

Selected 2013 Legislation  
Enacted by the North Carolina General Assembly

**Juvenile Law and Other Laws Relating to Children**

**“Caylee’s Law” – S.L. 2013-52 (H 149)**

Duty to report a child’s disappearance. S.L. 2013-52 creates a duty to report to law enforcement the disappearance of a child under the age of sixteen. For purposes of this duty, a child has disappeared when a parent or other person supervising a child does not know where the child is and has not had contact with the child for twenty-four hours. Under new G.S. 14-318.5 it is a Class I felony for a parent or other person supervising a child to knowingly or wantonly fail to report a child’s disappearance to law enforcement. If the failure to report results in serious physical injury to the child, an amendment to the felony child abuse statute (G.S. 14-318.4) also makes the failure to report a Class H felony by characterizing the failure as a “grossly negligent omission.”

The new law also requires a report to law enforcement by any person who *reasonably suspects* that a child has disappeared and that the child may be in danger. Failing to report the suspicion to law enforcement within a reasonable time is a Class 1 misdemeanor. (The statute does not specify that the failure must be knowing or wanton.)

The statute does not apply to

1. operators and staff of child care facilities, or adults present in a child care facility with the provider’s approval, when they already have a duty under G.S. 110-102.1 to report to law enforcement upon learning that a child under the age of sixteen who was placed in the facility’s care is missing; or
2. teachers, with respect to children’s absences from school, if the teachers report the absences as required by Article 26 of G.S. Chapter 115C.

New G.S. 14-318.5 provides immunity for any person who makes a report under the statute in good faith.

Concealing the death of a child. The act rewrites G.S. 14-401.22 to make it a Class H felony for a person to attempt to conceal the death of a child by failing to notify law enforcement of a child’s death or secretly burying or otherwise disposing of the body of a dead child under the age of sixteen. (The offense remains a Class I felony if the deceased is age sixteen or older.) If the person violating the statute knows that the child did not die of natural causes, the offense is a Class D felony.

Making false report to law enforcement. G.S. 14-225 makes it a Class 2 misdemeanor to willfully make (or cause to be made) to law enforcement a false, misleading, or unfounded report for the purpose of interfering with, hindering, or obstructing a law enforcement agency or officer in the performance official duties. S.L. 2013-52 rewrites the section to make the offense a Class H felony if the law enforcement investigation involves a child under the age of sixteen who has disappeared or who is the victim of a Class A, B1, B2, or C felony.

Failing to report child abuse, neglect, dependency, or death due to maltreatment. Every state has a law that requires the reporting of child abuse and other forms of child maltreatment. North Carolina's reporting law imposes that duty on anyone who has cause to suspect that a child is abused, neglected, or dependent, or that a child has died as the result of maltreatment. The reports must be made to county departments of social services. North Carolina has been in a small minority of states that provide no statutory sanction for violating this duty to report. (As of August, 2012, only Maryland, North Carolina, Wyoming, and Puerto Rico did not have statutes imposing penalties for failing to report. "Penalties for Failure to Report and False Reporting of Child Abuse and Neglect," Child Welfare Information Gateway, available at [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/report.pdf#Page=1&view=Fit](https://www.childwelfare.gov/systemwide/laws_policies/statutes/report.pdf#Page=1&view=Fit).)

S.L. 2013-52 rewrites the reporting law, G.S. 7B-301, to make it a Class 1 misdemeanor for any person to knowingly or wantonly fail to make a report, or knowingly or wantonly prevent another person from making a report, when a report is required. It also makes it a Class 1 misdemeanor for a county social services director to knowingly fail to notify the State Bureau of Investigation when the director receives a report of sexual abuse of a child in a child care facility.

Applicability. S.L. 2013-52 applies to offenses committed on or after December 1, 2013.

### **"Lily's Law" – S.L. 2013-47 (S 117)**

This act rewrites G.S. 14-17, which defines murder in the first and second degree, to provide that murder occurs when a child is born alive but dies as a result of injuries that were inflicted before the child was born. The degree of murder is determined under existing law. The act is effective December 1, 2013, and applies to offenses committed on or after that date. Uncodified provisions in the act specify that

1. the act does not abate or affect prosecutions for offenses committed before the effective date, and that existing statutes and common law remain applicable to those prosecutions;
2. existing statutes and common law remain applicable to offenses that are not described in the act; and
3. the act does not apply to an unintentional act or omission by the child's birth mother during pregnancy.

### **Criminal Child Abuse Penalties and Records – S.L. 2013 – 35 (H 75)**

The act rewrites the felony child abuse statute, G.S. 14-318.4, to increase the penalty for each offense under the statute, changing a Class E felony to a Class D felony, changing a Class C felony to a Class B2 felony, and changing a Class H felony to a Class G felony. These changes apply to offenses committed on or after December 1, 2013.

S.L. 2013-35 also rewrites G.S. 15A-1382.1 to make changes with respect to the official record of any defendant who is convicted of an offense against a minor that involves child abuse, assault, or an act of domestic violence as defined in G.S. 50B-1(a). In those cases, the judge must indicate on the judgment form that the case involved child abuse. Then, the clerk of court must ensure that the official record of the defendant's conviction includes the court's determination. These requirements apply to judgments entered on or after December 1, 2013.

