

---

# Amy Edwards

FAMILY LAW

---

# Family Matters

e-Newsletter

May 2014



Board Certified  
Family Law Specialist

**Amy Edwards**  
FAMILY LAW

313 West 2nd St • Greenville  
252-758-3430  
[www.GreenvilleLaw.us](http://www.GreenvilleLaw.us)

Formerly known as Mattox, Davis & Edwards, P.A.

Welcome to another issue of Family Matters e-Newsletter. This monthly divorce e-Newsletter is brought to you by Amy Edwards Family Law and Divorce Magazine. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please reply with the subject "Remove" or use the unsubscribe feature at the end of this e-mail. Visit us online at [www.greenvillelaw.us](http://www.greenvillelaw.us) For past issues of *Family Matters* visit [our archives](#).

## In This Issue

[Child Neglect in North Carolina](#)

[Safe Surrender Laws](#)

[Divorce Magazine Spring 2014 \(free download\)](#)

[Anatomy of a Subpoena](#)

[Focus on: The Carolina Pregnancy Center](#)

[The Pit Bull Lawyer](#)

## ANNOUNCEMENT

The law firm formerly known as Mattox, Davis & Edwards, P.A. is now known as Amy Edwards Family Law.

## Web Site of the Month

### **The Way Back Machine**

is an internet archive, operated by a non-profit organization. The web site boasts 378 billion web site pages permanently archived. You can search for web sites that are no longer available and even save specific web sites so the content will remain there for you to access even after the site has been changed or deleted.

## Tip of the Month

### **NC Cash Program**

Search for unclaimed money on the the NC Cash Program [web site](#). This service is made

By Amy A. Edwards

This is part two of a three part series on child abuse, child neglect, and the abuse and neglect courts.

## The Legal Definition

For purposes of the civil (*i.e.*, non-criminal) law, a minor child who is neglected is one who does not receive proper care, supervision, or discipline from the parent or caretaker. NC Gen. Stat. §7B-101. Also included in the civil definition of child neglect are the following situations:

- Abandonment of the child without safely surrendering the child;
- Placement of a child for adoption in violation of the law;
- Failure to provide necessary medical care to the minor;
- Living in an environment injurious to his or her welfare; or
- Child placed in the care of someone in violation of the law.

When the judge decides whether a child is neglected, he or she can take into account certain circumstances of that child's siblings or other children who have lived in the home. For example, the statute specifically says it is relevant to consider whether another child "has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." NC Gen. Stat. §7B-101(15).

## Duty to Report Neglect or Abuse

When someone suspects child neglect, the law imposes a duty to report it to the Department of Social Services through Child Protective Services (CPS). This duty to report suspected neglect or abuse applies to any person (or institution). Although callers will be asked their names, their names are not made available to anyone, including the person who is being reported. The policy of the law is to encourage people to report suspected neglect without the fearing retribution.

## The State Response

After an investigation, CPS has several possible options. If the report of neglect is substantiated, CPS will usually take immediate temporary physical custody of the child until a court order is obtained. A civil trial will follow, during which the court will rule on whether the child is neglected, using the legal definition of neglect. If the court rules that the child was neglected, CPS usually retains custody of the child to place with suitable family members or foster families until the parent(s) correct the conditions that led to the neglect, or eventually, move towards the adoption process if the conditions are not met in a reasonable time period.

## Legal Term of the Month

### Verification

When documents that are filed at the courthouse are "verified" the person who signs them is doing so under penalty of perjury. He or she must verify the truth of what is stated in the document.

## Legal Trivia

### Did You Know?

By NC statute, any person who fails to return a book to the library within thirty days of receiving a notice from the library is guilty of a Class 3 misdemeanor

NC Gen. Stat. §125-11

## Suggestions For Future Newsletter Topics

Is there a topic you would like to see featured in a future newsletter?

Click Reply and send us an e-mail with your suggestion.

## Quick Links

[City of Greenville](#)

[Pitt County](#)

[Pitt County Schools](#)

[State of NC](#)

[Collaborative Divorce Assn of Eastern Carolina](#)

[Social Security Admin.](#)

[Research Family Law](#)

[Our Firm Web Site](#)

[Pitt County Courthouse](#)

The Department maintains a "[Responsible Individuals List](#)" which may be given to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services placing children for adoption. Someone may be listed on the list only after notice to that person and court review of the matter, or he or she is criminally convicted as a result of the same incident involved in the investigation. When the Department receives a report of sexual abuse of a minor child in a child care facility, notice to the [State Bureau of Investigation](#) is required within 24 hours or on the next workday.

