

**Frequently Asked Questions
from the
“Asking the Right Questions: Assessment and Intervention To
Prevent Sexual Coercion Workshop”**

If you need further assistance after reading this document, you may contact the speaker Jill Moore at 919-966-4442 or moore@sog.unc.edu. She works at the School of Government at UNC-Chapel Hill University.

1) How do I receive the book Reporting Child Abuse and Neglect in North Carolina by Janet Mason that Jill Moore referred to in her presentation?

The book is available on the following web site <http://ncinfo.iog.unc.edu/pubs/electronicversions/rca/rca.htm>

2) Once a person has cause to suspect that a child under the age of 18 is abused, neglected, or dependent and reports this to DSS, are there specific legal requirements for DSS to report the outcome or results of their investigation to the originator of the notification? If not, how can the originator know if anything was done about the situation?

There are specific legal requirements that are set forth in N.C. General Statute 7B-302 (in paragraph (f) and (g)) and in the N.C. Administrative Code (Title 10A, Chapter 70A, section .0105(h)).

Within 5 working days after receiving a report, DSS must give the reporter written notice of two things: (1) whether the report has been accepted for investigation, and (2) whether the report has been referred to a law enforcement agency. If DSS does not accept the report for investigation, the notice must tell the reporter: (1) that the department will not conduct an investigation, (2) the basis for the department's decision not to investigate, and (3) that the reporter has a right to ask for a review of the department's decision. The notice should also explain the procedures for requesting review of the department's decision not to investigate.

If the report is accepted for investigation, DSS must give the reporter another written notice when its investigation is completed. This second notice must be given within 5 working days after the investigation is completed, and must include all of the following: (1) whether DSS has made a finding of abuse, neglect, or dependency; (2) whether DSS is taking action to protect a child, and if so, what the action is; (3) whether DSS has filed a petition to begin a juvenile proceeding; (4) a statement that the reporter has 5 working days after receiving the notice to ask the DA to review DSS's decision if the reporter is not satisfied with it, and (5) the procedure for requesting the DA's review.

These notices are required unless the reporter reported anonymously, or specifically asked DSS not to give notice.

3) How far out in time can statutory rape be brought against a perpetrator? Is there a time frame?

There is no time limitation for bringing this charge. In North Carolina, there is no statute of limitations for felonies. First-degree statutory rape (vaginal intercourse with a child under the age of 13, by a person who is at least four years older than the victim) is a Class B1 felony. Statutory rape of a 13, 14, or 15 year old is a Class C felony if the perpetrator is at least four years older than the victim but less than six years older, or a Class B1 felony if the perpetrator is six or more years older than the victim. Since all of these acts are felonies, the charge could legally be brought at any time.

4) Must we have the parental permission for a 15 y/o unwed mom to treat the 15 y/o? She is not emancipated and is totally supported by her parents and lives with them. They care for both her and the child.

A 15-year-old who is not emancipated can consent to her own care for prevention, diagnosis, or treatment of pregnancy, reportable communicable diseases, emotional disturbance, or abuse of controlled substances or alcohol. Any other type of care requires the permission of her parent, or if she isn't in her parent's care, her legal guardian or person acting in loco parentis. (There are others who may be able to consent to a 15-year-old's abortion, such as a grandparent with whom the minor lives, or a judge. Also, health care providers can provide care without first obtaining consent in emergencies or other urgent situations when parents cannot be reached within the time the care is needed.)

The fact that the 15-year-old you described is a mother does not change the rules regarding her ability to consent to her own care. She can consent to care on behalf of her child, but not on behalf of herself, except when the care is related to one of the conditions noted above (pregnancy, etc.).

5) How can teens become emancipated? How hard is it? Concerning abortion.

I am not sure what you mean by "concerning abortion." I will return to that in a moment, but first I will describe the general rules of minors' emancipation in North Carolina.

In general, in North Carolina a teen can become emancipated in one of two ways: (1) by getting married, or (2) by obtaining a court order of emancipation.

