

Chapter 9

Legal Rights of the Reporter

Confidentiality

The law directs county departments of social services to hold “in strictest confidence” the information they receive in reports and during assessments of child abuse, neglect, and dependency, including the identity of the reporter.¹ This confidentiality requirement is far from absolute, however. Social services departments are allowed to share information and a summary of documentation from a child protective services record with

- agencies or individuals providing or facilitating the provision of services to the child; and
- the prosecutor, when he or she needs the information in order to carry out mandated responsibilities resulting from the report.²

The child and the child’s attorney may access the record, and the court in a juvenile case or in a separate civil or criminal action may order the social services director to disclose protective services records.³ Even without a court order the social services department may voluntarily disclose to other parties in a juvenile abuse, neglect, or dependency case information that is relevant to the case, but it may not disclose

- the identity of the reporter;
- identifying information that would lead to the discovery of the reporter’s identity; or
- the identity of any other person, if the department determines that disclosing the person’s identity would endanger that person’s life or safety.⁴

A reporter's identity might not be protected if he or she has information that has to be presented in court. The reporter could be called as a witness, although ordinarily the reporter would not have to reveal the fact that he or she was the person who made the report. The department of social services also may reveal the reporter's identity to a law enforcement agency that needs it in carrying out law enforcement's duties in relation to a report.⁵ More generally, a social services department may disclose the reporter's identity to any federal, state, or local government entity that shows it needs to know the reporter's name in order to carry out its mandated responsibilities.⁶

In one situation the law specifically authorizes a judge to require a county social services director to reveal in court the identity of the person who made a report. If someone obstructs or interferes with a department's assessment after a report of suspected abuse, neglect, or dependency, the department may apply to the court for an order directing that person to stop obstructing or interfering with the assessment. At a hearing to determine whether the judge should issue that order, the judge may require the director of social services (or the director's representative) to identify the person who made the report.⁷

The circumstances that give the reporter cause to suspect abuse, neglect, or dependency may make it quite obvious to parents or others where a report originated. For that reason, some people choose to tell the parents (or guardian, custodian, or caretaker) that they are making a report, why they are making it, and something about what the parents can expect to happen as a result of the report. In some situations the person making the report can help the parent understand that the purpose of the report and any ensuing assessment by social services is to protect or assist the child. (There is no guarantee, however, that a criminal investigation will not occur.) Some parents may be less likely to confront, accuse, or harbor anger toward the reporter and may be more cooperative in an assessment if the reporter explains his or her actions and the reasons for them.

Obviously, the reporter should not tell the parent about the report if there is a possibility that doing so would lead to the parent's harming the child or someone else or would impede the social services department's assessment.

Immunity for Reporting, Cooperating, or Testifying

Many reports of suspected abuse, neglect, and dependency that social services departments receive prove to be either unfounded or impossible to substantiate. In state fiscal year 2010–2011, for example, departments of social services in North Carolina received 70,631 reports, involving 129,510 children.⁸ Slightly fewer than half (34,767) of the reports resulted in findings of abuse, neglect, dependency, or a need for services.⁹ A person who has cause to suspect that a child is abused, neglected, or dependent but has no proof may fear that he or she could be sued for making a report if a social services assessment finds no cause for concern. The law requires a person in that situation to make a report and does not require the person to produce evidence or proof of any kind. The law does not allow the person to delay reporting because he or she is not certain that the child is abused, neglected, or dependent.

The law encourages prompt reporting and acknowledges people's concerns about liability by providing immunity from legal liability for people who report in good faith. It also provides immunity to people who cooperate in a social services department's assessment (by sharing information, for example) or who testify in court actions that result from a report.¹⁰

Anyone who makes a report pursuant to [the reporting law], cooperates with the county department of social services in a protective services assessment, testifies in any judicial proceeding resulting from a protective services report or assessment, or otherwise participates in the program authorized by [the law that provides for reports, assessments, and the provision of protective services], is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed.¹¹

This provision was applied in a case in which a school principal reported to the department of social services his suspicion that a substitute teacher had abused students. The social services department reported the information to law enforcement officials, who conducted an investigation and charged the teacher with five counts of assault. After the teacher was found not guilty of all the charges in criminal court, he sued the city school system for malicious prosecution, defamation, intentional infliction of emotional distress, and negligence. Relying on the immunity provision and the

statutory presumption of good faith, the trial court dismissed the teacher’s case before it even went to trial. The court of appeals affirmed the trial court’s decision.¹² To prevail in that situation a teacher would have to allege and prove that the report was made with actual malice.

In the case just described, the principal had reported not only to the department of social services, but also to the assistant superintendent for personnel. The trial court and the court of appeals applied the immunity provision and presumption of good faith to that report as well. The appellate court said:

[A] report made in good faith by the principal of the school to his or her superior who is responsible for school personnel would clearly fall within the scope of the immunity contemplated by the statute. To say that the principal was protected in reporting the incident to the Department of Social Services but not in reporting to the Assistant Superintendent would be both contrary to the spirit of the statute and also impractical.¹³

The law cannot prevent an irate parent or others from suing people who report suspected child abuse or neglect or who testify in court or cooperate in protective services assessments. The Juvenile Code’s immunity provisions, however, make it much less likely that suits will be filed or that a suit, once filed, will succeed. In order to establish liability, the person who sues would have to prove, among other things, that whoever made the report, testified, or cooperated in an assessment did so “in bad faith”—that is, without any justification other than malice.¹⁴

The North Carolina Supreme Court has stated that the legislative intent of the immunity provision is to encourage people to “be vigilant in assuring the safety and welfare of the [state’s] children”—a policy that “compels a significant evidentiary burden for those who challenge the presumption that people who report . . . abuse or neglect do so in good faith.”¹⁵

Notification and Review

The law and state administrative rules require a county department of social services to give a person who reports suspected abuse, neglect, or dependency certain information about the department’s response to the report.¹⁶

Within five days after receiving a report, the department must give the person who made the report written notice of

1. whether the department accepts the report and is conducting an assessment or plans to initiate an assessment¹⁷ and
2. whether the department has referred the report to a state or local law enforcement agency.

