

# **Reporting Child Abuse and Neglect in North Carolina**

Third Edition 2013

## **Supplemental Content: Part 4A. Child Care Facilities Chapter 13a Suspected Child Maltreatment Occurring in a Child Care Facility**

**By Sara DePasquale\***

2016



\*Sara DePasquale is an assistant professor at the School of Government specializing in the field of child welfare.

# Contents

<b>Introduction</b>	13a-1
<b>The Reporting Laws</b>	13a-2
<b>The New Reporting Law</b>	13a-3
<i>Who Must Report</i>	13a-3
SPECIAL CONSIDERATIONS FOR EMPLOYEES OF CHILD CARE FACILITIES	13a-3
<b>Deciding to Report: Key Definitions</b>	13a-4
<i>Child Care Facility</i>	13a-5
<i>Caregiver</i>	13a-7
<i>Child Maltreatment</i>	13a-9
<b>How to Report</b>	13a-10
<b>What to Include</b>	13a-12
<b>The DCDEE Investigation of Child Maltreatment</b>	13a-12
<b>Collaborative Investigation</b>	13a-13
<b>Law Enforcement's Role</b>	13a-13
<b>A County Department Assessment for Abuse,     Neglect, or Dependency</b>	13a-14
<b>Steps in the Investigation</b>	13a-15
<b>Inspecting the Child Care Facility</b>	13a-15
<b>Obtaining Information</b>	13a-17
<i>Interviewing Children; the Parents' Role</i>	13a-17
<b>Immediate Protection Plans</b>	13a-18
<b>The Result of the Investigation</b>	13a-19
<b>Administrative Action against the Child Care Facility</b>	13a-19
<b>An Individual's Placement on the Child Maltreatment Registry</b>	13a-21
<i>Liberty Interests, Employment, and Government Regulation</i>	13a-21
<i>Due Process</i>	13a-22

<b>Confidentiality and Information Sharing</b>	13a-22
During the Investigation	13a-22
The Reporter's Identity	13a-23
The Results of the Investigation	13a-23
The Child Maltreatment Registry	13a-23
<b>Conclusion</b>	13a-24
<b>Notes</b>	13a-25
<b>Appendix A. North Carolina's Mandatory Reporting Laws for Child Abuse, Neglect, Dependency, or Maltreatment: A Flowchart</b>	13a-35
<b>Appendix B. Division of Child Development and Early Education Public Request Form for Child Maltreatment Registry</b>	13a-36
<b>Appendix C. Selected Laws Regulating Child Care Facilities</b>	13a-37
<b>Appendix D. Selected Updated Laws from the Juvenile Code</b>	13a-50

## Chapter 13a

# Suspected Child Maltreatment Occurring in a Child Care Facility

### Introduction

On January 1, 2016, “An Act to Transition Abuse and Neglect Investigations in Child Care Facilities to the Division of Child Development and Early Education within the Department of Health and Human Services”<sup>1</sup> became effective. This act is a significant change to North Carolina’s mandated reporting law for suspected child abuse, neglect, or dependency. Now a county child welfare agency, referred to as a “county department”,<sup>2</sup> is no longer responsible for screening and assessing reports of suspected child abuse or neglect that occur in a child care facility. Instead, when a child is suspected of being maltreated in a child care facility, the North Carolina Department of Health and Human Services (DHHS), Division of Child Development and Early Education (DCDEE), which is a state agency, investigates the report as part of its child care licensing responsibilities. The transition of these cases to the state licensing system falls within the purpose of that system: to protect children by ensuring that each child care facility in the state provides a safe and healthy environment that meets children’s developmental needs and is a place where children are cared for by qualified persons of good moral character.<sup>3</sup>

This supplemental chapter to *Reporting Child Abuse and Neglect in North Carolina* (hereinafter *Reporting Child Abuse*)<sup>4</sup> explains the new laws and procedures that apply when a child is suspected of being maltreated in a child care facility. This chapter replaces all references in *Reporting Child Abuse* that discuss suspected abuse or neglect of a child occurring in a child care facility.<sup>5</sup>

## The Reporting Laws

North Carolina now has two mandated reporting laws when there is cause to suspect that a child is abused, neglected, dependent, or maltreated.

The first law, which is the subject of *Reporting Child Abuse*, is part of North Carolina's child welfare system and is found in the state Juvenile Code.<sup>6</sup> The purpose of the child welfare system is to protect children from abuse, neglect, or dependency created by a parent, guardian, custodian, or caretaker. The child welfare system has additional purposes, including

- providing fair procedures that protect the constitutional rights of parents and children;
- developing a disposition that considers the child's needs and the strengths and weaknesses of the family;
- providing services that respect family autonomy and the child's needs for safety, continuity, and permanence;
- providing standards consistent with the prevention of unnecessary or inappropriate separations of children from their parents; and
- providing standards that ensure a child's best interests is the court's paramount consideration, and, when it is not in a child's best interest to be returned home, that the child will be placed in a safe, permanent home within a reasonable period of time.<sup>7</sup>

The second law, which is the subject of this chapter, is part of North Carolina's child care facilities licensing system.<sup>8</sup> The purpose of the child care facility licensing system is to protect children by ensuring that each child care facility in the state provides a safe and healthy environment for children where care is provided by qualified persons of good moral character.<sup>9</sup>

While these two systems have a shared purpose, namely, protecting children, they do so in different ways. One system (the child welfare system) consists of governmental action that involves itself in a family's private life, and the other system (the child care facilities licensing system) involves government action that regulates child care facilities. It is logical that two different systems would be involved when there is suspected child abuse, neglect, dependency, or maltreatment because of the private interests that are affected.

## The New Reporting Law

The new mandated reporting law that applies to children in child care facilities states that

[a]ny person who has cause to suspect that a child in a child care facility has been maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in a child care facility, shall report the case of that child to the Department [of Health and Human Services, Division of Child Development and Early Education].<sup>10</sup>

### *Who Must Report*

Everyone must report. Both mandated reporting laws use the phrase “any person who has cause to suspect” when identifying who is obligated to report suspected child maltreatment, abuse, neglect, or dependency.<sup>11</sup> North Carolina has universal mandated reporting.<sup>12</sup> There are no exceptions to the obligation to make a report of suspected maltreatment of a child occurring in a child care facility.<sup>13</sup> The reporting obligation applies equally to everyone. For example, parents, neighbors, cashiers, electricians, teachers, doctors, judges, or persons working or volunteering in child care facilities are all mandated reporters.

Unlike the reporting law in the Juvenile Code, the reporting law applying to suspected child maltreatment in a child care facility does not address (1) exemptions to the obligation to report based on confidential communications or privilege (e.g., therapist-patient),<sup>14</sup> (2) the reporter’s liability for or immunity from any civil or criminal action that may result from making the report,<sup>15</sup> or (3) what happens if a person fails to make a report.<sup>16</sup> Although the law is silent on these three issues, the obligation to report still exists. When determining whether a report should be made, a person should act in good faith and consider the purposes of this reporting law and the child care licensing system: to protect children by ensuring that those who are cared for in child care facilities are receiving such care in safe and healthy environments.

### SPECIAL CONSIDERATIONS FOR EMPLOYEES OF CHILD CARE FACILITIES

An employee of a child care facility is in the unique position of being able to observe events that occur within the facility. Such observation may cause the employee to suspect that a child is being maltreated by another employee or by a volunteer. The employee is obligated to make a report to the DCDEE,

even if the employee informs a supervisor of his or her suspicion and/or the employee has concerns that the employer may retaliate.

An employee who makes a mandated report to the DCDEE is not necessarily protected from retaliatory action by his or her employer, such as being fired, suspended, or demoted. Although North Carolina has two laws that protect employees from retaliation, one does not apply in the context of reporting child maltreatment and the other has only limited application. The Retaliatory Employment Discrimination Act (REDA)<sup>17</sup> protects an employee from retaliation by the employer when the employee engages in certain specified activities.<sup>18</sup> Compliance with the mandated reporting law for suspected child maltreatment is not one of the designated protected activities. The second law is the Protection for Reporting Improper Government Activities Act,<sup>19</sup> which is commonly known as the whistleblower's protection act. This law only applies to state, public school, and community college employees,<sup>20</sup> meaning that only those child care employees who work for the state, a public school, or a community college are protected.

Regardless of whether the whistleblower's protection act applies, there are remedies that may be available to an employee whose employer retaliates. For example, if the employee is fired, he or she may be able to bring a wrongful discharge suit against the employer and seek monetary damages.<sup>21</sup> If there was an employment contract, the employee may have a breach of contract claim.<sup>22</sup> And an employee who is terminated from his or her employment may be eligible for unemployment benefits.<sup>23</sup>

If an employee or volunteer in a child care facility who has cause to suspect that a child is being maltreated does not make a report, that failure to act may itself constitute child maltreatment. (See the section below entitled "Child Maltreatment.") If the employee's failure to report is found to be maltreatment, consequences may include being placed on the Child Maltreatment Registry. (See the section below entitled "An Individual's Placement on the Child Maltreatment Registry.")

### **Deciding to Report: Key Definitions**

The new mandated reporting law uses different terms than the mandated reporting law in the Juvenile Code. The relevant terms under the new reporting law are "child care facility", "caregiver", and "child maltreatment". Each term has a specific statutory definition. A potential reporter does not need to be an expert on the terms and their respective definitions. But understanding the applicable terms and how they differ from the terms and definitions

that apply to a child's suspected "abuse", "neglect", or "dependency" (Juvenile Code reporting law terms) will help a person understand if a report to the DCDEE is required. Upon receiving a report, the DCDEE will decide if the criteria defining the relevant terms are met.

