

New legislation requiring reporting of certain crimes against juveniles: Overview and Q&A opportunity for NC local health departments

Jill D. Moore, MPH, JD
UNC School of Government
December 5, 2019

This webinar does NOT fulfill the
FY 2021 Title X/Family Planning
Mandatory Reporting training
requirement.

Resources

3

Go to www.ncphlaw.unc.edu and click on “Annual Legislative Updates” for:

- Online narrated PowerPoint presentation
- Summary of new legislation and Q&A for local health departments

Alternate URL:

<https://www.sog.unc.edu/resources/legal-summary-collections/annual-legislative-updates>

Brief summary: S.L. 2019-245, Part I (S 199)

4

The legislation enacts a new statute, G.S. 14-318.6, which:

- Requires certain crimes against juveniles to be reported to law enforcement
- Provides immunity from liability under state law for reports that are made in good faith
- Makes failure to report a misdemeanor
- Effective December 1, 2019

The new law addresses mandatory reports to law enforcement.

Reports to DSS are separate and there are different criteria for determining when a report to DSS is required.

It is possible that a particular case will require you to report only to DSS, or only to law enforcement (LE), or to both DSS and LE.

Make a report only when the law
requires you to do so.

New G.S. 14-318.6

7

- A person age 18 or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, a sexual offense, or misdemeanor child abuse must make an immediate report to local law enforcement.
- Juvenile means a person under age 18 who is not married, legally emancipated (by court order), or serving in the U.S. armed forces. The age of the juvenile at the time of the abuse or offense governs.

Who must report?

8

General rule: Universal reporting

- Any adult (18+) who knows or should have reasonably known that a juvenile has been or is the victim of a reportable offense

Exceptions: Some individuals with statutory privileges

- Psychologists, psychological associates, their employees & agents
- Certified/licensed social workers engaged in private delivery of social work services
- Licensed mental health counselors (professional counselors)
- Employees and agents of rape crisis centers & domestic violence programs
- Attorneys

There is no exception to the mandatory reporting requirement for physicians, physician assistants, nurse practitioners, nurses, or those working under their direction.

Which offenses must be reported?

10

Violent offense against a juvenile

Sexual offense against a juvenile

Misdemeanor child abuse

What is a violent offense?

11

Violent offense

- A criminal offense that causes non-accidental serious bodily injury or serious physical injury. The term includes an attempt, solicitation, or conspiracy to commit a violent offense, or aiding and abetting a violent offense.
- “Serious bodily injury” means a bodily injury that:
 - Creates a substantial risk of death, or
 - Causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, a permanent or protracted loss or impairment of the function of any bodily member or organ, or
 - Results in prolonged hospitalization.
- “Serious physical injury” means physical or mental injury that causes great pain and suffering.

Which sexual offenses must be reported?

12

Ambiguity in the new statute:

- The reporting requirement refers to “sexual offenses”
 - No definition in the new statute
 - In the criminal code (G.S. Chapter 14), only 5 offenses are called “sexual offenses”
- The definitions section defines the term “sexually violent offense”
 - The definition includes 29 separate crimes, including some that are specific to juveniles

What is a sexually violent offense?

13

Sexually violent offense

- The definition of sexually violent offense in the new reporting law incorporates the definition contained in G.S. 14-208.6(5), which is part of the laws creating NC's Sex Offender and Public Protection Registration Programs.
- G.S. 14-208.6(5) defines "sexually violent offense" as a violation of any of 29 criminal statutes (or provisions of those statutes).
- The term includes an attempt, solicitation, or conspiracy to commit a sexually violent offense, or aiding and abetting a sexually violent offense.

Please note:

The information that follows is intended to help mandatory reporters understand generally what constitutes a “sexually violent offense” under G.S. 14-318.6.

The categories provided in the following slides are not in the statute. They were created for this presentation by the author. Others may categorize the offenses differently.

The brief descriptions of the offenses do not attempt to include all elements of each crime, nor do they take into account all applicable case law. They should not be considered a comprehensive guide to reportable offenses.

For more information about a particular offense, please consult an attorney.

Sexually violent offenses

(as defined in G.S. 14-318.6(a)(4), incorporating G.S. 14-208.6(5))

15

Forcible rape and sexual offenses

- First- and second-degree forcible rape
- First- and second-degree forcible sexual offense
- Sexual battery
- Attempted rape or sexual offense as defined under former law

Statutory rape and sexual offenses

- Statutory rape or sexual offense in which the victim is under age 13 and the perpetrator is 4 or more years older
- Statutory rape or sexual offense in which the victim is age 13-15 and the perpetrator is 6 or more years older

Sexually violent offenses (cont.)

