

Reporting Requirements for Sexually Active Adolescents: Suggested Procedures for Educators

State statutes regarding the mandatory reporting of sexually active adolescents are complex with different directives that depend on the nature of the sexual contact, age of the adolescent, and access to health care services. This summary was first 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). It 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, or in place of, 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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Involuntary Sexual Contact or Intercourse between a Minor and Another Person

Any school professional who, through the course of 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 was voluntary, must 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 the student's parents or caregivers as long as the parents or caregivers 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.

Generally, county departments of social services have the autonomy to either investigate reports of non-caregiver abuse or refer these reports to law enforcement for investigation, and to make this determination on a case-by-case basis. However, counties must investigate suspected sex trafficking. The reader is advised to contact the local county department of social services to learn how non-caregiver reports are handled in that county.

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

Voluntary Sexual Contact or Intercourse between a Minor Student and 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

Pursuant to Wis. Stat. § 948.095, any school staff member that has *sexual contact* or *sexual intercourse* with a 16 or 17 year old that attends the school or school district that employs the staff member is guilty of a Class H felony. The same penalty applies to an individual age 21 or over who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children.

Other than as is set forth by Wis. Stat. § 948.095, it is not illegal for an individual 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, pursuant to Wis. Stat §§ [948.09](#) and [948.093](#). 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/their professional opinion, the sexual intercourse is voluntary and Wis. Stat. § 948.095 does not apply. 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." 72 Wis. Atty. Gen. 93. The DOJ reiterated this legal interpretation in a memorandum dated 4/14/05.

Changes to Wisconsin statutes in 2017 reduced the penalties for individuals under the age of 19 who engage in consensual sexual contact or sexual intercourse with 15-17 year olds. See Wis. Stat §§ [948.09](#) and [948.093](#). Other than these changes, the Wisconsin laws that deal with sexual contact and sexual intercourse with minors do not discuss an age discrepancy between the minor and the other person relative to the appropriateness of the behavior. However, concerning 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 whether the student has talked to the student's 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 parents or caregivers, and 3) ask the student whether appropriate health care services have been accessed 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 if the actor is 19 years old or older, and a misdemeanor if the actor is under 19. Wis. Stat. §§ [948.02\(1\)](#) and [\(2\)](#); 948.093. School professionals who have reasonable cause to believe a student under the age of 16 years has had sexual contact or sexual intercourse with another person, including another minor, **must report this behavior** to the county CPS or local law enforcement agency, even in situations where the student claims the sexual contact or sexual intercourse is consensual.

Health Care Services Exemption

A health care provider (such as a school nurse, see Definitions) is not required to report as abuse sexual contact or sexual intercourse of a child if they are providing, or have provided, health care services to the child. In this section, a child is a person under 18 years old. The stated purpose of this exception in state statute “is to allow children to obtain confidential health care services.” Wis. Stat. § [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).

An additional exemption exists under this section. A person who learns that a child has accessed or is accessing health care services is not required to report the sexual contact or sexual intercourse as abuse. 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 that they have accessed health care services. For example, a student might tell a teacher that they use birth control. Consequently, in order to maintain a minor’s right to confidential health care services, mandated reporters may not be required to report under these circumstances. Wis. Stat. § [48.981\(2m\)](#).

However, there are a number of circumstances under which a report to the CPS or local law enforcement agency must still be made by a health care provider providing services, or by a person who learns the child has accessed health care services:

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; or
6. 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. §§ [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 parents or caregivers as long as the parents or caregivers were in no way involved in the sexual contact nor contributed to nor condoned it in any way.

References: Wis. Stat. §§ [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 students later feeling that their confidence has been violated. Typically, the only professional working in a school who meets the statutory definition of a health care provider as defined in Wis. Stat. § [48.981\(2m\)\(b\)1.](#) is a school nurse.

Parental Notification

When making a mandatory report for suspected child abuse, school officials routinely do not notify the parents or caregivers of the referral. Parental notification as part of the investigation becomes the responsibility of the investigating CPS agency. Clearly, when the parents or caregivers 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 or caregivers are not suspect. Schools and county CPS and law enforcement agencies may meet and proactively discuss guidelines for determining how, when, and if parents or caregivers 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. §§ [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. § 948.095 (Sexual assault of a child by a school staff person or a person who works or volunteers with children), 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. § 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. § 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. Wis. Stat. §§ 940.225(1)(d), (2)(e) and (4), all sexual conduct involving children in that age group must be reported.” See 72 Wis. 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. § 253.07(1)(b).

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

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

School staff - means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract. Wis. Stat. § 985.095(1)(b)

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. § [948.01\(5\)\(a\)](#); See also Wis. Stat. §§ [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. § [948.01\(6\)](#).

Available Resources

More information on child maltreatment is available from the Department of Children and Families at <https://dcf.wisconsin.gov/reportabuse>.

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