

## **Reporting Requirements for Sexually Active Adolescents: Suggested Procedures for Educators**

State statutes regarding the mandatory reporting of sexually active adolescents are complex with different directions dependent upon the nature of the sexual contact, age of the adolescent, and access to health care services. This summary, developed by the Department of Public Instruction (DPI) in cooperation with the former Department of Health and Family Services (DHFS) and the Department of Justice (DOJ), is intended to help school districts, in collaboration with their county child protective services (CPS) and law enforcement agencies, develop policies and procedures to address situations where a school staff member becomes aware that a student is sexually active. Applicable definitions are included for reference.

*This information is not designed nor intended to be used as a school district policy. School districts are advised to consult with their attorney, prior to finalizing and implementing any local policies and procedures.*

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### **Suggested Procedures for School Professionals Who Become Aware a Minor Student Has Had Involuntary Sexual Contact or Intercourse with Another Person**

Any school professional, who through the course of her/his professional duties, has reason to believe that a student under the age of 18 years has had *sexual contact* or *sexual intercourse* (see Definitions) with another person and has reason to doubt the student's participation in the sexual contact is voluntary, should immediately contact the county CPS agency or local law enforcement agency and make a report to that effect. The school professional may inform the student in a confidential interview: 1) the report is being made and is required by law, and 2) what to expect concerning the investigation (e.g. investigation procedures, possible outcomes of the investigation).

The school professional may encourage the student to discuss this matter with her/his parents as long as the parents were in no way involved in the sexual contact nor contributed to nor condoned the sexual contact. If the student has previously accessed or is accessing health care services (see Definitions), the school professional should relate this information to the county CPS agency or local law enforcement agency, as a report may already have been made by a health care provider.

County departments of social services now have the autonomy to continue to investigate reports of non-caregiver abuse, refer these reports to law enforcement for investigation, or determine this on a case-by-case basis. The reader is advised to contact his/her respective county department of social services to learn how non-caregiver reports are handled in that county.

References: Wis. Stats. sec. [48.02\(2\)](#); [48.981\(2\)](#), (2m), (3)(a)1.; [940.225](#); [948.02\(1\)](#), (2), (3); and [948.025](#)

## **Suggested Procedures for School Professionals Who Become Aware a Minor Student Has Had Voluntary Sexual Contact or Intercourse with Another Person**

Suggested procedures for school professionals who become aware that a student under the age of 18 years has had consensual *sexual contact* or *sexual intercourse* with another person differ dependent upon the student's age (see Definitions for "consent.")

### *Students 16 or 17 Years Old*

It is not illegal to have voluntary *sexual contact* with a person 16 or 17 years old and, consequently, there is no requirement for a report to either the county CPS agency or local law enforcement.

*Sexual intercourse* (see Definitions) with someone 16 or 17 years old is a Class A misdemeanor, and carries the same penalty classification as fourth degree sexual assault, Wis. Stats. sec. [940.225\(3m\)](#) and [948.09](#). However, this behavior does not fall under the mandated reporting requirement in Wis. Stat. sec. [48.981](#) if the school professional feels, in his/her professional opinion, the sexual intercourse is voluntary. A 1983 Wisconsin Attorney General opinion states, "Sexual contact or intercourse with a sixteen- or seventeen-year-old is not sexual assault unless it is nonconsensual. Therefore, it should be reported as abuse only if there is reasonable cause to suspect that the sixteen- or seventeen-year-old did not consent." (Ref. 72 Atty. Gen. 93). This legal interpretation was reestablished in a Department of Justice (DOJ) memorandum dated 4/14/05.

The Wisconsin laws that deal with sexual contact and intercourse with minors do not discuss the age of the person with which the minor has sexual contact or intercourse nor an age discrepancy between the minor and the other person. However, relative to a school professional's decision to make a report for suspected abuse, it is important to discuss this issue. Because of the greater possibility of a power differential in an adolescent relationship where one person is significantly older than the other, some counties request that mandated reporters contact the CPS or law enforcement agency if they become aware of voluntary sexual relationships where the age differential exceeds a certain number (e.g., three years). It is important for mandated reporters to be aware of their county's local policies and expectations. While not required by law, greater cooperation between systems can be fostered by respecting each other's policies.

