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TITLE X - REGION II Family Planning Training Center
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FACTsheet

MANDATORY REPORTING

PUERTO RICO

Mandatory Reporting In Title X Funded Family Planning Settings PUERTO RICO

Cicatelli Associates Inc.
Region II Family Planning Training Center

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Disclaimer:

This manual has been prepared by Cicatelli Associates Inc., to serve as a general guide for mandatory reporters. It provides information and does not constitute legal advice or representation. For legal advice, readers should consult their own counsel. This manual presents the state of the law as of September 2008. We cannot guarantee the accuracy of the contents after publication.

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Introduction

The purpose of this manual is to help program staff to understand if reportable activity has occurred; whether it should be reported, to whom and how; and the consequences of reporting. To this end, program staff must be familiar with two sets of laws: criminal and civil codes, of Puerto Rico and the federal government. Criminal codes define the legality of sexual activities involving minors, while civil codes describe individuals' reporting responsibilities, including those regarding the confidentiality of patient health information.

A. Who are Mandatory Reporters?

Mandated reporters include:

- Professionals or public officials
- Public, private, and privatized entities
- Professionals in the fields of health, justice, education, social work, or public order
- Persons who administer or work in care giving institutions or centers, rehabilitation institutions, centers for minors, or foster homes
- Processors of film or photograph

P.R. Ann. Laws tit. 8, § 446.

B. When is a Mandatory Reporter Required to Report?

When must abuse be reported?

There are two circumstances that trigger the mandatory reporter duty to file a report of child abuse in Puerto Rico. First, mandated reporters must immediately file a report, when “in his or her professional capacity and in the performance of his or her functions, **learns or comes to suspect** that a minor is, has been, or is at risk of becoming a victim of abuse.” Second, any person, including a mandatory reporter, must file a report if they have knowledge of or suspect that a minor is a victim of abuse, institutional abuse, neglect, and/or institutional neglect. Persons who are not mandated reporters also have a duty to report, but the timing of the report is not specified as immediate under the law.

It is important to note the few differences between the two circumstances:

- (1) the reportable actions generally are wider under the second circumstance, which additionally includes neglect and institutional abuse or neglect;
- (2) the second circumstance does not mandate a report where there is only a risk of neglect or institutional abuse or neglect; and

- (3) under the second circumstance, the mandatory reporter is not required to make an immediate report.

P.R. Ann. Laws tit. 8, § 446.

What should a mandatory reporter do when they are not certain abuse occurred?

Questions often arise where mandatory reporters are not **certain** that reportable activity has occurred. The legislature of Puerto Rico has not provided guidance on interpreting what is meant by **knowledge** or **suspicion** in the context of the child abuse reporting statute. Similarly, the courts have not ruled on this issue. Decisions from other courts within the same Federal Court jurisdiction, however, have assessed a similar issue and may provide some guidance. A Massachusetts court held that “a presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements.” *In Re Care and Protection of Robert*, 408 Mass. 52, 63 (1990).

What does it mean for a reporter to be in their official or professional role?

This requirement is meant to limit the liability of mandatory reporters to times when they are practicing their profession. For example, if during an office visit a doctor notices there is evidence of abuse, then he or she must make a report. However, if that same doctor were at his child’s school and noticed the same evidence of abuse, then he or she would not be required to report.

C. What Type of Activity Must be Reported?

Immediate reports must be made of **abuse** against a minor. A minor is a person under the age of 18 years. Puerto Rico law specifically defines abuse as:

- Allowing another person to cause or to put the minor at risk of suffering **damage or harm to his or her health or physical, mental, and/or emotional integrity**
- **Willfully abandoning** a minor;
- Allowing the father, mother, or other person in charge of the well-being of the minor to **exploit** him or her; or
- Allowing another person to exploit the minor by forcing or allowing the minor to perform any act, including but not limited to **obscene acts** for profit or in order to receive any other benefit, or to incur in any conduct that, if criminally prosecuted, would constitute a **crime against the health or physical, mental, or emotional integrity** of the minor, including **sexual abuse** of the minor.

