

Minor Consent, Confidentiality and Mandatory Child Sex Abuse Reporting for Title X Providers in Nevada

presented February, 2024



Presented by:

Rebecca Gudeman, JD, MPA,
Senior Director,
National Center for Youth Law

Objectives

By the end of this training, participants will be able to:

Summarize

- Title X consent and confidentiality regulations and how they intersect with state law

Identify

- Identify at least one risk factor or possible indicator of child abuse or neglect

Explain

- Explain the mandatory child abuse reporting process in Nevada

Describe

- Describe at least two trauma-informed best practices that support clients

Acknowledgements and Caveats:

The contents of this presentation are based on information in:

- Gudeman, R., *Minor Consent, Confidentiality and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Nevada, 2024.*
- Gudeman, R., Monasterio, E., *Trauma-Informed Mandatory Child Abuse Reporting in a Family Planning Setting*, Reproductive Health National Training Center.

This session presents legal information, not legal advice.

The presentation reflects the status of the law as of **December 2023** and this webinar is being presented in **February, 2024.**

Always consult your own legal counsel before relying on any statement of law in this presentation moving forward as both the laws themselves and interpretations of them can change quickly with litigation or legislative action.





Title X: Overview



Title X History and Overview

- 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.
- Designed to provide access to services to all, including adolescents.
- Title X is a federal funding program. Entities that accept Title X funding enter a contract to provide certain services and comply with certain rules as part of receipt of this funding.
- Implementing legislation requires Title X providers to comply with all state laws requiring notification or reporting of child abuse, sexual abuse, rape or incest

Source: HHS OPA website: "About Title X Service Grants".

Title X Services

Programs that accept Title X funding **must provide**:

- “a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, STI services, preconception health services)
- Services that are adolescent friendly and provided in a way that is “client-centered, culturally and linguistically appropriate, inclusive and trauma-informed; protects the dignity of the individual and ensures equitable and quality service delivery consistent with nationally recognized standards of care.”

Programs that accept Title X funding **may use Title X funding to provide**:

- “other reproductive health and related preventive health services that are considered beneficial to reproductive health such as HPV vaccination, provision of HIV pre-exposure prophylaxis (PrEP), breast and cervical cancer screening, and screening for obesity, smoking, drug and alcohol use, mental health, and intimate partner violence .” (emphasis added).

Source: HHS OPA website: “About Title X Service Grants”, Title X Program Handbook, July 2022.

Title X: Implementing regulations related to consent and confidentiality

CONSENT:

Title X services must be made available to all minors, regardless of age.

CONFIDENTIALITY:

All patient information must be kept confidential unless:

- There is documented consent from the minor patient for the release
- Release is necessary to provide services to the patient
- State or federal law requires the release

How does this work when state or other law may conflict?

Federal courts of appeals are in consensus that federal Title X minor consent and confidentiality regulations prevail over conflicting state law. In 2022, a federal district court in Texas found a sentence in 42 CFR 59.10(b) regarding parent involvement unconstitutional. This decision is now on appeal to the federal court of appeals. **Keep checking in with your own legal counsel for application questions and updates.**

Source: 42 C.F.R. 59.5, 59.10(a)

Nevada Law: Consent and Confidentiality

Nevada: Minor Consent Laws

Based on status

- Emancipated
- Minor parent or borne a child
- Married
- Living apart from parents
- Danger of or suffering a serious health hazard

Based on service

- Abortion
- Contraception
- Controlled substance abuse treatment
- Sexually transmitted disease and infection

See: Gudeman, R., Minor Consent, Confidentiality and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Nevada, 2024.

Nevada Minor Consent: STIs and Contraception

Sexually Transmitted Disease and Infections

“A minor may give express consent to ...a local or state health officer, licensed physician, physician assistant, registered nurse or clinic to conduct an **examination** for or treat, or both, any sexually transmitted disease [and] to **provide services related to the prevention** of sexually transmitted diseases, including, without limitation, [medications for the prevention of human immunodeficiency virus (HIV)].”

Source: Nev. Rev. Stat. § 129.060

Contraception

“A minor may give express consent to a local or state health officer, licensed physician, physician assistant, registered nurse, pharmacist or clinic to **issue a prescription** for, the **dispensing** of or the **administration** of a **contraceptive drug or device.**”

Confidentiality: Title X, HIPAA and state law

There are several possible sources:

- **Federal Laws and Regulations** – Health Insurance Portability and Accountability Act (HIPAA Privacy Rule)
- **State Laws and Regulations**
- **Other federal and state laws** that may apply based on funding, services provided, practitioners involved, etc. Title X regulations are an example.

