

CHAPTER B.12 - ABUSED, NEGLECTED, AND DEPENDENT JUVENILES

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*Government has no nobler duty than that of protecting its country's lifeblood – the children.*¹ - Justice Franklin E. Freeman, Supreme Court of North Carolina

§ B.1200. Introduction

Classroom teachers and other school personnel strive to promote learning and provide students with a healthy, supportive educational environment. Despite their best efforts, however, a student's educational progress may be hindered by abuse and neglect away from school. School personnel are in a unique position to recognize and respond to child abuse and neglect. Changes in a child's behavior or appearance, as well as the child's own statements may draw a teacher's or other school employee's attention to a problem that would go unnoticed by others.

Subchapter I of the North Carolina Juvenile Code² contains laws that apply to (a) abused juveniles, (b) neglected juveniles, and (c) dependent juveniles—children whose parents are deceased or unable to care for them. The purposes of the Juvenile Code with respect to these children are to

- provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;
- develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family;
- provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' need for safety, continuity, and permanence;
- provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing unnecessary or inappropriate separation of juveniles from their parents; and
- provide standards for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time.³

The Juvenile Code focuses on the child's condition as abused, neglected, or dependent and the appropriate protective response to that condition. The investigation procedures attempt to strike a balance between society's interest in protecting children and the right of a family to function without unwarranted intervention by the state.⁴ Separate criminal laws provide penalties for perpetrators of abuse and other crimes against children. This chapter will discuss the mandatory child abuse reporting law, as well as the procedures

for submitting a report to the local department of social services, the reporter's duties and rights, and the role of schools, county social services departments, law enforcement agencies, and district courts in responding to reports that a child may be abused, neglected, or dependent or have died as a result of maltreatment.

§ B.1201. Mandatory Reporting under North Carolina Law

A. Generally Applicable Law

In North Carolina everyone, including school teachers, school administrators and all other school employees, has a statutory duty under G.S. 7B-301 to report when there is cause to suspect that a child is abused, neglected, or dependent, or has died as a result of maltreatment.⁵ The reporting requirement also applies to doctors, social workers, therapists, court counselors, law-enforcement officers, and judges, as well as relatives, friends, neighbors, co-workers, and even strangers. G.S. 7B-301 is commonly called "the child abuse reporting law" even though the statute also includes within its scope children who are neglected or dependent, and those who have died as a result of maltreatment. According to the statute,

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by [the Juvenile Code], or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found.⁶

B. Reporting Laws Specific to School Personnel

Child abuse reporting statistics indicate that school personnel are a major source of reports of child abuse or neglect received by county departments of social services. According to Central Registry Statistics compiled annually by the state Department of Health and Human Services (DHHS), in fiscal year 1998-1999⁷ county departments of social services received 63,200 reports of suspected abuse, neglect, or dependency involving 127,930 children.⁸ Almost 23,000 (17.4%) of these children came to the attention of the county department of social services because of a report made by a school employee.⁹ In fiscal year 1998-99 school personnel filed more reports of suspected abuse, neglect or dependency than any other group—more than relatives, medical personnel, parents, law enforcement agencies, and child-care providers.¹⁰

G.S. 115C-400 ("School personnel to report child abuse"), reiterates the requirement of G.S. 7B-301 discussed above. In addition, G.S. 115C-378 requires a school principal to notify the department of social services in the county where the child resides (1) when a child has accumulated ten unexcused absences in a school year, and (2) the principal determines that the child's parent, guardian, or custodian has not made a good faith effort to comply with the compulsory attendance law. Evidence that shows that the parent or guardian was notified that the child has accumulated ten absences that cannot be justified under the school board's attendance policy constitutes a prima facie case that the child's parent, guardian, or custodian is responsible for the absences. Upon receiving notification from the school principal, the director of social services must determine whether to undertake a child protective services investigation.¹¹

§ B.1202. Key Definitions

The Juvenile Code defines "abused juvenile," "neglected juvenile," "dependent juvenile," and other key terms used in the Code.¹² The definitions are important because they determine which children's situations must be reported to the county department of social services, whether the county social services department has a duty and the authority to investigate, and whether the district court has authority to intervene on the child's behalf. State administrative rules,¹³ state social services policy,¹⁴ and North Carolina appellate court decisions amplify and interpret some of these definitions.

A. People

1. Juvenile

For purposes of the child abuse reporting law, a "juvenile" is any person under the age of eighteen who is not emancipated, married, or a member of the armed forces of the United States.¹⁵

A juvenile who is sixteen or seventeen years of age may petition the district court for a decree of emancipation.¹⁶ Generally a person must be at least eighteen to marry in North Carolina. A sixteen- or seventeen-year-old, however, may marry with the consent of a parent who has full or joint legal custody of the juvenile, or with the consent of a person, agency or institution having legal custody or serving as the guardian of the juvenile.¹⁷ A girl who is fourteen or fifteen years of age and is pregnant or has given birth to a child, or a boy who is fourteen or fifteen and is the putative father of a child, whether born or unborn, may marry, but only if (a) the proposed marriage is to the other parent of the born or unborn child and (b) a district court judge has issued an order authorizing the marriage.¹⁸ It is unlawful for persons under the age of fourteen to marry in this state.¹⁹

In order to avoid confusion over terms, school officials should note that the definition of "juvenile" in the context of abuse, neglect, and dependency differs from the definition of "juvenile" in the context of young people who are delinquent or undisciplined. The Juvenile Code defines a "delinquent juvenile" as "any juvenile who, while less than sixteen years of age but at least six years of age, commits a crime or infraction under state law or under a local government ordinance, including a violation of the motor vehicle laws."²⁰

An "undisciplined juvenile" is

- a juvenile who, while less than sixteen years of age but at least six years of age, is unlawfully absent from school, or is regularly disobedient to and beyond the disciplinary control of his/her parents, or is regularly found in places where it is unlawful for a juvenile to be, or has run away from home for a period of more than twenty-four hours, or
- a juvenile who is sixteen or seventeen years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent or is regularly found in places where it is unlawful for a juvenile to be or has run away from home for a period of more than twenty-four hours.²¹

Thus, for example, a court may rule that a seventeen-year-old is "abused," "neglected," or "dependent," but a seventeen-year-old is too old to be classified as a "delinquent juvenile." On the other hand, a child younger than six is too young to be

classified as delinquent or undisciplined, but can be classified as abused, neglected, or dependent.

2. Parent, Guardian, Custodian, or Caretaker

The Juvenile Code defines abuse, neglect, and dependency in terms of the conduct of a child's parent, guardian, custodian, or caretaker.

- A "parent" is a child's biological or adoptive parent.
- A "guardian" is a person appointed by the court to have care, custody, and control of the child (or to arrange an appropriate placement for a child). A guardian also has the authority to enroll the child in school and consent on the child's behalf to medical care and other things for which a parent's consent ordinarily would be required.²²
- A "custodian" is a person or agency that has legal custody of a child pursuant to a court order. A custodian also may be a person, other than a parent or a legal guardian, who has assumed the status and obligation of a parent without being awarded legal custody of a juvenile by a court.²³
- A caretaker is someone "other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services." A caretaker also includes a person who has the responsibility for the care of a juvenile in a child-care facility and anyone who has the approval of the care provider to assume responsibility for the juvenile under the care of the care provider.²⁴

Because a "caretaker" is a person who has responsibility for a juvenile in a residential setting, public school employees are not "caretakers" as defined by the Juvenile Code. Thus inappropriate treatment of a child by a school employee is not subject to the mandatory child abuse reporting law because it is not child abuse or neglect caused by a parent, guardian, custodian, or caretaker. Abusive treatment of children by school employees should be reported, however, to law enforcement, to the Department of Public Instruction, or to both. See Section B.1203.C.

B. Conditions

The Juvenile Code defines what conditions constitute "abuse," "neglect," and "dependency."

1. Abused Juvenile

An abused juvenile²⁵ is a child less than eighteen years old whose parent, guardian, custodian, or caretaker

- inflicts or allows to be inflicted on the juvenile a serious physical injury by non-accidental means;

- creates or allows to be created a substantial risk of serious physical injury to the juvenile by non-accidental means;
- uses or allows to be used on the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
- commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape;²⁶ second degree rape;²⁷ first-degree sexual offense;²⁸ second degree sexual offense;²⁹ sexual act by a custodian;³⁰ crime against nature;³¹ incest;³² preparation of obscene photographs, slides, or motion pictures of the juvenile;³³ employing or permitting the juvenile to assist in a violation of the obscenity laws;³⁴ dissemination of obscene material to the juvenile;³⁵ displaying or disseminating material harmful to the juvenile;³⁶ first and second degree sexual exploitation of the juvenile;³⁷ promoting the prostitution of the juvenile;³⁸ and taking indecent liberties with the juvenile,³⁹ regardless of the age of the parties; (Note: most of these acts constitute criminal conduct even if the juvenile apparently participates in them voluntarily. School employees need not master the intricacies of criminal law to determine whether a child has been the victim of one of the listed criminal offenses because conduct that does not meet the definition of one of these criminal offenses still may be reportable under another part of the definitions of "abuse" "or neglect.")
- creates or allows to be created serious emotional damage to the juvenile (serious emotional damage is evidenced by the juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others);⁴⁰ or
- encourages, directs, or approves of delinquent acts⁴¹ involving moral turpitude⁴² committed by the juvenile.

2. Neglected Juvenile

A "neglected" juvenile is a child who

- does not receive proper care, supervision, or discipline from the child's parent, guardian, custodian, or caretaker; or
- has been abandoned; or
- is not provided necessary medical care; or
- is not provided necessary remedial care; or
- lives in an environment injurious to the child's welfare; or
- has been placed for care or adoption in violation of law.

The statutory definition of "neglected juvenile" also states that in determining whether a child is a neglected juvenile, it is relevant to consider whether that child lives in a home where another child has died as a result of suspected abuse or neglect or where another child has been subjected to abuse or neglect by an adult who regularly lives in the home.⁴³

Not every act of negligence on the part of parents or other caretakers constitutes "neglect" under the law or results in a legal determination that a child is a "neglected juvenile."⁴⁴ A review of North Carolina case law indicates that "neglect" has been found

when the conduct at issue constituted "severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the child."⁴⁵

Although some aspects of the definition of neglect, such as "proper care," "necessary medical care," and "an environment injurious to the juvenile's welfare," seem relatively vague, North Carolina appellate courts have held that societal norms give the terms used in the definition sufficiently precise and understandable meaning to withstand challenge on the basis of vagueness.⁴⁶ Thus "treatment of a child which falls below the normative standards imposed upon parents by our society is considered neglectful."⁴⁷ The courts have said, in effect, that people should use common sense and generally accepted values to determine what is meant by "proper care," "necessary medical care," or "an injurious environment."

It is not necessary for a child to suffer physical harm or be threatened with physical harm in order to be neglected. For example, the North Carolina Court of Appeals ruled that if a parent willfully fails to enroll a child in school, this may constitute neglect if the parent has failed to provide the child with a basic education.⁴⁸ Similarly, if the parent or person acting in the place of the parent does not provide an appropriate remedial education to a child with special educational needs, the child is neglected.⁴⁹ In another case the North Carolina Court of Appeals ruled that a mother's refusal to allow her daughter to receive treatment that would allow the child to overcome speech and hearing defects was neglect.⁵⁰ In a similar case the court of appeals ruled that withholding a child from therapeutic day care was one of several factors establishing neglect.⁵¹

Neglect may consist of inappropriate discipline of the child by his or her parent. One North Carolina case held that a child who was disciplined severely enough to cause bruises was a "neglected juvenile" even though the child's injuries were not severe enough to constitute abuse.⁵²

Usually a court considers a combination of factors in determining whether a child is neglected. For example, in one case, evidence that a deaf child regularly arrived at school in a filthy condition, that his mother was without a permanent residence, that the child's grandparents and the child's residential school did not know how to contact the mother in case of an emergency, and that the mother had initially refused to enroll the child in the residential school so that he could learn proper skills showed that a fourteen-year-old boy with special needs was neglected.⁵³ Any of these factors standing alone, however, might not be sufficient to establish that a child is neglected.

3. Dependent Juvenile

A dependent juvenile is (a) a child who is in need of assistance or placement because the child has no parent, guardian, or custodian responsible for the child's care or supervision or (b) a child whose parent, guardian, or custodian is unable to provide for the child's care or supervision and lacks an appropriate alternative child-care arrangement.⁵⁴ A child would be dependent, for example, if one parent is hospitalized or incarcerated and neither the other parent nor relatives nor anyone else is available to care for the child. Even when parents are not able to care for their children, the responsibility for developing an alternative plan of care falls first on the parents themselves. The child is dependent only if the parent has no plan or the parent's plan is inappropriate. The reason for the parent's inability to care for the child is not particularly relevant.⁵⁵

4. Maltreatment

Any person or institution with cause to suspect that a child has died as the result of maltreatment must report the case of that child to the county department of social services.⁵⁶ The term "maltreatment" is not defined in the Juvenile Code, and it is not clear whether or how the term differs from "abuse" or "neglect." It is safe to assume that when a child's death results from abuse or neglect, as the Juvenile Code defines those terms, it must be reported. "Maltreatment," though, seems to be a broader term, since the legislature easily could have said "children who die as a result of abuse or neglect." An argument could be made, for example, that "maltreatment" includes harmful actions by people other than parents, guardians, custodians, and caretakers.

On the other hand, the way the Juvenile Code instructs social services departments to respond to reports of a child's death due to maltreatment casts some doubt on this interpretation. In cases of death due to maltreatment, the department is required to "ascertain if other juveniles remain in the home" and, if they do, to determine whether they require protective services or "whether immediate removal of the juveniles from the home is necessary for their protection."⁵⁷ This mandate, like the rest of the Juvenile Code, seems to focus on families and family-like situations. People other than parents, guardians, custodians, and caretakers are not mentioned.