The legal meaning of physical harm, mental/emotional harm, sexual abuse, and abandonment are specified in the reporting statute as follows:

1. ***Sexual abuse*** means (a) engaging in sexual conduct in the presence of a minor; (b) using the minor, voluntarily or otherwise, to engage in sexual conduct aimed at satisfying

lasciviousness, or any other act that, if criminally prosecuted, would constitute the crime of rape, sodomy, lewd or lascivious acts, indecent exposure or obscene propositioning; or (b) remitting, transporting, selling, distributing, publishing, exhibiting, or possessing obscene materials and obscene shows.

2. **Physical harm** means any non-accidental trauma, injury, or condition, including inadequate nourishment that, if left unattended, could result in death, disfigurement, illness, or temporary or permanent disability of any part or function of the body, including inadequate nourishment. The trauma, injury, or condition may also be the result of a single episode or several episodes.
3. **Mental or emotional harm** means the impairment of the intellectual or emotional capacity of a minor, given what is considered normal for his or her age or cultural environment. Emotional harm is deemed to exist when there is evidence that the minor recurrently manifests or exhibits behaviors such as fear, feelings of abandonment or hopelessness, frustration and failure, anxiety, insecurity, withdrawal, regressive behavior, or aggressive behavior towards him or herself or towards others, or any other similar behavior.
4. **Abandonment** means willful dereliction of or being remiss in the responsibilities that the father, mother, or other person in charge of the minor have, taking into account the minor's age and need for adult care. The intention to abandon can be evidenced by, but not limited to: (a) a lack of communication with the minor for a period of at least 3 months, (b) a lack of participation in any plan or program designed to reunite the minor with the father, mother, or other person in charge of the well-being of the minor, (c) a failure to respond to notices of hearings for protection of the minor, or (d) when the minor is found in circumstances that make it impossible to ascertain the identity of the father or mother; when the identity is known, but the whereabouts of the person is unknown, in spite of effort to locate him or her; or when the father or mother fails to claim the minor within 30 days after the minor is found.

Minors will also be considered to be victims of abuse if a parent or a person responsible for the minor has engaged in acts that constitute **domestic violence** in the presence of minors.

Neglect by the parent or person responsible for the minor is also reportable, although the law does not require an immediate report. **Neglect** means (a) failing to perform the duties or to exercise the capacity to provide adequate food, clothing, shelter, education, or health care to a minor; (b) failing to exercise supervision; or (c) failing to visit the minor or to remain in contact or frequent communication with the minor. It is also considered neglect when a parent fails to comply with the duties or exercise the powers provided in title 31, § 601(1). These duties include, but are not limited to, the duty of having the minor in his/her company according to law, of supervising his/her education and development, of adequately providing sustenance, clothing, shelter, education or health care, according to his/her wealth or with the means provided by the Commonwealth of Puerto Rico or any natural or juridical person. Health care includes any treatment or preventive measure required to attend to or prevent any condition involving the physical, mental, or emotional health of the minor.

Persons in charge of the minor includes the custodian, employees, or officials of the programs, centers or institutions that provide care, education, treatment or detention services to minors or 24 hours a day or any part thereof.

D. What Sexual Activity Must be Reported?

What sexual activity must be reported?

Sexual activity reportable as child abuse under the reporting law is defined broadly, as noted above. First, sexual activity that constitutes sexual abuse is reportable regardless of the individual committing the abuse. Generally speaking, any sexual activity punishable under the Penal Code is reportable. The two criminal sexual acts providers should be aware of are:

- (1) **Rape:** where a man of any age has “carnal intercourse”¹ with a female under the age of 14 years, if that female is not the man’s wife and/or if the female is compelled to have carnal intercourse. The crime is committed by the slightest penetration. P.R. Ann. Laws Tit. 33, §§ 4061.

