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## When and How to Report Child Abuse, Neglect, Dependency, and Death

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Most psychologists will—sooner or later—learn about a case of suspected child abuse, neglect, death, or dependency that needs to be reported to proper authorities. They may only have a general awareness about what needs to be done. And even clinicians who face this situation regularly may have picked up bits of common wisdom about child-abuse reporting that are just not true.

We are lawyers who represent psychologists, and our clients frequently ask us questions about what needs to be reported, and how. Moreover, we see cases where clinicians' failure to report led to licensing-board complaints. So, here is a compilation of our answers to the questions our clients have asked us. (These are practical initial answers, and we will try not to just parse the words in the statutes, but to point you in the right direction. If you need to study the statute to figure out what to do, you have had the bad luck to be in a complicated situation and need to get expert advice.)

### WHO HAS TO REPORT SUSPECTED ABUSE, NEGLECT, DEPENDENCY, OR DEATH?

Every person and institution—not just professionals such as psychologists—must report child abuse, neglect, dependency, and death from maltreatment.

Psychologists have to report known or suspected abuse, neglect, or dependency, notwithstanding their professional privilege. NCGS 7B-310; see also NCGS 8-53.3.

### HOW OLD CAN A PERSON BE AND STILL BE COVERED BY THE STATUTE?

The statute covers juveniles under 18, unless they are married, emancipated, or in the armed forces. NCGS 7B-101(14).

### WHAT HAS TO BE REPORTED?

People are required to report they have “cause to suspect that any juvenile is abused, neglected, or dependent [or] has died as the result of maltreatment” at the hands of a “parent, guardian, custodian, or caretaker.” NCGS 7B-301. Later on we will talk about the meanings (i) of abuse, neglect, dependency, and death from maltreatment as well as the meanings of (ii) parent, guardian, custodian, and caretaker. Here, we want to focus on the two words “cause” and “suspect.” If the information could be true, and if the source of the information is credible, then there will be cause to suspect and a report will have to be made.

### IS THERE A PENALTY FOR NOT REPORTING?

For years there was no penalty for failing to report, but now the failure to report is a misdemeanor. NCGS 7B-301(b). It could also be the basis for a professional-malpractice claim.

### WHAT IS ABUSE OR NEGLECT? WHAT IS MALTREATMENT?

The definition of abuse runs a full printed page and covers serious physical harm, the substantial risk of serious physical harm, rape and many other sexual acts, serious

emotional damage or the risk of it, cruel or grossly inappropriate efforts to change a juvenile's behavior, and encouraging of delinquent behavior. NCGS 7B-101(1). The definition of neglect is another quarter of a page, and it focuses on the lack of care and the inadequate quality of the juvenile's environment as opposed to specific actions. NCGS 7B-101(15).

It may be hard to say where neglect stops and abuse begins, but there is no gap between them, and both must be reported. So any juvenile who does not receive proper care or supervision from a parent, guardian, custodian, or caretaker, is at least a neglected juvenile.

There is no definition of death “as a result of maltreatment.” The words mean what they say.

### IS CORPOREAL PUNISHMENT BY A PARENT ABUSE OR NEGLECT?

Corporal punishment is abuse if it is cruel or grossly inappropriate.

### WHAT IS DEPENDENCY?

A dependent juvenile has no parent, guardian, or custodian, or has a parent, guardian, or custodian who is unable to provide proper care and supervision and has not made appropriate alternative arrangements. NCGS 7B-101(9). Again, it may be hard to know where dependency stops and neglect begins, but both must be reported, so the reporter does not need to make fine distinctions.

### **IS ALL MISTREATMENT OF CHILDREN REPORTABLE?**

No. The reporting laws only apply to a few categories of people: parents, guardians, custodians, and caretakers. Strangers, neighbors, non-custodial relatives, home visitors, and all the other people who interact with children are not covered by the reporting statute. If they mistreat children, it is probably a crime, but it is not reportable abuse, neglect, or dependency.

However, if a parent, guardian, or custodian were to tolerate recurring mistreatment by—for example—an aunt, a boyfriend, or a neighbor, that would probably be reportable neglect.

### **WHO IS A PARENT, GUARDIAN, CUSTODIAN, OR CARETAKER?**

A parent is a parent, and a guardian is a guardian; these words are not defined in the law.