§ B.1203. Reporting Child Abuse and Neglect

When a school employee observes that a child has unusual or unexplained injuries, sees other signs of possible abuse or neglect, or witnesses someone injuring a child, the employee may be obligated to report those observations or suspicions to several different agencies, depending on the circumstances. In addition, as noted above, the school principal must notify social services when a child has accumulated ten unexcused absences and the principal determines that the child's parent, guardian, or custodian has not made a good faith effort to comply with the compulsory attendance law.

A. Deciding to Report to the Department of Social Services

G.S. 7B-301 requires a report to be made to the department of social services whenever a person "has cause to suspect" that a child is abused, neglected, or dependent or has died as a result of maltreatment. What does the phrase "cause to suspect" mean? Answering that question requires a school employee to look at a combination of objective and subjective factors. First of all, a careful reading of the statutory definitions of "abuse," "neglect," and "dependency" will help determine whether any of the terms apply to a particular child. According to the North Carolina Division of Social Services, the statute does not require that the reporter possess any information beyond a cause to suspect abuse or neglect. The reporter is not required to have witnessed the abuse or neglect or to have first-hand knowledge of the child's situation.⁵⁸

At the same time, a mere feeling or suspicion that one cannot connect to something observable, to something the child or someone else has said, or to the child's behavior, probably is not enough to trigger a duty to report. The standard is not just "a suspicion," but "cause to suspect." Thus when deciding whether to make a report, a school employee must consider a child's statements, appearance, behavior and other objective indicators of possible abuse or neglect in light of the employee's own experience and other available information. Ultimately, an individual must decide for himself or herself whether the available information and perceptions create "cause to suspect" abuse or neglect,

understanding that sometimes another person in the same situation might reach a different conclusion.

Should a person who already has cause to suspect abuse or neglect delay making a report in order to "investigate" further or discuss his or her concerns with the child or the child's parents? Under North Carolina law an individual does not have a duty to investigate and should not delay making a report if he or she already has "cause to suspect" abuse or neglect. In addition, the reporter does not need to ascertain the child's precise condition (abused, neglected, or dependent) before making a report.

A person with cause to suspect that a child is abused or neglected may choose to tell the child's parents (or the child in cases of older children) that the person intends to make a report to social services, but this should not be used as a reason to delay making the report. The reporting law does not permit anyone to make an agreement *not* to report in exchange for an assurance that the person suspected of abusing or neglecting a child will seek help or take other actions. As long as the individual has *cause to suspect* that the child is abused, neglected, or dependent, the child's condition must be reported.

What action should school employees take if they suspect that a child is being injured by the mother's boyfriend rather than by a parent, guardian, custodian or caretaker? Remember that the statutory definition of "abuse" says that "abuse" has occurred if the parent, guardian, custodian, or caretaker "inflicts *or allows*" the infliction of serious physical injury on the child, "uses *or allows*" to be used on the child grossly inappropriate procedures, or "commits *or allows*" to be committed certain crimes against the child.

In other words, abuse may result not only when a parent inflicts injury, but also when a parent allows someone else to inflict injury on a child. Thus if a child's mother knows her boyfriend is injuring her child in some way and yet fails to take action to protect her child, *her failure to act may constitute abuse and should be reported*. The failure to act also may constitute neglect in that the mother is failing to provide proper care and supervision for her child. The department of social services, not the school system, is the proper agency to determine whether the failure to protect the child in this type of situation constitutes abuse or neglect. Of course, when school officials know or suspect that a person other than a parent, guardian, custodian, or caretaker is harming a child, school officials may report that knowledge or suspicion to a local law enforcement agency and should inform the child's parent of the threat to the child's health and safety.

If a school employee is uncertain whether to report a situation, the employee should err on the side of caution - when in doubt, report. The Juvenile Code is clearly aimed at encouraging reports anytime an individual has cause to suspect that a child is abused, neglected, or dependent.⁵⁹ Even if the department of social services does not substantiate the report, the reporter will not incur liability as long as the report was made in good faith.⁶⁰ Moreover, failing to report suspected abuse or neglect may subject the individual who fails to report to civil liability or criminal prosecution if the child is harmed in the future.⁶¹

B. Making a Report to the Department of Social Services

A report to the department of social services may be made in person, by telephone, or in writing to the department of social services in the county where the child lives or is found.⁶² The information that must be reported usually will be the same information that creates the "cause to suspect" including any information that would be helpful in

determining the need for the department of social services or the court to take action to protect the child. The report should include as much of the following as the person making the report knows:

- the name and address of the juvenile;
- the name and address of the juvenile's parent, guardian, custodian, or caretaker;
- the age of the juvenile;
- the names and ages of any other juveniles in the home;
- the present whereabouts of the juvenile if not at the home address;
- the nature and extent of the injury or condition resulting from abuse, neglect, or dependency; and
- any other information that the person making the report believes might be helpful in establishing the need for protective services or court intervention.⁶³

If the report is made orally or by telephone, the reporter must include his or her name, address, and telephone number. Even if the reporter refuses to give his or her name, the department of social services must investigate the report.⁶⁴ If a reporter chooses to remain anonymous, however, this obstructs the department's ability to seek additional information from the reporter. In addition, an anonymous reporter forfeits his or her right to receive notification about the outcome of the investigation.⁶⁵

C. Reports to Other Agencies

Not all instances of deliberate injury or suspicions of harm to a child must be reported to the department of social services—only those that result from the actions or inactions of the child's parent, guardian, custodian, or caretaker. For example, injury of a child by a school employee should not be reported to the department of social services unless the school employee also happens to be the child's parent, guardian, custodian, or caretaker. School officials may have a duty, though, to make reports to one or more other agencies.

Under G.S. 115C-288(g), when a school principal has personal knowledge or actual notice from school personnel that an act has occurred *on school property* involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon in violation of the law, or possession of a controlled substance in violation of the law, he or she *must immediately report the act to the appropriate local law enforcement agency*. Failure to make this report is a misdemeanor. The critical fact triggering the obligation to report to law enforcement under this statute is not the identity or status of the victim or perpetrator, but the fact that the act occurred "on school property." The statute defines "school property" as "any public school building, bus, public school campus, recreational area, or athletic field in the charge of the principal."⁶⁶

Thus, for example, a report to law enforcement must be made when anyone commits an assault resulting in serious personal injury against someone else while on school property. It does not matter whether the persons involved are students, employees, parents or trespassers. Note, however, that if a parent commits a serious assault against his or her child on school property, school officials must make a report to both the department of social services and the local law enforcement agency.

In situations in which a certified school employee has deliberately injured a child in some way, school officials should consider whether the incident should be reported both to local law enforcement under G.S. 115C-288(g) and to the state superintendent of public instruction. Regulations adopted by the State Board of Education require local school administrators to report to the state superintendent if they know, or have substantial reason to believe, that a certified school employee has engaged in behavior that

- would justify revoking the employee's certificate and
- involves physical or sexual abuse of a child.⁶⁷

For purposes of this reporting requirement, "physical abuse" is defined as serious, non-accidental physical injury, inflicted other than in self-defense. "Sexual abuse" means either committing a sexual act upon a student or causing a student to commit a sexual act. Neither the student's age nor whether he or she consented is relevant.⁶⁸

D. Immunity for Good Faith Reporting

Most reports of suspected child abuse, neglect and dependency prove to be either unfounded or impossible to substantiate.⁶⁹ A person who has cause to suspect that a child is abused, neglected, or dependent may fear that he or she will be sued by an irate parent, guardian, custodian, or caretaker for making a report, especially if the report is not substantiated. Although this is always a possibility, the reporting law creates a duty to report whenever someone has "cause to suspect" abuse, neglect, or dependency. It does not permit the person to delay reporting because of fears of a lawsuit. North Carolina law, however, provides statutory protection for individuals who make reports to the department of social services in good faith.

G.S. 7B-309 states,

[a]nyone who makes a report pursuant to [the reporting statute], cooperates with the county department of social services in a protective services inquiry or investigation, testifies in any judicial proceeding resulting from a protective services report or investigation, or otherwise participates in the program authorized by [the statute] is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed.

Two North Carolina court decisions discuss these immunity provisions. According to the facts of a 2000 case, *Dobson v. Harris*,⁷⁰ a customer became irate with a department store clerk after the clerk made errors while retrieving the customer's lay-away items. The customer demanded to know the name of the clerk's supervisor. During the same period of time, the customer allegedly yelled at her young child, picked her up, and slammed her down on the counter. The clerk made a child abuse report to the department of social services, which investigated but did not substantiate the allegation. The customer subsequently filed a lawsuit against the department store and the clerk, seeking damages for slander *per se* and intentional infliction of emotional distress, arguing that the clerk filed the report in "bad faith" to retaliate for the customer's request for the name of the clerk's supervisor.

The North Carolina Supreme Court, holding that the trial court had been correct in dismissing the customer's claims, explained that the good faith presumption of G.S. 7B-309 places a heavy evidentiary burden on the plaintiff bringing a lawsuit against someone who reports suspected abuse or neglect. According to the Supreme Court, the clerk was entitled to immunity and to the presumption of good faith. She was not required to prove that she acted in good faith. Instead, the plaintiff had the burden to produce evidence of the defendant's bad faith or malice. In this case, although the plaintiff alleged retaliatory motives for the defendant's report, she did not present evidence based on substantiated facts. The North Carolina Supreme Court held that the plaintiff's subjective assessment of the defendant's motivation was not, by itself, "sufficient to permit reasonable minds to conclude the presumed fact [good faith] did not exist." ⁷¹

The law cannot prevent irate parents or others from suing people who report, testify, or cooperate in investigations. The immunity protections in the law, however, make it much less likely that lawsuits, once filed, will succeed. The *Dobson* case offers reassurance to school employees that irate parents or other caregivers will not prevail in a lawsuit against school employees who report possible instances of child abuse or neglect unless the person bringing the lawsuit can present evidence and prove that the report was made in bad faith - that is, without any justification other than malice.

A 1988 case decided by the North Carolina Court of Appeals discussed the scope of good faith immunity in a public school setting. *Davis v. Durham City Schools* involved a school principal who had cause to suspect that a substitute teacher had physically abused students while disciplining them.⁷² She reported her concerns to the department of social services and also to the assistant superintendent of personnel for the school system.⁷³ The teacher was charged with five counts of assault, but eventually was acquitted on all charges. After his acquittal, he sued the school system for malicious prosecution, defamation, intentional infliction of emotional distress, and negligence.

Part of the teacher's claim was based on the fact that the principal had reported her suspicions to the assistant superintendent of personnel as well as to the department of social services. The North Carolina Court of Appeals concluded that

[w]hen suspected child abuse occurs in the public school classroom, a report made in good faith by the principal of the school to his or her superior who is responsible for school personnel would clearly fall within the scope of the immunity contemplated by the statute. To say that the principal was protected in reporting the incident to the Department of Social Services but not in reporting to the Assistant Superintendent would be both contrary to the spirit of the statute and also impractical.⁷⁴

The *Davis* decision, although decided under an earlier version of the good faith immunity statute, indicates that school employees do not need to fear liability for making a good faith report of suspected abuse or neglect to an appropriate superior within the school system.

E. Liability for Failing to Report

No North Carolina statute imposes civil or criminal penalties on individuals who fail to comply with the mandatory reporting requirement. Nevertheless, there is some possibility that an individual may be held civilly liable or be criminally prosecuted for ignoring the statutory duty to report child abuse or neglect.

1. Civil Liability

The North Carolina appellate courts have not decided a case involving a civil claim for damages against an individual for failing to report suspected child abuse or neglect, although such lawsuits are possible.⁷⁵ At least one case filed in North Carolina was settled before it came to trial.⁷⁶ Courts in several other states have held that an individual may be held liable for failing to report.⁷⁷ These decisions are not binding on North Carolina courts.

In its 1979 final report, the North Carolina General Assembly's Juvenile Code Revision Committee indicated that civil liability may be appropriate if an individual breaches the statutory duty to report:

The Committee considered a penalty for not reporting abuse, neglect, or dependency to insure that the administrators of hospitals, schools, and other institutions whose employees may see evidence of abuse, neglect, or dependence develop a mechanism for reporting and encourage their employees to report such incidents as required by law. The Committee, however, concluded that the threat of civil suit for failure to report should be sufficient incentive for institutions to encourage reporting.⁷⁸

Failure to report abuse, neglect, or dependency will not automatically result in liability if a lawsuit is filed, however. Under the general principles of the law of negligence, in order to be successful the person filing the lawsuit must prove *all* of the following:

- an individual with a duty to report failed to do so,
- a child was injured or harmed in some manner,
- the injury or harm was *caused* by the individual's failure to report, and
- the type of injury or harm that the child suffered was a foreseeable result of the failure to report.

Proving all these elements can be difficult. Increased recognition of children's rights, however, may increase the likelihood that liability issues will be raised when children are seriously harmed in ways that could have been prevented if people who should have reported had done so.

2. Criminal Prosecution

Failure to comply with the mandatory reporting requirement also might trigger a criminal prosecution. Although the North Carolina appellate courts have never addressed the issue, in at least two district court cases persons have been prosecuted for violating the reporting law, even though there is no statute making the failure to report a criminal offense.

In *State v. Freitag*, an assistant school superintendent was convicted of a misdemeanor by the Wake County District Court because he failed to report suspected sexual abuse of students by a substitute teacher.⁷⁹ (When this case arose, the Juvenile Code definition of "caretaker" was not limited to people who care for children in residential settings, and it often was assumed that the reporting law applied to abuse and neglect that occurred in a school setting. Under current law, suspicions of sexual abuse

by a substitute teacher would be reported directly to law enforcement officials and would not be subject to the mandatory reporting requirement of the Juvenile Code.)