### **Criminal Implications**

The criminal law that applies to child neglect is not very clear. If anyone who is 16 or older intentionally causes, encourages, or aids a child to "be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent . . . abused, or neglected . . . shall be guilty of a Class 1 misdemeanor." NC Gen. Stat. §14-316.1. Clear as mud, right? The definition of criminal abandonment requires an on-going abandonment for six months. Abuse as a crime usually involves physical injury and/or gross negligence. Murder and manslaughter are possible charges in the event a child dies from neglect.

This article is current as of May 2014.

Copyright 2014

## **Safe Surrender Laws**

By Amy A. Edwards

### **What Are They?**

In exchange for leaving the baby with an appropriate caretaker, pursuant to the safe surrender laws, the state will grant immunity from criminal charges. See NC Gen. Stat. §14-322.3. This safe surrender is a form of legal abandonment.

Infants are especially vulnerable to neglect, and all states now have legislation allowing parents to legally abandon a baby and/or child if done according to the law. North Carolina's safe surrender law was passed in 2001. NC Gen. Stat. §7B-500.



### **Why Do We Have These Laws?**

The purpose of the law is to encourage people who do not want a baby, or are unable to care for him or her, to surrender the infant in a safe manner rather than leaving the baby in bathrooms, on someone's doorstep or some other type of abandonment. In our state, only a parent may safely abandon an infant, which must occur within seven days of birth. Any adult may accept the baby, but health care providers, social workers, law enforcement and emergency medical service workers are legally required to take an infant who is legally abandoned. The person accepting the infant must contact CPS immediately.

### **What Happens to the Parents?**

A parent who is abandoning the baby has no obligation to tell anyone his or her name or other information about the baby. However, the person accepting baby may ask questions, but has to notify the parent he or she has no legal obligation to disclose the information. A parent who abandons the baby in an unsafe manner, such as leaving the infant exposed in the woods in the winter, will not receive immunity from criminal prosecution. A parent whose infant dies as a result of such wanton and willful behavior may face charges of murder or manslaughter if the child dies. Safely surrendering an infant does not change the legal rights of the other parent, nor does it act cut off rights of the other parent. In the case of the civil court making a ruling on the child's custody and care, the judge will treat a safe surrender case the same way, ruling on whether there was neglect and awarding custody or guardianship as appropriate.

This article is current as of May 2014.

Copyright 2014

## **Divorce Magazine Winter/Spring 2014**

[Click here](#) to check out the Spring 2014 edition of Divorce Magazine.

Breaking Free from Guilt

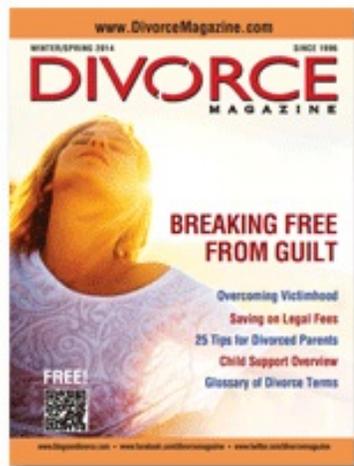
Child Support Overview

Coming to Terms: Divorce

Terminology in Court

Saving on Legal Fees During Your Divorce

Victimhood: The Curse of Discovery



Tips for Divorced Parents

Divorce Magazine Facebook Fans

Share

Your Best Online Resources

## Anatomy of a Subpoena

By Amy A. Edwards

### What is a Subpoena?

Subpoenas are documents that require a witness to appear in court or at a deposition to testify. A subpoena or subpoena *duces tecum* (rarely called by that name) may require a witness to provide documents or other evidence, in addition to requiring a witness to appear in court to testify.

### What if You Don't Respond?

A witness must be prepared to testify and/or produce the documents unless and until the judge rules otherwise. A court may hold the witness in contempt of court for failure to comply with a subpoena. A judge has the authority to incarcerate a person who refuses to testify or produce records as required by a subpoena.

### The Rules

An attorney (or any interested party) may file a motion to quash (or cancel) a subpoena. The decision about whether materials must be provided, or if a witness must testify, rests with the judge. Sometimes judges will rule there are valid reasons to override the objections to a subpoena. This may be because the information subpoenaed is subject to a privilege, such as attorney-client privilege. Other types of special rules might apply to information requested, such as medical records.

Or, a judge can limit what must be released pursuant to the subpoena.

Sometimes judges will ask the person who has the information to "redact" it. Redacting is taking a marker and blotting out certain information, such as the name of the person who reported suspected abuse of a child to Child Protective Services or social security numbers and dates of birth. Judges may review the information "*in camera*" before making a ruling, which means he or she reviews the documentation in his or her office before allowing any of it to be released to the attorneys.

### If You Are Served

A subpoena is usually served on someone by sheriff. Not only can a sheriff hand the paperwork to you, he or she also has the legal authority to serve someone by telephone call. A North Carolina subpoena includes

information for witnesses, explaining the duties and rights of a witness.

