

**Mandatory Reporting of Child Abuse and Neglect
Overview of North Carolina Law**

Jill Moore, JD, MPH April 2018

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Successful completion of the Live or Archived webinar for CNE contact hours includes:

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Disclosures and Conflict of Interest

The following people have no conflict of interest and no relevant financial, professional or personal relationships to disclose.

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Learning Objectives

1. Describe when NC law requires a report to the department of social services:
 - a. For a minor child (under age 18) who is abused, neglected or dependent.
 - b. For an adult (age 18 or older) who is disabled and in need of protective services.
2. Identify the injuries and illnesses that must be reported to law enforcement under NC law.
3. Explain when a report is required to law enforcement under Caylee's law.

Overview: Mandatory Reports

- Potential recipients of mandatory reports:
 - Social services (DSS)
 - Law enforcement (LE)
- Different mandatory reporting laws for:
 - Adults (age 18 and older)
 - Minors (under age 18)
 - Missing children (under age 16 & “disappeared”)

Overview: Reports vs. Confidentiality



- Confidentiality laws allow health care providers (HCPs) to disclose confidential information to make a mandatory report, but they also:
- Limit when a HCP may make the report (only when law requires it)
 - Limit to whom information may be disclosed (lawful recipient of mandatory report)
 - Limit amount of information that may be disclosed (only amount law requires)

CHILD ABUSE, NEGLECT, OR DEPENDENCY

Who must be reported?

- Children and adolescents under age 18 who are abused, neglected, or dependent

To whom is report made?

- DSS

Legal Duty to Report



- Any person or institution who has cause to suspect that a child under age 18 is abused, neglected, or dependent must make a report to the county department of social services (DSS).

G.S. 7B-301

Scope of DSS Authority



- In NC, departments of social services are authorized to respond to reports that allege abuse or neglect by a child's parent, guardian, custodian, or caretaker

Who is a caretaker?

- Someone other than a parent, guardian, or custodian who is responsible for a child in a residential setting

Caretaker	Not a caretaker
<ul style="list-style-type: none"> Stepparent Foster parent Adult member of child's household Adult relative entrusted with child's care Potential adoptive parent during a visit or trial placement People who supervise children in residential facilities or schools 	<ul style="list-style-type: none"> School teachers Coaches Club leaders Child day care Others with similar temporary caretaking responsibility for children

Legal Duty to Report



- Any person or institution who has cause to suspect that a child under age 18 is abused, neglected, or dependent must make a report to the county department of social services (DSS).

G.S. 7B-301

What is abuse?

Parent, guardian, custodian, or caretaker:

- Inflicts or allows non-accidental serious physical injury
- Creates or allows substantial risk of non-accidental serious physical injury
- Uses or allows cruel or grossly inappropriate behavior modification methods
- Creates or allows serious emotional damage
- Commits, permits, or encourages rape or other sexual crimes against child
- Encourages, directs or approves of certain delinquent acts
- Engages in or permits another to use the child in human trafficking, involuntary servitude, or sexual servitude

Examples: Abuse

- The parent of a 4-year-old hit the child with a hairbrush, causing deep bruises that persisted for more than a week.
- A parent's disciplinary techniques included requiring a child to sleep outside, binding the child to a tree, and forcing the child to pray at gunpoint.
- An infant had multiple rib fractures that parents could not explain.
- The parent of an adolescent girl fondled her breasts and genitals.
- An older sibling repeatedly sexually abused a younger sibling. Parents were aware this was occurring and took no action.
- A parent drove while intoxicated with the child in the car.

What is neglect?

A child under the age of 18:

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

Examples: Neglect

- A parent's corporal punishment left injuries that did not rise to the level of "serious physical injury" required for an abuse determination, but the child was determined to be neglected.
- Children of a parent with an opiate dependency were locked out of their home for long periods, frequently missed school, and did not receive necessary medical care.
- A caretaker used and sold drugs from the child's home and physically abused the child's parent in the child's presence.
- A newborn tested positive for cocaine and the mother refused to cooperate with DSS or agree to a safety plan.
- A parent maintained a filthy home environment, left the child home alone for several days, and was often under the influence of drugs when home with the child.