In *Freitag* the court relied on a common law rule, derived from ancient English law and previous appellate court decisions that hold that if a statute places an individual under a legal duty and the statute does not specify the consequences for failing to comply, failure to comply is punishable as a general misdemeanor. Because the Juvenile Code places individuals under the legal duty to report cases of suspected abuse and neglect, and does not specify any criminal consequences for failing to report, the court found the assistant superintendent guilty of a misdemeanor. (The assistant superintendent could have appealed that decision but chose not to.)

In *State v. Gray*, a district court judge relied on the same common law rule in a case involving a psychologist who failed to report suspected child abuse.⁸⁰ The psychologist was convicted of a misdemeanor, but he appealed to the superior court, where he was entitled to a jury trial. Before the case was tried in superior court, the superior court judge dismissed the charge. The judge relied partly on the fact that the Final Report of the Juvenile Code Revision Committee indicated that the committee had considered and specifically rejected the notion of establishing criminal sanctions for failing to report. In summary, it is unlikely but not impossible that an individual will be criminally prosecuted for failing to report a case of suspected child abuse or neglect. And it is unclear what the outcome of such a prosecution would be at the trial or appellate level. The trial court decisions described above are not binding on other North Carolina courts.

F. The Reporter's Rights

The Juvenile Code gives the person who reports suspected abuse, neglect, or dependency several specific rights. These include the right to receive certain information about the social services department's response to the report and the right to challenge the department's decisions regarding a child who was the subject of the report. Protective services workers, however, are bound by confidentiality requirements that limit their ability to disclose most of the information used to reach decisions in these cases.

1. Notification Within Five Working Days of Making a Report

Within five working days of receiving a report of suspected abuse, neglect or dependency, the director of the county department of social services must give written notice to the person who made the report as to whether the report was accepted for investigation and whether it has been referred to a law enforcement agency for further action.⁸¹ The only exceptions to this requirement are reports that are made anonymously and cases in which the reporter asks that the notice not be sent.

If the reporter disagrees with the department's decision not to investigate, *i.e.*, to "screen out" a report, he or she may request a review of the department's decision. Each county department of social services has established procedures for reviewing a decision to screen out a report.⁸² These procedures designate the persons who are responsible for conducting the review and the manner in which the review will be conducted.⁸³ If the final review affirms the original decision to forgo an investigation, the reporter may be directed to outreach services and other appropriate agencies.⁸⁴

2. Notification after Completion of an Investigation

If a report of suspected abuse, neglect, or dependency is accepted for investigation, the reporter is entitled to written notice of the results of the investigation unless the reporter requested that he or she not be notified. Within five working days after completing the protective services investigation, the director of the department of social services must inform the reporter in writing of

- whether the department "substantiated" the report - that is, whether the department made a finding of abuse, neglect, or dependency;
- whether the department is taking action to protect the child and, if it is, what that action is being taken;
- whether the department has filed a petition, initiating a proceeding in juvenile court;
- the reporter's right to request, within five working days, that the prosecutor review the director's decision not to file a petition; and
- the procedure for requesting a review.⁸⁵

Because the statute provides no other method of review, it seems likely that the reporter is entitled to request a review of the agency's decision not to substantiate a report of abuse, neglect, or dependency as well as a decision not to file a petition to take the matter to juvenile court.⁸⁶

The reporter must request prosecutorial review of the case within five working days after receiving notice of the results of the investigation. In response, the prosecutor will notify the reporter and the social services director of the time and place of the review, which must be conducted within twenty days after the reporter is informed of the results of the investigation. In most formal reviews, the prosecutor will meet with the reporter, the protective services worker, and any other appropriate individuals. After conducting the review the prosecutor may affirm the department's original decision, request a law-enforcement investigation, or direct the social services director to file a petition in juvenile court.⁸⁷

3. Confidentiality of the Reporter's Identity

The Juvenile Code requires the department of social services to hold all information associated with a report of suspected abuse, neglect, or dependency, including the identity of the reporter, "in strictest confidence."⁸⁸ This confidentiality requirement is not absolute, however. The department of social services has discretionary power to disclose otherwise confidential information if the disclosure is necessary to execute the agency's duties. For instance, a reporter's identity might not be protected if he or she had information that had to be presented to the court. The reporter could be called as a witness, although ordinarily the reporter would not have to reveal the fact that he or she was the person who made the report. The department may reveal the identity of the reporter to the district attorney or a law enforcement agency.⁸⁹ Moreover, in a proceeding against someone who allegedly has obstructed or interfered with an investigation, the judge may compel the director of social services to disclose the identity of the reporter.⁹⁰ In most circumstances, however, disclosure of the reporter's identity will not be vital to the department's investigation or to its plan to provide protective services to a child.

G. Other Consequences of Failing to Report

The most obvious and serious consequence of failing to report suspected abuse, neglect, and dependency is that a child may suffer unnecessarily. The cost to the child, the family, and ultimately to society may be immense—especially when compared with the small effort required to make a report. In some cases, of course, the consequences of not reporting may be insignificant. The suspicions may be unfounded; the department of social services may be involved already; or someone else may have made a report. It is not always possible to predict whether a report will make a difference in a child's life. Nevertheless, the law does not excuse a person from the duty to report for any reason.

§ B.1204. How the Department of Social Services Responds to Reports of Abuse, Neglect, or Dependency

In North Carolina most social services programs are administered by the counties under the state's supervision.⁹¹ All but two counties have a county department of social services headed by a director who is selected by a three- or five-member county social services board.⁹²

County social services departments are supervised by the Division of Social Services in the North Carolina Department of Health and Human Services (DHHS). The division issues detailed policy manuals to guide local social service workers.

When a county department of social services receives a report of suspected abuse, neglect, or dependency, the report prompts a series of actions—screening, investigation, and sometimes protective action—that are designed to determine and address the needs of the child who is the subject of the abuse, neglect, or dependency report.

A. Screening

After the county department of social services receives a report of suspected child abuse, neglect, or dependency it must answer the following question: If the information in the report is true, does the child fit into one of the categories covered by the Juvenile Code? That is, is the child abused, neglected, or dependent as the Code defines those terms? This first stage of the response process is screening.

Screening in child protective services is the action of receiving reports of abuse, neglect, or dependency and, through the process of gathering preliminary information with the reporter, determining what further action is required. Considering the statutory definitions of child abuse, neglect, and dependency is a critical part of the screening process because they provide the basis for agency intervention as well as any subsequent juvenile court intervention to protect a child.⁹³

If the child's situation appears to constitute abuse, neglect, or dependency, the department of social services is required to investigate the child's condition. If the information conveyed in the report does not meet the requirements for abuse, neglect, or dependency the report is "screened out" because the department of social services does not have authority to investigate the matter.⁹⁴

Reports are typically screened out for one of three reasons. In some cases, the victim is not a "juvenile" as defined in the Juvenile Code. For instance, if a sixteen-year-old is married or legally emancipated, that young person is not a "juvenile" under the Juvenile Code definition, and a report that he or she was being abused by a parent would be screened out.⁹⁵ Similarly a report that an eighteen-year-old with mental disabilities was

being neglected by his parents would be screened out because the term "juvenile" only applies to persons under age eighteen.⁹⁶

In other cases, the alleged perpetrator may not be a parent, guardian, custodian, or caretaker as defined in the Code. If the county social services department receives a report that a neighbor has injured a child, this report will be screened out because the agency lacks the authority to investigate abusive acts of neighbors unless the neighbor is a parent, guardian, custodian, or caretaker.⁹⁷

Finally, the child's condition may not meet the Code's definition of abuse, neglect, or dependency. A report concerning a child who comes to school on one occasion with head lice, lacking adequate clothing, or needing a bath is likely to be screened out in every county. If the report indicates that the problem has occurred repeatedly and is having a harmful effect on the child, however, most county departments of social services would accept this as a report of neglect at some point. When that point is reached will depend on other information that is available about the child and family, the family's willingness to seek or accept help, resources within the school and community to address the problem, as well as the policies of the county department of social services.

When the department of social services receives a report that a child has died as a result of suspected maltreatment, it must determine immediately whether other children are in the home and, if so, conduct an immediate investigation to determine whether those children need services or need to be removed from the home for their protection. The department takes action as if a report of possible abuse or neglect has been made regarding any other children in the same home.

During the screening process the department of social services may contact the reporter to gain additional information.⁹⁸ The county director must establish a two-level internal review process that includes, at a minimum, the worker and the worker's supervisor before a report is screened out as not constituting abuse, neglect or dependency.⁹⁹

B. Notice to the Reporter after Five Days

As discussed in Section B.1203.F, within five working days after receiving a report, the director of the county department of social services must provide the reporter with written notice (unless the reporter requested that such notice not be given) indicating

- whether the report was accepted for investigation or screened out and
- whether the report has been referred to a state or local law enforcement agency for further action.¹⁰⁰

In any case in which the department does not accept a report for investigation, the notice must inform the reporter of the fact that the department will not conduct an investigation, the basis for that decision, and the reporter's right to obtain a review of that decision, and the procedures for obtaining a review of the decision.

For example, if a school administrator reports that a seven-year-old is not supervised at home after school, a county social services department may decline to accept and investigate the matter on the ground that the situation, even if exactly as described by the school administrator, does not constitute "neglect." If the school administrator disagrees and thinks that the child is at risk of injury from lack of proper care and supervision, he

- the alleged perpetrator;¹¹⁷
- collaterals—including extended family members and friends.¹¹⁸

Although interviews with the child and other family members are the primary sources of information during an investigation, social services workers may consult with public or private agencies, including schools, for assistance in investigating and evaluating allegations of abuse, neglect, or dependency.¹¹⁹

The department of social services may make a written request for confidential information, such as school records, during an investigation. The Juvenile Code, at G.S. 7B-302(e), states that "[u]pon the director's or director's representative's request, . . . any public or private agency or individual shall provide access to and copies of . . . confidential information and . . . records to the extent permitted by federal law and regulations." As discussed in greater detail in Section B.1206 of this chapter, this is one of several situations in which school officials must consider the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA)¹²⁰ when deciding whether to release confidential information requested by the department of social services.

When a social services worker seeks information from collateral contacts, including extended family, friends, and community agencies such as schools, the social worker must use discretion in selecting whom to interview in order to respect the privacy of the family under investigation. Only those collaterals believed to have information related to the investigation should be contacted.¹²¹

In addition to interviewing collateral contacts, the department of social services is required to check its own records and the records of the North Carolina Central Registry to determine whether previous reports of abuse, neglect, or dependency have been made concerning the same child.¹²²

The Juvenile Code prohibits obstruction of or interference with investigations of child abuse, neglect, or dependency. Obstruction or interference occurs when someone refuses to disclose the whereabouts of the juvenile, refuses to allow the director to have personal access to the juvenile, refuses to allow the director to observe or interview the juvenile in private, refuses to allow the director access to confidential records upon a request pursuant to the Juvenile Code, refuses to allow the director to arrange for an evaluation of the juvenile by a physician or expert, or otherwise makes it impossible for the director to fulfill the department's duty to investigate.¹²³ If obstruction or interference occurs, the director of social services may file a petition requesting a court to order the person named in the petition to cease whatever activities are preventing the department from conducting its investigation.¹²⁴

D. Case Decision

After the investigation is completed, the social service worker must determine whether the allegations of abuse, neglect, or dependency have been substantiated. This decision must be based on an assessment of all available facts and evidence. Because the case decision can have a significant impact on a family, the Division of Social Services has established a team approach to case decisions, and the social services worker must consult with his or her supervisor on each case before a decision is made.¹²⁵

According to state social services policy, case decisions (whether the county department concludes that the report is substantiated or not substantiated) should be made

within thirty days of the receipt of a report.¹²⁶ The documentation of a case decision must list the participants in the decision, the legal basis for the decision, a description of the actions taken, a description of the services provided, and the rationale for agency involvement and service delivery on an ongoing basis.¹²⁷

If the department of social services decides that suspicions of abuse, neglect, or dependency are not substantiated, the agency must notify any parent, guardian, custodian, or caretaker who was alleged to have abused or neglected the child, any other person with whom the child resided at the time the investigation was initiated, and any agency that has legal custody of the child of this decision.¹²⁸ The notification must inform these people that the department of social services will no longer be involved with the family on a non-voluntary basis.¹²⁹ This notice must be in writing and should be given within five days of the case decision.¹³⁰

When the department of social services decides that abuse, neglect, or dependency is substantiated, the agency must give written notice of that decision within five days to any parent, guardian, custodian, or caretaker who was alleged to have abused or neglected the child, any other person with whom the child resided at the time the agency initiated the investigation, and any agency that has legal custody of the child.¹³¹

E. Notice to the Reporter after the Investigation

The person who reported suspected abuse, neglect, or dependency is entitled to written notification of the results of the protective services investigation (unless the reporter requested that notice not be given) within five working days after completion of the investigation. The director of the department of social services must inform the reporter of

- the outcome of the investigation - specifically, whether there was a finding of abuse, neglect, or dependency;
- whether the department is taking action to protect the child and, if so, what that action is;
- whether the department has filed a petition to initiate a juvenile court proceeding;
- the reporter's right to request, within five working days, that a prosecutor review the director's decision not to file a petition; and
- the procedure for requesting a review.¹³²

No notification is required if the person making the report does not identify himself or herself to the director.¹³³ In this situation, the reporter does not retain a right to request a formal review.

