

**NORTH CAROLINA LAWS REQUIRING REPORTS OF  
CHILD ABUSE AND NEGLECT, MISSING CHILDREN, AND CERTAIN CRIMES**

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Part 1. Reports to the Department of Social Services: Child Abuse, Neglect, & Dependency

Any person or institution who has cause to suspect that a child under the age of 18 is abused, neglected, or dependent must make a report to the county department of social services (DSS) or other agency responsible for child welfare services (such as a consolidated human services agency). G.S. 7B-301.<sup>1</sup>

***1.a. Who must make a report?***

North Carolina law requires any person with cause to suspect that a child under 18 is abused, neglected, or dependent to make a report. This is called universal mandated reporting. Some states require only certain professionals to make reports, but in North Carolina the duty to report extends to everyone.<sup>2</sup>

***1.b. When must a report be made?***

A report must be made when a person has cause to suspect that a child under the age of 18 is an abused juvenile, a neglected juvenile, or a dependent juvenile as those terms are defined in G.S. 7B-101.

“Abused juvenile” means a child under age 18 whose parent, guardian, custodian, or caretaker does any of the following:

- Inflicts or allows to be inflicted upon the child a non-accidental, serious physical injury
- Creates or allows to be created a substantial risk of non-accidental, serious physical injury
- Uses or allows to be used upon the child cruel or grossly inappropriate procedures or devices to modify behavior
- Commits, permits, or encourages the rape of the child or specific other sexual crimes in which the child is a victim
- Creates or allows to be created serious emotional damage to the child
- Encourages, directs, or approves of the child’s delinquent acts involving moral turpitude,
- Commits or allows to be committed an offense of human trafficking, involuntary servitude, or sexual servitude of the child<sup>3</sup>

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<sup>1</sup> G.S. 7B-301 also requires a report to DSS when a person suspects that the death of a child under the age of 18 is due to maltreatment. Reportable child deaths will not be discussed further in this handout, which is focused on reports related to living children who are in danger.

<sup>2</sup> The only exception to the universal mandate is for attorneys who acquire the information through privileged communications with clients they are representing in abuse, neglect, or dependency cases. G.S. 7B-310.

<sup>3</sup> In 2013, the North Carolina legislature amended state laws to provide that children under the age of 18 are immune from prosecution for the crime of prostitution. When it is discovered that a person suspected of or charged with prostitution is a minor, the minor must be taken into temporary protective custody and reported to DSS by the law enforcement officer who takes the minor into custody. S.L. 2013-268, sec. 5. This amendment is

“Neglected juvenile” means a child under age 18 who:

- Does not receive proper care, supervision, or discipline from his or her parent, guardian, custodian, or caretaker, or
- Has been abandoned, or
- Is not provided necessary medical or remedial care, or
- Lives in an environment injurious to the child’s welfare, or
- Has been placed for care or adoption in violation of the law.

“Dependent juvenile” means a child who needs assistance or placement because:

- The child has no parent, guardian, or custodian responsible for his or her care or supervision, or
- The child’s parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

Each of these definitions refers to actions or omissions by a child’s parent, guardian, custodian, or caretaker. When a child is harmed by the actions or omissions of someone who is *not* a parent, guardian, custodian, or caretaker, the case may not be within DSS’s jurisdiction and the report may be screened out—that is, not accepted for further assessment or investigation.<sup>4</sup>

The terms parent, guardian, and custodian are not further defined in law, but they are commonly understood. A parent is a child’s biological or adoptive parent.<sup>5</sup> A guardian is someone appointed by a court to have the care, custody and control of the child, or to arrange for an appropriate placement for the child. A custodian is a person or agency with legal custody of a child.

The term “caretaker” is defined in G.S. 7B-101(3). Under this statutory definition, a caretaker is someone other than a parent, guardian, or custodian who is responsible for a child’s health and welfare in a residential setting. The term caretaker includes a stepparent, a foster parent, an adult member of a child’s household, an adult relative who has been entrusted with the child’s care, people who supervise children in residential child-care facilities or schools (such as cottage parents or house parents), and people who care for children in institutions or schools operated by the state Department of Health and Human Services. The term does *not* include child day care providers, school teachers, coaches, club leaders, or others with similar temporary caretaking responsibility for children.<sup>6</sup>

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consistent with a national trend toward treating minors engaged in prostitution as victims rather than criminal offenders. Sara DePasquale, *2013 Legislation Affecting Abuse, Neglect, Dependency, and Termination of Parental Rights*, *Juvenile Law Bulletin* No. 2013/03 (October 2013).