- AND -

- (2) **Sodomy:** where any person has “sexual intercourse”¹ with some one of the same sex. Age of the sexual partners does not matter; any sodomy is criminal. P.R. Ann. Laws Tit. 33, §§ 4065.

Thus, mandatory reporters who have knowledge of or suspect that such sexual activity has occurred must report that activity. The critical circumstances are where the child is less than 14 years old (and not married) and whether the partner is of the same sex. Nonetheless, where the child is 14 years or older and the sexual partner is of the opposite sex, sexual activity is still reportable, where committed by a family member (including if the child is adopted and has sex with their parent) or where committed forcibly or otherwise compelled.

Does a minor’s sexual activity require a report, even if they consented?

A child under the age of 14 cannot legally consent to sexual activity (same or opposite sexual intercourse), as described above; thus, any sexual activity of that constitutes rape, sodomy or a lewd/indecent act is reportable. In addition, such activity that is forcible, with a family member, or with someone of the same, regardless of that minor’s age, is reportable activity.

¹ The Penal Code does not explicitly define either carnal or sexual intercourse. It does state, however, that: “[t]he words and phrases shall be construed pursuant to context and the meaning sanctioned by common and current usage.” Lewd and indecent acts are also criminally punishable, when committed forcibly or with a child under the age of 14 years. P.R. Ann. Laws Tit. 33, §§ 4067. However, the definition of lewd or indecent is specified in the Penal Code.

Does pregnancy or an STD require an abuse report?

The laws of the Commonwealth of Puerto Rico do not state explicitly that pregnancy or an STD of a child constitutes knowledge or suspicion of reportable abuse. Therefore, mandatory reporters must use their discretion – based upon their own background, training and experience – to determine whether pregnancy or an STD is sufficient to constitute knowledge or suspicion of reportable abuse. As described above, the reporting laws define a wide range of sexual activity as reportable abuse. In fact, the majority of sexual activity of a minor patient is reportable as abuse, particularly where the child is under 14 years of age. Therefore, under many circumstances a positive pregnancy or STD test is evidence of reportable abuse, since that child must have had sex.

Do a patient's criminal acts require an abuse report?

Both Commonwealth and federal law protect the confidentiality of information received in the course of providing medical care. This information cannot be shared with the authorities unless a specific statutory requirement allows that sharing. Commonwealth law requires mandatory reporters to share information about child abuse and neglect. It does not require mandated reporters to report information about any other crimes. Indeed, no state or federal law requires medical practitioners to report every criminal act of their patients.

What sexual activity by a minor does not require reporting?

As stated above, consensual and nonconsensual sexual activity by a minor may require reporting, in particular if the minor is under the age of 14. Only consensual sexual activity between a minor 14 years or older and someone of the opposite sex is not reportable, unless that activity is forcible or with a family member.

Does a mandated reporter have a duty to ascertain the ages of the minor's partners?

No statute or case obligates mandatory reporters to ask their minor patients about the age of the minors' sexual partners. However, the reporter does not have to know for certain a partner's age for their duty to report to arise. Rather, the duty arises where a reporter has reasonable suspicion to believe that the minors' partner is of an age where sexual activity between the two would be considered reportable child abuse.

E. How is a Report Made?

To whom should reports be made?

Reports are made to the hotline of the Department of the Family of the Commonwealth of Puerto Rico (the “Department”), the Puerto Rico Police Department, or a local office of the Department of the Family.

Toll-Free: (800) 981-8333

Local (toll): (787) 749-1333

How are reports made?

An oral report must be made immediately to the hotline followed with a written report within 48 hours of the oral report. A reporting form is provided by the Department.

The identity of the person who made the report is maintained confidential. 8 P.R. Laws Ann. Tit. § 446.

F. What Happens After a Report is Made?

What will the Department of the Family do after receiving a report?

