

Mandatory Reports to DSS and Law Enforcement

KIRSTEN E. LELOUDIS, JD, MPH

UNC SCHOOL OF GOVERNMENT

The information provided in this presentation is for educational purposes only and does not constitute legal advice or establish an attorney-client relationship.



Presentation Roadmap

Confidentiality Laws: Is Reporting Allowed?

- What do we mean by “confidentiality?”
- HIPAA
- Title X
- FERPA
- NC’s minor’s consent law

Mandatory Reporting

- Introduction to mandatory reporting
- Abuse, neglect, dependency, and death due to maltreatment
- Certain criminal offenses
- Certain injuries and illnesses
- Children who have disappeared (“Caylee’s Law”)

Case Studies + Discussion

A Few Quick Notes

Scope of Presentation

- Today, we are focused on mandatory reporting requirements that apply to minors
- For more information about preventing elder abuse and mandatory reporting, please see G.S. 108A, Art. 6 and visit <https://protectadults.sog.unc.edu/>

Content Warning

- This presentation involves discussion of child abuse, neglect, dependency, and crimes committed against minors, including sexual violence

Confidentiality Laws: Is Reporting Allowed?



What Do We Mean by “Confidentiality?”

Confidentiality laws protect specific types of information by establishing requirements for how the information can be...

- Used or shared
 - Ex: use by the entity that holds the information
 - Ex: sharing the information with the person who the information is about, a family member, law enforcement, another health care provider, a third-party research team, etc.
- Securely stored and transmitted
 - Ex: firewalls, VPNs, encrypted emails, locked file cabinets, etc.
- And more



Why Does Confidentiality Matter?

What do you think?



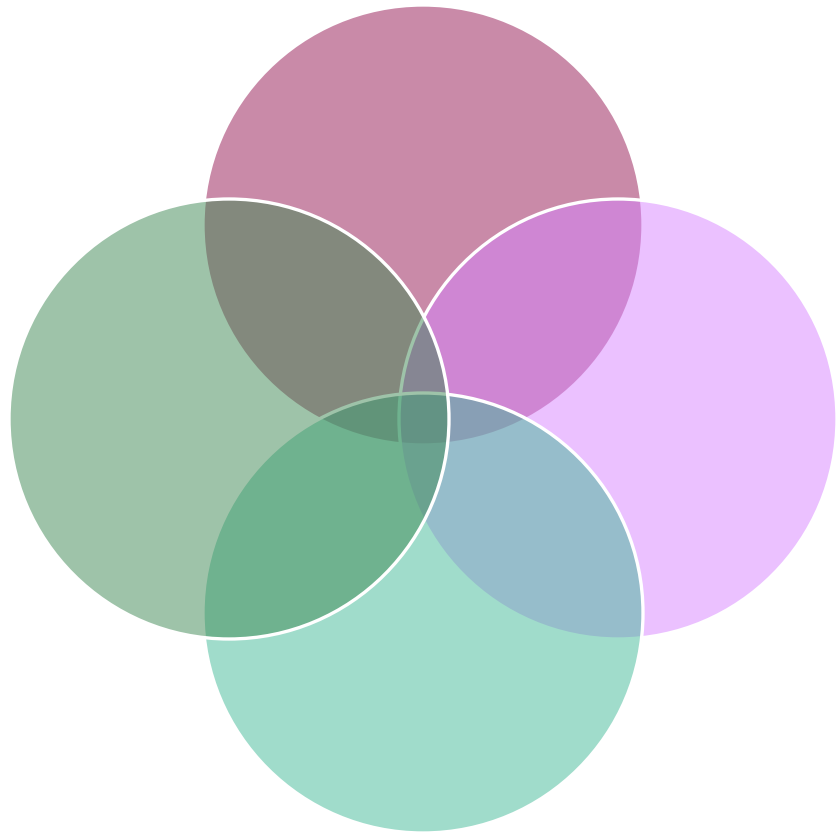
Why Does Confidentiality Matter?

What do you think?

Possible reasons:

- Protects individuals' privacy
- Helps prevent fraud (misuse of someone else's information)
- **Violating confidentiality can result in loss of an individual's and/or the public's trust in your organization**
- Violating confidentiality can result in civil, criminal, and other penalties
- And more

HIPAA, Title X, FERPA, Minor's Consent...



What do these four laws have in common when it comes to confidentiality and mandatory reporting?

They all include requirements around confidentiality

AND YET

they all also allow making mandatory reports in certain situations



HIPAA

45 CFR 164.512(a)

HIPAA allows disclosures of protected health information (PHI) when the disclosure is “**required by law**”

- This includes North Carolina’s mandatory reporting laws

HIPAA says the disclosure must **comply with** and **be limited to** the relevant requirements of the law

- This means only releasing the pieces of information that the mandatory reporting law requires (e.g., child’s name, age, etc.) to the party specified in the mandatory reporting law (e.g., law enforcement)

HIPAA Changes: 2024 Final Rule

U.S. Department of Health and Human Services published the HIPAA Final Rule on April 26, 2024

- Amends HIPAA Privacy Rule, creating new protections for protected health information (PHI) that is related to lawful reproductive health care (RHC)
- Certain types of disclosures of PHI related to RHC are now prohibited
- Four types of disclosures of PHI related to RHC continue to be allowed, but require an attestation

Key takeaway for today's presentation: this change to HIPAA does not preclude you from making a mandatory report as currently required under NC law

→ For more information about the 2024 HIPAA Final Rule, visit: <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html>



Title X

45 CFR 59.10(a)

Title X programs are allowed to release confidential information about individuals receiving Title X family planning services when the disclosure is **required by law**

- This includes North Carolina's mandatory reporting laws

Unlike HIPAA, the Title X does not specify what type of information can be disclosed- just that there should be "appropriate safeguards for confidentiality"

- Suggestion: take the same approach as you would for HIPAA, only releasing the pieces of information that the mandatory reporting law requires (e.g., child's name, age, etc.) to the party specified in the mandatory reporting law (e.g., law enforcement)



FERPA

34 CFR 99.36

FERPA typically applies to school nurses

Different from HIPAA/Title X- no “required by law” provision

... however, FERPA allows disclosure of personally identifiable information (PII) PII when it is **necessary to protect the health and safety of the student or another person.**

- Must have a “rational basis” for deciding disclosure is necessary
- Threat must be “articulable” and “significant”
- Can share PII with anyone in a position to protect the student/other person who is at risk



NC Minor's Consent Law

G.S. 90-21.5(a) allows minors with decisional capacity to consent, on their own, to medical health services for:

- Prevention, diagnosis, and/or treatment of
- Venereal/reportable diseases, pregnancy, emotional disturbance, and abuse of controlled substances/alcohol

→ Includes birth control, emergency contraception, pregnancy testing, prenatal care, and more!

