

# North Carolina Laws Requiring Reports of Child Abuse and Neglect and Certain Crimes

Jill D. Moore, JD, MPH  
UNC School of Government

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## I. Required Reports to DSS: Child Abuse and Neglect

A. Legal duty to report: *Any person or institution* who has cause to suspect that a child under the age of 18 is abused, neglected, or dependent must make a report to the county department of social services. G.S. 7B-301.

B. Conditions or circumstances that must be reported:

1. Abuse or neglect of a child under age 18 *by a parent, guardian, custodian, or caretaker.*
  - a. When a child is harmed by someone who is *not* a parent, guardian, custodian or caretaker, the case may not be within DSS's jurisdiction and the report may be screened out. However, DSS is required to notify local law enforcement and the district attorney whenever it receives information that a child may have been physically harmed in violation of any criminal statute by any person other than the parent, guardian, custodian, or caretaker. G.S. 7B-307.
2. Dependency of a child under age 18.
3. Death of a child under age 18 that is due to maltreatment. G.S. 7B-301.

C. Important definitions:

1. Individuals who may be responsible for a child who is the subject of an abuse or neglect report:
  - a. A **parent** is a child's biological or adoptive parent.
  - b. A **guardian** is someone appointed by a court to have the care, custody, and control of the child, or to arrange for an appropriate placement for the child.
  - c. A **custodian** is a person or agency with legal custody of a child.
  - d. A **caretaker** is someone other than a parent, guardian, or custodian who is responsible for a child's health and welfare in a residential setting.
    - The term includes a stepparent, a foster parent, an adult member of a child's household, an adult relative who has been entrusted with the child's care, people (such as cottage parents or house parents) who supervise children in residential child-care facilities or schools, and people who care for children in child day-care homes or facilities.
    - The term does not include schoolteachers, coaches, club leaders, or others with similar temporary caretaking responsibility for children. G.S. 7B-101.

2. Children who are the subject of reports (GS 7B-101):
- a. **Abused juvenile** means a child under age 18 whose parent, guardian, custodian, or caretaker:
    - Inflicts or allows to be inflicted upon the child a non-accidental, serious physical injury, or
    - Creates or allows to be created a substantial risk of non-accidental, serious physical injury, or
    - Uses or allows to be used upon the child cruel or grossly inappropriate procedures or devices to modify behavior, or
    - Commits, permits, or encourages the rape of the child or other sexual crimes in which the child is a victim (see paragraph 2.d., below), or
    - Creates or allows to be created serious emotional damage to the child, or
    - Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the child.
  - b. **Neglected juvenile** means a child under age 18 who:
    - Does not receive proper care, supervision, or discipline from his or her parent, guardian, custodian, or caretaker, or
    - Has been abandoned, or
    - Is not provided necessary medical or remedial care, or
    - Lives in an environment injurious to the child's welfare, or
    - Has been placed for care or adoption in violation of the law.
  - c. **Dependent juvenile** means a child who needs assistance or placement because:
    - The child has no parent, guardian, or custodian responsible for his or her care or supervision, or
    - The child's parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.
  - d. More on **sexual abuse**: A child is an abused juvenile if the child's parent, guardian, custodian or caretaker *commits, permits, or encourages the commission* of any of the following crimes against the child:
    - Rape: first-degree, second-degree, or rape of a child by an adult
    - Sexual offense: first-degree, second-degree, or sexual offense with a child by an adult
    - Sexual act by a custodian
    - Crime against nature
    - Incest
    - Preparation of obscene photographs or motion pictures of the child
    - Employing or permitting the child to assist in a violation of obscenity laws
    - Dissemination of obscene material to the child
    - Displaying or disseminating material harmful to the child
    - First- and second-degree sexual exploitation of the child
    - Promoting the prostitution of the child
    - Taking indecent liberties with the child

## **II. Required Reports to Law Enforcement: Crimes Causing Serious Illness or Injury; Child's Recurrent Illness or Serious Injury Due to Non-Accidental Trauma**

### **A. Legal duty to report:** *A physician or administrator of a health care facility must report to local law enforcement authorities:*

1. Certain injuries and illnesses that may have been caused by criminal acts. G.S. 90-21.20(b).
2. Recurrent illness or serious physical injury to a child under the age of 18, if the illness or injury appears to the physician to be due to nonaccidental trauma. G.S. 90-21.20(c1).

