

BIG NEWS: S.L. 2019-245 Creates a New Universal Mandated Reporting Law for Child Victims of Crimes and Changes the Definition of “Caretaker”

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[Editor's note: Because the information in this post cuts across multiple subject areas, the post will appear on several School of Government blogs.]

An Act to Protect Children from Sexual Abuse and to Strengthen and Modernize Sexual Assault Laws, [S.L. 2019-245](#) (S199) enacts and amends various laws related to crimes; amends some civil and criminal statutes of limitations; requires mandatory training for school personnel addressing child sex abuse and trafficking; amends the definition of “caretaker” as it relates to child abuse, neglect, or dependency; and creates a new universal mandatory reporting law for child victims of certain crimes.*

This post discusses

- the amendment to the definition of caretaker and
- the new mandatory reporting law, which requires any adult to make a report to law enforcement when a juvenile is a victim of certain crimes.

Caretaker in Abuse and Neglect Cases

When a department of social services (DSS) and/or the district court in an abuse or neglect action is making a determination as to whether a juvenile is abused or neglected, the role of a caretaker in creating the child’s circumstances is considered. See [G.S. 7B-101\(1\), \(15\)](#). “Caretaker” is defined at G.S. 7B-101(3). Effective December 1, 2019, that definition is expanded by Part VI, Section 6 of S.L. 2019-245 to include “an adult entrusted with the juvenile’s care.” The amendment removes the limitation that the adult be a relative and now applies to relatives and nonrelatives alike who have responsibility for a juvenile’s health and welfare in a residential setting. For more information about how to determine whether an adult is entrusted with a juvenile’s care, see my previous blog post [here](#).

New Mandatory Reporting to Law Enforcement for Certain Crimes Involving Child Victims

Part I of S.L. 2019-245 creates a new mandatory reporting law when a juvenile is or has been a victim of certain crimes – G.S. 14-318.6. This new reporting law is in addition to the universal mandatory reporting law for child abuse, neglect, or dependency required by [G.S. 7B-301](#)**.

The New Law

“Any person 18 years of age or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse under G.S. 14-318.2 shall immediately report

the case of that juvenile to the appropriate local law enforcement agency in the county where the juvenile resides or is found.”

Who is a Juvenile?

A juvenile is defined as a person younger than 18 who is not married, emancipated, or a member of the U.S. Armed Forces. G.S. 14-318.6(a)(1); 7B-101(14). The statutory definition further states, “For the purposes of this section, the age of the juvenile at the time of the abuse or offense governs.” G.S. 14-318.6(a)(1).

The most straightforward reading of this language includes adults who had been a victim of an applicable reportable crime that occurred when they were under the age of 18. This interpretation may not be what was intended if the purpose is to protect current juveniles rather than any person who had been a juvenile when a specified crime was committed upon them. However, if the purpose is to identify and possibly prosecute perpetrators of sexual offenses on children, given the lack of a statute of limitations for felonies in North Carolina, the more expansive reading would meet that purpose. An unintended consequence of this expanded interpretation may impact treatment provided by health care providers who are not exempt from the law (e.g., a psychiatrist who starts to treat a 50-year-old patient who discloses they were a victim of a sexual offense when under the age of 18).

What Offenses Must Be Reported?

The new statute designates three types of offenses:

1. a violent offense, which is defined as any offense that inflicts on a juvenile by other than nonaccidental means
 - seriously bodily injury, which creates a substantial risk of death or causes serious permanent disfigurement; coma or prolonged hospitalized; or a permanent or protracted condition causing extreme pain or loss or impact of a bodily function or organ, or
 - serious physical injury, which causes great pain and suffering and can include serious mental injury,
 - and includes an attempt, solicitation or conspiracy to commit or aid and abet any of these offenses; (G.S. 14-318.6(a)(2), (3), (5))
2. misdemeanor child abuse, which occurs when a parent of or a person providing care or supervision to a child who is 15 or younger
 - inflicts or allows to be inflicted physical injury to the child by nonaccidental means or
 - creates or allows to be created substantial risk of physical injury to the child by nonaccidental means; ([S. 14-318.2](#)) or
3. a sexual offense.

G.S. 14-318.6(a)(4) defines “sexually violent offense,” which incorporates all the designated offenses in [G.S. 14-208.6\(5\)](#). This definition covers a broad range of offenses, including rape, attempted rape or sexual offense, sexual offenses, sexual activity, sexual battery, human trafficking (including promoting, patronizing, or permitting a minor in “prostitution”***), incest, employing or permitting a minor to assist in offenses against public morality and decency, sexual exploitation of minors, felonious indecent exposure, indecent liberties with children/student, solicitation of a child by computer/electronic devices to commit an unlawful sex act, and a parent or guardian committing or allowing a sexual act upon the juvenile.

