

North Dakota State Reporting Laws

THE PURPOSE OF THIS GUIDE IS TO PROVIDE GENERAL INFORMATION ONLY. IT IS NOT INTENDED AS LEGAL ADVICE OR TO APPLY TO ANY PARTICULAR SITUATION.

TITLE X

Background:

In 1970, Congress added Title X to the Public Health Services Act to make family planning and reproductive health services available to individuals who need them, with priority given to low-income individuals.

Providing family planning services:

All clients, including adolescents, who are seeking Title X services may consent to their own care, and these services must be provided to them on a voluntary and confidential basis.

Confidentiality and state law requirements for reporting abuse and neglect:

Although Title X providers are legally required to maintain confidentiality of all clients, including adolescents, they are not exempt from state laws that require the reporting of “child abuse, child molestation, sexual abuse, rape or incest.” This reporting obligation creates a limited exception to the duty to maintain client confidentiality.

Please refer to the Supporting Statutes, which are attached.

DUTY TO REPORT

In public health clinics:

Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professions, religious practitioner of the healing arts, addiction counselor, social worker, child care worker having knowledge of reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, *shall* report, oral or written (oral report must be followed by a written report) the circumstances to the Department of Human Services if the knowledge or suspicion is derived from information received by that person in that person’s professional capacity.

- A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received at the capacity of the spiritual adviser.
- Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, *may* report such circumstances to the Department of Human Services.
- Prenatal exposure to controlled substances - Individuals required to report (as listed above) who have knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a non-medical purpose during the pregnancy *shall* report the circumstances to the Department of Human Services if the knowledge or suspicion is derived from information received by that individual in that individual’s official or professional capacity.

- ◇ Any individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a non-medical purpose during that pregnancy.

AGE OF “CONSENT”

Sexual contact with a child is illegal and considered child abuse when:

- ◇ The child is under age 18.
- ◇ When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least three years older than the minor.

WHO ARE REPORTS MADE TO?

Department of Human Services, or its designee, which is usually county social services.

PROCEDURE FOR MAKING A REPORT

Oral or written (oral report must be followed by a written report within 48 hours if requested by the department) to the Department of Human Services.

CAN A REPORTER BE HELD LIABLE IF IT TURNS OUT THAT HER/HIS SUSPICIONS WERE WRONG?

All those required to report who do so in good faith are protected from civil or criminal liability if suspicions are unfounded. Any person who intentionally makes a false report could be civilly or criminally liable.

CONSEQUENCES OF FAILURE TO REPORT

The penalty for failure to make a report is a misdemeanor.

VICTIMS SERVICES AGENCIES

Each clinic should contact their local State’s Attorney’s Office or Sheriffs Department for Victims Service contact information, as it is not a state service, but a town/city or community service.

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Supporting Statutes

Abused child §50-25.1-02 An individual under the age of 18 years:

- Who is suffering from serious physical *harm* or traumatic abuse caused by other than accidental means
 - By a *person responsible for the child's welfare*
 - The child's parent, guardian, or
 - Foster parent; an employee of a public or private school or nonresidential child care facility;
 - An employee of a public or private residential home, institution, or agency; or
 - A person responsible for the child's welfare in a residential setting
- Who is suffering from or was subjected to any *sexual act, sexual contact, gross sexual imposition, corruption or solicitation of minors or sexual assault*.

Harm §50-25.1-02 Negative changes in a child's health which occur when a *person responsible for the child's welfare*:

- Inflicts, or allows to be inflicted, upon the child, physical or mental injury,
 - including injuries sustained as a result of excessive corporal punishment; or
- Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined below.

Prenatal exposure to a controlled substance §50-25.1-02 (part of child abuse statute): Use of a controlled substance by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.

Sexual act §12.1-20-02 means contact between human beings consisting of:

- Contact between the genitalia, anus or mouth or the use of an object which comes in contact with the victim's genitalia or anus.

Sexual contact §12.1-20-02 means any touching, whether or not through the clothing or other covering:

- of the sexual or other intimate parts of the person, or
- the penile ejaculation or emission of urine or feces upon the part of the person,
- for the purpose of arousing or satisfying of aggressive desires.

Gross sexual imposition §12.1-20-02 – A person engages in a *sexual act* with another, or who causes another to engage in a *sexual act* when:

- A person compels the victim to submit by force or threat of imminent death or serious bodily injury, or kidnapping, to be inflicted on any human being;
- That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct through the use of intoxicant's, controlled substance
 - Without the victim's knowledge;
- The person knows that the victim is unaware that the sexual act is being committed upon him/her;
- The victim is less than 15 years old;

- The person knows or has reasonable cause to believe that the victim suffers from a mental disease or defect
 - Which renders the victim incapable of understanding own conduct.

Corruption or solicitation of minors §12.1-20-03

- An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor;
- An adult who solicits with the intent to engage in a sexual act with a minor under 15 years of age or,
- An adult is at least 22 years of age and the victim is 15 to 18 years, engages in or causes another to engage in a sexual act.

Sexual assault §12.1-20-07 – A person who knowingly has *sexual contact* with another, or causes another to have sexual contact when:

- That person knows or has reasonable cause to believe that the contact is offensive to the other person;
- That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect where the other person is incapable of understanding the nature of the conduct;
- That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct for the purpose of preventing resistance;
- The victim is in official custody or detained in a hospital, prison or other institution and the actor has authority over the victim;
- The victim is a minor, 15 to 17 years of age, and the actor is the victim's parent, guardian or otherwise responsible for the supervision of the victim's welfare; or
- The victim is a minor, 15 to 17 years of age, and the actor is an adult (18 and older).