

New legislation requiring reports about juvenile crime victims: Basic information for NC health departments

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Overview of the new law and the issues

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



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

Requires reports to law enforcement of certain crimes against juveniles

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

Some initial issues for local health departments

Understanding the interaction between the reporting requirement and HIPAA/other confidentiality laws

Assuring health department policies/procedures reflect the requirements of all applicable laws, including other mandatory reporting laws, as well as HIPAA/confidentiality laws

Training the department's workforce in the new law and how to simultaneously comply with the new reporting requirements and obligations under HIPAA/other confidentiality laws

A closer look at the new law's provisions

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

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Reporting juvenile crime victims to law enforcement

New G.S. 14-318.6:

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, emancipated, or serving in the armed forces. The age of the juvenile at the time of the abuse or offense governs.

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Who must report?

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?

Violent offense against a juvenile

Sexual offense against a juvenile

Misdemeanor child abuse

Which offenses must be reported?

Violent offense against a juvenile

Sexual offense against a juvenile

Misdemeanor child abuse

What is a violent offense?

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 offenses must be reported?

Violent offense against a juvenile

Sexual offense against a juvenile

Misdemeanor child abuse

Sexual offenses against juveniles: What must be reported?

Sexual offense?

- Law requires a person to report a “sexual offense”
- Report only the crimes called “sexual offense”?

Sexually violent offense?

- Law defines the term “sexually violent offense” to include many more offenses
- Report crimes that fall under this definition?

Ambiguity in the statute: reporting requirement uses an undefined term; definitions section defines a different term

What is a sexually violent offense?

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))

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))

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))

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/other exploitation of minors

- Employing or permitting a minor to assist in offenses against morality and decency
- First-, second-, and third-degree sexual exploitation of a minor

Sexually violent offenses (cont.)

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

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

Which offenses must be reported?

Violent offense against a juvenile

Sexual offense against a juvenile

Misdemeanor child abuse

What is misdemeanor child abuse?

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.

What are the required contents of a report?

- Name, address, and age of the victim
- Name & address of the victim's parent/guardian/custodian/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

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)

Reporting requirements (cont.)

Additional provisions

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

Additional considerations for health departments

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How does the reporting requirement interact with HIPAA?

Disclosure of PHI is allowed, but must be limited to the required contents of the report.

When a HIPAA-covered component of the health department makes a report to law enforcement under new G.S. 14-318.6, the report will disclose protected health information (PHI).

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.
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How does the reporting requirement interact with HIPAA? (cont.)

The covered entity must inform the individual of the report.

HIPAA requires a covered entity that makes a report under the new law to 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: This requirement does not apply to all mandatory reporting laws.

- For example, it does not apply to reports to DSS of child abuse, neglect, or dependency.
- However, the requirement does apply to the new reporting requirement in S.L. 2019-245, Part I.

Who should be informed of the report?

The individual, if the individual is:

- An unemancipated minor, and the reportable information was acquired while treating the individual pursuant to the minor's consent law, or
- An unemancipated minor, and the reportable information was acquired while the minor was 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 and the reportable information was acquired while providing treatment not under the minor's consent law and pursuant to the consent of the minor's parent or other adult authorized by law to consent, or
- The individual is an adult who lacks decisional capacity.

What are the exceptions to the requirement to inform?

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?

- This following applies only if the CE is supposed to inform the personal representative instead of the individual.
- 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.

How does the reporting requirement interact with other confidentiality laws?

Requirements under other laws may vary.

Health information is often subject to more than one confidentiality law.

Whether a health department is subject to other confidentiality laws depends on which services the department provides and other factors.

Health departments should determine whether other confidentiality laws they are subject to affect reporting under the new law.

Does the new law apply to non-clinical health department staff?

The new law applies to any person age 18 or older, except for the individuals with statutory privileges that are specifically exempted in the law.

Health department staff who are not covered by HIPAA under the local health department's hybrid entity designation:

- Are mandatory reporters under the new law (unless they are specifically exempted due to a privilege).
- But are not required to comply with the additional requirements that HIPAA imposes, such as informing the individual or personal representative.

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.

Administrative matters

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Policies & procedures

Review health department policies/procedures and amend if needed

Some issues to take into account (not an exhaustive list):

- Some health departments may have workforce members who are excepted from the new reporting requirement due to a statutory privilege (they may still be subject to other reporting requirements).
- For the department's HIPAA-covered components:
 - **Apply the correct disclosure rule:** Different HIPAA provisions apply to disclosures of PHI for purposes of making a mandatory report to law enforcement, vs. disclosures of PHI for law enforcement investigations or judicial proceedings.
 - **Limit PHI disclosed to only that which is required:** Reports to law enforcement under the new law must disclose only the amount of PHI that is required in order to comply with the mandatory reporting law.
 - **Inform the individual or personal representative:** Reports to law enforcement under the new law are subject to a HIPAA requirement to inform the individual or personal representative. When dealing with minors, it is very important to be clear on whether it is the individual or personal representative who must be informed.
- Some health department programs or workforce members may be subject to other laws that affect reporting under the new law.

Training

HEALTH DEPARTMENT STAFF/OTHERS WHO ARE SUBJECT TO HIPAA

Covered entities must train workforce members in policies and procedures implementing the HIPAA privacy, security, and breach regulations

- Workforce means employees, volunteers, trainees, and other persons who perform work for a covered entity, and whose conduct in the performance of such work is under the direct control of the covered entity

Training must be provided to new workforce members and periodically to existing workforce members

Additional training for existing workforce members is required when there is a material change in policies and procedures affecting their work

OTHER HEALTH DEPARTMENT STAFF

Health departments should provide information about the new mandatory reporting requirement to health department staff members who are not subject to HIPAA as well

Questions?



If you have questions about the new law, please email them to me at moore@sog.unc.edu.

Please note: I will not be able to respond to each question individually. However, I will review each question and will identify common questions for additional FAQs to be posted on ncphlaw.unc.edu.