### ***Child Care Facility***

The new reporting law does not apply to every situation where a child is receiving a form of short-term substitute care and supervision from someone who is not the child's parent, guardian, custodian, or caretaker. The law applies to child care arrangements that are subject to state regulations, which include situations where children receive care

- in a child care facility that is required to be licensed by DHHS,
- at a location that requires a child care facility license but where one has not been issued, or
- in a "religious sponsored child care facility" (including a summer day camp)<sup>24</sup> that is required to file a Notice of Intent to Operate with DHHS.<sup>25</sup>

North Carolina requires that all child care facilities other than religious sponsored child care facilities be licensed by DHHS.<sup>26</sup> To obtain a license, a child care facility must apply to DHHS and show that it conforms with the licensing standards that are established in the laws regulating child care facilities.<sup>27</sup> A licensed child care facility is required to display its current license in a prominent place at all times.<sup>28</sup> Instead of obtaining a license, a religious sponsored child care facility files a Notice of Intent to Operate a child care facility with DHHS at least thirty days before it opens and, after opening, it files reports to DHHS showing that it is complying with the licensure standards that apply to religious sponsored child care facilities.<sup>29</sup>

The term "child care facility" has a very specific meaning under the new reporting law and is defined as

- a child care center that provides child care at any one time to three or more pre-school-age children or nine or more school-age children;<sup>30</sup>
- a family child care home, which involves child care being provided in a residence to at least three but no more than eight children at any one time;<sup>31</sup> or
- any other arrangement that provides child care.<sup>32</sup>



The term “child care”, which is included in the definition of “child care facility”,<sup>33</sup> is defined as a program or arrangement that provides care

- on a regular basis (at least once per week for four to twenty-four hours per day)
- to three or more children
- who are 12 and younger,
- do not reside where the care is provided, and
- receive care from someone other a guardian, full-time custodian, or person related to the child by birth, marriage, or adoption.<sup>34</sup>

There are several exceptions to the definition of “child care”.<sup>35</sup> The new law does not apply to care provided in non–child care facilities, such as

- a child’s home when all but two of the children receiving care are related to each other;
- recreational programs that operate for less than four consecutive months in a year;
- specialized activities, such as athletics; lessons for dance, art, music, horseback riding, and gymnastics; or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;
- drop-in or short-term care provided on premises where a child’s parents are participating in non-work-related activities (or where the parents are easily accessible), such as care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
- drop-in or short-term care provided by an employer for part-time employees where the employee’s child does not receive care for more than two and one-half hours in a day, the parents are on the premises, and there is a maximum of twenty-five children in any one group in any one room;
- public schools;
- nonpublic schools that are accredited by national or regional accrediting agencies with early childhood standards and that operate child care facilities for less than six and one-half hours per day or, if for more than six and one-half hours per day, without North Carolina Prekindergarten (NC Pre-K) or child care subsidy funding;
- Bible schools offered during vacation periods;
- a facility that provides services for children with developmental disabilities, substance abuse, or mental illness;

- a cooperative arrangement among parents to provide care for their own children as a convenience rather than for employment; and
- any child care program or arrangement consisting of at least two separate components when each component operates for a maximum of four hours a day and different children attend each component.<sup>36</sup>

Although these types of care arrangements do not require a license, a program may voluntarily choose to apply for one.<sup>37</sup> If the program is/becomes licensed, it must comply with all the applicable laws governing child care facilities.<sup>38</sup> The reporting law applies to any program that voluntarily chooses to be licensed.

In some cases, it will be apparent that the child is attending a religious sponsored child care facility or a licensed child care facility because the facility's status is either known to the potential reporter or the child care facility license is prominently displayed at the facility as required by law. In those cases, a report must be made to the DCDEE when a person has cause to suspect that a child was maltreated in a child care facility. But in other cases, there may be uncertainty about whether or not the care arrangement is being provided in a child care facility. In such cases, a person with cause to suspect child maltreatment may go to the DCDEE website and search for the child care facility by name to see if it has a license,<sup>39</sup> but he or she is not required to do so. In the event that a person does not know if the child is being cared for in a child care facility, a report of suspected child maltreatment may still be made to the DCDEE. The DCDEE will determine whether the child's care is being provided in a child care facility.

### **Caregiver**

Children attending child care facilities receive care from a "caregiver". This term is important. The legal definitions of "abuse", "neglect", "dependency", and "child maltreatment" all address the relationship between the child and the person who creates the child's condition. These definitions require that the person who causes the child to be abused, neglected, dependent, or maltreated must have a certain type of relationship with the child to trigger any action by the child welfare or child care facility licensing systems. Under the Juvenile Code's definition of "abuse", "neglect", and "dependency" there must be a relationship of parent, guardian,<sup>40</sup> custodian,<sup>41</sup> or caretaker<sup>42</sup> to the child.<sup>43</sup> The definition of "child maltreatment" requires the relationship of "caregiver" with a child receiving care in a child care facility.<sup>44</sup>

Because the relationship is relevant, not all children who are harmed will be considered to have been abused, neglected, dependent, or maltreated under these different laws. For example, a child may be sexually assaulted by a neighbor. That child is a victim of a crime and, as such, law enforcement should be involved. But without the requisite relationship between the neighbor and the child, the child is not abused, neglected, dependent, or maltreated, and action by a county department or by the DCDEE is neither required nor authorized by law.

A “caregiver” is defined in the new reporting law as

- an operator<sup>45</sup> of a licensed or religious sponsored child care facility,
- a child care provider who is employed or is seeking to be employed by a child care facility,
- a person who is at least 16 years old and is a household member of a family child care home,<sup>46</sup>
- a volunteer, or
- a person who has approval from a child care provider to assume responsibility for a child under that provider’s care.<sup>47</sup>

“Caregiver” is a new term. Although it closely resembles “caretaker”, which is referred to in the Juvenile Code, the two terms are not the same. The Juvenile Code defines “caretaker” as any person other than a parent, guardian, or custodian who has responsibility for a child’s health and welfare in a residential setting and includes a stepparent, foster parent, an adult member of the child’s household, a house or cottage parent, an adult relative entrusted with the child’s care, and, when a child is in the custody of a county department, a potential adoptive parent during a visit or trial placement.<sup>48</sup> The new law not only created the term “caregiver”, it also amended the definition of “caretaker” in the Juvenile Code to remove any reference to an employee or volunteer of a child care facility.<sup>49</sup> The change in the definition of “caretaker” means that a report to a county department of a child’s suspected abuse or neglect by a caregiver in a child care facility no longer satisfies the requisite relationship for abuse or neglect. The reporter should call the DCDEE, not the county department, to make a report. If a county department were to receive such a report, it would not screen the report in nor conduct an assessment to determine whether the child was abused or neglected. However, the county department is obligated to notify the DCDEE within twenty-four hours or on the next working day that it received a report of a child’s suspected maltreatment in a child care facility.

The DCDEE will then initiate and conduct an investigation of the suspected child maltreatment.

### ***Child Maltreatment***

A report to the DCDEE is required when a person has cause to suspect that a child has been maltreated in a child care facility.<sup>50</sup> Similar to the different definitions and application of “caregiver” versus “caretaker”, the term “child maltreatment” is a new term that is specific to care provided in a child care facility and differs from the terms “abuse” or “neglect” that apply to the Juvenile Code. Each of these three terms is specifically defined, and the terms are not interchangeable.<sup>51</sup> However, they may have some elements that overlap; for example, sexual abuse is included in the definition of “child maltreatment” and “abuse”.<sup>52</sup>

“Child maltreatment” is defined in the new reporting law as “[a]ny act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child.”<sup>53</sup> Statutory examples of such acts include

- physical, sexual, or psychological abuse;
- the failure to provide for the physical, emotional, or medical well-being of a child; or
- the failure to properly supervise a child/children that results in a child’s exposure to a potentially harmful environment.<sup>54</sup>

Currently, there are no state regulations or case law providing further guidance on what constitutes child maltreatment. It is possible that the DCDEE will look to mandatory licensure requirements that relate to a caregiver’s actions or lack of action when determining whether child maltreatment has occurred. For example, one requirement for licensure is that child care staff attend to each child in a nurturing and appropriate manner that conforms to the child’s developmental needs.<sup>55</sup> To constitute “child maltreatment”, a caregiver’s failure to provide nurturing care that conforms to the child’s developmental needs must result in “harm, potential for harm, or threat of harm to a child.”<sup>56</sup>

Licensure also requires a written disciplinary policy that describes a child care facility’s disciplinary methods and practices.<sup>57</sup> Disciplinary policies must comply with state regulations that prohibit

- placing a child in a locked room, closet, or box;
- leaving a child alone in a room that is separated from staff;

- withholding food or giving food as a means of discipline;
- assigning chores that require contact with or use of hazardous materials, such as cleaning bathrooms or floors or emptying diaper pails; and
- disciplining a child for not sleeping during rest period or for lapses in toilet training.<sup>58</sup>

In addition, no child should be handled roughly in any way, such as by being shaken, pushed, shoved, pinched, slapped, spanked, bitten, or kicked.<sup>59</sup> Corporal punishment is prohibited in nonreligious child care facilities.<sup>60</sup> Actions that violate these prohibitions are likely to amount to maltreatment if the actions caused harm, the threat of harm, or the potential for harm to the child.

Ultimately, the decision as to whether child maltreatment occurred is left with the DCDEE. A person making a report need only have cause to suspect that child maltreatment has occurred. A person is not required to investigate or to know that a child has been maltreated.<sup>61</sup>

## How to Report

A report of suspected child maltreatment is made to the DCDEE and may be made in writing or orally.<sup>62</sup>

A report may be made over the telephone by calling the Intake Unit at the DCDEE at (919) 527-6500 or, if calling within North Carolina,<sup>63</sup> at 1-(800) 859-0829. There does not appear to be an afterhours (nights and weekends) contact number for the DCDEE, but a person making a report may leave a voice message if he or she calls during non-regular business hours. The outgoing DCDEE message states that the reporter's call will be returned but that if an emergency exists, the reporter should call local law enforcement.

A written report of suspected child maltreatment may be sent by

- email to [webmasterdcd@dhhs.nc.gov](mailto:webmasterdcd@dhhs.nc.gov);
- postal mail to NC DCDEE, 2201 Mail Service Center, Raleigh, NC 27699-2200; or
- fax to the "Intake Unit" at (919) 715-1013.<sup>64</sup>

Because the obligation to report is mandatory, a person may want to document that he or she made a report. If a report was made over the phone,

the reporter may want to make a notation on a calendar, journal, or piece of paper of the date, time, and phone number called and (1) the name of the person who took the call or (2) the fact that the reporter left a message. If a report was made in writing, the reporter may want to retain a copy of that written report (e.g., a saved email) with a notation as to when, where, and how (e.g., the date, the mailing address, that U.S. first-class mail was used) the report was made.

The law does not address the timing of when a report must be made, leaving unanswered questions such as must a person report immediately after having cause to suspect child maltreatment or may the person wait a few hours or days to make a report? Because timing is not expressly mentioned, a person who waits until the DCDEE's regular business hours to make a report to a live person (versus leaving a voice mail message) is complying with his or her reporting obligation.

As a practical matter, if a person believes that there is an emergency situation occurring at a child care facility that is operating during hours that the DCDEE is closed, a report should be made to law enforcement or to the county department so that an immediate response to the reported emergency can be made.<sup>65</sup> Regardless of whether there is an emergency, if a person calls the county department to make a report during those hours when the DCDEE is closed, the county department should take the report.<sup>66</sup> The county department must notify the DCDEE within twenty-four hours (or on the next working day) that it has received a report of a child's suspected maltreatment.<sup>67</sup> The county department may inform the reporter that he or she can also make a report to the DCDEE.<sup>68</sup>

The laws do not address what procedures should be followed when a report of a child's suspected maltreatment has been made to local law enforcement. Compliance with the new reporting law requires that the DCDEE, not law enforcement, be notified. It is possible, but not guaranteed, that a report made to law enforcement will be shared with the DCDEE. For example, an officer who receives a report may form his or her own "cause to suspect" that the child is being maltreated, depending on the facts that are shared and the officer's assessment of the reporter's credibility. If the officer has cause to suspect that a child is being maltreated, the officer must make a report to the DCDEE under the mandated reporting law.<sup>69</sup> A report made to law enforcement is not the same as a report to the DCDEE. Because the new law requires a report to the DCDEE, a person should make a report to the DCDEE in addition to law enforcement.

