



# Title X

Mandated Reporting, Minor Consent Refresher Course



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## *The Fine Print*

This presentation is for informational purposes only. The interpretations presented are my own, and do not represent the official position of MDHHS.

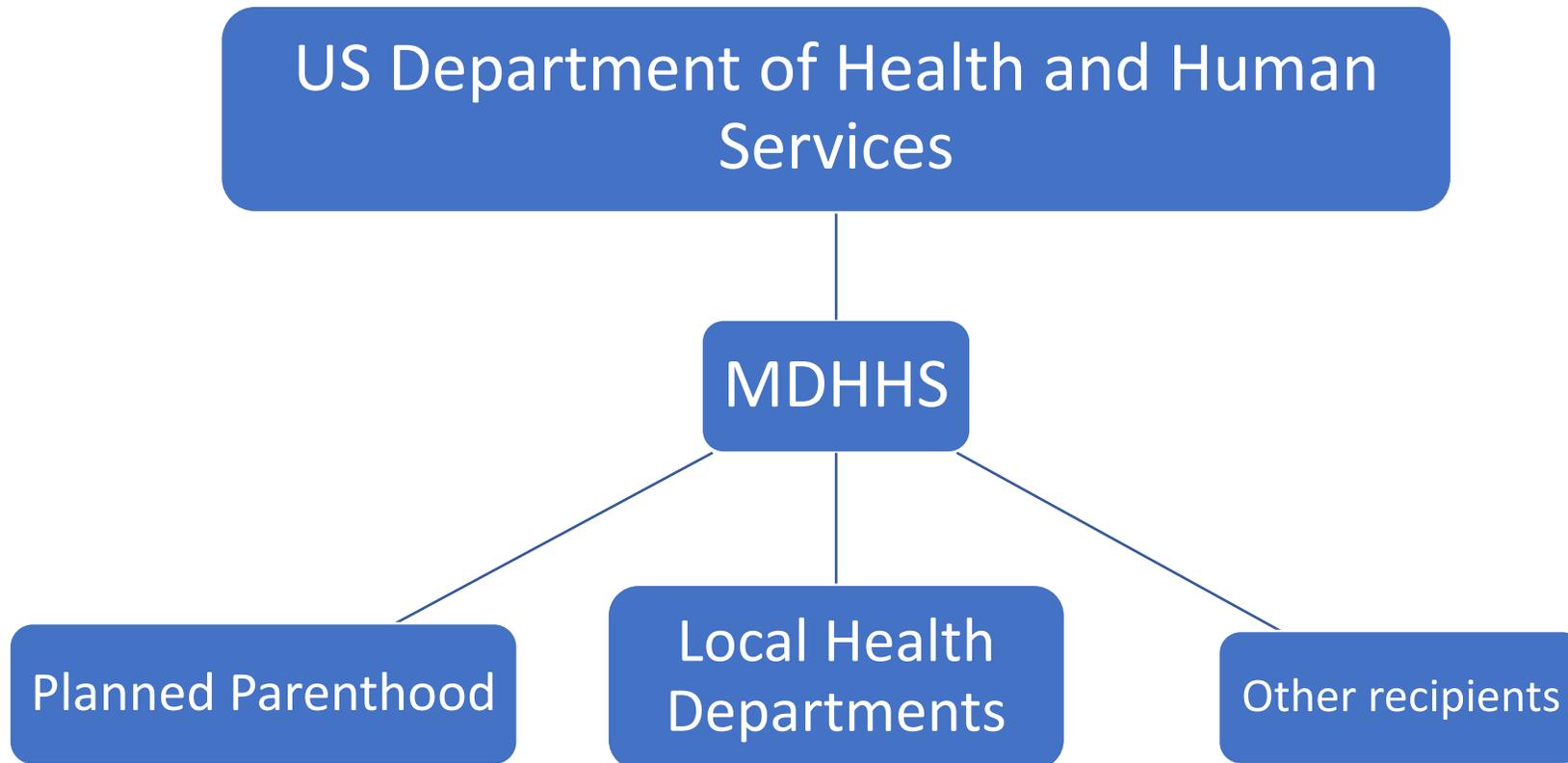
The presentation does not establish an attorney-client relationship. The information presented is not intended to serve as legal advice.



# Two Requests

- Provide examples of how you have experienced these issues
- Ask questions as they come to you

# Title X Requirements – Follow the Money





## Title X Background

- Family planning and related preventive health services
- Cannot “provide abortion as a method of family planning”



## Title X Services

- Related preventive health services
  - Patient education and counseling;
  - Cervical and breast cancer screening;
  - Sexually transmitted disease (STD) and human immunodeficiency virus (HIV) prevention education, testing, and referral; and
  - pregnancy diagnosis and counseling.



## Congressional Declaration of Purpose

- (1) [M]aking comprehensive voluntary family planning services readily available to **all persons** . . . .
- (5) [T]o develop and make readily available information (including educational materials) on family planning and population growth to **all persons** . . . .



