

Chapter 7

Deciding to Report

Cause to Suspect

What does it mean for a person to have “cause to suspect” that a child is abused, neglected, or dependent? Answering that question means looking at a combination of objective and personal factors. A mere feeling or suspicion that one cannot connect to something observable, to something the child or someone else has said, or to the child’s behavior probably is not enough to trigger a duty to report. The standard is not just a suspicion but *cause to suspect*.¹ However, a person deciding whether to make a report also must consider a child’s statements, appearance, or behavior (or other objective indicators) in light of the context; the person’s experience; and other available information. A person who has cause to suspect that a child is abused, neglected, or dependent has no duty to conduct an investigation to uncover evidence for the report. He or she is not required to have actual knowledge of abuse, neglect, or dependency, and physical evidence is not required.

The North Carolina Supreme Court has acknowledged that determining cause to suspect child abuse or neglect involves some subjectivity. The court described the phrase “cause to suspect” as “giv[ing] wide margin to whatever prompts the reporter to notify DSS.”² Contrasting the phrase with the wording in some other states’ laws (for example, “reasonable cause to believe or suspect”), the court stated that the phrase “does not call for scrutiny, analysis, or judgment by a finder of fact.”³ Although determining that one has cause to suspect abuse or neglect involves both objective and subjective factors, someone who has cause to suspect has no discretion about whether

to make a report. The North Carolina Court of Appeals made that point when it said that a law enforcement officer was not permitted “to weigh the safety interests of the public” or other discretionary factors before reporting possible sexual abuse.⁴

Some states’ statutes define “cause to suspect” or similar phrases used in their reporting laws.⁵ Montana, for example, defines “reasonable cause to suspect” as “cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.”⁶ Pennsylvania’s statute refers to reasonable cause to suspect “on the basis of medical, professional or other training and experience.”⁷ In Alaska, “reasonable cause to suspect” means “cause, based on all the facts and circumstances known to the person, that would lead a reasonable person to believe that something might be the case.”⁸

Appellate court decisions that address “cause to suspect” or similar phrases used in states’ reporting laws usually involve allegations that someone either failed to report when a report was required⁹ or made a report when there was no cause to suspect that abuse or neglect had occurred.¹⁰ Few cases analyze the specific meaning of the phrase. A Michigan court, rejecting a claim that the state’s reporting law was unconstitutionally vague, concluded that the words “‘reasonable cause to suspect’ speak for themselves and provide fair notice of the conduct expected in reporting suspected child abuse.”¹¹ “[A] statute is not vague,” the court said, “when the meaning of the words . . . can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning.”¹²

Two authors, on the other hand, have written about the inconsistencies in reporting that are caused by the lack of precision in statutory thresholds for requiring reports.¹³ They assert the need to connect those thresholds to some system for making educated estimates of probability that abuse or neglect has occurred and the need for empirical research to support such a system.¹⁴

For most people, the imprecise threshold for the duty to report is not a major issue. Making a report in good faith, even if a report was not required, cannot be the basis for civil or criminal liability.¹⁵ Although they are protected by the same immunity provisions, those who are bound by legal, professional, or ethical duties of confidentiality struggle to understand the

line between required reports and prohibited disclosures. In some cases, that line can be determined only if a judicial, licensing, or other authority is called on to consider a claim based on failing to report or on making an improper disclosure.

Guidelines

In most situations, someone who has read the Juvenile Code definitions carefully will be able to tell whether there is cause to suspect that one or more of them apply to a particular child. Still, the definitions leave room for uncertainty. In the absence of formal clarification through legislation, court decisions, or state policy, local guidelines can help relieve this uncertainty and answer questions about the duty to report. Some counties have guidelines (sometimes called protocols) for cooperation between the county social services department and one or more other agencies or institutions. Ideally, local guidelines should be developed jointly by representatives of the county social services department and other key agencies in the community. Inquiries about local guidelines or protocols should be directed to individual county departments of social services.¹⁶ (See Chapter 14 for an outline of suggested guidelines for cooperation between county departments of social services and local school units.)

With or without local guidelines, there will be circumstances in which individuals and institutions disagree about the definitions or struggle to determine whether they apply and whether a report is required. For example, a psychologist may wonder whether a report to social services is required if he learns that a client's girlfriend is punishing the client's child by locking him in a dark closet for up to forty-five minutes at a time. The girlfriend is in the home frequently but does not live there full time. Does that information give the psychologist cause to suspect that the child is an abused or neglected juvenile? The following questions must be considered:

- Is the girlfriend a “caretaker”? Is she “responsible for the health and welfare of [the child] in a residential setting,” which is one of the criteria for being a caretaker?
- If the girlfriend is not a caretaker, is the child nevertheless abused or neglected because the child's father condoned or failed to prevent her mistreatment of the child?

- Does locking the child in a closet as discipline constitute abuse? Or neglect? Is the answer the same for a four-year-old child and a teenager? Is the answer the same if it happened once or if it happens regularly?

In cases of uncertainty about whether information or perceptions constitute cause to suspect that a child is abused, neglected, or dependent, the following basic guidelines may be helpful.

1. Consider the purposes of the reporting law and of the child protective services system, which are to identify and respond to children who may need care, assistance, or protection when the child's parent (or guardian, custodian, or caretaker) either is not providing or cannot provide for those needs. Keep in mind that a primary part of the response is to assist parents to become better care providers for their children, and that children are removed from their homes only when it is not safe for them to remain at home.