F. Referral to Law Enforcement or Other Agencies

If, during an investigation, the director of the department of social services finds evidence that a child may have been abused, the director must make an oral report of these findings immediately and a written report within forty-eight hours to both the district attorney and the appropriate local law enforcement agency. The law enforcement agency must initiate a criminal investigation immediately, but no later than forty-eight hours after receiving the director's report, and the criminal investigation must be coordinated with the department of social services' investigation.¹³⁴ After completing the

investigation, the district attorney determines whether criminal prosecution is appropriate.¹³⁵

If the social services director receives information indicating that a child may have been physically harmed by the criminal conduct of a person other than the child's parent, guardian, custodian, or caretaker, the director must make an oral report immediately and file a written report of that information to the district attorney and the appropriate law enforcement agency within forty-eight hours of receiving the information. The law enforcement agency must initiate a criminal investigation within forty-eight hours, but the criminal investigation does not need to be coordinated with the department of social services because the department does not have the authority to investigate cases that do not involve a parent, guardian, custodian, or caretaker.¹³⁶

G. Intervention

In substantiated cases of abuse, neglect, and dependency, the department of social services is required to take further action to protect the child.

1. Structured Risk Assessment and Protective Services

In cases of substantiated child abuse or neglect, intervention begins with a structured risk assessment of the family.¹³⁷ If dependency is substantiated, a formal risk assessment may be completed *if* the director of social services believes that an assessment would be appropriate.¹³⁸ The social services worker assigned to the case conducts the initial assessment. The assessment must be completed within seven days of the case decision, and the findings of the assessment used to develop an intervention plan.¹³⁹

A "structured risk assessment" occurs whether or not the child's immediate removal from the home is necessary. The assessment evaluates the need for protective services and the likelihood that the child will be safe if left in the home or returned home. Based on the assessment, the department develops a plan for protecting the child and working with the family.¹⁴⁰

An intervention plan must be based on the findings of the structured risk assessment, when one is required. It must contain goals that represent the desired outcome of the intervention plan. In addition, it must contain objectives that

- are measurable,
- are time-limited,
- describe specific outcomes,
- identify necessary behavior changes,
- are based on an assessment of the specific needs of the child and family, and
- are agreed to by the county director of social services and the client.

The plan must specify activities that are needed to achieve each objective, must clearly state the consequences that will result if the plan succeeds, and must state the consequences if the agreed upon goals are not met. Finally, if the child cannot be protected in the child's own home, the plan must include a petition to remove the child from the home for placement in appropriate care.¹⁴¹

Throughout the course of the department's involvement with the family, the department must complete additional structured risk assessments to evaluate the effectiveness of the intervention plan. Assessments must be completed as part of a six-

month review and an annual review if the case remains open for services. An assessment also is conducted if the director is considering taking court action in relation to the case or closing a case for services.¹⁴²

2. Immediate Removal of Child

If the department's investigation substantiates that a child is abused, neglected, or dependent, the director must assess whether the child's safety requires that the child be removed from the home immediately. Sometimes the parent will consent to the child's removal. Unless a parent consents, the department ordinarily must file a petition and get a court order before taking custody of a child.

If, however, it appears that the time it would take to get a court order might result either in injury to the child or in the department's inability to take the child into custody later, then a law enforcement officer or social services worker may take the child into temporary physical custody without a court order. If that is done and the social services department determines that the child should remain in custody for more than twelve hours (twenty-four hours if any of the first twelve-hour period falls on a weekend or holiday), then within that time the department must file a petition and obtain a court order. (For discussion of the juvenile court proceedings see Section B.1205.)

3. Keeping the Family Together

According to current thinking, children who can remain safely in or return safely to their own homes almost always are better off than they would be in foster care or other substitute care arrangements. The law requires county departments of social services to make "reasonable efforts" to keep the family together.¹⁴³ The term's broader definition, though, refers to the legal duty of a county department of social services to make reasonable efforts (a) to prevent the need to remove a child from the home; or (b) if the child has been removed from the home, to return the child home; or (c) if it becomes clear that the child cannot return home safely, to find another permanent home for the child.¹⁴⁴ When a child needs placement because of an immediate threat of harm, it may be reasonable to place the child without making any efforts to prevent the need for placement, and the juvenile court may make a finding to that effect.¹⁴⁵

In some cases, when it is not going to be possible to return the child home, the court may terminate the parents' rights completely in order for the child to be eligible for adoption. This ultimate deprivation of the parents' rights can occur only if the court finds by clear and convincing evidence that one of the statutory grounds for termination exists and that terminating the parents' rights is in the child's best interest.¹⁴⁶

The authority and procedures used by the district court to remove a child from his or her home are discussed in greater detail in Section B.1205 of this chapter.

§ B.1205. Juvenile Court Proceedings

Sometimes after the department of social services determines that a child is abused, neglected, or dependent, the family will not cooperate with the department of social services and accept an intervention plan. Sometimes protective services cannot adequately protect the child in the home environment. In these situations, the social services director must sign and file a petition alleging the relevant facts and asking the district court to intervene on the child's behalf. The filing of a petition begins a juvenile proceeding in the district court. Only a county director of social services (or the

director's representative) can file an abuse, neglect, or dependency petition. Juvenile proceedings are civil actions (that is, not criminal prosecutions) that focus on the condition and needs of the child instead of the guilt or innocence of the alleged perpetrator.

County departments of social services file petitions in only a small percentage of substantiated cases; most cases are handled successfully without court action.

A. Assuming Custody of the Juvenile

When necessary the social services department will file a petition alleging that a child is abused, neglected, or dependent and, in most cases, ask the court for a custody order. The order can direct that the child be removed from the home and placed in foster care or another appropriate setting without waiting for a full hearing on the petition.

There are two types of "custody" in abuse, neglect, and dependency proceedings - "temporary custody" and "nonsecure custody."¹⁴⁷

1. Temporary Custody

Temporary custody means "the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained."¹⁴⁸ Temporary custody provides immediate protection to the child. A law enforcement officer or a department of social services worker may assume temporary custody of the child if there are reasonable grounds to believe that the child is abused, neglected, or dependent, and

- the child will be injured while the department is obtaining a nonsecure custody, or
- the department will be unable to take custody of the child if it must wait for a nonsecure custody order.¹⁴⁹

The law enforcement officer or social services worker must notify the child's parent, guardian, custodian, or caretaker that the child has been taken into temporary custody.¹⁵⁰ If it is determined subsequently that continued custody is unnecessary, the child must be released immediately.¹⁵¹

If the social services director believes that continued custody is necessary, the director will file a petition and seek a nonsecure custody order.¹⁵² If a child is taken into temporary custody over the weekend or on a holiday, the child may be held for up to twenty-four hours. Otherwise, a child may not be held in temporary custody for more than twelve hours. Within that time, the director must either release the juvenile or file a petition and obtain a court order for nonsecure custody.¹⁵³

2. Nonsecure Custody

Nonsecure custody allows a designated individual or agency, with the court's approval, to take physical custody of a child and provide personal care and supervision. Any district court judge has the authority to issue a nonsecure custody order.¹⁵⁴ Before the judge may award nonsecure custody to the department of social services, the judge must consider releasing the child to the child's parent, relative, guardian, custodian, or other responsible adult.¹⁵⁵ If the judge concludes that the child should not be released to one of these individuals, the judge may grant nonsecure custody if there is a reasonable basis to believe that the allegations in the petition are true and

- the child has been abandoned; or
- the child has suffered physical injury or sexual abuse; or
- the child is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or
- the child is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the child's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or
- the parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or
- the child is a runaway and consents to nonsecure custody.¹⁵⁶

The custody order must be in writing, and a copy must be provided to the parent, guardian, custodian, or caretaker.¹⁵⁷

When the judge makes these findings and authorizes the child's removal from the home, the judge may direct a law enforcement officer to assume custody of the child and deliver the child to the social services office or another specified place, such as the home of a relative.

After a judge issues a nonsecure custody order, the department will place the child in a temporary residential living arrangement. This placement could be the home of a relative if the court determines that a relative is "willing and able to provide the child with proper care and supervision in a safe home."¹⁵⁸ If the child cannot be placed in a relative's home, he or she may be placed in a licensed foster home or a facility operated by the department of social services.¹⁵⁹

Once a child is placed in nonsecure custody, the court has seven calendar days to conduct either the hearing on the petition or a hearing to determine whether the child needs to remain in nonsecure custody pending the hearing on the petition.¹⁶⁰ At the hearing on the need for continued nonsecure custody, the court is not bound by formal rules of evidence and the participants are allowed to present testimony, examine witnesses, and submit evidence. The department of social services must establish, by clear and convincing evidence, that the juvenile's placement in nonsecure custody is necessary.¹⁶¹ If the department establishes the need for continued nonsecure custody, another hearing on the need for continued custody must be held within seven business days, and every thirty calendar days thereafter, until the court conducts the hearing to determine whether the child is abused, neglected, or dependent.¹⁶²

3. Reasonable Efforts to Prevent the Need for Placement

Any time the court deprives a parent of custody, it must determine whether the department has made reasonable efforts to avoid the need to place the child outside the home and whether the department should continue to make those efforts. In determining reasonable efforts to be made with respect to a child, the child's health and safety must be the primary concern.

When a court places a child in the department's custody - whether through an order for continued nonsecure custody, a dispositional order, or a review order, the order

- must contain a finding that the child's continuation in or return to the home would be contrary to the child's best interests;
- must contain a finding regarding the extent of the department's reasonable efforts to prevent or eliminate the need for placement of the child;¹⁶³
- must contain a finding as to whether the department should continue to make reasonable efforts to prevent or eliminate the need for placement of the child;¹⁶⁴
- must specify that the child's placement and care are the responsibility of the department of social services and that the agency is to provide or arrange for the foster care or other placement of the child;¹⁶⁵
- may provide for other services or efforts aimed at returning the child to a safe home or achieving another permanent placement.¹⁶⁶

According to G.S. 7B-507, if a court finds that the department has not made reasonable efforts, this finding does not prevent the court from entering an order authorizing the placement of the child outside the home if the court finds that placement is necessary to protect the child. If there is an immediate threat of harm to the child, the court may find that placement of the juvenile outside the home is reasonable even though no "reasonable effort" was made to keep the child in the home.

In any order placing a child in the custody or placement responsibility of the department of social services, the court may direct that reasonable efforts to eliminate the need for placement of the child are not required or shall cease if the court makes written findings of fact that

- such efforts would be futile or would be inconsistent with the child's health, safety, and need for a safe, permanent home within a reasonable period of time;
- a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in the child abuse statute (G.S. 7B-101);
- a court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
- a court of competent jurisdiction has determined that the parent has committed murder or voluntary manslaughter of another child of the parent; the parent has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or the parent has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

If a court determines in a hearing that reasonable efforts to eliminate the need for a child's placement are not required or should cease, the court must order that a permanency planning hearing be held with thirty calendar days after the date of the hearing and, if possible, must set the date and time for the hearing. In some cases, reasonable efforts to preserve or unify the family may be made concurrently with efforts

to plan for the child's adoption, to place the child with a legal guardian, or to place the child in another permanent arrangement.¹⁶⁷

B. Legal Representation

1. The Child

If a petition is filed alleging that a child is abused or neglected, the court must appoint a guardian ad litem (guardian for the purposes of the suit) to represent the child in the proceedings.¹⁶⁸ If a child is alleged to be dependent, the court may appoint a guardian ad litem to represent the child. The duties of the guardian ad litem are to

- conduct an investigation to determine the facts, the needs of the child, and the available resources within the family and the community to meet those needs;
- facilitate the settlement of disputed issues, when appropriate;
- offer evidence and examine witnesses at adjudication;
- explore options with the court at the dispositional hearing;
- conduct follow-up investigations to insure that the orders of the court are being properly executed;
- report to the court when the needs of the child are not being met; and
- protect and promote the best interests of the child until formally relieved of the responsibility by the court.¹⁶⁹

The law authorizes the guardian ad litem to demand any information or reports, including those that are confidential, that the guardian ad litem considers relevant to the case. Whenever a guardian ad litem exercises this authority, he or she should present personal identification and a copy of the court order appointing him or her guardian ad litem for the child.¹⁷⁰ School officials may have concerns about releasing information to the guardian ad litem. The guardian ad litem, however, is required by law to respect the confidentiality of the information received, and is not allowed to disclose the information or reports to anyone without a court order or unless otherwise authorized by law.¹⁷¹

If school officials receive a request for confidential information from a guardian ad litem, they should provide the requested information promptly unless the guardian ad litem does not have a court order appointing him or her guardian ad litem or federal law or regulations prohibit disclosure of the information. School officials should consult with the school board attorney if they have questions about the release of confidential student information to a guardian ad litem.

2. The Child's Parent

If the county director of social services files a petition alleging that a child is abused, neglected, or dependent, the child's parent has the right to be represented by counsel, and if the parent is indigent, the parent is entitled to appointed counsel unless the parent waives his or her right to counsel.¹⁷²

C. Stages in a Juvenile Case

Juvenile cases are heard in two stages—an adjudicatory hearing and a dispositional hearing.

1. Adjudication

After the county director files a petition to initiate a juvenile court proceeding, the court has sixty days to conduct the adjudicatory hearing.¹⁷³ At the adjudicatory hearing the judge hears testimony, considers other evidence (such as medical records), and determines whether the facts alleged in the petition are true—i.e., whether the child is an abused, neglected, or dependent juvenile within the meaning of the Juvenile Code definitions. This hearing is fairly formal,¹⁷⁴ and the rules of evidence apply.¹⁷⁵

The judge is not required to exclude the public from the hearing, but may do so unless the child (through the guardian ad litem or attorney advocate) asks that it be open.¹⁷⁶ Anyone who has relevant information, including the person who made the initial report of abuse, neglect, or dependency, may be subpoenaed to testify at the hearing.¹⁷⁷ The court must find by clear and convincing evidence that the child is abused, neglected, or dependent.¹⁷⁸ The "clear and convincing evidence" requirement is more strict than the general evidence requirement in other civil cases,¹⁷⁹ but less strict than the evidence requirement in criminal cases.¹⁸⁰

At the conclusion of the adjudicatory hearing, if the court concludes that the allegations of abuse, neglect, or dependency have not been proved by clear and convincing evidence, the petition must be dismissed and if the child is in nonsecure custody, the child must be released to the parent, guardian, custodian, or caretaker.¹⁸¹ If the court finds that the allegations have been proved by clear and convincing evidence, the case will proceed to a dispositional hearing.

