

## A/N/D Reporting: Rights, Protections, and Prosecutor Review

Like every other state, North Carolina has a mandated reporting law for child abuse and neglect. North Carolina's law requires *any* person or institution *with cause to suspect* a child is abused, neglected, or dependent by a parent, guardian, custodian, or caretaker to make a report to the county child welfare department (in most counties, DSS) where the child resides or is found. [GS 7B-301](#). What is in a report? Are there protections for the reporter? What are the rights of the reporter? If DSS decides not to initiate a court action, can the reporter challenge that decision?

### Making the Report

A report may be made in writing, by telephone, or in person. A report must include information the reporter knows about

- the child's name, address, age, and present whereabouts;
- the child's parents' and if applicable guardian's, custodian's, and/or caretaker's names and addresses;
- the names and ages of any other children in the home;
- the nature and extent of any injury or condition resulting from the suspected abuse, neglect, or dependency; and
- any other information the reporter believes might be helpful in establishing the need for protective services or court intervention.

GS 7B-301.

### Anonymous

The statute requires that the report also include the reporter's name, address, and telephone number, but DSS will accept reports that are made anonymously or do not include some of the reporter's contact information. *Id.*; [10A NCAC 70A.0105\(a\)](#); see *In re T.R.P.*, 360 N.C. 588 (2006). Once a report is accepted, DSS will determine whether an assessment is needed.

### Immunity and Presumed Good Faith

A person making a mandated report in good faith is immune from any civil or criminal liability. [GS 7B-309](#). In any liability case, good faith is presumed. *Id.* So, in a lawsuit brought against the reporter (e.g., slander), the plaintiff must prove that the reporter acted with bad faith or malice when making the report. *Dobson v. Harris*, 352 N.C. 77 (2000); *Kroh v. Kroh*, 152 N.C. App. 347 (2002).

### Identity Is Confidential

Starting with the first report, DSS must keep information it receives in an abuse, neglect, or

dependency case “in strictest confidence.” [GS 7B-302\(a1\)](#). This includes the reporter’s identity. Maintaining the confidentiality of the reporter’s identity serves the purpose of the reporting law to encourage the reporting of suspected abuse, neglect, or dependency. See *Ritter v. Kimball*, 67 N.C. App. 333 (1984).

As with all confidentiality laws, there are exceptions that authorize the disclosure of information when certain criteria are met. For example, a court may order disclosure of confidential information, including the reporter’s identity. See, e.g., G.S. 7B-303(e). Two exceptions that allow for the disclosure of confidential information include special provisions related to the reporter’s identity:

1. Information sharing and discovery: The reporter’s identity or uniquely identifying information that would lead to the reporter’s identity may not be disclosed as part of information sharing with parties (including the child and parents) in an abuse, neglect, or dependency case. [GS 7B-700\(a\)](#).
2. Government entity: The reporter’s identity may be disclosed without a court order to a federal, state, or local government entity or agent when that entity demonstrates to DSS a need for the reporter’s name to carry out its mandated responsibilities. [GS 7B-302\(a1\)\(1a\)](#).

### Notice to Reporter

DSS is required to disclose certain information to the reporter unless the report was made anonymously or the reporter waives his or her right to notice. [GS 7B-302\(f\)](#), [\(g\)](#). Within 5 working days of receiving the report, DSS must give written notice to the reporter as to whether the report was accepted for an assessment and/or referred to an appropriate law enforcement agency. [GS 7B-302\(f\)](#). When there is an assessment, DSS must send a second written notice to the reporter within 5 working days of the completion of its assessment as to whether there was a finding of abuse, neglect, or dependency and whether and what action DSS is taking to protect the child. [GS 7B-302\(g\)](#). This second notice must include the right and procedures to request a prosecutor review of the DSS decision not to take court action. *Id.*

### Prosecutor Review

#### Timing

If a reporter receives a DSS notice that indicates that the agency is not filing an abuse, neglect, or dependency petition in court, the reporter has 5 working days from receiving that notice to ask the prosecutor to review DSS’s decision. [GS 7B-305](#). When a review is requested, the prosecutor must notify the reporter and the DSS director of the time and place for the review. *Id.* The review must be held within 20 days after the reporter is notified. [GS 7B-306](#).

#### Information Sharing by DSS

DSS must immediately provide the prosecutor with a summary of its assessment. GS 7B-305. The applicable rule references an outer time limit of 3 working days. [10A NCAC 70A.0109\(b\)](#). Applicable confidentiality laws authorize DSS to provide the prosecutor with access to the case record. [10A NCAC 70A.0113\(c\)](#); see GS 7B-302(a1) (disclosure to a government entity in order to protect a juvenile from abuse or neglect). Because these types of reviews are unusual, the prosecutor may be unfamiliar with what is included in a DSS case record. DSS may want to work with the prosecutor to identify and share all of the relevant and necessary information in the file.

### Review Conferences

In the course of conducting the review, the prosecutor is required to have conferences with the reporter, the protective services worker, the child (if practicable), and other persons. GS 7B-306. There is nothing in the statute that mandates a joint conference, but instead requires "conferences". A prosecutor could hold individual conferences that allow him or her to gain needed information without compromising (1) the reporter's identity to the child, parents, or others the prosecutor wants to meet with and (2) confidential information that is held by DSS.

Nothing in the law allows for information sharing and/or the disclosure of a reporter's identity during a prosecutor review. Confidential information shared with a government entity, in this case the prosecutor, can only be redisclosed for purposes directly connected with carrying out its mandated responsibilities. GS 7B-302(a1)(1). Another statute that supports having the prosecutor keep information confidential is [GS 108A-80\(a\)](#), which applies generally to social services records related to a client (in this case the child) and applies broadly to "any person," which would include a prosecutor performing his/her responsibilities as set forth in the Juvenile Code.

In the course of the review, the reporter may share information with the prosecutor but is not entitled to hear about all the information that has been received by DSS or gathered by the prosecutor.

### Outcomes

At the conclusion of the review, the prosecutor must make one of three decisions:

1. affirm the DSS decision;
2. refer the case to law enforcement and request an investigation (presumably because the prosecutor believes a crime has been committed); or
3. "direct the director to file a petition."

GS 7B-306.

If the prosecutor elects the third option, DSS may want to request a written summary of the basis on which the prosecutor is making that decision, including (if applicable) any new information the

prosecutor may have received as a result of conferences that were held with other persons where DSS was not present. Ultimately, it is DSS that alleges the facts and must prove by clear and convincing evidence that the child is abused, neglected, or dependent. [GS 7B-403](#); [7B-805](#); [7B-807\(a\)](#); *In re E.H.*, 227 N.C. App. 525 (2013).

The statute does not explicitly address whether the prosecutor should notify the reporter of the decision. Given the framework provided for DSS notifications, it is reasonable to assume that the prosecutor should also notify the reporter about the decision. The prosecutor could simply provide the same type of information DSS provides at the conclusion of its assessment. Model notices are included in the NC Division of Social Services Family Service Manual, [Chapter VIII](#), §1407, p. 84 and § 1408, p. 57 of the pdf.

\*For more information about reporting and the DSS response, see Janet Mason, *Reporting Child Abuse and Neglect in North Carolina*, 3<sup>rd</sup> ed. (UNC School of Government, 2013), available for free as an [e-book](#) or a [downloadable pdf](#).