What is a dependent child?

A child under the age of 18:

- Who has no parent, guardian, or custodian responsible for the child's care or supervision; or
- Whose parent, guardian, or custodian is unable to provide for care or supervision and lacks an appropriate alternative child care arrangement.

When is duty to report triggered?

Duty & role of reporter

- Duty to report triggered by facts that cause person to **suspect** abuse or neglect
- Not HCP's role or duty to investigate facts and produce evidence
- Cause to suspect must be reasonable; report must be in good faith



What gives you "cause to suspect"?



Some things to consider

- What have you been told about the child's circumstances?
- What have you observed?
- What other information is available and what does it mean in light of your professional experience?

What to Report



- 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

Reports of Child Maltreatment

- Who {
 - Any person or institution
- When {
 - Cause to suspect a child under 18 is abused, neglected, or dependent
- What {
 - Information specified in GS 7B-301
- Liability {
 - Immunity if report made in good faith
- Penalty {
 - Knowingly or wantonly failing to report is a class 1 misdemeanor

ADULT PROTECTIVE SERVICES

- Who must be reported?
 - Disabled adults (age 18 or older) who are in need of protective services
- To whom is report made?
 - DSS

Legal Duty to Report



- Any person who has reasonable cause to believe that a disabled adult is in need of protective services must make a report to the county department of social services (DSS).

G.S. 108A-102

Definitions

Disabled adult –

- Age 18+ or lawfully emancipated minor
- Physically or mentally incapacitated due to certain physical or mental conditions, developmental disabilities, or substance abuse

In need of protective services –

- Unable to perform or obtain essential services due to physical or mental incapacity

What to Report



- Name and address of the disabled adult
- Name and address of the disabled adult’s caretaker
- Age of the disabled adult
- Nature and extent of any injury or condition resulting from the abuse or neglect of the disabled adult
- Other pertinent information

Informing Client of Report

General Rule:

- Must promptly inform a client who is reported to Adult Protective Service (APS) that the report has been or will be made

Exceptions—don’t have to inform in two circumstances:

- If the Healthcare Provider (HCP) believes informing the client would place the client at risk of serious harm; or
- If the HCP would have to inform client’s personal representative because of the client’s incapacity, and the HCP believes two things:
 - That the personal representative is responsible for the client’s abuse or neglect, and
 - That it is not in the client’s best interest to inform the personal representative

45 C.F.R. 164.512(c)

Reports to Adult Protective Services

Who	• Any person
When	• Cause to suspect a disabled adult is in need of protective services
What	• Information specified in GS 108A-102
Liability	• Immunity if report made in good faith and without malicious intent
Penalty	• None specified
Client notification	• Generally must inform client or personal representative that report has been or will be made

REPORTS TO LAW ENFORCEMENT

Types of Reports to Law Enforcement

Caylee's Law	• Children under age 16 • Disappeared and in danger
Serious nonaccidental harm to a child	• Children under age 18 • Recurrent illness or serious physical injury caused by nonaccidental trauma
Gunshot wounds and other bodily harm from criminal violence	• Persons of any age • Wounds, injuries, and illnesses caused by criminal acts

CAYLEE'S LAW

Who must be reported?

- A child under the age of 16 who has disappeared and is in danger

To whom is report made?

- Law enforcement

Caylee's Law (GS 14-318.5)

Legal duty to report

- Disappearance of a child < 16 years old must be reported to law enforcement (LE).
- Parent/other person responsible for care must report within 24 hours.
- **Any other person who reasonably suspects that a child has disappeared and is in danger must report within a reasonable time.**

What "disappearance" means

- 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.

