




**NCCASA**  
EDUCATION ♦ ADVOCACY ♦ LEGISLATION

**Confidentiality & Mandatory Reporting in Corrections Settings**  
December 2015 Webinar  
Tricia Smar & Joe Polich

811 Spring Forest Road, Suite 900  
Raleigh, NC 27609  
919-871-1015



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**Resources**

- Range of expert sources
  - NC statute
  - NC DPS PREA page
  - JDI/PRC Webinar:
    - “Untangling the PREA Standards: Outside Reporting, Confidential Support, & Third-Party Reporting”
  - PRC Webinar:
    - American University’s Washington College of Law “The Project on Addressing Prison Rape”
  - National PREA Standards



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**Agenda**

- The Law
  - Confidentiality
  - Mandatory Reporting
- PREA & Confidentiality
- Confidentiality in Action
  - Corrections Policies
  - An Advocate’s Role
- Question & Answer



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**Different Frameworks**

<b>Advocates</b>	<b>Corrections</b>
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**Different Frameworks**

<b>Advocates</b>	<b>Corrections</b>
<ul style="list-style-type: none"><li>• Support survivor</li><li>• Advocate for their healing &amp; well-being</li></ul>	<ul style="list-style-type: none"><li>• Safety and security of facility, community, and inmates</li></ul>



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**Different Frameworks**

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The Law

**Confidentiality  
Vs.  
Privileged Communication**



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Confidential vs. Privileged

**Confidential**  
– adj. - intended to be kept secret



The Secret, by Felix Nussbaum (Brussels, November 1939).  
Public Domain work of art. Source: <http://www.felix-nussbaum.de>.



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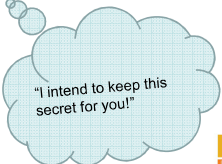
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Confidential vs. Privileged

**Confidential**  
– adj. - intended to be kept secret



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### Confidential vs. Privileged

**Confidential**  
- adj. - intended to be kept secret

**Privileged**  
- adj. - having special rights, advantages, or immunities



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### Confidential vs. Privileged

"I am legally protected from having to disclose information based on our relationship."

**Privileged**  
- adj. - having special rights, advantages, or immunities



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### Confidential vs. Privileged

**Confidential**  
- adj. - intended to be kept secret

**Privileged**  
- adj. - having special rights, advantages, or immunities

★ Information can be both confidential *and* privileged



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## Confidential vs. Privileged

**Confidential**  
– adj. - intended to be kept secret

**Privileged**  
- adj. – having special rights, advantages, or immunities



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## Obtaining Privilege

- [NCGS Art. 7, §8-53.2](#)
  - Privileged communications between an “agent” of a “center” *with 20 hours of training*
    - DO the training!
    - Document your training
    - Volunteers without that training are *not* covered
    - Information necessary to enable the agent to render services is covered
    - Cannot be compelled to disclose information



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## Losing Privilege



Richard Nixon in Berlin, DE. Bernd W. Schuttke, available via creative commons license. Available at <https://www.flickr.com/photos/53207432@N00/2298153424>



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### Losing Privilege

- Losing the privilege, or “waiver”
  - The “owner” of the privilege is the client
  - The client can intentionally waive in court
  - *Information that is shared with a 3<sup>rd</sup> party is not confidential and is no longer privileged!*



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### Losing Privilege

- NOT PRIVILEGED:
  - *Phone calls that are recorded*
  - *Conversations that occur in the presence of someone who doesn't enjoy the privilege*
  - *Information that is intended to be shared cannot be later protected by privilege*



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### The Law

#### Mandatory Reporting



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### Mandatory Reporting

A cause to suspect	Abuse or neglect
Of a juvenile	By a parent, guardian, caretaker, or custodian



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### Mandatory Reporting

**Neglect**  
NCGS 7B-101(15)

- Does not receive proper care, supervision, or discipline
- Has been abandoned
- Not provided necessary medical care
- Not provided necessary remedial care
- Lives in an environment injurious to child's welfare
- Has been placed for care or adoption in violation of law



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### Mandatory Reporting

**Abuse**  
NCGS 7B-101(1)

- Inflicts, allows other to inflict a serious physical injury that is not accidental
- Creates or allows other to create a sub. risk that child will suffer physical injury
- Use/allow cruel or grossly inappropriate procedures or devices to modify behavior
- Commits/permits other to commit sex offenses

(1/2)



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## Mandatory Reporting

**Abuse**  
NCGS 7B-101(1)

- Commits/permits the offense of unlawfully selling, surrendering, or purchasing child
- Create/allow serious emotional damage to the child
- Encourage, direct, approve delinquent acts of moral turpitude
- Commits/allows trafficking




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## Mandatory Reporting

**Of a juvenile**

- This one is easy... or should be
- ANYONE UNDER 18 is considered a juvenile, and could be the subject of a mandatory report
  - UNLESS they are emancipated, married, or in the military




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## Mandatory Reporting

**By a parent, guardian, caretaker, or custodian**

"A child who suffers an injury as a result of inappropriate discipline by a parent, guardian, custodian, or caretaker is an abused or neglected juvenile. A child who suffers an identical injury as a result of identical conduct by a schoolteacher, an older child, or a stranger is not an abused or neglected juvenile for purposes of the Juvenile Code and the reporting law."

Janet Mason, Reporting Child Abuse and Neglect in North Carolina, page 22.