## What to Include

While the new law states that a person should give his or her name, address, and telephone number when making a report,<sup>70</sup> anonymous reporting is also permitted.<sup>71</sup> A report of a child's suspected maltreatment should include the following information, if known:

- the name and address of the child care facility at which the suspected maltreatment occurred;
- the name and address of the affected child's parent, guardian, or custodian;
- the child's age;
- the child's current location if the child is not at home;
- the nature and extent of any injury or condition the child has suffered as a result of the maltreatment; and
- any other information the reporter believes will be helpful in an investigation.<sup>72</sup>

Additional information that may be helpful to an investigation includes

- the child's name (if known);
- a physical description of the child;
- the name, title, and/or a description of the involved caregiver;
- the reasons why the reporter suspects the child has been maltreated; and
- the time period during which the suspected maltreatment occurred.

## The DCDEE Investigation of Child Maltreatment

A report of a child's suspected abuse, neglect, dependency, or maltreatment is the event that initiates action by either the child welfare system or the child care facility licensing system.<sup>73</sup> Under the child care facility licensing system, the DCDEE must complete a prompt and thorough assessment of a report to determine

- the facts of the case,
- the existence and extent of any maltreatment, and
- the risk of harm to any children being cared for in the child care facility.<sup>74</sup>

The DCDEE is not, however, required to act alone when assessing whether maltreatment has occurred.

### **Collaborative Investigation**

The law explicitly recognizes that a proper investigation of suspected child maltreatment in a child care facility requires cooperation between the DCDEE, local law enforcement, and county departments.<sup>75</sup> As part of its investigation, the DCDEE is authorized to consult with public and private agencies or individuals, including law enforcement officers, probation or parole officers, and county departments.<sup>76</sup> If requested by the DCDEE, a county department and/or law enforcement agency must assist the DCDEE in assessing and evaluating the seriousness of a child maltreatment report.<sup>77</sup> The DCDEE and medical providers must also cooperate with one another to ensure that reports of suspected child maltreatment are properly investigated.<sup>78</sup>

### **Law Enforcement's Role**

A report of suspected child maltreatment may include facts that also meet the definitions of felony or misdemeanor child abuse under North Carolina's criminal laws.<sup>79</sup> Facts that fall under both child maltreatment and criminal child abuse would be that the caregiver

- inflicted or allowed to be inflicted physical injury to the child by non-accidental means,<sup>80</sup>
- created or allowed to be created a substantial risk of physical injury to the child by non-accidental means,<sup>81</sup>
- intentionally inflicted serious physical injury<sup>82</sup> or serious bodily injury<sup>83</sup> on the child,<sup>84</sup>
- committed or allowed to be committed any sexual act on the child,<sup>85</sup> or
- was willfully or grossly negligent in caring for the child such that there was a reckless disregard for human life.<sup>86</sup>

When such facts are alleged in a report of suspected child maltreatment, the DCDEE must contact local law enforcement to investigate the report.<sup>87</sup> There are two separate cases that may be simultaneously occurring:

1. a child care facility licensing case that involves suspected child maltreatment and possible administrative action by the DCDEE against the child care facility and caregiver and



2. a criminal case where law enforcement is investigating whether a crime has been committed and whether a referral will be made to the district attorney's office where a prosecutor will decide whether criminal charges should be initiated against the perpetrator who is believed to have committed a crime against the child.

When sexual abuse of a child in a child care facility is suspected, the State Bureau of Investigation (SBI) must also be involved. When the DCDEE receives a report that alleges a child has been sexually abused in a child care facility, the DCDEE must notify the SBI within twenty-four hours (or the next workday) of receiving the report.<sup>88</sup> In addition, if, in the course of assessing a report of child maltreatment that did not allege sexual abuse, the DCDEE suspects that the child was sexually abused in a child care facility, the DCDEE must immediately notify the SBI.<sup>89</sup> Upon being informed of a child's possible sexual abuse in a child care facility, the SBI may form a task force to investigate.<sup>90</sup>

### **A County Department Assessment for Abuse, Neglect, or Dependency**

There may be circumstances where a report of or assessment for child maltreatment will raise concerns that the child is "abused", "neglected", or "dependent". For example, when it is unknown where the child was injured (at home or at the child care facility) and/or who was responsible (a parent, guardian, custodian, caretaker, or caregiver). When abuse, neglect, or dependency is also suspected, the DCDEE must notify the county department.<sup>91</sup> The county department should open its own case to determine whether the child is abused, neglected, or dependent and in need of protective services. In that event, there will be two separate cases: a child welfare case and a child care facilities licensing case.

**Table 1. The Different Agency Investigations**

Circumstances Giving Rise to Duty to Investigate	Agency Involved in Investigation		
	County Dept.	DCDEE	Law Enforcement
A report is made of alleged child maltreatment by a caregiver occurring in a child care facility		●	
A report of suspected child maltreatment in a child care facility includes facts that meet criteria of felony or misdemeanor child abuse		●	●
A report of suspected child maltreatment or an assessment by DCDEE indicates that a child was sexually abused in a child care facility (SBI may form a task force to investigate)		●	●
DCDEE requests assistance with its investigation from law enforcement		●	●
DCDEE requests assistance with its investigation from a county department	●	●	
DCDEE requests assistance with its investigation from a county department and law enforcement	●	●	●
A report indicates that a child is abused, neglected, or dependent because of circumstances created by a parent, guardian, custodian, or caretaker	●		
A report is made that alleges a crime has been committed against a child regardless of the relationship between the child and alleged offender			●

## Steps in the Investigation

The DCDEE will determine what steps are required in its investigation of suspected child maltreatment based on the facts of each case. However, there are some procedures that are required in all cases.

### Inspecting the Child Care Facility

The DCDEE must make an unannounced inspection of the child care facility as part of its investigation of reported child maltreatment.<sup>92</sup> The unannounced inspection must take place within seven days of when the DCDEE

receives a report of the suspected child maltreatment.<sup>93</sup> Presumably, the timing of the unannounced inspection will be based on the severity of the suspected maltreatment reported. It is also possible that previous reports made about the same caregiver or child care facility and the number of children suspected of being maltreated will factor into how soon within the seven-day window the inspection is made. After this initial unannounced inspection, the DCDEE may make additional visits to the child care facility if it determines additional visits are necessary.<sup>94</sup>

If the child care facility refuses to allow an inspection or if the DCDEE has concerns that the facility will prevent it from conducting an inspection, the DCDEE may seek an administrative inspection warrant (“inspection warrant”) from a court official.<sup>95</sup> An inspection warrant authorizes a DCDEE employee to inspect the child care facility when consent is not provided.<sup>96</sup>

The DCDEE obtains an inspection warrant from a magistrate, clerk (including an assistant or deputy clerk) of court, or judge with jurisdiction in the area where the child care facility is located.<sup>97</sup> For example, if the child care facility is located in Boone, the DCDEE would apply for an inspection warrant from a magistrate or clerk from Watauga County, any district court judge in Judicial District 24,<sup>98</sup> or any North Carolina superior court judge, Court of Appeals judge, or Supreme Court justice. An authorized employee of the DCDEE applies for an inspection warrant by completing an affidavit under oath that includes facts to establish probable cause to believe that a circumstance that legally justifies searching the child care facility exists.<sup>99</sup> For example, the DCDEE received a report on X date alleging that a child who receives care in the Y facility was maltreated in the following way (list details) during (fill in the blank) time period. The judicial official must question, under oath, the DCDEE employee who completed the affidavit.<sup>100</sup> If the judicial official determines that the statements in the affidavit are true and the search satisfies the probable cause standard, the inspection warrant will be authorized.

The inspection warrant must describe the property that will be searched and the circumstances or conditions that the inspection is intended to reveal.<sup>101</sup> The search of the child care facility must be conducted within twenty-four hours of when the DCDEE obtains the inspection warrant.<sup>102</sup> Before the DCDEE can inspect the child care facility it must, at some time between 8:00 a.m. and 8:00 p.m., serve the owner or possessor of the facility with the inspection warrant and the affidavit upon which it is based.<sup>103</sup> If after reasonable efforts have been made the owner or possessor cannot

be found, the search may be conducted after the inspection warrant and the affidavit upon which it is based are affixed to the child care facility (e.g., posted on the entrance door).<sup>104</sup> The DCDEE employee may ask a law enforcement officer to be present for the service of the inspection warrant and the inspection of the child care facility when there are concerns about security. The inspection warrant must be returned to the court that issued it within forty-eight hours of when it was issued.<sup>105</sup>

### **Obtaining Information**

The DCDEE must obtain information about the alleged child maltreatment. To accomplish that, the DCDEE is authorized to consult with agencies or individuals and to make a written demand for any information or reports that it believes is relevant for its assessment, even if the information is confidential under state law.<sup>106</sup> Any agency or individual that receives a written demand for information must provide the DCDEE with access to and copies of any records or information that is requested to the extent the disclosure is permitted by federal law and regulations.<sup>107</sup> Information that is protected by attorney-client privilege should not be provided to the DCDEE.<sup>108</sup>

North Carolina's Child Care Rules<sup>109</sup> state that the DCDEE should interview the child care facility operator and/or staff, the child's parents, or any other adult who has information regarding the child maltreatment allegation.<sup>110</sup>

### ***Interviewing Children; the Parents' Role***

Children attending the child care facility may be witnesses to suspected child maltreatment. A child who is the alleged victim of suspected maltreatment will have information about what has been reported. Other children may have observed events occurring between a caregiver and another child in the child care facility. Depending on a child's age and development, it may be appropriate to interview that child.

The North Carolina Child Care Rules (hereinafter Rules) in effect at the time of this writing contemplate a situation under the old law where the county department receives and investigates the report of a child's suspected "abuse or neglect" occurring in a child care facility. One of those Rules states that the DCDEE may interview a child when a county department is not conducting the investigation.<sup>111</sup> Under the new law, that Rule would apply in essentially every case because the DCDEE and not the county department will be conducting the investigation.