Gudeman, R., *Minor Consent, Confidentiality and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Nevada, 2024.*

Nevada: General Rule under HIPAA and state law



Generally, information protected by HIPAA and state law can only be disclosed by a health care provider if the provider has a signed authorization to release records.



However, a number of exceptions in HIPAA and state law allow or require a provider to release information without an authorization in certain situations (e.g., child abuse reporting, coordination of care, billing)

Gudeman, R., *Minor Consent, Confidentiality and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Nevada, 2024.*

Confidentiality for Minor Consent Care under HIPAA and state law

Who signs the release of information?

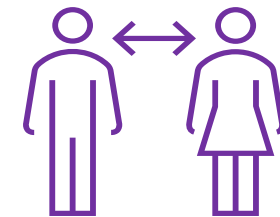
Under HIPAA, if a minor consented for their own care, the minor is considered the “individual” with rights under HIPAA. This means minor signs the release of information where necessary

Parent access?

Under HIPAA, parent’s right to access information or medical records about the minor’s care is determined by state and other law.

Nevada law states that a minor’s consent is required to disclose to a parent or guardian any individually identifiable health information obtained from an electronic health record or health information exchange, if the health information concerns services received by a minor based on the consent of the minor.

Gudeman, R., *Minor Consent, Confidentiality and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Nevada, 2024.*



A blue ribbon graphic with a 3D effect, featuring a dark blue shadow on the left side and a lighter blue top surface. The ribbon is folded at the top and bottom, creating a central rectangular area where the text is placed.

Child Abuse and Neglect Reporting Requirements under Nevada State Law

Who Must Report

The background is a dark grey color. On the right side, there are two overlapping circles. The top circle is blue and the bottom circle is yellow. Both circles have a thick white outline. A large, thin white arc is also visible on the left side of the image, curving from the top towards the bottom.

Who is a mandated reporter of child abuse in state law?

Defined by profession. Includes but not limited to:

- A person providing services licensed under chapters 450B, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640B, 640C, 640D, 640E, 641, 641A, 641B, 641C, 641D, or 653 of Nevada Revised Statutes.
- Any personnel of a medical facility licensed pursuant to chapter 449 of the Nevada Revised Statutes who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility;
- Any person who maintains, is employed by, or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

Source: Nev. Rev. Stat. § 432B.220.

When to Report



When to report?

Mandated reporters must report when the reporter in their **“professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected.”**
(emphasis added)

“Child” means any person under 18 years of age.

Source: Nev. Rev. Stat. § 432B.220, § 432B.121.



What Must Be Reported



What is Reportable Abuse or Neglect?

Source: Nev. Rev. Stat. §§ 432B.020(1); 432B.140.

1. “Physical or mental injury of a nonaccidental nature”
2. “Sexual abuse or sexual exploitation”
3. “Negligent treatment or maltreatment of a child...caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.”

What is “Sexual Exploitation” for reporting purposes?

Source: Nev. Rev. Stat. § 432B.110.

1. To solicit for or engage in prostitution;

2. To view a pornographic film or literature; and

3. To engage in: Filming, photographing or recording on videotape; Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child's genitals or any sexual conduct with a child, as defined in NRS 200.700

What is “prostitution” for reporting purposes?

- Prostitution: “engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value”
- A person is guilty of “sex trafficking” in Nevada if the person “induces, causes, recruits, harbors, transports, provides, obtains or maintains a child to engage in prostitution or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution”

Source: Nev. Rev. Stat. § 201.295, § 201.300.

What is “Sexual Abuse” for reporting purposes?

Source: Nev. Rev. Stat. § 432B.100.

1. Incest

2. Lewdness with a child under 16

3. Sad-masochistic abuse

4. Sexual assault

5. Statutory sexual seduction

6. Open or gross lewdness

7. Genital mutilation

What is sexual assault for reporting purposes?

This includes but is not limited to:

When a person subjects another person to sexual penetration, or forces another person to make a sexual penetration on themselves or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct; or

When a person commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on themselves or another, or on a beast .

Source: Nev. Rev. Stat. § 200.366(1), § 200.364

What is “statutory sexual seduction?”

‘Statutory sexual seduction’ means ordinary sexual intercourse, anal intercourse or sexual penetration committed by a person 18 years of age or older with a person who is 14 or 15 years of age and who is at least 4 years younger than the perpetrator.

Source: Nev. Rev. Stat. § 200.364; see Nev. Rev. Stat. § 200.368.

What sexual activity must be reported as child abuse?

