Legal Issues Impacting Adolescent Medical-Forensic Exams

October 2025 Wisconsin Child Abuse Network Webinar Series

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Disclosure Information for:

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- Learners must attend the entire one-hour session and complete an evaluation to receive contact hours. There will be a code to text confirming attendance. The code and phone number will be displayed at the end of the session.

The nurse planner from Children's Wisconsin Nursing Continuing Professional Development provider unit has reviewed the information and determined that:

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- The content being presented strives to be fair, well-balanced and evidence-based.

Objectives

Describe the purpose and scope of forensic interviews and **differentiate** their role from that of medical-forensic examinations.

Distinguish between misdemeanor and felony sexual assault and child maltreatment statutes, and **analyze** how electronic evidence (e.g., texts, images, social media) may influence classification.

Summarize state mandatory reporting statutes and **explain** how these legal requirements intersect in adolescent cases.

Apply knowledge of legal requirements at the bedside by **demonstrating** approaches to balancing confidentiality, patient trust, and mandatory reporting during adolescent medical-forensic exams.

Forensic Interviews & Medical-Forensic Exams

A forensic interview of a child is a **developmentally sensitive** and **legally sound** method of gathering **factual** information regarding allegations of abuse or exposure to violence. This interview is conducted by a **competently trained**, **neutral** professional utilizing **research** and **practice-informed** techniques as part of a larger investigative process.

A medical-forensic exam is a **patient-centered medical evaluation** performed by a **specially trained** forensic nurse or other health care professional, utilizing evidence-based practice to **provide health care** for patients who are experiencing acute and long-term health consequences associated with victimization and/or trauma, and/or unmet evidentiary needs, across the lifespan.

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Forensic Interviews

What are the goals of a Forensic Interview?

- Minimize Trauma
- Maximize Information
- Minimize Contamination
- Maintain the Integrity of the Investigation

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Wisconsin Sexual Assault Statutes

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WI Sexual Assault Statutes

- The legal framework for sexual assault generally has two categories of offenses:
- **“Sexual assault of a child”**
  - A child victim under the age of 16
- **“Sexual assault”**
    - Includes adult victims (and can include minor victims), but generally requires non-consent
- FAQ: Are there “Romeo and Juliet” Laws in WI?
    - Voluntariness/cooperative

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WI Sexual Assault Statutes

- Generally speaking, sexual assault tends to be categorized as a felony in Wisconsin
  - Punishable by more than one year imprisonment
- However, there are notable exceptions:
  - 4th Degree sexual assault (sexual contact without consent) is a misdemeanor
  - Adolescent cases

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Adolescent Statutory Considerations

948.09 Sexual intercourse with a child age 16 or older. Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor if the defendant has attained the age of 19 years when the violation occurs.

(Offender is OVER 19)

948.093 Underage sexual activity. Whoever has sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years, or whoever has sexual intercourse with a child who has attained the age of 15 years, is guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when the violation occurs. This section does not apply if the actor is the child's spouse.

(Offender is UNDER 19)

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Why is this important for Forensic Exams?

- SECOND DEGREE SEXUAL ASSAULT.

  Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony. **This subsection does not apply if s. 948.093 applies.**

  - **However:**

- FIRST DEGREE SEXUAL ASSAULT.

  (c) Whoever has **sexual intercourse** with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony.

  (d) Whoever has **sexual contact** with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony if the actor is at least 18 years of age when the sexual contact occurs.

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Mandatory Reporter Requirements and Exceptions

48.981(2) PERSONS REQUIRED TO REPORT.

(a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under subs. (2m) and (2r), report as provided in sub. (3):

1. A physician.

1m. A naturopathic doctor.

2. A coroner.

3. A medical examiner.

4. A nurse . . .

Confidential Health Care Services for Children

48.981(am)(c) Except as provided under pars. (d) and (e), the following persons **are not required** to report as suspected or threatened abuse . . . sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

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Exception to the exception -- (d)