Exceptions to the law: minors can't consent to their own admission to 24/7 mental health facility; an abortion (see G.S. 90-21.7); or sterilization

NC Minor's Consent *Confidentiality* Law

G.S. 90-21.4(b) says the provider “shall not notify a parent, legal guardian, person standing in loco parentis, or a legal custodian” about services provided under G.S. 90-21.5 unless:

- In the provider’s opinion, notification is essential to life or health of the minor, or
- Minor’s parent/legal guardian/person standing in loco parentis/legal custodian contacts the provider about services provided under G.S. 90-21.5 (in which case, the provider *may choose* to disclose info)

A few key points:

- G.S. 90-21.4(b) prohibits disclosure to certain parent figures
 - This law does not prevent you from making a report to DSS or law enforcement when required by law!
- Nevertheless, keep in mind that making a mandated report *could* result in a parent-figure becoming aware of a minor’s consent service provided to a minor patient

Mandatory Reporting



Introduction to Mandatory Reporting

Mandatory reporting = a legally enforceable duty to report certain conduct to government officials

Why do mandatory reporting laws exist? *What do you think?*



Introduction to Mandatory Reporting

Mandatory reporting = a legally enforceable duty to report certain conduct to government officials

Why do mandatory reporting laws exist? *What do you think?*

Possible reasons:

- Protect vulnerable populations (e.g., children, adults with disabilities)
- Improve health and safety by connecting people to resources
- Prevent “falling through the cracks”
- And more



... It's Not Just North Carolina

All states have mandatory reporting laws

- The Child Abuse Prevention and Treatment Act (CAPTA) requires states that receive federal funds for child welfare work to have a mandatory reporting law for child abuse and neglect
- Different approaches taken in different states



Mandatory Reporting: NC Requirements

The remainder of this presentation will focus on four types of mandatory reporting that are established under NC law.

This includes requirements to report:

- Child abuse, neglect, dependency, and death due to maltreatment
- Certain criminal offenses committed against a child
- Certain injuries and illnesses in children
- Children who have disappeared (“Caylee’s Law”)

Summary of Mandatory Reporting Requirements for Local Health Departments (LHDs) Serving Minors (July 2023)

Who is the report made to?	DSS	Law Enforcement		
When is a report required?	Cause to suspect that a child is abused, neglected, or dependent or has died due to maltreatment	Know or reasonably should have known that a juvenile was or is the victim of a violent offense, sexual offense, or misdemeanor child abuse	Certain wounds, illnesses, and injuries (regardless of patient age); non-accidental trauma causing recurrent illness or serious physical injury in a child under age 18	Suspect that a child under age 16 has disappeared and may be in danger
Who must report?	All persons (“universal”)	Persons age 18+ (limited exceptions for some professionals with privilege; exception does not include doctors and nurses)	Physicians and health care facility directors/administrators	All persons (“universal”)
Timing of report	Law does not specify (but given risks to child health and safety, reporting should not be delayed)	Immediately	As soon as practicable before, during, or after the child’s treatment	Within a reasonable time
Criminal penalty for failure to report or preventing a report?	Yes- misdemeanor	Yes- misdemeanor	No- but liability still possible, depending on the circumstances	Yes- misdemeanor
Immunity for good faith reporting?	Yes	Yes	Yes	Yes
Statutes	G.S. 7B-101; 7B-301	G.S. 14-318.6	G.S. 90-21.20(b)-(c1)	G.S. 14-318.5

Reminder: Some situations may trigger a requirement to make a report to both DSS and law enforcement. When this occurs, a person cannot make a report to just one agency (e.g., reporting to DSS, but not law enforcement) in satisfaction of their total reporting duties; instead, reports to both agencies must be made.

Reminder: Terms such as “abuse,” “neglect,” “serious physical injury,” etc. have specific meanings under NC law. Definitions can be found by reading the relevant statutes.

Direct link: <https://www.sog.unc.edu/resources/legal-summaries/mandatory-reporting-health-care-providers-chart>

The screenshot shows the profile page for Kirsten Leloudis, an Assistant Professor of Public Law and Government at the UNC School of Government. The 'Resources' tab is highlighted with a green circle. Below the profile, a search bar and a dropdown menu for 'All Content Types' are visible. A list of six results is shown, with a green arrow pointing to the 'Mandatory Reporting for Health Care Providers (Chart)' entry.

Kirsten Leloudis
Assistant Professor of Public Law and Government
kirsten@sog.unc.edu

Overview Courses Publications Blogs **Resources** Roles / Topics

This list consists of blogs, blog posts, FAQ collections, legal summaries, listservs, microsites, pages and tools which are associated with this profile.

Search resources

All Content Types

Results: 6

LEGAL SUMMARY **Questions and Answers: Follow Up to Webinar on S.L. 2023-106** Edit
This Q&A document is a follow up to a webinar offered on January 26, 2024, which focused on S.L. 2023-106.

LEGAL SUMMARY **Consent and Common Pathways for Providing Care to Minors (the "Rainbow Chart")** Edit
Sometimes referred to as "the rainbow chart," this document provides an overview of the most common ways in which care may be provided to minor patients and the associated consent requirements under North Carolina law.

LEGAL SUMMARY **"Required by Law" Disclosures of PHI to DSS: G.S. 7B-302(e) and 7B-3100(a) and 7B-3100 (Chart)** Edit
A chart summarizing the application of G.S. 7B-302(e) and 7B-3100(a) requiring the disclosure of certain information to North Carolina departments of social services (DSS) in specific situations) to North Carolina local health departments (LHDs) that are also covered entities subject to HIPAA.

LEGAL SUMMARY **Mandatory Reporting for Health Care Providers (Chart)** Edit
A chart summarizing certain mandatory reporting requirements for North Carolina health care providers who serve minors (people under age 18).

Summary of Mandatory Reporting Requirements for Local Health Departments (LHDs) Serving Minors (July 2023)

Who is the report made to?	DSS	Law Enforcement		
When is a report required?	Cause to suspect that a child is abused, neglected, or dependent or has died due to maltreatment	Know or reasonably should have known that a juvenile was or is the victim of a violent offense, sexual offense, or misdemeanor child abuse	Certain wounds, illnesses, and injuries (regardless of patient age); non-accidental trauma causing recurrent illness or serious physical injury in a child under age 18	Suspect that a child under age 16 has disappeared and may be in danger
Who must report?	All persons (“universal”)	Persons age 18+ (limited exceptions for some professionals with privilege; exception does not include doctors and nurses)	Physicians and health care facility directors/administrators	All persons (“universal”)
Timing of report	Law does not specify (but given risks to child health and safety, reporting should not be delayed)	Immediately	As soon as practicable before, during, or after the child’s treatment	Within a reasonable time
Criminal penalty for failure to report or preventing a report?	Yes- misdemeanor	Yes- misdemeanor	No- but liability still possible, depending on the circumstances	Yes- misdemeanor
Immunity for good faith reporting?	Yes	Yes	Yes	Yes
Statutes	G.S. 7B-101; 7B-301	G.S. 14-318.6	G.S. 90-21.20(b)-(c1)	G.S. 14-318.5

Reminder: Some situations may trigger a requirement to make a report to both DSS and law enforcement. When this occurs, a person cannot make a report to just one agency (e.g., reporting to DSS, but not law enforcement) in satisfaction of their total reporting duties; instead, reports to both agencies must be made.

