

Chapter 10

Consequences of Failing to Report

Criminal Liability

For many years North Carolina differed from most other states by having no statute imposing civil or criminal penalties for failing to comply with its mandatory reporting law.¹ As of August 2012, North Carolina was one of only three states without statutory sanctions for willfully failing to make a report when the law required one.² Although the General Assembly enacted the state's first mandatory reporting law in 1971 and has amended it several times, the legislature did not establish a statutory penalty for failing to report until 2013.³

Effective December 1, 2013, it is a Class 1 misdemeanor for any person or institution to *knowingly* or *wantonly*

1. fail to make a report when the reporting law requires one, or
2. prevent another person from making a report when the law requires one.

In addition, it is a Class 1 misdemeanor for a county social services director who receives a report of sexual abuse of a child in a child care facility to *knowingly* fail to notify the State Bureau of Investigation.⁴

A person acts "knowingly" when the person knows what he or she is about to do and, with that knowledge, proceeds to act.⁵ A person acts "wantonly" when he or she acts with conscious and intentional disregard of and indifference to the rights and safety of others.⁶ Courts have said that "wantonly" has essentially the same meaning as "willfully," which means "the wrongful

doing of an act without legal excuse or justification, or the commission of an act purposely and deliberately in violation of law.”⁷

Even before enactment of a statute creating a criminal penalty for failing to report, there was some risk of criminal liability for violating North Carolina’s reporting law. In the 1980s, at least two people in the state were prosecuted for violating the reporting law.⁸ These cases were not appealed beyond the trial court level, so there were no appellate court decisions that served as precedent for other cases. The prosecutions were based on a seldom-used common law rule that if a statute does not specify consequences for failing to perform a duty created by the statute, a person who fails to perform that duty can be charged with a general misdemeanor.⁹ Because North Carolina now has a statutory penalty for failing to report, this common law theory is no longer relevant.

Civil Liability

The threat of civil liability has materialized rarely in this state. Although civil actions have been filed alleging violations of the reporting law, no appellate court decisions in North Carolina deal directly with civil liability for failing to report suspected child abuse, neglect, or dependency.¹⁰ That does not mean that a person cannot be civilly liable for failing to report child abuse in North Carolina. The issue simply is not addressed in statutes and has not been addressed directly by appellate courts in this state.

A number of courts in other states have considered the issue of liability for failing to report, with varying results. Those cases involve statutory schemes that differ from state to state, and their conclusions vary. For example, most courts have rejected the notion that the state’s mandatory reporting law itself implies a right to bring a civil action against someone who violates the law.¹¹ A few, though, have held otherwise. The Supreme Court of Washington, interpreting a statute that mandates reporting by specified professionals, held that the state’s reporting law “implies a cause of action against a mandatory reporter who fails to report suspected child abuse.”¹²

The notion that violation of a statutory duty may form the basis for civil liability is a familiar one in North Carolina. Our courts have said that “when a statute imposes a duty on a person for the protection of others, it is a public safety statute and a violation of such a statute is negligence *per se*.”¹³ However, not every statutory duty that can be associated with safety auto-

matically creates a claim for negligence when the duty is breached.¹⁴ The courts have not spoken to the applicability of that principle to violations of the reporting law.¹⁵

Even if the reporting law itself does not create a civil cause of action for failing to report, application of the general principles of the law of negligence could result in liability.¹⁶ Establishing a claim based on common law negligence requires the plaintiff to prove

- that the defendant had a duty of care to the plaintiff,
- that the defendant breached that duty,
- that the defendant’s breach of duty was the actual or proximate cause of the injury to the plaintiff, and
- that the type of injury or harm suffered by the plaintiff was a foreseeable consequence of the defendant’s breach of duty.¹⁷

Generally, the duty that every person owes to every other person is a duty of reasonable care under the circumstances to see that harm does not come to the other person. The existence of a statute creating a specific duty designed to protect a category of people may affect a court’s assessment of what “reasonable care” is in a particular circumstance.¹⁸ However, the court also would consider the statute’s overall purposes in deciding whether the statute established the standard for reasonable care for purposes of negligence liability.¹⁹

Statutes that impose duties on law enforcement officers sometimes are treated differently. Courts have applied a doctrine known as the “public duty doctrine” to shield law enforcement officers from some liability claims based on alleged negligence, reasoning that the officers’ duties are directed toward the protection of the public generally, not the protection of particular individuals. The court of appeals has held, however, that this doctrine does not protect an officer from a claim of negligence based on failing to report known child abuse, because the duty to report is not particular to law enforcement—it is a duty imposed by statute on everyone.²⁰