Caylee's Law—reports to Law Enforcement by persons other than parents

Who	• Any person
When	• Reasonably suspect a child under 16 has disappeared and is in danger
What	• Child's identity and reasons for suspecting the child has disappeared and is in danger
Liability	• Immunity if report made in good faith
Penalty	• Failing to report is a class 1 misdemeanor

Reports to LE of serious nonaccidental harm to a child

- Who { • Physician or health care administrator
- When { • Recurrent illness or serious physical injury caused by nonaccidental trauma
- What { • Child's identity and information about injury or illness
- Liability { • Immunity if report made in good faith
- Penalty { • None specified

GUNSHOT WOUNDS AND OTHER INJURIES/ILLNESSES

- Who must be reported?
 - A person of any age who suffers a gunshot wound or other specific injuries that are due to criminal violence
- To whom is report made?
 - Law enforcement

Legal Duty to Report

- A physician or administrator of a health care facility must report the following injuries and illnesses to law enforcement:
 - Gunshot wounds
 - Illness from poisoning
 - Wounds/injuries from knives/sharp instruments caused by criminal acts
 - Grave bodily harm or grave illness caused by a criminal act of violence
- G.S. 90-21.20(b)



What to Report



- Person's name, age, sex, race, residence or present location
- The character and extent of the person's reportable injury or illness

Reports to LE about gunshot wounds/other injuries associated with crime

Who	• Physician or health care administrator
When	• Specified wounds, injuries, and illnesses caused by criminal acts
What	• Name, age, sex, race, residence or present location, info about injury or illness
Liability	• Immunity if report made in good faith
Penalty	• None specified

What triggers a mandatory report to LE?

- Disappearance of a child under age 16
- Reportable illness or injury (see G.S. 90-21.20)



**CHILD VICTIMS OF
SEX CRIMES**

Statutory rape (vaginal intercourse)

- Statutory rape of child by adult (GS 14.27.23)
 - Victim under age 13
 - Perpetrator at least 18
- First-degree statutory rape (GS 14-27.24)
 - Victim under age 13
 - Perpetrator at least 12 years old and at least 4 years older than the victim
- Statutory rape of person age 15 or younger (GS 14-27.25)
 - Victim under age 16
 - Perpetrator at least 12 years old and at least 4 years older than victim (more severe penalty if perpetrator ≥ 6 years older)

Statutory sexual offense (sexual act other than vaginal intercourse)

- Statutory sexual offense with child by adult (GS 14.27.28)
 - Victim under age 13
 - Perpetrator at least 18
- First-degree statutory sexual offense (GS 14-27.29)
 - Victim under age 13
 - Perpetrator at least 12 years old and at least 4 years older than the victim
- Statutory sexual offense with child age 15 or younger (GS 14-27.30)
 - Victim under age 16
 - Perpetrator at least 12 years old and at least 4 years older than victim (more severe penalty if perpetrator ≥ 6 years older)

Age matters, gender doesn't

Child < 16 + Person 4+ years older = Crime



The diagram illustrates the equation: Child < 16 + Person 4+ years older = Crime. Below the text, there are two photographs: a girl on the left and a boy on the right.

Age matters, gender doesn't

Child < 16 + Person 4+ years older = Crime



The diagram illustrates the equation: Child < 16 + Person 4+ years older = Crime. Below the text, there are two photographs: a boy on the left and a girl on the right.

Report to DSS?

- Case-by-case determination
- Legal duty to report is triggered if child is abused, neglected, or dependent, as those terms are defined by NC law
- Legal definitions refer to actions or omissions of parents, guardians, custodians or caretakers

Report to law enforcement?

- Case-by-case determination

- Legal duty to report triggered by:
 - Disappearance if child is under 16

 - Otherwise requires one of the reportable injuries or illnesses

What about involving parents?

