

Chapter 6

Adjudication of Abuse, Neglect, or Dependency

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6.1 Summary and Purpose of Adjudication

“Adjudication” refers both to the hearing at which the court determines the existence or nonexistence of the facts alleged in the petition, and to the court’s action when it concludes as a matter of law that a child is an abused, neglected, or dependent juvenile. An adjudication is the court’s determination of the child’s status as abused, neglected, or dependent. It is not a determination of each individual parent’s, guardian’s, custodian’s, or caretaker’s culpability and is not an adjudication of the child’s status as to a particular caregiver. *See In re E.X.J.*, 191 N.C. App. 34 (2008), *aff’d per curiam*, 363 N.C. 9 (2009); *see also In re A.B.*, 272 N.C. App. 13, 17 (2020), *In re Q.A.*, 245 N.C. App. 71, 74 (2016) and *In re A.L.T.*, 241 N.C. App. 443, 451 (2015) (all three cases quoting *In re Montgomery*, 311 N.C. 101, 109 (1984)).

The petitioner – a department of social services (DSS) – must prove the facts by clear and convincing evidence. The adjudication is a formal trial before a judge, and the rules of evidence apply. *In re K.W.*, 272 N.C. App. 487 (2020). A consent order may also be entered, obviating the need for a full formal trial, if the requirements of G.S. 7B-801(b1) are satisfied. Consent orders must include findings of fact that are sufficient to support the conclusion of abuse, neglect, or dependency.

Note, for purposes of this Manual, a “department of social services” or “DSS” refers to a department as defined by G.S. 7B-101(8a) regardless of how it is titled or structured.

If the alleged facts are proved and the court concludes that they are sufficient to support an adjudication, the child is adjudicated abused, neglected, or dependent. The court may proceed to the dispositional phase of the case to determine the best way to address the family’s needs. If the allegations are not proved by clear and convincing evidence, there is no adjudication. The court must dismiss the case with prejudice.

A stated purpose of the Juvenile Code (G.S. Chapter 7B) is to provide hearing procedures that assure fairness and equity and that protect the constitutional rights of juveniles and parents. G.S. 7B-100(1). The Juvenile Code specifically instructs the court to protect the rights of the child and the parent to assure due process at the adjudication hearing. G.S. 7B-802. An important aspect of assuring fairness and protecting rights is appropriately separating the adjudication and disposition phases of the case. While it is permissible for the two phases to take place in one court setting, the purposes, procedures, and standards applicable to the two phases are different.

This Chapter addresses the court’s adjudication of the juvenile. All matters that are prerequisites or preliminary to an adjudication hearing are addressed elsewhere in this Manual, such as

- the filing of a proper petition alleging abuse, neglect, dependency (Chapters 5.3.A; 4.2);
- the summons and service of process (Chapters 5.3.B; 4.3; 4.4);
- jurisdiction (Chapter 3);
- appointment of counsel and guardians ad litem for parents (Chapters 2.4.E–G; 5.4.B);
- appointment of guardian ad litem and attorney advocate for child (Chapters 2.3.D; 5.4.C);
- orders for nonsecure custody and hearings on the need for continued nonsecure custody (Chapter 5.5; 5.6);

- discovery and access to information (Chapters 4.6; 14); and
- pre-adjudication hearing and other pretrial conferences (Chapter 5.7).

Dispositional hearings, outcomes, and orders are discussed in Chapter 7.

6.2 The Adjudication

A. Procedure for Adjudication

There are two procedural paths for an abuse, neglect, or dependency adjudication: (1) an adjudicatory hearing and (2) adjudication by consent. *In re R.L.G.*, 260 N.C. App. 70 (2018); *In re J.S.C.*, 253 N.C. App. 291 (2017). An adjudicatory hearing involves a judicial process that determines the existence or nonexistence of any of the conditions alleged in the petition. G.S. 7B-802. Allegations in the petition must be proved by clear and convincing evidence. G.S. 7B-805. An adjudication by consent occurs in the absence of an adjudicatory hearing when all the parties have reached an agreement that is sanctioned by the court, and all the criteria of G.S. 7B-801(b1) are satisfied. *See In re R.L.G.*, 260 N.C. App. 70; *In re J.S.C.*, 253 N.C. App. 291. See Section 6.5, below (discussing consent orders).