(as defined in G.S. 14-318.6(a)(4), incorporating G.S. 14-208.6(5))

16

Offense committed by parent/parent substitute or other relative

- Sexual activity with a person under age 18 by a substitute parent or custodian
- Incest (carnal relations with biological or adoptive child, step-child, grandchild, nephew, niece, sibling, half-sibling, parent, grandparent, uncle or aunt)
- Parent or guardian commits a sexual act on a juvenile under age 16, or allows a sexual act to be committed on such juvenile

Offense committed by school personnel

- Sexual activity with a student by a teacher, school administrator, student teacher, school safety officer, coach, or other school personnel
- Indecent liberties with a student by a teacher, school administrator, student teacher, school safety officer, or coach
- Indecent liberties with a student by other school personnel who is 4 or more years older than the victim

Sexually violent offenses (cont.)

(as defined in G.S. 14-318.6(a)(4), incorporating G.S. 14-208.6(5))

17

Trafficking/prostitution

- Human trafficking
- Subjecting or maintaining a person for sexual servitude
- Patronizing a prostitute who is a minor or has a mental disability
- Promoting the prostitution of a minor or person with a mental disability
- Parent or caretaker commits or permits an act of prostitution with or by a juvenile

Pornography/dissemination of obscene materials

- Employing or permitting a minor to assist in offenses against morality and decency (includes preparing and disseminating obscene materials)
- First-, second-, and third-degree sexual exploitation of a minor (using, inducing, encouraging, or facilitating a person under age 18 to engage in sexual activity for the purpose of producing pornography; creating, duplicating, or distributing such materials; or possessing child pornography)

Sexually violent offenses (cont.)

(as defined in G.S. 14-318.6(a)(4), incorporating G.S. 14-208.6(5))

18

Other offenses against children

- Felonious indecent exposure, in which the victim is under 16 and the perpetrator is over 18
- Indecent liberties with a child under 16 by a person who is 5 or more years older
- Using a computer or other electronic device to solicit a child to commit an unlawful sex act

What is misdemeanor child abuse?

19

Misdemeanor child abuse

- The new reporting law requires reports to law enforcement of misdemeanor child abuse as defined in G.S. 14-318.2.
- A parent or other person providing care or supervision to a child under age 16 who 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, commits misdemeanor child abuse.

Make a report only when the law
requires you to do so.

Know (or reasonably should know) that a juvenile is/has been a victim of:

21

Violent offense

- Non-accidental
- Serious bodily injury or serious physical injury as defined in law

Sexual offense

- Sexually violent offense listed in law
- Note especially relationship & age requirements

Misdemeanor child abuse

- Child under age 16
- Parent or other person providing care or supervision
- Physical injury inflicted or substantial risk of non-accidental physical injury created

What does it mean to know?

22

Unclear, but I think it likely means you have information to support your conclusion that offense is reportable.

1. Information that the victim of the offense was a juvenile (under age 18, not married, not emancipated by court order, not in the US armed forces), AND
2. Information related to the offense. Examples (not an exhaustive list) →

Violent offense

- Nature of the injury/injuries
- Information supporting conclusion it was non-accidental

Sexual offense

- Information supporting conclusion it's one of the 29 listed crimes: client statements; information about relationships (such as teacher-student) or age differences, if those are required for the offense to be reportable; etc.

Misdemeanor child abuse

- Child's age at time of offense (must be under 16)
- Relationship between child and perpetrator
- Physical injury or exposure to risk of physical injury

Reporting requirements

23

What are the required contents of a report?

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

Reporting requirements (cont.)

24

When, how, and to whom must a report be made?

- When: immediately
- How: orally or by telephone
- To whom: the appropriate local law enforcement agency in the county where the juvenile resides or is found

What information must the reporter provide about him/herself?

- A person who makes a report must provide his or her name, address, and telephone number
- The identity of the reporter must be protected and revealed only as provided in G.S. 132-1.4(c)(4)

Additional provisions of the new law

- Immunity from civil or criminal liability under state law for good faith action in:
 - Making a report
 - Cooperating with a law enforcement investigation pursuant to a report
 - Participating in judicial proceedings resulting from a report
- Penalty—class 1 misdemeanor to:
 - Willfully or knowingly fail to make a required report
 - Willingly or knowingly prevent another person from making a required report

Provisions pertaining to law enforcement reports to DSS

How does the new law interact with other mandatory reporting laws?

- Other laws requiring reports to law enforcement or the department of social services (DSS) are still in effect.
- The report to law enforcement that is required under the new law is separate from, and in addition to, any report to DSS that may be required.
- Remember that each mandatory reporting law is different on matters such as when to report, how to report, what information to report, etc.

Obligations under HIPAA

27

S.L. 2019-245 (S 199), Part I

Does HIPAA allow these reports?

28

Yes

HIPAA allows covered entities to disclose PHI to law enforcement when required by law to do so. However:

- Covered entities must disclose only the information required to be in the report.
- The law does not authorize further disclosures of PHI for law enforcement investigations or judicial proceedings. Such disclosures would require additional legal process.