The procedures followed after a report is received are not well-defined under the law. According to the reporting statute, the Department is responsible for investigating (including delegating the investigation where necessary) of abuse, institutional abuse, abuse through neglect, or abuse through institutional neglect “in the manner the urgency of the case deserves.”

Can individuals be held liable for making reports?

Any person who **voluntarily** and **in good faith** files a report under the reporting statute is granted immunity in any civil or criminal procedure that may be initiated as a result of the report. 8 P.R. Laws Ann. Tit. § 441h.

Can individuals be held liable for not making reports?

If a reporter **willfully** and **deliberately** fail to report, the reporter is liable for a \$200-\$ 1,000 fine or imprisonment for up to 30 days Puerto Rico. 8 P. R. Laws Ann. Tit. § 441i.

G. How do Confidentiality Laws and Title X Regulations Effect a Mandated Report?

Federal regulations establish special protections for family planning information and records. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. Chpt. 1 § 59.11. Providers can only share information without client authorization if an exception in state or federal law specifically permits such sharing. Otherwise information may be disclosed only in summary, statistical, or other form, which does not identify particular individuals.²

HIPAA regulations are intended to protect the confidentiality of patient health information. They give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach those rules. See 45 C.F.R. § 160. Thus, providers who breach confidentiality laws may expose themselves to legal liability under state and federal law.

Since the passage of the federal HIPAA, confusion has arisen regarding the obligation of a mandated reporter to provide copies of written records that underlie the report. While the Puerto Rico reporting statute does not clearly state that mandatory reporters may breach confidentiality in order to make a report of suspected child abuse. It does state that mandatory reporters are immune from liability for any resulting harm in providing information necessary to the report, so long as the report was not willfully made with false information. This would include the harm resulting from a breach of confidentiality. This immunity, however, applies only to the sharing of information necessary to make the report and related to the suspicion or knowledge of the reported abuse.

In sum, while HIPAA and state laws protect the confidentiality of health information, neither excuse the failure of mandatory reporters to report child abuse and neglect.

² See, U.S. Dep’t Health Human Serv., Program Guidelines for Project Grants for Family Planning Services, 2001, available at: http://www.dhhs.gov/opa/familyplanning/toolsdocs/2001_ofp_guidelines_complete.pdf.

H. Resources

ChildHelp	www.childhelp.org
Child Welfare Information Gateway	www.childwelfare.gov www.childwelfare.gov/systemwide/laws_policies/state/ (formerly known as National Clearinghouse on Child Abuse and Neglect)
Child Welfare League of America	www.cwla.org
National Center for Youth Law	www.youthlaw.org
Prevent Child Abuse America	www.childabuse.org
Parents United, International	www.parentsunited.info
Office of Population Affairs	www.hhs.gov/opa
Office of Civil Rights, HIPAA	http://hhs.gov/ocr/hipaa
Puerto Rico Administration for Families and Children	www.gobierno.pr/GPRPortal/StandAlone/AgencyInformation.aspx?Filter=177

APPENDIX A – Applicable Puerto Rico Law

Tit. 8, Public Welfare and Charitable Institutions.

§ 444. Definitions.

(a) *Abandonment* Shall mean willful dereliction of or being remiss in the responsibilities that the father, mother, or other person in charge of the minor have, taking into account their age and their need for adult care. The intention to abandon can be evidenced by, but not limited to:

- (1) a lack of communication with the minor for a period of at least three (3) months;
- (2) a lack of participation in any plan or program designed to reunite the minor with the father, mother, or other person in charge of the wellbeing of the minor;
- (3) a failure to respond to notices of hearings for protection of the minor; or
- (4) when the minor is found in circumstances that make it impossible to ascertain the identity of the father, mother, or other person in charge of the minor's wellbeing; when the identity is known, but the whereabouts of the person is unknown, in spite of effort to locate him or her; or when the father, mother, or other person in charge of the minor's wellbeing fails to claim the minor within thirty (30) days after the minor is found.