Most procedural aspects of an adjudication are governed by the Juvenile Code. In some circumstances, a specific Rule of Civil Procedure may apply when it does not conflict with the Juvenile Code and only to the extent that it advances the purposes of the Juvenile Code. *In re E.H.*, 227 N.C. App. 525 (2013); *In re L.O.K.*, 174 N.C. App. 426 (2005). See Chapter 4 (discussing procedures under the Juvenile Code and the applicability of the Rules of Civil Procedure to juvenile cases).

At the adjudication hearing, DSS is the petitioner with the burden of proof. *In re E.H.*, 227 N.C. App. 525. The respondents (parents, guardian, custodian, or caretaker) and the juvenile (usually through a GAL and attorney advocate) have the right to present evidence and cross-examine witnesses. The court may proceed with the hearing even if the respondents are not present. In those circumstances, an adjudication of abuse, neglect, or dependency cannot result from a default judgment or judgment on the pleadings. There must be a hearing where DSS presents evidence and proves its case. *See In re Shaw*, 152 N.C. App. 126 (2002) (default judgment and judgment on the pleadings not available for an adjudication); *see also In re I.D.*, 239 N.C. App. 172 (2015) (originally unpublished Feb. 3, 2015, but subsequently published) (reversing adjudication order and remanding for further proceedings as adjudication amounted to a judgment on the pleadings after the court accepted the verified petition as evidence and DSS put on no evidence at the adjudicatory hearing; immaterial that respondent did not object); *In re K.P.*, 249 N.C. App. 620 (2016) (reversing an adjudication and disposition order and vacating all orders based on the adjudication after determining the adjudication order did not result from a proper adjudicatory hearing or the G.S. 7B-801(b1) requirements for a valid consent adjudication order).

The length and complexity of the hearing will vary with each individual proceeding. There is no requirement that the testimony presented by the petitioner be extensive so long as there is some live testimony and evidence that supports a court's adjudication of the child as abused, neglected, or dependent. *See In re N.N.*, 296 N.C. App. 159 (2024) and *In re N.R.R.N.*, 297

N.C. App. 673 (2025) (both holding hearing that consisted of brief DSS social worker testimony that the information in the verified petition was true and the admission of verified petition were sufficient).

B. Timing

The adjudication hearing must be held within sixty days from the time the petition is filed unless the court orders that the hearing be continued. G.S. 7B-801(c); *see In re D.S.*, 286 N.C. App. 1, n.5 (2022) (stating “[o]ur record does not provide any satisfactory reason for the delay of a year. This hearing is required by law to be held within 60 days from the filing of the petition”). The North Carolina Supreme Court has held that the remedy for a delay in the hearing that violates the statutory timeline requires a party to file a writ of mandamus, which provides for swift enforcement of a party’s legal rights, rather than allowing a party to “sit back” and “rely upon an appeal to cure” the violation. *In re C.R.L.*, 377 N.C. 24, 28 (2021) (citations omitted). See Chapter 12.10.D (discussing writ of mandamus).

Under G.S. 7B-803, continuances are permissible only

- for good cause, for as long as is reasonably required, to receive
 - additional evidence, reports, or assessments the court has requested or
 - other information needed in the best interests of the juvenile;
- to allow a reasonable time for the parties to conduct expeditious discovery; or
- in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile, but resolution of a pending criminal charge against a respondent arising out of the same transaction or occurrence as the juvenile petition may not be the sole extraordinary circumstance. *See In re Patron*, 250 N.C. App. 375 (2016) (affirming denial of stay of judicial review of placement on Responsible Individuals List when petitioner had pending criminal charges resulting from the same incident; relying on language in G.S. 7B-803).