## Focus on Youth

“[O]ne of the primary purposes of Title X— [is] to make family planning services readily available to teenagers . . . .”  
- *Planned Parenthood v. Heckler*, 712 F.2d 650, 660 (D.C. Cir. 1983)



## Title X - Maintaining Confidentiality

- “Family” can be an individual
- “Low-income family” can include minors from higher income families - 42 CFR 59.2



## Title X Requirements

- Title X projects **may not require written consent of parents or guardians** for the provision of services to minors.
- [M]ust . . . **encourage family participation**



# What is Consent?

- Required for **all** medical treatment
- Required by Title X, but not defined in Title X

## Common law consent

1. Voluntary
2. Informed
3. Understanding
4. Competent



# 1. Voluntary

Provide services “without . . . coercion . . . Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility.” 42 CFR 59.5

## 2. Informed

“Provide a broad range of acceptable and effective medically approved family planning methods” 42 CFR 59.5





## 3. Understanding

- Encouraging family participation – 2018 HHS Funding Announcement includes spouses
- Presenting information in a way that the recipient can comprehend

“Because you’re an FWD, you need to see your PCP before you get an IUD as your means of LARC. Make sure to follow up with your OB. Is that clear?”



## 4. Competent

Does the recipient have the capacity to consent?

- Mental disabilities
- Disease
- Age – minority



## When Minors Can Consent

- State law authorizing consent
- Emergencies
- Emancipation
- Title X confidentiality

“[T]he consent to the provision of medical or surgical care, treatment, or services . . . that is executed by a minor who is or **professes to be infected** with a sexually transmitted infection or HIV is valid and binding”  
MCL 333.5127



# Title X – A Conflict of Law



v.



Federal Law Reigns Supreme





## Title X Regulations - Confidentiality

All 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 CFR 59.11



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## Breaching confidentiality “as required by law”

- Title X providers “must **comply with State laws requiring** notification or the **reporting** of child abuse, child molestation, sexual abuse, rape, or incest.” – OPA Policy Notice 2014-01



# Why is Confidentiality Important?

- Teens prefer Title X clinics

“This preference is due partially to **the greater degree of teenage confidence in the confidentiality which can be assured by a family planning clinic . . . .**” - S.Rep. No. 102, 95th Cong., 1st Sess. 26 (1977)