When a school professional comes into contact with a student who is sexually active and a report is not warranted, the school professional may wish to 1) take steps to ensure the student is fully cognizant of the potential adverse consequences of being sexually active, 2) ask the student whether he/she has talked to his/her parents or some

other responsible, adult family member about being sexually active, and if not, provide the student with strategies and encouragement to do so, including offering to help the student speak with his/her parents, and 3) ask the student whether he/she has accessed appropriate health care services necessary to prevent pregnancy and sexually transmitted infections (STIs) and, if not, provide the student with the necessary information to make a self-referral.

### *Students Under 16 Years Old*

*Sexual contact* or *sexual intercourse* with a person under the age of 16 years is a felony, Wis. Stat. sec. [948.02\(1\)](#) and [\(2\)](#). School professionals who have reasonable cause to believe a student under the age of 16 years has had sexual contact or intercourse with another person, where the student claims the sexual contact or intercourse is consensual, must still report this behavior to the county CPS or local law enforcement agency.

The only possible exception to this requirement is when the student is receiving or has received health care services from a health care provider (see Definitions). The stated purpose of this exception in state statute “is to allow children to obtain confidential health care services,” Wis. Stat. sec. [48.981\(2m\)\(a\)](#). Some health care services (as defined in statute to include family planning services) may be within the scope of a school nurse’s responsibilities (i.e., counseling, distribution of information, and referral).

In addition to a reporting exception for the health care provider providing the health care services as defined in Wis. Stat. sec. [48.981\(2m\)\(b\)2.](#), the law also states that “a person who obtains information about a child who is receiving or has received health care services from a health care provider” also need not report, as long as none of the circumstances described in the next paragraph apply. The statute does not define who that “person” may be or how the “person” learns that the child has accessed or is accessing health care services. It is not uncommon for minors to disclose to others, including adults who may be mandated reporters, that they have accessed health care services. Consequently, in order to maintain a minor’s right to confidential health care services, mandated reporters, other than health care providers, may not be required to report under these circumstances, Wis. Stat. sec. [48.981\(2m\)](#).

However, even if a student has accessed health care services, there are a number of circumstances under which a report to the CPS or local law enforcement agency must still be made:

1. the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver,
2. 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 action,
3. 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. 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,
  5. another participant in the sexual contact or sexual intercourse was or is exploiting the child, and
- the school professional has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse, Wis. Stat. sec. [48.981\(2m\)\(d\)](#) and [\(e\)](#).

Once again, a significant age difference between the student and the other person may be reason alone to doubt whether the nature of the student's participation is truly voluntary, due to the power differential that may be present in the relationship. Local school policy, developed in collaboration with the county CPS agency, may wish to stipulate an age difference or range determined to be significant and necessitating a referral.

As above, the school professional may inform the student in a confidential interview: 1) the report is being made and is required by law, and 2) what to expect concerning the CPS or law enforcement investigation (e.g., investigation procedures, likely outcomes of the investigation). The school professional may encourage the student to discuss this matter with her/his parents as long as the parents were in no way involved in the sexual contact nor contributed to nor condoned it in any way.

References: Wis. Stats. sec. [48.981\(2\)](#), [\(2m\)](#), and [\(3\)\(a\)1.](#); [253.07\(1\)\(b\)](#); [940.225\(3m\)](#); [948.02\(1\)](#), [\(2\)](#), and [\(3\)](#); [948.025](#); [948.09](#); DHFS Office of Legal Counsel letter dated 3/15/94; Opinions of the Attorney General, 1983; and DOJ Memorandum dated 4/14/05.

### **Suggested Disclaimer to Be Used by Pupil Services Staff Members Prior to Providing Counseling to Adolescent Students**

Prior to beginning a counseling relationship, pupil services staff typically notify students that everything discussed is confidential unless there is reason to believe someone has been or will be hurt in some way. Similarly, it may be appropriate to notify adolescent students that any information shared about having sexual contact with another person may also have to be reported to the appropriate authorities, dependent upon the age of the student and the circumstances of the sexual contact. Using this disclaimer can avoid a student later feeling that her/his confidence has been violated.

