

# South Dakota State Reporting Laws

**THE PURPOSE OF THIS GUIDE IS TO PROVIDE GENERAL INFORMATION ONLY.  
IT IS NOT INTENDED AS LEGAL ADVICE OR TO APPLY TO ANY PARTICULAR SITUATION.**

## **TITLE X**

### **Background:**

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.

### **Providing family planning services:**

All clients, including adolescents, who are seeking Title X services may consent to their own care, and these services must be provided to them on a voluntary and confidential basis.

### **Confidentiality and state law requirements for reporting abuse and neglect:**

Although Title X providers are legally required to maintain confidentiality of all clients, including adolescents, they are not exempt from state laws that require the reporting of “child abuse, child molestation, sexual abuse, rape, or incest.” This reporting obligation creates a limited exception for the duty to maintain client confidentiality.

Please refer to the Supporting Statutes, which are attached.

## **DUTY TO REPORT**

### **In public health clinics:**

Applies to child abuse only, no privileged communication. Physicians, mental health professionals or counselors, psychologists, social workers, hospital interns or residents, and nurses who have reasonable cause to suspect that a child has been abused or neglected must make an oral report immediately to law enforcement, or, the Department of Social Services, or, State’s attorney of the county where the child resided.

- Sexual abuse, molestation or exploitation reported only if the victim is under 18 and the perpetrator is the child’s:
  - Parent
  - Guardian
  - Custodian
  - Or any other person responsible for the child’s care
- No age distinction for perpetrator provided in statutes.
- No duty to report any other type of suspected crime.

## **AGE OF “CONSENT”**

Sexual contact with a child under 16 is illegal, defined as:

- If any person 16 or older knowingly engages in *sexual contact* with another person, other than their spouse, that is under 16 years old. Statute of limitations – within 7 years of the commission of the crime or anytime prior to the victim becoming 25 years old, whichever is longer.
- If any person under 16 years old knowingly engages in *sexual contact* with another person, not their spouse, that is also under 16 years of age.

## **WHO ARE REPORTS MADE TO?**

Law enforcement, Department of Social Services, or the State's Attorney of the county where the child resides.

## **PROCEDURE FOR MAKING A REPORT**

Immediate oral report to the above mentioned entities.

## **CAN A REPORTER BE HELD LIABLE IF IT TURNS OUT THAT HER/HIS SUSPICIONS WERE WRONG?**

All those required to report who do so in good faith are protected from penalties if suspicions are unfounded. Any person who intentionally makes a false report could be civilly liable.

## **CONSEQUENCES OF FAILURE TO REPORT**

Penalties for failure to make a report is a misdemeanor.

## **VICTIMS SERVICES AGENCIES**

Each clinic should contact their local District Attorney's Office or Sheriffs Department for Victims Service contact information, as it is not a state service, but a town/city or community service.

The purpose of this guide is to provide general information only. It is not intended as legal advice or to apply to any particular situation.



## Supporting Statutes

**Sexual contact §22-22-7.1** – Exception when within scope of medical practice.

- Any touching, not amounting to *rape* (see below) of the breasts of a female, and/or
- Any touching, not amounting to *rape*, of the genitalia or anus of a person
- With the intent to arouse or gratify the sexual desire of either party.

**Rape § 22-22-1** – sexual penetration with any person:

- Through the use of force, coercion, or threats of great bodily harm against the victim, or,
- If the victim is physically or mentally incapable of giving consent to such act
  - Due to mental or physical incapacity, or,
  - Due to any intoxicating, narcotic, or anesthetic agent or hypnosis
- If the sexual relationship, with penetration, between parties is considered *incest* (see below)
- If the victim is less than 10 years old, or,
- If the victim is between 10 years of age and 16 years of age, and the perpetrator is at least 3 years older than the victim, or,
- If the victim is between 10 years and 18 years of age and is the child of a spouse or former spouse of the perpetrator.

Statute of limitations – Within 7 years of the commission of the crime or anytime prior to the victim becoming 25 years old, which ever is longer.

**Incest §22-22-19.1** – Any person, 14 years of age or older:

- Who knowingly engages in *sexual contact* with another person, other than the person's spouse if the other person is under the age of 21, and,
  - Are parent and child, or,
  - Are ancestors and descendants of every degree, or,
  - Are brother and sister, half or whole, or,
  - Are uncle and niece or aunt and nephew, or,
  - Are cousins, half or whole, and
  - Include the above relationships that arise through adoption.

Statute of limitations – Within 7 years of the commission of the crime or anytime prior to the victim becoming 25 years old, which ever is longer.

**Age of minority §26-1-1** – Minors are under the age of 18.

**Child abuse or neglect §26-8A-2** – A child (under age 18):

- Whose parent, guardian or custodian has abandoned the child or subjected the child to mistreatment or abuse,
- Who lacks proper parental care through actions or omissions of the parent, guardian or custodian
- Whose environment is injurious to child's welfare,
- Whose parent, guardian, or custodian fails or refuses to provide proper or necessary
  - Subsistence
  - Supervision
  - Education
  - Medical care
  - Any other care necessary for the child's health, guidance or well being

- Who is homeless, without proper care, or not living with the child's parent, guardian or custodian
- Who is threatened with substantial harm
- Who has sustained emotional harm or mental injury as indicated by
  - An injury to the child's intellectual or psychological capacity
- Who was subject to prenatal exposure to abusive use of alcohol or controlled substances not legally prescribed
- Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's
  - Parent
  - Guardian
  - Custodian
  - Or any other person responsible for the child's care.

**Pedophilia §22-22-30.1** Any act of sexual penetration:

- With a victim less than 13 years of age by a person 26 years of age or older
- Under any circumstances not constituting *incest*.