(1) Marriage: A 16- or 17-year-old can marry with a parent's permission. The circumstances under which a 14- or 15-year-old can marry are more limited: the 14- or 15-year-old must either have a child or be pregnant (if the 14- or 15-year-old is a male, he must be the person responsible for a female's pregnancy); he or she must be marrying the child's other parent; and a judge must give permission for the 14- or 15-year-old to marry. In North Carolina, a minor under the age 14 cannot marry under any circumstances.

(2) Order of emancipation: A 16- or 17-year-old can petition a court for an order of emancipation. The judge can order emancipation if the judge determines it is in the minor's best interest, after considering a number of factors, including the minor's ability to function as an adult. A minor under the age of 16 cannot petition for emancipation.

Regarding abortion: A minor female who has been emancipated can consent to her own abortion. However, a minor does not have to be emancipated in order to obtain an abortion. An unemancipated minor who wishes to obtain an abortion must consent to the procedure herself and also have the written consent of one of the following persons: a parent with custody of the minor, a legal guardian or legal custodian of the minor, a parent with whom the minor is living, or a grandparent with whom the minor has been living for at least six months. (This is commonly called the "parental consent requirement," even though it may involve the consent of a guardian, custodian, or grandparent rather than the actual parent.) There is also a procedure by which an unemancipated minor can petition a district court judge for a waiver of the parental consent requirement. If the judge grants the waiver, the minor can obtain the abortion upon her own consent. This is not the same as a judge's order of emancipation--it is just a waiver of the parental consent requirement for the abortion.

6) When a male is raped or sexually coerced by a male, must this be reported as a rape or sexual offense to DSS or law enforcement?

I want to note at the outset that the legal answers are the same for assaults/coercion involving both opposite-sex and same-sex pairs. Since the question specifically asks about two males, that is what I will refer to in my response, but my conclusions would be the same if it involved two members of the opposite sex.

I. Should this situation be reported to law enforcement?

Male-on-male sexual assault is a crime under North Carolina law. In North Carolina, individuals are not required to report crimes to law enforcement officials. Although individuals ordinarily can choose to report crimes, even though they're not required to, that is not the case for health care providers, because health care providers are required by law to keep patient information confidential. In North Carolina, local health departments must comply with both the HIPAA privacy rule and state privilege statutes. In order to comply with both laws, in most cases a health department would need a sexual assault victim's consent to disclose his or her health information to law enforcement. There is an exception to this general rule: health care providers **MUST** make a report to law enforcement when they treat a patient who has suffered any of the following illnesses or injuries:

- a gunshot wound or any other injury caused or apparently caused by a firearm,
- an illness caused by poisoning,
- a wound or injury caused or apparently caused by a knife or sharp instrument if it appears that a criminal act was involved, or
- a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the health care provider that the wound, injury or illness resulted from a criminal act of violence.

If a sexual assault victim suffered a wound, injury, or illness that fit into one of the above categories, a report **MUST** be made to law enforcement and the victim does not have to authorize the disclosure of health information. Otherwise, a report to law enforcement **CANNOT** be made without the victim's consent.

II. Should it be reported to DSS?

Whether male-on-male sexual assault or coercion should be reported to DSS depends on the circumstances of the particular case. Health department staff must report information about abuse or neglect that the staff member believes in good faith was committed by a parent, guardian, custodian, or caretaker. In some cases, a staff member may have reason to believe the sexual assault or coercion is within DSS's jurisdiction. For example, all of the following should prompt a staff member to make a report:

- a good faith suspicion that the person who committed the assault or coercion is a parent, guardian, or caretaker
- a good faith suspicion that the sexual assault or acts were encouraged or coerced by the parent, guardian, custodian or caretaker
- a good faith suspicion that the sexual assault or acts occurred or are occurring because the minor is not receiving appropriate supervision by the parent, guardian, custodian or caretaker.

The above list is not exhaustive; any instance in which the staff member has cause to suspect that the minor's assault/coercion can be attributed to either the actions or neglect of his or her parent, guardian, custodian, or caretaker should trigger a report. But, there may be cases in which there is no cause to suspect the parent, guardian, custodian, or caretaker was responsible, and then there is no duty to report to DSS. Please see the workshop handout for more information about the duty to report child abuse and neglect under North Carolina law.