- Better access = better outcomes



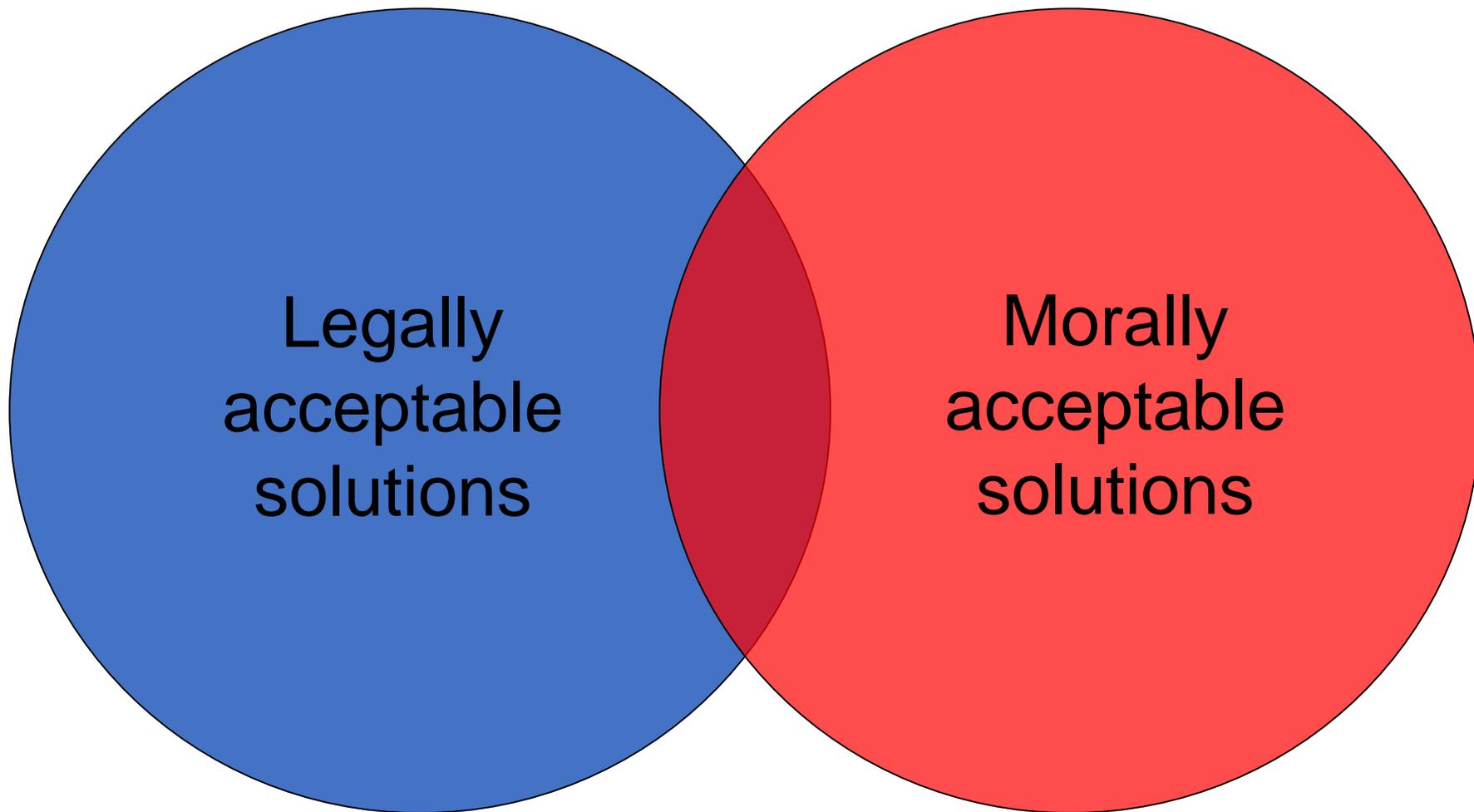
## Title X Confidentiality and the Law

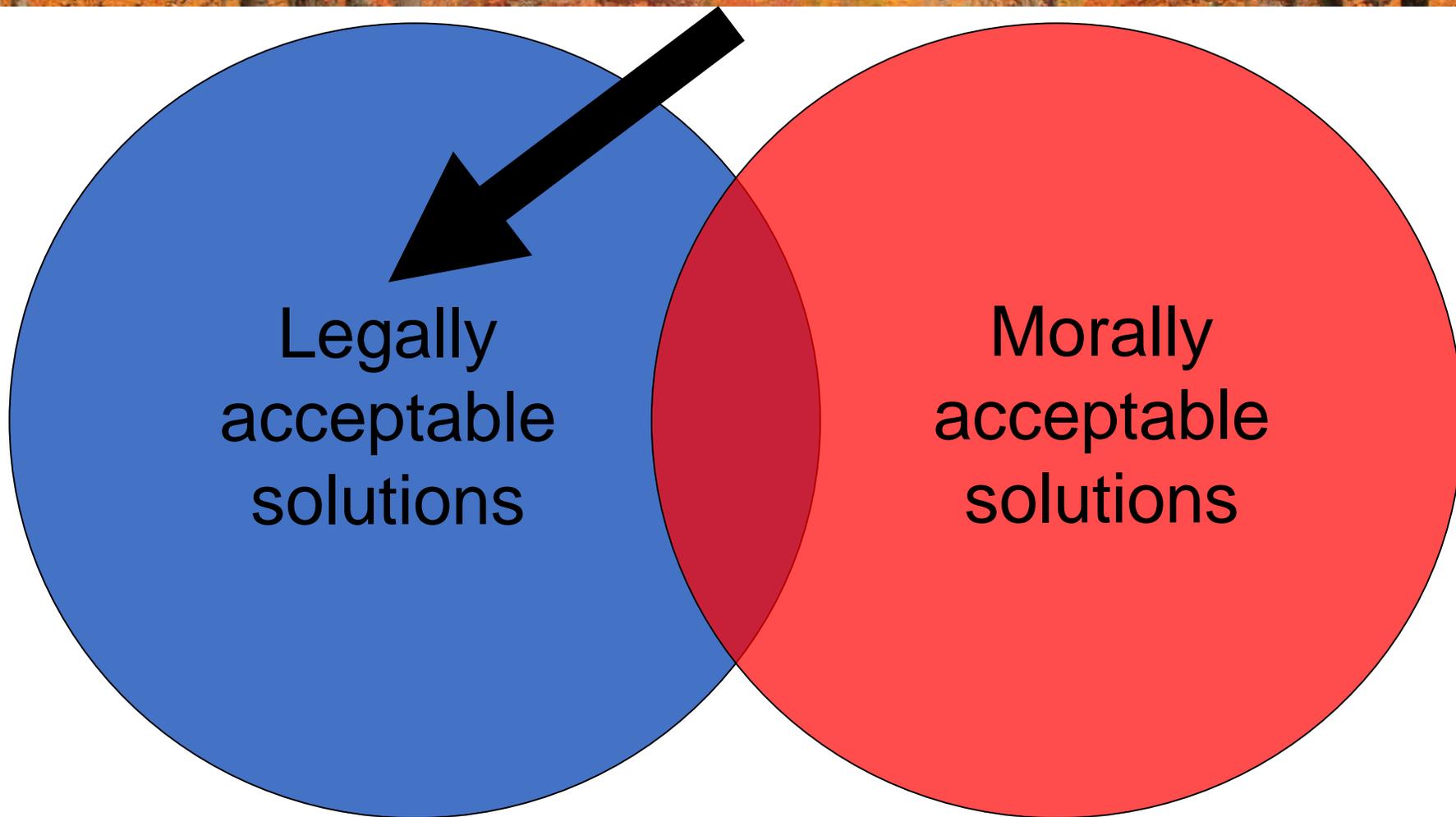
- *Planned Parenthood v. Heckler* (1982) – HHS Parental notification rule violated Title X
- Contrary to Congress's intent – confidentiality as a means of stemming teenage pregnancies

