

NCCASA
EDUCATION ♦ ADVOCACY ♦ LEGISLATION

Confidentiality & Mandatory Reporting in Corrections Settings
December 2015 Webinar
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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



Agenda

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



Different Frameworks

Advocates	Corrections
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Different Frameworks

<p style="text-align: center;">Advocates</p> <ul style="list-style-type: none">• Support survivor• Advocate for their healing & well-being	<p style="text-align: center;">Corrections</p> <ul style="list-style-type: none">• Safety and security of facility, community, and inmates
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The Law

**Confidentiality
Vs.
Privileged Communication**



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>.



Confidential vs. Privileged

Confidential
– adj. - intended to be kept secret



Confidential vs. Privileged

Confidential
- adj. - intended to be kept secret

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



Confidential vs. Privileged

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

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



Confidential vs. Privileged

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★ Information can be both confidential *and* privileged



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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



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>



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 3rd party is not confidential and is no longer privileged!*



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*



The Law

Mandatory Reporting



Mandatory Reporting

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



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



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)



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



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



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.



Mandatory Reporting

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



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.



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



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)



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



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



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



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



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



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



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)



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



**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



**Confidentiality In Action:
Advocates**

<p><u>Hotlines</u></p> <ul style="list-style-type: none"> • Physical privacy • Free access • Recorded vs. monitored • Off-topic calls 	<p><u>Mail</u></p> <ul style="list-style-type: none"> • Legal mail status • Mail process & limitations 	<p><u>Hospital Accompaniment</u></p> <ul style="list-style-type: none"> • 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!



“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*



Questions



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