member of the board: Provided, however, That in the event one or more members of the board cannot be appointed as otherwise provided in this section, then the chief judge of the circuit court of the county shall appoint a sufficient number of citizens of the county as may be necessary to constitute the board. At least one member of the hearing board shall be of the same rank as the deputy sheriff against whom the complaint has been filed.</p> <p>(5) “Hearing” means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure</b> (<i>West Virginia</i>)</p>	<p>W. VA. CODE ANN. § 8-14A-2 (West 2008) <u>Municipal corporation. Investigation and interrogation of a police officer or fireman.</u></p> <p>When any police officer or fireman is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing police or fire department, which could lead to punitive action, such interrogation shall be conducted under the following conditions:</p> <p>(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the police officer or fireman is on duty, or during his normal working hours, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the police officer or fireman being interrogated at any place other than his residence, such officer or fireman shall be compensated for such off-duty time in accordance with regular department procedure. If the interrogation of the police officer or fireman occurs during his regular duty hours, such officer or fireman shall not be released from employment for any work missed due to interrogation.</p> <p>(2) Any police officer or fireman under investigation shall be informed of the nature of the investigation prior to any interrogation. Such officer shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. No more than three interrogators at one time shall question the officer or fireman under investigation.</p> <p>(3) No police officer or fireman under interrogation shall be subjected to offensive language or threatened with punitive action. No promise of reward shall be made as an inducement to answering questions.</p> <p>(4) The complete interrogation of any police officer or fireman shall be recorded, either written, taped or transcribed. Upon request of the law-enforcement officer or fireman under investigation or his counsel, and upon advance payment of the reasonable cost thereof a copy of the record shall be made available to him not less than ten days prior to any hearing.</p> <p>(5) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any police officer or fireman, then that officer or fireman shall have the right to be represented by counsel who may be present at all times during such interrogation.</p> <p>Nothing herein shall prohibit the immediate temporary suspension, pending an investigation, from duty of any police officer or fireman who reports for duty under the influence of alcohol or controlled substances which would prevent the officer or fireman</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (<i>West Virginia</i>)</p>	<p>from performing his duties as defined in chapter sixty-a of this code, or under the influence of an apparent mental or emotional disorder.</p> <p>W. VA. CODE ANN. § 7-14-17 (West 2008) <u>Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in force; mandatory retirement age.</u></p> <p>(a) No deputy sheriff of any county subject to the provisions of this article may be removed, discharged, suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section fifteen of this article; and no such deputy may be removed, discharged, suspended or reduced in rank or pay except as provided in this article and in no event until the deputy has been furnished with a written statement of the reasons for the action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefore and of the written answer thereto, if the deputy desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. If the deputy demands it, the civil service commission shall grant a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At the hearing, the burden shall be upon the sheriff to justify his or her action, and in the event the sheriff fails to justify the action before the commission, then the deputy shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which the deputy may have been prevented from performing his or her usual employment, and no charges may be officially recorded against the deputy's record. The deputy, if reinstated or exonerated, shall, if represented by legal counsel, be awarded reasonable attorney fees to be determined by the commission and paid by the sheriff from county funds. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection unless an appeal is taken from the action of the commission.</p> <p>(b) In the event the civil service commission sustains the action of the sheriff, the deputy has an immediate right of appeal to the circuit court of the county. In the event that the commission reinstates the deputy, the sheriff has an immediate right of appeal to the circuit court. In the event either the sheriff or the deputy objects to the amount of the attorney fees awarded to the deputy, the objecting party has an immediate right of appeal to the circuit court. Any appeal must be taken within ninety days from the date of entry by the civil service commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof may be permitted to be introduced. The circuit court's decision is final, but the deputy or sheriff, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. The deputy or sheriff also has the right, where appropriate, to seek, in lieu of an</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (West Virginia)</p>	<p>appeal, a writ of mandamus. The deputy, if reinstated or exonerated by the circuit court or by the supreme court of appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the sheriff from county funds.</p> <p>(c) The removing sheriff and the deputy shall at all times, both before the civil service commission and upon appeal, be given the right to employ counsel to represent them.</p> <p>(d) If for reasons of economy or other reasons it is deemed necessary by any appointing sheriff to reduce the number of his or her deputies, the sheriff shall follow the procedure set forth in this subsection. The reduction in the numbers of the deputy sheriffs of the county shall be effected by suspending the last person or persons, including probationers, who have been appointed as deputies. The removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the number of deputies is increased in numbers to the strength existing prior to the reduction of deputies, the deputies suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments of deputy sheriffs in the county are made.</p> <p>(e) Notwithstanding any other provision of this article to the contrary, no deputy sheriff in any county subject to the provisions of this article may serve as a deputy sheriff in any county subject to the provisions of this article after attaining the age of sixty-five years.</p> <p>W. VA. CODE ANN. § 7-14B-17 (West 2008) <u>Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in force; mandatory retirement age.</u></p> <p>(a) No correctional officer of any county subject to the provisions of this article, may be removed, discharged, suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section fifteen of this article; and no such correctional officer may be removed, discharged, suspended or reduced in rank or pay except as provided in this article and in no event until the correctional officer has been furnished with a written statement of the reasons for the action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the correctional officer desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. If the correctional officer demands it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At the hearing, the burden shall be upon the sheriff to justify his or her action, and in the event the sheriff fails to justify the action before the commission, then the correctional officer shall be reinstated with full pay, forthwith and</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

