



# **Mandatory Reports to Law Enforcement about Juvenile Victims of Crime**

**Jill Moore**

**November 2019**



**UNC**  
SCHOOL OF GOVERNMENT

# Basic rules for disclosures to LE

- Under HIPAA, a LHD may disclose protected health information (PHI) to a law enforcement official for specific law enforcement purposes.
- Disclosures must be limited to the specific information set out in the rule and must satisfy any additional conditions set in the rule.
- Other laws may restrict or limit a disclosure that HIPAA allows.

# HIPAA: When LHD may disclose PHI to LEO

HIPAA has rules for disclosures that fit into each of the following categories:

Disclosure is required by a law other than HIPAA or by legal process (court order, warrant)	Info relates to a crime on LHD's premises
LEO requests PHI to identify or locate a missing person, suspect, fugitive, or material witness (limited amount of PHI may be disclosed)	HCP provides emergency care <u>somewhere other than LHD</u> and discovers info about crime
LEO requests information about a crime victim (usually requires victim's permission)	LHD determines disclosure is necessary to avert a serious & imminent threat to the health or safety of a person or the public
LHD has knowledge of death caused by criminal conduct	Patient is an inmate or in lawful custody → LHD may disclose PHI to officer with custody if necessary for health, safety, or security

# Current NC statutes requiring reports to LE

Gunshot wounds & other injuries/illnesses caused by criminal acts

- G.S. 90-21.20(a) & (b)

Non-accidental recurrent illness or serious physical injury to a minor child (under age 18)

- G.S. 90-21.20(a) & (c1)

Caylee's law: Child under age 16 has disappeared and is in danger

- G.S. 14-318.5

# Reporting juvenile crime victims to law enforcement

New G.S. 14-318.6, effective December 1:

A person age 18 or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, a sexual offense, or misdemeanor child abuse must make an immediate report to local law enforcement.

S.L. 2019-245 (S 199), Part I

# Who must report?

## General rule: Universal reporting

- Any adult (18+) who knows or reasonably should have known juvenile is or has been victim of reportable offense

## Exceptions: Some people with statutory privileges

- Attorneys
- Psychologists, psychological associates, their employees & agents
- Certified or licensed social workers engaged in private delivery of social work services
- Licensed mental health counselors (professional counselors)
- Employees and agents of rape crisis centers & domestic violence programs

# Which offenses must be reported?

## Violent offense against a juvenile

- Offense that causes non-accidental serious bodily injury, or serious physical or mental injury

## Sexual offense against a juvenile

- “Sexually violent offense” is defined by reference to specific criminal statutes
- The term includes rape, some of the statutory offenses, some offenses committed by parents/parent substitutes, some offenses committed by teachers/school personnel, offenses related to trafficking/prostitution of minors, child pornography, indecent liberties, and more

## Misdemeanor child abuse

- Parent or other person providing care or supervision to a child under age 16 inflicts physical injury on the child, or allows physical injury to be inflicted, or creates or allows to be created a substantial risk of physical injury by other than accidental means

# What is in a report? How is it made?

## Required contents

- Victim information: name, address, age, name & address of parent/guardian/custodian/caretaker, present whereabouts if not home address, nature & extent of any injury or condition resulting from offense or abuse
- Offender information: name, address, age
- Location where offense was committed
- Names & ages of other juveniles present or in danger
- Any other information the person making the report believes might be helpful in establishing the need for law enforcement involvement

## Manner and timing of report

- Orally or by telephone
- Immediately



# Issues for local health departments

## Exceptions for some health care providers but not others

- No exception for physicians, physician assistants, nurse practitioners, nurses, dentists, etc.

## HIPAA Privacy Rule

- Disclosing protected health information (PHI) to make a report:
  - Reports allowed, but may disclose only the information specified in law
  - Must inform patient/personal representative of the report (limited exceptions)
  - Disclosures of PHI for investigations or judicial proceedings that result from a report are not authorized by this law; HIPAA has additional requirements pertaining to such disclosures
- Administrative requirements:
  - Amending policies/procedures regarding disclosures of PHI to law enforcement
  - Training workforce in new requirements

# Issues for local health departments (cont.)

## Interaction with other confidentiality laws

- Other laws may prohibit or limit some reports (fact-specific determination)

## Interaction with other mandated reporting laws

- Other laws requiring reports to law enforcement or DSS are still in effect
- Different requirements under different laws: may be variation in when to report, what to report, how to report, who must report, etc.
- Report to law enforcement under new law is separate from, and in addition to, any report to DSS that may be required