Reminder: Terms such as “abuse,” “neglect,” “serious physical injury,” etc. have specific meanings under NC law. Definitions can be found by reading the relevant statutes.

Reports to DSS: Abuse, Neglect, Dependency (A/N/D)

G.S. 7B-301 requires a report to DSS by **any person or institution** that has **cause to suspect** that a juvenile is:

- Abused
- Neglected
- Dependent
- Has died as a result of maltreatment

“Juvenile” is defined at G.S. 7B-101 as someone under 18 years old who is not...

- Emancipated
- Married
- A member of the U.S. Armed Forces



Reports to DSS: A/N/D

“Cause to suspect”

- Lower threshold than other reporting requirements that are triggered if a person “knows” or “reasonably should’ve known”
- Not your duty to investigate/gather evidence
- Things to consider:
 - What has the adolescent told you about their circumstances?
 - What else have you observed?
 - What other information is available and what does it mean in light of your professional experience?

Definitions for “abused,” “neglected,” and “dependent” juvenile are found at G.S. 7B-101

Abused: The juvenile’s parent, guardian, custodian, or caretaker –

- Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means
- Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means
- Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or devices to modify behavior
- Commits, permits, or encourages the commission of certain crimes by, with, or upon the juvenile (see G.S. 7B-101(1)(d) for list of crimes)
- Creates or allows to be created serious emotional damage to the juvenile
- Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile

Neglected: The juvenile’s parent, guardian, custodian, or caretaker –

- Does not provide proper care, supervision, or discipline
- Has abandoned the juvenile
- Has not provided or arranged for the provision of necessary medical or remedial care
- Has refused to follow recommendations made by the Juvenile and Family Team under G.S. 7B, Article 27A
- Creates or allows to be created a living environment that is injurious to the juvenile’s welfare
- Has participated or attempted to participate in the unlawful transfer of custody of the juvenile or has unlawfully placed the juvenile for care or adoption

Dependent: The juvenile needs assistance or placement because the parent, guardian, custodian, or caretaker –

- Is unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement
- The juvenile has no parent, guardian, custodian, or caretaker responsible for the juvenile’s care or supervision

Note: a juvenile who is a victim of human trafficking is considered abused and neglected, regardless of who created the circumstances.

Reports to DSS: A/N/D

What do they
have in
common?

Abused: The juvenile's parent, guardian, custodian, or caretaker –

- Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means
- Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means
- Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or devices to modify behavior
- Commits, permits, or encourages the commission of certain crimes by, with, or upon the juvenile (see G.S. 7B-101(1)(d) for list of crimes)
- Creates or allows to be created serious emotional damage to the juvenile
- Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile

Neglected: The juvenile's parent, guardian, custodian, or caretaker –

- Does not provide proper care, supervision, or discipline
- Has abandoned the juvenile
- Has not provided or arranged for the provision of necessary medical or remedial care
- Has refused to follow recommendations made by the Juvenile and Family Team under G.S. 7B, Article 27A
- Creates or allows to be created a living environment that is injurious to the juvenile's welfare
- Has participated or attempted to participate in the unlawful transfer of custody of the juvenile or has unlawfully placed the juvenile for care or adoption

Dependent: The juvenile needs assistance or placement because the parent, guardian, custodian, or caretaker –

- Is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement
- The juvenile has no parent, guardian, custodian, or caretaker responsible for the juvenile's care or supervision

Reports to DSS: A/N/D

Except in the case of human trafficking, **abuse, neglect, and dependency must always tie back to an act (or failure to act) by the juvenile's parent, guardian, custodian, or caretaker.**

Reports to DSS: A/N/D

Who is a parent, guardian, custodian, or caretaker?

Parent: Adoptive or biological

Guardian: Person appointed as a guardian by the court to care for the juvenile

Custodian: Person or agency (for example, DSS) with legal custody of the child

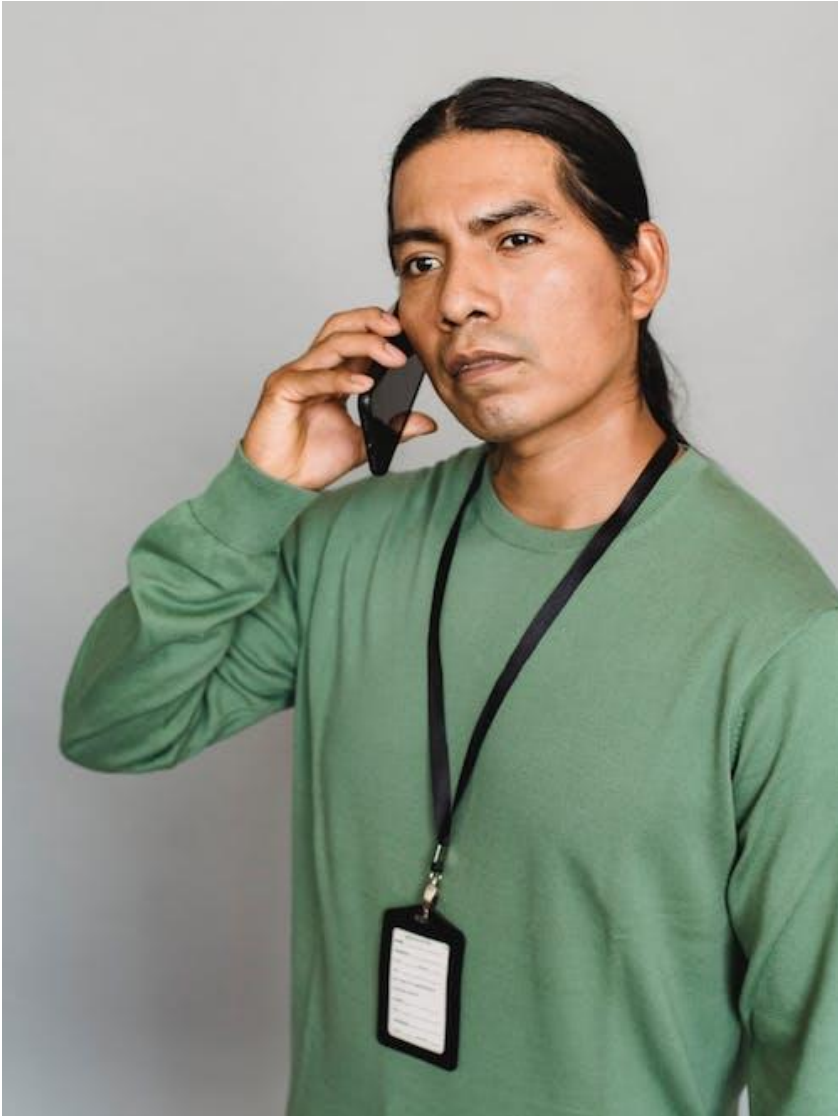


→ These three terms may sound familiar, but what about a “**caretaker?**”