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### Mandatory Reporting

A cause to suspect	Abuse, neglect, dependency, or maltreatment
Of a juvenile	By a parent, guardian, caretaker, or custodian



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### Mandatory Reporting

A cause to suspect	Abuse, neglect, dependency, or maltreatment	Of a juvenile	By a parent, guardian, caretaker, or custodian
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**PREA STANDARDS**  
115.61, 115.161, 115.261, 115.361

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.



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### Mandatory Reporting

- What about adults?
- No NC requirement to report crimes against adults (except elderly and disabled adults)
- For corrections staff, must follow PREA, with caveats for physicians and health care providers



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### PREA Standards & Confidentiality

- **Inmate reporting** (115.51, 115.151, 115.251, 115.351)
- **Access to outside confidential support services** (115.53, 115.253, 115.353)
- **Staff and agency reporting duties** (115.61, 115.161, 115.261, 115.361)




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### PREA: Inmate Reporting

- \*115.51 (a) Multiple internal ways to privately report
- (b) At least one way to report to:
  - an entity/office that is not part of the agency,
  - and that is able to receive and immediately forward inmate reports to agency officials,
  - allowing the inmate to remain anonymous upon request

\*see also 115.151, 115.251, 115.351




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### PREA: Inmate Reporting

- Intent of this standard
- Outside Reporting (part b):
  - Ability to report to an entity that doesn't have custody over them
  - Avenue to direct reports back to the facility, NOT serve as investigating mechanism
- Third party reporting:
  - Increases transparency with the public

Just Detention International & National Standards To Prevent, Detect, and Respond to Prison Rape




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### PREA: Inmate Access to Confidential Support Services

- 115.53\* (a) Access to outside victim advocates via mailing address and phone number
  - “The facility shall enable **reasonable communication** between inmates and these organizations in **as confidential a manner as possible.**”
- (b) Inform inmates of communications monitoring and mandatory reporting laws
- (c) Maintain or attempt to enter into MOU with community service providers

\*see also 115.253, 115.353




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### PREA: Inmate Access to Confidential Support Services

- Intent of this standard:
  - Ensure all inmates have access to trained counselors via phone or mail **even if they don't feel safe making a report**
  - Enable survivors to reach out for help without seeking staff approval
  - Provide survivors with emotional support to protect against further trauma and begin healing

National Standards To Prevent, Detect, and Respond to Prison Rape & Just Detention International




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### PREA: Inmate Access to Confidential Support Services

- Intent of this standard:
  - Inform inmates how “private” their communications with victim advocates will be
  - Formalize arrangements with outside service providers to ensure parameters
  - Confidential support yields increased likelihood of reporting & participating in investigation process

National Standards To Prevent, Detect, and Respond to Prison Rape & Just Detention International




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### PREA: Staff Reporting

- 115.61\* (a) Report immediately:
  - Knowledge, suspicion, or information of abuse
  - Allegations of inmate-inmate or inmate-staff “relationships”
  - Retaliation against reporter
- (b) Staff shall not reveal any information outside of designated supervisors/officials
- (c) Medical/mental health staff required to report unless precluded by law
  - Inform inmates of duty to report and limitations of confidentiality

\*see also 115.161, 115.261, 115.361




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### PREA: Staff Reporting

- Intent of this standard:
  - Staff trained on proper reporting while maintaining privacy of survivor
  - Prohibit the sharing of any more information than is necessary to make treatment, investigation, or other security and management decisions
  - Reporting is limited by legal obligations of confidentiality

National Standards To Prevent, Detect, and Respond to Prison Rape & The Project on Addressing Prison Rape (via PREA Resource Center)




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### Confidentiality in Action: NCDPS

- Staff & Agency Reporting Duties
  - Report immediately:
    - Knowledge, suspicion, or information of abuse
    - Allegations of inmate-inmate or inmate-staff “relationships”
    - Retaliation against reporter
  - All reports forwarded to Facility Head and NCDPS PREA Office
  - All allegations reported to facility’s designated investigators




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### Confidentiality in Action: NCDPS

- Internal Reporting
  - To any DPS employee
  - Administrative remedy process
  - PREA/Grievance locked box
  - Toll-free PREA Office phone number
- Outside Reporting
  - Prisoner Legal Services
- Third-Party Reporting
  - Available via email, phone, or letter

NC Prisoner Legal Services  
PO Box 25397  
Raleigh, NC 27611  
919-856-2200




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### Confidentiality In Action: Advocates

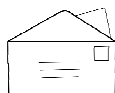
Hotlines

- Physical privacy
- Free access
- Recorded vs. monitored
- Off-topic calls



Mail

- Legal mail status
- Mail process & limitations



Hospital

Accompaniment

- Policy challenges
- Location challenges
- Follow-up services




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### Critical Elements

- Corrections staff training
- Advocate training
- Inmate education
- **Memorandum of Understanding**

**Result: Trauma-informed approach!**




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*“Providing access to outside support services may involve surmounting logistical hurdles, but the potential benefits of such access should make the effort worthwhile.”*

*-Department of Justice,  
National Standards To Prevent, Detect, and  
Respond to Prison Rape*



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### Questions



**Tricia Smar**  
PREA Victim Service  
Program Specialist  
[Tricia@nccasa.org](mailto:Tricia@nccasa.org)

**Joe Polich**  
Staff Attorney  
[Joe@nccasa.org](mailto:Joe@nccasa.org)

NCCASA  
[www.nccasa.org](http://www.nccasa.org)  
919-871-1015



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