If a court found that the reporting law set the minimum standard for reasonable care, liability for violating the reporting law still would exist only if the court also determined that a defendant’s failure to report was the proximate cause of injury or harm to the child—that is, if the report had been made, the child most likely would not have been harmed. A case decided by the court of appeals in 2010 involved a child’s claim that a hospital and other defendants who treated him for a wrist injury were negligent for failing

to identify and report prior abuse the child had suffered.²¹ After the child received treatment and returned home, he suffered a serious brain injury allegedly inflicted by his mother's boyfriend. The suit alleged that these injuries were caused by the defendants' negligence because had they followed proper screening procedures and identified the earlier abuse, a report would have been made to the department of social services and the department would have removed the child from the home. The trial court dismissed the case, and the court of appeals reversed, holding that the plaintiff's extensive medical evidence about the standard of care and causation was sufficient to withstand the defendants' motion to dismiss. In other words, the court held that a jury should determine "whether defendants' actions constituted a breach of the standard of care and proximately caused [the child's] injury."²²

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, or 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 of these or similar reasons.

In some instances a failure to report may place a person's professional credentials or employment in jeopardy. In reviewing the revocation of a psychologist's license based on multiple alleged violations of the Ethical Principles of Psychologists, the court of appeals 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.²³ 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."²⁴

North Carolina law relating to civil and criminal liability for failing to report suspected child abuse, neglect, or dependency remains relatively undeveloped. To encourage people to report, the Juvenile Code has relied primarily on the policies underlying the reporting requirement, the ease of reporting, and the provision of immunity for good-faith reporting—rather than on fear of civil liability or criminal prosecution for failing to report. Now, the possibility of criminal prosecution for knowingly or wantonly failing to report adds a substantial additional incentive to comply with the reporting law.

Notes

1. 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.

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, Jan. 1979), 34–35.

2. U.S. Department of Health & Human Services, Administration for Children & Families, Child Welfare Information Gateway, “Penalties for Failure to Report and False Reporting of Child Abuse and Neglect,” August 2012, www.childwelfare.gov/systemwide/laws_policies/statutes/report.cfm#ll.pdf. See also Seth C. Kalichman, *Mandated Reporting of Suspected Child Abuse: Ethics, Law, & Policy*, 2nd ed. (hereinafter *Mandated Reporting of Suspected Child Abuse*) (Washington, D.C.: American Psychological Association, 1999), 33–42.

3. See S.L. 2013-52, sec. 7.

4. S.L. 2013-52, sec. 7, rewrote the reporting law, G.S. 7B-301, to create these offenses.

5. See, e.g., *State v. Williams*, ___ N.C. App. ___, 741 S.E.2d 9, 19 (2013).

6. Jessica Smith, *North Carolina Crimes: A Guidebook on the Elements of Crime*, 7th ed. (Chapel Hill, N.C.: UNC School of Government, 2012), 6, citing *State v. Brackett*, 306 N.C. 138 (1982); *State v. Williams*, 284 N.C. 67 (1973).

7. *Id.* at 6–7, citing *State v. Arnold*, 264 N.C. 348 (1965).

8. See *State v. Freitag*, Wake Cnty. Dist. Ct., Jan. 31, 1986; *State v. Gray*, Durham Cnty. Dist. Ct., Feb. 1986, and *Durham Cnty. Super. Ct.*, Jan. 14, 1987. See also “Assistant

Superintendent Convicted for Not Reporting Suspected Child Abuse,” *School Law Bulletin* 17 (Spring 1986): 46–47, and “Charges against Chapel Hill Psychologist Dismissed,” *Durham Morning Herald*, January 15, 1987, 1A. The *Gray* case is discussed at pages 36–37 in Kalichman, *Mandated Reporting of Suspected Child Abuse*, cited in full in note 1.

9. See, e.g., *State v. Bishop*, 228 N.C. 371, 45 S.E.2d 858 (1947); *State v. Bloodworth*, 94 N.C. 918 (1886); *State v. Parker*, 91 N.C. 650 (1884).