## **Gaston County Foster Care Ombudsman Pilot – S.L. 2013-111 (H 68)**

S.L. 2013-111, which applies only to Gaston County, requires the board of county commissioners in that county to establish qualifications for and select a foster care ombudsman. This person must have experience in child welfare and state laws and policies governing children in foster care, and must remain objective and impartial in carrying out his or her duties. The ombudsman is to serve at the discretion and under the direction and supervision of the board of commissioners.

The act specifies the duties of the ombudsman, which include

- participate as a party on behalf of the foster parents in review and permanency planning hearings;
- determine the facts, the juvenile's needs, and available resources;
- when appropriate, facilitate the settlement of disputed issues;
- explore options with the court at the dispositional hearing;
- report to the court when the juvenile's needs are not being met;
- protect and promote the juvenile's best interests as seen by the foster family;
- refer to the social services director and law enforcement any cause to suspect that any juvenile is abused, neglected, or dependent;
- be a resource and advocate for foster parents;
- make periodic reports to the social services director about foster care placements in the county, and make recommendations about a placement or future placements;
- compile data for the board of commissioners;
- provide information about the role, duties, and functions of foster parents and the ombudsman, and the rights of children in foster care; and
- carry out any other duties deemed appropriate by the board of commissioners.

The act authorizes the ombudsman to obtain any information or reports, even if confidential, that he or she believes are relevant to the case.

S.L. 2013-111 is effective June 13, 2013, and expires July 1, 2015.

## **Children Born out of Wedlock – S.L. 2013-198 (H 219)**

This act amends numerous statutes, effective June 26, 2013, to delete references to “bastardy” and “illegitimate child,” and to refer instead to children “born out of wedlock.” The act also rewrites G.S. 29-19(b) and G.S. 30-17, to provide that when a man dies before or within a year after a child's birth and his paternity of the child can be established by DNA testing, the child may receive a child's allowance and, pursuant to intestate succession, take by, through, and from that man. This change applies only to the estates of persons who die on or after June 26, 2013.

## **Name Change for Minor or Others – S.L. 2013-42 (S 369)**

When consent of both parents is not required. This act rewrites G.S. 101-2(d) to clarify that an application to change a minor's name may be filed by the child's parent(s), guardian appointed pursuant to G.S. Chapter 35A, or guardian ad litem appointed under G.S. 1A-1, Rule 17. It also

specifies three circumstances in which, if both parents are living, the consent of only one of the parents is required in an application to change a minor's name:

1. a minor who is age 16 or 17 applies to change his or her own name, with the consent of the parent who has custody of and has supported the minor, if the clerk is satisfied that the other parent has abandoned the minor. (Provisions for determining abandonment remain the same.)
2. a parent files an application to change a minor's name and the other parent has abandoned the child.
3. a parent files an application to change a minor's name and the other parent has been convicted of any of the following offenses against the minor or a sibling of the minor:
  - felonious or misdemeanor child abuse,
  - indecent liberties with a minor,
  - rape or other sex offense under Article 7A of G.S. Chapter 14,
  - incest, or
  - assault, communicating a threat, or any other crime of violence.Proof of the conviction must be presented at the time of filing.

Criminal record checks for applicants 16 and older. S.L. 2013-42 also rewrites G.S. 101-5(a) to provide that except when the application is to change the name of a child younger than 16, every applicant for a name change must present a state and national criminal history record check that was conducted within 90 days of the date of the name change application.

Confidentiality. If the name change is not a matter of public record because of domestic violence or participation in an address confidentiality program, G.S. 101-5(e), as rewritten by the act, directs the clerk to notify the State Registrar and directs the State Registrar not to notify the register of deeds in the applicant's county of birth or the registration office of the state of birth.

Effective date. The act is effective October 1, 2013.

### **Court Fees and Costs – S.L. 2013-225 (H 343)**

Child support cases. Section 4.(a) of the act rewrites G.S. 7A-305(f) to provide that the \$20 fee for filing motions does not apply to motions filed by child support enforcement agencies established pursuant to Part D of Title IV of the Social Security Act. Section 4.(d) rewrites G.S. 7A-308(a) to exempt child support enforcement agencies from the \$15 fee for issuance of an alias and pluries summons and endorsements on an original summons. These changes apply to pleadings filed on or after July 1, 2013.

Counties and municipalities. Section 5 of S.L. 2013-225 rewrites G.S. 7A-317 to

1. provide that counties and municipalities are required to pay all costs and fees due to the court at the time of filing,
2. authorize the clerk of superior court to allow the county or municipality to pay costs and fees within 45 days of the date of the filing in lieu of paying them at the time of filing, and
3. require the clerk of superior court to withhold all facilities fees due to a county or municipality when the county or municipality does not pay costs and fees due to the court within 90 days of the date of filing any action.

These changes apply to actions filed and amounts assessed or collected on or after June 30, 2013.