

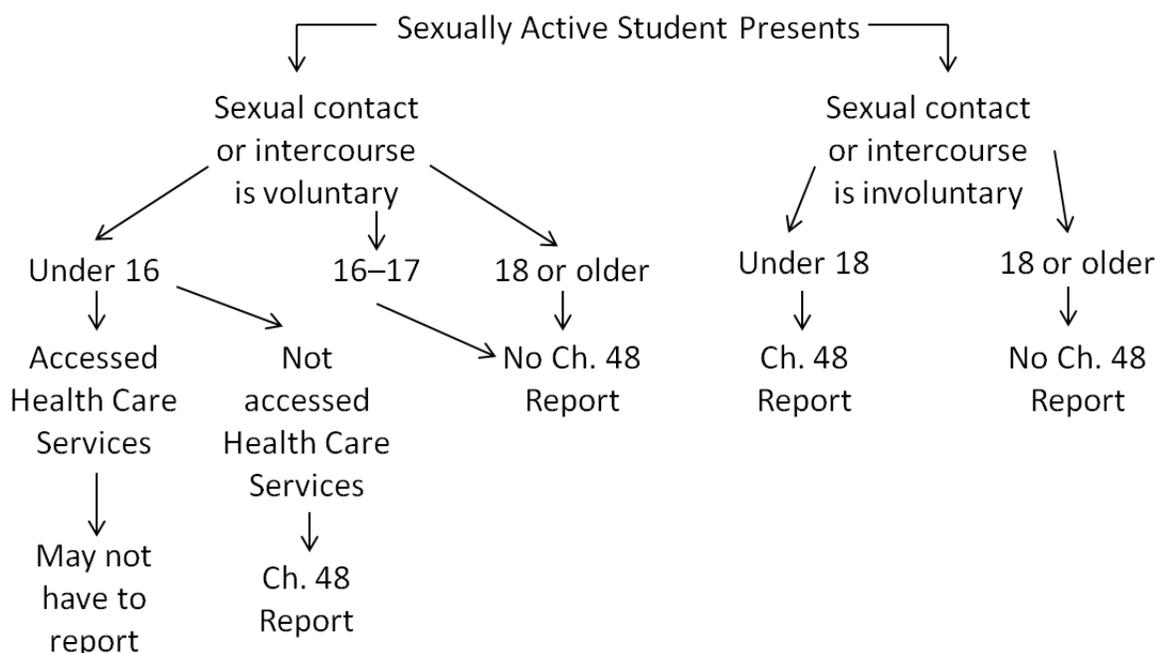
Decision-Making Process for Ch. 48 Reports of Adolescents Who Have Had Sexual Contact with another Person

When a mandated reporter under WI Ch. 48 becomes aware that an adolescent seen in the course of her/his professional duties has had sexual contact or intercourse with another person, the professional needs to determine if a Ch. 48 report is necessary. There are multiple goals in this situation: 1) follow the law, 2) keep the teen safe, 3) ensure the teen accesses health care services, and 4) allow and encourage the teen to exercise as much control over her/his personal life as is possible.

The flow chart below helps to outline a simple, three-step process that can be followed to help determine if a report is necessary under Ch. 48. A Ch. 48 report is not made for a teen who is 18 years or older, as the teen is an adult (i.e., Ch. 48 provisions do not apply). However, support could be provided to help the teen contact law enforcement about a sexual assault.

See the publication *Reporting Requirements for Sexually Active Adolescents* at <http://sspw.dpi.wi.gov/sites/default/files/imce/sspw/pdf/rfsaa.pdf> for more information.

Sexually Active Adolescents Decision-Making Flow Chart for Ch. 48 Reports



Step 1 – Determine if the sexual contact or intercourse is voluntary or not. If the sexual contact or intercourse is not voluntary and the teen is under 18 years old, a Ch. 48 report is legally required. If the sexual contact is voluntary, go to Step 2.

Step 2 – Take note of the teen’s age. Voluntary sexual contact with a teen 16 or 17 years old is not illegal and not sexual abuse under Ch. 48 (i.e., not reportable). While it is illegal to have voluntary sexual intercourse with someone 16 or 17 years old (Wis. Stat. 948.09), this statute is not cross-referenced in Ch. 48 as part of the statutory definition of sexual abuse. Consequently, a Ch. 48 report

should not be made, unless there is reason to doubt the teen's voluntary participation (e.g., the teen's partner is several years older). Voluntary sexual contact or intercourse with someone under the age of 16 is a felony (i.e., the voluntary participation of the teen is irrelevant to determining if a Ch. 48 report must be made). For teens less than 16 years old who believe the sexual contact or intercourse is voluntary, go to Step 3.

Step 3 – Determine if the teen has accessed health care services from a health care provider. If not, a Ch. 48 report is legally required. If yes, a Ch. 48 report may not be required, as the exception to the reporting requirement in Ch. 48 includes people who learn that a minor has accessed health care services. Circumstances that would still necessitate a Ch. 48 report include any of the following:

1. the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver,
2. the teen suffered or suffers from a mental illness or mental deficiency that rendered or renders the teen incapable of understanding or evaluating the consequences of her/his action,
3. the teen, because of her/his age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact,
4. the teen 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. another participant in the sexual contact or sexual intercourse was or is exploiting the teen, and
6. the professional has reason to doubt the voluntary nature of the teen's participation in the sexual contact or sexual intercourse.

Definitions

Sexual contact - means any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant: 1) intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts; or 2) intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person, Wis. Stat. sec. [948.01\(5\)\(a\)](#). Reference also Wis. Stat. sec. [948.01\(5\)\(b\)](#) and [\(c\)](#).

Sexual intercourse - means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required, Wis. Stat. sec. [948.01\(6\)](#).

Health care provider - for the purposes of providing a "health care service" as defined in Wis. Stat. sec. [48.981\(2m\)\(b\)2.](#), means a physician, as defined under Wis. Stat. sec. [448.01\(5\)](#), a physician assistant, as defined under Wis. Stat. sec. [448.01\(6\)](#), or a nurse holding a certificate of registration under Wis. Stat. sec. [441.06\(1\)](#) or a license under Wis. Stat. sec. [441.10\(3\)](#), Wis. Stat. sec. [48.981\(2m\)\(b\)1.](#)

Health care service - means family planning services, as defined in Wis. Stat. sec. [253.07\(1\)\(b\)](#), pregnancy testing, obstetrical health care or screening, and diagnosis and treatment for a sexually transmitted disease, Wis. Stat. sec. [48.981\(2m\)\(b\)2.](#)