The Rules are silent as to a parent's role in making a decision about whether his or her child should be interviewed.<sup>112</sup> Parents have a constitutional right to the care, custody, and control of their children.<sup>113</sup> However, a parent's right is not absolute; a parent forfeits his or her paramount constitutional rights when he or she has been found to be unfit or has acted inconsistently with his or her parental rights.<sup>114</sup> But, unlike a finding that a child is abused, neglected, or dependent as a result of circumstances created by a parent, an allegation or finding that a child has been maltreated by a caregiver in a child care facility does not usually support a conclusion that a parent has acted inconsistently with his or her parental rights.<sup>115</sup> The DCDEE regulates child care facilities and assesses reports of suspected child maltreatment caused by a caregiver, not a parent. The DCDEE does not have any statutory authority to interfere with the parent-child relationship. A parent's right to make decisions for his or her child, including whether the child should be interviewed or have a medical examination, remain with the parent. Although the Rules allow for the DCDEE to interview the child, the parent's constitutional right to care, custody, and control of the child should not be ignored.

Because parents have paramount constitutional rights to make decisions for, and have custody of, their child, the DCDEE will need to work with the child's parent when conducting its investigation of child maltreatment. If the DCDEE wants to interview a child, it should first contact the child's parent(s) to obtain parental consent and make arrangements for the time, place, and conditions (e.g., the parent will be present) for the child's interview. The DCDEE may want to obtain a parent's consent authorizing disclosure of confidential records that relate to the child when such consent is required by federal law and regulations.<sup>116</sup> If the child requires a medical evaluation, the parent is the person who must consent; the DCDEE does not have that authority.

### **Immediate Protection Plans**

The DCDEE may take immediate action to protect a child when its investigation of suspected child maltreatment is pending. The DCDEE may issue a protection plan, which may restrict the individual alleged to have maltreated a child from being on the child care facility's premises or suspend activities at a facility, such as field trips, aquatics, and transportation.<sup>117</sup> The DCDEE may also order immediate corrective action when necessary to protect the health, safety, or welfare of children at a child care facility.<sup>118</sup> If emergency

action is required to protect the health, safety, or welfare of children at the facility, the DCDEE may summarily suspend the facility's license while any administrative hearing to decide the license suspension is pending.<sup>119</sup>

## The Result of the Investigation

There are three possible outcomes of an investigation of suspected child maltreatment:

1. the DCDEE determines that there was no child maltreatment and no further action is taken,
2. the DCDEE determines that there was no child maltreatment but finds one or more violations of other licensure laws or regulations,<sup>120</sup> or
3. the DCDEE finds that child maltreatment has occurred (and also may find additional violations of licensure laws or regulations).<sup>121</sup>

A determination of whether to substantiate child maltreatment is made by a team from the DCDEE and not by an individual investigator.<sup>122</sup> Some of the factors the team will consider include

- the child's age,
- the severity of injury involved (if any), and
- the actions taken or not taken by the caregiver suspected of maltreating a child.<sup>123</sup>

## Administrative Action against the Child Care Facility

Child maltreatment is a violation of state licensure standards and laws governing child care facilities.<sup>124</sup> If child maltreatment at a child care facility is established, the DCDEE may take administrative action against the facility.<sup>125</sup> The DCDEE must provide a statement of the reasons for the administrative action.<sup>126</sup> If the administrative action allows the DCDEE to require corrective action, the DCDEE must specify the corrective action that the operator of the child care facility must take.<sup>127</sup> Possible administrative remedies include

1. an official written reprimand,
2. a written warning with a request for compliance (also known as a "corrective action plan" or CAP),

3. limited enrollment of new children at the facility until the DCDEE is satisfied that the situation that created the child maltreatment no longer exists,
4. a civil penalty of up to \$1,000,
5. issuance of a probationary license to the facility until compliance has been verified,
6. issuance of a six-month special provisional license,
7. a summary suspension of the facility's license for up to one year, or
8. license revocation.<sup>128</sup>

When determining the type of sanction to impose, the DCDEE may consider the following criteria:

1. the severity of the incident,
2. the probability of reoccurrence,
3. prior incidents of maltreatment in the facility,
4. the facility's history of compliance with child care requirements, and
5. the DCDEE's assessment of the facility operator's response to the incident.<sup>129</sup>

When the DCDEE issues a corrective action plan, the child care facility may remain open.<sup>130</sup> The corrective action plan may require that the caregiver responsible for child maltreatment be removed from the facility until there is a final determination of his or her placement on the Child Maltreatment Registry (discussed below).<sup>131</sup> If a corrective action plan has been issued, the DCDEE must make unannounced visits to the affected child care facility to determine whether the plan has been implemented.<sup>132</sup> If the facility has not made the corrective action, the DCDEE may take additional action necessary to protect the health, safety, or welfare of the children in the facility.<sup>133</sup> For example, a civil penalty of up to \$1,000 may be imposed if there is a finding that the penalty is required to enforce the corrective action plan.<sup>134</sup>

The operator of a child care facility against whom an administrative action has been taken by the DCDEE has a right to appeal that administrative action.<sup>135</sup> When the DCDEE decides to take action it must provide the operator with a written notice that explains the action as well as details regarding the operator's right to appeal.<sup>136</sup> The operator must file a petition for a contested case with the Office of Administrative Hearings within thirty

days of when the DCDEE gives notice of the administrative action.<sup>137</sup> The appeal will be heard by an administrative law judge, who will issue a written decision.<sup>138</sup> That decision may be appealed to superior court.<sup>139</sup>

### **An Individual's Placement on the Child Maltreatment Registry**

The new child maltreatment laws require the creation a statewide registry that must be maintained by DHHS called the Child Maltreatment Registry (CMR).<sup>140</sup> The CMR contains the names of all caregivers who have been found to have maltreated a child.<sup>141</sup> Any individual who is listed on the CMR cannot be a caregiver at a licensed or religious sponsored child care facility.<sup>142</sup> Information from the CMR may also be provided by DHHS to child-caring institutions; child-placing agencies; group homes; and other foster care, child care, or adoption service providers who are determining an individual's fitness to care for or adopt a child.<sup>143</sup>

### ***Liberty Interests, Employment, and Government Regulation***

The consequences of being prohibited from working as a caregiver and/or being excluded from becoming a foster or adoptive parent impact an individual's constitutional right to "life, liberty, the enjoyment of the fruits of [his or her] own labor, and the pursuit of happiness."<sup>144</sup> Liberty includes "the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation. . . ."<sup>145</sup> However, the right to choose and pursue any occupation is not absolute.<sup>146</sup> The state may regulate businesses and professions through laws, regulations, and licensure when such regulation is necessary to promote the public health, safety, and welfare of the people of North Carolina.<sup>147</sup> North Carolina regulates child care facilities and the employees who work in those facilities to ensure that children receive care in safe and healthy environments by qualified persons of good moral character.<sup>148</sup> Included in the state's regulation of child care is the mandatory licensure of child care facilities, the authority to investigate suspected maltreatment and impose sanctions when maltreatment is found, and the maintenance of a registry that identifies and prohibits caregivers who have been found to have maltreated a child.



### ***Due Process***

Both the U.S. Constitution and the North Carolina Constitution guarantee that a person has the right to due process before he or she can be deprived of life, liberty, or property.<sup>149</sup> Due process requires that there be a fair procedure that includes notice and “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”<sup>150</sup> Before a person can be placed on the CMR, he or she must (1) be notified of the DCDEE’s intent to place him or her on the list and (2) be given a right to appeal the DCDEE’s decision to the Office of Administrative Hearings.<sup>151</sup> An appeal must be filed within thirty days of when the written notice of the DCDEE’s intent to place an individual on the CMR was mailed.<sup>152</sup> If the individual fails to file an appeal within thirty days or appeals and is unsuccessful, his or her name will be added to the CMR. The new law allows the DCDEE to impose corrective action that prohibits the caregiver from providing child care at any regulated facility while his or her appeal is pending, even though his or her name is not yet placed on the CMR.<sup>153</sup> Corrective action imposed on a caregiver that prevents him or her from working in the child care profession while his or her appeal is pending but not completed may be a violation of the caregiver’s due process rights.<sup>154</sup>

## **Confidentiality and Information Sharing**

The child maltreatment laws addressing confidentiality vary according to the content of the information at issue and the phase and outcome of the case.

### **During the Investigation**

During the DCDEE investigation of child maltreatment, all information is confidential.<sup>155</sup> However, the DCDEE may need to share information with an agency that is assisting with the investigation, such as the county department or law enforcement.<sup>156</sup> Disclosure is permitted when it is made to a federal, state, or local government agency to protect a child from child maltreatment, abuse, or neglect. If a disclosure of this type is made, the information remains confidential with the government agency unless redisclosure is directly connected to the agency’s performance of its mandated responsibilities<sup>157</sup> or a court or administrative order authorizes disclosure.

If the disclosure order is being sought in a proceeding where the DCDEE is a not party, the DCDEE must receive notice and have an opportunity to be heard. To authorize disclosure, the tribunal should determine that the information is relevant, necessary to the trial or hearing that is before the court or administrative officer, and unavailable from other sources.<sup>158</sup>

### **The Reporter's Identity**

At all phases of a child maltreatment investigation, the identity of the person who reported the suspected maltreatment is kept confidential unless (1) a court order authorizes disclosure or (2) a federal, state, or local government entity demonstrates a need for the reporter's name to carry out its own mandated responsibilities.<sup>159</sup>

### **The Results of the Investigation**

After the investigation of alleged child maltreatment at a child care facility is completed, if maltreatment has been substantiated, those findings, including the date(s) of the DCDEE's visit(s) to the facility and, if applicable, the corrective action plan, are available to the public.<sup>160</sup> The information will be posted on the DCDEE website.<sup>161</sup>

If child maltreatment was not found, information about the report of maltreatment, the subsequent investigation (including that there was an unannounced visit), and the determination are not public and will not be posted on the DCDEE website.<sup>162</sup> However, even if child maltreatment at a child care facility is not substantiated, if, during the course of the investigation, the DCDEE finds a licensure violation by that facility, the date of the visit to the facility where the violation was found, the violation, and any resulting administrative action imposed by the DCDEE is public information.<sup>163</sup>

### **The Child Maltreatment Registry**

The names of caregivers listed in the CMR are public records.<sup>164</sup> Anyone (e.g., a parent) may submit a public request form for information about whether a specific individual is on the CMR.<sup>165</sup> Information other than the caregiver's name, such as social security numbers, taxpayer identification numbers, and dates of birth, is confidential and not a matter of public record.<sup>166</sup>

## Conclusion

The new child maltreatment laws do not change who is obligated to make a report of suspected child abuse, neglect, dependency, or maltreatment. Instead, the laws change where a report is made and the procedures for how a report is investigated and resolved. The new child maltreatment laws make it clear that North Carolina has two separate systems that are designed to protect children: the child welfare system and the child care facilities licensing system. The child welfare system focuses on the family when addressing the needs of a child who is suspected of being abused, neglected, or dependent because of circumstances created by a parent, guardian, custodian, or caretaker. The child care facilities licensing system responds to reports of children who are suspected of being maltreated by a caregiver in a child care facility as part of its regulation of child care facilities. Both of these systems have a shared purpose of protecting children, but they serve different functions and provide for different remedies.