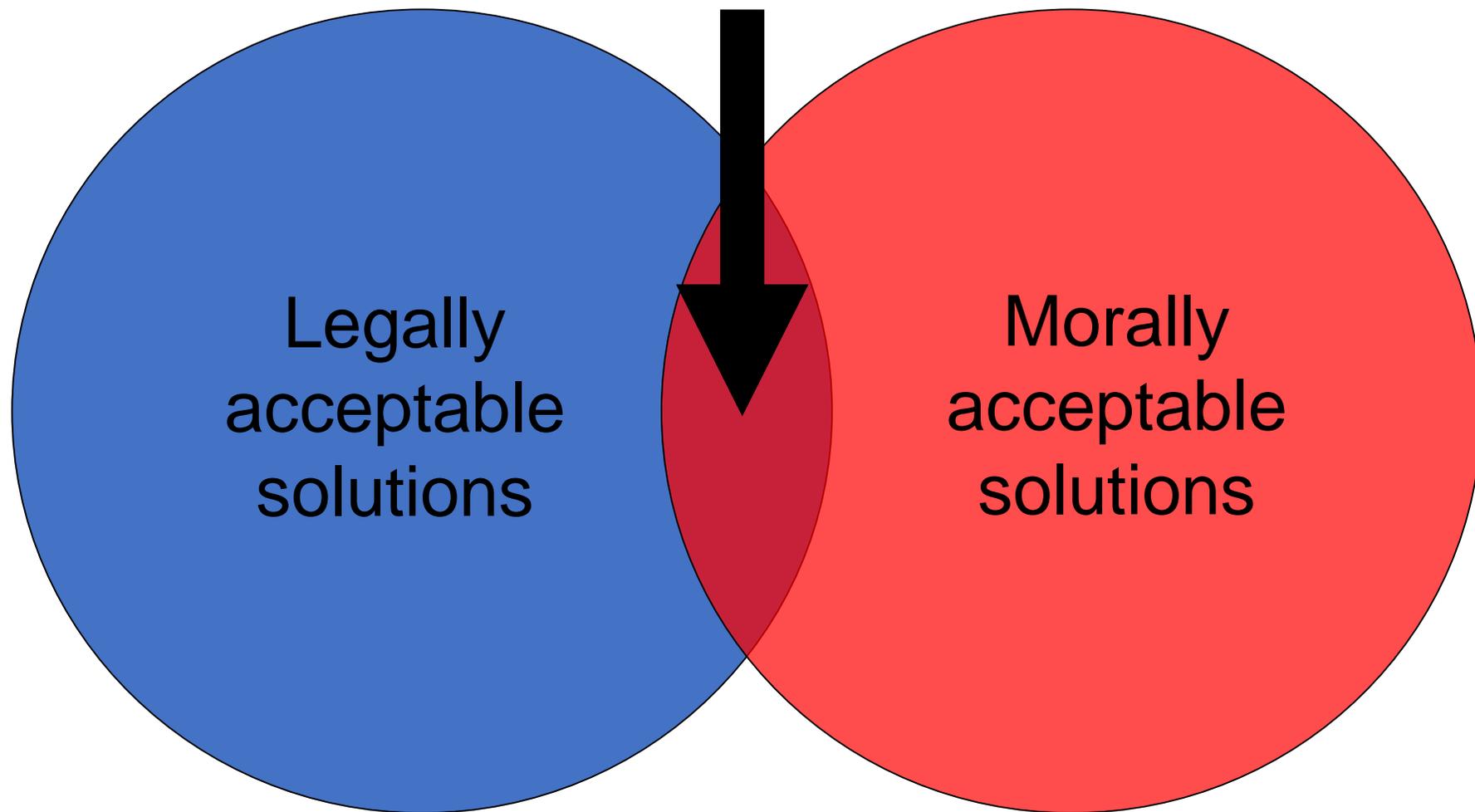


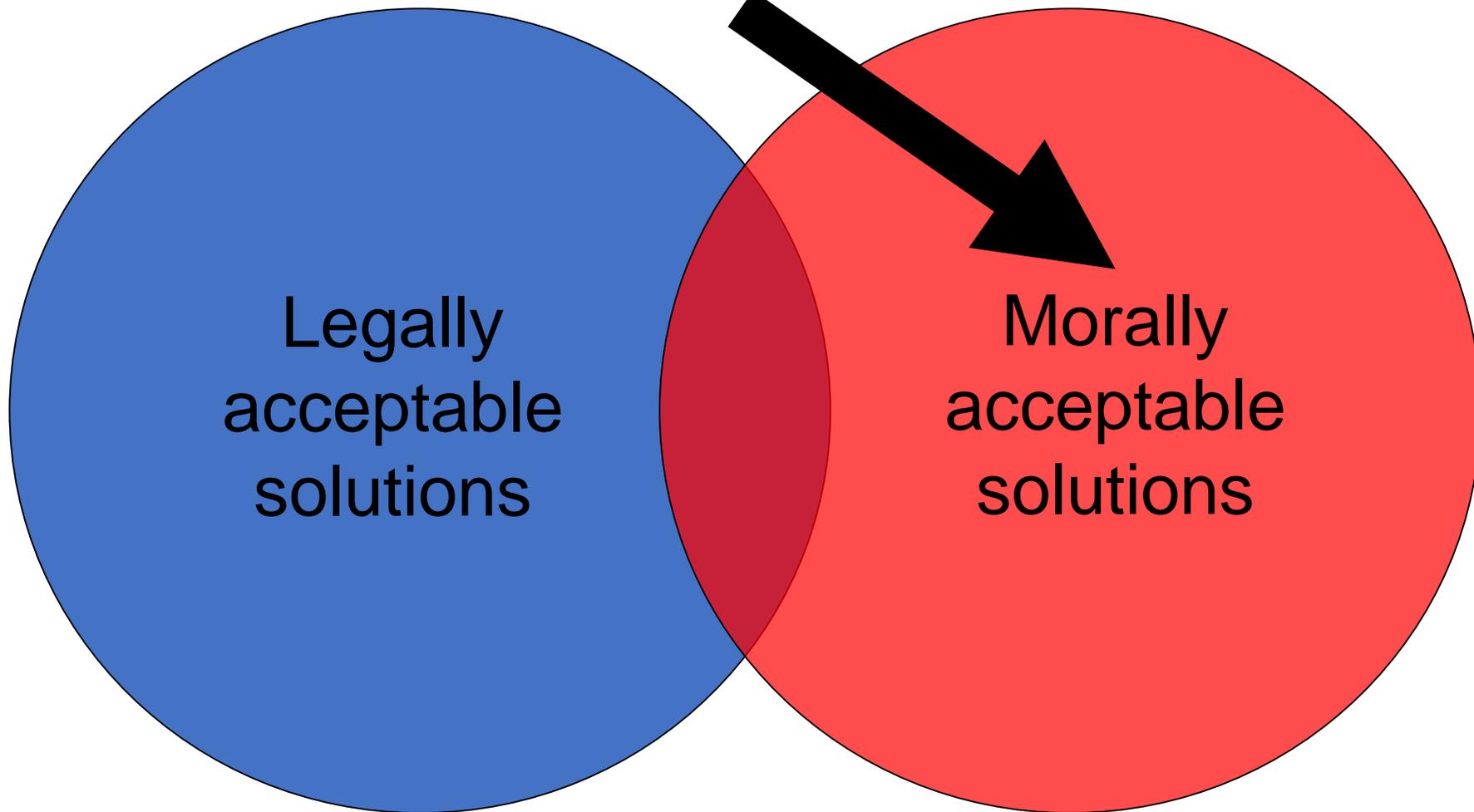
## Title X - Maintaining Confidentiality