To summarize my conclusions:

1. Health care providers usually cannot disclose health information about crime victims to law enforcement without the victim's permission. The exception to this general rule is that health care providers MUST make a report to local law enforcement if a crime victim has one of the wounds, injuries, or illnesses listed above.
2. All persons, including health care providers, MUST make a report to DSS if there is cause to suspect that a minor is abused or neglected by his or her parent, guardian, custodian, or caretaker. Whether a report is required will depend upon the facts and circumstances of the particular case.

7) What specifically constitutes a 'crime against nature'?

Under North Carolina law, crime against nature includes fellatio, cunnilingus, anal intercourse, and anilingus, as well as sex acts with animals.

In June 2003, the U.S. Supreme Court ruled that laws that criminalize non-commercial oral or anal sex acts between consenting adults violate the United States Constitution. As a result, crime against nature can no longer be prosecuted against an adult who engages in such activities consensually and non-commercially (that is, not for pay) with another adult. However, the crime can still be prosecuted when one of the parties is a minor, even if the minor consented to the sex act.

8) If daughters are being forced to prostitute-how is this handled? Reportable to DSS?

If you have reason to suspect that a child is being forced to participate in prostitution, you are legally obligated to make a report to DSS. A child whose parent, guardian, custodian or caretaker forces her to participate in prostitution is a sexually abused juvenile under our state's legal definitions.

9) If new mother is under 18, does she and her parent have to sign consent for home visitation program, i.e. general consent for service/treatment. This program includes teaching parenting skills, health education, case management of clients' needs.

An unemancipated minor mother can consent to any treatment for her child, but she still needs her parent/guardian's consent for treatment of herself in most circumstances. The minor can consent on her own to medical treatment for the prevention, diagnosis, and treatment of pregnancy (including family planning), communicable disease, emotional disturbance, and alcohol/substance abuse. She can provide the consent to a physician or to another health care provider who is working under a physician's supervision. If the services/treatments offered through the home visitation program are under the supervision of a physician and are directed toward those issues, then the minor can consent on her own. Or, if the services are for the baby, then the minor mother can provide consent. Otherwise, she needs her parent/guardian's consent.

10) What if a child runs away and is involved in prostitution? Child neglect?

It depends on the specific circumstances. A child is neglected if her parent, guardian, custodian, or caretaker abandons her or fails to provide proper care, supervision, or discipline to her. A child who runs away is not necessarily neglected by her parents. They may be willing to provide proper care, supervision, or discipline and have tried to provide it, but the child rejected it. On the other hand, she could be neglected. For example, if a child under the age of 18 was told to leave home (that is, was a "throw-away" rather than a runaway), she probably meets the legal definition of neglected. Another example of a neglected child might be the runaway whose parents knew where she was and what she was doing but made no attempt to care for her. Each case must be considered on its own facts, but in any case, if you have good-faith cause to suspect neglect, you should make the report to DSS and let them make the final determination.

11) Is pregnancy or STDs considered grave bodily harm or illness if child is 12 or 13?

A. I believe you are referring to the law (GS 90-21.20) that requires reports to law enforcement officers in certain circumstances. Under that law, you must make a report to law enforcement when a patient suffers grave bodily harm or grave illness as a result of a criminal act of violence. There are thus two elements that must be present for you to report:

- grave bodily harm or grave illness
- that results from a criminal act of violence

The second element is the easiest to sort out, and you don't have to be an expert in criminal law--you just need to have good faith reason to believe the patient was the victim of a criminal act of violence. Consensual sex is not ordinarily a crime, but it could constitute a criminal act of violence if it was statutory rape. Also, forced or coerced sex might be a criminal act of violence as well. So, if you have reason to believe that the sex was rape (including statutory rape) or otherwise coerced, the second element above is satisfied.

Unfortunately, the first element is tougher. The terms "grave bodily harm" and "grave illness" do not have legal definitions. In the absence of guidance in the law, I believe health care providers are free to apply their clinical judgment in determining whether an injury or illness meets this standard. Does the treating or supervising physician think that the STD or pregnancy constitutes a grave illness for the patient? If so, then I think you have good faith reason to believe you're within the statute and the report should be made (assuming you've also determined you have good faith reason to believe it resulted from a criminal act of violence).