

New Mandatory Reporting Laws and Sex Crimes

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Speaking Up for Child Victims

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Way back in the innocent days of yore (in 1944 to be exact), a little Christmas song was written named, "Baby, It's Cold Outside."¹ In recent years, the song has come under attack because of lyrics said to be depicting sexual assault or harassment. In fact, last year, a number of radio stations decided that they would never play this song again. Despite your position on this controversy of utmost importance, I would say this: If we are crossing bad Christmas songs off of our playlists, there are scores of Christmas songs that deserve to go before we even start discussing "Baby, It's Cold Outside." But the song does make for a nice segue into today's topic about the recent passage of a bill entitled "Laws on sexual assaults and other matters."

Shortly before recessing until mid-January, the North Carolina General Assembly passed one more law intended to strengthen the laws relating to child abuse, rape, and sex offenders. Perhaps most importantly to law enforcement, Session Law 2019-245 (Senate Bill 199) created new legal requirements which make it a crime in most cases to fail to report certain crimes against juveniles to the police. In addition, this bill makes several other tweaks that you should know about. All of the provisions of this law went into effect on December 1st.²

As you (hopefully) know, law enforcement has long been under a statutory duty to report any cases of juvenile abuse, neglect, or dependency to the Department of Social Services. G.S. 7B-301 requires "any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent" as defined in the juvenile code "or has died as the result of maltreatment" to report the case to DSS in the county where the juvenile resides or is located. Failure to do so is a Class 1 misdemeanor. This law remains in effect, but there is a new law that establishes a broader reporting requirement.

New G.S. 14-318.6 requires "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 . . . 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." Failure to do so or knowingly or willfully preventing someone else from doing so is a Class 1 misdemeanor. Under both these laws, a "juvenile" is anyone under 18 who is not emancipated, married, or in the U.S. Armed Forces. G.S. 14-318.6 says that the age of the juvenile at the time of the abuse or offense governs.³ The statute defines a "violent offense" as one that inflicts "serious bodily injury or serious

¹ Technically, the song is not a Christmas song as it has nothing to do with Christmas. But, like other songs such as "Winter Wonderland" and "Let It Snow," the rules clearly state that it may only be played, sung, or listened to in the month of December (outside of retail establishments which may play them beginning in October.) Don't look at me - I don't make the rules.

² #5 on the list of Christmas songs we need to get rid of: "Do They Know It's Christmas?" This was a benefit song for the famine in Ethiopia by "Band Aid" in 1984. Basically, the "We are the World" for Britain and Ireland but for Christmas. It features the questionable line, "well tonight thank God it's them instead of you." It also ignores the fact that the majority of Ethiopia's population identified as Christian back then, so they probably did, in fact, know that it was Christmas.

³ This seems to mean that even if the report is of a crime that happened many, many years ago, a report would still need to be made once it is discovered.

physical injury⁴ by other than accidental means.” A “sexually violent offense” uses the same definition found in the sex offender registration section (G.S. 14-208.6(5)) and includes most sex-related crimes.⁵ Both “violent offenses” and “sexually violent offenses” would include any attempt, solicitation, conspiracy, or aiding and abetting of these crimes as well.⁶

The report may be made orally or by telephone and must include the reporter’s name, address, and telephone number which are protected the same way that a 911 caller’s identity is currently protected. Obviously, the report should contain all the information that might be helpful to law enforcement and several of those types of information are listed in the statute. There are a few exceptions to this reporting requirement for the following people where specific privileges exist:

1. Attorneys
2. Licensed psychologists, associates, and employees
3. Licensed or certified social workers engaged in private social work services
4. Licensed professional counselors and associates also known as licensed clinical mental health counselors, and
5. Agents of rape crisis centers and domestic violence programs.

If the report made to law enforcement causes an officer to find evidence that a juvenile may be abused, neglected, or dependent, this new statute requires them to give notice to DSS. Specifically, G.S. 14-318.6(g) states that the officer “shall make an oral report as soon as practicable and make a subsequent written report of the findings to the director of [DSS] within 48 hours after discovery of the evidence.” Note that this situation (following a report of a possible crime under this new statute) requires more from you than the general duty to report under G.S. 7B-301.

Quick Summary of Mandatory Reporting Laws

- G.S. 7B-301 requires any person or institution (including law enforcement) with cause to suspect juvenile is abused, neglected or dependent to report it to DSS. The report can be oral or written.
- New G.S. 14-318.6 requires any person 18 or older who knows or reasonably should know that a juvenile has been or is the victim of a violent offense, sexually violent offense, or misdemeanor child abuse to report that to law enforcement subject to a few specific exceptions. If law enforcement finds evidence of abuse, neglect, or dependency (whether or not there has been a separate crime), the officer must make an oral report to DSS and follow up with written findings within 48 hours of the discovery.
- Failure to follow either of these laws is a Class 1 misdemeanor.

In addition to this new mandatory reporting requirement, this bill made several other changes to sexual assault laws. First, you may recall some media attention last year to the realization that North Carolina law did not recognize the withdrawal of consent after sexual intercourse had started based on a N.C. Supreme Court decision from 1979, State v. Way.⁷ This has been addressed now by a clarification of the definition of “against the will of the other person” in G.S. 14-27.20. Under the new definition, “against the will” includes those situations “after consent is revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked.”

⁴ These have the same definitions as they do in the assault inflicting serious injury and assault inflicting serious bodily injury statutes.