2. Disposition

After the court concludes that the child is abused, neglected, or dependent, a dispositional hearing will be held either immediately following the adjudication or sometime later. The court may not conduct a dispositional hearing without sufficient social, medical, psychiatric, psychological and educational information to assist the court in making a disposition that is in the child's best interest. The court may proceed with the dispositional hearing without receiving a predisposition report, however, if the court makes a written finding that a report is not necessary.¹⁸²

The dispositional hearing is informal.¹⁸³ The court may consider any evidence, including hearsay evidence, that it finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. According to G.S. 7B-900,

The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and the juvenile's family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile. Thus, the court should arrange for appropriate community-level services to be provided to the juvenile and the juvenile's family in order to strengthen the home situation.

At the dispositional hearing, the child and the child's parent, guardian, or custodian must have the opportunity to present evidence and tell the court the disposition he or she believes is in the child's best interest. The court may exclude the public from the dispositional hearing unless the child (through the guardian ad litem) requests that the hearing be open.¹⁸⁴

The judge may choose from among a variety of dispositional alternatives or choose a combination of alternatives based on a determination of the best interests of the child. For example, the judge may dismiss the case or continue the case (postpone making a dispositional order) to allow the parent, guardian, custodian, or caretaker to take appropriate action.¹⁸⁵

The finding that a child is abused, neglected, or dependent does not automatically result in the child being removed from the parent's custody. The law favors leaving the child at home when the child can be safe there. Thus the judge may allow the child to remain at home under the supervision of the department of social services. Alternatively, the court may place the child in the custody of a parent, a relative, a private placement agency, some other suitable person, or the county department of social services.¹⁸⁶

In all cases, the court has the authority to order the child to be examined by a physician, psychiatrist, psychologist, or other qualified expert to assist the court in determining the child's needs. If the court believes or there is evidence to suggest that the child is mentally ill or developmentally disabled, the child will be referred to the area mental health, developmental disabilities, or substance abuse services authority for appropriate action.¹⁸⁷

The court's dispositional order must be made orally and in writing. It must specify the precise terms of the intervention plan, including the kind of disposition, the duration of the disposition, the person responsible for carrying out the disposition, and the person or agency who has custody of the child.¹⁸⁸ If the parent is deprived of custody of the child, the dispositional order must provide a visitation plan that is in the best interests of the child.¹⁸⁹

D. Authority over Parents

The court has considerable authority over the parent of an abused, neglected, or dependent child. After making proper findings at a dispositional hearing or any subsequent hearing, the judge may order the parent to

- participate in treatment that the child needs;
- obtain treatment for himself or herself as a condition of having custody of the child;
- to the extent that the parent is able to do so, pay for the treatment for the child or for himself or herself;¹⁹⁰
- undergo psychiatric, psychological, or other treatment or counseling that the parent is able to pay for or that is available through the local mental health program.¹⁹¹

Any treatment that the judge orders the parent to undergo must relate to

- the behaviors or conditions that contributed to the child's being abused, neglected, or dependent or
- the court's decision to remove custody of the child from the parent.¹⁹²

If legal custody of the child is vested in an individual other than the child's parent, the court may order the child's parent to pay child support.¹⁹³ If the parent refuses to participate in the dispositional hearing or comply with the dispositional order, the parent may face a contempt proceeding.¹⁹⁴

E. Review Hearings

The child (through the guardian ad litem) or any other party may file a motion to have a case reviewed at any time. The court may modify or vacate the order in light of changes in circumstances or in the needs of the child.¹⁹⁵ In any case in which custody was removed from the parent, guardian, custodian, or caretaker, the court must conduct a review hearing within ninety days from the date of the dispositional hearing and must conduct a review hearing within six months thereafter.¹⁹⁶ This hearing requirement can be waived if certain conditions are met.¹⁹⁷

The county director of social services is responsible for asking the clerk of superior court to schedule these cases for review hearings. The clerk is responsible for giving fifteen days' notice of a review to the following people: the parents; the child, if he or she is twelve or older; the guardian, if there is one; any foster parent, relative, or pre-adoptive parent providing care for the child; the person or agency with custody of the child; the guardian ad litem; and any other person or agency the court may specify.¹⁹⁸

The child, the child's guardian ad litem, the child's parent, guardian, or custodian, and the department of social services may appeal any final dispositional order issued by a judge in a juvenile court proceeding.¹⁹⁹ The appeal is to the North Carolina Court of Appeals.²⁰⁰

The juvenile court also is required to conduct hearings to review the placement of a child whose parents' rights have been terminated,²⁰¹ the placement of a child after the child is surrendered for adoption,²⁰² and the placement of a child who is in foster care pursuant to a voluntary placement agreement.²⁰³

§ B.1206. Confidentiality and Sharing Information about Children

When a child comes to the attention of social services, a large amount of information about the child and the child's family may be acquired by the department of social services and, in some cases, the courts. Schools also possess various types of information about students and their families. Each agency—the department of social services and the local public school system—is subject to state and federal statutes enacted to protect the confidentiality of the information these agencies maintain about children and their families. Although several statutes address the sharing of information between agencies, in many situations school officials may not be certain whether it is permissible to share information with a social services department, especially if the department does not have a court order authorizing the school to release the requested information.

School personnel, foster parents, and mental health professionals are just some of those who often need, and from whom social services needs, information in order to serve the child and family effectively. The appropriate limits of information-sharing for child protective services remain unclear, however. Local guidelines and protocols among agencies can be extremely helpful. They can clarify when, how, and with whom certain kinds of information may be shared, and they can help ensure that the person or agency receiving confidential information continues to protect its confidentiality.

This section discusses statutes that govern the extent to which departments of social services and school systems may disclose information about a child.

A. Recognizing the Need to Share Information

The North Carolina General Assembly has recognized the need for various agencies to share information about children receiving supervision, education services, or treatment from more than one governmental agency. G.S. 7B-3100 directs the state Department of Juvenile Justice and Delinquency Prevention to adopt rules designating agencies that are authorized to share information concerning juveniles who are the subject of petitions filed in juvenile court.

The statute specifies that these may include local mental health, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, district attorney's offices, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Agencies designated in the rules must share with one another, upon request, information they possess that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent. This sharing of information must continue until the child is no longer subject to the jurisdiction of juvenile court.

Any confidential information shared among agencies pursuant to G.S. 7B-3100 must remain confidential, must be withheld from public inspection, and must be released in accordance with the provisions of the Family Educational and Privacy Rights Act (FERPA).²⁰⁴ As discussed below, FERPA permits school officials to release student information only in very limited circumstances unless the department of social services obtains a court order authorizing the release of confidential information or the department of social services has custody of the child.

In compliance with the statute, the Department of Juvenile Justice issued administrative rules for information sharing that became effective April 1, 2003.²⁰⁵ Under the regulations specific agencies are directed to "share with one another upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent." The list of agencies ordered to share information includes the agencies listed in the statute and, in addition, includes county mental health facilities, developmental disabilities, and substance abuse programs and "a local agency designated by an administrative order issued by the chief district court judge of the . . . district in which the agency is located, as an agency authorized to share information pursuant to the rules and the standards set forth in G.S. 7B-3100."²⁰⁶

Under the regulations, "any agency that receives information disclosed pursuant to G.S. 7B-3100 and shares such information with another authorized agency, shall document the name of the agency to which the information was provided and the date the information was provided."²⁰⁷ When the disclosure of requested information is prohibited or restricted by federal law or regulations, a designated agency must comply with the applicable federal law and regulation. In this situation, the agency requesting information may ask the agency that refuses to share information to indicate what specific law or regulation is the basis for the refusal.²⁰⁸

Note that this statute authorizes the sharing of information only when a petition has been filed. As noted previously, petitions are filed in only a small percentage of all cases of alleged child abuse, neglect, or dependency that departments of social services

investigate. Thus this statute and the rules are applicable in only a small portion of cases in which social services is seeking information about a child who is alleged to be abused, neglected, or dependent.

B. Statutes Governing the Release of Information by Social Services

G.S. 7B-302, the child abuse reporting statute, requires that all information received by the department of social services from a person who reports suspected abuse, neglect, or dependency, including the identity of the reporter, be held in strictest confidence by the department. Thus, as discussed in Section B.1203.F, in most situations, social services will not reveal who filed a report of abuse, neglect or dependency.²⁰⁹

Social services workers also are subject to G.S. 108A-80, which provides that it is unlawful for any person to obtain, disclose, or use, or to authorize, permit, or acquiesce in the use of any information concerning persons receiving social services that may be derived from the records or files of the state or county departments of social services. Information maintained by social services may be obtained or disclosed *only if the information will be used for purposes directly related to the administration of social services programs.*²¹⁰

These confidentiality requirements are not absolute. Information in the agency's child protective services records will be disclosed when a judge orders disclosure. Without a court order, information can be disclosed only

- to a child or a child's attorney who asks to examine the child's record,
- to the agencies or individuals that are helping provide or facilitate the provision of services to the child, and
- to a district attorney who needs access to the case record to carry out his or her responsibilities relating to a report of confirmed abuse or a director's decision not to file a petition.²¹¹

G.S. 7B-2901(b) directs the department of social services to maintain a record of the cases of children under protective custody by the department of social services or under placement by the court. These records may be inspected only by order of the court except that the guardian ad litem or the child has the right to examine the records. Similarly, G.S. 7B-2901(a) requires the clerk of superior court to maintain a complete record of all juvenile cases filed in the clerk's office. These records must be withheld from public inspection and, except as provided by the statute, may be examined only by an order of the court.²¹²

In the case of a child victim, the statute gives the court the authority to order the sharing of information among any public agencies if the court deems this necessary to reduce the trauma to the victim.²¹³

C. Statutes Governing Release of Information by School Officials

1. School Counselors

At times a school counselor may have reason to suspect a child is abused, neglected, or dependent based on information acquired in the course of performing his or her duties as a school counselor or based on information acquired during a counseling session with a student. G.S. 8-53.4, entitled "school counselor privilege" states that

[n]o person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services

This statute generally shields a counselor from *testifying* in a juvenile court proceeding, but the privilege is not absolute. If the presiding judge believes that disclosure of the information "is necessary to a proper administration of justice," the judge can compel disclosure and the school counselor will be required to testify.²¹⁴

This privilege does not relieve a school counselor from the duty to report suspected child abuse, neglect, or dependency under the mandatory reporting law, however. According to G.S. 7B-310,

[N]o privilege shall be grounds for any person or institution failing to report that a juvenile may have been abused, neglected, or dependent, even if the knowledge or suspicion is acquired in an official professional capacity²¹⁵

Thus if a counselor has cause to suspect that a student is abused, neglected, or dependent, the counselor is required by law to report these suspicions to the local county department of social services in accordance with the child abuse reporting law.

2. Educational Records

Both federal and state laws protect the confidentiality of the information contained in the records a school maintains about its students.²¹⁶ The restrictions contained in these statutes do not apply to making a report of suspected abuse, neglect, or dependency with a local department of social services. They do apply at any stage after reporting, i.e., during an investigation or while services are being provided by the department of social services.

G.S. 7B-302 authorizes the director of social services (or the director's representative) to make a written demand for any information or reports that the director considers relevant, even if the information is considered confidential. But, several kinds of information are excluded from this rule. According to the statute " . . . any public or private agency or individual shall provide access to and copies of this confidential information and these records *to the extent permitted by federal law and regulations.*"²¹⁷ For school officials the primary concern is the school system's obligation to comply with the Family Educational Rights and Privacy Act of 1974 (FERPA).²¹⁸ However, in 2000 the Office of Special Education and Rehabilitative Services suggested in response to a letter of inquiry that school officials could rely upon the provisions of the Federal Child Abuse Prevention and Treatment Act to disclose student information to child welfare agencies if a child is a suspected victim of child abuse.²¹⁹

FERPA generally prohibits the release of educational records or personally identifiable information contained in educational records without the written consent of the child's parent.²²⁰ If a child's parent consents, therefore, school records may be released to social services workers. For example, social workers may want to verify that a child has been attending school regularly. If the parent consents, school officials may release the child's attendance records to social workers without a subpoena or a court order.²²¹ If the department of social services has assumed custody of a child, it would

seem that social workers are entitled to access to a child's educational records because the department of social services is "acting as a parent."²²²

In addition, FERPA allows the release of information in the educational record without prior parental consent in specific circumstances. For example, FERPA permits schools to release "directory information" about students without written consent from the students' parents.

"Directory information" may include the student's name, address, telephone listing, email address, photograph, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and most recently attended previous educational agency or institution.²²³ Directory information may be released without a parent's prior written consent if school officials have notified all parents of the categories of information that have been designated as directory information, have informed parents of their right to object to the release of such information, and have allowed parents a reasonable time after the notice has been given to inform the school that any or all of the designated directory information should not be released without the parent's prior written consent. (Most school systems give parents notice regarding the release of directory information at the beginning of the school year.)

Unless a parent has notified school officials not to release directory information, school officials may release designated directory information about a child to social services without written consent from the child's parent. For example, if social services workers are having difficulty locating a child who is the subject of an abuse report, the department might request a copy of a recent photograph of a child from school officials. In most school systems a photograph is considered to be directory information.