In addition to Incest, Sado-masochistic abuse (flagellation, torture, physical restraint), Genital mutilation of a female, and Sex trafficking/prostitution/exploitation:

- **Nonconsensual** sexual penetration including vaginal, oral and anal intercourse no matter the ages of the persons involved.
- Sexual penetration/contact **based on the ages** of the individuals involved.

What does “nonconsensual” mean?

- against the will of the victim
- under conditions in which the perpetrator knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of his or her conduct

Source: Nev. Rev. Stat. § 200.366.

Is a report of sexual activity with a minor ever required based on age and activity alone?

YES, must report, even where there is no reasonable suspicion that activity was “nonconsensual” or part of trafficking when:

- Sexual penetration (including intercourse) with a person under age 14 unless the perpetrator is less than two years older than the victim
- Sexual penetration (including intercourse) with someone who is 14 and a partner who is 18 or older (at least 4 years of age difference)
- Sexual penetration (including intercourse) with someone who is 15 and a partner who is 19 or older (at least 4 years of age difference)
- Lewd and lascivious acts (other than sexual penetration) between a person 18 or older and a person under age 16
- Lewd and lascivious acts (other than sexual penetration) with a person under age 14

Source: Nev. Rev. Stat. §§ 200.364, 200.366, 201.230.

What sexual activity with a minor does not require reporting?

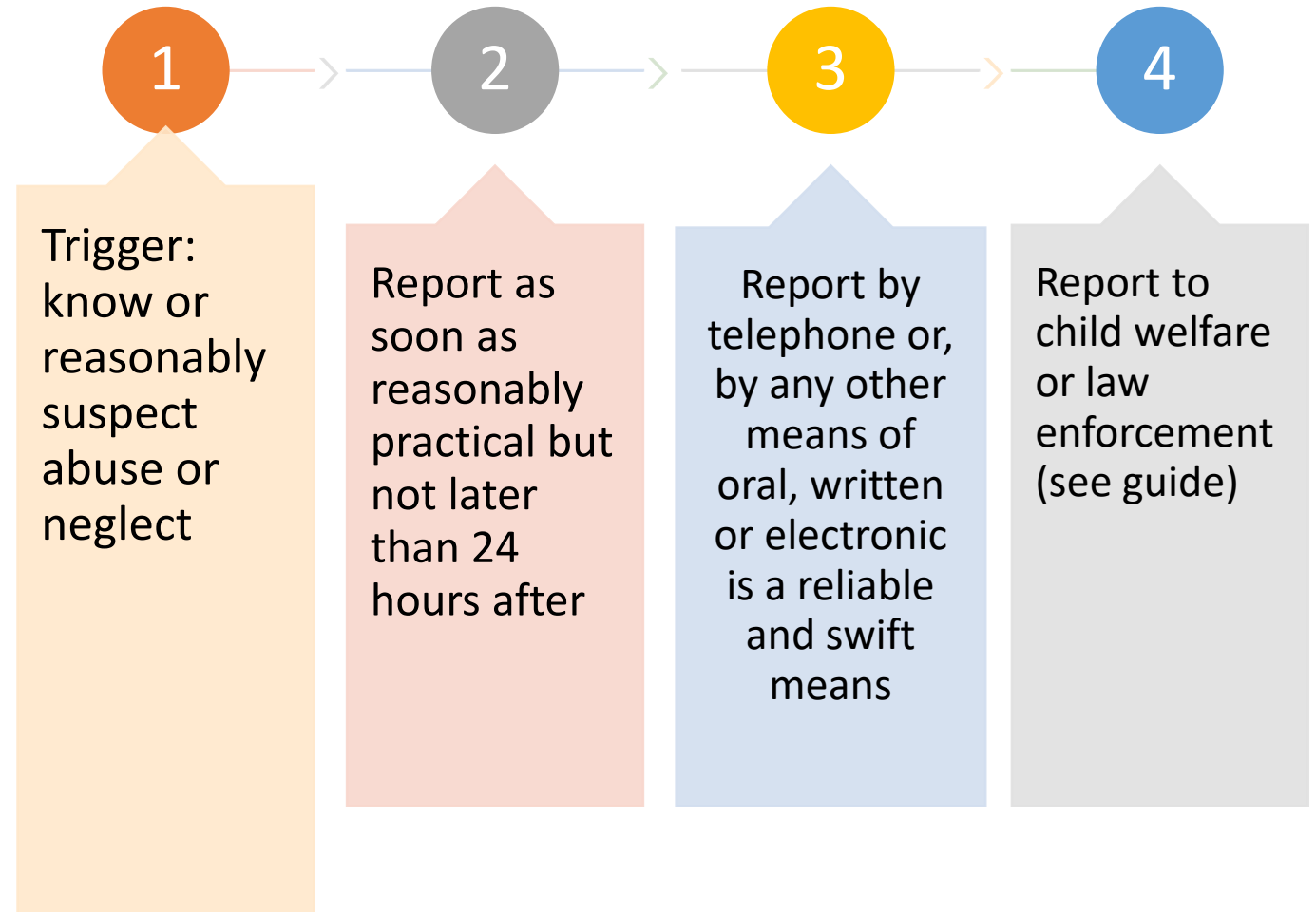
When there is absolutely no reasonable suspicion that sexual activity was “nonconsensual”, or part of incest, sado-masochistic abuse, genital mutilation, trafficking or exploitation, mandated reports are *not* required for:

