

## Consequences of Failing to Report

Unlike many other states, North Carolina has no statute that imposes civil or criminal penalties for failing to report suspected child abuse, neglect, or dependency.<sup>1</sup>

Although the General Assembly enacted the state's first mandatory reporting law in 1971 and has amended it several times, it has never provided civil or criminal penalties for *not* making a report when the law requires one.

The committee that drafted the Juvenile Code that was in effect from 1980 to 1999 said in its 1979 report:

The Committee considered a penalty for not reporting abuse, neglect, or dependency to insure that the administrators of hospitals, schools, and other institutions whose employees may see evidence of abuse, neglect, or dependence develop a mechanism for reporting and encourage their employees to report such incidents as required by law. The Committee, however, concluded that the threat of civil suit for failure to report should be sufficient incentive for institutions to encourage reporting.<sup>2</sup>

### Civil Liability

Thus far, the threat of civil suit has materialized rarely. There are no appellate court decisions in North Carolina—and very few nationally—dealing with civil

liability for failing to report child abuse, neglect, or dependency.<sup>3</sup> But that does not mean that a person cannot be civilly liable for failing to report child abuse in North Carolina. The issue simply has not come before the courts in this state. Cases from other states and the literature in this area suggest that the potential for civil liability for failing to report is real.<sup>4</sup>

By itself, however, failing to report child abuse, neglect, or dependency is not enough to generate civil liability, even when the law clearly requires a report. Under the general principles of the law of negligence, civil liability is possible if

- someone with a duty to report fails to do so,
- a child is injured or harmed,
- the injury or harm to the child was *caused* by the failure to report, and
- the type of injury or harm the child suffered was a foreseeable consequence of the failure to report.

Proving all of these elements can be difficult. Increased recognition of children's rights, however, may increase the likelihood that liability issues will be examined when children are seriously harmed and people who should have reported their situations did not.

## **Criminal Prosecution**

Criminal prosecutions for failing to report child abuse or neglect have resulted in no appellate court decisions in North Carolina and very few nationally. In at least two cases, however, persons in North Carolina have been prosecuted for violating the reporting law, even though there is no statute making the failure to report a criminal offense. In North Carolina, only appellate court decisions create precedents for other cases, and neither of these cases went to the court of appeals. Still, they are interesting because they illustrate the potential for criminal prosecutions for failing to report.

In 1986, an assistant school superintendent was convicted of a misdemeanor in district court for not reporting suspected sexual abuse of students by a substitute teacher.<sup>5</sup> The defendant did not appeal the conviction. That same year a psychologist was convicted in district court of a misdemeanor for not reporting suspected child abuse. He exercised his right to appeal to superior court, where he could have a new trial before a jury. Before the case went to trial again, however, the superior court judge dismissed the charge. This was partly because, in the judge's view, the General Assembly had not intended criminal consequences for failing to report.<sup>6</sup>

Prosecution of these two cases relied on a seldom-used common-law rule. Common-law rules are derived from ancient English law and past decisions of appellate courts. Under the rule on which these prosecutions were based, if a statute does not specify consequences for failing to perform a duty that the statute creates,

a person who fails to perform that duty can be charged with a general misdemeanor.<sup>7</sup>

If this common-law rule applies to the reporting law, the reporting mandate in G.S. 7B-301, combined with the lack of sanctions in the statute for failing to report, makes the failure to report a misdemeanor. There is a strong argument that this common-law rule applies to the reporting requirement.<sup>8</sup> There also is a strong argument, however, that the General Assembly would have spelled out explicit criminal consequences for a failure to report if it had intended them.