It is also important to be familiar with any local rules relating to continuances. See Chapter 4.5 (providing more detail and case law related to continuances and the consequences of delay).

Although the Juvenile Code sets forth a sequential hearing process, with an adjudication followed by the initial disposition and then review or permanency planning hearings, it does not prohibit the court from conducting the adjudication, dispositional, and permanency planning hearings on the same day. *In re C.P.*, 258 N.C. App. 241 (2018) (referred to by *In re E.A.C.*, 278 N.C. App. 608 (2021)).

C. Public Access to Hearing

Hearings in abuse, neglect, or dependency cases are open to the public even though the court records are withheld from public inspection. *See* G.S. 7B-801(a); 7B-2901(a). However, the court may determine to close to the public a hearing or part of a hearing. G.S. 7B-801(a), (b). If the juvenile requests that a hearing or part of a hearing be open, it must be open. G.S. 7B-801(b). When the juvenile does not request that the hearing or part of the hearing be open, the

court considers the circumstances of the case and the following factors when deciding whether to close the hearing or part of the hearing:

- the nature of the allegations in the petition,
- the child’s age and maturity,
- the benefit to the child of confidentiality,
- the benefit to the child of an open hearing,
- the extent to which the confidentiality of the juvenile’s record pursuant to G.S. 7B-2901 (abuse, neglect, or dependency cases) and 132-1.4(1) (criminal investigations) will be compromised by an open hearing, and
- any other relevant factor.

G.S. 7B-801(a).

Even if a hearing is open, electronic media and still photography coverage of juvenile proceedings is prohibited by Rule 15 of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure. Local rules should also be consulted on this issue.

D. Record of Proceedings

The hearing must be recorded by stenographic notes or electronic or mechanical means. G.S. 7B-806. Audio recording is the means typically used by courts. Recordings of abuse, neglect, or dependency court hearings must be reduced to writing only when a timely notice of appeal has been filed. G.S. 7B-806; 7B-2901(a). Recordings may be erased or destroyed upon written court order after the time for appeal has expired with no appeal having been filed or in accordance with the records retention schedule approved by the director of the Administrative Office of the Courts and the Department of Natural and Cultural Resources. G.S. 7B-2901(a); *see* G.S. 121-5(c). Note that the records retention policies may require that the recordings, which are considered part of the juvenile file maintained by the clerk, be kept longer.

Appellate cases have indicated that gaps in a recording or the accidental destruction of the tape recording is reversible error only if it results in prejudice. *See In re L.B.*, 184 N.C. App. 442 (2007) and cases cited therein. Prejudice is required even when a statute requiring recording is violated. *In re X.M.*, 293 N.C. App. 98 (2024). The fact that the recording is of poor quality or inadequate will matter only if the appellant shows specific error (as opposed to probable error) in the recording and that the appellant was prejudiced as a result of the recording problems. *See, e.g., In re L.O.K.*, 174 N.C. App. 426 (2005); *In re Howell*, 161 N.C. App. 650 (2003); *In re Bradshaw*, 160 N.C. App. 677 (2003).

Problems with the recording of a hearing present issues to be dealt with in settling the record on appeal pursuant to Rule 9 of the Rules of Appellate Procedure. When an adequate verbatim transcript is unavailable, there may be ways to reconstruct the testimony, and there is an expectation that an appellant will do everything possible to reconstruct the transcript. *See In re X.M.*, 293 N.C. App. 98 (affirming TPR; referencing G.S. 7B-806; no prejudice when verbatim transcript unavailable but agreed to narrative and judicially noticed orders and reports from permanency planning hearings were included in the appellate record allowing for appellate review); *In re L.B.*, 184 N.C. App. 442 (2007) (rejecting respondent’s contention that she was denied due process where electronic recordings were accidentally destroyed,

finding that respondent did not do all that she could to reconstruct the transcript and did not show prejudice). For a discussion of appeals, see Chapter 12.

