

REPORTING REQUIREMENTS FOR SEXUALLY ACTIVE ADOLESCENTS

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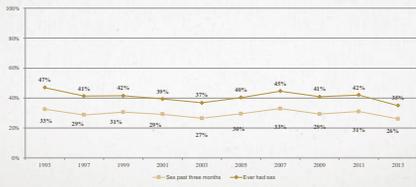
INTRODUCTION

- Complex topic
- Varying opinions from authoritative sources
- This information represents the collective opinions of Wisconsin Departments of:
 - Justice
 - Children & Families
 - Health Services
 - Public Instruction

AGENDA

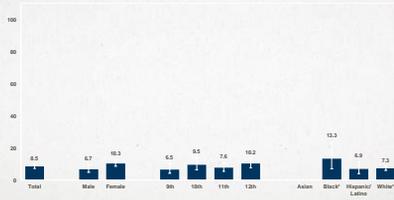
- Risk behaviors of WI youth
 - WI YRBS
- Definitions in state statutes
 - Sexual contact
 - Sexual intercourse
- Mandatory reporting
 - Age
 - Involuntary vs. voluntary sexual contact
 - Exception for health care services
- Apply learning to school-based scenarios

PERCENTAGE OF STUDENTS WHO EVER HAD SEXUAL INTERCOURSE OR THOSE WHO HAVE HAD SEXUAL INTERCOURSE IN THE LAST 3 MONTHS. (1993 - 2013)



WISCONSIN HIGH SCHOOL SURVEY

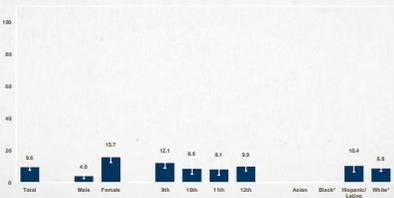
Among students who dated or went out with someone during the past 12 months, the percentage who had been physically hurt on purpose by someone they were dating or going out with one or more times during the past 12 months



Q22 - Weighted Data
 *Not Hispanic
 Weighting data reflects that only 100 students in this category

WISCONSIN HIGH SCHOOL SURVEY

Among students who dated or went out with someone during the past 12 months, the percentage who had been forced by someone they were dating or going out with to do sexual things that they did not want to one or more times during the past 12 months



Q23 - Weighted Data
 *Not Hispanic
 Weighting data reflects that only 100 students in this category

DEFINITION: ABUSE

48.02 Definitions. In this chapter, unless otherwise defined:

- (1) "Abuse," other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:
 - (b) Sexual intercourse or sexual contact under s. 940.225, 948.02, 948.025.
 - (c) Sexual exploitation of a child (s. 948.05)
 - (cm) Trafficking (or attempted trafficking) of a child (eff. 5/29/17)
 - (d) Permitting, allowing, or encouraging a child to engage in prostitution (s. 944.30 (1m))

DEFINITION: SEXUAL CONTACT

948.01(5) "Sexual contact" means any of the following:

- (a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:

DEFINITION: SEXUAL CONTACT

948.01(5)(a)

- 1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.
- 2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.

DEFINITION: SEXUAL INTERCOURSE

948.01(6)
(6) "Sexual intercourse" means **vulvar penetration as well as cunnilingus, fellatio or anal intercourse** between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

MANDATORY REPORTING

- Must immediately report suspected abuse of child seen in course of professional duties
 - Report is by phone or in person
 - Could be past or future
- May report to CPS or local law enforcement

NON-CAREGIVER SUSPECTED MALTREATMENT

- Counties determine if ...
 - CPS will investigate
 - Law enforcement will investigate
 - Decide on case-by-case basis
 - May collaborate under some circumstances (i.e., joint investigation)
- What about your county?

CPS VS. LAW ENFORCEMENT INVESTIGATIONS

- Each system must notify the other within 12 hours of receiving a non-caregiver report
- CPS
 - Focus of investigation is child safety & what actions need to be taken, if any
 - Parent must be contacted first, followed by child, if parent consents
- Law enforcement
 - Focus of investigation is public safety & determination whether a crime may have been committed
 - Parents do not have to be interviewed first (or at all)
 - Youth may be interviewed without parent consent

3 CRITICAL DETERMINANTS

1. Voluntary vs. coerced sexual contact
2. Age of youth
 - under 16 years
 - 16 - 17 years
 - 18 years or older
3. Access to health care services

**CRITICAL DETERMINANT #1
INVOLUNTARY SEXUAL CONTACT OR INTERCOURSE**

- If the youth is a minor
 - Mandatory report for suspected child maltreatment
 - Inform student
 - Follow your county's policy
- If the young person is an adult
 - Mandatory reporting does not apply
 - Inform student of rights to press charges

**CRITICAL DETERMINANT #2 – AGE OF STUDENT
16 & 17 YEARS OLD**

- Voluntary sexual contact
 - Youth 16 years of age or older is not illegal
- Voluntary sexual intercourse
 - Class A Misdemeanor to have sexual intercourse with someone 16 or 17 years old [s. 948.09]
 - Age of the other person is not referenced in statute
 - **Not** cross-referenced as part of definition of sexual abuse
 - Mandatory reporting does **not** apply
- Counsel youth about consequences, family awareness, & health care services