Reports to DSS: A/N/D

Caretaker

- A person other than a parent, guardian, or custodian who has responsibility for the health and welfare of the juvenile in a residential setting
- A person who is responsible for a juvenile's health and welfare can include:
 - Stepparents and foster parents
 - An adult member of the juvenile's household (e.g., parent's live-in boyfriend)
 - A potential adoptive parent during a visit or trial placement of the child
 - A person who has primary responsibility for supervising the juvenile in a residential child care/school
 - An adult entrusted with the juvenile's care
 - Must have responsibility for making parent-like decisions for the child- do not have to live together
 - Does not include: teachers, coaches, etc.



Reports to DSS: A/N/D

Once it has been determined that a report must be made, **what is required for the report?**

- Report may be made orally, by phone, or in writing
- Report is made to DSS agency in the county where the child resides or is found
 - For example, if a child lives in Johnston County but is at a Wake County hospital, a report can be made to DSS for Wake or Johnston County

Reports to DSS: A/N/D

Report must include the following information “as it is known to the person” making the report:

- Name and address of the juvenile
- Name and address of juvenile’s parent, guardian, custodian, or caretaker
- Age of the juvenile
- Names and ages of other children in the house where the juvenile lives
- Present whereabouts of the juvenile, if not at their home address
- Nature and extent of any injury or condition resulting from the A/N/D
- Any other information the reporter thinks would help establish a need for protective services or court intervention
- If report is made by phone or orally, the reporter’s name, address, and phone number*

*DSS must act on the report of A/N/D even if the reporter refuses to provide their name and contact information



Reports to DSS: A/N/D

What else should you know about reporting A/N/D to DSS?

- **G.S. 7B-301:** A person or institution who “knowingly or wantonly” fails to make a report of A/N/D when required, or who “knowingly and wantonly” prevents another person from making a report, is guilty of a Class 1 misdemeanor
- **G.S. 7B-302(f)-(g):** Unless the reporter asks not to be notified, DSS will send written notice to the reporter at least once (and up to two times) to share certain information about the status of the reported case
- **G.S. 7B-309:** A person who makes a report of A/N/D to DSS in good faith is immune from civil and criminal liability; in any proceeding involving liability, the reporter’s good faith is presumed

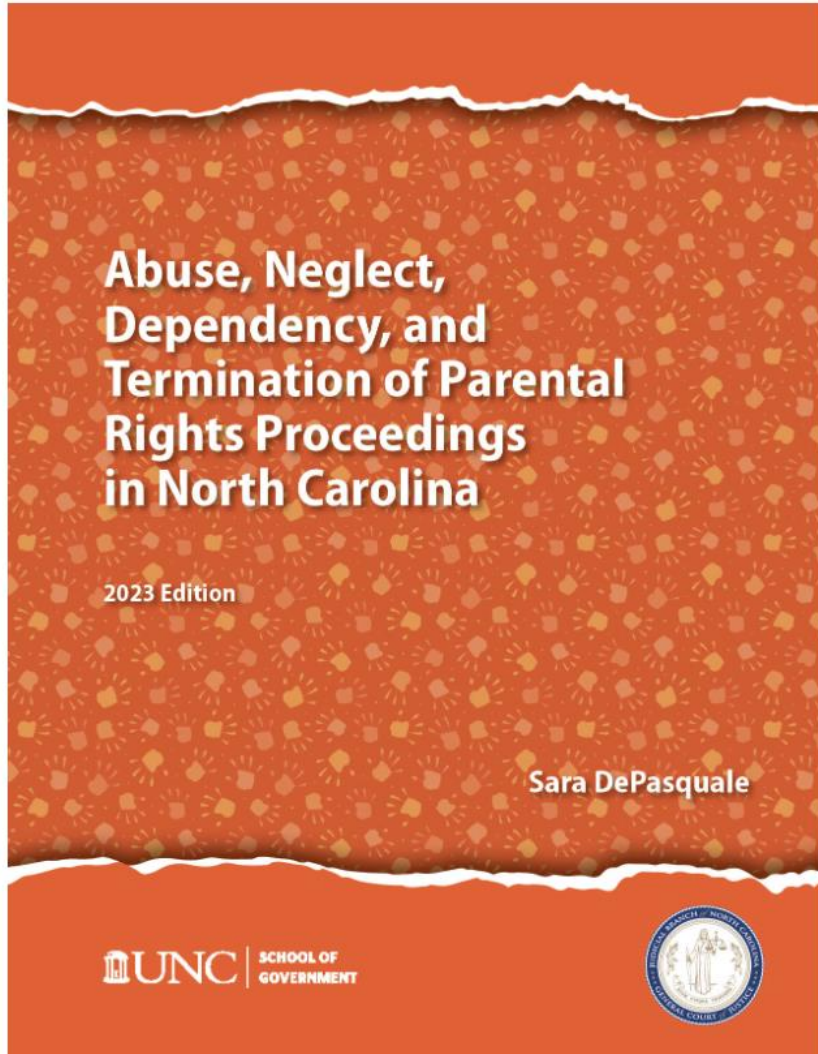


Image provided courtesy of the UNC School of Government.

I Made a Report to DSS... Now What?