Ask yourself whether, in the situation being considered, involuntary intervention by the state (through the county social services department and possibly the court) is consistent with those purposes. Of course, if the definition of abuse, neglect, or dependency clearly applies, a report is required without further analysis.

2. Do not limit your thinking to only one definition.

If a child is harmed or placed at risk by someone who is not a parent, guardian, custodian, or caretaker, consider whether one of those persons has placed the child at risk or failed to protect the child from the other person's mistreatment. Cause to suspect abuse or neglect can arise from a parent's failure to protect as well as from a parent's harming a child or placing a child at risk. If the non-parent's conduct constitutes an assault or some other crime, a person who knows about it could make a report to law enforcement officials. That report would not relieve the person of the duty to make a report to social services, however, if the child is abused, neglected, or dependent because a parent, guardian, custodian, or caretaker allowed another person to harm the child.

3. Finally, if in doubt, make the report.

While the legal definitions of abuse, neglect, dependency, caretaker, and other key terms are important, a person who is concerned about a child but in a quandary as to whether the definitions or a particular definition applies should make a report. If the report is made in good faith, there is no liability risk in reporting. (See Chapter 9.) If the child or family needs assistance, even if it turns out that a report was not required and the department of social services is not authorized to conduct an assessment—that is, the report is screened out—the department may be able to suggest other resources to which the reporter can either direct his or her concern or refer the family that needs assistance.

Notes

1. North Carolina General Statutes (hereinafter G.S.) § 7B-301. The North Carolina General Statutes can be viewed online at www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl.

2. *Dobson v. Harris*, 352 N.C. 77, 84 n.4, 530 S.E.2d 829, 836 n.4 (2000), citing Danny R. Veilleux, Annotation, *Validity, Construction, and Application of State Statute Requiring Doctor or Other Person to Report Child Abuse*, 73 A.L.R. 4th 782, § 18 (2000). See also Benjamin H. Levi and Sharon G. Portwood, *Reasonable Suspicion of Child Abuse: Finding a Common Language*, 39 J.L. MED. & ETHICS 62 (2011) (hereinafter *Reasonable Suspicion*), <http://onlinelibrary.wiley.com/doi/10.1111/j.1748-720X.2011.00550.x/pdf>.

3. *Dobson*, 352 N.C. at 84 n.4, 530 S.E.2d at 836 n.4.

4. *Smith v. Jackson Cnty. Bd. of Educ.*, 168 N.C. App. 452, 462, 608 S.E.2d 399, 408–09 (2005).

5. State statutes use a variety of wording to specify the standard for reporting—reason to believe, cause to believe, reasonable cause to believe, reasonable grounds to believe, reasonably believe, suspect, reason to suspect, cause to suspect, reasonable cause to suspect, reasonably suspect, and reasonable suspicion. Levi and Portwood, *Reasonable Suspicion*, cited in full in note 2, at 64.

6. MONT. CODE ANN. § 41-3-102(25).

7. 23 PA. CONS. STAT. § 6311(a).

8. ALASKA STAT. § 47.17.290(14).

9. See, e.g., *Gaines ex rel. Hancox v. Cumberland Cnty. Hosp. Sys., Inc.*, 203 N.C. App. 213, 224, 692 S.E.2d 119, 126 (2010) (reversing summary judgment in favor of a hospital and medical personnel in a negligence action and describing medical testimony that a child's injuries should have created cause to suspect child abuse and resulted in a report to social services); *Diana G-D ex rel. Ann D. v. Bedford Cent. Sch. Dist.*, 33 Misc. 3d 970, 986–87, 932 N.Y.S.2d 316, 328–29 (2011) (holding that school

officials did not have cause to suspect child abuse and were not required to make a report when they were told third-hand by another child's mother about something the child allegedly said to other children on the playground, they observed no signs of abuse and no behavioral issues with the child, and the child seemed happy and denied that there were issues at home).

10. *See, e.g., Dobson v. Harris*, 352 N.C. 77, 84, 530 S.E.2d 829, 836 (2000) (holding that a store employee's report to social services after the plaintiff reportedly yelled at her child, picked her up from the counter where she was sitting, and slammed her back down was entitled to the presumption of good faith and immunity for complying with the reporting law).

11. *People v. Cavaiani*, 172 Mich. App. 706, 714, 432 N.W.2d 409, 413 (1988) (holding that a psychologist was required to report a nine-year-old client's statement that her father had fondled her breasts, even though the psychologist, after talking with the father, personally believed that no abuse had occurred). *See also* Michigan Judicial Institute, *Child Protective Proceedings Benchbook: A Guide to Abuse and Neglect Cases*, 4th ed. (2013), § 2.2, <http://courts.mi.gov/education/mji/Publications/Documents/Child-Protective-Proceedings.pdf>.

12. *Cavaiani*, 172 Mich. App. at 714, 432 N.W.2d at 413 (citation omitted).

13. Levi and Portwood, *Reasonable Suspicion*, cited in full in note 2, at 62–69.

14. *Id.*

15. G.S. 7B-309.

16. Information about how to contact any of the one hundred county departments of social services in the state can be found at N. C. Department of Health and Human Services, *Local County Directory*, www.ncdhhs.gov/dss/local.