



North Carolina's "Caylee's Law"

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In 2013 North Carolina enacted "Caylee's Law," [S.L. 2013-52](#), a statute similar to laws adopted in other states after the high-profile Casey Anthony trial. North Carolina's law makes a number of changes regarding the reporting of missing, abused or deceased children. This post summarizes the changes, all of which are effective for offenses occurring on or after December 1, 2013.

New Crime: Failing to Report Missing Child By Parent/Care Giver

Elements. A person guilty of this offense:

- (1) is a parent or other person providing care to or supervision of a child and
- (2) knowingly or wantonly
- (3) fails to report the disappearance of a child to law enforcement

G.S. 14-318.5(b).

Punishment. Class I felony. G.S. 14-318.5(b).

Notes.

"Child." A child is a person less than 16 years old. G.S. 14-318.5(a)(1).

"Disappearance of a child." A disappearance of a child occurs when the parent or person providing supervision does not know the child's location and has not had contact with the child for 24 hours. G.S. 14-318.5(a)(2).

Exceptions. The offense does not apply if G.S. 110-102.1 "is applicable." G.S. 14-318.5(d). As amended by S.L. 2013-52, G.S. 110-102.1 states that child care facility operators, staff, and specified others must immediately report a missing child to law enforcement upon learning that a child under 16 and in their care is missing.

If a child is absent from school, a teacher is not required to report the absence to law enforcement if the teacher reports the absence pursuant to G.S. Ch. 115C Art. 26. G.S. 14-318.5(e).

Multiple convictions and punishments. G.S. 14-318.5(f) provides that this offense is "an offense additional to" other criminal provisions that might apply. This provision creates some conflict with the crime's punishment provision, stating that the proscribed punishment applies unless the conduct is covered under another provision providing greater punishment. G.S. 14-318.5(b). For a discussion of the meaning of the latter language as used in other criminal statutes, see Jessica Smith: North Carolina Crimes 116 (7th ed. 2012).

Immunity. Anyone who in good faith reports a child's disappearance as required is immune from any civil or criminal

liability that might otherwise occur. G.S. 14-318.5(g). In any liability proceeding, good faith is presumed. *Id.*

New Crime: Failing to Report a Missing Child By One Who Suspects Danger

Elements. A person guilty of this offense:

- (1) reasonably suspects
 - (a) the disappearance of a child and
 - (b) that the child may be in danger and
- (2) fails to report those suspicions to law enforcement
- (3) within a reasonable time

G.S. 14-318.5(c).

Punishment. Class 1 misdemeanor. G.S. 14-318.5(c).

Notes. The notes above entitled “Child,” “Disappearance of a child,” “Exceptions,” and “Immunity” apply here as well.

Generally. Element (1)(b) requires that the person reasonably suspect that the child “may be in danger.” The statute does not define this term. Its inclusion suggests that there must be some danger to the child other than the general danger associated with a 24-hour disappearance.

Multiple convictions and punishments. The statute provides that “[u]nless the conduct is covered under some other provision of law providing greater punishment, a violation of this subsection is punishable as a Class 1 misdemeanor.” For a discussion of the meaning of this language as used in other criminal statutes, see Jessica Smith: North Carolina Crimes 116 (7th ed. 2012).

Failing to Report Missing Child Is A Grossly Negligent Omission

Two existing child abuse offenses apply to grossly negligent omissions. G.S. 14-318.4(a4) (Willful Act/Omission Causing Serious Bodily Injury); G.S. 14-318.4(a5) (Willful Act/Omission Causing Serious Mental or Physical Injury). S.L. 2013-52 amends the statute proscribing those offenses to state that failure to report a child as missing as required by new G.S. 14-318.5(b) constitutes a “grossly negligent omission.”

Concealing the Death of a Child Now a Class H or D Felony

G.S. 14-401.22 provides that concealing a person’s death is a Class I felony. Specifically, a defendant is guilty of that offense when with the intent to conceal the death, he or she fails to notify law enforcement of it or secretly buries or disposes of the body. S.L. 2013-52 amends that statute creating a Class H felony version of the crime that applies when the deceased is a child less than 16 years of age. G.S. 14-401.22(a1). If the person violates the statute knowing that the child did not die of natural causes, the offense is a Class D felony. G.S. 14-401.22(e).

False Reports Regarding Missing Children Now a Class H Felony

G.S. 14-225 makes it a Class 2 misdemeanor to willfully make a false, misleading, or unfounded report to a law enforcement officer or agency for the purpose of interfering with the agency’s operation or hindering or obstructing an

officer in performing official duties. S.L. 2013-52 creates an enhanced Class H felony version of the offense that applies when the report pertains to a missing child. The new offense applies when a false, deliberately misleading, or unfounded report relates to a:

- (1) law enforcement investigation involving the disappearance of a child or
- (2) child victim of a Class A, B1, B2, or C felony offense.

G.S. 14-225(b). A child is a person under 16 years old. *Id.*

Failure to Report Abuse, etc. Now a Crime

G.S. 7B-301 requires any person or institution suspecting that a child is abused, neglected, or dependent or has died from maltreatment to make a report to the local social services department director. It further requires that when a director receives a report of sexual abuse of a juvenile in a child care facility, he or she must notify the SBI. However, the statute does not expressly provide for a criminal penalty for failing to make the required reports. S.L. 2013-52 changes that. Specifically, it enacts new G.S. 7B-301(b) providing that “[a]ny person or institution who knowingly or wantonly fails to report the case of a juvenile . . . or who knowingly or wantonly prevents another person from making a report . . . is guilty of a Class 1 misdemeanor.” This change is significant because it applies to all people who interact with children, including school personnel, medical personnel, family and friends. Additionally, new G.S. 7B-301(c) provides that if a social services director receives a report of sexual abuse of a juvenile in a child care facility and knowingly fails to notify the SBI, the director is guilty of a Class 1 misdemeanor.