In addition, FERPA allows school officials to release information "to appropriate parties in a health or safety emergency."²²⁴ The regulations provide that before the record may be divulged, "knowledge of the information" must be necessary in order to protect the health or safety of the student or other individuals. Although this exception is to be strictly construed, it is conceivable that in some cases a child's situation would involve a "health or safety emergency" warranting disclosure of confidential information under this exception.

Finally, FERPA permits school officials to release information "to comply with a judicial order or lawfully issued subpoena."²²⁵ For a detailed discussion of court orders to produce records, see John Rubin, "Subpoenas and School Records: A School Employees Guide" published in *School Law Bulletin* in the Spring of 1999.²²⁶ Even when acting under a court order, the school system may disclose the requested information only if it makes a reasonable effort to notify the parent of the order or subpoena in advance of compliance, so that the parent may seek protective action. School officials should consult with their school board attorney regarding the appropriate procedures for releasing confidential information.

In conclusion, when a social services worker requests confidential information about a student, school officials should determine

- whether the child's parent has consented to the release of the requested information;
- whether social services has custody of the child; or

- whether social services has a court order requiring release of the information.

If one of these conditions exists, then school officials should follow established school system procedures for releasing the requested information. If none of these conditions exists, school officials should determine whether the information sought is "directory information" or grounds for releasing the information exist under the "emergency health and safety" exception to FERPA. If not, then the information probably may not be released. Such determinations, however, should be made in consultation with the school board attorney.

§ B.1207. The Role of Schools in the Reporting System

As discussed above, school personnel are in a unique position to observe children and recognize problems that might not be noticed by others. The General Assembly has emphasized the duty of school personnel to report abuse and neglect by repeating the reporting mandate of the Juvenile Code in G.S. 115C-400. This statute, entitled "School personnel to report child abuse," states that "[a]ny person who has cause to suspect child abuse or neglect has a duty to report the case of the child to the Director of Social Services of the county as provided in [the Juvenile Code]."

In 1991 the Department of Human Resources (now the Department of Health and Human Services) and the Department of Public Instruction agreed upon a set of recommended procedures to maximize cooperation between local school systems and local departments of social services in handling cases of suspected or confirmed child abuse, neglect, and dependency.²²⁷ These procedures are not mandatory—they may be adapted to meet local needs. As of this writing the current version of the agreement suggests the following procedures (paraphrased from the original).

A. Adopting Policies.

Local boards of education should adopt policies and procedures leading to identification, reporting, and follow-up of child abuse, neglect, and dependency. School personnel should be informed of their responsibilities with regard to child abuse and neglect, the ability of social services departments to receive reports twenty-four hours a day, seven days a week, and where and to whom such reports should be made.

B. Reporting to Social Services

A school may designate a contact person (and a back-up) to receive reports from staff members in order to expedite reports to social services and to act as a liaison between the school and the county social services department. The contact person must transmit any report of suspected abuse or neglect to social services immediately. School officials are not authorized to conduct investigations, and any contact with a possible child victim should gather only enough information to validate the suspicion of abuse or neglect. The contact person may not screen reports of abuse or neglect.

If a school staff member believes that informing the contact person would cause a delay that would endanger the child, the staff member should report suspicions of abuse or neglect directly to the local social services department and inform the school contact person. A report of suspected child abuse, neglect, or dependency must contain, at a minimum, sufficient information to identify the child, his or her family, and the facts that cause the reporter to suspect abuse, neglect, or dependency.

C. Social Services' Response

When the county department of social services receives a report, one or several of the following actions must be taken, depending on the circumstances of the report received.

- **Informing the Reporter.** If the department of social services concludes that it does not have authority to investigate the situation, the department must inform the person making the report of the reason and of that person's right to seek a review of the decision by supervisory social services staff.²²⁸
- **Investigation.** An investigation must be initiated within twenty-four hours if the report alleges abuse or seventy-two hours for neglect unless the situation dictates more immediate action.
- **Assessing Need for School Involvement.** Upon beginning an investigation, the child protective services social worker will assess the situation to determine the necessity of involving (or further involving) local school personnel.
- **Child Interviews.** Interviewing the child at school is necessary at times; however, it is not standard procedure in every investigation. If the social worker determines that a visit to the school is merited, he or she should notify the principal or the contact person and arrange a mutually convenient time that is least disruptive of the child's schedule.

D. Cooperation between Schools and Social Services

School personnel must cooperate with the social worker in the investigation. School officials should

- give the social worker any information that could help establish neglect or abuse;²²⁹
- permit the social worker to interview school staff members familiar with the child or the report;
- permit the social worker to photograph evidence, such as bruises or marks;
- allow the social worker to interview the child alone and without the parent or guardian's consent.²³⁰ Unlike cases in which a child is questioned about delinquency matters, when the department of social services is conducting an investigation of abuse, neglect, or dependency there is no statutory requirement that parents be notified before the child is questioned.
- allow the social worker to remove the child from school if the social worker determines that the child is at immediate or imminent risk. (This will require a court order unless the statutory conditions for temporary custody without a court order are satisfied.²³¹)

E. Follow up

The county director of social services will provide feedback, in the form of the notices required by statute, to the person who made the report. If that feedback is provided to the principal or contact person, that person should relay the information to the school staff member who initiated the report.

- **Feedback to the School.** Within five working days after receipt of a report from school personnel, the local director of social services must provide feedback to the person who made the report that there is no finding of abuse, neglect, or dependency, or inform the reporter of the action taken or to be taken by the local department of social services to protect the child's welfare. The feedback must include notification that, if the person who made the report is not satisfied with the decision of the local director of social services not to file a petition, he or she (the reporter) may request a review of the decision by the local district attorney within five working days of receiving notice from the department of social services. When feedback is provided to the principal or school contact person, that person must give the feedback to the appropriate school staff member.
- **Planning and Information Sharing.** In any case in which school personnel must be involved with the investigation, it is appropriate for social services to share more detailed information relating to the report of suspected abuse or neglect with school staff members who are assisting in the investigation or service planning for the child. Also, the two agencies should cooperate fully and collaborate in planning consistent services for the child and the child's family for the treatment and prevention of further abuse and neglect.
- **Multidisciplinary Teams.** Local school administrative units and local departments of social services should develop multidisciplinary teams so that trained and experienced personnel may provide ongoing support and information to local school personnel in the area of child abuse and neglect. Formation and participation in such teams does not preclude or substitute for participation in Community Child Protection Teams.

F. Confidentiality of Department of Social Services Information

A child's protective services record maintained by the local department of social services, including the identity of the person who made the report of suspected abuse or neglect, is confidential and may be examined only by court order, except that the child or the child's attorney has a right to examine it. This does not preclude the necessary sharing of information among authorized agencies to facilitate the provision of protective services. Both the county department of social services and the local school must comply with applicable law and their own regulations to insure the confidentiality of all information disclosed, discovered, or maintained as a result of the investigation.²³²

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revised edition of Reporting Child Abuse and Neglect in North Carolina was published in 2003 and is available from the School of Government at <http://ncinfo.iog.unc.edu> .

Endnotes

- ¹ Dobson v. Harris, 352 N.C. 77, 530 S.E.2d 829 (2000).
- ² N.C. Gen Stat. Ch. 7B. (Hereinafter the General Statutes will be abbreviated G.S.). The Juvenile Code defines "abused," "neglected," and "dependent" juveniles (G.S. 7B-101). The Code also defines and addresses "delinquent" and "undisciplined" juveniles. Laws and procedures applicable to these young people will be discussed in a future edition of this publication. The Juvenile Code and other statutes cited in this chapter are available on-line through the North Carolina General Assembly website: <http://www.ncga.state.nc.us/>.
- ³ G.S. 7B-100.
- ⁴ The tension between the welfare of the juvenile and deference to family integrity is reflected in the purposes of Subchapter I of G.S. Chapter 7B. The United States Supreme Court has established constitutional limitations on the right of government to intervene in family matters. *See, e.g.,* Moore v. City of E. Cleveland, 431 U.S. 494 (1977) (zoning laws cannot obstruct family living arrangements); Pierce v. Society of Sisters, 268 U.S. 510 (1925) (family retains the right to send a child to a private parochial school); Meyer v. Nebraska, 262 U.S. 390 (1923) (family may guide and control a child's education).
A recent North Carolina case, *In re Stumbo*, 357 N.C. 279, 582 S.E.2d 255 (2003), focused public attention on the statutory powers given to social services workers when they are investigating reports of abuse or neglect. *Stumbo* involved a department of social services (DSS) worker who was sent to a family's home to investigate possible child neglect after an anonymous caller reported that a two-year-old child had been observed playing outside the home, naked and unsupervised. The child's parents refused to allow the social worker to interview their children in private. The county department of social services filed a petition pursuant to G.S. 7B-303 to prohibit interference with or obstruction of a child protective services investigation and the case progressed through the North Carolina court system. In 2003 the North Carolina Supreme Court concluded that the evidence in the *Stumbo* case did not constitute a report of neglect. According to the court, an anonymous call reporting a naked child, two years of age, unsupervised in a driveway, in and of itself, does not constitute a "report of abuse, neglect, or dependency." Because the DSS did not have sufficient grounds to pursue an investigation, the Supreme Court said, the *Stumbos* could not be convicted for obstructing the investigation.
- ⁵ *See* White v. North Carolina State Board of Examiners of Practicing Psychologists, 97 N.C. App. 144, 165, 388 S.E.2d 148, 161, *cert. denied*, 326 N.C. 601, 393 S.E.2d 891 (1990). A psychologist failed to report a suspected case of child abuse because "he thought the matter was already in the judicial system and the parents and attorneys knew of the alleged sexual abuse." *Id.* The court held that he had technically violated the child abuse reporting law because the law "makes no exceptions for extenuating circumstances in reporting suspected child abuse." *Id.*
- ⁶ G.S. 7B-301.
- ⁷ North Carolina Department of Health and Human Services, Division of Social Services, "Central Registry Reports of Child Abuse, Neglect, and Dependency, Selected Statistical Data" (Raleigh, N.C., 1999, unpublished). (Hereinafter, Central Registry

Reports.) Available at the following website:

<http://www.dhhs.state.nc.us/dss/childrenservices/> using the link to "Statistics." The Central Registry collects data about abuse and neglect reports from county departments of social services. G.S. 7B-311. Registry data are generally confidential, but non-identifying statistical information about the scope and extent of abuse, neglect, and dependency is not subject to this confidentiality requirement. N.C. Admin. Code (hereinafter N.C.A.C.) tit. 10A, subch. 70A § .0102(a). Each year, the Department of Health and Human Services releases a summary of the Central Registry statistics. The most current statistics and those for several preceding are available through the website given above.

- 8 Central Registry Reports. One report may contain information about the suspected abuse, neglect, or dependency of more than one child.
- 9 Central Registry Reports.
- 10 The primary sources of reported children for state fiscal year 1998-1999 were educational personnel (17.43%); human service (15.94%); non-relative (13.73%); anonymous (12.57%); relative (12.27%); law enforcement/courts (9.94%); medical personnel (7.81%); parent (7.69%); child care provider (1.81%); and victim (0.81%). Central Registry Reports.
- 11 If the principal determines that the parent, guardian, or custodian has made a good faith effort to comply with the law, the principal may file a complaint with the juvenile court counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse.
- 12 Subchapter I of the Juvenile Code defines 21 terms in G.S. 7B-101. Only the most essential terms are discussed in this section.
- 13 The North Carolina Social Services Commission issues administrative rules regarding child protective services in Title 10A of the North Carolina Administrative Code, subchapter 70A . The Administrative Code is available on-line at <http://www.oah.state.nc.us/> .
- 14 State policy relating to child protective services is developed by the Division of Social Services in the Department of Health and Human Services and is published in the *Family Services Manual*, Volume I, Chapter VIII (Child Protective Services). The manual is available on-line at <http://info.dhhs.state.nc.us/olm/manuals/dss/> .
- 15 G.S. 7B-101(14).
- 16 G.S. 7B-3500. The juvenile must have resided in the same county in North Carolina or on federal territory within the boundaries of North Carolina for six months preceding the filing of the petition.
- 17 G.S. 51-2(a).
- 18 G.S. 51-2A. A district court judge may issue an order authorizing the marriage only upon finding as fact and concluding as a matter of law that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve the best interest of the underage party. To make this determination, the district court judge must consider (1) the opinion of the parents of the underage party as to whether the marriage serves the best interest of the underage party; (2) the opinion of any person, agency, or institution having legal custody or serving as a guardian of the underage party as to whether the marriage serves the best interest of the underage

party; (3) the opinion of the *guardian ad litem* appointed to represent the best interest of the underage party as to whether the marriage serves the best interest of the underage party; (4) the relationship between the underage party and the parents of the underage party, as well as the relationship between the underage party and any person having legal custody or serving as a guardian of the underage party; and (5) any evidence that would be useful in making its determination.

¹⁹ G.S. 51-2(b1).

²⁰ G.S. 7B-1501(7).

²¹ G.S. 7B-1501(27).

²² In North Carolina a clerk of superior court may appoint a "guardian of the person" (as opposed to a "guardian of the estate") only for a child who has no "natural guardian," i.e., no parent. G.S. 35A-1203(a). A district court judge, in a juvenile proceeding, may appoint a guardian of the person whenever the court finds this action to be in the juvenile's best interest. G.S. 7B-600 and 7B-2001.

²³ G.S. 7B-101(8).

²⁴ G.S. 7B-101(3).

²⁵ G.S. 7B-101(1).

²⁶ G.S. 14-27.2.

²⁷ G.S. 14-27.3.

²⁸ G.S. 14-27.4.

²⁹ G.S. 14-27.5.

³⁰ G.S. 14-27.7.