Despite the definition of “sexually violent offense,” the remainder of G.S. 14-318.6 refers to a “sexual offense” and makes no further mention of a “sexually violent offense.” A sexual offense, if read literally, applies only to first- and second-degree forcible sexual offenses (G.S. 14-27-26; -27), statutory sexual offense with a child by an adult or with a person who is younger than 15 years of age (G.S. 14-27-28; -30) and first-degree statutory sexual offense (G.S. 14-27.29) and excludes all other offenses listed in G.S. 14-208.6(5), such as all rapes.

Given the definition of sexually violent offense in G.S. 14-318.6(a)(4), it is likely the intent was to refer to the comprehensive listing of criminal offenses that relate to inappropriate sexual contact with juveniles. However, until and unless a legislative correction or appellate court interprets the statutory language, confusion as to which crimes must be reported may arise. A mandated reporter, however, who in good faith makes a report, cooperates with a law enforcement investigation, or testifies in any judicial proceeding resulting from a criminal investigation is immune from any civil or criminal liability arising under state law.

Who Must Report; Exceptions

The new reporting law is a universal mandate, applying to all adults 18 and older. It does not limit the reporting mandate to only those individuals affiliated with specific professions. However, the law exempts a limited number of professions who have a statutory privilege. Those who are exempt from the reporting law when a privilege applies to the knowledge of the crime include (1) attorneys; (2) licensed psychologists, associates, and employees; (3) licensed or certified social workers engaged in private social work services; (4) licensed professional counselors (renamed to licensed clinical mental health counselor, effective January 1, 2020; see [S.L. 2019-240](#), Part II) or associates; and (5) agents of rape crisis centers and domestic violence programs. G.S. 14-318.6(h). No other professions with a privilege are exempted from the new mandated reporting statute.

The Report: G.S. 14-318.6(b), (e)

The report must be made to the appropriate local law enforcement agency where the juvenile resides or is found. This is similar language to the reporting statute for abuse, neglect, or dependency. Although “found” is not defined, published opinions addressing “found” in the context of abuse, neglect, or dependency may provide guidance. The opinions interpreted “found” to be where the juvenile is physically present. See [In re J.L.K.](#), 165 N.C. App. 311 (2004); [In re Leonard](#), 77 N.C. App. 439 (1985).

The report may be made orally or by telephone. It must include the reporter’s name, address, and telephone number. The reporter’s identity must be protected and may only be disclosed pursuant to disclosure permitted for the contents of a 911 or other emergency telephone call under [G.S. 132-1.4\(c\)\(4\)](#). The reporter should include the following information to the extent known:

- the juvenile’s name, age, address, and present whereabouts if not at home;
- the name and address of the juvenile’s parent, guardian, custodian, or caretaker;
- name, address, and age of person who committed the offense;
- location of where the offense occurred;
- nature and extent of any injury or condition that resulted from the offense;
- names and ages of any other juveniles present or in danger; and
- any other information that might be helpful in establishing the need for law enforcement involvement.

Failure to Report Is a Crime

A mandated reporter who knowingly or willfully fails to report or prevents another person from reporting is guilty of a Class 1 misdemeanor.

When Does the New Law Go into Effect?

G.S. 14-318.6 is effective December 1, 2019. It applies to offenses that are committed on or after December 1st. It is unclear whether the offenses referred to are limited to the misdemeanor of failing to report to law enforcement or whether it applies to the underlying offenses that have been committed upon a juvenile prior to December 1, 2019.

Intersection with the Mandated Reporting Requirement of Child Abuse, Neglect, or Dependency

The obligation to make a report to a county DSS of suspected child abuse, neglect, or dependency is separate and independent from the obligation to make a report to a local law enforcement agency when a person knows or reasonably should have known a juvenile is or has been a victim of a designated crime. Depending on the facts, a report will need to be made to either DSS (e.g., there is abuse, neglect, or dependency but no crime), law enforcement (there is a designated crime but no abuse, neglect, or dependency), or both (there is abuse, neglect, or dependency and the juvenile is a victim of a designated crime). See G.S. 14-318.6(d).

Additionally, law enforcement officers are mandated reporters under both laws. Should a report to law enforcement be made, and the officer finds evidence of abuse, neglect, or dependency, he or she must make an immediate oral and subsequent written (within 48 hours) report to the county DSS. G.S. 14-318.6(g). Under [G.S. 7B-307](#), when a DSS finds evidence of abuse or receives any information that a juvenile may have been physically harmed as a result of any crime committed by a person who is not the juvenile’s parent, guardian, custodian, caretaker, DSS must make an immediate oral and subsequent written (within 48 hours) report to the district attorney or designee and appropriate local law enforcement agency.

Table: Comparison of the Mandated Reporting Statutes

	G.S. 7B-301	G.S. 14-318.6
Who is obligated to report	Any person or institution	Any person 18 or older
Who is exempted from reporting		