**Procedure Cont'd**  
(West Virginia)

without any additional order, for the entire period during which the officer may have been prevented from performing his or her usual employment, and no charges may be officially recorded against the officer's record. The correctional officer, if reinstated or exonerated, shall, if represented by legal counsel, be awarded reasonable attorney fees to be determined by the commission and paid by the sheriff from county funds. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection, unless an appeal is taken from the action of the commission.

(b) In the event the civil service commission sustains the action of the sheriff, the correctional officer has an immediate right of appeal to the circuit court of the county. In the event that the commission reinstates the correctional officer, the sheriff has an immediate right of appeal to the circuit court. In the event either the sheriff or the correctional officer objects to the amount of the attorneys fees awarded to the correctional officer, the objecting party has an immediate right of appeal to the circuit court. Any appeal must be taken within ninety days from the date of entry by the civil service commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof may be permitted to be introduced. The circuit court's decision is final, but the correctional officer or sheriff, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. The correctional officer or sheriff also has the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus. The correctional officer, if reinstated or exonerated by the circuit court or the supreme court of appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the sheriff from county funds.

(c) The removing sheriff and the correctional officer shall at all times, both before the civil service commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it is deemed necessary by any appointing sheriff to reduce the number of his or her correctional officers, the sheriff shall follow the procedure set forth in this subsection. The reduction in the numbers of the correctional officers of the county shall be effected by suspending the last person or persons, including probationers, who have been appointed as correctional officers: Provided, That in the event the number of correctional officers is increased in numbers to the strength existing prior to the reduction of correctional officers, the correctional officers suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments of correctional officers in the county are made.

(e) Notwithstanding any other provision of this article to the contrary, no correctional officer in any county subject to the