- Explanation of benefits – disclosure risk
- Solutions
  - Alternative means of communication - required by HIPAA
  - Communication by phone - request a callback











- Do you know the name of your organization's attorney?
- Do you have their phone number handy?
- Do you know their dog's name?



## Attorney-Client Privilege

- Protected by the Child Protection Law
  - “Any legally recognized privileged communication **except** that between attorney and client . . . is abrogated and shall not constitute grounds for excusing a report otherwise required to be made . . .” MCL 722.631



## Don't have an attorney?

- Identify someone in your organization who can help
- Review the handout
- Choose to err on side of Title X or the Child Protection Law



# Mandatory Reporting Under the Child Protection Law

Must report if “reasonable cause to suspect” “abuse” or “neglect”



## What is “Reasonable Cause”?

- “Reasonable cause” = “reasonable suspicion”
  - Objective
  - Takes into account the whole picture



## What is “Reasonable Cause”?

- Statutory examples
  - Pregnancy in a child under 12 years old
  - STDs in child between 1 month and 12 years old
- Everything else is a judgment call.
  - Ask your lawyer/colleagues



## Penalties for failure to report

- Misdemeanor criminal charges (93 days in jail, fine of \$500)
- Civilly liable for all “damages proximately cause by the failure” to report
- Professional sanctions



## How to Report

**IMMEDIATE report by phone - 855-444-3911**

**Written report to CPS within 72 hours**



## The Challenge

- “The reporter is **not expected to investigate the matter, know the legal definitions** of child abuse and neglect, or even know the name of the perpetrator.” – MDHHS  
Mandatory Reporters Resource Guide
- Due to the confidentiality protections of Title X, you may *only* report if you are *required by law* to report



# Mandatory Reporting Factors

- Mandatory reporter
- Victim
- Harm
- Perpetrator



## Who Must Report

- “A physician, . . . physician's assistant, . . . medical examiner, nurse . . . .”
- “Any employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order.”



# Mandatory Reporting Definitions

Child: “[A] person under 18 years of age”



## Mandatory Reporting Definitions

Child abuse: “[H]arm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.”



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# Mandatory Reporting Definitions

Person Responsible for the child's health or welfare: “[A] parent, legal guardian, **person 18 years of age or older who resides for any length of time in the same home in which the child resides**, or . . . nonparent adult; or an owner, operator, volunteer, or employee of . . . [a child care org, adult foster care home, court-operated juvenile residential facility].”



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# Mandatory Reporting Definitions

Nonparent adult: “[A] person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:

- (i) Has substantial and regular contact with the child.
- (ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.
- (iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.”