To learn more about what happens after a report is made to DSS, see the 2023 edition of “Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina”

→ Digital copies are available at no cost here:

<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights/>

Summary of Mandatory Reporting Requirements for Local Health Departments (LHDs) Serving Minors (July 2023)

Who is the report made to?	DSS		Law Enforcement	
When is a report required?	Cause to suspect that a child is abused, neglected, or dependent or has died due to maltreatment	Know or reasonably should have known that a juvenile was or is the victim of a violent offense, sexual offense, or misdemeanor child abuse	Certain wounds, illnesses, and injuries (regardless of patient age); non-accidental trauma causing recurrent illness or serious physical injury in a child under age 18	Suspect that a child under age 16 has disappeared and may be in danger
Who must report?	All persons (“universal”)	Persons age 18+ (limited exceptions for some professionals with privilege; exception does not include doctors and nurses)	Physicians and health care facility directors/administrators	All persons (“universal”)
Timing of report	Law does not specify (but given risks to child health and safety, reporting should not be delayed)	Immediately	As soon as practicable before, during, or after the child’s treatment	Within a reasonable time
Criminal penalty for failure to report or preventing a report?	Yes- misdemeanor	Yes- misdemeanor	No- but liability still possible, depending on the circumstances	Yes- misdemeanor
Immunity for good faith reporting?	Yes	Yes	Yes	Yes
Statutes	G.S. 7B-101; 7B-301	G.S. 14-318.6	G.S. 90-21.20(b)-(c1)	G.S. 14-318.5

Reminder: Some situations may trigger a requirement to make a report to both DSS and law enforcement. When this occurs, a person cannot make a report to just one agency (e.g., reporting to DSS, but not law enforcement) in satisfaction of their total reporting duties; instead, reports to both agencies must be made.

Reminder: Terms such as “abuse,” “neglect,” “serious physical injury,” etc. have specific meanings under NC law. Definitions can be found by reading the relevant statutes.



Reports to Law Enforcement (LE): Certain Crimes Against a Juvenile

New(ish) mandatory reporting requirement- went into effect
December 1, 2019

Under **G.S. 14-318.6**, a report to law enforcement is required for any adult who “knows or reasonably should have known” that a juvenile has been or is the victim of:

- a **violent offense**
- a **sexual offense**
- **misdemeanor child abuse**

Reports to LE: Certain Crimes Against a Juvenile

- **“Juvenile”**- same definition as the one used for mandatory reporting of A/N/D to DSS
- Exceptions: no reporting requirement for professionals with certain statutory privilege:
 - Attorneys
 - Psychologists
 - Licensed or certified social workers providing private social work services
 - Licensed clinical mental health counselors
 - Employees/agents of rape crisis centers or domestic violence programs (as defined at G.S. 8-53.12)
 - **Note:** other professionals that may have privilege, such as physicians or nurses, are not included in this exception





Report not required if injury caused by an accident.

Reports to LE: Certain Crimes Against a Juvenile

How does the law define “**violent offense?**”

- Any offense that inflicts **serious bodily injury** or **serious physical injury** by other than accidental means.

Includes an attempt, solicitation, conspiracy, aiding, or abetting of a violent offense.



Reports to LE: Certain Crimes Against a Juvenile

Serious bodily injury

- G.S. 14-318.4(d): Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Serious physical injury

- G.S. 14-318.4(d): Physical injury that causes great pain and suffering. The term includes serious mental injury that causes great pain and suffering.

Reports to LE: Certain Crimes Against a Juvenile

How does the law define “**sexual offense**” committed against a juvenile?

- G.S. 14-318.6 does not define “sexual offense”- but it does define “sexually violent offense,” which includes the crimes described in G.S. 14-208.6(5)
- Includes an attempt, solicitation, conspiracy, aiding, or abetting of any of those offenses

A note about statutory rape:

- There is no requirement under NC law that a provider ask a minor about the age of a minor’s sexual partner
- But keep the standard for reporting in mind: if a provider “knows or reasonably should have known” that a crime- including a statutory rape offense- was committed against a juvenile, then a report is required
 - Example: 12 year old says they’re in a sexual relationship with their best friend’s sibling, who is a senior in college

Sexually violent offenses, as defined by G.S. 14-208.6(5) and 14-318.6(a)(4)

Updated to reflect S.L. 2024-37

Forcible rape and sexual offenses	
First- and second-degree forcible rape	G.S. 14-27.21; 14-27.22
First- and second-degree forcible sexual offense	G.S. 14-27.26, 14-27.27
Sexual battery	G.S. 14-27.23
Attempted rape or sexual offense as defined under former law	Former G.S. 14-27.33
Statutory offenses	
Statutory rape: victim under 13, perpetrator at least 4 years older	G.S. 14-27.23; 14-27.24
Statutory rape: victim ages 13-15, perpetrator at least 6 years older*	G.S. 14-27.25(a)
Statutory sexual offense: victim under 13, perpetrator at least 4 years older	G.S. 14-27.28; 14-27.29
Statutory sexual offense: victim ages 13-15, perpetrator at least 6 years older*	G.S. 14-27.30(a)
Offenses committed by a parents/parent substitutes or other relatives	
Sexual activity with a person under 18 by a substitute parent or custodian	G.S. 14-27.31
Incest (carnal relations with a person’s biological or adoptive child, stepchild, grandchild, nephew, niece, sibling, half-sibling, parent, grandparent, uncle, or aunt)	G.S. 14-178
Parent or guardian commits a sexual act on a juvenile under age 16, or allows a sexual act to be committed on a juvenile under age 16	G.S. 14-318.4(a2)
Offenses committed by teachers or other school personnel	
Sexual activity with a student by a teacher, school administrator, student teacher, school safety officer, coach, or other school personnel	G.S. 14-27.32
Indecent liberties with a student by a teacher, school administrator, student teacher, school safety officer, or coach who is at least 4 years older	G.S. 14-202.4(a)
Trafficking /offenses related to prostitution**	
Human trafficking	G.S. 14-43.11
Subjecting or maintaining a person for sexual servitude	G.S. 14-43.13
Patronizing a prostitute who is a minor or has a mental disability	G.S. 14-205.2(c) & (d)
Promoting the prostitution of a minor or person with a mental disability	G.S. 14-205.3(b)
Parent or caretaker commits or permits an act of prostitution with or by a juvenile	G.S. 14-318.4(a1)
Offenses related to pornography/dissemination of obscene materials	
Employing or permitting a minor to assist in offenses against public morality and decency (includes preparing & disseminating obscene materials)	G.S. 14-190.6
First-, second-, and third-degree sexual exploitation of a minor (using, inducing, coercing, encouraging, or facilitating a minor under age 18 to engage in sexual activity for the purpose of producing pornography; creating, duplicating, or distributing such materials; or possessing child pornography)	G.S. 14-190.16, 14-190.17, 14-190.17A
NEW Obscene visual representation of sexual exploitation of a minor	G.S. 14-190.17C
Other offenses against children	
Felonious indecent exposure (victim under 16, perpetrator 18 or older)	G.S. 14-190.9(a1)
Indecent liberties with a child under 16 by a person 5 or more years older	G.S. 14-202.1
Using a computer or other electronic device to solicit a child to commit an unlawful sex act	G.S. 14-202.3

List of “Sexually Violent Offenses” That Trigger Mandatory Reporting to Law Enforcement When Committed Against a Juvenile

The original chart was compiled by my colleague at the UNC School of Government, Jill Moore. Yellow highlighting indicates updates made to reflect S.L. 2024-37.