## Notes

1. S.L. 2015-123.
2. Chapter 7B, Section 101(8a) of the North Carolina General Statutes (hereinafter G.S.) (defining “Department” as “[e]ach county’s child welfare agency,” which in many counties is the department of social services or DSS).
3. G.S. 110-85.
4. Janet Mason, *Reporting Child Abuse and Neglect in North Carolina*, 3rd ed. (UNC School of Government, 2013) (hereinafter *Reporting Child Abuse*). The Mason book, which was funded by a grant from the Governor’s Crime Commission of the North Carolina Department of Public Safety, discusses North Carolina’s laws through the 2013 session of the North Carolina General Assembly and is available for free downloading, in pdf format, at [www.sog.unc.edu/publications/books/reporting-child-abuse-and-neglect-north-carolina](http://www.sog.unc.edu/publications/books/reporting-child-abuse-and-neglect-north-carolina). This supplemental chapter reflects legislative changes made through the 2016 session of the General Assembly and is posted as a stand-alone pdf and as part of an updated, cumulative pdf version of the Mason book, both of which are also available for free downloading at the above-listed URL.
5. See *Reporting Child Abuse*, 25, 87, 100–102, 111–12, 117, 172, 176–77, 184.
6. G.S. Chapter 7B is referred to as the Juvenile Code; the reporting law is found at G.S. 7B-301.
7. G.S. 7B-100.
8. Article 7 of G.S. Chapter 110 regulates child care facilities; the reporting law is found at G.S. 110-105.4.
9. G.S. 110-85.
10. G.S. 110-105.4(a).
11. See *id.* (reporting law governing child care facilities); *id.* § 7B-301 (reporting law in the Juvenile Code).
12. North Carolina is in the minority of states that has a universal mandated reporting statute for child abuse and neglect. As of August 2015, only eighteen states and Puerto Rico had universal mandated reporting statutes. See Child Welfare Information Gateway, Children’s Bureau, *Mandatory Reporters of Child Abuse and Neglect*, [www.childwelfare.gov/pubPDFs/manda.pdf#page=5&view=Summaries of State Laws](http://www.childwelfare.gov/pubPDFs/manda.pdf#page=5&view=Summaries of State Laws).
13. In contrast, the Juvenile Code has one limited exception to the reporting requirement. G.S. 7B-310 exempts an attorney from reporting when that attorney forms a suspicion (or knows) that a child is abused, neglected, or dependent because of privileged conversations between the attorney and his or her client in an abuse,

neglect, or dependency action. See chapter 6 of *Reporting Child Abuse* for a discussion of mandated reporting despite confidentiality and privileged communication laws or ethical responsibilities.

14. G.S. 7B-310 explicitly states that except for attorney-client privilege when an attorney is representing a client in the abuse, neglect, or dependency case, privilege is not a ground for failing to report. In contrast, G.S. 110-105.4 does not specifically address privileged or confidential communications and the duty to report suspected child maltreatment. G.S. 110-105.3(l) addresses confidential information when a written demand is made by the North Carolina Department of Human Services, Division of Child Development and Early Education (DCDEE) and only protects confidential information (1) between an attorney and client or (2) when releasing the information is prohibited by federal law. See note 107 *infra* and chapter 6 of *Reporting Child Abuse* for further discussion about confidentiality as applied to professions.

15. G.S. 7B-309 provides immunity from any civil or criminal liability to a person who makes a mandated report, cooperates with a county department's assessment of the report, and/or testifies in court when that person has acted in good faith.

16. G.S. 7B-301(b) makes it a Class 1 misdemeanor when a person knowingly or wantonly fails to report or prevents another person from making a report of a child's suspected abuse, neglect, or dependency. Note that the DCDEE may take administrative action against a child care facility for not complying with state laws that pertain to a child's health, safety, and welfare. See G.S. 110-91 (compliance with federal and state laws required); -102.2 (administrative penalties); -103.1 (civil penalty).

17. Article 21 of G.S. Chapter 95.

18. G.S. 95-241. For example, G.S. 95-241(a)(1)h. protects an employee of a retailer that sells glass tubes, which could be used to process, store, conceal, or ingest a controlled substance, from retaliation when the employee makes a good faith report to law enforcement of alleged criminal activity related to the sale of glass tubes. See G.S. 90-113.84 (immunity). G.S. 95-241(a)(5) protects a victim of domestic violence against retaliation when he or she has to take reasonable time off from work to obtain a domestic violence protection order. See G.S. 50B-5.5.

19. Article 14 of G.S. Chapter 126.

20. G.S. 126-5(c5).

21. See *Coman v. Thomas Mfg. Co., Inc.*, 325 N.C. 172 (1989) (In North Carolina, an at-will employee (meaning, generally speaking, that the employee or employer can terminate the employment for any reason, at any time) may have a wrongful discharge claim against an employer when the reason for the employee's discharge is against public policy. In this case, a truck driver was penalized by his employer for refusing to follow the employer's directive to violate federal and state regulations that impose maximum driving times and mandatory rest periods for truck drivers. The purpose of those regulations is to protect the public by making highways safe.). See also *Sides v. Duke Univ.*, 74 N.C. App. 331 (1985) (A nurse, who had worked at Duke Hospital for eleven years as an at-will employee, was permitted

to bring a wrongful discharge complaint against her employer alleging retaliation based on her having given truthful and complete testimony adverse to the employer in a medical malpractice trial. The court reasoned that it would be against public policy to allow an employer to retaliate against an employee who refused to commit perjury. An employee who is discharged from a child care facility in retaliation for making a mandated report of suspected child maltreatment could argue that the public policy interests in protecting children support a wrongful discharge action against the employer.

22. *Sides*, 74 N.C. App. 331.

23. G.S. Chapter 96, Article 2C. There are several requirements for unemployment insurance eligibility, one of which involves the reason for the employee's separation from employment. Although, for eligibility purposes, the separation cannot be based on employee misconduct, a retaliatory discharge will not necessarily disqualify someone from obtaining unemployment benefits. The North Carolina Division of Employment Security will determine whether the employment separation was based on good cause or whether the employee was at fault.

24. G.S. 110-106(a) (a "religious sponsored child care facility" is a child care facility that is operated by a church, synagogue, or school of religious character).

25. G.S. 110-105.3(b). *See id.* § 110-106 (regulation of religious sponsored child care facilities).

26. G.S. 110-85(3) (mandatory licensing of child care facilities); -93 (application to DHHS for a license); -98 (mandatory compliance). G.S. 110-106(b)(4) exempts religious sponsored child care facilities from the state's mandatory licensure requirement.

27. *See* G.S. 110-86(6) ("License" defined); -93 (application for license); -91 (mandatory licensure standards, which address medical care, health, and sanitation, including health assessments of children and staff, nutrition, and rest time; staff qualifications and development; child-to-staff ratios; building location and standards, including fire prevention and space and equipment requirements; record keeping; and standards of care, including disciplinary policies, transportation, developmentally appropriate activities, and safe sleeping policies). *See also id.* § 110-90.2 for criteria related to mandatory criminal history and other background checks of child care providers.

28. G.S. 110-99(a1).

29. G.S. 110-106(b). *See id.* §§ 110-106(c) and -91 (the minimum licensing standards that do not apply to a religious sponsored child care facility involve staff qualifications, staff development, and developmentally appropriate activities).

30. G.S. 110-86(3)a.

31. G.S. 110-86(3)b.

32. G.S. 110-86(3).

33. *Id.* *See id.* § 110-86(2).

34. G.S. 110-86(2).

35. *Id.*

36. *Id.*

37. G.S. 110-90(11) and -106(b)(4).

38. G.S. 110-91 and -93.

39. The DCDEE Child Care Facility Search Site is an interactive search tool where one can enter the full or partial name of the facility, city, and/or county where a given facility is located. The search is available at <http://ncchildcaresearch.dhhs.state.nc.us/search.asp>.

40. G.S. 7B-600; 35A-1202(10) (“Guardian of the person” defined) and (7) (“General guardian” defined).

41. G.S. 7B-101(8).

42. G.S. 7B-101(3).

43. See G.S. 7B-101(1) (“Abuse” defined), (9) (“Dependency” defined; note that the relationship of caretaker does not apply to dependency), (15) (“Neglect” defined). See also *Reporting Child Abuse*, chapter 4, pages 22–28 for a discussion of the role of a parent, guardian, custodian, and caretaker.

44. G.S. 110-105.3(b)(3) (“Any act or series of acts of commission or omission by a caregiver . . .”).

45. G.S. 110-86(7) (an “operator” is the owner, director, or person with primary responsibility for the operation of the child care facility).

46. G.S. 110-90.2(a)(2)c. and -105.3(b)(1).

47. G.S. 110-105.3(b)(1). See *id.* § 110-90.1(a)(2).

48. G.S. 7B-101(3). See S.L. 2016-94, § 12C.1.(d), which added “a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department” to the definition of “caretaker”.

49. S.L. 2015-123, § 1 amended G.S. 7B-101(3).

50. G.S. 110-105.4(a).

51. G.S. 7B-101(1) (“Abuse” defined) and (15) (“Neglect” defined); 110-105.3(b)(3) (“Child maltreatment” defined). See *Reporting Child Abuse*, chapter 5, pages 31–44 for a discussion of the definitions of “neglect” and “abuse” set forth in the Juvenile Code. Note that the Juvenile Code refers to “maltreatment” in its mandated reporting statute. G.S. 7B-301(a) requires any person who has cause to suspect that a child “has died as the result of maltreatment” to make a report to the county department where the child resided or was found. However, the Juvenile Code does not define “maltreatment.” G.S. 110-105.3(b)(3) defines “child maltreatment” and requires a caregiver-child relationship. The Juvenile Code does not apply to child maltreatment by a “caregiver”. Because of the use of the undefined term “maltreatment” in the Juvenile Code, it is unclear if a person should also make a report to the county department when he or she has cause to suspect that a child has died in a child care facility because of child maltreatment. See *Reporting Child Abuse*, chapter 5, pages 45–46 for a discussion of “maltreatment” as used in the Juvenile Code.

52. G.S. 7B-101(1) (“Abuse” defined); 110-105.3(b)(3) (“Child maltreatment” defined).

53. G.S. 110-105.3(b)(3).

54. *Id.*

55. G.S. 110-91(10).

56. G.S. 110-105.3(b)(3).

57. G.S. 110-91(10).

58. Title 10A of the North Carolina Administrative Code (hereinafter N.C.A.C.), Chapter 09, Sections .1722(d), (f), (g), and .1801(b).