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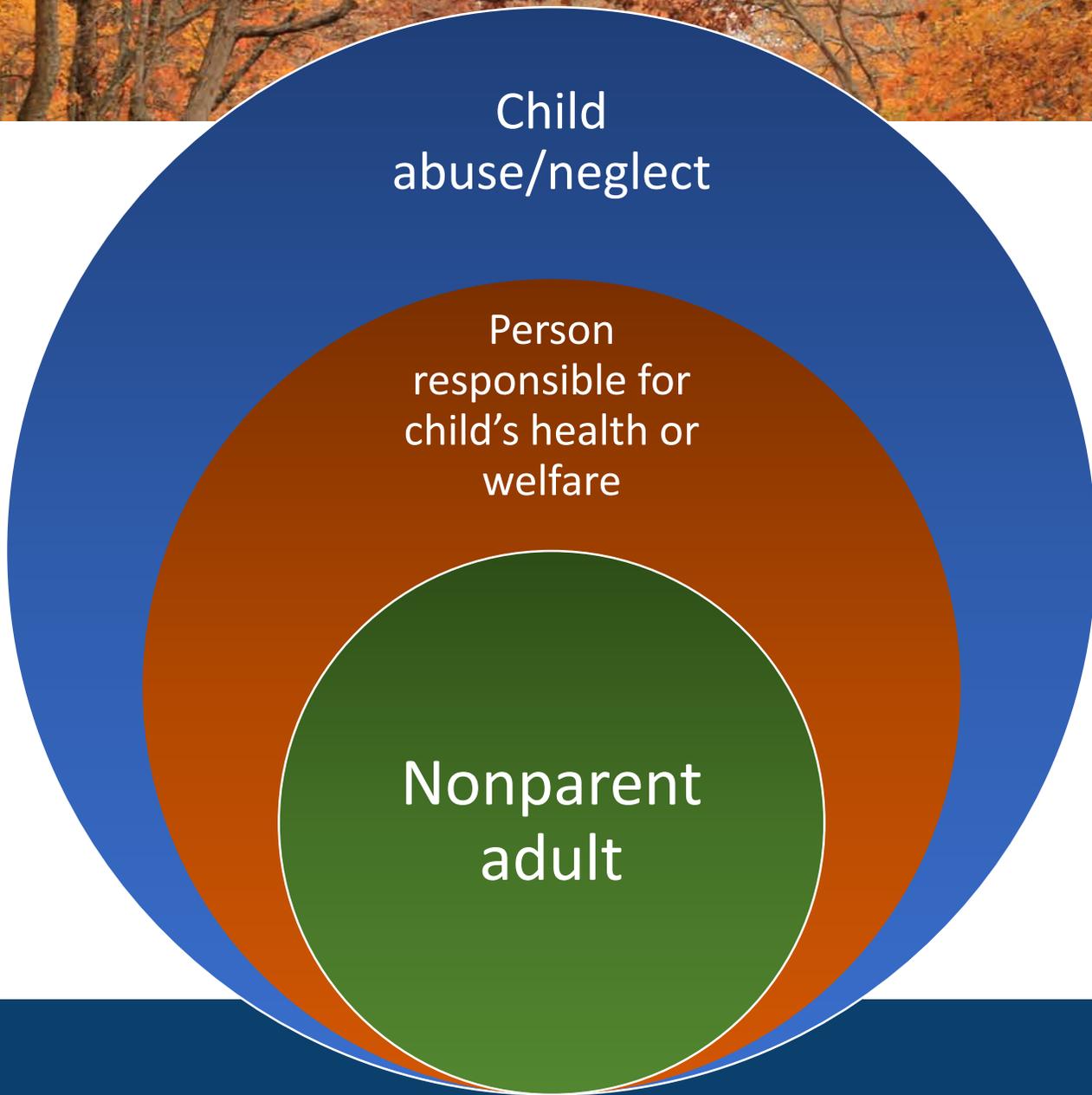
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“This act is designed to protect children when the persons who normally do the reporting are actually the persons responsible for the abuse, and thus unlikely to report it.”  
*People v. Beardsley*, 263 Mich. App. 408 (2004)



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- Negligent treatment including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or by the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.
- **Placing a child at an unreasonable risk to the child's health or welfare by failure** of the parent, legal guardian, or other person responsible for the child's health or welfare **to intervene to eliminate that risk** when that person is able to do so and has, or should have, knowledge of the risk.”



