

## Chapter 1

# Purposes of the Reporting Law

*A seventh-grade student comes to school with a badly swollen black eye. The teacher talks privately with the student, who says: “My dad hit me ‘cause I broke his radio.”*

*A teenager tells her best friend that her mother’s live-in boyfriend has been coming into her room at night and touching her. She’s afraid of him and afraid to tell her mother. The friend tells her own mother about the conversation.*

*A police officer picks up a four-year-old child he sees walking alone on the side of the road at night.*

*Parents tell a doctor that their son’s injuries occurred when he tripped on a toy and fell down some stairs. The doctor thinks that explanation is inconsistent with the nature of the child’s injuries.*

In each of these examples, someone—a teacher, a parent, a law enforcement officer, a doctor—has a legal duty to make a report about a child’s situation or condition. Most likely, even without a legal obligation to report, each of these people would do something to bring appropriate attention to the child’s need for protection.

Historically, our system of justice has distinguished between moral obligations and legal duties. In the absence of a statute or a special relationship, private citizens are not obligated legally to involve themselves in other

people's problems. North Carolina law includes neither a general mandate to report crimes nor a general mandate to report crimes involving child victims.<sup>1</sup> (Obviously, despite the absence of a legal duty to do so, many people do report these and other crimes to law enforcement officials when they know about them.) The legislature, however, has created reporting requirements directed to specific professions or groups of people, and some of these create a duty to report certain crimes.<sup>2</sup>

The reporting law discussed in this book is not a crime-reporting statute, and it applies to everyone, not just people in specific professions or relationships. By enacting this law, the North Carolina General Assembly has expressed a strong public policy of intervention on behalf of children whose parents or other care providers neglect them, inflict harm on them, place them at substantial risk of harm, or lack the ability to provide proper care for them. (For definitions of key terms specifying the kinds of harm or risk that must be reported, see Chapter 5.)

Although the circumstances that trigger a duty to report under this law often involve criminal offenses, the subject of the required report is not the criminal conduct or the person who commits it. It is the child who has been harmed or placed at risk of being harmed by that conduct. The reporting statute is part of the state's child protective services system, designed to respond to children's needs for protection or assistance in specified circumstances.<sup>3</sup> Because reporting is required in order to ensure that children receive the services and protection they need, the law requires reports to county departments of social services, not to law enforcement agencies. Sometimes the nature of a report that a social services department receives or the evidence that it finds in responding to a report generates a duty on the part of the department to make a report to law enforcement.<sup>4</sup> But the public's legal duty is to report to the department of social services.

The child protective services system is based on a body of law and procedures that are carried out primarily by county departments of social services and the juvenile (district) courts. These laws are in the North Carolina Juvenile Code (the Code), which establishes civil (as opposed to criminal) procedures for responding to children who are abused, neglected, or dependent.<sup>5</sup> The Code requires county social services departments to conduct assessments of reported cases of suspected child abuse, neglect, dependency, and death due to maltreatment and to offer services to children and families when those conditions are found to exist. It authorizes social

services departments to take steps to protect children in emergencies and to begin juvenile court proceedings when necessary. The Code also defines the court's authority to adjudicate (make a legal determination) that a child is abused, neglected, or dependent and to order appropriate responses to meet the child's needs.

The United States Supreme Court has characterized parents' rights to care for and make decisions about their children as "fundamental" and has stated that these rights require heightened protection against government interference.<sup>6</sup> Parents are presumed to act in their children's best interest, and ordinarily there is no reason for the government to intervene in the private realm of a family.<sup>7</sup> The Supreme Court has said, for example, that "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made."<sup>8</sup>

When a child is harmed or placed at risk of harm by a stranger or by someone else who does not have caretaking responsibility for the child, we assume that the parent or other person responsible for the child's care will respond appropriately to meet the child's needs and keep the child safe. We rely on law enforcement, the criminal justice system, the juvenile justice system, employers, and others to respond appropriately to the conduct of the person who harmed the child or created the risk. Separate from the criminal justice system, the Juvenile Code provides for governmental intervention into the lives of the child and the child's family only when the parents, or people whose roles resemble those of parents,

- cause harm or risk of harm to the child,
- allow others to harm the child or put the child at risk,
- respond inappropriately when the child is harmed or placed at risk, or
- are unable or unwilling to prevent harm or risk of harm to the child or to care properly for the child.

