

**Minor Consent, Confidentiality, and Child Abuse Reporting  
In Title X Funded Family Planning Settings**

**MICHIGAN**

**Rebecca Gudeman, J.D., M.P.A  
National Center for Youth Law  
405 14<sup>th</sup> St., Suite 1500  
Oakland, CA 94612  
[www.youthlaw.org](http://www.youthlaw.org)**

**for**

**Region V / Title X Family Planning Training Program  
MPRES, Inc.  
316 N. Milwaukee St.  
Suite 440  
Milwaukee, WI 53202**

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## I. MINOR CONSENT

### **What is the age of majority/minority?**

The age of majority in Michigan is eighteen years. MCL §§ 722.1; 722.52.

### **What is the age of consent for sexual activity?**

While no statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for consensual sexual activity with a minor under 16 years of age. *See* MCL § 750.520b. There also can be criminal penalties for consensual sexual activity with a minor under 18 years old when certain circumstances exist. For example, it is considered “third degree criminal sexual conduct” for a teacher or school administrator to sexually penetrate a student under 18 years old, irrespective of consent. MCL § 750.520d.

### **Who generally consents for health care for minors?**

Generally, a parent, guardian or other person *in loco parentis* must consent for health care on behalf of a minor. *See* MCL § 722.2.

### **What exceptions allow minors or others to consent for health care?**

#### *Emancipated Minors:*

“A minor emancipated by operation of law or by court order shall be considered to have the rights and responsibilities of an adult, [including] [t]he right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability.” MCL § 722.4e.

Emancipation occurs:

1. Pursuant to a petition filed by a minor with the family division of circuit court;
2. When a minor is validly married;
3. When a person reaches the age of 18 years; or
4. During the period when the minor is on active duty with the armed forces of the United States.

MCL § 722.4.

#### *While in Law Enforcement Custody:*

“For the purposes of consenting to routine, nonsurgical medical care or emergency medical treatment to a minor, when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located, the minor may consent to care as if she were an emancipated minor. This right shall end upon the termination of medical care or treatment or upon the minor's release from custody, whichever occurs first.” MCL § 722.4.

*While Incarcerated:*

A minor is emancipated “for the purposes of consenting to his or her own preventive health care or medical care including surgery, dental care, or mental health care, except vasectomies or any procedure related to reproduction, during the period when the minor is a prisoner committed to the jurisdiction of the department of corrections and is housed in a state correctional facility operated by the department of corrections or in a youth correctional facility operated by the department of corrections or a private vendor or the period when the minor is a probationer residing in a special alternative incarceration unit established under the special alternative incarceration act. This subdivision applies only if a parent or guardian of the minor cannot promptly be located by the department of corrections or, in the case of a youth correctional facility operated by a private vendor, by the responsible official of the youth correctional facility.” MCL § 722.4; *see* Op.Atty.Gen. 1994, No. 6823.

*Title X Family Planning, including Pregnancy Testing, Contraception:*

Federal regulations establish special access rules for family planning services funded through Title X. Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. 42 C.F.R. 59.5(a)(4); *see* Does 1-4 v. Utah Dept. of Health, 776 F.2d 253 (10<sup>th</sup> Cir. 1985).

Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations. Thus, minors of any age may consent to family planning services when those services are funded in full or in part by Title X monies.

For family planning services not funded in full or in part by Title X, state consent law applies.

*Prenatal/Pregnancy Related Care:*

Under Michigan state law, a minor may consent “to the provision of prenatal and pregnancy related health care...by a health facility or agency licensed under article 17 or a health professional licensed under article 15. The consent of any other person, including the putative father of the child or a spouse, parent, guardian, or person in loco parentis, is not necessary to authorize the provision of health care to a minor or to a child of a minor.” MCL § 333.9132.

“As used in this statute, "health care" means only treatment or services intended to maintain the life and improve the health of both the minor and the minor's child or fetus.” MCL § 333.9132.

*Sexually Transmitted Diseases:*

To the extent that STD services are funded in full or in part by Title X, minors of any age may consent. *See* “Title X Family Planning” above.