## Child Neglect – Examples

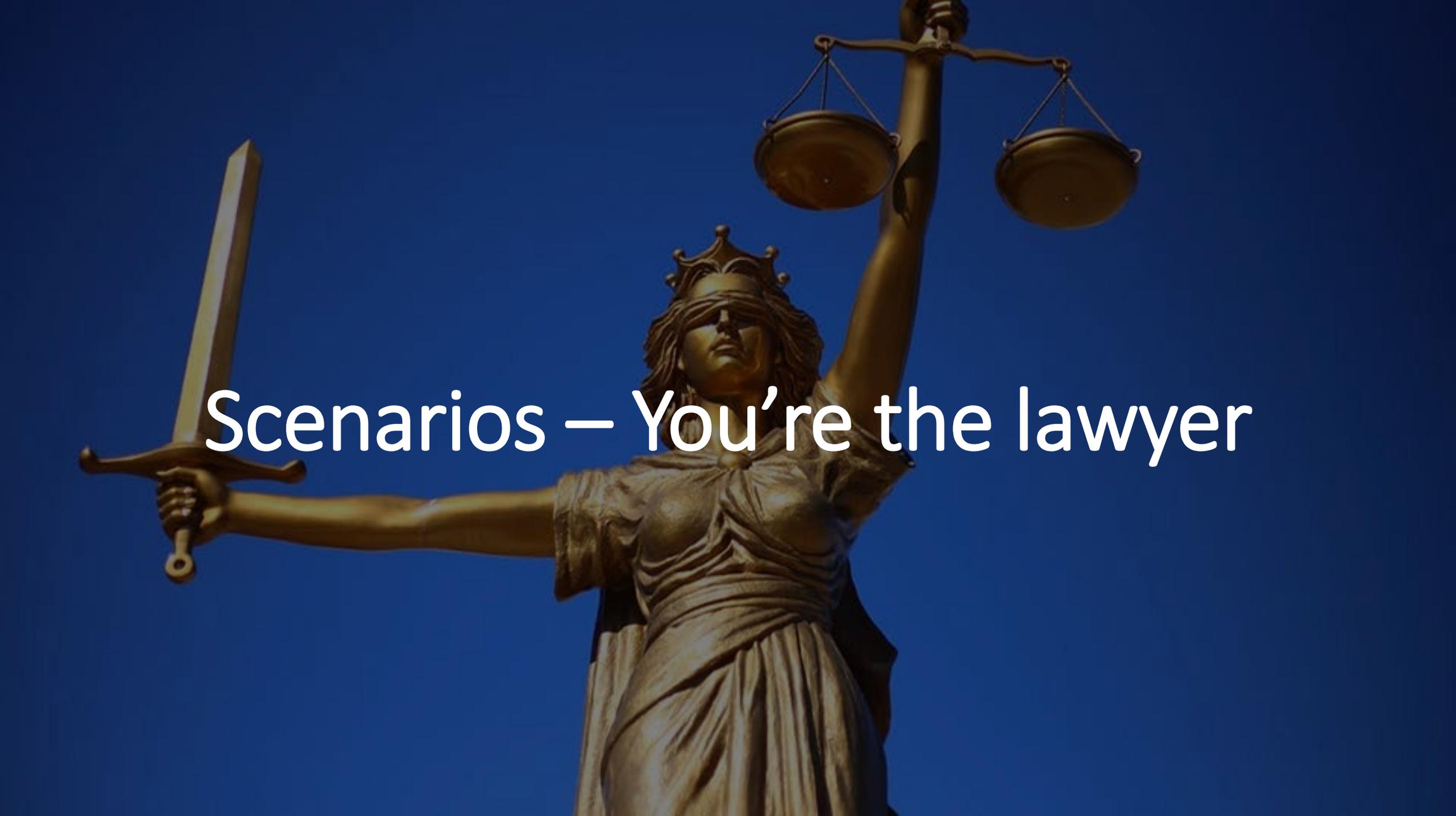
- Inadequate food/clothing/shelter
- Failure to seek/follow through on medical care, resulting in harm
- NOT child neglect – failure to vaccinate



## Public Health Requirements

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- Communicable disease diagnosis
  - Gonorrhea, HIV/AIDS, Chlamydia, Syphilis
- Provide access for disease investigations
- Provide info to LHDs for partner notification

A golden statue of Lady Justice, blindfolded, holding a sword and scales of justice, set against a blue background. The statue is the central focus, with its right arm raised holding a sword and its left arm raised holding a pair of scales. The background is a solid, deep blue color.

Scenarios – You're the lawyer



## Scenario 1

- 17 year old being abused by adult teacher
- You reported to CPS

**Can you tell the parent?**

NO – What can you do?



## Scenario 2

- 14 year old says father fondled her breasts
- You speak to the father, who credibly states that if any touching occurred, it was accidental and non-sexual

**Must you report?**

YES – *People v. Caviaiani* 172 Mich. App. 706 (1988)



## Scenario 3

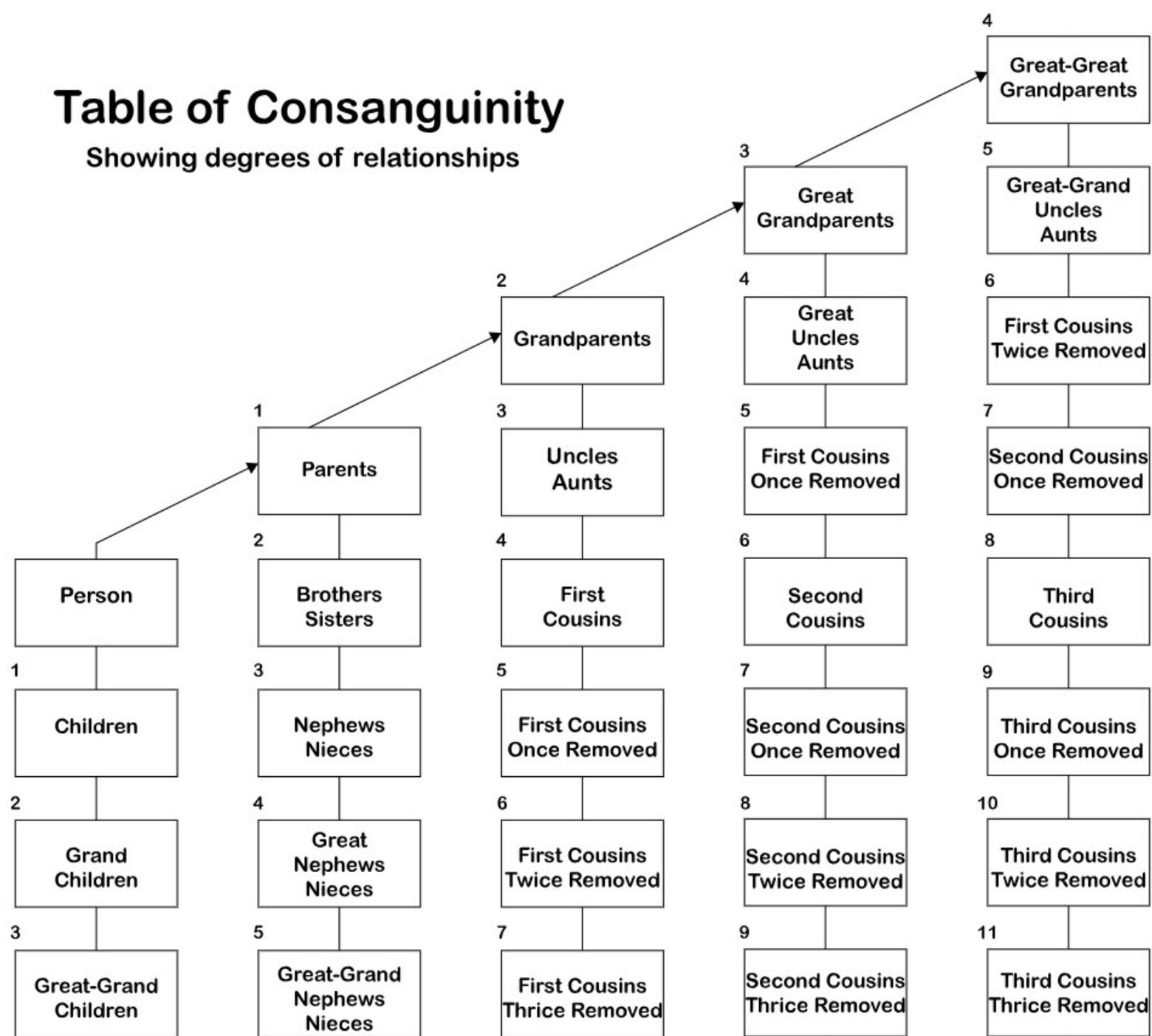
- 15 year old reveals that his aunt, who lives down the street, sexually assaulted him