10. The state court of appeals affirmed the trial court’s dismissal of an action in which negligent failure to report child abuse was one of six claims against a school principal, but the appellate court’s opinion made no mention of the specific claim relating to failure to report. *Medlin v. Bass*, 96 N.C. App. 410, 386 S.E.2d 80 (1989), *aff’d*, 327 N.C. 587, 398 S.E.2d 460 (1990). In a case brought by former minor patients of a state hospital, the court of appeals affirmed the trial court’s grant of summary judgment in favor of the defendants, finding among other things that one incident of offensive touching of a minor patient by a male staff member did not constitute abuse that had to be reported. *Susan B. v. Planavsky*, 60 N.C. App. 77, 298 S.E.2d 397 (1982), *review denied*, 307 N.C. 702, 301 S.E.2d 388 (1983). A civil action in which one claim asserted was that school officials were negligent in failing to report child abuse was filed in Onslow County in 1986 by a student after he reached age eighteen, but the case was settled before it went to trial. Complaint on behalf of minor plaintiff, *Hague v. Lloyd*, No. 86-CVS-1347, Onslow Cnty. Super. Ct., filed Aug. 1, 1986.

11. See, e.g., *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011) (holding that South Carolina’s reporting law did not create a private right of action for negligence *per se*); *Becker v. Mayo Found.*, 737 N.W.2d 200 (Minn. 2007) (holding that the reporting law did not create civil liability for failing to report); *Arbaugh v. Bd. of Educ., Cnty. of Pendleton*, 214 W. Va. 677, 682–83, 591 S.E.2d 235, 241 (2003) (concluding that West Virginia’s reporting law did not create an implied private civil cause of action and citing cases from other states reaching the same conclusion).

12. *Beggs v. Wash. Dep’t of Soc. & Health Servs.*, 171 Wash. 2d 69, 77, 247 P.3d 421, 425 (2011). See also *Ham v. Hosp. of Morristown, Inc.*, 917 F. Supp. 531 (E.D. Tenn. 1995) (holding that Tennessee’s reporting statute created a private cause of action for failure of physicians and hospital personnel to recognize and report symptoms of child abuse).

13. *Gregory v. Kilbride*, 150 N.C. App. 601, 610, 565 S.E.2d 685, 692 (2002), *review denied*, 357 N.C. 164, 580 S.E.2d 365 (2003), *citing* *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958) (additional citation omitted).

14. *Gregory*, 150 N.C. App. at 610, 565 S.E.2d at 692.

15. The court of appeals did hold in one case that violation of the statute prescribing a social services department’s duties after receiving a report of suspected abuse or neglect could give rise to an action for negligence. *Coleman v. Cooper*, 89 N.C. App. 188, 197, 366 S.E.2d 2, 8 (1988), *aff’d in part, rev’d in part, remanded, as to individual defendant’s liability*, 102 N.C. App. 650, 403 S.E.2d 577, *review denied*, 329 N.C. 786, 408 S.E.2d 517 (1991).

16. As early as 1976, a California court held that a 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. *Landeros v. Flood*, 17 Cal. 3d 399, 131 Cal. Rptr. 69, 551 P.2d 389 (1976).

17. *See, e.g., Davis v. N.C. Dep't of Human Res.*, 121 N.C. App. 105, 112, 465 S.E.2d 2, 6 (1995) (citations omitted), *review denied*, 343 N.C. 750, 473 S.E.2d 612 (1996).

18. *See, e.g., Gregory*, 150 N.C. App. at 610, 565 S.E.2d at 692 (noting that "[a] court may determine that a statute creates a minimum standard of care required to avoid liability for negligence").

19. *Id.* at 610, 565 S.E.2d at 692.

20. *Smith v. Jackson Cnty. Bd. of Educ.*, 168 N.C. App. 452, 462, 608 S.E.2d 399, 407–08 (2005). The appellate court affirmed the trial court's denial of the officers' motion to dismiss and did not address the ultimate outcome of the negligence claim. For a discussion of the "special duty" and "special relationship" exceptions to the public duty doctrine, see *Blaylock v. North Carolina Department of Correction*, 200 N.C. App. 541, 685 S.E.2d 140 (2009), *review denied, dismissed*, 363 N.C. 853, 693 S.E.2d 916, 917 (2010). Also see North Carolina General Statutes § 143-299.1A, which sets out the limits on use of the public duty doctrine as an affirmative defense. The North Carolina General Statutes can be viewed online at www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl.

21. *Gaines v. Cumberland Cnty. Hosp. Sys.*, 203 N.C. App. 213, 692 S.E.2d 119, *review denied*, 700 S.E.2d 750 (2010).

22. *Id.* at 227, 692 S.E.2d at 127.

23. *White v. N.C. State Bd. of Exam'rs of Practicing Psychologists*, 97 N.C. App. 144, 388 S.E.2d 148 (1990).

24. *Id.* at 165, 388 S.E.2d at 161.