<sup>4</sup> Some cases that are screened out may be referred to local law enforcement. Under G.S. 7B-307, DSS is required to notify local law enforcement and the district attorney when it receives information that a child may have been physically harmed in violation of any criminal statute by any person other than the parent, guardian, custodian, or caretaker.

<sup>5</sup> Stepparents are included in the statutory definition of “caretaker.”

<sup>6</sup> The term “caretaker” used to include child day care providers. Legislation in 2015 removed child day care providers from the definition and transferred responsibility for investigating child maltreatment in those facilities to the state agency that oversees them (Division of Child Development and Early Education, Department of Health and Human Services). S.L. 2015-123 (S 578).

**1.c. How is a report made and what must it include?**

A report may be made orally, in person or by telephone, or in writing. A reporter must give the following information (to the extent that he or she has or knows the information, the law acknowledges that some of the information may be unknown):

- Name, address, and age of the child
- Name and address of the child’s parent, guardian, or caretaker
- Names and ages of other children under age 18 in the same home
- Present whereabouts of the child if not at the home address
- Nature and extent of any injury or condition resulting from the abuse, neglect, or dependency
- Any other information the reporter believes may be useful in establishing the need for protective services or court intervention<sup>7</sup>

**1.d. Some of the information that must be included in a report is ordinarily kept confidential. Does making a report violate HIPAA or other medical confidentiality laws?**

No. The HIPAA privacy rule specifically permits reports of child abuse or neglect that are made to a governmental entity such as a department of social services that is authorized by law to receive the report.<sup>8</sup> State medical confidentiality laws also specifically allow these reports to be made, even if they involve the disclosure of information that would otherwise be protected by confidentiality laws or provider-patient privileges.<sup>9</sup> The reporter does not need the permission of the child or the child’s parent to make the report.

**1.e. Can a person be held liable for making a report?**

A person who makes a report in good faith is immune from any liability that might otherwise arise. The reporter’s good faith is presumed, which means that the burden of showing bad faith is on the person who wants to hold the reporter liable.<sup>10</sup>

**1.f. Is there a penalty for failing to make a required report?**

A prosecutor may charge a person with a class 1 misdemeanor if (1) the person knowingly or wantonly fails to make a required report, or (2) the person knowingly or wantonly causes another person to fail to make a required report.<sup>11</sup>

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<sup>7</sup> G.S. 7B-301.

<sup>8</sup> 45 C.F.R. 164.512(b). HIPAA also allows disclosures of protected health information when the disclosure is required by a state law. 45 C.F.R. 164.512(a). This provision may come into play if a DSS seeks additional information about a child who was the subject of a report. Under G.S. 7B-302(e), DSS is permitted to demand confidential information that it determines it needs for a child protective services assessment or investigation, or for the provision of child protective services. Disclosure of information pursuant to such a demand is allowed under HIPAA because it is required by state law.

<sup>9</sup> Under G.S. 7B-309, a person who makes a report in good faith is immune from liability for breaching confidentiality. G.S. 7B-310 makes clear that the reports must be made, even if the information is otherwise privileged. See also G.S. 8-53.1 (neither the physician-patient privilege nor the nurse-patient privilege are grounds for excluding evidence of child abuse or neglect in court proceedings).

<sup>10</sup> G.S. 7B-309.

<sup>11</sup> G.S. 7B-301.

## Part 2: Reports to Law Enforcement: Disappearance of a Child Under Age 16 (Caylee’s Law)

The disappearance of a child under the age of 16 must be reported to law enforcement. The parent or other person responsible for providing care or supervision of the child must make the report within 24 hours of the disappearance. In addition, any person who reasonably suspects that a child has disappeared and is in danger must make a report within a reasonable time. G.S. 14-318.5.<sup>12</sup>

### ***2.a. Who must make a report?***

A parent or other person who is responsible for providing care or supervision for a child under the age of 16 must report the child’s disappearance to law enforcement. Other persons are required to report to law enforcement only when they reasonably suspect that a child has disappeared and may be in danger.