(b) *Sexual abuse* Shall mean engaging in sexual conduct in the presence of a minor and/or using the minor, voluntarily or otherwise, to engage in sexual conduct aimed at satisfying lasciviousness, or any other act that, if criminally prosecuted, would constitute the crime of rape, sodomy, lewd or lascivious acts, indecent exposure, or obscene propositioning; remitting, transporting, selling, distributing, publishing, exhibiting, or possessing obscene materials and obscene shows, as defined in §§ 3001 et seq. of Title 33.

(c) *Protection cases* Shall mean situations of abuse, institutional abuse, neglect and/or institutional neglect of minors, as these terms are defined in this section, and supported by an investigation.

(d) *Lewd conduct* Shall mean any physical activity of the human body, whether carried out alone or with other persons, including singing, talking, dancing, acting, simulating, or pantomiming, which as a whole is considered by the average person and according to contemporary community standards, to appeal to lustful interests, that is, a morbid interest in nudity, sexuality or physiological functions and which represents or depicts in an overtly offensive manner any sexual conduct and lacks any serious literary, artistic, political, religious, scientific or educational value.

(i) *Physical harm* Shall mean any nonaccidental trauma, injury, or condition, including inadequate nourishment, which, if left unattended, could result in death, disfigurement, illness, or temporary or permanent disability of any part or function of the body, including inadequate nourishment. The trauma, injury, or condition may also be the result of a single episode or several episodes.

(j) *Mental or emotional harm* Shall mean the impairment of the intellectual or emotional capacity of a minor, given what is considered normal for his or her age or cultural environment. Moreover and subject to proof to the contrary, emotional harm shall be presumed to exist when there is evidence

that the minor recurrently manifests or exhibits behaviors such as fear, aggressive behavior towards himself or herself or towards others, feelings of abandonment or hopelessness, frustration and failure, anxiety, insecurity, withdrawal, regressive behavior or behavior appropriate for a child of a lesser age, or any other similar behavior.

(s) *Abuse* Shall mean any intentional act or omission by the father, mother, or other person in charge of the minor of such a nature that it causes or puts a minor at risk of suffering damage or harm to his or her health or physical, mental, and/or emotional integrity, including sexual abuse as defined in this section. Abuse shall also mean to engage in obscene behavior and/or use the minor to carry out obscene acts; to allow another person to cause or to put the minor at risk of suffering damage or harm to his or her health or physical, mental, and/or emotional integrity; to abandon a minor willfully; to allow the father, mother, or other person in charge of the wellbeing of the minor to exploit him or her; or to allow another person to do so by forcing or allowing the minor to perform any act, including but not limited to using the minor to engage in obscene acts for profit or in order to receive any other benefit, or to incur in any conduct that, if criminally prosecuted, would constitute a crime against the health, or physical, mental, or emotional integrity of the minor, including sexual abuse of the minor. Minors will also be considered to be victims of abuse if the father, mother, or person responsible for the minor has incurred in the conduct described above, or has engaged in acts that constitute domestic violence in the presence of minors, as defined in §§ 601 et seq. of this title.

(t) *Institutional abuse* Shall mean any act or omission by a foster parent or an employee or official of a public or private institution that provides caregiving services, for twenty-four (24) hours a day or part thereof, who has control over or custody of a minor for his or her care, education, treatment, or detention, who causes harm or endangers the health, or physical, mental, and/or emotional integrity of the minor, including sexual abuse; engages in obscene conduct and/or uses the minor to perform obscene acts, known or suspected, or which occur as a result of the prevailing policies, practices, and conditions in the institution in question; exploits the minor or allows someone else to do so, including, but not limited to, using the minor to perform obscene acts for profit or in order to receive any other benefit.

(v) *Minor* Shall mean any person who has not yet attained the age of eighteen (18) years.