### **B. Reporting injuries/illness caused by criminal acts:** The law specifies that the following wounds, injuries, and illnesses must be reported to local law enforcement:

- Gunshot wounds and any other injuries caused or apparently caused by firearms.
- Illnesses caused by poisoning.
- Wounds or injuries caused or apparently caused by a knife or sharp instrument, if it appears to the treating physician that a criminal act was involved.
- "Every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence."

Unfortunately, the law does not define its terms, so exactly what must be reported under the final category is not clear. There are no statutory definitions or court cases interpreting the terms "grave bodily harm," "grave illness," or "criminal act of violence." These reports are required for any patient, regardless of age.

### **C. Reporting recurrent illness or serious physical injury to a child:** The law also requires a report to law enforcement for certain cases involving children under age 18. A report is required if a child has a recurrent illness or serious physical injury that, in the physician's professional judgment, is the result of nonaccidental trauma. This reporting requirement applies only to children. The law specifies that the report to law enforcement must be made *in addition to* any report that is made to DSS—in other words, a report to DSS alone does not suffice; the physician or facility must also report to law enforcement.

## **III. Statutory Rape and Sexual Offense; Rape or Sexual Offense of a Child by an Adult**

### **A. Legal definitions of the offenses**

1. First-degree statutory rape: Vaginal intercourse with a child who is under the age of 13, by a person who is at least 12 years old and at least 4 years older than the victim. G.S. 14-27.2(a)(1).
2. Rape of a child by an adult: Vaginal intercourse with a child under the age of 13 by a person who is at least 18 years of age. G.S. 14-27.2A.
3. Statutory rape of a person who is 13, 14, or 15 years old: Vaginal intercourse with a child who is 13, 14, or 15 years old by a person who is at least 4 years older than the victim and is not married to the victim.
  - a. If the person is at least 6 years older than the victim, this is a Class B1 felony.
  - b. If the person is at least 4 but less than 6 years older than the victim, this is a Class C felony.G.S. 14-27.7A.

4. First-degree statutory sexual offense: A sexual act other than vaginal intercourse with a child who is under the age of 13, by a person who is at least 12 years old and at least 4 years older than the victim. G.S. 14-27.4(a)(1).
  5. Sexual offense with a child by an adult: A sexual act other than vaginal intercourse with a child under the age of 13, by a person who is at least 18 years of age. G.S. 14-27.4A.
  6. Statutory sexual offense of a person who is 13, 14, or 15 years old: A sexual act other than vaginal intercourse with a child who is 13, 14, or 15 years old by a person who is at least 4 years older than the victim and is not married to the victim.
    - a. If the person is at least 6 years older than the victim, this is a Class B1 felony.
    - b. If the person is at least 4 but less than 6 years older than the victim, this is a Class C felony.
 G.S. 14-27.7A.
- B. Reports of statutory rape or sexual offense to DSS: A report to DSS is required if there is cause to suspect that a child is an abused juvenile or a neglected juvenile as those terms are defined by North Carolina law. This is something that must be determined on a case-by-case basis.
- The role of child protective services is to protect children when the people who should be their natural protectors—their parents or guardians—fail in that role. This is why the legal definitions of abused and neglected juvenile refer to the actions or omissions of *parents, guardians, custodians, or caretakers*. The fact that a minor has been the victim of a statutory rape or sexual offense (or any other crime) does not necessarily mean that the minor has been abused or neglected by his or her parent, guardian, custodian, or caretaker. On the other hand, it could mean that, so it is something a health care provider should consider.
- There may be circumstances in which a report is clearly indicated—for example, if the offense is being committed by an adult residing in the child’s household (such a person would be considered a *caretaker* under NC law), or if a minor reports being left unsupervised to a degree that is age-inappropriate. However, some cases are not clearcut. When the situation is murky, it is wise to consult with the facility administrator or other appropriate persons in the agency before deciding whether to make the report. If it is determined that there is a good faith reason to believe the minor may be abused or neglected, the report should be made.
- It is important to remember that *any* child may need child protective services, not just those who are victims of statutory rape. For example, suppose a 12-year-old tells a health care provider he or she has engaged in vaginal intercourse with a 15-year-old. This would not constitute statutory rape, because there is not a 4-year age difference between the two children. But either or both of them could be neglected or abused juveniles who should be reported to child protective services—if, for example, they are not receiving age-appropriate supervision, or if their caretakers are encouraging their sexual activity.
- C. Reports of statutory rape or sexual offense to law enforcement: GS 90-21.20 requires reports in several circumstances that *might* include statutory rape or sexual offense—but this is unclear, because the statute does not define key terms. For example, the law requires reports of “grave bodily harm” caused by “criminal acts of violence.” Neither of those terms are defined, nor have they been interpreted by a court. It seems reasonable to assume statutory rape and sexual offense would fall under the term “criminal act of violence.” However, such acts may not cause “grave bodily harm”—this would likely