### ***2.b. When must a report be made?***

A parent or other person responsible for the child’s supervision must make a report when a child under the age of 16 has disappeared. The term “disappearance of a child” is defined in the law as “[w]hen the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period.”

A person who is not the parent or person responsible for the child’s supervision must report to law enforcement when two conditions are met. First, the person must reasonably suspect the child has disappeared according to the law’s definition—that is, the person must reasonably suspect that the parent or other person responsible for the child’s supervision does not know where the child is and has not had contact with the child for 24 hours. Second, the person must reasonably suspect that the child is in danger. When these conditions are met, the report to law enforcement must be made within “a reasonable time.”<sup>13</sup>

### ***2.c. How is a report made and what must it include?***

The law does not specify how the report must be made, to which law enforcement agency it must be made, or what it must include. Given the urgency of the circumstances leading to such reports, an oral report by telephone to a local law enforcement agency may be the wisest course. When the report is made by someone other than a parent or person responsible for the child’s supervision, the report probably should include the child’s name, age if known (or a statement of belief that the child is under age 16 if not known), address if known, and the reasons for suspecting the child has disappeared and is in danger. Remember that the “disappearance” means that the parent or other person in charge of supervising the child does not know where the child is and has not had contact with the child for at least 24 hours.

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<sup>12</sup> This law is also known as “Caylee’s law.” See S.L. 2013-52.

<sup>13</sup> G.S. 14-318.5(c). This provision does not require teachers to report a child’s absence from school, so long as the absence is properly reported under the usual school laws and procedures. G.S. 14-318.5(e).

**2.d. Does making a report violate HIPAA or other medical confidentiality laws?**

Any report made by a health care provider under this law will almost certainly require the disclosure of protected health information. The HIPAA Privacy Rule specifically permits disclosures of protected health information that are required by law.<sup>14</sup> Reports under this law are required, so the disclosure of information is permitted so long as it is limited to what is required by the law compelling the report. As the previous question notes, the law does not specify the contents of the report, but I believe the information I outlined in the answer to the previous question is the amount that would be necessary to fulfill the duty to make the required report.<sup>15</sup> State laws also expressly permit the disclosure of protected health information to law enforcement when the disclosure is allowed by HIPAA.<sup>16</sup> The reporter does not need the permission of the child or the child's parent to make the report.

**2.e. Can a person be held liable for making a report?**

A person who makes a report in good faith is immune from any liability that might otherwise arise. The reporter's good faith is presumed, which means that the burden of showing bad faith is on the person who wants to hold the reporter liable.<sup>17</sup>

**2.f. Is there a penalty for failing to make a required report?**

If a parent or other person who is responsible for a child's supervision knowingly or wantonly fails to report the child's disappearance, the parent/other responsible person may be charged with a Class I felony.<sup>18</sup> If a person who is not the child's parent or other person responsible for the child's supervision fails to report his or her reasonable suspicion that the child has disappeared and is in danger, the person may be charged with a class 1 misdemeanor.<sup>19</sup>

A health care provider who concludes that a report is required under this new section almost certainly needs to make a report to DSS as well. If you have reasonable cause to suspect a child has disappeared and is in danger, then you likely have cause to suspect the child is a neglected juvenile as that term is defined by state law.<sup>20</sup>

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<sup>14</sup> 45 C.F.R. 164.512(a) (disclosures that are required by law generally); 164.512(f)(1) (disclosures to law enforcement that are required by law).

<sup>15</sup> A law enforcement officer may request additional information after receiving such a report. If and when an officer specifically inquires about the child as a missing person, all of the following information may be released: name, address, date and place of birth, social security number, ABO blood type and rh factor, type of injury (if applicable), date and time of treatment, date and time of death (if applicable), and distinguishing physical characteristics, including height, weight, sex, race, hair color, eye color, and the presence or absence of facial hair, scars, and tattoos. 45 C.F.R. 164.512(f)(2); G.S. 90-21.20B(a).

<sup>16</sup> G.S. 90-21.20B(a); G.S. 8-53.1.

<sup>17</sup> G.S. 14-318.5(g).

<sup>18</sup> G.S. 14-318.5(b).

<sup>19</sup> G.S. 14-318.5(c). This provision does not require that the failure to report be made knowingly or wantonly.

<sup>20</sup> G.S. 7B-101, see also page 1 of this handout.