## **Other Consequences of Failing to Report**

The most obvious and serious consequence of not reporting suspected child abuse, neglect, or dependency is that a child may suffer unnecessarily. The cost to the child, the family, and ultimately to society may be immense—especially when compared with the small effort required to make a report that may result in protection for the child. In some cases, of course, the consequences of not reporting may be insignificant. The suspicion may be unfounded; the department of social services may be involved already; someone else may have made a report. But there is no way of predicting whether the report will make a difference in a child's life, and the law does not excuse a person from the duty to report for any reason.<sup>9</sup>

North Carolina law relating to civil and criminal liability for failing to report suspected child abuse, neglect, or dependency remains relatively undeveloped. The law relies primarily on the policies

that underlie the reporting requirement, the ease of reporting, and the provision of immunity for good faith reporting—rather than fear of civil liability or criminal prosecution—to encourage people to report.

## Notes to Chapter 10

1. See Seth C. Kalichman, *Mandated Reporting of Suspected Child Abuse: Ethics, Law, & Policy*, 2d ed. (Washington, D.C.: American Psychological Association, 1999), 33–42.

2. Juvenile Code Revision Committee, *The Final Report of the Juvenile Code Revision Committee* (Raleigh, N.C.: North Carolina Department of Crime Control and Public Safety, January 1979), 34–35.

3. A civil action involving allegations that school officials were negligent in failing to report child abuse was filed in Onslow County in 1986. The plaintiff in the case was a student who filed the action after he became eighteen. *Hague v. Lloyd* (86-CVS-1347, Onslow County Superior Court, complaint filed August 1, 1986). The case was settled before it went to trial.

4. See, e.g., *Landeros v. Flood*, 17 Cal. 3d 399, 131 Cal. Rptr. 69, 551 P.2d 389 (1976) (doctor and hospital could be liable if their negligent failure to diagnose and report battered-child syndrome resulted in the child's being returned home and receiving further injuries); Note, "Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse," *Wayne Law Review* 28 (1981–82): 183–213; Donald T. Kramer, *Legal Rights of Children*, 2d ed. (Colorado Springs, Colo.: Shepard's/McGraw-Hill, Inc., 1994), 2: 64–65; Kalichman, *supra* note 1.

5. *State v. Freitag* (Wake County District Court, January 31, 1986). See "Assistant Superintendent Convicted for Not Reporting Suspected Child Abuse," *School Law Bulletin* 17 (Spring 1986): 46–47. Under current law, a report to the department of social services

would not be required in the circumstances of that case, because a teacher is not a "caretaker" as the Juvenile Code defines that term. (See Chapter 4.) Under current law, however, a report to law enforcement officials might be required, at least by the principal, since a principal has a duty to report to law enforcement certain criminal offenses that occur on school property. (See Chapter 14.)

6. *State v. Gray* (Durham County District Court, February, 1986; Durham County Superior Court, January 14, 1987). See "Charges against Chapel Hill Psychologist Dismissed," *Durham Morning Herald*, 15 January 1987, 1A. This case is discussed in Kalichman, 36–37.

7. See, e.g., *State v. Parker*, 91 N.C. 650 (1884) (statute making it unlawful to sell liquor in specified localities); *State v. Bloodworth*, 94 N.C. 918 (1886) (statute requiring keeping fence five feet high around cultivated field during crop season); *State v. Bishop*, 228 N.C. 371 (1947) (statute prohibiting requiring membership in labor union as condition of employment).

8. Neither the courts nor the General Assembly has overturned this rule.

9. See *White v. North Carolina State Board of Examiners of Practicing Psychologists*, 97 N.C. App. 144, 165, 388 S.E.2d 148, 161, *cert. denied*, 326 N.C. 601, 393 S.E.2d 891 (1990). In reviewing the revocation of a psychologist's license based on multiple alleged violations of the Ethical Principles of Psychologists, the court held that the psychologist "technically" had violated both one of the ethical principles and the child abuse reporting law by failing to report suspected child abuse. In response to the psychologist's argument that he had not reported because "he thought the matter was already in the judicial system and the parents and attorneys knew of the alleged sexual abuse," the court of appeals stated that the reporting law "makes no exceptions for extenuating circumstances in reporting suspected child abuse." 97 N.C. App. at 165, 388 S.E.2d at 161.