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

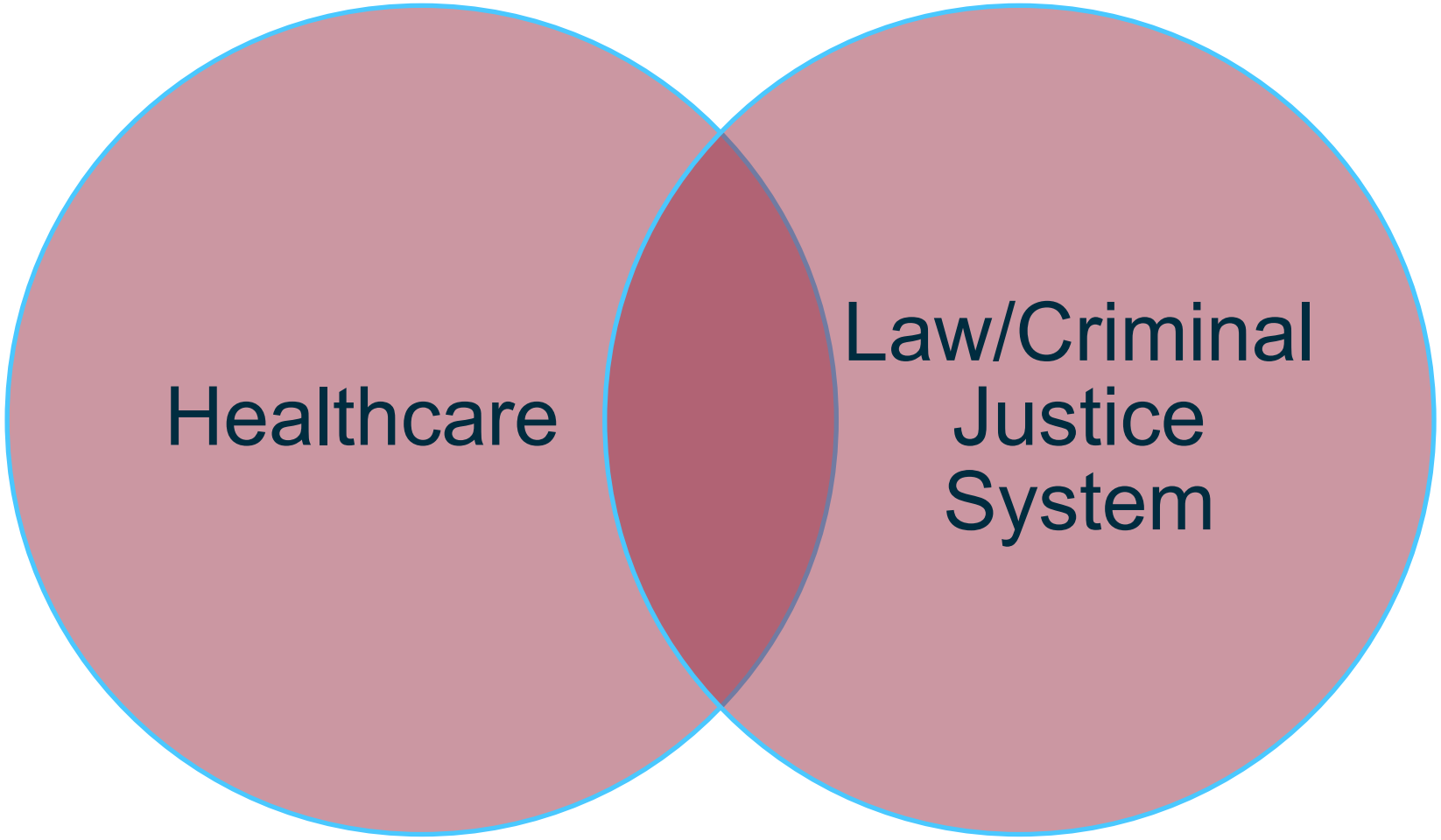
5. **That another participant in the sexual contact or sexual intercourse was or is exploiting the child.**

Exception to the exception -- (e)

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) **if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.**

Medical-Forensic Exams at the Bedside

Where We Practice



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Navigating Adolescent Medical-Forensic Care

- Adolescent wants **emergency contraception**; parents do not
- Parents **want a forensic exam/evidence** collection/virgin check; adolescent does not
- Mandatory reporting and involving **Child Protective Services**

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Adolescent Rights in Health Care

Access to Confidential Reproductive Care

- ✓ Can receive emergency contraception (EC) and STI screening/treatment without parent consent or involvement.
- ✓ Can request and receive a medical-forensic exam without parent consent or involvement

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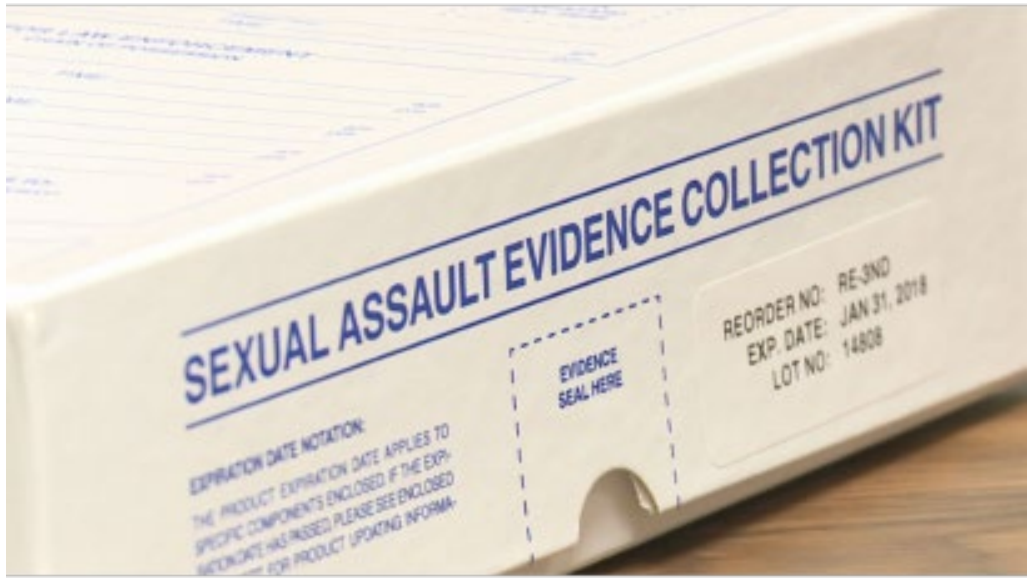
Adolescent Rights in Health Care