⁵ One problematic issue with this statute is that while it gives a definition for “sexually violent offenses,” the rest of the statute refers only to “sexual offenses” which could be read literally to only include about four crimes that are actually titled “sex offenses.” However, it seems the intent was to require reporting for the defined “sexually violent offenses,” so you should report anything falling into that category in order to err on the side of caution.

⁶ The #4 Christmas song that we need to get rid of is “I Saw Mommy Kissing Santa Claus.” Now, mommy knows that it’s really daddy dressed up like Santa and listeners can figure that out also, but this little kid who has snuck out of his room now believes that he has caught his mother in an act of adultery on Christmas Eve! That’s horrible.

⁷ 297 N.C. 293 (1979). Speaking of horrible Christmas songs, #3 on my list is actually a category. We should get rid of every Christmas song that tries to make light of a tragic situation at Christmas. The headliner for this category is, of course, “Grandma Got Run Over By a Reindeer.” But there are several others, including the John Denver song, “Please, Daddy (Don’t Get Drunk on Christmas)” which deals with an emotionally abusive alcoholic father on the backdrop of a jaunty holiday arrangement.

Second degree rape and forcible sexual offense can also occur when the victim is “mentally incapacitated” such that they are “substantially incapable of either appraising the nature of” their conduct, or resisting the criminal act. Previously, the incapacitation had to be caused by an act committed upon the victim or a substance provided to the victim without their knowledge or consent. A revision to that definition now only requires the incapacitation be due to “any act,” which seems to mean that this element would exist now in those cases where the victim was mentally incapacitated by their own actions, such as drinking.⁸

The legislature has tried a few times to outlaw the use of social media sites by registered sex offenders and their previous attempt was ultimately held by the U.S. Supreme Court to be an unconstitutional violation of the offender’s First Amendment rights.⁹ This year, the legislature has rewritten G.S. 14-202.5 to try and pass constitutional muster.¹⁰ Under this revised law, it is a Class H felony for:

1. A high-risk sex offender¹¹
2. To do any of the following online:
 - a. Communicate with a person that the offender believes is under 16 years old,
 - b. Contact a person that the offender believes is under 16,
 - c. Pose falsely as a person under 16 with the intent to commit an unlawful sex act with a person the offender believes is under 16,
 - d. Use a website to gather information about a person that the offender believes is under 16,
 - e. Use a “commercial social networking website” in violation of a policy, posted in a manner reasonably likely to come to the attention of users, prohibiting convicted sex offenders from using the site.

One of the more interesting parts of this bill is a change to the statute of limitations for a few misdemeanors. In North Carolina, the statute of limitations for almost all misdemeanors is two years, meaning that charges must be brought within two years of the crime. This bill has extended the statute of limitations for the following crimes to ten years from the commission of the crime:

- G.S. 14-27.33: Sexual Battery
- G.S. 14-202.2: Indecent Liberties between Children
- G.S. 14-318.2: Misdemeanor Child Abuse
- G.S. 7B-301(b): Failure to Report Abuse, Neglect, Dependency to DSS as discussed above, and
- The new G.S. 14-318.6: Failure to Report Crimes against Juveniles as discussed above.

Before we close, there are two other small changes in this bill that you should be aware of. First, as part of the recent emphasis on victims’ rights, the victim of the underlying offense may now appear and be heard regarding a petition to terminate sex offender registration under G.S. 14-208.12A. If they have elected to receive notices, the district attorney’s office must notify the victim of the date, time, and place of the hearing. Second, G.S. 14-401.11 makes it illegal to knowingly distribute any food or eatable substance containing a controlled substance or other dangerous substance or item.¹² That statute has now been amended to also protect beverages or other drinkable substances.¹³

⁸ Back in the old days when I was fighting for truth and justice in the DA’s office, I tried and convicted a man for rape on facts where the victim had drunk to the point of passing out. The N.C. Court of Appeals overturned that conviction based on their interpretation that the “any act committed upon the victim” language meant that it did not cover cases where the victim caused their own “mental incapacitation.” State v. Haddock, 191 N.C. App. 474 (2008). This new definition likely changes that.

⁹ Packingham v. North Carolina, 137 S. Ct. 1730 (2017).

¹⁰ #2 on the list of Christmas songs to discard is: “Wonderful Christmas Time.” As much as it pains me to put Sir Paul McCartney on this list, this song will drive a person legally insane. I’ve heard it described as “a long song between a middle-aged man and the new Casio keyboard he got in his stocking,” and I agree with that.

¹¹ “High-risk sex offender” is defined in the statute and basically includes all offenses requiring sex offender registration if committed against a person under 18 years old.

¹² This is the “razor blades in Halloween candy” law. Until now, the title actually was “Distribution of certain food at Halloween and all other times prohibited.” And you know how I feel about Halloween.

¹³ As the controversial song goes, “say, what’s in this drink?” But the #1 Christmas song that we need to get rid of is . . . “Christmas Shoes.” The song is dreadfully sad – the little boy is braving the stores on Christmas Eve to buy some shoes for his mom who is probably “going to meet Jesus that night” and he wants her to look her best. That’s already too much for me to handle in a Christmas song. But the kicker that puts this as the song I most want to get rid of is that after the boy goes through all of this and puts his pennies on the counter to pay for the

And now that you know all about this new bill, get out of here! I don't care how cold it is. You really can't stay, you've got to go away, you simply must go, because baby...this update is over.

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.



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