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (West Virginia)</p>	<p>provisions of this article may serve as a correctional officer in any county subject to the provisions of this article after attaining the age of sixty-five years.</p> <p>W. VA. CODE ANN. § 7-14C-2 (West 2008) <u>Investigation and interrogation of a deputy sheriff.</u></p> <p>When any deputy sheriff is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the department, which could lead to punitive action, the interrogation shall be conducted under the following conditions:</p> <p>(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the deputy sheriff is on duty, or during his or her normal working hours, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during the off-duty time of the deputy sheriff being interrogated at any place other than his or her residence, the deputy sheriff shall be compensated for that off-duty time in accordance with regular department procedure. If the interrogation of the deputy sheriff occurs during his or her regular duty hours, the deputy sheriff may not be released from employment for any work missed due to interrogation.</p> <p>(b) Any deputy sheriff under investigation shall be informed of the nature of the investigation prior to any interrogation. The deputy sheriff shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers and all other persons to be present during the interrogation. No more than three interrogators at one time may question the deputy sheriff under investigation.</p> <p>(c) No deputy sheriff under interrogation may be subjected to offensive language or threatened with punitive action. No promise of reward may be made as an inducement to answering questions.</p> <p>(d) The complete interrogation of any deputy sheriff shall be recorded, whether written, taped or transcribed. Upon request of the deputy sheriff under investigation or his or her counsel, and upon advance payment of the reasonable cost thereof, a copy of the record shall be made available to the deputy sheriff not less than ten days prior to any hearing.</p> <p>(e) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any deputy sheriff, then that deputy sheriff shall have the right to be represented by counsel who may be present at all times during the interrogation.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Procedure Cont'd</b> (<i>West Virginia</i>)</p>	<p>Nothing herein prohibits the immediate temporary suspension from duty, pending an investigation, of any deputy sheriff who reports for duty under the influence of alcohol or a controlled substance which would prevent the deputy from performing his or her duties as defined in chapter sixty-a of this code, or under the influence of an apparent mental or emotional disorder.</p>
<p><b>Criminal Penalty</b> (<i>West Virginia</i>)</p>	<p>N/A.</p>
<p><b>Administrative Penalty</b> (<i>West Virginia</i>)</p>	<p>W. VA. CODE ANN. Const. Art. 9 § 4 (West 2008) <u>Malfeasance and Misfeasance in Office.</u></p> <p>The presidents of the county courts, the justices of the peace, sheriffs, prosecuting attorneys, clerks of the circuit and of the county courts, and all other county officers shall be subject to indictment for malfeasance, misfeasance, or neglect of official duty and upon conviction thereof, their office shall become vacant.</p> <p>W. VA. CODE ANN. § 5-10-49 (West 2008) <u>West Virginia Public Employees Retirement Act. Removal from office.</u></p> <p>Any member of the retirement system who has been removed from office or his office shall have been vacated for official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, or misfeasance shall immediately have his membership in the retirement system terminated permanently by the board of trustees and shall never become eligible for an annuity; however, any such member so terminated by virtue of this section shall be entitled to a refund of his contributions with regular interest as provided in section thirty hereof.</p>
<p><b>Wisconsin</b></p>	
<p><b>Statute</b> (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. 946.12 (West 2008). <u>Misconduct in public office.</u></p> <p>Any public officer or public employee who does any of the following is guilty of a Class I felony:</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (<i>Wisconsin</i>)</p>	<p>(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or</p> <p>(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or</p> <p>(3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or</p> <p>(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or</p> <p>(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.</p> <p>WIS. STAT. ANN. 17.09 (West 2008) <u>Removal of elective county officers.</u></p> <p>Elective county officers may be removed from office as follows:</p> <p>(1) County clerk; treasurer; surveyor; supervisor. The county clerk, county treasurer or surveyor, or a county supervisor, by the county board, for cause, by a vote of two-thirds of all the supervisors entitled to seats on such board.</p> <p>(2) Clerk of circuit court. The clerk of the circuit court, by the judge or a majority of judges of the circuit court for the clerk's county, for cause.</p> <p>(5) Other elective county officers. The sheriff, coroner or register of deeds, by the governor, for cause.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Definitions</b> (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. 946.18 (West 2008). <u>Misconduct sections apply to all public officers.</u></p> <p>Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.</p> <p>WIS. STAT. ANN. 164.01 (West 2008). <u>Law Enforcement Officers' Bill of Rights.</u> <u>Definition.</u></p> <p>In this chapter, except in § 164.06, "law enforcement officer" means any person employed by the state or by a city, village, town or county for the purpose of detecting and preventing crime and enforcing laws or ordinances, who is authorized to make arrests for violations of the laws or ordinances which he or she is employed to enforce.</p>
<p><b>Procedure</b> (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. 68.001 (West 2008).<sup>28</sup> <u>Administrative Procedure. Legislative purpose.</u></p> <p>The purpose of this chapter is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by municipal authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th amendment to the U.S. constitution.</p> <p>WIS. STAT. ANN. 164.02 (West 2008). <u>Law Enforcement Officers' Bill of Rights. Interrogation.</u></p> <p>(1) If a law enforcement officer is under investigation and is subjected to interrogation for any reason which could lead to disciplinary action, demotion, dismissal or criminal charges, the interrogation shall comply with the following requirements:</p> <ul style="list-style-type: none"><li>(a) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.</li><li>(b) At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.</li></ul> <p>(2) Evidence obtained during the course of any interrogation not conducted in accordance with sub. (1) may not be utilized in any subsequent disciplinary proceeding against the law enforcement officer.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty</b> (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. 939.50 (West 2008). <u>Classification of felonies.</u></p> <p>(i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.</p>
<p><b>Administrative Penalty</b> (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. 17.09 (West 2008) <u>Removal of elective county officers.</u></p> <p>Elective county officers may be removed from office as follows:</p> <p>(1) County clerk; treasurer; surveyor; supervisor. The county clerk, county treasurer or surveyor, or a county supervisor, by the county board, for cause, by a vote of two-thirds of all the supervisors entitled to seats on such board.</p> <p>(2) Clerk of circuit court. The clerk of the circuit court, by the judge or a majority of judges of the circuit court for the clerk's county, for cause.</p> <p>(5) Other elective county officers. The sheriff, coroner or register of deeds, by the governor, for cause.</p>
<p><b>Wyoming</b></p>	
<p><b>Statute</b> (<i>Wyoming</i>)</p>	<p>WYO. STAT. ANN. § 6-5-107 (West 2008). <u>Official misconduct; penalties.</u></p> <p>(a) A public servant or public officer commits a misdemeanor punishable by a fine of not more than five thousand dollars (\$5,000.00), if, with intent to obtain a pecuniary benefit or maliciously to cause harm to another, he knowingly:</p> <ul style="list-style-type: none"> <li>(i) Commits an unauthorized act relating to his official duties;</li> <li>(ii) Refrains from performing a duty imposed upon him by law; or</li> <li>(iii) Violates any statute relating to his official duties.</li> </ul> <p>(b) A public officer commits a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00) if he intentionally fails to perform a duty in the manner and within the time prescribed by law.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Wyoming)</p>	<p>WYO. STAT. ANN. § 9-13-105 (West 2008). <u>Public Officials, Members and Employees Ethics.</u> <u>Misuse of office.</u></p> <p>(a) A public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for his private benefit or that of another unless the use is authorized by law.</p> <p>(b) A public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for political or campaign activity unless the use is:</p> <ul style="list-style-type: none"><li>(i) Authorized by law; or</li><li>(ii) Properly incidental to another activity required or authorized by law and the public official, public employee or public member allocates and reimburses the governmental entity for any additional costs incurred for that portion of the activity not required or authorized by law.</li></ul> <p>(c) A public official, public employee or public member shall not disseminate to another person official information which the public official, public employee or public member obtains through or in connection with his position, unless the information is available to the general public or unless the dissemination is authorized by law.</p> <p>WYO. STAT. ANN. § 18-3-102 (West 2008). <u>County officers required to execute bonds; amount; sureties; penalty.</u></p> <p>(a) All county officers, except county attorneys, before assuming the duties of their office and within twenty (20) days after the commencement of the term for which they were elected or appointed, shall take, subscribe and file the oath of office, and execute and file their official bonds to the state of Wyoming to insure the honest and faithful performance of their duties, in the penal amounts specified and according to the following provisions:</p> <ul style="list-style-type: none"><li>(v) County sheriff: a bond approved by the board of county commissioners of four thousand dollars (\$4,000.00) with sufficient surety;</li></ul> <p>(d) Whenever the board of county commissioners requires any county officer to execute a new or additional bond, the county clerk shall immediately give personal notice to that officer. If the bond is not executed within twenty (20) days after receipt of the notice, the board of county commissioners shall declare the office vacant and shall appoint a qualified person to hold the office as</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (Wyoming)</p>	<p>provided by W.S. 22-18-111.</p> <p>(e) Sureties of official bonds as provided in this section shall be residents of the state and have a net worth of twice the amount secured by the bond and each shall sign an affidavit, which will be endorsed on the bond, of his net worth. Any surety who willfully and corruptly makes a false affidavit as to his qualifications is guilty of false swearing.</p> <p>(f) If a surety ceases to possess the required qualifications, the board of county commissioners shall require the county officer giving the bond to execute a new one.</p> <p>(g) Any action to recover on the bonds provided in this section shall be in the name of the people.</p>
<p><b>Definitions</b> (Wyoming)</p>	<p>N/A.</p>
<p><b>Procedure</b> (Wyoming)</p>	<p>N/A.</p>
<p><b>Criminal Penalty</b> (Wyoming)</p>	<p>WYO. STAT. ANN. § 6-5-107 (West 2008). <u>Official misconduct; penalties.</u></p> <p>(a) A public servant or public officer commits a misdemeanor punishable by a fine of not more than five thousand dollars (\$5,000.00), if, with intent to obtain a pecuniary benefit or maliciously to cause harm to another, he knowingly:</p> <ul style="list-style-type: none"> <li>(i) Commits an unauthorized act relating to his official duties;</li> <li>(ii) Refrains from performing a duty imposed upon him by law; or</li> <li>(iii) Violates any statute relating to his official duties.</li> </ul> <p>(b) A public officer commits a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00) if he intentionally fails to perform a duty in the manner and within the time prescribed by law.</p> <p>WYO. STAT. ANN. § 9-13-109 (West 2008). <u>Public Officials, Members and Employees Ethics. Penalties.</u></p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Criminal Penalty Cont'd</b> (Wyoming)</p>	<p>(a) Any person who violates this act is guilty of a misdemeanor punishable upon conviction by a fine of not more than one thousand dollars (\$1,000.00).</p> <p>(b) Violation of any provision of this act constitutes sufficient cause for termination of a public employee's employment or for removal of a public official or public member from his office or position.</p> <p>(c) If any action is prohibited both by this act and any provision of title 6, the provisions of this act shall not apply and the provisions of title 6 shall apply.</p>
<p><b>Administrative Penalty</b> (Wyoming)</p>	<p>WYO. STAT. ANN. § 6-5-113 (West 2008). <u>Removal from office after judgment of conviction.</u></p> <p>A judgment of conviction rendered under W.S. 6-5-102 through 6-5-112 and 6-5-117 against any public servant, except state elected officials, supreme court justices, district court judges and circuit court judges, shall result in removal from office or discharge from employment.</p>
<p><b>United States/ Federal</b></p>	
<p><b>Statute</b> (U.S./ Federal)</p>	<p>Federal Bureau of Prisons, Department of Justice, 3420.09 “Standards of Employee Conduct” (1999) available at: <a href="http://www.bop.gov/DataSource/execute/dsPolicyLoc">http://www.bop.gov/DataSource/execute/dsPolicyLoc</a></p> <p>8. GENERAL POLICY. Employees of the Bureau are governed by the regulations published in 5 CFR Part 2635. While this Program Statement expounds on those regulations to clarify their application in the Bureau, it does not and cannot specify every incident which would violate the Standards of Conduct. In general, the Bureau expects its employees to conduct themselves in such a manner that their activities both on and off duty will not discredit themselves or the agency.</p> <p>Employees shall:</p> <ol style="list-style-type: none"> <li>a. Conduct themselves in a manner that creates and maintains respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.</li> </ol>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (U.S./ Federal)</p>	<p>b. Not abuse their position by giving any false impression of having arrest authority through use of Bureau credentials or otherwise. Bureau employees may only arrest in their official capacity in very limited circumstances as permitted by 18 U.S.C. § 3050 or other authority officially granted to them, such as U.S. Marshal deputation.</p> <p>c. Avoid any action which might result in, or create the appearance of, adversely affecting the confidence of the public in the integrity of the U.S. Government.</p> <p>d. Avoid conflicts of interest in matters that affect their financial interests.</p> <p>e. Comply with post-employment restrictions.</p> <p>f. Conform with procurement integrity regulations.</p> <p>g. Uphold the ethical rules governing their professions including complying with applicable licensing authority rules, except when they conflict with federal law.</p> <p>h. Follow special rules to avoid conflicts of interest when seeking employment outside the Bureau.</p> <p>i. Immediately report to their CEOs, or other appropriate authorities, such as the Office of Internal Affairs or the Inspector General's Office, any violation or apparent violation of these standards. Failure by employees to follow these regulations or this policy could result in appropriate disciplinary action, up to and including removal (see Attachment A).</p> <p>9. PERSONAL CONDUCT. It is essential to the orderly running of any Bureau facility that employees conduct themselves professionally. The following are some types of behavior that cannot be tolerated in the Bureau.</p> <p>a. Alcohol/Narcotics. The use of illegal drugs or narcotics or the abuse of any drug or narcotic is strictly prohibited at any time. Use of alcoholic beverages or being under the influence of alcohol while on duty or immediately prior to reporting for duty, is prohibited. Employees shall be subject to disciplinary action if found to possess a .02 blood alcohol content level or greater while on duty.</p> <p>b. Sexual Relationships/Contact With Inmates. Employees may not allow themselves to show partiality toward, or become emotionally, physically, sexually, or financially involved with inmates, former inmates, or the families of inmates or former</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> (U.S./ Federal)</p>	<p>inmates. Chaplains, psychologists, and psychiatrists may continue a previously established therapeutic relationship with a former inmate in accordance with their respective codes of professional conduct and responsibility.</p> <p>(1) An employee may not engage in, or allow another person to engage in, sexual behavior with an inmate. Regardless of whether force is used, or threatened, there is never any such thing as “consensual” sex between staff and inmates.</p> <p>(2) Title 18, U.S. Code Chapter 109A provides penalties of up to life imprisonment for sexual abuse of inmates where force is used or threatened. “Sexual contact” is defined as the intentional touching of “the genitalia, anus, groin, breast, inner thigh, or buttocks.” Penetration is not required to support a conviction for sexual contact. All allegations of sexual abuse shall be thoroughly investigated and, when appropriate, referred to authorities for prosecution.</p> <p>(3) Employees are subject to administrative action, up to and including removal, for any inappropriate contact or relationship with inmates, regardless of whether such contact constitutes a prosecutable crime. Physical contact is not required to subject an employee to sanctions for sexual misconduct.</p> <p>c. Additional Conduct Issues. An employee may not offer or give to an inmate or a former inmate or any member of his or her family, or to any person known to be associated with an inmate or former inmate, any article, favor, or service, which is not authorized in the performance of the employee's duties. Neither shall an employee accept any gift, personal service, or favor from an inmate or former inmate, or from anyone known to be associated with or related to an inmate or former inmate. This prohibition includes becoming involved with families or associates of inmates. If such contact occurs, it must be reported using the procedure in subsection c(5).</p> <p>(1) An employee may not show favoritism or give preferential treatment to one inmate, or a group of inmates, over another.</p> <p>(2) An employee may not use brutality, physical violence, or intimidation toward inmates, or use any force beyond that which is reasonably necessary to subdue an inmate.</p> <p>(3) An employee may not use physical violence, threats or intimidation toward fellow employees, family members of employees, or any visitor to a Bureau work site.</p> <p>(4) An employee may not use profane, obscene, or otherwise abusive language when communicating with inmates, fellow</p>
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# Fifty State Survey of Official Misconduct Statutes

## NIC/WCL Project on Addressing Prison Rape

<p><b>Statute Cont'd</b> <i>(U.S./ Federal)</i></p>	<p>employees, or others. Employees shall conduct themselves in a manner which will not be demeaning to inmates, fellow employees, or others.</p> <p>(5) An employee who becomes involved in circumstances as described above (or any situation that might give the appearance of improper involvement with inmates or former inmates or the families of inmates or former inmates, including employees whose relatives are inmates or former inmates) must report the contact, in writing, to the CEO as soon as practicable. This includes, but is not limited to, telephone calls or written communications with such persons outside the normal scope of employment. The employee will then be instructed as to the appropriate course of action.</p> <p>(6) Employees shall avoid situations which give rise to a conflict of interest or the appearance of a conflict of interest (see Section 6, Definitions).</p> <p>(7) Employees shall not participate in conduct which would lead a reasonable person to question the employee's impartiality (see Section 20, Conflicts of Interest).</p> <p>10. RESPONSIVENESS</p> <p>a. Inattention to duty in a correctional environment can result in escapes, assaults, and other incidents. Therefore, employees are required to remain fully alert and attentive during duty hours.</p> <p>b. Because failure to respond to an emergency may jeopardize the security of the institution, as well as the lives of staff or inmates, it is mandatory that employees respond immediately and effectively to all emergency situations.</p> <p>c. Employees are to obey the orders of their superiors at all times. In an emergency situation, carrying out the orders of those in command is imperative to ensure the security of the institution.</p> <p>11. ILLEGAL ACTIVITIES. Illegal activities on the part of any employee, in addition to being unlawful, reflect on the integrity of the Bureau and betray the trust and confidence placed in it by the public. It is expected that employees shall obey, not only the letter of the law, but also the spirit of the law while engaged in personal or official activities. Should an employee be charged with, arrested for, or convicted of any felony or misdemeanor, that employee must immediately inform and provide a written report to the CEO. Traffic violations resulting in fines under \$150 shall be exempt from the reporting requirement.</p>
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## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Definitions</b> <i>(U.S./ Federal)</i>	N/A.
<b>Procedure</b> <i>(U.S./ Federal)</i>	N/A.
<b>Criminal Penalty</b> <i>(U.S./ Federal)</i>	N/A.
<b>Administrative Penalty</b> <i>(U.S./ Federal)</i>	<p><u>Standard Schedule of Disciplinary Offenses and Penalties</u></p> <p>1. This table is intended to be used as a guide in determining appropriate discipline to impose according to the type of offense committed. The offenses listed are not inclusive of all offenses.</p> <p>2. Ordinarily, penalties imposed should be within the range of penalties provided for an offense. In aggravated cases, a penalty outside the range of penalties may be imposed. For example, supervisors, because of their responsibility to demonstrate exemplary behavior, may be subject to greater penalty than is provided in the range of penalties. When a more severe penalty than provided for in the range of penalties is proposed, the notice of proposed action must provide a justification.</p> <p>3. The deciding official will consider relevant circumstances, including mitigating and aggravating factors, when determining the appropriate penalty. The range of penalties provided for most offenses is intentionally broad, ranging from official reprimand to removal. While the principles of progressive discipline will normally be applied, it is understood that there are offenses so egregious as to warrant severe sanctions for the first offense up to and including removal. This is especially true in cases where there is no indication that the employee would be corrected by a lesser penalty, or if the offense is of such a nature that reoccurrence of the conduct could jeopardize security or bring disrepute on the Bureau of Prisons. For example, if an employee failed to respond to an emergency, even if that emergency turned out to be a false alarm, removal would be appropriate if the deciding official was not convinced that the employee would respond promptly to any future emergency.</p> <p>4. Where appropriate, consideration may be given to a demotion or other action in lieu of removal.</p> <p>5. Suspension penalties on this schedule refer to calendar days. Except for emergency suspensions and indefinite suspensions, all disciplinary suspensions are to begin on the first workday of the employee's next regularly scheduled work week.</p>

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

<b>Administrative Penalty Cont'd</b> (U.S./ Federal)	<p>6. The reckoning period is defined as that period of time following the date management becomes aware of the offense during which that offense can be used to determine the sanction for a subsequent offense.</p> <p>7. Offenses falling within the reckoning period, even though unrelated, should be considered when determining the appropriate action.</p> <p>8. Where the deciding official substitutes a letter of reprimand in lieu of a greater proposed sanction, the letter of reprimand itself is to be separate from the decision.</p> <p>The offense-penalty chart is available at Attachment A, page 1: <a href="http://www.bop.gov/policy/progstat/3420_009.pdf">http://www.bop.gov/policy/progstat/3420_009.pdf</a></p>
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<sup>1</sup> The old law provided: “Any person appointed to office in any city or town may, for cause, after a hearing, be removed by the officer making the appointment. The city council may remove, by a two-thirds vote of all those elected to the council, any such person in the several departments for incompetency, malfeasance, misfeasance, or nonfeasance in office and for conduct detrimental to good order or discipline, including habitual neglect of duty.”

<sup>2</sup> In an Alaska Supreme Court decision, *Doe v. State*, 189 P.3d 999 (Alaska 2008), the court held that 12.55.035 and 12.55.135 provisions are unconstitutional as applied to a sex offender who was convicted and sentenced before The Alaska Sex Offender Registration Act’s (ASORA) enactment because it violated the State’s Constitution’s ex post facto clause.

<sup>3</sup> The Arkansas Code does not have a state officer removal statute that is applicable to this survey. Under the Arkansas Constitution, Art. 15, the Governor, State Officers, Judges of the Supreme and Circuit Courts, Chancellors and Prosecuting Attorneys, are liable for impeachment. None of these officers, as defined in the Code, are applicable to this survey.

<sup>4</sup> The Arkansas Code does not have a state officer removal statute that is applicable to this survey. Under the Arkansas Constitution, Art. 15, the Governor, State Officers, Judges of the Supreme and Circuit Courts, Chancellors, and Prosecuting Attorneys are liable for impeachment. None of these officers, as defined in the Code, are applicable to this survey.

<sup>5</sup> CONN. GEN. STAT. ANN § 7-418 exempts inmates from the municipal merit system unless granted special permission by the local commission.

<sup>6</sup> FLA. STAT. ANN. § 775.082 is an eligibility statute for felony re-offenders who face mandatory-minimum penalties, and FLA. STAT. ANN. § 775.084 is a procedural and definitional statute for violent habitual offenders. These statutes are not included in the survey because they are not directly applicable, however, serve as a reference as they may be applicable.

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

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<sup>7</sup> Subsections (a), (c), (e), and (f) are omitted because they were repealed.

<sup>8</sup> The “Officials Convicted of Infamous Crimes Act” (720 ILL. COMP. STAT. ANN. 280/1) does not contain an “infamous crime” definition; however, the Act’s full title is “An Act to require the payment of compensation to any officer or employee of the State of Illinois who has been reinstated in his office or employment after reversal of his conviction for any crime,” which suggests that “infamous crime” refers to any criminal conviction. There is no other statutory definition for “infamous crime.”

<sup>9</sup> IOWA CODE ANN. § 445.1 (West 2008) refers to definitions in the Tax Code that are not applicable to this survey.

<sup>10</sup> See KAN. CRIM. CODE ANN. § 21-4704 for more information on non-drug felony sentencing guidelines.

<sup>11</sup> The former law was classified under its penal code “Crimes, Public Office and Officers.”

<sup>12</sup> After its repeal, the Michigan Supreme Court in an Advisory Opinion declared the law unconstitutional for embracing more than one object in violation of Const. Art. 4, § 24. The Advisory Opinion stated, “In addition to the multitude of varying activities sought to be regulated by this Act, the Act specifically repealed five individual and distinct acts. They concerned the licensing and regulation of legislative agents; the corrupt practice section of the general election law; two specific conflict of interest statutes; and an ethics act... A prohibition against the passage of an act relating to different objects expressed in the title makes the whole act void,” 240 N.W.2d 193, 195-196 (Mich. 1976). The statute mainly, but not exclusively, addressed financial propriety for public employees.

<sup>13</sup> Excerpt is the following paragraph in part (1) from § 38.514.

<sup>14</sup> In *Stagemeyer v. County of Dawson*, 192 F. Supp. 2d 998 (Neb. 2002) applied this holding to the statute: “If Nebraska criminal statute which provided for treble damages if a public servant or peace officer commits the misdemeanor offense of oppression under color of office supported a civil cause of action to be brought against a defendant in their individual capacity, the statute would be unconstitutional to the extent it allowed recovery of treble damages unrelated to actual damages.”

<sup>15</sup> New Jersey’s legislative findings on official misconduct are codified at N.J. STAT. ANN. § 2C:30-5 (West 2008).

<sup>16</sup> Among other sections within the chapter, § 10-1-2 provides: “No person convicted of a felonious or infamous crime, unless such person has been pardoned or restored to political rights, shall be qualified to be elected or appointed to any public office in this state.”

<sup>17</sup> Among other sections within the chapter, § 10-1-2 provides: “No person convicted of a felonious or infamous crime, unless such person has been pardoned or restored to political rights, shall be qualified to be elected or appointed to any public office in this state.”

## Fifty State Survey of Official Misconduct Statutes

### NIC/WCL Project on Addressing Prison Rape

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<sup>18</sup> North Carolina’s code contains “misconduct in public office” (Art. 31) and “misconduct in private office” criminal offenses” (Art. 32) that are not applicable to this survey.

<sup>19</sup> N.D. CENT. CODE § 44-10-21 provides that nothing in chapter 44-10 may be construed to bar criminal prosecution.

<sup>20</sup> The Act provides (under § 91): All state officers not subject to impeachment under § 1, Article 8 of the Constitution, and all county, city and municipal officers may, in addition to the methods now and causes provided by law, be removed from office as herein provided.

<sup>21</sup> For ease of reference, we have abridged the oath.

<sup>22</sup> Malfeasance may subject public employee pension to divestment. *See, McGrath v. Rhode Island Retirement Bd. By and Through Mayer*, 906 F. Supp. 749 (D. R.I.1995).

<sup>23</sup> This law was amended in 2009 by Tex. Sess. Law Serv. Ch. 82 (S.B. 828).

<sup>24</sup> TEX. PENAL CODE ANN. § 12.32, § 12.33, and § 12.34 were amended in 2009 by Tex. Sess. Law Serv. Ch. 82 (S.B. 828).

<sup>25</sup> This law was amended in 2009 by Tex. Sess. Law Serv. Ch. 82 (S.B. 828).

<sup>26</sup> Statute amended in 2009 by legislature, however, the former law included in the survey remains accurate.

<sup>27</sup> Refers to “Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigation district...”.

<sup>28</sup> Procedure is outlined in §§ 68.001 – 68.16.