### Part 3. Reports to Law Enforcement: Specific Injuries and Illnesses

A physician or administrator of a health care facility must make a report to local law enforcement authorities when a patient of any age is treated for certain injuries or illnesses that may have been caused by criminal acts. In addition, a physician or administrator of a health care facility must make a report to local law enforcement authorities when a patient under the age of 18 is treated for a recurrent illness or serious physical injury that appears to be due to nonaccidental trauma. G.S. 90-21.20.

#### **3.a. Who must make a report?**

This law gives the duty to make reports to physicians and administrators of health care facilities, and the duty to report applies only to individuals that the physician or facility treats as patients. If a person in a health care facility who is not a physician or administrator becomes aware that a patient has one of the injuries or illnesses that must be reported (see next question), he or she should notify the supervising physician or the facility administrator so that the required report can be made.

#### **3.b. When must a report be made?**

Note that there are two distinct categories of reports that are required under this law: (1) reports pertaining to a patient of any age who has an injury or illness that is required to be reported, and (2) reports pertaining only to children under the age of 18 who have a recurrent illness or serious physical injury apparently caused by nonaccidental trauma.

Category (1) requires that a report be made to local law enforcement when a patient of any age has any of the following wounds, injuries, or illnesses:

- Gunshot wound or any other injury caused or apparently caused by a firearm
- Illness caused by poisoning
- A wound or injury caused or apparently caused by a knife or sharp instrument, if it appears to the treating physician that a criminal act was involved
- A wound, injury or illness causing grave bodily harm or grave illness, if it appears to the treating physician that the wound, injury, or illness was caused by a criminal act of violence

The report must be made “as soon as it becomes practicable before, during, or after completion of treatment.”<sup>21</sup>

Category (2) requires that a report be made to local law enforcement when a child under the age of 18 has a recurrent illness or serious physical injury that, in the physician’s professional judgment, is the result of nonaccidental trauma. The report must be made “as soon as it becomes practicable before, during, or after completion of treatment.” The law specifies that the report to law enforcement must be made *in addition to* any report that is made to DSS. In other words, a report to DSS alone does not suffice—the physician or facility administrator must also report to local law enforcement.<sup>22</sup>

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<sup>21</sup> G.S. 90-21.20(a) and (b).

<sup>22</sup> G.S. 90-21.20(c1).

### ***3.c. How is a report made and what must it include?***

Reports must be made to the local law enforcement agency responsible for the location where the facility is located. The law specifies that the report should be made to municipal police officials if the facility is in a municipality. If the facility is not in a municipality the report should be made to the sheriff's office.<sup>23</sup> The law does not specify how reports should be made, but given the speed with which reports are required—as soon as practicable before, during or after treatment—an oral report by telephone is probably the wisest course of action.

Category 1 reports must include all of the following information that is known: the patient's name, age, sex, race, residence or present location, and the character and extent of the patient's illness or injuries.<sup>24</sup> The law does not specify the information that must be included in a Category 2 report, but it would make sense to include the same information.

### ***3.d. Does making a report violate HIPAA or other medical confidentiality laws?***

Any report made under this law will require the disclosure of protected health information. The HIPAA Privacy Rule specifically permits disclosures of protected health information that are required by law.<sup>25</sup> Reports under this law are required, so the disclosure of information is permitted so long as it is limited to what is required by the law compelling the report. State laws also expressly permit the disclosure of protected health information to law enforcement when the disclosure is allowed by HIPAA.<sup>26</sup> The reporter does not need the permission of the child or the child's parent to make the report.

### ***3.e. Can a person be held liable for making a report?***

A physician or health care facility administrator who makes a report in good faith is immune from any liability that might otherwise arise.<sup>27</sup>

### ***3.f. Is there a penalty for failing to make a required report?***

Unlike the other laws described in this document, this reporting law does not provide a penalty for failing to make a required report. It is nevertheless possible that liability for failing to report could arise, depending on the circumstances.

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<sup>23</sup> G.S. 90-21.20(a).

<sup>24</sup> G.S. 90-21.20(c).

<sup>25</sup> 45 C.F.R. 164.512(a) (disclosures that are required by law generally); 164.512(f)(1) (disclosures to law enforcement that are required by law).

<sup>26</sup> G.S. 90-21.20B(a); G.S. 8-53.1.

<sup>27</sup> G.S. 90-21.20(d).