Chapter 2

History of the Reporting Law

Background

North Carolina first enacted a juvenile code and created a juvenile court system in 1919.[1] While much of this code established procedures for responding to delinquent conduct by young people, the law also gave the newly created juvenile court jurisdiction over any child who was neglected; who "engage[d] in any occupation, calling, or exhibition"; who was "in such condition or surroundings or . . . under such improper or insufficient guardianship or control as to endanger the morals, health or general welfare" of the child; or who was "dependent upon public support or . . . destitute, homeless or abandoned."[2] This wording is the precursor of the current law's definitions of *abused juvenile*, *neglected juvenile*, and *dependent juvenile*. The 1919 juvenile code did not include a reporting requirement relating to any category of children.

Enactment of a juvenile code and creation of the juvenile court system indicated a growing recognition of the need for governmental involvement on behalf of children whose basic needs were not being met adequately.[3] Not until the 1950s and 1960s, however, did child abuse and neglect begin to be recognized as a major medical and social phenomenon. In 1962, publicity about a new medical diagnosis—battered child syndrome—captured the attention of some professionals and, to a lesser extent, that of the general public.[4] Reports emerged about the frequent failure within the medical community to diagnose child abuse or to refer cases of abused children to appropriate authorities. This publicity captured lawmakers' attention as well, and state legislatures began to enact child abuse reporting statutes. By 1966, all

states except one had enacted laws requiring physicians to report suspected child abuse or at least allowing them to do so without fear of liability.[5] Over time, those laws have been expanded both to require more people to make reports and to broaden the kinds of conditions or maltreatment that must be reported.[6]

Because reporting requirements are matters of state law, they differ from state to state. Since the enactment of the federal Child Abuse Prevention and Treatment Act (CAPTA) of 1974, states have been required, as a condition of receiving certain federal child welfare funds, both to have child abuse and neglect reporting laws and to include specified elements in their state law definitions of abuse and neglect.[7] As a result, states' reporting laws tend to have some elements in common, but they still vary widely with respect to what must be reported and who is required to report.[8]

North Carolina Law

In North Carolina, the law commonly called the child abuse reporting law is part of the Juvenile Code, which comprises Chapter 7B of the state's General Statutes (hereinafter G.S.). It provides that

> [a]ny person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found.[9]

This law has evolved from what began as an attempt to encourage people to report child abuse and neglect. North Carolina's first reporting law, enacted in 1965, did not mandate reporting.[10] Rather, it served the limited purposes of authorizing physicians, teachers, and certain other professionals to report when they had cause to believe that a juvenile was abused or neglected and guaranteeing these professionals immunity from civil or criminal liability if they made a report in good faith. Without this protection, doctors and some other professionals were constrained from reporting by legal and/or ethical confidentiality requirements. This reporting law required county departments of social services to investigate these voluntary reports. It also created an exception to the physician–patient privilege,

which otherwise would have restricted or prohibited testimony by physicians in court proceedings involving abuse or neglect. The exception meant that when a report of abuse or neglect resulted in a legal proceeding, the privilege could no longer be used to exclude medical testimony or evidence of abuse or neglect. This first reporting law applied only when the abuse or neglect was of a child younger than sixteen.

In 1971, a new law replaced the 1965 statute. The 1971 law made some reporting mandatory and distinguished between the reporting duties of certain professionals and those of other citizens.[11] It required specified professionals to report if they had reasonable cause to suspect that a child was abused or neglected.[12] It required all other people to report, but only if they had actual knowledge that a child was abused. The legislature included in the 1971 law the following statement of its purpose in requiring people to report child abuse and neglect:

> The General Assembly recognizes the growing problem of child abuse and neglect and that children do not always receive appropriate care and protection from their parents or other caretakers acting in loco parentis. The primary purpose of requiring reports of child abuse and neglect as provided by this Article is to identify any children suspected to be neglected or abused and to assure that protective services will be made available to such children and their families as quickly as possible to the end that such children will be protected, that further abuse or neglect will be prevented, and to preserve the family life of the parties involved where possible by enhancing parental capacity for good child care.[13]

The 1971 law made the good-faith immunity provisions applicable to all reporters. It maintained the exception to the physician–patient privilege in child abuse and neglect cases and added a comparable exception to the husband–wife privilege.