Every person who makes a report is entitled to this notice unless he or she reports anonymously or specifically requests not to receive it.

If the department does not accept a report for assessment, the notice described above also must inform the person who made the report of

- the basis for the decision not to accept the report,
- the person's right to request a departmental review of the decision,
- the procedures for requesting a review of the decision,
- the identity of the persons who would review the decision, and
- the manner in which a review would be conducted.¹⁸

If the department does accept the report for assessment, the department must give the person who made the report a second written notice within five days after completing the assessment. This notice must tell the reporter

- whether the department found abuse, neglect, or dependency;
- what (if any) action the department is taking to protect the child;
- whether the department has filed a petition to begin a juvenile court action; and
- how to request a review by the local prosecutor of a decision by the department not to file a petition.¹⁹

This notice is required for every report the department accepts for assessment, unless the person who made the report did so anonymously or specifically requested not to receive it.²⁰

The screening of reports is discussed in Chapter 11. Rights of review are described in more detail in Chapter 12.

Notes

1. North Carolina General Statutes (hereinafter G.S.) § 7B-302(a1). The North Carolina General Statutes can be viewed online at www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl. The law does not specify any remedy for a reporter whose identity is disclosed improperly or any penalty for making an improper disclosure.

2. N.C. Admin. Code (hereinafter N.C.A.C.) tit. 10A, subch. 70A, § .0113 (Sept. 1991).

3. See G.S. 7B-302(a1); N.C.A.C. tit. 10A, subch. 70A, § .0113(a) (Sept. 1991).

4. G.S. 7B-700(a).

5. N.C.A.C. tit. 10A, subch. 70A, § .0105(c) (Apr. 2003). This rule specifically authorizes social services to share with law enforcement the name, address, and telephone number of the person making the report when that information is necessary in order for law enforcement to perform its duties related to the report.

6. G.S. 7B-302(a1)(1a).

7. G.S. 7B-303(e). These are not the exclusive means by which a reporter's identity might be revealed. For example, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-1320d-9 (2010) (HIPAA), allows patients and their representatives to obtain an "accounting of disclosures." (See 45 C.F.R. § 164.528.) Because a parent ordinarily is a minor patient's representative, this means that a health care provider who reports suspected abuse, neglect, or dependency must maintain a record of the report and provide it to the parent upon request. However, the provider may choose not to treat the parent as the child's representative if the provider reasonably believes that the parent has abused or neglected the child or that treating the parent as the child's personal representative could endanger the child. (See 45 C.F.R. § 164.502(g)(5).)

8. These and other child welfare statistics for North Carolina are from D. F. Duncan, H. C. Kum, K. A. Flair, C. J. Stewart, J. Vaughn, R. Bauer, and A. You, *Management Assistance for Child Welfare, Work First, and Food & Nutrition Services in North Carolina* (hereinafter *Management Assistance*) (Chapel Hill, N.C.: UNC Jordan Institute for Families), <http://ssw.unc.edu/ma/>.

9. *Management Assistance*, cited in full in note 8.

10. G.S. 7B-309.

11. *Id.*

12. *Davis v. Durham City Schs.*, 91 N.C. App. 520, 372 S.E.2d 318 (1988).

13. *Id.* at 523, 372 S.E.2d at 320. The parties did not raise, and the court did not discuss, the issues of whether a substitute teacher was a caretaker and whether a report to social services had even been required. When this case arose, the Juvenile Code definition of "caretaker" did not specify, as it does now [see G.S. 7B-101(3)], that it refers only to individuals providing care "in a residential setting," and there was some uncertainty as to whether incidents involving school personnel should be reported to social services.

14. For a case in which the court found that a report to social services was made with malice, see *Kroh v. Kroh*, 152 N.C. App. 347, 567 S.E.2d 760 (2002), *review denied*, 356 N.C. 673, 577 S.E.2d 120 (2003), which held that a wife's statements to a social

services department that her husband had molested their two children were made with actual malice.

15. *Dobson v. Harris*, 352 N.C. 77, 78, 530 S.E.2d 829, 832 (2000) (holding that the trial court properly dismissed a parent's action against a department store and a store employee who made a report to social services after observing the parent yell at the child, pick the child up from a counter, and slam her back down).

16. G.S. 7B-302; N.C.A.C. tit. 10A, subch. 70A, §§ .0105(h) (Apr. 2003) and .0109 (Sept. 1994).

17. G.S. 7B-302(f). Note that every social services department must have a procedure for a two-level internal review that includes, at a minimum, the social worker and the worker's supervisor before making a decision not to accept a report. N.C.A.C. tit. 10A, subch. 70A, § .0105(g) (Apr. 2003).

18. N.C.A.C. tit. 10A, subch. 70A, § .0105(h) (Apr. 2003).

19. G.S. 7B-302(g).

20. *Id.*