59. 10A N.C.A.C. §§ 09.1722(c) and 09.1801(b)(1).

60. G.S. 110-91(10); 10A N.C.A.C. §§ 09.1722(b) and 09.1801(b). The disciplinary policy must state that corporal punishment is prohibited. A religious sponsored child care facility may use corporal punishment, but it must (1) file a notice with DHHS stating that corporal punishment is part of its religious training and (2) have a written disciplinary policy that clearly states corporal punishment is part of its religious training program. *See also* G.S. 110-101.1.

61. *See Reporting Child Abuse*, chapter 7, pages 67–71 for a discussion of cause to suspect.

62. G.S. 110-105.4(a).

63. If you are making a call from a cellular phone, your phone number must be a North Carolina phone number to call the 800 number.

64. NC DCDEE website: [www.ncchildcare.nc.gov/parents/pr\\_sn2\\_complaints.asp](http://www.ncchildcare.nc.gov/parents/pr_sn2_complaints.asp).

65. DCDEE, *Frequently Asked Questions: The law about how DCDEE investigates child abuse and neglect in child care is changing January 1, 2016. What do you need to know?* (Dec. 18, 2015), [http://ncchildcare.dhhs.state.nc.us/PDF\\_forms/MaltreatmentFAQ\\_12-18-15.pdf](http://ncchildcare.dhhs.state.nc.us/PDF_forms/MaltreatmentFAQ_12-18-15.pdf) (hereinafter *DCDEE FAQ*). Page 5 of the *DCDEE FAQ* states that when the county department receives an emergency afterhours report, it should, if needed, contact law enforcement and may visit the child care facility to assess safety concerns and investigate with law enforcement. The county department must share any information with the DCDEE on the next business day, and the DCDEE will take over the investigation.

66. *See* G.S. 7B-307. *See also DCDEE FAQ*, 5.

67. G.S. 7B-307. Additionally, G.S. 110-105.3(l) and 7B-302(a1)(1) authorize a county department to share the report with the DCDEE. Under G.S. 110-105.4, the county department worker who took the report may now have cause to suspect that a child is being maltreated and may be obligated to make a report him or herself under the mandated reporting law.

68. *DCDEE FAQ*, 5.

69. G.S. 110-105.4(a).

70. *Id.*

71. *Id.*

72. *Id.*

73. *See In re Stumbo*, 357 N.C. 279, 285 (2003) (the receipt of a report “sets off a chain of statutory and regulatory actions by the DSS”).

74. G.S. 110-105.3(d).

75. G.S. 110-105.3(a).

76. G.S. 110-105.3(l).

77. *Id.* *See id.* § 110-105.3(c).

78. G.S. 110-105.3(c).



79. *See* G.S. 14-318.2 (misdemeanor child abuse) and -318.4 (felony child abuse). The relationship of a parent or a person providing care or supervision to a child younger than 16 is a required element of each crime.

80. G.S. 14-318.2(a) (misdemeanor child abuse).

81. *Id.*

82. G.S. 14-318.4(d)(2) defines “serious physical injury” as an injury that causes great pain and suffering and includes serious mental injury.

83. G.S. 14-318.4(d)(1) defines “serious bodily injury” as a bodily injury that creates a substantial risk of death; serious permanent disfigurement; coma; a permanent or protracted condition that causes extreme pain, loss, or impairment of a function of a bodily member or organ; or that results in prolonged hospitalization.

84. G.S. 14-318.4 (felony child abuse).

85. *Id.*

86. *Id.*

87. G.S. 110-105.3(d). The statutory language is not clear as to whether law enforcement is conducting the investigation on behalf of the DCDEE or whether law enforcement is conducting its own criminal investigation. Per comments provided to this author, the DCDEE interprets this language to mean that law enforcement determines when it will conduct its own criminal investigation, and the DCDEE investigates the child care facility to determine whether child maltreatment occurred warranting administrative action under the licensing laws.

88. G.S. 110-105.4(b).

89. *Id.*

90. *Id.*

91. G.S. 110-105.3(k).

92. G.S. 110-105(a).

93. *Id.*

94. *Id.*

95. G.S. 110-105(b); 15-27.2. *See* N.C. Admin. Office of the Courts (AOC), “Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity,” Form AOC-CR-913M, [www.nccourts.org/Forms/Documents/172.pdf](http://www.nccourts.org/Forms/Documents/172.pdf).

96. G.S. 15-27.2(a).

97. G.S. 15-27.2(b). *See* Robert L. Farb, *Arrest, Search, and Investigation in North Carolina*, 4th ed. (UNC School of Government, 2011; 5th edition forthcoming, 2016), 426 (noting that the most reasonable way to interpret the extent of the official’s jurisdiction with respect to administrative inspection warrants is that it is the same as the official’s jurisdiction to issue a search warrant).

98. District Court Judicial District 24 is composed of Watauga, Avery, Mitchell, Yancey, and Madison counties. A map of the North Carolina District Court Judicial Districts can be found on the AOC’s website: [www.nccourts.org/Courts/Trial/District/Documents/DistrictCourtmap15.pdf](http://www.nccourts.org/Courts/Trial/District/Documents/DistrictCourtmap15.pdf).

99. G.S. 15-27.2(c)(1)–(2). An inspection warrant may also be issued in cases where the search of the property is part of a legally authorized program of inspection that naturally includes the property. For example, in a specific week, a public housing inspector is conducting an annual inspection of every apartment in a

designated building, and a tenant in one of the apartments is refusing to allow the inspection.

100. G.S. 15-27.2(c)(3).

101. G.S. 15-27.2(d). The inspection warrant must also include the judicial official's signature and the date and hour it was issued, with a notation that it is valid for twenty-four hours, and it must be attached to the affidavit that was made to obtain the inspection warrant.

102. G.S. 15-27.2(d)(1) and (e). The inspection warrant is valid for twenty-four hours.

103. G.S. 15-27.2(e).

104. *Id.*

105. *Id.*

106. G.S. 110-105.3(l).

107. *Id.* For example, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. pt. 99) prohibits disclosure of information in a student's educational records without a parent's written consent (34 C.F.R. § 99.30) or a court order or a lawfully issued subpoena (34 C.F.R. § 99.31(a)(9)). Disclosure of such information may be permitted when there is an emergency and the information is necessary to protect the health or safety of the student or others; the determination of whether an emergency exists is made by the educational institution involved (34 C.F.R. §§ 99.31(a)(10) and 99.36). The Public Health Service Act (42 U.S.C. § 290dd-2; 42 C.F.R. pt. 2) prohibits disclosure of drug and alcohol abuse patient records without the patient's (or parent's) consent (42 C.F.R. §§ 2.31 and 2.33) or a subpoena with an accompanying court order (42 C.F.R. § 2.61). An exception applies to a disclosure made for the limited purpose of reporting child abuse or neglect, but the exception does not extend to information sought after the report is made (42 C.F.R. § 2.12(c)(6)). The Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. §§ 1320d to 1320d-8) relates to health information maintained by a covered health care provider and prohibits disclosure of such information unless it is made to a government authority that is authorized by law to receive reports of child abuse or neglect (45 C.F.R. § 164.512(b)(ii)) or unless it is made with the patient's (or parent's) consent (42 C.F.R. §§ 165.508 and 165.502(g)(3)).

108. G.S. 110-105.3(l).

109. 10A N.C.A.C. Ch. 9.

110. 10A N.C.A.C. § 09.1903(a). This regulation is part of N.C. Administrative Code Title 10A, Section 1900, "Special Procedures Concerning Abuse/Neglect in Child Care Facilities." Section 1900 likely applies to investigations of "child maltreatment" because G.S. 110-105.3(m) requires the North Carolina Child Care Commission to adopt, amend, or repeal regulations that are necessary to implement the new child maltreatment laws. Although the Child Care Commission has not adopted, amended, or repealed applicable regulations as of the date of this writing, Section 1900 establishes rules that apply to suspected abuse or neglect occurring in a child care facility and would likely have application to investigations of "child maltreatment."

111. 10A N.C.A.C. § 09.1903(b).

112. *Id.*

113. *Stanley v. Illinois*, 405 U.S. 645 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57 (2000); *Petersen v. Rogers*, 337 N.C. 397 (1994); *Price v. Howard*, 346 N.C. 68 (1997).

114. *See Troxel*, 530 U.S. 57; *Lehr v. Robertson*, 463 U.S. 248 (1983); *Petersen*, 337 N.C. 397; *Price*, 346 N.C. 68 (1997); *Adams v. Tessener*, 354 N.C. 57 (2001). Whether a parent is unfit or has acted inconsistently with his or her parental rights is determined on a case-by-case basis. Examples of courts finding that a parent has forfeited his or her constitutional rights include where a parent voluntarily relinquished custody of the child to someone else for an indefinite period of time (*Price*) and where a parent acted in a way that would constitute a ground to terminate parental rights under G.S. 7B-1111 (*Owenby v. Young*, 357 N.C. 142 (2003)). G.S. 7B-1111 sets forth eleven possible grounds to terminate parental rights. Included among those grounds are abuse, neglect, willful abandonment, willfully failing without justification to support a child, willfully leaving a child in a placement outside of the home (i.e., foster care) for one year or more and failing to correct the conditions that led to the child's removal, and a father of a child born out of wedlock failing to establish paternity or to legitimate or provide substantial financial support or consistent care for the child.

115. It is possible that a parent may be aware of the child's maltreatment and, despite that knowledge, continue to bring the child to the child care facility where the maltreatment is occurring.

116. *See note 107 supra*, regarding exceptions allowing disclosure of confidential records.

117. G.S. 110-105.3(e).

118. G.S. 110-105.3(f).

119. G.S. 110-105.3(g). *See id.* § 150B-3(c) (summary suspension of license under the Administrative Procedure Act).

120. G.S. 110-105.3(h). The DCDEE may cite the violation or issue an administrative action.

121. G.S. 110-105.3(h) and (i).

122. *DCDEE FAQ*, 3.

123. *Id.*

124. G.S. 110-105.6(a).

125. G.S. 110-105.6(b). *See id.* §§ 110-102.2 (administrative penalties) and -103.1 (civil penalty).

126. G.S. 110-105.6(e).

127. *Id.*

128. G.S. 110-102.2 (administrative penalties); -103.1 (civil penalty); -105.6(b) (the DCDEE may issue an administrative action up to and including summary suspension and revocation of a license) and (f) (enrollment of new children may be limited); 10A N.C.A.C. § 09.1904.

129. 10A N.C.A.C. § 09.1904(e).