The Juvenile Code balances opposing interests, defining the parameters of permissible state intervention into the lives of families and children for the purpose of protecting children. The Code identifies situations in which the state's interest in protecting children outweighs parents' rights to privacy and to freedom from governmental interference in the care of their children. Because the state's deference to these familial rights has constitutional dimensions, the threshold for state intervention must be carefully drawn.<sup>9</sup>

Sometimes social services departments are portrayed as doing too much in the name of protective services and intruding on families' rights without sufficient cause.<sup>10</sup> When a child is harmed or dies as a result of abuse or neglect, however, questions often arise as to why the protective services system failed to protect the child.<sup>11</sup> The children in the examples at the beginning of this chapter may be harmed, or further harmed, if no one takes steps to examine their situations and provide the services and protection they need. North Carolina's mandatory reporting law attempts to ensure that notice will be taken and that the needs of children like these will not be overlooked. In these examples, though, it is possible that the seventh-grader received the black eye in a fight with another student before school, that the teenage girl lied to her friend about her mother's boyfriend, or that the doctor's impression is incorrect and the child really was injured when he tripped on a toy and fell down the stairs.

Reports are required based on cause to suspect that a child is abused, neglected, or dependent, and suspicions may turn out to be unfounded. In those instances, the resulting inconvenience, embarrassment, and other negative consequences for the parents of those children are inevitable costs of requiring steps to identify those children whose circumstances do require intervention. However, understanding the reporting law and appreciating its purposes can help minimize inappropriate reports that have similar negative consequences and divert limited resources away from children whose cases are properly reported.

Recent high-profile cases of alleged sexual abuse have heightened interest in child abuse reporting laws but also have revealed confusion about what those laws require.<sup>12</sup> Although every state has a child abuse reporting law, the laws vary greatly in terms of who must report, what must be reported, and to whom reports must be made. Unlike the North Carolina law, some states' laws require reporting crimes that involve child victims, and many require only specified professionals to make reports. Thus, conversations about the duty to report must occur in the contexts of specific state laws. In some states the heightened interest in child abuse reporting has resulted in questions about the sufficiency of the laws and proposals to change them.<sup>13</sup> Clarity about the purposes a state assigns to its reporting law is an essential element of assessing proposed changes to the law.

In North Carolina, the reporting law applies to everyone in the state. Everyone has a legal duty to intervene, to the limited extent of making a

report to a county department of social services, on behalf of children who may be “abused,” “neglected,” or “dependent,” as the General Assembly has defined those terms. It is unlawful to ignore this duty. Complying with the reporting law, however, requires close attention to the way those three conditions are defined.

## Notes

1. See Ric Simmons, *Private Plea Bargains*, 89 N.C. L. REV. 1125, 1152 (2011), noting that the Model Penal Code does not criminalize the nonreporting of crimes and that only two states—Ohio and South Dakota—do so. See also L. Poindexter Watts, “The Duty to Report a Crime,” *School Law Bulletin* 17 (Summer 1986): 22–30.

2. See, e.g., North Carolina General Statutes (hereinafter G.S.) § 115C-288(g) (school principal’s duty to report certain acts to law enforcement and to the principal’s superintendent); G.S. 90-21.20 (duty of physicians and hospitals to report to law enforcement certain wounds, injuries, and illnesses). The North Carolina General Statutes can be viewed online at [www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl](http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl). See also Sandra Guerra Thompson, *The White-Collar Police Force: “Duty to Report” Statutes in Criminal Law Theory*, 11 WM. & MARY BILL RTS. J. 3 (2002), <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1313&context=wmborj> (discussing a variety of state and federal reporting requirements applicable to specific groups of professionals).