**Is a mandatory report required?**

NO – Not without more information

# Table of Consanguinity

Showing degrees of relationships



A dark, stormy sky with multiple bright lightning bolts striking down. The scene is dimly lit, with the lightning providing the primary light source. The background shows a dark silhouette of a landscape with hills or mountains.

# Lightning Round

Hands up = YES

Hands down = NO



## Scenario 4

### Sexual Relations–Without Parental Knowledge

- 12 year old with 13 year old schoolmate
- 15 year old with 19 year old housemate
- 16 year old with 45 year old neighbor
- 16 year old with 19 year old family friend
- 17 year old with 45 year old uncle



## Scenario 4

### Sexual Relations—Without Parental Knowledge

- 12 year old with 13 year old schoolmate - NO
- 15 year old with 19 year old housemate
- 16 year old with 45 year old neighbor
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# Scenario 5

## Sexual Relations – **WITH** Parental Knowledge

- 12 year old with 13 year old schoolmate
- 15 year old with 19 year old housemate
- 16 year old with 45 year old neighbor
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## Scenario 5

### Sexual Relations – **WITH** Parental Knowledge

- 12 year old with 13 year old schoolmate - Probably not
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- 15 year old with 19 year old housemate - YES
- 16 year old with 45 year old neighbor - Possibly
- 16 year old with 19 year old family friend - YES
- 17 year old with 45 year old uncle - Almost certainly yes



## Scenario 6

- 15 year old patient reveals he was sexually assaulted by an EMT, who is also a mandatory reporter.

**Is a mandatory report required?**

NO – Doe v. Doe 289 Mich. App. 211 (2010)



## Scenario 7

- You, a mandatory reporter, perpetrated an act of abuse or neglect.

**Are you required to submit a mandatory report about your own conduct?**

Surprisingly, NO – *Gohl v. Turbiak*, 2018 WL 2067796 (2018)



## Scenario 8

- 13 year old being sexually abused by adult neighbor
- Patient says she doesn't want you to tell parents

**Can you speak to patient's parents?**

NO – only individual can authorize release

**Is a mandatory report required?**

NO – Not a person covered by MCL 722.622



## Scenario 9

- 17 year old is dating 19 year old teacher's aide
- Relationship is voluntary, but 19 YO is prompting 17 YO to send sexually explicit photos via Snapchat

**Is a mandatory report required?**

YES – listed person in MCL 722.622(g)



## Scenario 10

- 11 year old requests contraceptives.

**Is a mandatory report required?**

Maybe. Ask your lawyer.



## Scenario 11

- 11 year old requests contraceptives
- Mom brought daughter to clinic, but stays in waiting room
- Daughter will not consent to sharing treatment info with mom

**Can you tell mom?**

NO – But what can you do?



## Scenario 12

- Patient, newly 18, reveals sexual abuse by parent, which occurred 6 months ago

### **Duty to report?**

NO - AG Opinion # 6934 (1997) – CPL protects children, not adults. Is another child at risk?



## Scenario 13

- 16 year old reveals physical abuse by parent
- You reported that same day
- On follow-up visit, 16 year old reveals additional information about parent's abuse

**Duty to report again?**

YES



## Scenario 14

- 17 year old becomes emancipated. Can live alone, enter contracts, has adult rights
- Reveals sexual relationship with their adult teacher

### **Duty to report?**

YES – No distinction made in CPL for emancipation



## How to Handle Edge Cases

- Familiarize yourself with the CPL and mandatory reporter guides
- Talk to your attorney or colleagues
- Weigh the risks
- Choose a path



Questions?