A court order is the only way to avoid obligations to testify or produce records.

Examples of reasons a court might enter an order if someone makes a proper motion:

The subpoena fails to allow reasonable time for compliance.

The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.

The subpoena subjects a person to an undue burden or expense.

The subpoena is otherwise unreasonable or oppressive.

The subpoena is procedurally defective.

If you are served with a subpoena and want to know your rights or you need to file a motion to quash a subpoena, contact an attorney. Time is of the essence, especially if you were served shortly before the trial date is scheduled.

Copyright 2014

## Focus on: Carolina Pregnancy Center



### Did You Know?

Did you know that Greenville has a wonderful resource called the Carolina Pregnancy Center? Recently, I discovered a wealth of valuable services the Center offers to this area.

The [Carolina Pregnancy Center](#) is a non-denominational Christian non-profit organization that serves men and women of any age, race or economic status, at no charge. They also serve family members of the client in certain circumstances.

Carolina Pregnancy Center services include:

- Free pregnancy testing for anyone.
- Free limited ultrasound to confirm and date pregnancy.
- Free education, support and assistance of trained client advocates.

- Free education on fetal development, sexual integrity and STDs, but CPC also provides post-abortion support.
- Free parenting classes.
- Post abortion support for those suffering emotionally from a past abortion.
- Prenatal vitamins, baby and maternity clothing, and other items as part of the "earn while you learn" Hope Program.
- Appointments may be made discretely online.

For more information, contact them directly:

### **Carolina Pregnancy Center**

1012 Charles Blvd. (Beside Sheetz)

Greenville, NC 27858

Phone 252.757.0003

[www.CarolinaPregnancyCenter.org](http://www.CarolinaPregnancyCenter.org)

## **The Pit Bull Lawyer**

By Amy A. Edwards

We've all heard the "pit bull lawyer" expression. Popular culture seems to associate the term with a lawyer who is aggressive, tough and powerful, able to bend the law and find loopholes to do whatever it takes to win their cases. Like any other professional group, attorneys have their own individual styles, personalities and work ethics. Attorneys have an old adage about judges: you can line up ten judges, have a trial, and get ten different rulings. The same probably holds true for attorneys. What kind of attorney do you want? Upon closer examination of the "pit bull lawyer" there are several things you should take into account.

Just because an attorney is loud, rude and pushy doesn't mean he or she is the best. In fact, there are attorneys who may actually use that facade to hide the fact that they aren't prepared and they plan on winging it that day. Or, they may use it to bury the fact that they are spending many hours of unnecessary (but billable) office time and/or courtroom time waging a war for show to impress their client, while skipping negotiation. Best case scenarios often include a separation agreement or what is called a consent order if there is a pending court case.

Another "pit bull" hazard might be writing lengthy (and expensive) letters that essentially do nothing but make personal attacks and generally fan the flames between the family members. Creating unnecessary hostility in a family is not in anyone's best interest. There are fine lines between an attorney's ethical behavior and other types of behavior. For example, do you really think it is wise to use scorched Earth tactics that starve out your children to get back at your ex? Is that what you are really trying to achieve? A good lawyer will caution you to step back from anger and

look at the long terms consequences.

A divorcing client can be angry now, but he or she should step back to consider the consequences of the decision in five or ten years from now. Think about how it will make you feel when your child is 24 years old and asks you why you made him testify in court against your ex, making him cry in front of his grandparents, aunts and uncles, teachers who were subpoenaed and other people who were in court for moral support. Wouldn't you prefer to be advised about your options and avoid a war of attrition if possible?

While the bulldozer attorney is flashy and looks glamorous, it is often a matter of having an attorney who listens to you, tells you the options available to you and advises you which is in your best interest. An attorney who is cool, calm and collected will often be more objective and create a good strategy for the client instead of falling victim to his or her temper or big ego.

Bulldozer attorneys will sometimes act the same way to their clients as they do their courtroom opponents. They dictate what you must do, period, without explaining it or advising you of your options. Ultimately, you are the decision-maker and your attorney works for you. Make sure there is more to your attorney than smoke and mirrors.

Copyright 2014

[Amy Edwards Family Law 252.758.3430](http://AmyEdwardsFamilyLaw.com)

When you need a hand  
*We're here*

- 13 Years Family Law Experience -

Divorce • Child Custody & Support  
Marital Property Division • Alimony  
Adoptions • Military Families

[Join Our Mailing List!](#)

Thank you for reading our newsletter.

**Sincerely,**

**Amy A. Edwards**

\* This e-newsletter is not meant to be legal advice. Amy A. Edwards is licensed to practice law in North Carolina. No attorney-client relationship is formed by viewing this e-mail.