In other cases, state law applies. Michigan state law provides that a minor who “is or professes to be infected with a venereal disease may consent to the provision of medical or surgical care, treatment, or services by a hospital, clinic, or physician. The consent of

any other person, including a spouse, parent, or guardian, or person in loco parentis, is not necessary to authorize the services described in this subsection to be provided to a minor.” MCL § 333.5127.

*HIV/AIDS Related Care:*

To the extent that HIV/AIDS services are funded in full or in part by Title X, minors of any age may consent. See “Title X Family Planning” above.

In other cases, state law applies. Michigan state law provides that a minor who “is or professes to be infected with HIV may consent to the provision of medical or surgical care, treatment, or services by a hospital, clinic, or physician. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, or guardian, or person in loco parentis, is not necessary to authorize the services described in this subsection to be provided to a minor.” MCL § 333.5127.

*Abortion - Judicial Bypass:*

The general rule is that a provider shall not perform an abortion on a minor without first obtaining the written consent of the minor and one of her parents or her legal guardian.

However, the minor may petition the probate court for a waiver of the parental consent requirement. The minor may seek judicial bypass if (1) the parent or legal guardian is not available, (2) refuses to give his or her consent, or (3) the minor elects not to seek consent of a parent or the legal guardian. MCL § 722.903. The probate court must hear petitions within 72 hours, excluding Sundays and holidays, and must render its decision within 48 hours. MCL § 722.904.

*Abortion - Medical Emergency:*

The requirement that providers receive written consent of parents and the minor prior to performing an abortion does not apply when abortions are performed pursuant to medical emergency. MCL § 722.905. Medical emergency means “a condition which, on the basis of a physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate an immediate abortion of that woman’s pregnancy to avert her death, or for which a delay in performing an abortion will create a serious risk of substantial and irreversible impairment of a major bodily function.” MCL § 722.902.

*Drug and Alcohol Abuse Treatment:*

“A minor who is or professes to be a substance abuser may consent to the provision of substance abuse related medical or surgical care, treatment, or services by a hospital, clinic, or health professional authorized by law. The consent of any other person, including a spouse, parent, guardian, or person in loco parentis, is not necessary to authorize these services to be provided to a minor.” MCL § 333.6121.

*Outpatient Mental Health Care:*

“A minor 14 years of age or older may request and receive mental health services and a mental health professional may provide mental health services, on an outpatient basis,

excluding pregnancy termination referral services and the use of psychotropic drugs, without the consent or knowledge of the minor's parent, guardian, or person in loco parentis.”

“Services provided to a minor under this section shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor.”

“Services provided to a minor under this section shall be limited to not more than 12 sessions or 4 months per request for services. After the twelfth session or fourth month of services the mental health professional shall terminate the services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.” MCL § 330.1707.

*Photographs/X-Rays of Suspected Abuse/Violence:*

“When a child suspected of being an abused or neglected child is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies.” MCL § 722.626.

## II. CONFIDENTIALITY

### **Who controls access to medical information?**

The Michigan Medical Records Access Act of 2004 grants patients a right to examine and obtain copies of their medical records, including oral and written information. MCL § 333.26265; 333.26263. When a parent or guardian consents for a minor's care, the parent or guardian has a right to obtain records of the minor's treatment. When a minor consents for her own care, the minor has the exclusive right to control access. MCL § 333.26263. This Act only covers records relating to physical conditions and does not include the records of pharmacists, psychiatrists, psychologists, social workers or professional counselors who provide only mental health care. MCL § 333.26263. Additional state statutes, however, specifically protect the confidentiality of mental health and substance abuse treatment records. *See* MCL §§ 333.1746; 333.1748; 333.6111.

Federal regulations also impact access to Michigan medical records. Federal HIPAA regulations generally restate Michigan law -- establishing that when a parent consents for an unemancipated minor's health care, that parent generally has a right to control access to the minor's medical information. The HIPAA regulations also honor a minor's right to control access when the minor consents for care. 45 C.F.R. §§ 164.502(a)(1),(a)(2),(g)(3), (g)(1).

However, there are exceptions to both the federal and state rules:

### **What exceptions impact parent access to medical information about minors?**

#### *Adverse effect on patient:*

Under state law, providers may refuse to provide parents access to a minor's medical records "if the health care provider or health facility determines that disclosure of the requested medical record is likely to have an adverse effect on the patient." Instead, "the health care provider or health facility shall provide a clear statement supporting that determination [to the parents] and provide the medical records to another health care provider, health facility or legal counsel designated by the patient or his or her authorized representative." MCL § 333.26265.