- Legally may notify parents of minor's confidential care:
 - With minor's permission

 - Without permission, if clinician determines notification is essential to minor's life or health



GS 90-21.4(b)

HUMAN TRAFFICKING



Scenario



- 16-year-old confidential client is positive for sexually transmitted infection
- HCP learns that client has run away from parents and is engaging in commercial sex work

Report to DSS

Cause to suspect minor is trafficked →
Report to DSS

Minors engaged in commercial sex work
are always considered trafficked

Report to law enforcement?

- DSS is required to report to LE when:
 - It finds evidence that child may have been abused
 - It receives information that a child may have been physically harmed in violation of any criminal statute by any person
- Should HCP report directly to LE also?
 - If mandatory report, yes
 - If no trigger for a mandatory report, not required to report but could consider whether circumstances allow for a voluntary report to LE

When are voluntary reports to LE allowed?

- May disclose information about a crime victim to LE with the victim's written authorization (45 C.F.R. 164.508)
- May disclose information if a health care provider has a good faith belief that the disclosure is **necessary** to prevent or lessen a **serious and imminent threat** to the **health or safety** of a person or the public (45 C.F.R. 164.512(j))
 - Case by case determination
 - Essential to consider individual's needs and have a safety plan



Scenario



- 18-year-old confidential client is positive for sexually transmitted infection
- HCP learns that client is living with an intimate partner and is engaging in commercial sex work

Reporting Trafficked Adults: Legal Considerations

Report to DSS?

- Required only if the trafficked person is a disabled adult in need of protective services
- Must inform the person of the report unless an exception applies

Report to LE?

- Required only if the trafficked person has one of the injuries or illnesses specified in G.S. 90-21.20(b) (gunshot wounds, etc.)
- Not required, but allowed if:
 - Trafficked person consents to the report in writing, or
 - HCP determines in good faith *in this particular case* a report is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

Reporting Trafficked Adults: Ethical Considerations for Nurses

- Do not ignore signs and symptoms indicating a patient has been trafficked. A nurse is ethically obliged to take some action in response to this situation:
 - Make appropriate referrals to services.
 - Make reports when required by law to do so.
- Before making a decision about whether to take the specific action of making a voluntary report to LE:
 - Consult with appropriate others (social workers, legal department) if possible.
 - If not part of a system in which such consultation is possible, recognize that NC BON has not taken the position that voluntary reports to LE are an ethical duty and would not be inclined to take disciplinary action against a nurse for not making a voluntary report.

CASE STUDIES



Case Study 1: Mona

Mona is 14 years old. She is presented for care by her mother, who suspects that Mona is pregnant and wants a pregnancy test. Mother says that Mona is hard to control; she sneaks out at night and drinks. When the nurse speaks privately to Mona, Mona says that she too is worried that she may be pregnant. She says that she has had sex twice with her mother's live-in boyfriend, who gave her alcohol first.

Case Study 2: Tonya

Tonya is 15 years old and comes in without her parents for FP services. She indicates that she lives with both parents and her younger brother, and is enrolled in high school. She tells the interview nurse she has a 17-year-old boyfriend with whom she has been sexually active for about 3 months. She does not want her parents to find out that she is seeking birth control as they do not know she is sexually active.

Case Study 3: Tonya w/Older Boyfriend

Tonya is 15 years old and comes in without her parents for FP services. She indicates that she lives with both parents and her younger brother, and is enrolled in high school. She tells the interview nurse she has a 20-year-old boyfriend with whom she has been sexually active for about 3 months. She does not want her parents to find out that she is seeking birth control as they do not know she is sexually active.

Case Study 4: Sam

Sam is a 15-year-old transgender male. On his history form, he does not provide a response to a question about number of sexual partners. During the interview, he says he has had "several" sexual partners in the last three months but gives vague responses to questions about how many. He tells the nurse he lives with a friend's family and has not seen or spoken to his parents in "a while." During the physical exam, the nurse practitioner discovers bruises that Sam seems unable or unwilling to explain, as well as evidence of IV drug use.

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