³¹ G.S. 14-177.

³² G.S. 14-178 and G.S. 14-179.

³³ G.S. 14-190.5.

³⁴ G.S. 14-190.6.

³⁵ G.S. 14-190.7 and G.S. 14-190.8.

³⁶ G.S. 14-190.14 and G.S. 14-190.15.

³⁷ G.S. 14-190.16 and G.S. 14-190.17.

³⁸ G.S. 14-190.18.

³⁹ G.S. 14-202.1.

⁴⁰ Obviously serious emotional damage is not always caused by emotional abuse.

Children may suffer from depression or anxiety, or be aggressive, for a variety of reasons. Because causation is hard to prove, many cases of emotional abuse probably are treated as cases of neglect. A parent whose behavior creates serious emotional damage to a child may very well also be neglecting the child by failing to provide proper care, supervision, or discipline, or necessary medical or remedial care.

⁴¹ A delinquent act is an act committed by a child who is at least six and under the age of sixteen that would be a crime if committed by an adult. A sixteen- or seventeen-year-old is treated as an adult for purposes of his or her criminal behavior. A sixteen-year-old whose parent encouraged him to steal, therefore, would not be covered by this part of the abuse definition, because a sixteen-year-old does not commit delinquent acts—he or she commits crimes. Still the sixteen-year-old could be considered neglected, because the parent is failing to provide proper supervision and discipline.

⁴² "Moral turpitude" involves "an act of inherent baseness in the private, social, or public duties which one owes to his fellowmen or to society, or to his country, her institutions, and her government." *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369(1986) [*quoting Kurtz. v. Farrington*, 104 Conn. 257, 262 (1926)].

⁴³ G.S. 7B-101(15).

⁴⁴ *In re Stumbo*, 357 N.C. 279, 582 S.E.2d 255 (2003).

⁴⁵ On the other hand, a one time report of an unsupervised, naked, two-year old in her driveway does not, as a matter of law, constitute a report of "neglect." *In re Stumbo*, 357 N.C. 279, ___, 582 S.E.2d 255, ___ (2003).

⁴⁶ *See, e.g., In re Moore*, 306 N.C. 394, 401-02, 293 S.E.2d 127, 131 (1982); *accord, In re Allen*, 58 N.C. App. 322, 324, 293 S.E.2d 607, 609 (1982); *In re Biggers*, 50 N.C. App. 332, 341, 274 S.E.2d 236, 241-42 (1981) ("Our Court has not found it difficult to give a precise meaning to this definition of a neglected child in particular cases by analyzing the factual circumstances before it and weighing the compelling interests of the State with those of the parents and child . . . [The definition of a "neglected juvenile"] is not vague because the terms . . . are given a precise and understandable meaning by the normative standards imposed upon parents by our society, and parents are, therefore, given sufficient notice of the types of conduct that constitute child neglect in this State.").

⁴⁷ *In re Thompson*, 64 N.C. App. 95, 98, 306 S.E.2d 792, 794 (1983); *accord In re Biggers*, 50 N.C. App. 332, 341, 274 S.E.2d 236, 241-42 (1981).

⁴⁸ *In re McMillan*, 30 N. C. App. 235, 226 S.E.2d 693 (1976) (family willfully refused to allow their children to attend school because the school did not teach about Indians, Indian culture, and their Indian heritage).

⁴⁹ *See In re Devone*, 86 N.C. App. 57, 60, 356 S.E.2d 389, 390-91 (1987) (father of an educable child of limited intelligence refused to enroll the child in public school, opting instead to instruct the child at home and isolate him from the outside world).

⁵⁰ *In re Huber*, 57 N.C. App. 453, 458, 291 S.E.2d 916, 919 (1982).

"It is not the presence of the defects in the child that cause her to be neglected. It is the failure of the mother to allow [the child] to receive necessary medical and remedial care and treatment. Without treatment [the child] will suffer serious and permanent harm To deprive a child of the opportunity for normal growth and development is perhaps the greatest neglect a parent can impose upon a child." *Id.*

⁵¹ *In re Cusson*, 43 N.C. App. 333, 336, 258 S.E.2d 858, 859 (1979).

⁵² *In re Thompson*, 64 N.C. App. 95, 100, 306 S.E.2d 792, 795 (1983). The child's mother struck the child with a belt and scrubbed her until she bled as disciplinary measures for the child's perceived misconduct. These methods of discipline were below normal standards and established neglect under G.S. 7A-517(21) [now G.S. 7B-101(15)]. A juvenile is "abused" only if the juvenile experiences a serious physical injury or a substantial risk of serious physical injury. "Mild" physical mistreatment by itself usually is not sufficient to establish abuse; it may, however, constitute neglect.

⁵³ *In re Safriet*, 112 N.C. App. 747, 436 S.E.2d 898 (1993).

⁵⁴ G.S. 7B-101(9).

- 55 Before 1997, the statute provided that a child was dependent only if a parent could not provide proper care or supervision *because of the parent's physical or mental incapacity*. Under the law as it now reads, a child might be categorized as a dependent juvenile if the child's special needs (resulting from severe disease or disability, for instance) render the parent unable to provide proper care, even though the parent genuinely tries to provide for the child's needs.
- 56 G.S. 7B-301. The General Assembly added this requirement to the reporting law in 1993. 1993 N.C. Sess. Laws ch. 516, sec. 4.
- 57 G.S. 7B-302.
- 58 N.C. Div. of Social Services, *Family Services Manual*, Vol. I, Chapter VIII, Section 1408, I.B.
- 59 "It is clear that the legislative intent of these statutes [comprising the North Carolina Juvenile Code] is that citizens are to be vigilant in assuring the safety and welfare of the children of North Carolina." *Dobson v. Harris*, 352 N.C. 77, 78, 530 S.E.2d 829, 832 (2000).
- 60 For discussion of immunity for good-faith reporting, see § B.1203.D.
- 61 For discussion of the possibility of liability for failing to report, see § B.1203.E.
- 62 If the department of social services receives a report about a child who does not live in the county where the report was made, the department is required to relay the report to the appropriate agency in the county where the child resides. See, N.C. Div. Of Social Services, *Family Services Manual*, vol. I, Ch. VIII, Section 1408. II.A.5.
- 63 G.S. 7B-301.
- 64 G.S. 7B-301. N.C.A.C. tit. 10A, subch. 70A, § .0105(a).
- 65 For more on the reporter's rights during the investigation, see § B.1203.F.
- 66 G.S. 115C-288(g).
- 67 N.C.A.C. tit. 16, subch. 6C, § .0312(b).
- 68 Failure to report is grounds for suspension or revocation of the administrator's certificate. *Id.*
- 69 In fiscal year 1998-99 over two-thirds (43,288 of 63,200 reports) of all child abuse, neglect, and dependency reports were not substantiated. Central Registry Reports.
- 70 352 N.C. 77, 530 S.E.2d 829 (2000), *reversing* 134 N.C. App. 573, 521 S.E.2d 710 (1999).
- 71 *Dobson v. Harris*, 352 N.C. at 85, 530 S.E.2d at 836 (2000).
- 72 91 N.C. App. 520, 372 S.E.2d 318 (1988).
- 73 Because, when this case arose, the definition of caretaker was not restricted to caretakers in a residential setting, the court of appeals in *Davis* assumed that a report to the department of social services was required. Under the current version of the Juvenile Code, a principal would not be required to report abusive conduct by a substitute teacher to the department of social services because a substitute teacher, who does not provide care for a child in a residential setting, is not a "caretaker." But, a principal might have a duty under G.S. 115C-288(g) to report the teacher's conduct to a local law enforcement agency if a teacher's act is one of the enumerated crimes that must be reported under that statute.
- 74 *Davis*, 91 N.C. App. at 523, 372 S.E.2d at 320.

- 75 There have been few actual cases, but several legal writers agree that the threat of civil liability for failing to report is genuine. See Steven J. Singley, Comment, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. Juv. L. 236 (1998) ("Even if a state has not expressly created civil liability, a representative of the child may nevertheless sue the reporter for failing to report under any of the following theories: negligence *per se*; professional negligence (malpractice); or duty to warn a third party"); Douglas J. Besharov, *Child Abuse and Neglect, Liability for Failing to Report*, Trial, Aug. 1986, at 67; Note, *Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse*, 28 Wayne L. Rev. 183, 1981.
- 76 In 1986, a student in Onslow County filed a civil action alleging, along with several other claims, that he suffered continued abuse because school officials failed to comply with the mandatory reporting requirement. The student asked for \$12 million in compensatory and punitive damages, but the case was settled before it went to trial. See *Hague v. Lloyd et.al.*, 86-CVS-1347 (Onslow County Superior Court, complaint filed August 1, 1986). See also, *Teachers, Board Sued Over Case of Sexual Abuse*, The News and Observer (Raleigh, N.C.) (August 3, 1986).
- 77 See *Landeros v. Flood*, 17 Cal.3d 399 (1976) (permitting a juvenile to state a private cause of action—a civil claim—against a doctor and a hospital because the child was returned home and received additional injuries after the doctor negligently failed to recognize and report symptoms of child abuse); see also *Curran v. Walsh Jesuit High School*, 651 N.E.2d 1028 (Ohio App. 1995) (holding that a mandatory reporting law is intended to protect individuals instead of the general public and therefore can serve as the basis for a private cause of action); *Ham v. Hospital of Morristown*, 917 F. Supp. 531 (E.D. Tenn. 1995) (holding that Tennessee's reporting law supports a private cause of action even though the law expressly provides for criminal punishment); *Doe v. Coffee County Bd. of Educ.*, 852 S.W.2d 899 (Tenn. App. 1992) (establishing a private cause of action if the failure to report is a proximate cause of the child's injuries). But see *C.B. v. Bobo*, 659 So.2d 98 (Ala. 1995) (barring a private cause of action because "there is no indication of any legislative intent to impose civil liability for failure to report").
- 78 Juvenile Code Revision Committee, *The Final Report of the Juvenile Code Revision Committee* (Raleigh, N.C.: North Carolina Department of Crime Control and Public Safety, January 1979), pp. 34-35.
- 79 Wake County District Court, January 31, 1986. See also, *Assistant Superintendent Convicted for Not Reporting Suspected Child Abuse*, 17 School L. Bull. 46-47 (Spring 1986).
- 80 Durham County District Court, February 1986; Durham County Superior Court, January 14, 1987. See Seth C. Kalichman, *Mandated Reporting of Suspected Child Abuse: Ethics, Law, & Policy*, 2nd Edition (Washington, D.C.: American Psychological Association, 1999), pp. 36-37; *Charges against Chapel Hill Psychologist Dismissed*, Durham Morning Herald, January 15, 1987, 1A.
- 81 G.S. 7B-302(f).
- 82 N.C.A.C. tit. 10A, subch. 70A, § .0105(h). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(II)(C).

- 83 N.C.A.C. tit. 10A, subch. 70A, § .0105(h)(2).
- 84 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(II)(C).
- 85 G.S. 7B-302(g).
- 86 The person making the report may waive the right to notification, and no notification is required if the person making the report does not identify himself to the director. G.S. 7B-302(g). In these instances, the reporter does not retain a right to request a formal review.
- 87 G.S. 7B-306.
- 88 G.S. 7B-302(a).
- 89 N.C.A.C. tit. 10A, subch. 70A, § .0105(c).
- 90 G.S. 7B-303(e).
- 91 For a general overview of the North Carolina social services system, see Janet Mason, *Social Services*, County Government in North Carolina (Chapel Hill, NC: Institute of Government, University of North Carolina at Chapel Hill, A. Fleming Bell, II, and Warren Jake Wicker, eds., 1998) pp.693-739. This book may be ordered from the School of Government at CB# 3330, Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330 or through their web site at <http://ncinfo.iog.unc.edu> .
- 92 The exceptions are Wake and Mecklenburg counties. By special legislation (G.S.153A-77) each of these counties has consolidated its human services programs and assigned the duties of a county social services board to either a consolidated human services board or the board of county commissioners.
- 93 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(II)(A).
- 94 For example, in the case of *In re Stumbo* an anonymous report was made to a department of social services that an unsupervised, naked, two-year old was seen in a home driveway. The North Carolina Supreme Court held that this set of facts, standing alone, did not constitute a report of "neglect" under North Carolina law. 357 N.C. 279, 582 S.E.2d 255 (2003). .
- 95 Although a married or emancipated person is not protected by the Juvenile Code, the father's actions may constitute assault under North Carolina criminal law. For further discussion of the role of law enforcement agencies, see § B.1203.C and § B.1204. F.
- 96 Even though the report would be screened out as a report of child abuse or neglect, it would be treated as a report under the Protection of the Abused, Neglected, or Exploited Disabled Adult Act (Article 6 of G.S. Chapter 108A), which also includes a mandatory reporting requirement. The person making the report would be referred to the department's adult protective services unit.
- 97 The neighbor's conduct may constitute assault under North Carolina criminal statutes. The department of social services would be required to report these suspicions to a local law enforcement agency. For further discussion of the role of law enforcement agencies, see § B.1204.F.
- 98 "Screening requires a thorough discussion with the person making the report to assess whether the allegations, if true, fall within the statutory definitions. It is sometimes necessary to ask questions and to clarify statements before deciding there is 'insufficient information' to accept a complaint." Division of Social Services, *Family*

- Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(II)(A)(2).
- 99 N.C.A.C. tit. 10A, subch. 70A, § .0105(h).
- 100 G.S. 7B-302(f).
- 101 N.C.A.C. tit. 10A, subch. 70A, § .0105(h). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(II)(C).
- 102 N.C.A.C. tit. 10A, subch. 70A, § .0105(h)(2).
- 103 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(II)(C).
- 104 G.S. 7B-302(a).
- 105 G.S. 7B-302.
- 106 G.S. 7B-302. *See also* N.C.A.C. tit. 10A, subch. 70A, § .0106(a).
- 107 G.S. 7B-302(a).
- 108 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(A)(1). High risk situations include physical abuse of a child under the age of three, a child under the age of six left alone, a child being sexually abused, a child being tormented or tortured, a child in a life-threatening situation, a child under age twelve who is self-referred, and a child under age twelve who refuses to go home.
- 109 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(A)(2).
- 110 N.C.A.C. tit. 10A, subch. 70A, § .0105(e).
- 111 N.C.A.C. tit. 10A, subch. 70A, § .0106(e). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(5).
- 112 G.S. 7B-302(h).
- 113 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(A)(2). CPS intake and investigation Standard #10.
- 114 N.C.A.C. tit. 10A, subch. 70A, § .0105(d). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(A)(2).
- 115 N.C.A.C. tit. 10A, subch. 70A, § .0106(c). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(2).
- 116 N.C.A.C. tit. 10A, subch. 70A, § .0106(d). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(2).
- 117 N.C.A.C. tit. 10A, subch. 70A, § .0106(f). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(4).
- 118 N.C.A.C. tit. 10A, subch. 70A, § .0106(g). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(2).