A custodian is someone who has been given legal custody by a court. NCGS 7B-101(8).

A caretaker is someone who has the responsibility for the juvenile's health and welfare in a private or institutional residential setting, such as any adult member of the juvenile's household or a cottage parent in an institution. NCGS 7B-101(3).

### **WHERE DOES MY REPORT GO?**

Your report is filed with the local department of social services or other government child-welfare agency in the county where the child resides or is found. NCGS 7B-301.

### **MUST I REPORT CASES I KNOW ABOUT IN OTHER STATES?**

You should assume there is an obligation to report in other states. The North Carolina statute defines a county department of social services as the "county agency providing child welfare services." NCGS 7B-101-(8a). This definition certainly allows for interstate reports. Also, the NC Psychology Board

takes the position that a psychologist must report abuse to the authorities in the state where the abuse occurred.

As a practical matter, psychologists ought to phrase the report as an inquiry to child welfare authorities in the other state, saying that they have information that they believe would be reportable in North Carolina, sketching that information without initially identifying the people involved, and asking the authorities in the other state if it is reportable there.

*Assume you have to make a report, work back from there to see if you actually do not, and decide what to do as quickly as you can.*

### **MUST I REPORT SITUATIONS THAT ARE ALREADY KNOWN TO THE AUTHORITIES?**

Even if a matter is already known to the police, the criminal courts, the domestic courts, or the DSS, failure to report the case to DSS is at least a "technical violation" of the reporting statute. *White v. N.C. Board of Examiners*, 97 N.C. App. 144, 165, 388 S.E. 2d 148, 161 (1990). After all, you may have information no one else does. On the other hand, you do not need to report a case that you know has been assessed by DSS and closed, unless you think you have previously unknown information.

### **IF I MAKE A REPORT, WILL MY NAME BE DISCLOSED?**

The law provides that the DSS hold the

identity of the reporter and information received in the "strictest confidence." NCGS 7B-302(a1). However, there are exceptions to the confidentiality requirement. For instance, confidential information may be disclosed pursuant to a court order, to agencies that have to carry out mandated responsibilities, and to the juvenile and the juvenile's attorney. Also, remember that you might possess information that needs to be presented in court, so you could be called as a witness.

### **AM I IMMUNE FROM LIABILITY IF I MAKE A CHILD ABUSE REPORT?**

The abuse reporting law provides immunity for anyone who reports in good faith. NCGS 7B-309. Bad faith means the reporter actually knows the report is false or recklessly disregards indications that it is probably false.

### **IS THERE A TIMETABLE FOR REPORTING?**

Reports need to be made as soon as is reasonably possible. There is no deadline, but a report usually could and should be made in a day or two. The worse the case may be, the sooner you need to act.

### **WHAT SHOULD I DO WITH A CLOSE CASE?**

In a borderline case, you should consult counsel, your local county DSS, or both. There is nothing wrong with telling DSS you have a situation that may be reportable, but you are not sure, and then sketching the facts without identifying the parties. For example, you might tell DSS that your adolescent patient is having sex with an adult neighbor—unbeknownst to her parents—and ask if this is a reportable. (It's not.)

### **HOW SHOULD I DOCUMENT THESE CASES IN MY RECORDS?**

You need to document these cases carefully, and you especially need to protect yourself in two kinds of cases: the case you decided not to report, and the case you reported but which proved

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to have been unfounded. In both situations your notes should (i) say who you consulted—especially if it was DSS or an attorney, (ii) record all the information you relied on, and (iii) explain your reasons for doing what you did.

Remember that this note is not just for you. You are writing for other people—DSS, your client, your insurer—who may be second-guessing whatever you decide to do, so be thorough and clear.

**WHAT ARE THE TAKE-AWAY POINTS FROM THIS?**

Remember these key points in abuse and neglect cases:

- Everyone has a duty to report if they have cause to suspect abuse, neglect, dependency, or death from maltreatment.
- So, assume you have to make a report, work back from there to see if you actually do not, and decide what to do as quickly as you can.
- Do not worry about the characterization of the condition or conduct as abuse, neglect, or dependency since the definitions can overlap.
- If you have any reason to think the report may be necessary, report the information as you know it, and let DSS sort it out.
- Then document the case carefully.

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