The next version of North Carolina's reporting law came into effect as part of a new juvenile code that was enacted in 1979.[14] In this law the legislature did not distinguish between professionals and other persons. It required reporting by any person or institution that had cause to suspect that a child was abused or neglected. A 1993 amendment added a requirement that people and institutions make a report when they have cause to suspect that a child is dependent or that a child has died as the result of maltreatment.[15]

The amendment also added a requirement that the report include the names and ages of other children in the home if the person who made the report knew that information.[16]

Current Law

Since July 1, 1999, the effective date of the current Juvenile Code, the mandatory reporting law has been located in G.S. 7B-301.[17] The reporting requirement itself has not changed since 1993, although definitions of some of the key terms that determine when a duty to report exists have changed. (See Chapter 5 for legal definitions of "abused," "neglected," "dependent," and other key terms.)

In 2013, the General Assembly directed the state Division of Social Services in the Department of Health and Human Services to study the state's policies and procedures for reporting child abuse and to make recommendations for improving the process.[18] The results of this study or proposals from other sources can lead to further changes in the reporting law or related provisions of the Juvenile Code.

Now, the law requires every person or institution with cause to suspect that a child is abused, neglected, or dependent or that a child has died as a result of maltreatment to report that child's situation to the county department of social services in the county where the child resides or is found.

The reporting mandate sounds simple. However, it raises many issues of interpretation, even for those who know about the law and want to comply with it.

Notes

1. 1919 N.C. Pub. Laws ch. 97. This action was preceded by legislation aimed at removing juvenile offenders from adult correctional facilities. *See, e.g.,* 1907 Pub. Laws ch. 509 (establishing the Stonewall Jackson Manual Training and Industrial School, which opened in Cabarrus County in 1909) and 1917 N.C. Pub. Laws ch. 255 (establishing a similar facility for girls in Moore County).

2. 1919 N.C. Pub. Laws ch. 97, sec. 1.

3. For information about the national context in which child abuse and neglect reporting laws were enacted, see generally John E. B. Myers, *Child Protection in America: Past, Present and Future* (New York: Oxford University Press, 2006).

4. Battered child syndrome was described in C. Henry Kempe et al., "The Battered-Child Syndrome," *Journal of the American Medical Association* 181 (July 1962): 17.

5. Seth C. Kalichman, *Mandated Reporting of Suspected Child Abuse: Ethics, Law, & Policy*, 2nd ed. (Washington, D.C.: American Psychological Association, 1999), 15 (hereinafter *Mandated Reporting of Suspected Child Abuse*). Although Kalichman states that laws in all states except Hawaii required physicians to report, the law in effect in North Carolina at that time merely authorized physicians to report.

6. Kalichman, *Mandated Reporting of Suspected Child Abuse*, cited in full in note 5.

7. Enacted as Public Law Number 93-247, CAPTA has been rewritten and amended numerous times since 1974 and currently is codified at 42 U.S.C. §§ 5101 *et seq.*; 42 U.S.C. §§ 5116 *et seq.* Changes in CAPTA and its requirements are summarized in Senate Committee on Health, Education, Labor and Pensions, CAPTA Reauthorization Act of 2010 (report to accompany Senate Bill 3817), S. Rep. No. 111-378 (2010), www.gpo.gov/fdsys/pkg/CRPT-111srpt378/pdf/CRPT-111srpt378.pdf.

8. *See* U.S. Department of Health & Human Services, Administration for Children & Families, Child Welfare Information Gateway, "Mandatory Reporters of Child Abuse and Neglect," August 2012, www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm.

9. North Carolina General Statutes (hereinafter G.S.) § 7B-301. The statute goes on to explain how reports may be made and to specify the information that must be included in a report. The North Carolina General Statutes can be viewed online at www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl.

10. 1965 N.C. Sess. Laws ch. 472.

11. 1971 N.C. Sess. Laws ch. 710.

12. *Id*. The specified professionals included "a physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, physician-resident, intern, a registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, law enforcement officer, or a school teacher, principal, school attendance counselor or other professional personnel in a public or private school."

13. 1971 N.C. Sess. Laws ch. 710, sec. 1.

14. 1979 N.C. Sess. Laws ch. 815, sec. 1.

15. 1993 N.C. Sess. Laws ch. 516, sec. 4.

16. *Id*.

17. S.L. 1998-202, sec. 6.

18. S.L. 2013-360, sec. 12C.7, available at www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S402v7.pdf. Results of the study must be reported to the Joint Legislative Committee on Health and Human Services and the Fiscal Research Division by April 1, 2014.