- 119 G.S. 7B-302(e).
- 120 20 U.S.C. § 1232g (1998).
- 121 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(6).
- 122 N.C.A.C. tit. 10A, subch. 70A, § .0106(b). Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(1). The Department of Health and Human Services maintains a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment. G.S. 7B-311.
- 123 G.S. 7B-303(b).
- 124 G.S. 7B-303(a).
- 125 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(C)(1).
- 126 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(C)(1). CPS intake and investigation Standard #24. If an investigation lasts longer than thirty days, the reason for the delay must be documented in the case record.
- 127 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(B)(8). CPS intake and investigation Standard #23.
- 128 N.C.A.C. tit. 10A, subch. 70A, § .0108(1).
- 129 N.C.A.C. tit. 10A, subch. 70A, § .0108(2).
- 130 Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(C)(2).
- 131 N.C.A.C. tit. 10A, subch. 70A, § .0107(a).
- 132 G.S. 7B-302(g).
- 133 G.S. 7B-302(g).
- 134 G.S. 7B-307(a).
- 135 G.S. 7B-307(a).
- 136 G.S. 7B-307(a).
- 137 N.C.A.C. tit. 10A, subch. 70A, § .0107(b).
- 138 N.C.A.C. tit. 10A, subch. 70A, § .0107(c).
- 139 N.C.A.C. tit. 10A, subch. 70A, § .0107(b).
- 140 N.C.A.C. tit. 10A, subch. 70A, § .0107. A social services worker must make contact with the family within one week after the department of social services substantiates abuse, neglect, or dependency. In the very few instances in which the agency does not provide treatment services to the family, the rationale for that decision must be clearly documented. Division of Social Services, *Family Services Manual*, Volume I: Children's Services, Chapter VIII: Protective Services, § 1408(III)(C).
- 141 N.C.A.C. tit. 10A, subch. 70A, § .0107(d).
- 142 N.C.A.C. tit. 10A, subch. 70A, § .0107(e). If the director decides to close a case, the case must be closed within 30 days of the completion of an assessment. At the director's discretion, additional assessments may be completed to assist in decision-making.
- 143 See G.S. 7B-507.

- 144 These requirements are both a funding condition for the state's receipt of federal child welfare funds and provisions of state law. *See* 42 U.S. C. § 671; G.S. 7B-101(18); and G.S. 7B-507.
- 145 G.S. 7B-507(a).
- 146 G.S. 7B-1111. Of ten statutory grounds, those alleged most often include (1) the parent's abuse or neglect of the child; (2) the parent's having willfully left the child in foster care or other placement for more than a year without showing reasonable progress in correcting the conditions that led to the child's removal from the home; (3) the parent's willful failure to pay child support; and (4) when a child is born out of wedlock, the father's failure to establish his paternity or provide substantial financial support or consistent care for the child and mother.
- 147 The term "nonsecure custody" is a somewhat confusing term that is used to distinguish foster care and similar placements from the detention ("secure custody") of children who are delinquent.
- 148 G.S. 7B-500.
- 149 G.S. 7B-500.
- 150 G.S. 7B-501(a)(1).
- 151 G.S. 7B-501(a)(2).
- 152 G.S. 7B-501(a)(3).
- 153 G.S. 7B-501(b).
- 154 G.S. 7B-502. In addition, the chief district court judge may delegate the court's authority to issue nonsecure custody orders to persons other than district court judges.
- 155 G.S. 7B-503(a). In placing a child in nonsecure custody the court also must consider whether it is in the juvenile's best interest to remain in his or her community of residence. G.S. 7B-505.
- 156 G.S. 7B-503(a).
- 157 G.S. 7B-504.
- 158 G.S. 7B-505.
- 159 G.S. 7B-505.
- 160 G.S. 7B-506(a).
- 161 G.S. 7B-506(b).
- 162 G.S. 7B-506(e).
- 163 These finding are required unless the court has previously determined that such efforts are not required or shall cease. G.S. 7B-507(a)(2).
- 164 These finding are required unless the court has previously determined that such efforts are not required or shall cease. G.S. 7B-507(a)(3).
- 165 G.S. 7B-507(a).
- 166 G.S. 7B-507(a).
- 167 G.S. 7B-507 (c), (d).
- 168 G.S. 7B-601(a). North Carolina's Guardian ad Litem Program, established by Article 12 of the Juvenile Code, G.S. 7B-1200 *et. seq.*, is administered by the state Administrative Office of the Courts. If the guardian ad litem is not an attorney, the court also will appoint an attorney advocate to represent the juvenile's legal rights.
- 169 G.S. 7B-601(a).

- 170 The guardian ad litem may not obtain information that is protected by attorney-client privilege. G.S. 7B-601(c).
- 171 G.S. 7B-601(c).
- 172 G.S. 7B-602.
- 173 G.S. 7B-801(c).
- 174 G.S. 7B-802.
- 175 G.S. 7B-804.
- 176 The judge may elect to close the adjudicatory hearing to the public. In making this determination, the judge will consider the nature of the allegations, the age and maturity of the juvenile, the benefit of confidentiality to the juvenile, the benefit of an open hearing to the juvenile, and the extent to which the juvenile's confidential record will be compromised by an open hearing. G.S. 7B-801(a).
- 177 School personnel may be subpoenaed to testify during the adjudicatory stage of the hearing. For example, the school employee who made the initial report alleging abuse, neglect or dependency may be required to appear in court (although, in most cases, the employee need not be identified as the reporter). After adjudication, school officials may be contacted regarding educational information for the predisposition report. As with other requests for information, school officials should cooperate if providing the information is not a violation of federal law or regulations. See § B.1206 of this chapter regarding the sharing of confidential information.
- 178 G.S. 7B-805.
- 179 In most civil cases the standard is the "preponderance" or "greater weight" of the evidence.
- 180 In a criminal case the defendant must be proved guilty beyond a reasonable doubt.
- 181 G.S. 7B-807.
- 182 G.S. 7B-808.
- 183 G.S. 7B-901.
- 184 G.S. 7B-901.
- 185 G.S. 7B-903(1).
- 186 G.S. 7B-903(2). If the judge decides that the juvenile should be placed in the custody of an individual other than the parents, the court must verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile. G.S. 7B-903(c).
- 187 G.S. 7B-903(a)(3).
- 188 G.S. 7B-905(a).
- 189 G.S. 7B-905(c).
- 190 If the parent is unable to pay for the treatment, the court may charge the cost to the county. G.S. 7B-903(a)(3).
- 191 G.S. 7B-904(c).
- 192 G.S. 7B-904(c).
- 193 G.S. 7B-904(d).
- 194 G.S. 7B-904(e).
- 195 G.S. 7B-1000.
- 196 G.S. 7B-906(a).

197 G.S. 7B-906(b) allows a court to waive the holding of review hearings, require written reports to the court in lieu of review hearings, or order that review hearings be held less often than every six months, but only *if the court finds by clear, cogent, and convincing evidence that*

the child has resided with a relative or has been in the custody of another suitable person for at least one year;

the placement is stable, and continuation of the placement is in the child's best interest;

neither the child's best interests nor the rights of any party require that review hearings be held every six months;

all parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

the court order has designated a relative or other suitable person as the child's permanent caretaker or guardian of the person.

198 G.S. 7B-906.

199 G.S. 7B-1002.

200 G.S. 7B-1001.

201 G.S. 7B-908.

202 G.S. 7B-909.

203 G.S. 7B-910.

204 20 U.S. C. § 1232g.

205 N.C.A.C. tit. 28, 01A, Section .0300.

206 N.C.A.C. tit. 28, 01A, § .0301.

207 N.C.A.C. tit. 28, 01A, § .0302(a).

208 N.C.A.C. tit. 28, 01A, § .0302(b).

209 When necessary, the department may reveal the identity of the person who reported suspicions of abuse, neglect, or dependency to the district attorney or a law enforcement agency, or a judge may compel the director of social services to disclose the identity of the reporter if someone has obstructed or interfered with an investigation.

210 Accessing departmental records, files, or communications concerning persons receiving social services without authorization is a misdemeanor. G.S. 180A-80(c).

211 N.C.A.C. tit. 10A, 70A, § 0113.

212 G.S. 7B-2901(a).

213 G.S. 7B-2901(c).

214 G.S. 8-53.4.

215 G.S. 7B-310. The only exception allowed by the statute is if the knowledge or suspicion is gained by an attorney in the course of that attorney's representation of a client in the abuse, neglect, or dependency case.

216 Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g. G.S. 115C-402, G.S. 115C-114, and G.S. 115C-174.13. For further discussion of student records, see "Student Records," Chapter B.6 of this publication. *See also*

- Thomasin Hughes "Releasing Student Information: What's Public and What's Not," 32 School L. Bull. 12 (Winter 2001).
- 217 The statute also excludes information that is protected by attorney-client privilege, and criminal investigative records. G.S. 7B-302.
- 218 See Chapter B.6 for a more extensive discussion of FERPA. *See also* Thomasin Hughes "Releasing Student Information: What's Public and What's Not," 32 School L. Bull. 12 (Winter 2001), available from the School of Government at CB# 3330, Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330 or through the School's web site at <http://ncinfo.iog.unc.edu>.
- 219 In response to the question "Does FERPA allow schools to disclose student information to child welfare agencies if a student is a suspected victim of child abuse?" the Office of Special Education and Rehabilitative Services (OSERS) gave the following reply. "While FERPA does not specifically permit schools to disclose information from a student's education record to a child welfare agency if a student is a suspected victim of child abuse, we have advised schools that they may do so under the Federal Child Abuse Prevention and Treatment Act (CAPTA). Our review of CAPTA indicates that it is a later enacted, more specific Federal statute that conflicts with FERPA regarding the disclosure of information, and that Congress intended to override the privacy protections of FERPA when it enacted CAPTA. As a later enacted and more specific statute, we believe that CAPTA reflected congressional intent that information specified in the statute be reported to child welfare agencies, notwithstanding FERPA's privacy provisions. Letter to Shaffer, 34 *Indiv. with Disabilities Educ. Law Rep.* 151 (Oct. 4, 2000).
- 220 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.30(a). FERPA broadly defines "educational record" as those records directly related to a student and maintained by the educational agency or institution in which the student is or has been enrolled. A "record" is defined as any information or data recorded in any way, including but not limited to handwriting, print, computer media, visual or audio, tapes, film, microfilm or microfiche. 34 C.F.R. § 99.3. For purposes of this discussion, it will be presumed that the release of any student records sought by social services is regulated by FERPA.
- 221 For a detailed discussion of court orders to produce school records *see* John Rubin, "Subpoenas and School Records: A School Employees Guide," 30 *School L. Bull.* 1 (Spring 1999) available from the School of Government at CB# 3330, Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330 or through its web site at <http://ncinfo.iog.unc.edu>.
- 222 According to 34 C.F.R. § 99.3 "[p]arent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian."
- 223 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3. School boards may choose to release other similar types of information as "directory information." The regulations define as including "other similar information."
- 224 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.31(a).
- 225 20 U.S.C. § 1232g(b)(1)(J)(i); 34 C.F.R. § 99.31(a)(9).

- 226 Available from the School of Government at CB# 3330, Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330 or through its web site at <http://ncinfo.iog.unc.edu> .
- 227 Bob Etheridge and David T. Flaherty, untitled agreement between the North Carolina Department of Human Resources and the North Carolina Department of Public Instruction (November 1, 1991).
- 228 For further discussion of the reporter's right to notification and the reporter's right to request review, see § B.1203.F.
- 229 But see, § B.1206 regarding school official's obligation to comply with all applicable laws pertaining to the confidentiality of student records.
- 230 53 Op. N.C. Att'y Gen. 2 (April 27,1984). In response to the inquiry "May public school officials permit protective services workers of the county department of social services to interview a reported victim of child abuse or neglect on school premises in the absence of and without prior notice to the parent(s) of the reported victim?" the Department of Justice observed: "It is our opinion that there is no legal requirement that the parent(s) be present or be given prior notice of the interview. It should be noted, initially, that there is a vast difference between the circumstances here and those in which the juvenile is being investigated as the suspected perpetrator of a juvenile or criminal offense A child abuse or neglect investigation . . . involves the child as the victim—not the perpetrator—of an alleged offense. We have found no provision in law which implies, much less requires, that a parent must be present at or given notice of an investigative interview with a victim of suspected child abuse or neglect." *Id.* at 105.
- 231 For further discussion of temporary custody, see § B.1205.A.1.
- 232 Paraphrased from Etheridge and Flaherty, untitled agreement.