### **Parental Notification**

When making a mandatory report for suspected child abuse, school officials routinely do not notify the parents of the referral. Parental notification as part of the investigation becomes the responsibility of the investigating CPS agency. Clearly, when the parents are possibly the perpetrators, this is necessary in order to avoid interfering with the investigation. However, in situations involving peer-involved, sexually active students,

the parents are not suspect. Schools and county CPS and law enforcement agencies may meet and proactively discuss guidelines for determining how, when, and if parents are to be notified in a timely manner about their children being sexually active.

## Definitions

**Abuse** - in the context of sexual abuse and assault, means sexual intercourse or sexual contact under Wis. Stat. sec. [940.225](#) (Sexual assault), [948.02](#) (Sexual assault of a child), [948.025](#) (Engaging in repeated acts of sexual assault of the same child) or [948.085](#) (Sexual assault of a child placed in substitute care), Wis. Stat. sec. [48.02\(1\)\(b\)](#). Reference also Wis. Stat. sec. [948.05](#) (Sexual exploitation of a child), [944.30](#) (Prostitution), [948.055](#) (Causing a child to view or listen to sexual activity), and [948.10](#) (Exposing genitals or pubic area).

**Child** - when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age, Wis. Stat. sec. [48.02\(2\)](#).

**Consent** - with regard to sexual assault, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact, Wis. Stat. sec. [940.225\(4\)](#). In addition, a 1983 Attorney General's opinion concludes consent is not an issue for sexual contact involving children under the age of 16 years. Specifically, "Since sexual contact or intercourse with any child under the age of sixteen years is a sexual assault, regardless of whether consent was given, section 940.225(1)(d), (2)(e) and (4), all sexual conduct involving children in that age group must be reported," Ref. 72 Atty. Gen. 93.

**Family planning services** - mean counseling by trained personnel regarding family planning; distribution of information relating to family planning; and referral to licensed nurse practitioners within the scope of their practice, licensed physicians or local health departments for consultation, examination, medical treatment and prescriptions for the purpose of family planning. "Family planning" does not include the performance, promotion, encouragement or counseling in favor of, or referral either directly or through an intermediary for, voluntary termination of pregnancy, but may include the providing of nondirective information explaining any of the following: 1) prenatal care and delivery; 2) infant care, foster care or adoption; 3) pregnancy termination, Wis. Stat. sec. [253.07\(1\)\(b\)](#).

**Health care provider** - for the purposes of providing a "health care service" as defined in Wis. Stat. sec. [48.981\(2m\)\(b\)2.](#), means a physician, as defined under Wis. Stat. sec. [448.01\(5\)](#), a physician assistant, as defined under Wis. Stat. sec. [448.01\(6\)](#), or a nurse holding a certificate of registration under Wis. Stat. sec. [441.06\(1\)](#) or a license under Wis. Stat. sec. [441.10\(3\)](#), Wis. Stat. sec. [48.981\(2m\)\(b\)1.](#)

**Health care service** - means family planning services, as defined in Wis. Stat. sec. [253.07\(1\)\(b\)](#), pregnancy testing, obstetrical health care or screening, and diagnosis and treatment for a sexually transmitted disease, Wis. Stat. sec. [48.981\(2m\)\(b\)2](#).

**Sexual contact** - means 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: 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; or 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, Wis. Stat. sec. [948.01\(5\)\(a\)](#). Reference also Wis. Stat. sec. [948.01\(5\)\(b\)](#) and [\(c\)](#).

**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, Wis. Stat. sec. [948.01\(6\)](#).

### **Available Resources**

More information on child maltreatment is available from the Department of Children and Families at <http://dcf.wi.gov/children/CPS/index.htm>.

*The School's Role in Preventing Child Abuse and Neglect* was developed by the Department of Public Instruction with support from the (then) Department of Health and Family Services and can be obtained at [http://sspw.dpi.wi.gov/sspw\\_sswchildabuse](http://sspw.dpi.wi.gov/sspw_sswchildabuse).

*Educational Services for Children Placed in Foster Care* was developed jointly by the Department of Public Instruction, the Department of Children and Families, and the Wisconsin Association of family and Children Agencies and can be obtained at [http://sspw.dpi.wi.gov/sspw\\_fostercareedu](http://sspw.dpi.wi.gov/sspw_fostercareedu).