WISCONSIN AG OPINION

- "consensual sexual contact involving 16- and 17-year –old children does not constitute child abuse under section 48.981(2), Stats."
- "there is nothing in the child 'abuse' definition of s. 48.981 encompassing sexual activity of the typical 16-year-old or 17-year-old. Accordingly, there is no reporting requirement in that regard and no authority under s. 48.981 for the county Department of Social Services to investigate reports of such activity."
 - 1983 published AG opinion
 - 1994 DHFS letter
 - 2005 DOJ letter

**CRITICAL DETERMINANT #2 – AGE OF STUDENT
UNDER AGE OF 16 YEARS**

- Voluntary sexual contact or intercourse
 - Felony
 - Age of the other person is not referenced in statute
 - Mandatory reporting applies, unless the student is accessing or has accessed health care services as defined in s. 48.981(2m)

**CRITICAL DETERMINANT #3
HEALTH CARE SERVICES**

48.981(2m) Exception to reporting requirement.

a) The purpose of this subsection is to allow *children* to obtain confidential health care services.

- Health care service means family planning services, pregnancy testing, obstetrical health care or screening, diagnosis & treatment for a sexually transmitted disease.
- Health care provider is a physician, physician's assistant, or a nurse.

**CRITICAL DETERMINANT #3
EXCEPTION TO REPORTING DUE TO ACCESS TO
HEALTH CARE SERVICES**

48.981(2m)(c)

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.
4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

THE EXCEPTION TO THE EXCEPTION ...

48.981(2m)

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.
2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

THE EXCEPTION TO THE EXCEPTION ...

48.981(2m)

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

- 3. That the child, because of his or her **age or immaturity**, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.
- 4. That the **child was unconscious** at the time of the act or for any other reason was **physically unable to communicate unwillingness** to engage in sexual intercourse or sexual contact.

THE EXCEPTION TO THE EXCEPTION ...

48.981(2m)

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

- 5. That another participant in the sexual contact or sexual intercourse was or is **exploiting the child**.

THE EXCEPTION TO THE EXCEPTION ...

48.981(2m)

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any **reasonable doubt as to the voluntariness of the child's participation** in the sexual contact or sexual intercourse.

CONFIDENTIAL HEALTH CARE SERVICES FOR MINORS

- Medical records related to family planning are confidential – no distinction based upon age
- Different legal interpretations regarding whether minor patients may claim **privileged communication** for diagnosis or treatment
- References
 - Wis. Stats. 253.07(3)(c), 905.04(1)(c), (2), (3)
 - Planned Parenthood of Central Missouri v. Danforth, 428 US 52 (1976)
 - Cary v. Population Services International, 431 US 678 (1977)

SPECIAL CIRCUMSTANCES

- Age differential
- County DA discretion
- Cultural consideration
- Disclaimer?
- Parental notification?

REPORT: YES OR NO?

- 5 school-based scenarios to discuss
- Review 3 critical determinants
 1. Is the sexual contact or intercourse voluntary or involuntary?
 2. How old is the student?
 3. Has the student or is the student accessing health care services?
- Check out the decision-making tree

REPORT: YES OR NO?

A 17 year old student asks you if the home pregnancy tests are accurate. She explains she was at a party with her 17 year old boy friend a couple of weeks ago & both of them were drinking. She vaguely remembers having intercourse with him but not anything that came before it (i.e., going to the bedroom, getting undressed, etc.). Normally, they use a condom, but neither one of them can remember if they did that night.

REPORT: YES OR NO?

Two 16 year old high school girls come to you & complain that a high school boy grabbed their buttocks in the hallway while students were passing between classes.

REPORT: YES OR NO?

You are walking in the hallway of a middle school and observe 2 students kissing passionately in an alcove. The boy's hand is rubbing the girl's breast over her clothing.

REPORT: YES OR NO?

A 16 year old high school student comes to you with questions about sex. He shares he has been having regular, sexual contact with a male, 18 year old high school student. Based upon his description, you conclude they have not had sexual intercourse. The student shares his partner wants to have oral & anal sex, but has told him how confused he remembers he was at that age & does not want to him to do anything he does not want to do.

REPORT: YES OR NO?

A 14 year old 9th grader reveals that she has been dating a 19 year old 12th grade student & they just started to have sex. She is mature for her age & assures you the sexual involvement is voluntary. Prior to having sex, she went to the community clinic & is taking oral contraceptives to prevent pregnancy.

OTHER SCENARIOS

Are there other scenarios you would like to discuss?

AVAILABLE RESOURCES

Reporting Requirements for Sexually Active Adolescents

<http://dpi.wi.gov/sites/default/files/imce/sspw/pdf/rfrfsaa.pdf>

Confidential Services Available to Youth in WI

<http://dpi.wi.gov/sspw/pupil-services/school-social-work/publications/confidential-services>

Child Protective Services

<http://dct.wisconsin.gov/children/cps/>

http://dct.wisconsin.gov/wisacwis/knowledge_web/administration/standards/Access_Standards_2007.pdf

School's Role in Preventing Child Abuse & Neglect

<http://dpi.wi.gov/sspw/pupil-services/school-social-work/publications/preventing-child-abuse>