(w) *Neglect* Shall mean a type of abuse that consists of failing to perform the duties, or to exercise the capacity to provide adequate food, clothing, shelter, education, or health care to a minor; failing to exercise supervision; failing to visit the minor or to remain in contact or frequent communication with the minor. A minor shall also be deemed a victim of neglect if the father, mother, or other person in charge of the minor has incurred in the conduct described in subsections (3) and (4) of § 634a of Title 31, part of the Civil Code of Puerto Rico.

(x) *Institutional neglect* Shall mean the neglect incurred in, or suspected to be incurred by, by the operator of a foster home, or any employee or official of a private or public institution that provides caregiving services during a twenty-four (24) hours period or fraction thereof, or who has control over or custody of a minor for his/her care, education, treatment, or detention, who causes harm to a minor or puts him or her at risk of suffering harm to his or her health, physical, mental, and/or emotional integrity, including sexual abuse, known or suspected, or which occurs as a result of the policies, practices, and conditions in the institution in question.

(z) *Person in charge of the minor* Shall mean the custodian, employees, or officials of the programs,

centers, or institutions that provide care, education, treatment, or detention services to minors for twenty-four (24) hours a day or part thereof.

(ff) *Imminent risk* Shall mean any situation that represents a danger to the health, safety, and physical, emotional, and/or sexual wellbeing of a minor.

(gg) *Risk of death* Shall mean an act that places the minor in circumstances that may cause his or her death.

§ 481. Definitions.

(1) *Crimes against minors* are the crimes listed in subsections (a) and (b) of Section 3 of Act No. 28 of July 1, 1997, as amended, when these are committed against a person under eighteen (18) years of age.

(6) *Child* Is any person under eighteen (18) years of age.

§ 446. Obligation to report.

The following individuals and entities are under the obligation to report immediately those cases where there is actual or suspected abuse, institutional abuse, neglect, and/or institutional neglect of a minor:

(a) Professionals or public officials, public, private, and privatized entities which, in their professional capacity and in the performance of their duties, may learn of or come to suspect that a minor is, has been, or is at risk of becoming a victim of abuse, institutional abuse, neglect, and/or institutional neglect; professionals in the fields of health, the system of justice, education, social work, public order, persons who administer or work in caregiving institutions or centers that provide care services for twenty-four (24) hours a day or part thereof, or in rehabilitation institutions and centers for minors, or in foster homes; and all processors of film or photographs who have knowledge of or observe, in the performance of their professional responsibilities or employment, any motion picture, photograph, videotape, negative, or slide that depicts a minor involved in a sexual activity. They shall report that fact immediately through the hotline, to the Puerto Rico Police, or the local office of the Department. The information thus furnished, as well as the identity of the person who the information shall be kept strictly confidential. Any film, photograph, videotape, negative, or slide that depicts a minor involved in a sexual activity shall be delivered to the nearest station of the Puerto Rico Police.

Persons bound to furnish information as set forth in the preceding paragraph of this section shall subsequently fill out a form provided by the Department, which shall be sent to the central registry, established hereunder, not later than forty-eight (48) hours after having notified or referred the situation.

(b) Any person who has knowledge of or suspects that a minor is a victim of abuse, institutional abuse, neglect, and/or institutional neglect shall report that fact through the hotline of the Department, to the Puerto Rico Police, or to the local office of the Department, as provided in this chapter. The information thus furnished, as well as the identity of the person who reported the information shall be kept strictly confidential, except in the cases of unfounded reports in which false information has been knowingly provided.

(c) Persons bound to furnish information pursuant to this chapter, including technicians or social workers who provide protective services to minors, who have knowledge of or suspect that a minor has died as a result of abuse, institutional abuse, neglect, and/or institutional neglect, shall report the fact to the Puerto Rico Police and to the hotline of the Department as provided in this chapter, so that they will undertake the appropriate investigation.

Information provided in good faith by any persons, officials, or institutions bound to report situations of abuse, institutional abuse, neglect, and/or institutional neglect of minors, as set forth in this chapter, may not be used against them in any civil or criminal procedure that may be initiated as a result of said action. Nor may the information so reported by school and hospital employees and by law enforcement officers, who are obliged to allow the Department's intervention pursuant to the provisions of this section, be used against them.

