


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

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



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

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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*, 2022.
- Gudeman, R., Monasterio, E., *Trauma-Informed Mandatory Child Abuse Reporting in a Family Planning Setting*, Reproductive Health National Training Center.

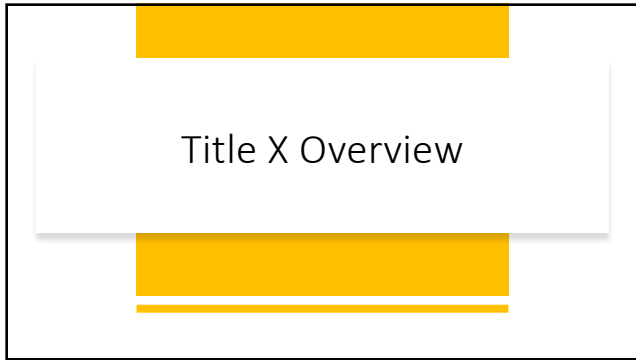
This session presents legal information, not legal advice.

The presentation reflects the status of the law as of December 2022 and this webinar is being presented on March 29, 2023.

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.



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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".

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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.

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Title X: Implementing regulations related to consent and confidentiality

<p>CONSENT:</p> <p>Title X services must be made available to all minors, <u>regardless of age</u>, on their own consent. Parent consent cannot be required.</p>	<p>CONFIDENTIALITY:</p> <p>All patient information must be kept confidential unless:</p> <ul style="list-style-type: none"> • 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 	<p>PARENT INVOLVEMENT:</p> <p>Grantees must encourage family participation to the extent practical, however, grantees <u>cannot disclose</u> Title X service information to parents without the patient's documented consent.</p>
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Source: 42 C.F.R. 59.5, 59.10

How does this work when state or other law may conflict?
 As of February 2023, federal courts of appeals are in consensus that federal Title X minor consent and confidentiality regulations prevail over conflicting state law. These opinions do not address potential conflicts between Title X and tribal law.

Keep checking in with your own legal counsel for application questions and updates.



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Child Abuse and Neglect Reporting Requirements under Nevada State Law

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Who Must Report




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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.



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When to Report


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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.

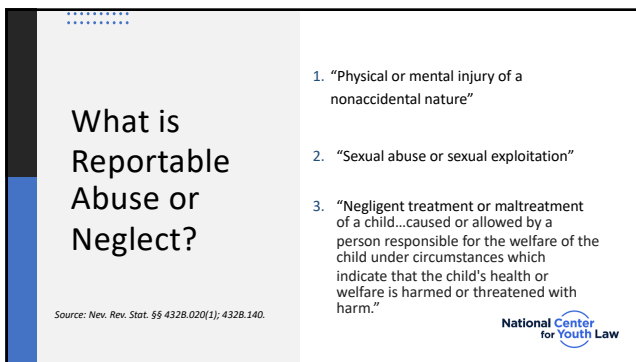
Source: Nev. Rev. Stat. § 432B.220, § 432B.121.



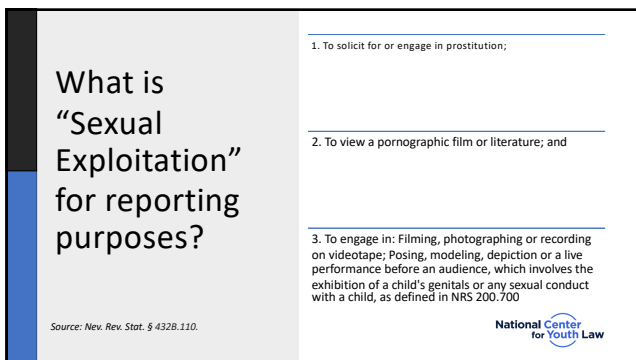
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What is "prostitution" for reporting purposes?

- 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.



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What is "Sexual Abuse" for reporting purposes?

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

Source: Nev. Rev. Stat. § 432B.100.



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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




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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.




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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.




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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.



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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.



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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

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



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How to Report

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How to Report Abuse – Legal Rules

Source: Nev. Rev. Stat. § 432B.220

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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

Source: Nev. Rev. Stat. § 432B.230

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What happens with reports?

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

Source: Nev. Rev. Stat. § 432B.260

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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?

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Trauma-Informed Reporting

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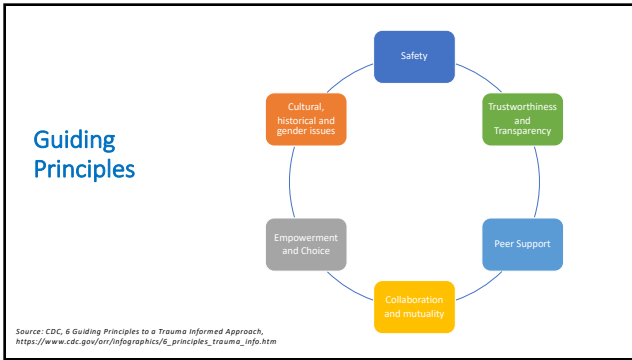
Trauma-Informed

"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>

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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

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This session presented the status of federal and Nevada state law as of December 2022.

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

This webinar was presented on March 22, 2023. 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.

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