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## Coates' Canons Blog: The New Law Addressing Child Maltreatment in Child Care Facilities: It's the State's Responsibility

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Article: <https://canons.sog.unc.edu/the-new-law-addressing-child-maltreatment-in-child-care-facilities-its-the-states-responsibility/>

This entry was posted on January 06, 2016 and is filed under Child Welfare, Social Services

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It seems fitting that my first blog post of the 2016 calendar year addresses a new law that became effective on January 1<sup>st</sup>. S.L. 2015-123 is "An Act to Transition Abuse and Neglect Investigations in Child Care Facilities to the Division of Child Development and Early Education [DCDEE] within the Department of Health and Human Services" (DHHS). In a nutshell, county child welfare agencies (county departments) retain responsibility for screening and assessing reports of suspected child abuse, neglect, and dependency by a parent, guardian, custodian, or caretaker but are no longer responsible for screening and assessing reports of suspected abuse and neglect of a child in a child care facility. As a result, petitions filed in district court by a county department that allege a child has been abused or neglected will no longer be based on circumstances created in a child care facility. Instead, the DCDEE has assumed responsibility for investigating suspected child maltreatment occurring in a child care facility. These investigations are a component of DCDEE's licensure procedures and requirements. S.L. 2015-123 sets forth the new process in Article 7 of G.S. Chapter 110.

### New Terms

Child care facilities include all facilities or locations where children are cared for that require a license under G.S. Chapter 110, Article 7 and all religious sponsored facilities, including summer day camps, operating under G.S. 110-106. G.S. 110-105.3(b)(2). There are two new terms to know:

1. **Caregiver**, which is defined as an operator of a licensed or religious-sponsored child care facility, a child care provider employed by a facility, a volunteer, or a person with approval of a child care provider to assume responsibility for a child under the provider's care. G.S. 110-105.3(b)(1). Note that the definition of "caretaker" for purposes of a child abuse, neglect, and dependency case no longer includes a caregiver in its definition. SeeS. 7B-101(3).
2. **Child Maltreatment**, which is defined as "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." G.S. 110-105.3(b)(3). Statutory examples of such acts include physical, sexual, or psychological abuse; the failure to provide for the physical, emotional or medical well-being of child; or the failure to properly supervise children which results in a child's exposure to a potentially harmful environment. *Id.* Note that the definition of "child maltreatment" differs from the definitions of "abuse" or "neglect" found in the Juvenile Code, which are based on conditions created by a parent, guardian, custodian, or caretaker. SeeS. 7B-101(1) & (15).

### Making a Report

As with suspected child abuse, neglect, and dependency, there is a universal mandated reporting statute for child maltreatment. Any person who has cause to suspect a child in a child care facility has been maltreated must make a report to DCDEE. G.S. 110-105.4. The report can be made in writing or by calling (919) 527-6500 or 1-800-859-0829. There does not appear to be an afterhours (nights and weekends) contact number for DCDEE. An individual may wait until normal business hours to call the DCDEE or call a county department or local law enforcement after regular business hours. If a county department receives a report of suspected child maltreatment in a child care facility, it must notify the DCDEE within 24 hours (or on the next working day) of receiving the report. G.S. 7B-307.

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## Contents of Report

If known to the reporter, the report should include the name and address of both the child care facility and the child's parent, guardian, or custodian; the child's age; the child's whereabouts if the child is not at home; the nature and extent of any injuries or conditions caused by the maltreatment; and any other information the reporter believes will be helpful in an investigation. G.S. 110-105.4(a). A reporter should give his or her name, address, and telephone number, but refusing to do so will not preclude an investigation. *Id.*

## Receipt of Report

DCDEE must make a prompt and thorough assessment of a report, which includes an unannounced inspection of the child care facility within 7 days of when the DCDEE receives a report of alleged child maltreatment. G.S. 110-105(a), 110-105.3(d). If the child care facility refuses to allow an inspection, the department may seek an administrative warrant. G.S. 110-105(b); 15-27.2. If the report alleges a child's sexual abuse in a child care facility, DCDEE must notify the State Bureau of Investigation within 24 hours or the next working day. G.S. 110-105.4(b).

## Interagency Collaboration: DCDEE, County Departments, Local Law Enforcement

G.S. 110-105.3(a) recognizes that a proper investigation of suspected child maltreatment in a child care facility requires cooperation between the State DCDEE, local law enforcement, and county departments. If a county department receives a report, it must notify DCDEE. A county department may share this information under G.S. 110-105.3(l), 110-105.4 (as a mandated reporter itself), 7B-302(a1)(1), and 7B-307. If DCDEE receives a report that includes misdemeanor or felony child abuse, it must notify local law enforcement so that law enforcement may conduct the investigation. G.S. 110-105.3(d)

## Action During the Investigation

The DCDEE may issue a **protection plan** during an investigation. Protection plans may involve restricting the individual who is alleged to have maltreated a child from being on the child care facility's premises, or suspending activities at a facility, such as field trips and transportation. G.S. 110-105.3(e). The DCDEE may also order **immediate corrective action** (including temporarily suspending the facility's license in emergency situations) when the action is necessary to protect the health, safety, or welfare of children at the facility. G.S. 110-105.3(f) & (g).

## Confidentiality and Findings

During an investigation, all information is confidential, unless a court or administrative order authorizes a disclosure or the DCDEE discloses information to a government entity to protect a child from maltreatment, abuse, or neglect (i.e., county department, local law enforcement). G.S. 110-105.3(i) & (j). See also G.S. 110-105.3(k). If findings of maltreatment are substantiated, those findings shall be public, along with the date(s) of visits to the facility and the corrective action plan (if applicable). *Id.*

A finding of child maltreatment is a violation of the licensure standards and laws for child care facilities and may result in administrative action that ranges from a correction action plan to suspension or revocation of the facility's license. G.S. 110-105.6.

## The New Child Maltreatment Registry

There is now a Child Maltreatment Registry (CMR) that is maintained by DHHS, which is in addition to the Responsible Individual List and the Central Registry (child abuse, neglect, and dependency). See G.S. 7B-311, 110-105.5. The CMR consists of the names of caregivers who have been found to have maltreated a child and who did not timely appeal or unsuccessfully challenged his or her placement on the list in an administrative appeal. G.S. 105.5(a) & (b). An individual who is listed on the CMR cannot be a caregiver at any licensed or religious-sponsored child care facility. G.S. 105.5(c). The names of the caregivers who are listed in the CMR are public records. G.S. 105.5(f). Any one may submit a public request form for information about whether a specific individual is on the CMR.



## Links

- [www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2015-2016/SL2015-123.pdf](http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2015-2016/SL2015-123.pdf)
- [ncchildcare.nc.gov/general/home.asp](http://ncchildcare.nc.gov/general/home.asp)
- [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)