- “Lewd” acts (other than sexual penetration) between two people who are both ages 14-17
- Sexual penetration (including intercourse) or contact (lewdness other than sexual penetration) between two parties who are both age 16 or older
- Sexual penetration (including intercourse) between persons who are both ages 15-18



How to Report

How to Report Abuse – Legal Rules



Source: Nev. Rev. Stat. § 432B.220

What must report include?

1. The name, address, age and sex of the child;
2. The name and address of the child's parents or other person responsible for the care of the child;
3. The nature and extent of the abuse or neglect of the child, the effect of a fetal alcohol spectrum disorder or prenatal substance abuse on the newborn infant or the nature of the withdrawal symptoms resulting from prenatal drug exposure of the newborn infant;
4. Any evidence of previously known or suspected abuse
5. The name, address and relationship, if known, of the person who is alleged to have abused or neglected the child; and
6. Any other information known to the person making the report that the agency which provides child welfare services considers necessary

What happens with reports?

Source: Nev. Rev. Stat. § 432B.260

Department will evaluate the information within 3 days to see if investigation is warranted.

If necessary, specialist may conduct an investigation immediately

child welfare and law enforcement "shall" cooperate in any investigation

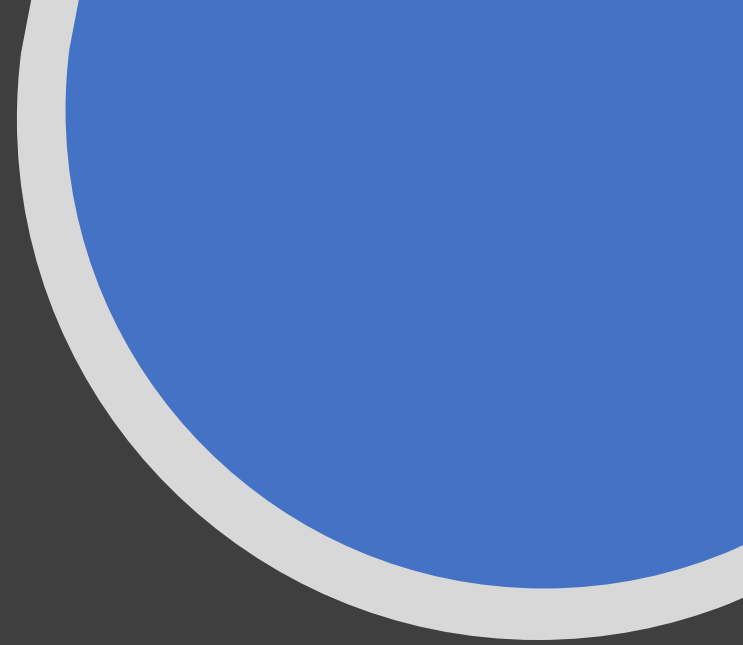
Common Questions:

Is a report still required if I don't have all the information necessary?

Can individuals be held liable for making reports? Or liable for not filing a report?

Can I inform parents/guardians that I am making a report? Must I inform them?