Does HIPAA require covered entities to inform individuals of the report?

29

Difficult question, but I think the best conclusion is yes.

- A covered entity that makes a report under the new law must promptly inform the individual, or sometimes the individual's personal representative (as defined by HIPAA), that the report has been made.
- There are limited exceptions to this requirement.
- *Please note:* The requirement to inform does not apply to all mandatory reporting laws. For example, it does not apply to reports to DSS of child abuse, neglect, or dependency.

Who should be informed of the report?

30

The individual, if the individual is:

- An unemancipated minor being treated pursuant to the minor's consent law, or
- An unemancipated minor receiving abortion-related treatment pursuant to a judicial bypass, or
- An emancipated minor, or
- An adult.

The individual's personal representative, if:

- The individual is an unemancipated minor whose treatment is not under the minor's consent law, or
- The individual is an adult who lacks decisional capacity.

What are the exceptions to the requirement to inform?

31

When can a CE decide not to inform an individual?

- A covered entity (CE) may elect not to inform the individual if the CE, in the exercise of professional judgment, believes doing so would place the individual at risk of serious harm.

When can a CE decide not to inform a personal representative?

- If a CE is required to inform the personal representative instead of the individual, a CE may elect not to inform the personal representative if the CE reasonably believes:
 - That the personal representative is responsible for the abuse or injury that is the reason for the report, and
 - That informing such person would not be in the best interests of the individual, as determined by the provider in the exercise of professional judgment.

Other HIPAA matters

32

- Amending policies and procedures regarding disclosures to LE to account for the new law
- Training staff in the new law and new local policies/procedures
- Documenting disclosures to LE
- Accounting for disclosures to LE: this may fall into an exception to the requirement to include in the accounting in some cases
- And more! Stay tuned

FAQs

33

Do you need a release (signed HIPAA authorization form) to make these reports?

34

- No
- You do not have to get a release for reports to law enforcement that are required by law
- Remember to make reports only when they're required; if it's not required, then you do need permission from the victim to notify law enforcement
 - Not necessarily a written authorization form; see section 164.512(f)(3) for the type of permission that is required

What about other confidentiality laws? Do they allow these reports?

35

- Title X confidentiality (42 CFR 59.11): Reports are allowed
- School nurses subject to FERPA: Reports are allowed if the knowledge of the offense is acquired from something other than information in education records.
 - For example, if knowledge is acquired from conversations or personal observations
- Mental health and substance use disorder treatment?
 - Remember some mental health providers are not required to report (psychologists, some social workers, licensed mental health counselors)
 - Stay tuned for more information about providers who are required to report

Who within the health department should make a report?

36

- Anticipate that sometimes more than one person in the health department will learn about the same reportable offense.
- While each individual has the duty to report, I do not think it is necessary or reasonable for each individual to call law enforcement separately to report the same thing.
- One idea: Have one person make the report and tell LE it is being made on behalf of all the others (give names).
- Remember that reports must be made "immediately."

Can I make an anonymous report?

37

- No
- The law specifically requires reporters to provide their name, address, and phone number. This information will be protected pursuant to a provision of the public records laws that applies to 911 calls.

Do I have to report ____ (fill in the blank)?

38

- Standard is know or reasonably should know
- Victim must be a juvenile
- Offense must be one of the reportable offenses

Violent offense

- Non-accidental
- Serious bodily injury or serious physical injury as defined in law

Sexual offense

- Sexually violent offense listed in law
- Note especially relationship & age requirements

Misdemeanor child abuse

- Child under age 16
- Parent or other person providing care or supervision
- Physical injury inflicted or substantial risk of non-accidental physical injury create

If we make a report that isn't required, aren't we immune from liability if we acted in good faith?

39

- The new law provides immunity from liability under state law, if you are acting in good faith when you make the report
- However, the law cannot and does not provide immunity from liability under federal laws such as HIPAA

If we report something to DSS, should we report it to LE at the same time? Or vice versa?

- The reporting requirements are different:

DSS	Law enforcement
Cause to suspect	Know/reasonably should know
Abuse, neglect, or dependency of a juvenile	Juvenile is/has been victim of a violent offense, sexual offense, or misdemeanor child abuse
Definitions in child welfare laws (G.S. 7B-101)	Definitions in criminal laws (G.S. 14-318.6)

- Some cases will require a report only to DSS, some will require a report only to LE, and some will require a report to both.
- Health departments should not have a policy of automatically reporting to both entities in all cases.

Issues & Concerns with New Law

41

Issues/Concerns

- Over-reporting
- Effects on public health
- Effects on provider-patient relationships
- Patient confidentiality after information provided to LE
- Other ethical dilemmas
 - Victim autonomy - no choice about involving LE
 - Risk of other harms to victim
 - May not be a protective structure for victim if no DSS/other agency involvement
- Others? Submit in Q&A pod

Questions?

43