§ 446a. Evidence; photographs; radiological and dental examinations; laboratory tests.

Any of the professionals and/or officials obliged to provide information in every case of abuse, institutional abuse, neglect, and/or institutional neglect, as well as any protection case worker, may take photographs or have photographs taken of the minor's trauma areas, and if medically indicated, shall perform or order radiological or dental examinations, laboratory tests, or any other medical examination of the minor that is necessary, even without the consent of the father, mother, or other person responsible for the wellbeing of the minor, in cases where they are opposed to these or are not available at the time. Taking photographs of the location where the abuse, institutional abuse, neglect, and/or institutional neglect has occurred is also authorized.

The taking of photographs or performing of radiological or dental examinations, laboratory tests, or any other necessary medical examination shall be conducted in such a way that the condition of the minor is not aggravated or his or her dignity offended; and they shall be remitted to the Department as quickly as possible. The Department shall cover the initial expenses for the evaluation and care of the allegedly abused or abandoned minor and may require that the father, mother, or other person responsible for the minor reimburse the expenses. Moreover, it may require the participation of other agencies in contributing to cover the cost of the services for the necessary care. This evidence shall be available to initiate criminal prosecution for violations of the provisions of this chapter or other related statutes.

§ 446e. Confidentiality of reports and records.

All records related to protection cases, including the reports from any office or public, private, or privatized entity, generated while enforcing this chapter shall be confidential and shall not be divulged except in the cases or circumstances specifically authorized by this chapter.

Title 33, Penal Code.

§ 4061. Rape.

Every person who has carnal intercourse with a female who is not his wife, in any of the following circumstances shall be punished by imprisonment, as provided hereinafter:

(a) If the female is under fourteen (14) years of age.

(b) If she is incapable, through illness or unsoundness of mind, whether temporary or permanent, to

give legal consent.

(c) If she has been compelled to the act by the use of irresistible physical force or threats of grave and immediate bodily harm, accompanied by apparent power of execution; or by overcoming or diminishing her capacity to resist substantially, without her knowledge, by means of hypnosis, narcotics, depressant or stimulant drugs or similar substances or means.

(d) If at the time of committing the act, she was not aware of its nature and this circumstance is [was] known to the accused.

(e) If she submits in the belief that the accused is her husband, and this belief is induced by any artifice, pretense or concealment put into practice by the accused.

§ 4062. Rape - Essential circumstances of the crime.

Emission is not necessary and the crime of rape is consummated by the slightest penetration.

§ 4065. Sodomy.

Any person who has sexual intercourse with a person of his same sex or commits the crime against nature with a human being shall be punished by imprisonment for a fixed term of ten (10) years. Should there be aggravating circumstances, the fixed penalty may be increased to a maximum of twelve (12) years; if there should be extenuating circumstances, it may be reduced to a minimum of six (6) years.

§ 4067. Lewd and indecent acts.

Every person who, without intending to consummate sexual intercourse, commits any indecent or lewd act with another person shall be punished by imprisonment as provided hereinafter if any of the following circumstances occur:

(a) If the victim is under fourteen (14) years of age

(b) If the victim has been compelled by the use of irresistible physical force or under threat of grave and immediate bodily injury, accompanied by apparent power of execution or by substantially overcoming or diminishing his capacity to resist through hypnotic means, narcotics, depressant drugs or stimulants or similar substances or means without his knowledge.

(c) If the victim is unable due to illness or unsoundness of mind, whether temporary or permanent, to give legal consent.

(d) If the victim was compelled to the act without knowledge by the use of deceptive means that substantially overcome or diminish his capacity to resist.

(e) If the victim is an ascendant or descendant in all degrees or a collateral by consanguinity up to the third degree of single or double bond, including the relationship as parent, male and female children or brothers or sisters by adoption.