Reports to LE: Certain Crimes Against a Juvenile

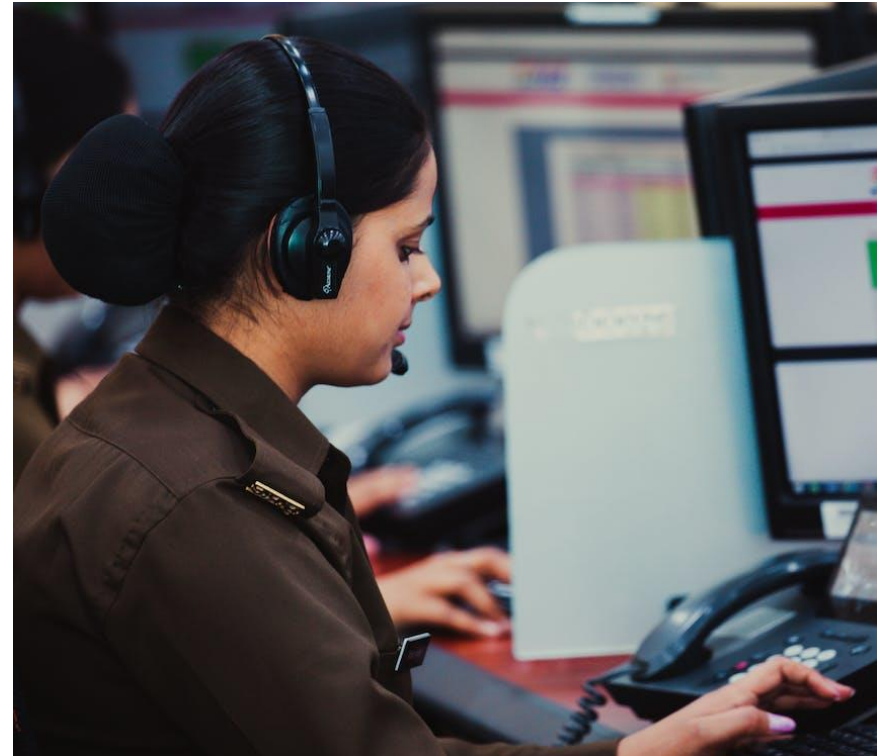
How does the law define “**misdemeanor child abuse?**”

- G.S. 14-318.2: A parent or other person providing care or supervision to a **child under age 16**:
 - Inflicts physical injury on the child, or allows physical injury to be inflicted, or
 - Creates or allows to be created a substantial risk of physical injury by other than accidental means

Reports to LE: Certain Crimes Against a Juvenile

Once it has been determined that a report must be made, **what is required for the report?**

- Must be made “immediately” to law enforcement in the county where the juvenile resides or is found
 - For example, if a child lives in Avery County but is at a clinic in Burke County, a report can be made to law enforcement for Avery or Burke County
- May be made orally or by telephone



Reports to LE: Certain Crimes Against a Juvenile

Report must include the following information as it is known to the reporter:

- Name, address, and age of the juvenile
- Name and address of the juvenile's parent, guardian, custodian, or caretaker
- Name, address, and age of the person who committed the offense against the juvenile
- Location where the offense was committed
- Names and ages of other juveniles present or in danger
- The present whereabouts of the juvenile, if not at the home address
- The nature and extent of any injury or condition resulting from the offense or abuse
- Any other information the person making the report believes might be helpful in establishing the need for law enforcement involvement



Reports to LE: Certain Crimes Against a Juvenile

What else should you know about reporting certain crimes against a juvenile to LE?

- The way that the law is written suggests that a report must be made even if the person is now an adult
 - Ex: a 50-year-old patient tells you about a sexual offense committed against them when they were 15
- “Knowingly” or “willfully” failing to make a report when required, or preventing another person from making a report, is a Class 1 misdemeanor
- A person who makes a report in good faith is immune from civil or criminal liability

Summary of Mandatory Reporting Requirements for Local Health Departments (LHDs) Serving Minors (July 2023)

Who is the report made to?	DSS		Law Enforcement	
When is a report required?	Cause to suspect that a child is abused, neglected, or dependent or has died due to maltreatment	Know or reasonably should have known that a juvenile was or is the victim of a violent offense, sexual offense, or misdemeanor child abuse	Certain wounds, illnesses, and injuries (regardless of patient age); non-accidental trauma causing recurrent illness or serious physical injury in a child under age 18	Suspect that a child under age 16 has disappeared and may be in danger
Who must report?	All persons (“universal”)	Persons age 18+ (limited exceptions for some professionals with privilege; exception does not include doctors and nurses)	Physicians and health care facility directors/administrators	All persons (“universal”)
Timing of report	Law does not specify (but given risks to child health and safety, reporting should not be delayed)	Immediately	As soon as practicable before, during, or after the child’s treatment	Within a reasonable time
Criminal penalty for failure to report or preventing a report?	Yes- misdemeanor	Yes- misdemeanor	No- but liability still possible, depending on the circumstances	Yes- misdemeanor
Immunity for good faith reporting?	Yes	Yes	Yes	Yes
Statutes	G.S. 7B-101; 7B-301	G.S. 14-318.6	G.S. 90-21.20(b)-(c1)	G.S. 14-318.5

Reminder: Some situations may trigger a requirement to make a report to both DSS and law enforcement. When this occurs, a person cannot make a report to just one agency (e.g., reporting to DSS, but not law enforcement) in satisfaction of their total reporting duties; instead, reports to both agencies must be made.

Reminder: Terms such as “abuse,” “neglect,” “serious physical injury,” etc. have specific meanings under NC law. Definitions can be found by reading the relevant statutes.



Reports to LE: Certain Injuries and Illnesses

Who must report?