130. G.S. 110-105.6(c).

131. G.S. 110-105.6(g).

132. G.S. 110-105.6(d).
133. *Id.*
134. See G.S. 110-103.1(a) and (b).
135. G.S. 110-102.2; -90(5) and (9); -94.
136. G.S. 150B-23(f).
137. G.S. 110-90(5) (license revocation) and (9) (civil or administrative penalty); -94 (contested cases); -102.2 (administrative penalties); 150B-23 (commencing an administrative hearing).
138. G.S. 150B-32 and -34.
139. G.S. 150B-43 and -45(a)(2).
140. G.S. 110-105.5. The CMR is the third statewide registry maintained by DHHS that identifies individuals who are involved in a child's abuse, neglect, or maltreatment. The other two registries are required by G.S. 7B-311 and are (1) the Central Registry of abuse, neglect, and dependency cases and child fatalities caused by abuse or neglect and (2) the Responsible Individuals List (RIL), which identifies a parent, guardian, custodian, or caretaker who has been determined to have seriously neglected or abused a child. The RIL is also governed by G.S. 7B-320; -323; -101(19a). See *Reporting Child Abuse*, chapter 11, pages 109–10 for a discussion of the Central Registry and pages 110–11 for a discussion of the RIL.
141. G.S. 110-105.5(a).
142. G.S. 110-105.5(c).
143. G.S. 110-105.5(g).
144. N.C. CONST. art. 1, § 1; see U.S. CONST. amends. V and XIV.
145. Nanny's Korner Care Ctr. *ex rel.* Cromartie v. N.C. Dep't of Health & Human Servs., Div. of Child Dev., 234 N.C. App. 51, 64 (2014), *citing* State v. Balance, 229 N.C. 764, 769 (1949), *and referencing* Roller v. Allen, 245 N.C. 516, 518–19 (1957) (“The right to conduct a lawful business or to earn a livelihood is regarded as fundamental”).
146. State v. Harris, 216 N.C. 746 (1940).
147. *Id.*
148. G.S. 110-85(1) (purpose). See Article 7 of G.S. Chapter 110; 10A N.C.A.C. Ch. 9, “Child Care Rules.”
149. U.S. CONST. amends. V and XIV; N.C. CONST. art. 1, § 19.
150. *In re* W.B.M., 202 N.C. App. 606, 615 (2010), *quoting* Mathews v. Eldridge, 424 U.S. 319, 333 (1976).
151. G.S. 110-105.5(b); *DCDEE FAQ*, 3. See *W.B.M.*, 202 N.C. App. 606.
152. G.S. 110-105.5(b).
153. See G.S. 110-105.6(g).
154. See *W.B.M.*, 202 N.C. App. 606. The court of appeals determined that the 2010 statutes regulating the Responsible Individuals List (RIL) were unconstitutional because they violated an individual's right to procedural due process. The 2010 statutes authorized the individual's placement on the RIL after the county department determined that the person was a responsible individual and before the individual had a right to be heard. The relief available in the judicial review was the individual's name being expunged from the RIL. The court found that a person's

placement on the RIL impacts his or her constitutional liberty interest to adopt, foster, and care for children and to work in the child care field. As a result, due process requires that the individual receive notice and have a meaningful opportunity to be heard before being placed on the RIL. In response to *W.B.M.*, the General Assembly enacted S.L. 2010-90, § 4, which amended the RIL statutes to provide procedural due process to an alleged responsible individual before his or her placement on the RIL.

155. G.S. 110-105.3(i) and (j).

156. G.S. 110-105.3(l). *See id.* §§ 110-105.3(a) (proper investigation of child maltreatment depends on cooperation of law enforcement agencies and county departments) and (d) (the DCDEE must contact law enforcement when suspected maltreatment meets the criteria of misdemeanor or felony child abuse or neglect) and -105.4(b) (the DCDEE must notify the SBI when sexual abuse in a child care facility is suspected).

157. G.S. 110-105.3(j)(1).

158. G.S. 110-105.3(j)(3).

159. G.S. 110-105.3(i) and (j)(1)–(2).

160. G.S. 110-105.3(i).

161. *DCDEE FAQ*, 2–4.

162. G.S. 110-105.3(i). *See DCDEE FAQ*, 2–3.

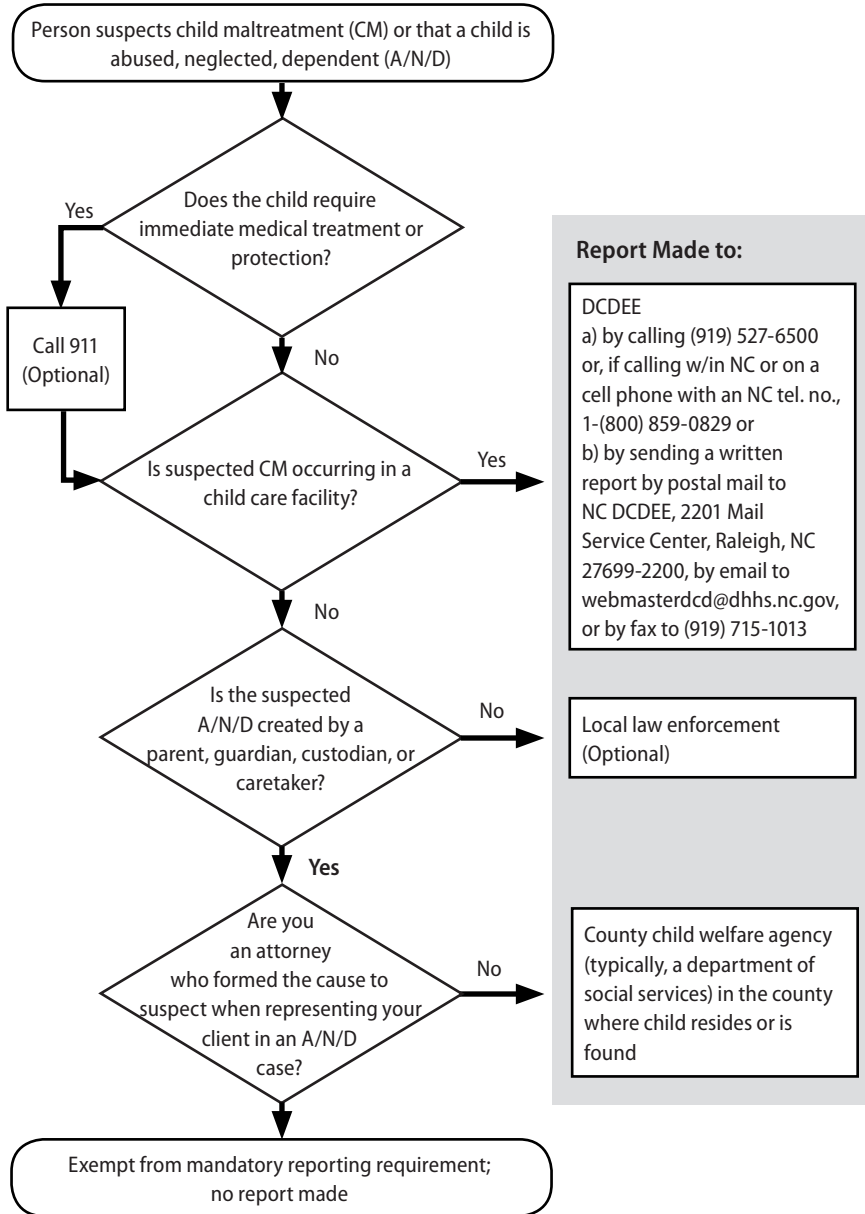
163. G.S. 110-105.3(h). *See DCDEE FAQ*, 2–4.

164. G.S. 110-105.5(f).

165. *DCDEE FAQ*, 2. The public request form is included in this supplemental chapter as Appendix B.

166. G.S. 110-105.5(f).

# Appendix A. North Carolina’s Mandatory Reporting Laws for Child Abuse, Neglect, Dependency, or Maltreatment: A Flowchart



# Appendix B. Division of Child Development and Early Education Public Request Form for Child Maltreatment Registry\*



North Carolina Department of Health and Human Services

Pat McCrory  
Governor

Richard O. Brajer  
Secretary

Tamara Barnes, Interim Director  
Child Development and Early Education

## Division of Child Development and Early Education Public Request Form for Child Maltreatment Registry

Pursuant to North Carolina General Statute 110-105.5, the Division of Child Development and Early Education as part of NC Department of Health and Human Services maintains a registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child in a child care facility pursuant to G.S. 110-105.3.

**Instructions:** At a minimum, the individual's full name, date of birth, and the last four digits of the social security number are required for your request to be completed. Your request will not be processed without this required information. Your request will be completed within two (2) weeks of receipt of this form.

**Submit completed request to:**

**Mail:** Division of Child Development and Early Education OR **Fax:** (919) 715-0987  
Attn: Maltreatment Registry  
2201 Mail Service Center  
Raleigh, NC 27699-2201

**Individual Information**

First name\*: \_\_\_\_\_  
Middle name\*: \_\_\_\_\_  
Last name\*: \_\_\_\_\_  
Maiden name: \_\_\_\_\_  
Date of Birth\*: \_\_\_\_\_  
SSN\* (last four digits): \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

(\* indicates required information)

**Requestor's Information**

Full Name: \_\_\_\_\_  
Business Name (if applicable): \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_  
Date of request: \_\_\_\_\_

**DCDEE Staff Use Only:**

The Division determined that the above named individual \_\_\_\_\_ is/ \_\_\_\_\_ is not on the Child Maltreatment Registry.

\_\_\_\_\_ Request contained incomplete/illegible information  
\_\_\_\_\_ Request received on \_\_\_\_\_  
\_\_\_\_\_ Request completed on \_\_\_\_\_

Completed by: \_\_\_\_\_  
Printed Name/Signature/Title

www.ncdhhs.gov • www.ncchildcare.nc.gov  
Tel 919-527-6335 • Fax 919-715-1012

Location: 820 South Boylan Avenue • Raleigh, NC 27603  
Mailing Address: 2201 Mail Service Center • Raleigh, NC 27699-2200  
An Equal Opportunity / Affirmative Action Employer



\*This form can be downloaded in PDF format from [http://ncchildcare.nc.gov/PDF\\_forms/Public\\_Request\\_form\\_for\\_Child\\_Maltreatment\\_Registry.pdf](http://ncchildcare.nc.gov/PDF_forms/Public_Request_form_for_Child_Maltreatment_Registry.pdf).

## Appendix C. Selected Laws Regulating Child Care Facilities

This appendix consists of selected statutes from Article 7 of G.S. Chapter 110. The entire chapter is available at [www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_110/Article\\_7.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_110/Article_7.html).