Medical-Forensic Exams & Evidence Collection

- ✓Must assent to evidence collection
- ✓Must assent to a medical-forensic / genital exam



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Utilizing Confidential/Privileged Records

All confidential and privileged records are protected by federal and state statutes

However, there are numerous exceptions to confidentiality and privilege

More About Mandatory Reporting

Mandatory Reporting & Confidentiality

- Mandatory reports (agency records) have a general rule of confidentiality
  - 34 exceptions (48.981(7)(a))
    - Multidisciplinary Teams/Child Fatality Review Teams
    - Child Advocacy Centers
    - Law Enforcement/District Attorney for purposes of investigation or prosecution
    - Parent, guardian or legal custodian
  - Information that could identify reporter remains confidential
  - Only certain records
    - Investigation
    - Assessment
    - Disposition

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More About Mandatory Reporting

Mandatory Reporting & Confidentiality

- Mandatory reports (agency records) have a general rule of confidentiality
  - Redisclosure is prohibited unless authorized by a court and could be subject to $1000 fine and 6 months imprisonment (48.981(7)(e)-(f))
  - If a statutory exception does not exist, records can be obtained by court order
    - *Herget/Bellows* procedure
  - Rules of privilege/other confidentiality still apply to any record

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Health Care Records/Information

Protected Health Information/Patient Health Records

- HIPAA

- Wisconsin State Statute 905.04 (privilege)
- Wisconsin State Statute 146.82 (confidentiality)

Health Care Records/Information

Exceptions to the Health Care Confidentiality and Privilege

- Child Abuse/Neglect Investigations
  - 45 C.F.R. 164.512
  - Wis. Stat. 146.82(2)(a)(11) (c)
  - Wis. Stat. 905.04(4)(e) (p)

2m. There is no privilege for information contained in a report of child abuse or neglect that is provided under s. 48.981 (3).

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

11. To an agency, as defined in s. 48.981 (1) (ag), a sheriff or police department, or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with an agency, sheriff or police department, or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose the report or record, except to the persons, for the purposes, and under the conditions specified in s. 48.981 (7).

Health Care Records/Information

Exceptions to the Health Care Confidentiality and Privilege

- Under lawful order of the court
  - Wis. Stat. 146.82(2)(4)
    - Subpoena for Documents (968.135)

Health Care Records/Information

Who Can Claim Privilege

- Wis. Stat. 905.04(3)
  - Patient
  - Patient's guardian or conservator (*State v. S.H.*, guardian ad litem over an adverse parent)
  - Certain providers, only on behalf of the patient

Balancing It All

Confidentiality, Mandatory Reporting & Access to Care

- Adolescents have a right to confidential reproductive health care, but in cases of suspected maltreatment, mandatory reporting obligations apply.
- Discuss with your adolescent patient your obligations at the beginning of the visit
- Parent will still have access to medical records at some point

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Thank you! Questions?

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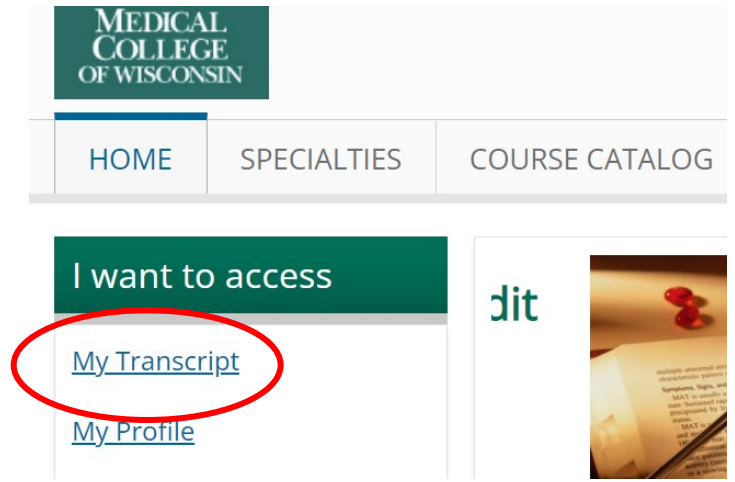

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