vary from case to case, and in the absence of a definition there could be confusion or disagreement among providers about when the threshold of “grave” harm is reached. Likewise, the law requires a report when a minor suffers a “recurrent illness” or “serious physical injury” as a result of “non-accidental trauma”—but those terms are also undefined. In the absence of key definitions, the question of when the duty to report is triggered has no clear answer. Health care providers may wish to discuss this requirement with their attorneys to obtain advice on when they should report.

#### **IV. Impact of Medical Confidentiality Laws on Required Reporting**

- A. Required reports do not violate medical confidentiality laws: Both the federal HIPAA medical privacy rule and state medical confidentiality laws permit covered health care providers to make the required reports discussed in this handout.
1. Reports to DSS under G.S. 7B-301:
    - a. The HIPAA privacy rule specifically permits reports of child abuse and neglect that are made to a governmental entity (such as a department of social services) that is authorized by law to receive the report. 45 C.F.R. 164.512(b). It also specifically permits disclosure of health information when the disclosure is required by a state law. 45 C.F.R. 164.512(a). G.S. 7B-301 is a state law that requires the disclosure of health information.
    - b. N.C. law: Health care providers may not invoke the physician-patient privilege or any other privilege as a reason for failing to report child abuse, neglect, and dependency. G.S. 7B-310; see also G.S. 8-53.1.
  2. Reports to law enforcement under G.S. 90-21.20:
    - a. The HIPAA privacy rule specifically permits reports to law enforcement that are required by law, including reports of wounds and injuries. 45 C.F.R. 164.512(f). It also specifically permits disclosure of health information when the disclosure is required by a state law. 45 C.F.R. 164.512(a). G.S. 90-21.20 is a state law that requires the disclosure of health information.
    - b. N.C. law: Disclosures to law enforcement officials that are expressly permitted by section 164.512(f) of the HIPAA privacy rule do not violate the physician-patient privilege. G.S. 90-21.20B; see also G.S. 8-53.1.
- B. Immunity from liability for reports made in good faith:
1. Reports to DSS under G.S. 7B-301:
    - a. HIPAA privacy rule: Because reports under G.S. 7B-301 are expressly permitted by the privacy rule, a person who makes a report that complies with the terms of G.S. 7B-301 does not violate HIPAA. Since there is no HIPAA violation, there is no risk of liability for violating HIPAA.
    - b. State law: G.S. 7B-309 provides immunity from liability for a person who makes a report in good faith.
  2. Reports to law enforcement under G.S. 90-21.20:
    - a. HIPAA privacy rule: Because reports under G.S. 90-21.20 are expressly permitted by the privacy rule, a person who makes a report that complies with the terms of G.S. 90-21.20 does not violate HIPAA. Since there is no HIPAA violation, there is no risk of liability for violating HIPAA.
    - b. State law: G.S. 90-21.20(d) provides immunity from liability under state law for a physician or health care facility administrator who makes a report in good faith.