3. The criminal justice system, on the other hand, focuses on apprehending, prosecuting, and punishing people who engage in criminal conduct. One incident may precipitate simultaneous criminal justice and protective services responses. Although the criminal justice system does not focus on the victim, criminal procedures may affect a child victim in several ways. A criminal investigation may involve multiple interviews of the child, the child may be required to testify in a criminal proceeding, the child may feel vindicated or fearful or confused about what happens in the criminal system, and the person who harmed the child may be removed from the home or otherwise isolated from the child as a result of the criminal proceeding.

4. See G.S. 7B-301 and -307.

5. The North Carolina Juvenile Code (the Code) is codified as Chapter 7B of the North Carolina General Statutes. The Code also establishes procedures for responding to children whose behavior is undisciplined or delinquent, for terminating parental rights, for the emancipation of minors, and for juvenile matters involving more than one state. The Code is available at [www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0007B](http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0007B).

6. See, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000); *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

7. See, e.g., *Parham v. J.R.*, 442 U.S. 584 (1979).

8. *Troxel*, 530 U.S. at 72–73.

9. See, e.g., *In re Stumbo*, 357 N.C. 279, 286, 582 S.E.2d 255, 260 (2003) (acknowledging both “the extraordinary importance of protecting children from abuse, neglect, or dependency” and “the limits within which governmental agencies may interfere with or intervene in the parent-child relationship”).

10. See, e.g., *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009) (holding (1) that a lengthy interview of a suspected child abuse victim at school by a social worker and law enforcement officer was a “seizure” that, without a warrant, court order, exigent circumstances, or parental consent, violated the Fourth Amendment and (2) that a social worker’s exclusion of a mother from a medical examination of her child violated “clearly established familial rights” under the Fourteenth Amendment), *vacated, remanded on other grounds sub nom. Camreta v. Greene*, 131 S. Ct. 2020 (U.S. 2011); *Stumbo*, 357 N.C. 279, 582 S.E.2d 255 (involving parents’ claim that a department of social services was not justified in conducting an investigation after receiving an anonymous report of suspected neglect).

11. See, for example, “N.C. Agencies Questioned about How the Zahra Baker Case was Handled,” *wbtv.com*, Feb. 21, 2011, updated March 22, 2011, [www.wbtv.com/global/story.asp?s=14070673](http://www.wbtv.com/global/story.asp?s=14070673). See also *Hunter v. Transylvania Cnty. Dep’t of Soc. Servs.*, 207 N.C. App. 735, 701 S.E.2d 344 (2010) (involving allegations, made in a wrongful death action filed after a child died as a result of shaken baby syndrome, that social services personnel were negligent in investigating and responding to reports that the child was being neglected), *review denied*, 365 N.C. 346, 717 S.E.2d 377 (2011).

12. Both the 2011 scandal involving child abuse allegations against a football coach at Penn State University and the earlier controversy about child abuse in the Catholic Church generated calls for expanding the population of people who are legally required to report child abuse. Since 1979, North Carolina law has defined that population as broadly as possible, requiring reports by any person or institution with cause to suspect that a child is abused, neglected, or dependent. However, North Carolina law would not require a report if abuse were caused by a coach or religious official in a nonresidential setting. That is not because of any limitation on who must report. It is because the definition of “abused juvenile,” for purposes of the reporting law, does not include a child who is abused by someone other than a parent, guardian, custodian, or caretaker. (Definitions of these and other key terms are discussed in Chapters 3, 4, and 5.)

13. The National Conference of State Legislatures reported that by June 27, 2013, “[a]pproximately 119 bills in 37 states and the District of Columbia [had] been introduced in the 2013 legislative session on the reporting of suspected child abuse and neglect.” National Conference of State Legislatures, “Mandatory Reporting of Child Abuse and Neglect: 2013 Introduced State Legislation,” updated June 27, 2013, [www.ncsl.org/issues-research/human-services/mandatory-rprt-g-of-child-abuse-and-neglect-2013.aspx](http://www.ncsl.org/issues-research/human-services/mandatory-rprt-g-of-child-abuse-and-neglect-2013.aspx).