- Physicians and directors/administrators of health care facilities
- More likely to see the injuries/illnesses that require reporting in an emergency department than at an LHD- but it's possible

Two reporting requirements:

- Certain injuries and illnesses in **patients of any age** (including patients under 18)
- Certain injuries and illnesses in **patients under 18**



Reports to LE: Certain Injuries and Illnesses

Under G.S. 90-21.20(b), must report the following in **patients of any age**:

- Wounds/injuries caused by or appearing to be caused by a firearm
- Illness that appears to be due to poisoning
- Wounds/injuries caused or apparently caused by a knife or “pointed instrument,” *if it appears to the physician or surgeon that a criminal act was involved*
- Wounds/injuries/illnesses in which there is grave bodily harm or grave illness, *if it appears to the physician or surgeon that the wound, injury, or illness resulted from a criminal act of violence*



Reports to LE: Certain Injuries and Illnesses

Under G.S. 90-21.20(c1), must report the following in **patients under 18 years of age**:

- Recurrent illness or a serious physical injury, *if in the treating physician's professional judgment, the illness or injury appears to be due to nonaccidental trauma*
- **Note:** This is in addition to, not instead of, any reporting of A/N/D to DSS that may be required under G.S. 7B-301



Reports to LE: Certain Injuries and Illnesses

Once it has been determined that a report must be made, **what is required for the report?**

- Report must be made “as soon as it becomes practicable” before, during, or after treating the patient
- No method of reporting specified (e.g., in writing v. telephone)
- Report is made to law enforcement in the city, town, or county where the health care facility is located
 - If located in a city/town, report is made to police
 - If in an unincorporated area, report is made to sheriff’s office

Reports to LE: Certain Injuries and Illnesses

Report must include the following information:

- Name of the patient (if known)
- Patient's age, sex, race (if known)
- Patient's residence or present location (if known)
- Character and extent of the patient's injuries

What else should health care providers know about reporting certain injuries and illnesses to LE?

- No criminal penalty for failing to make a report when required
 - But liability is still possible, depending on circumstances
- A physician or health care facility director/administrator who makes a report in good faith shall have civil and criminal immunity from liability associated with making the report

Summary of Mandatory Reporting Requirements for Local Health Departments (LHDs) Serving Minors (July 2023)

Who is the report made to?	DSS		Law Enforcement	
When is a report required?	Cause to suspect that a child is abused, neglected, or dependent or has died due to maltreatment	Know or reasonably should have known that a juvenile was or is the victim of a violent offense, sexual offense, or misdemeanor child abuse	Certain wounds, illnesses, and injuries (regardless of patient age); non-accidental trauma causing recurrent illness or serious physical injury in a child under age 18	Suspect that a child under age 16 has disappeared and may be in danger
Who must report?	All persons (“universal”)	Persons age 18+ (limited exceptions for some professionals with privilege; exception does not include doctors and nurses)	Physicians and health care facility directors/administrators	All persons (“universal”)
Timing of report	Law does not specify (but given risks to child health and safety, reporting should not be delayed)	Immediately	As soon as practicable before, during, or after the child’s treatment	Within a reasonable time
Criminal penalty for failure to report or preventing a report?	Yes- misdemeanor	Yes- misdemeanor	No- but liability still possible, depending on the circumstances	Yes- misdemeanor
Immunity for good faith reporting?	Yes	Yes	Yes	Yes
Statutes	G.S. 7B-101; 7B-301	G.S. 14-318.6	G.S. 90-21.20(b)-(c1)	G.S. 14-318.5

Reminder: Some situations may trigger a requirement to make a report to both DSS and law enforcement. When this occurs, a person cannot make a report to just one agency (e.g., reporting to DSS, but not law enforcement) in satisfaction of their total reporting duties; instead, reports to both agencies must be made.

Reminder: Terms such as “abuse,” “neglect,” “serious physical injury,” etc. have specific meanings under NC law. Definitions can be found by reading the relevant statutes.



Reports to LE: Children Who Have Disappeared

Under G.S. 14-318.5 (“Caylee’s Law”), report required by **any person** who reasonably suspects that a **child under age 16**:

- Has disappeared and
- May be in danger

Exception: teachers not required to report a child’s absence from school to law enforcement



Reports to LE: Children Who Have Disappeared

“Disappearance of a child” means:

- “When the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period.”

Reports to LE: Children Who Have Disappeared

Once it has been determined that a report must be made, **what is required for the report?**

- Report must be made “within a reasonable time”
- The law does not specify how a report must be made or what it must include
 - Given seriousness of these situations, a phone call may be the quickest option for reporting

What else should you know about reporting a disappeared child who may be in danger?

- Failure to make a report is a felony for child’s parents/person supervising the child
- Failure to report by anyone else (non-parent/supervising person) is a misdemeanor
- Civil and criminal immunity for a person who makes a report in good faith

Case Studies + Discussion

Case Study #1

Scenario: Maya is 13 years old. She is presented for care by her mother, who suspects that Maya is pregnant and wants a pregnancy test. Maya's mother says that Maya is hard to control, and that Maya sometimes sneaks out at night and drinks. When the nurse speaks with Maya in private, Maya says that she is worried that she may be pregnant. Maya says that she has had sex twice with her mother's live-in boyfriend, who is 40 years old.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement
- D) No report needs to be made

Case Study #1

Scenario: Maya is 13 years old. She is presented for care by her mother, who suspects that Maya is pregnant and wants a pregnancy test. Maya's mother says that Maya is hard to control, and that Maya sometimes sneaks out at night and drinks. When the nurse speaks with Maya in private, Maya says that she is worried that she may be pregnant. Maya says that she has had sex twice with her mother's live-in boyfriend, who is 40 years old.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement**
- D) No report needs to be made

Explanation: The live-in boyfriend likely meets the definition of a "caretaker" and his conduct constitutes statutory rape (and possibly other crimes). A report must be made to DSS (for abuse by a caretaker) and to law enforcement (for a sexual offense committed against a juvenile).

Case Study #2

Scenario: Rae is 15 and is brought into her primary care provider's office by her mom for an annual physical. During the appointment, and while her mom is out of the room, Rae tells the provider that she has a 17 year old boyfriend and that they have been sexually active together for 3 months. Rae is worried that she might be pregnant but doesn't want her mom to know that she is sexually active. A test confirms that Rae is pregnant.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement
- D) No report needs to be made

Case Study #2

Scenario: Rae is 15 and is brought into her primary care provider's office by her mom for an annual physical. During the appointment, and while her mom is out of the room, Rae tells the provider that she has a 17 year old boyfriend and that they have been sexually active together for 3 months. Rae is worried that she might be pregnant but doesn't want her mom to know that she is sexually active. A test confirms that Rae is pregnant.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement
- D) No report needs to be made**

Explanation: These facts, by themselves, do not trigger mandatory reporting to DSS. There is nothing in these facts to suggest that Rae is abused, neglected, or dependent. Although Rae's boyfriend is older and they are sexually active, the age difference is not significant enough to meet the legal definition of statutory rape (or another reportable sexual offense)- so no report to law enforcement is required, either.