# What triggers a mandatory report to LE?

## Until December 1, 2019:

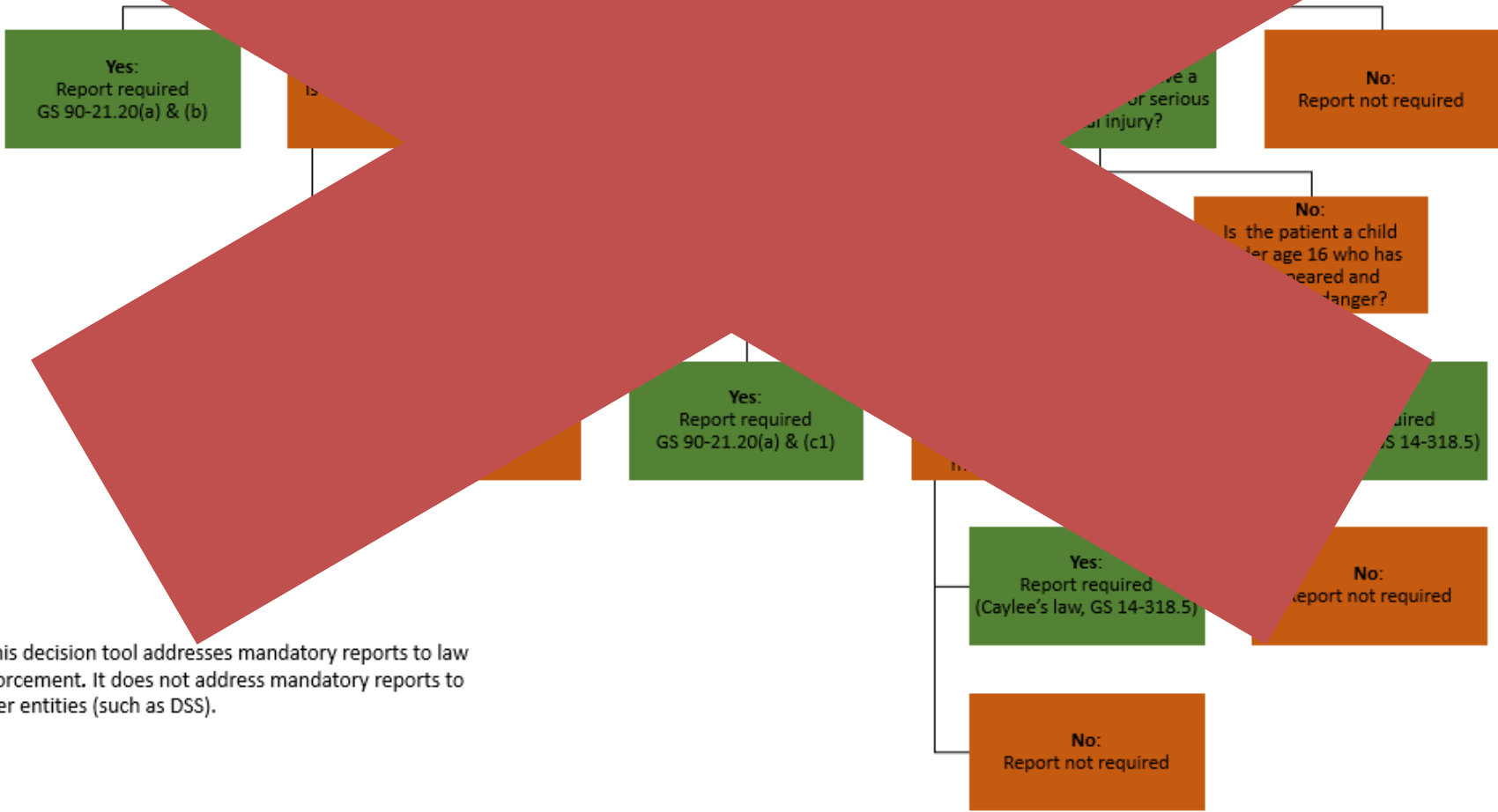
- Reportable illness or injury under G.S. 90-21.20
- Disappearance of a child under age 16 (Caylee's law)

## December 1, 2019 and after:

- Juvenile victim of violent offense, sexual offense, or misdemeanor child abuse
- Reportable illness or injury under G.S. 90-21.20
- Disappearance of a child under age 16 (Caylee's law)

**Decision Tool:  
Required Report to Law Enforcement\***

Does the patient have any of the following injuries or illnesses: gunshot wound, other firearm injury, poisoning, knife or sharps wound/injury, other grave illness or grave bodily harm



\* This decision tool addresses mandatory reports to law enforcement. It does not address mandatory reports to other entities (such as DSS).