#### *Risk of domestic violence/abuse/neglect:*

Under federal HIPAA regulations, providers may refuse to provide parents access to a minor's medical records if:

1. The providers have a "reasonable belief" that:
  - a) The minor has been or may be subjected to domestic violence, abuse or neglect by the parent, guardian or other giving consent; or
  - b) Treating such person as the personal representative could endanger the minor;

And:

2. The provider, in the exercise of professional judgment, decides that it is not in the best interest of the minor to give the parent, guardian or other such access.

45 C.F.R. § 164.502(g)(5).

*Emancipation:*

Under federal HIPAA regulations, emancipated minors have a right to control access to their medical information. *See* 45 C.F.R. § 502(g).

*Title X funded “Family Planning,” including Pregnancy Testing, Contraception:*

Federal regulations establish special protections for family planning information and records. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. 59.11.

*Prenatal/Pregnancy Related Care:*

“For medical reasons, the treating physician, and on the advice and direction of the treating physician, a member of the medical staff of a health facility or agency or other health professional may, but is not obligated to, inform the putative father of the child or the spouse, parent, guardian, or person in loco parentis as to the health care given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.”

“Before providing pregnancy or prenatal care to a minor under the minor’s consent, the health facility, agency or a health professional shall inform the minor that the putative father of the child or the minor’s spouse, parent, guardian, or person in loco parentis may be notified under this rule.”

“In addition, at the initial visit to the health facility or health professional, permission shall be requested of the minor to contact the minor’s parents for any additional medical information which may be necessary or helpful to the provision of proper health care.”

MCL § 333.9132.

*Sexually Transmitted Diseases:*

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide

services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. § 59.11.

For services not funded by Title X, the following state law applies: When a minor consents for care, “for medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.” MCL § 333.5127.

*HIV/AIDS Test Results:*

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. 59.11.

For services not funded by Title X, the following state law applies: When a minor consents for care, “for medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.” MCL § 333.5127.

*Abortion:*

When a minor seeks a judicial bypass, the court proceedings are confidential. MCL § 722.904.

*Drug and Alcohol Abuse Treatment:*

Federal regulations establish special protections for substance abuse treatment records. Providers that meet certain criteria must follow the federal rule.

Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:

1. The individual, program, or facility is federally assisted. (Federally assisted means authorized, certified, licensed or funded in whole or in part by any department of the federal government. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare.) 42 C.F.R. §2.12;

And:

2. The individual or program:
  - 1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR
  - 2) Is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR
  - 3) Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral. 42 C.F.R. §2.11; 42 C.F.R. §2.12.

For individuals or programs meeting these criteria, federal law prohibits disclosing any information to parents without a minor’s written consent if the minor acting alone under applicable state law has the legal capacity to apply for and obtain alcohol or drug abuse treatment. 42 C.F.R. § 2.14.

For programs that don’t meet the above criteria, when a minor consents for care, “for medical reasons the treating physician, and on the advice and direction of the treating physician, a member of the medical staff of a hospital or clinic or other health professional may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.” MCL § 333.6121.

*Outpatient Mental Health Counseling:*

“The minor's parent, guardian, or person in loco parentis shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is notified of the mental health professional's intent to inform the minor's parent, guardian, or person in loco parentis.”

“Services provided to a minor under this section shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor.” MCL § 330.1707.

*Photographs/Exam of Suspected Abuse:*

After examination of a child suspected of being abused or neglected, “the physician's written report to the department shall contain summaries of the evaluation, including medical test results.” MCL § 722.626.

**What other situations allow or require me to give others access to a minor’s medical information without requiring me to seek parent or minor consent?**

Examples include:

*Partner Notification of HIV infection:*

Providers may disclose to partners in certain circumstances. “Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by a physician or local health officer to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the physician or local health officer determines that the disclosure of the information is necessary to prevent a reasonably foreseeable risk of further transmission of HIV. This subdivision imposes an affirmative duty upon a physician or local health officer to disclose information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome. A physician or local health officer may discharge the affirmative duty imposed under this subdivision by referring the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to the appropriate local health department for assistance with partner notification under section 5114a.” MCL § 333.5131.

*Reporting Child Abuse:*

Michigan law requires providers to share relevant medical information if necessary to make a child abuse report. MCL § 722.623.

**Can individuals be held liable for revealing confidential information outside the exceptions listed in federal or state law?**

Providers can only share information without client authorization if an exception in state or federal law specifically allows the release. If no exception applies that would allow a provider to share information, providers who reveal confidential information may be held liable. The HIPAA regulations give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach those rules. *See* 45 C.F.R. § 160.

Beyond criminal sanction, professionals who violate confidentiality also may put their medical license at risk. For example, the Department may investigate and discipline health professionals for “a betrayal of a professional confidence.” MCL § 333.16221.

### III. CHILD ABUSE REPORTING REQUIREMENTS

#### **A. Am I a Mandated Reporter?**

##### **Who is a mandated reporter?**

Mandated reporters include:

- a physician,
- dentist,
- physician's assistant,
- registered dental hygienist,
- medical examiner,
- nurse,
- person licensed to provide emergency medical care,
- audiologist,
- psychologist,
- marriage and family therapist,
- licensed professional counselor,
- certified social worker,
- social worker,
- social work technician,
- school administrator,
- school counselor or teacher,
- law enforcement officer,
- member of the clergy, and
- regulated child care provider.

MCL § 722.623.

##### **May I report child abuse even if I am not a mandated reporter?**

Any person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency. MCL § 722.624.

#### **B. When is a Mandated Reporter Required to Submit a Report?**

##### **When must I report abuse?**

A mandated reporter must report when he or she has “reasonable cause to suspect” child abuse or neglect. MCL § 722.623.

##### **What if I am not sure that abuse has occurred?**

Confirmation of abuse is not required. Reporters must report whenever they have “reasonable cause to suspect” that abuse has occurred.

## **C. Is This a Type of Activity That Must be Reported?**

### **What constitutes abuse or neglect?**

Michigan law defines "child abuse" as "harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy." MCL § 722.622.

Michigan law defines "child neglect" as "harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk."

MCL § 722.622.

A "person responsible for the child's health or welfare" includes a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, a nonparent adult (as defined by state law); or an owner, operator, volunteer, or employee of one or more of the following: (i) A licensed or registered child care organization; or (ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act. MCL § 722.622.

## **D. What Sexual Activity Must be Reported?**

### **What sexual activity am I mandated to report?**

The Child Protection Law mandates child abuse reports when a *person responsible for a minor's welfare* engages in sexual activity with the minor.

Specifically, a report is mandated if the following three criteria are met:

(1) The activity involves a minor;

(2) The minor's partner is:

- a parent
- a legal guardian
- a teacher
- a teacher's aide
- a member of the clergy
- a person 18 years of age or older who resides for any length of time in the same home in which the child resides
- a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:
  - i. Has substantial and regular contact with the child.
  - ii. Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare; and
  - iii. Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree; or
- an owner, operator, volunteer, or employee of one or more of the following:
  - i. A licensed or registered child care organization; or
  - ii. A licensed or unlicensed adult foster care family home or adult foster care small group home; AND

(3) Any of the following sexual activity occurred:

- the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:
  - i. Revenge.
  - ii. To inflict humiliation.
  - iii. Out of anger.
- sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required; OR
- allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code.

MCL §§ 722.622; 750.520a.

### **Am I ever required to report a minor's *consensual* sexual activity as child abuse?**

The Michigan Child Protection Law does not distinguish between consensual and non-consensual activity when defining what activity constitutes abuse. If the criteria described above in “What Sexual Activity Am I Mandated to Report” are met, a report is required – irrespective of claimed consent.

**Does pregnancy or an STD automatically require an abuse report?**

The pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is deemed “reasonable cause to suspect” child abuse or neglect have occurred under the Michigan Protection Law. MCL § 722.623.

**Do I have to report if my adult client reveals she was abused as a minor or once abused a child who is now an adult?**

The Child Protection Law does not impose a duty to report child abuse when an adult discloses that he or she was abused as a child or when an adult discloses having abused a child, who is now an adult, unless there is reasonable cause to suspect that there is a current threat of harm to a child. Op.Atty.Gen.1997, No. 6934.

**Do I have to report every criminal act of my client?**

Both state and federal law protect the confidentiality of information received in the course of providing medical care. This information cannot be shared with the authorities unless a specific statutory requirement allows that sharing. The Michigan Child Protection Law requires mandated reporters to share information about child abuse and neglect. It does not require mandated reporters to report information about any other crimes. Indeed, no state or federal law requires medical practitioners to report every criminal act of their patients.

Thus, even though Michigan law makes some consensual sexual activity between minors illegal, this cannot be reported under the Child Protection Law unless the activity also meets the definition of sexual abuse as described above. As an example, in one recent case, two minors, ages 12 and 13, were caught engaging in sexual activity. Even though their sexual activity was a violation of Michigan criminal law, a Michigan Appeals court held their activity did not constitute child abuse that required reporting under the Child Protection Law. Interpreting the reporting statute, the court held that mandated reporting only applies when the minor’s sexual partner is a parent, legal guardian, teacher, teacher’s aide, or other person responsible for the child’s welfare. People v. Beardsley, 688 N.W.2d 304, 263 (2004).

**What sexual activity by a minor does not require reporting?**

Most consensual and nonconsensual sexual activity by a minor will not require reporting. Because both state and federal law protect the confidentiality of information received in the course of providing care, mandated reporters should not report any consensual activity unless the minor’s sexual partner is a parent, legal guardian, teacher, teacher's aide, or other person responsible for the child's health and welfare (as described in “What Sexual Activity Am I Mandated to Report” above).

Mandated reporters may not even use the Child Protection Law to report nonconsensual assaults by a stranger. The only exception would be if the person responsible for the minor's welfare knew there was an unreasonable risk of assault and failed to take steps to prevent it. In that case, the mandated reporter may consider making a neglect report against the person responsible for the child's welfare.

**For the purposes of child abuse reporting, does a mandated reporter have a duty to try to ascertain the ages of the minor's partners?**

No statute or case obligates providers to ask their minor patients about the age of the minors' sexual partners.

**E. How Does Reporting Work?**

**To whom should reports be made?**

Reports should be made to the Family Independence Agency. MCL § 722.623.

“If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section.” MCL § 722.623.

**How do I make a report?**

A mandated reporter “who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act.

“The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person,” but at a minimum, “the written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.”

“The written report required in this section shall be mailed or otherwise transmitted to the county family independence agency of the county in which the child suspected of being abused or neglected is found.”

MCL § 722.623.

## **F. What are the Consequences of My Reporting Decision?**

### **What will the Family Independence Agency do after I make my report?**

It depends on the type of abuse, age of the child, and the level of risk. In all cases, the FIA will initiate an investigation within 24 hours and enter every report that merits field investigation into the CPSI system. MCL § 722.628.

“In its field investigation, the Child Protective Service Unit shall determine if the child is abused or neglected. After completing a field investigation and based on its results, the department shall determine in which single category to classify the allegation of child abuse or neglect. If the department classifies a report of suspected child abuse or neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator of the child abuse or neglect. The notice shall not identify the person reporting the suspected child abuse or neglect.” Id.

“If a central registry case involves a child's death, serious physical injury of a child, or sexual abuse or exploitation of a child, the department shall refer the case to the prosecuting attorney for the county in which the child is located. The prosecuting attorney shall review the investigation of the case to determine if the investigation complied with the protocol adopted.” MCL § 722.628b.

On a practical level, the Department's response may depend in part on location. Each local agency and investigator has some discretion in how they assess reports. Different local agencies may have different policies and protocols. Therefore, it is always advisable to know your local agency and their practice.

### **Will I receive any further information about my report and client?**

“Upon completion of the investigation by the department, the department shall inform mandated reporters in writing as to the disposition of the case and shall include in the information at least all of the following:

- (a) What determination the department made and the rationale for that decision.
- (b) Whether legal action was commenced and, if so, the nature of that action.
- (c) Notification that the information being conveyed is confidential.”

MCL § 722.628.

### **Will my report be confidential?**

The identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process. MCL § 722.625; Op.Atty.Gen.1978.

### **Can individuals be held liable for making reports?**

There are two kinds of liability mandated reporters worry about: liability for filing a false report and liability for breaching medical confidentiality.

While there is no guarantee that a mandated reporter will never be sued for making a report, mandated reporters are protected from civil and criminal liability if a report was made in good faith. MCL § 722.625. However, if it can be proved that the reporter knew there was no reasonable cause to suspect child abuse and nevertheless transmitted a false report, the reporter can be held liable. See Warner v. Mitts, 536 N.W.2d 564 (1995).

Reporters also are protected from liability in breach of confidentiality suits if a report was made in good faith. However, reporters may be found liable for breach if it can be proved the reporter knew the report was not required and not appropriate.

### **Can individuals be held liable for not making reports?**

Michigan law requires a child abuse report whenever a reporter has a reasonable suspicion of child abuse. There are various consequences for a knowing failure to report. Mandated reporters who fail to report can be convicted for that failure and may be found liable civilly to the abuse victim. Marcelletti v. Bathani, 500 N.W.2d 124 (1993).

In addition, mandated reporters who fail to report suspected child abuse or neglect may be subject to license suspension or revocation. In one case, a social worker lost her license when a review of her files demonstrated that she had reason to believe her client committed abuse and the files revealed no evidence that the social worker made an oral or written report to FIA. Becker-Witt v. Board of Examiners of Social Workers, 663 N.W.2d 514 (2003).

## **G. Do Medical Records Remain Confidential in Cases of Alleged Abuse?**

### **Is information in the medical chart and provider notes confidential?**

“Providers making child abuse reports are required to provide all medical information necessary that might establish the cause of the abuse or neglect or the manner in which the abuse or neglect occurred.” MCL § 722.623; Op.Atty.Gen.1978, No. 5406.

### **How should a subpoena or other legal request for confidential information be handled?**

While both federal and state law allow providers to release information when subpoenaed, there are procedural and substantive standards that must be met before a subpoena is valid. Many subpoenas will not withstand legal challenge. For this reason,

when presented with a subpoena, it is always advisable to seek legal counsel before releasing any information.

## **H. What are the Potential Criminal Charges Arising Out of Abuse Reports?**

### **Will the police be informed of any child abuse reports I make?**

“The department is required to involve law enforcement officials in an investigation within 24 hours after becoming aware that one or more of the following conditions exist:

- (a) Abuse or neglect is the suspected cause of a child's death.
- (b) The child is the victim of suspected sexual abuse or sexual exploitation.
- (c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization.
- (d) Law enforcement intervention is necessary for the protection of the child, a department employee, or another person involved in the investigation.
- (e) The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

MCL § 722.628; 722.623.

### **In addition to being used as indicators of abuse or neglect for child welfare purposes, will evidence of sexual activity uncovered during an abuse/neglect investigation be prosecuted?**

It might. The police and prosecutor will decide how best to investigate and possibly prosecute criminal incidents.

### **In a case involving consensual sexual activity between minors uncovered during an abuse/neglect investigation, who if anyone might be prosecuted?**

The minor's partner may be prosecuted for criminal sexual conduct. In some cases, both minors may be prosecuted if they each can be charged with a sexual crime against the other. In addition, depending on the situation, a parent or other person responsible for the child may be prosecuted for criminal neglect for failing to take steps to prevent the sexual abuse of a child. See Phillips v. Deihm, 541 N.W.2d 566, 573 (1995).

The police and prosecutor's office will decide who to charge and with what. Because the prosecutor has some discretion, if you have questions about how such charges are handled in your jurisdiction, it is best to speak to your local welfare, police and prosecutor's office.

**In a criminal case involving sexual acts, will the offender be required to register as a sex offender?**

Persons convicted of certain offenses must register as sex offenders under the Michigan Sex Offenders Registration Act. Qualifying offenses include, but are not limited to: Criminal Sexual Conduct in the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degrees. (violations of MCL §§ 750.520b, 750.520c, 750.520d and 750.520e).

Minors convicted of these crimes also must register as sex offenders. As an example of the breadth of the registration statute, if two 15-year-olds engage in consensual sexual intercourse, they each could be convicted of 3<sup>rd</sup> degree criminal sexual conduct. This conviction would obligate them both to register as sex offenders.