Case Study #3

Scenario: Arlo is 12 and lives with his siblings, mom, and his mom's boyfriend. In the last six months, Arlo has been brought to the emergency department (ED) three times for serious burns on his buttocks that appear to have been caused by immersion in hot water. Arlo is usually brought to the ED by his mother, who always appears distraught over the injuries. During the third ED visit, his mom's boyfriend comes with them and makes an offhand comment about how Arlo still wets the bed. The provider asks to speak with Arlo's mom privately. Arlo's mom confirms that her boyfriend sometimes puts Arlo in a very hot bath after he wets the bed in an effort to break Arlo of his bed-wetting habit.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement
- D) No report needs to be made

Case Study #3

Scenario: Arlo is 12 and lives with his siblings, mom, and his mom's boyfriend. In the last six months, Arlo has been brought to the emergency department (ED) three times for serious burns on his buttocks that appear to have been caused by immersion in hot water. Arlo is usually brought to the ED by his mother, who always appears distraught over the injuries. During the third ED visit, his mom's boyfriend comes with them and makes an offhand comment about how Arlo still wets the bed. The provider asks to speak with Arlo's mom privately. Arlo's mom confirms that her boyfriend sometimes puts Arlo in a very hot bath after he wets the bed in an effort to break Arlo of his bed-wetting habit.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement**
- D) No report needs to be made

Explanation: This situation likely arises to abuse by a caretaker (mom's boyfriend) or abuse that Arlo's parent (his mom) is allowing to occur, either of which requires a report to DSS. This situation also likely arises to non-accidental trauma causing a serious physical injury and/or misdemeanor child abuse, both of which require reporting to law enforcement.

Case Study #4

Scenario: Rowan is 21 and a starting player on the local university's soccer team. He presents at his local health department for a physical exam and a flu shot. During the visit, Rowan discloses that when he was 16 and a player for his high school team, he was forced to perform oral sex on a much older member of the coaching staff who still works for the high school.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement
- D) No report needs to be made

Case Study #4

Scenario: Rowan is 21 and a starting player on the local university's soccer team. He presents at his local health department for a physical exam and a flu shot. During the visit, Rowan discloses that when he was 16 and a player for his high school team, he was forced to perform oral sex on a much older member of the coaching staff who still works for the high school.

Question: Based on these facts, is a report required and if so, to whom?

A) Yes- a report must be made to DSS

B) Yes- a report must be made to law enforcement

C) Yes- a report must be made to DSS and law enforcement

D) No report needs to be made

Explanation: The situation Rowan described likely meets the definition of a sexual offense against a juvenile (*see* G.S. 14-27.32, sexual act committed by a coach with a student). The way that G.S. 14-318.6 is written suggests that a report must be made even though Rowan is an adult when he tells the nurse about what happened to him as a juvenile.

Note: a coach does not meet the definition of a “caretaker” under G.S. 7B-101, so this does not constitute abuse by a parent, guardian, custodian, or caretaker that must be reported to DSS.

Case Study #5

Scenario: Ripley is 17 and presents for care at the local health department. During Ripley's appointment, Ripley discloses to a nurse that they recently came out to their parents as non-binary. Ripley's mother was supportive, but Ripley's dad was angry and the two of them got into a big argument. Three weeks ago, Ripley ran away from home. Ripley has not spoken to their parents since then and doesn't think their parents know where Ripley is. Ripley does not have a place to stay and has been engaging in commercial sex work to earn money for food.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement
- D) No report needs to be made

Case Study #5

Scenario: Ripley is 17 and presents for care at the local health department. During Ripley's appointment, Ripley discloses to a nurse that they recently came out to their parents as non-binary. Ripley's mother was supportive, but Ripley's dad was angry and the two of them got into a big argument. Three weeks ago, Ripley ran away from home. Ripley has not spoken to their parents since then and doesn't think their parents know where Ripley is. Ripley does not have a place to stay and has been engaging in commercial sex work to earn money for food.

Question: Based on these facts, is a report required and if so, to whom?

- A) Yes- a report must be made to DSS
- B) Yes- a report must be made to law enforcement
- C) Yes- a report must be made to DSS and law enforcement**
- D) No report needs to be made

Explanation: A report must be made to DSS because commercial sex work constitutes human trafficking. A minor victim of human trafficking is considered abused and neglected. Human trafficking is also a sexually violent offense that triggers a requirement to report to law enforcement.

Note: Caylee's Law and the requirement to report disappeared children does not apply here because Ripley is older than 16.

Legal References

Federal Laws

- 45 C.F.R. 164.103 (HIPAA, definition of “required by law”)
- 45 C.F.R. 164.512(a) (HIPAA, required by law disclosures permitted)
- 45 C.F.R. 59.10(a) (Title X, required by law disclosures permitted)
- 34 C.F.R. 99.36 (FERPA, disclosures to protect health and safety of student or others)
- 42 U.S.C. 5106a(b)(2)(B)(i) (CAPTA requirements for grant funding)

NC Laws

- G.S. 7B-101 (definitions of “juvenile,” “abused juvenile,” “neglected juvenile,” and “dependent juvenile”)
- G.S. 14-208.6(5) (list of sexually violent offenses)
- G.S. 7B-301 (requirement to report abuse, neglect, dependency to DSS)
- G.S. 7B-309 (immunity for good faith reports of A/N/D to DSS)
- G.S. 14-318.2 (definition of “misdemeanor child abuse”)
- G.S. 14-318.4 (definitions of “serious bodily injury” and “serious physical injury”)
- G.S. 14-318.5 (“Caylee’s law”)
- G.S. 14-318.6 (requirement to report certain crimes against a juvenile)
- G.S. 90-21.4 (minor’s consent confidentiality law)
- G.S. 90-21.20 (reporting certain injuries and illnesses)

Additional References + Resources

Other References

- “Summary of New Legislation and Q&A for Local Health Departments: S.L. 2019-245 (S 199), Part I. Duty to Report Crimes against Juveniles,” Jill Moore, November 25, 2019, available at:
<https://www.sog.unc.edu/sites/www.sog.unc.edu/files/S%20199%20Summary%20Nov%202019.pdf>

Additional Resources

- “Abuse, Neglect, Dependency, and Termination of Parental Rights,” Sara DePasquale, Jan Simmons, and John Rubin, 2023, available for download at:
<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights/chapter-1-overview-north-carolina-child-welfare-system>
- “Mandatory Reporting for Health Care Providers (Chart),” Kirsten Leloudis, 2023,
<https://www.sog.unc.edu/resources/legal-summaries/mandatory-reporting-health-care-providers-chart>

Image References

All images included in this presentation are from Pexels (www.pexels.com) and were last accessed on Oct. 21, 2024.

Additional information about the license and use of images available from Pexels can be found here: <https://www.pexels.com/license/>.



Questions?

Thank you for your time.

If you have additional questions at a later date, please send me an email or give me a call.

Email: Kirsten@sog.unc.edu (preferred)

Office: 919-966-4210