### § 110-85. Legislative intent and purpose.

Recognizing the importance of the early years of life to a child's development, the General Assembly hereby declares its intent with respect to the early care and education of children:

- (1) The State should protect children in child care facilities by ensuring that these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified persons of good moral character.
- (2) Repealed by Session Laws 1997-506, § 2, effective September 16, 1997.
- (3) Achieving this level of protection and early education requires the following elements: mandatory licensing of child care facilities; promotion of higher quality child care through the development of enhanced standards which operators may comply with on a voluntary basis; and a program of education to help operators improve their programs and to deepen public understanding of child care needs and issues.

### § 110-86. Definitions.

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

...

- (2) Child care. -- A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. Child care does not include the following:



- a. Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care;
- b. Recreational programs operated for less than four consecutive months in a year;
- c. Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;
- d. Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
- d1. Drop-in or short-term care provided by an employer for its part-time employees where (i) the child is provided care not to exceed two and one-half hours during that day, (ii) the parents are on the premises, and (iii) there are no more than 25 children in any one group in any one room;
- e. Public schools;
- f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by national or regional accrediting agencies with early childhood standards and that operate (i) a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site or (ii) a child care facility for more than six and one-half hours per day, but do not receive NC Pre-K or child care subsidy funding;
- g. Bible schools conducted during vacation periods;
- h. Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;
- i. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and

- j. Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component;
- k. Track-out programs provided to school-age children when they are out of school on a year-round calendar.

...

- (3) Child care facility. -- Includes child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
  - a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
  - b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

...

#### **§ 110-91. Mandatory standards for a license.**

All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities . . .

- (1) Medical Care and Sanitation. -- . . .
- (2) Health-Related Activities. -- . . .
- (3) Location. -- . . .
- (4) Building. -- . . .
- (5) Fire Prevention. -- . . .
- (6) Space and Equipment Requirements. -- . . .
- (7) Staff-Child Ratio and Capacity for Child Care Facilities. -- . . .
- (8) Qualifications for Staff. -- . . .
- (9) Records. -- . . .
- (10) Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in child care facilities and may not be used by any operator or staff member of any child care facility, except that corporal punishment may be used in religious sponsored child care facilities as defined in G.S. 110-106, only if (i) the religious sponsored child care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child care facilities shall clearly state the prohibition on corporal punishment.

- (11) Staff Development. -- . . .
- (12) Developmentally Appropriate Activities. -- . . .
- (13) Transportation. -- . . .
- (14) Any effort to falsify information provided to the Department. -- . . .
- (15) Safe Sleep Policy. -- . . .

#### **§ 110-94. Administrative Procedure Act.**

The provisions of Chapter 150B of the General Statutes shall be applicable to the Commission, to the rules the Commission adopts, and to child care contested cases. However, a child care operator shall have 30 days to file a petition for a contested case pursuant to G.S. 150B-23. The contested case hearing shall be scheduled to be held within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-23(a), in any contested case resulting from administrative action taken by the Secretary to revoke a license or Letter of Compliance or from administrative action taken in a situation in which child abuse or neglect in a child care facility

has been substantiated. A request for continuance of a hearing shall be granted upon a showing of good cause by either party.

**§ 110-102.2. Administrative penalties.**

For failure to comply with this Article, the Secretary may:

- (1) Issue a written warning and a request for compliance;
- (2) Issue an official written reprimand;
- (3) Place a licensee upon probation until his compliance with this Article has been verified by the Commission or its agent;
- (4) Order suspension of a license for a specified length of time not to exceed one year;
- (5) Permanently revoke a license issued under this Article.

The issuance of an administrative penalty may be appealed as provided in G.S. 110-90(5) and G.S. 110-90(9).

**§ 110-103.1. Civil penalty.**

- (a) A civil penalty may be levied against any operator of any child care facility who violates any provision of this Article. The penalty shall not exceed one thousand dollars (\$1,000) for each violation documented on any given date. Every operator shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article.
- (b) In determining the amount of the penalty, the threat of or extent of harm to children in care as well as consistency of violations shall be considered, and no penalty shall be imposed under this section unless there is a specific finding that this action is reasonably necessary to enforce the provisions of this Article or its rules.
- (c) A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Secretary shall refer the matter to the Attorney General for collection.

...

**§ 110-105. Authority to inspect facilities.**

- (a) The Department shall have authority to inspect facilities without notice when it determines there is cause to believe that an

emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child maltreatment in a child care facility, or when the Department is notified by any other person that alleged child maltreatment has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged child maltreatment has occurred. The inspection shall be conducted within seven calendar days of receipt of the report. Additional visits shall be conducted, as warranted.

- (a1) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:
- (1) An initial licensing inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection visit;
  - (2) A plan for visits to all facilities, including announced and unannounced visits, which shall be confidential unless a court orders its disclosure;
  - (3) An inspection that may be conducted without notice, if there is cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law.

The Department, upon presenting appropriate credentials to the operator of the child care facility, may perform inspections in accordance with the standards and rules promulgated under this subsection. The Department may inspect any area of a building in which there is reasonable evidence that children are in care or in which the Department has cause to believe that conditions in that area of a building pose a potential risk to the health, safety, or well-being of children in care.

- (b) If an operator refuses to allow the Secretary or the Secretary's designee to inspect the child care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2.

**§ 110-105.3. Child maltreatment.**

- (a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.
- (b) The following definitions shall apply in this Article:
  - (1) Caregiver. -- The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.
  - (2) Child care facilities. -- Any of the following:
    - a. All facilities required to be licensed under this Article.
    - b. All religious-sponsored facilities operating pursuant to G.S. 110-106.
    - c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article but have not been issued a license by the Department.
  - (3) Child maltreatment. -- Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.
- (c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the

medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

- (d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.
- (e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation, including, but not limited to, transportation, aquatic activities, and field trips.
- (f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.
- (g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.
- (h) In the event the Department determines child maltreatment did not occur in a child care facility, nothing in this section shall prevent the Department from citing a violation or issuing an administrative action based upon violations of child care licensure law or rules based upon its investigation. Citations of violations or administrative actions issued pursuant to this subsection shall not be confidential.

- (i) During the pendency of an investigation, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or documentation regarding inspections or the identity of the reporter, shall be held in strictest confidence as provided by subsection (j) of this section. Following a determination that maltreatment has occurred, the investigation findings shall be made public, as well as the date of any visits made pursuant to the investigation, and any corrective action taken, if applicable. DCDEE shall not post on its Internet Web site that a maltreatment investigation occurred if the allegation of maltreatment was unsubstantiated.
- (j) Regardless of the Department's final determination regarding child maltreatment, all information received by the Department during the course of its investigation shall be held in the strictest confidence by the Department, except for the following:
  - (1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
  - (2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
  - (3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order



the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

- (k) When a report of child maltreatment alleges facts that indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found and make the necessary report.
- (l) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by federal law and regulations.
- (m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f).

**§ 110-105.4. Duty to report child maltreatment.**

- (a) Any person who has cause to suspect that a child in a child care facility has been maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in a child care facility, shall report the case of that child to the

Department. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making the report, including (i) the name and address of the child care facility where the child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home address, (v) the nature and extent of any injury or condition resulting from maltreatment, and (vi) any other information the person making the report believes might assist in the investigation of the report. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the Department's assessment of the alleged maltreatment.

- (b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a child care facility, the Department shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the assessment there is reason to suspect that sexual abuse has occurred, the Department shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report.

**§ 110-105.5. Child maltreatment registry.**

- (a) The Department shall establish and maintain a registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child pursuant to G.S. 110-105.3.
- (b) Individuals who wish to contest findings under subsection (a) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act under Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written

notice of the Department's intent to place its findings about the person in the Child Maltreatment Registry.

- (c) Individuals whose names are listed on the Registry shall not be a caregiver as defined in G.S. 110-105.3(b)(1) at any licensed child care facility or religious-sponsored child care facility.
- (d) No person shall be liable for providing any information for the Child Maltreatment Registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the Child Maltreatment Registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. The immunity established by this subsection does not extend to malicious conduct or intentional wrongdoing.
- (e) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to provide confidential or other identifying information to the Department, including social security numbers, taxpayer identification numbers, parent's legal surname prior to marriage, and dates of birth, for the purpose of verifying the identity of the accused caregiver.
- (f) With the exception of the names of individuals listed on the Child Maltreatment Registry, all other information received by or pertaining to the Child Maltreatment Registry shall be confidential and is not a public record under Chapter 132 of the General Statutes.
- (g) In order to determine an individual's fitness to care for or adopt a child, information from the Child Maltreatment Registry may be used by any of the Department's divisions responsible for licensing homes or facilities that care for children, and the Department may provide information from this list to child-caring institutions, child-placing agencies, group home facilities, and other providers of foster care, child care, or adoption services.

- (h) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

**§ 110-105.6. Penalties for child maltreatment.**

- (a) For purposes of this Article, child maltreatment occurring in child care facilities is a violation of this Article, licensure standards, and licensure laws.
- (b) Pursuant to G.S. 110-105.3, when an investigation confirms that child maltreatment did occur in a child care facility, the Department may issue an administrative action up to and including summary suspension and revocation of the facility's child care license.
- (c) If the facility is permitted to remain open after an administrative action has been issued, the administrative action shall specify any corrective action to be taken by the operator.
- (d) The Department shall make unannounced visits to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may take further action against the facility as necessary to protect the health, safety, or welfare of the children at the child care facility.
- (e) Administrative actions issued shall include a statement of the reasons for the action and shall specify corrective action that shall be taken by the operator.
- (f) Under the terms of the administrative action, the Department may limit enrollment of new children until satisfied the situation giving rise to the confirmation of child maltreatment no longer exists.
- (g) Specific corrective action required by an administrative action authorized by this Article may include the removal of the individual responsible for child maltreatment from child care pending a final determination or appeal of the individual's placement on the Child Maltreatment Registry.
- (h) Nothing in this section shall restrict the Department from using any other statutory or administrative remedies available.

## Appendix D. Selected Updated Laws from the Juvenile Code

This appendix replaces the following statutes in Appendix A of *Reporting Child Abuse* and reflects legislative changes made through the 2016 session of the North Carolina General Assembly.

### § 7B-101. Definitions.

...

- (3) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

...

### § 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.

- (a) Any 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. The report may be made orally, by telephone, or in writing. The report shall include information

as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

- (b) Any person or institution who knowingly or wantonly fails to report the case of a juvenile as required by subsection (a) of this section, or who knowingly or wantonly prevents another person from making a report as required by subsection (a) of this section, is guilty of a Class 1 misdemeanor.
- (c) Repealed by S.L. 2015-123, § 3, eff. Jan. 1, 2016.

**§ 7B-302. Assessment by director; access to confidential information; notification of person making the report.**

- (a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take

appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child.

...

**§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services.**

- (a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services assessment being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation.

Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile or child maltreatment, as defined in G.S. 110-105.3, in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

(b), (c) Repealed by S.L. 2015-123, § 5, eff. Jan. 1, 2016.

The director of the department of social services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission.