



MANDATED REPORTING OF SEXUAL AND PHYSICAL ABUSE OR NEGLECT OF A CHILD

In Minnesota, sexual assault advocates are mandated to report the abuse or neglect of a child by “certain persons” in caregiving roles to the child. Failure to do so when required is a crime. See Minn. Stat. §626.556. For a helpful training resource see “An Interactive Informational Guide on Mandated Reporting” from the Minnesota Department of Human Services available at www.dhs.state.mn.us (look under “child protection”).

Who is a Mandated Reporter

- A professional or professional’s delegate who is engaged in (among other things) the practice of the healing arts, social services, or psychological treatment. **Sexual assault advocates should fall into one of these categories, making them mandated reporters.**

What Must Be Reported:

- Physical or sexual abuse or neglect of a child by **certain persons** when that abuse/neglect has occurred within the past 3 years, or 10 years for multiple victims

Sexual Abuse

1. Sexual abuse is: when **certain persons** subject a child to an act of sexual contact or penetration or threaten the same (also violation of prostitution laws involving a minor and use of a minor in a sexual performance):

Those **certain persons** are (not necessarily adults):

- A “person responsible for the child’s care” - a person functioning within the family unit with responsibilities similar to a parent or guardian, OR a person outside the family unit with duties of the child’s care such as school employees and other short-term caregivers such as babysitters, counselors, or coaches
- A “significant relationship” - an immediate or extended family member, or an adult residing in the same home
- A “position of authority” - a person acting in the place of a parent, or having the responsibility for the health, welfare, or supervision of a child, even if briefly

The behavior mandating a report is:

- Sexual contact – touching or having someone else touch a child’s intimate parts (genital, groin, inner thigh, buttocks or breast) with sexual or aggressive intent
- Sexual penetration – sexual intercourse, cunnilingus, fellatio, or anal intercourse, or any intrusion however slight into the genital or anal openings of the child by any body part or object of the actor, or having the child commit these acts upon the actor

Note also that a mandated report is required when there is threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under Minn. Stat. §243.166 subd. 1b, paragraph (a) or (b), or required registration under the same statute sections. Crimes under this section include criminal sexual conduct but also a broader list of related crimes such as indecent exposure, solicitation of a minor for prostitution, sexual performance and possessing child pornography, as well as other crimes such as murder and kidnapping. Be sure to review the statute for a complete list.

Physical Abuse

2. Physical abuse is: mental or threatened injury inflicted by a “person responsible for the child’s care” other than by accident. Physical or mental injury that cannot be reasonably explained by the child’s history of injuries is also included as reportable physical abuse.
 - Physical abuse is *not* reasonable and moderate physical discipline of a child administered by a parent or legal guardian not resulting in injury, nor the use of reasonable force by a school employee as permitted by law.

Neglect

3. Neglect is:
 - Failure by a “person responsible for the child’s care” to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child’s physical or mental health
 - Failure to protect a child from conditions or actions that seriously endanger the child’s physical or mental health
 - Failure to provide necessary supervision or child care arrangements considering factors involving the child’s ability to care for herself and failure to ensure the child’s education.

Where do I report?

- Local welfare agency, police, sheriff, or agency responsible for investigating the report.

When and how must I report?

- **Immediately** report by telephone suspicions of abuse or neglect upon knowing or having reason to believe that it has happened within the preceding **3** years
- **Immediately** report by telephone suspicions of abuse or neglect upon knowing or having reason to believe that the same perpetrator has abused two or more children not related to the perpetrator within the preceding **10** years
- Follow the telephone call by a written report within 72 hours
- Mandated reporter must make the report *herself*. Referring the issue to a supervisor is not sufficient
- When in doubt about whether the incident was already reported, report it. There is nothing prohibiting multiple reports of the same incident.

Why must I report?

- Failure to report when mandated is a misdemeanor if it is the **3** year scenario above; it is a gross misdemeanor if it is the **10** year scenario.

Sample Scenarios:

- A 15 year old client tells you she is having sexual intercourse with her 20 year old boyfriend. When you tell her this is illegal, she refuses to report to the authorities.

As it relates to the boyfriend, this is not a mandated reporting situation because he does not fit into the “certain persons” categories described above. You will be violating your duty of confidentiality to the girl if you report the boyfriend against her wishes, and an advocacy agency would not serve the community as well if it earned a reputation for betraying confidences.

- Mandated reporting obligations may not extend beyond workplace obligations.

You have a neighbor child who is 8 years old and has come to like and trust you, although neither he nor his mother knows that you are an advocate. He reports to you that his mother’s live-in boyfriend “sometimes makes me touch his pee-pee.”

The statute is unclear as to whether a mandated reporter has an obligation to report child abuse only while performing her job duties as an advocate. Most likely this scenario is not a mandated report because the information is received when the advocate is not engaged in her work duties. A voluntary report, however, is an option since there is no confidential relationship between you and the child or the parent. You are not required to do so, but if you do make a report you should use your judgment about whether to tell the parent about the report.

- Remember that it is not your role to decide whether the suspected abuse or neglect is valid or “true” before reporting it. You must report when you “know or have reason to believe” that a child was abused or neglected.

You are contacted by a woman who wants information about counseling for her 17 year old niece, as the niece told her mother (the caller’s sister) that a coach at school touched her sexually. The mother does not believe her daughter has refused to report to the authorities, but the aunt has called you for information to get the girl into counseling. She gives you the name and address of the 17 year old.

This is a mandated reporting situation, even though the information comes to you third-hand and is sketchy. You need not be sure that the abuse happened, but only “have reason to believe.” A child who says she was abused or neglected is “reason to believe,” and it is up to law enforcement or social services to investigate whether the complaint is “true.”

What Can I Do?

- Remember that mandated reporting always involves the relationship between the child and the abuser or neglecter: reporting is only mandated when the abuser has some sort of a caregiver role to the child as specified above.
- Remember that parental or guardian neglect might include allowing the child to remain at risk of physical or sexual abuse by another.
- Remember that you have a duty of confidentiality towards your clients (see related SVJI fact sheets). You may not disclose information obtained from and about your clients against their wishes, and may not report sexual assault against their wishes unless it is a mandated reporting situation.
- Inform clients upfront about your obligations as a mandated reporter and decide how you will discuss a report with a client if you are required to make one.
- Remember that it is not the duty of the advocate to investigate or collect factual information about any given situation, but rather only to report when the situation presents itself.
- Each advocacy agency should have a system or policy available to advocates in the event that a report becomes necessary, and it is advisable that supervisory staff for the advocate be made aware when she makes a report.
- When questions about mandated reporting arise, advocates should contact the local child protection office for advice, keeping identities private.

*For additional information on mandated reporting see the Minnesota Department of Human Services Website (www.dhs.state.mn.us) and look under “child protection.”

See last page of this fact sheet for a helpful chart on mandated reporting from the booklet, *Consent and Confidentiality*, published by Hennepin County Medical Center.

Minor Presents with History of Sexual Assault/Abuse