Trauma- Informed Reporting



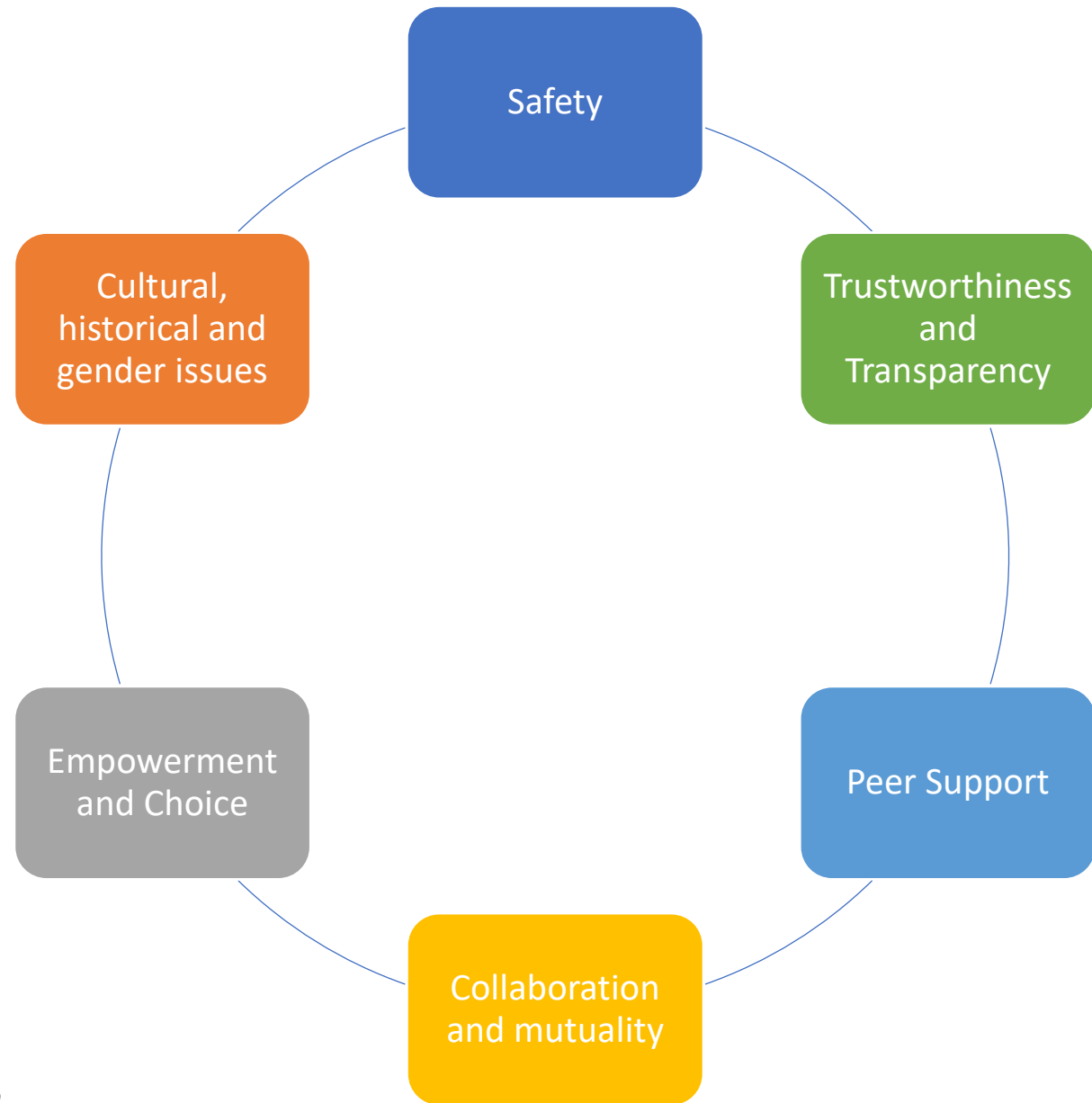
Trauma- Informed

“A program, organization, or system that is trauma-informed:

- Realizes the widespread impact of trauma and understands potential paths for recovery;
- Recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system;
- Responds by fully integrating knowledge about trauma into policies, procedures, and practices; and
- Seeks to actively resist re-traumatization.”

Source: <https://www.integration.samhsa.gov/clinical-practice/trauma>

Guiding Principles



Source: CDC, *6 Guiding Principles to a Trauma Informed Approach*, https://www.cdc.gov/orr/infographics/6_principles_trauma_info.htm

How to Report: Leveraging the Guiding Principles

Set the stage before any engagement

- Explain your role and the limits of confidentiality: *“if you share something that suggests you may hurt yourself or others, or someone is hurting you, I might have to share information with other people in order to get you help”*

Safety *FIRST*

- Address their needs first
- Carefully query the youth regarding safety
- Arrange for alternate placement if they are not safe at home

Frame the mandate to report in the context of getting help for a youth who may need it

- Avoid *“I have to report because the law says so”*

Provide as much control and information as possible in the reporting process

- Explain what is likely to happen
- Reinforce: *“It took courage for you to talk to me today.”*
- Communicate what may be shared with whom moving forward

This session presented the status of federal and Nevada state law as of December 2023.

Questions about application of the law? Please consult your legal counsel.

This webinar was presented in February 2024.

Always consult your own legal counsel before relying on any statement of law in this presentation after this date as both the laws themselves and interpretations of them can change quickly with litigation or legislative action.



Thank you!!!

National Center
for Youth Law