E. Petition Controls Scope of Adjudication

The court determines whether the conditions alleged in the petition exist. G.S. 7B-802. The conditions – a juvenile’s abuse, neglect, or dependency as each term is statutorily defined – are the basis for the petition. *See In re M.G.*, 363 N.C. 570 (2009) (deciding, under former language of G.S. 7B-800, whether the amended petition changed the nature of the conditions alleged, specifically the condition of abuse and looked to all six [now eight] criteria in the definition of abuse). The court of appeals has stated, “[t]he purpose of the adjudication hearing is to determine the existence of the juvenile’s conditions as alleged in the petition.” *In re R.B.*, 280 N.C. App. 424, 431 (2021) (citations omitted).

In conducting the adjudication hearing, the court is required to protect the rights of the juvenile and the parent to assure due process. G.S. 7B-802; *In re R.B.*, 280 N.C. App. 424; *In re H.P.*, 278 N.C. App. 195 (2021). The court may consider only matters relating to the conditions alleged in the petition. *See* G.S. 7B-802; 7B-805; 7B-807(a) (referencing matters alleged in petition in relation to adjudication). Without specific factual allegations to put the respondent on notice as to each alleged ground for adjudication – abuse, neglect, or dependency – the court lacks jurisdiction to adjudicate a ground that was not alleged. *See In re K.L.*, 272 N.C. App. 30 (2020); *see also In re L.E.W.*, 375 N.C. 124, 126 n.2 (2020) (commenting that the trial court lacked authority to adjudicate the juvenile dependent when dependency was not alleged in the neglect petition); *In re B.W.*, 274 N.C. App. 280 (2020) (vacating adjudication of abused juvenile; petition only alleged neglected juvenile); *In re D.C.*, 183 N.C. App. 344 (2007) (holding that it was error for court to allow DSS to proceed on a theory of neglect and to adjudicate neglect when the petition alleged only dependency and the factual allegations did not put respondent on notice as to neglect).

A petition is adequate when the facts alleged are sufficient to put the respondent on notice of an alleged condition. *In re M.M.*, 291 N.C. App. 571 (2023) (although box on form petition for emotional abuse not checked (boxes for other criteria of abuse were checked), petition was sufficient to put father on notice of abuse resulting in serious emotional damage when allegations included concerns about the children’s emotional well-being due to high conflict custody battle between parents and children being sad and emotionally withdrawn); *In re K.L.*, 272 N.C. App. at 48 (quoting *In re K.B.*, 253 N.C. App. 423, 427 (2017) (specific factual allegations that put respondent on notice of the alleged ground are sufficient “even if DSS fails to ‘check the [correct] box’ on the petition”; reversing adjudication of neglected juvenile when abuse was only condition alleged and factual allegations did not support a separate claim of neglect); *In re K.B.*, 253 N.C. App. at 427 (petition alleging only that child was abused and neglected put respondent on notice that dependency would be at issue when (1) factual allegations attached to the petition encompassed language from the statutory definition of dependency by asserting that respondent “failed to provide proper supervision” and “was unable to provide an alternative placement resource for the child,” and (2) an order entering stipulations for adjudication stated in the first sentence that the petition alleged abuse, neglect, and dependency); *In re L.T.R.*, 181 N.C. App. 376 (2007) (rejecting the stepfather’s claim that the petition did not put him on notice that the child’s bathing routine would be at issue

because an attachment to the petition addressed an injury occurring during bathing and the stepfather did not object to evidence of child’s bathing routine when it was offered at trial).

Generally, events that occur after the filing of the petition are not to be considered at adjudication because the issue at adjudication is whether the facts alleged in the petition are true. See *In re L.N.H.*, 382 N.C. 536, 543 (2022) (“conditions underlying [a] determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition”); *In re A.D.*, 278 N.C. App. 637, 641 (2021) (“Evidence of events after the petition is filed is irrelevant to the determination of whether the child is neglected”); *In re E.P.-L.M.*, 272 N.C. App. 585, 597 (2020) (“Absent exceptional circumstances, the trial court may only look to the circumstances before the court at the time the petition was filed when considering whether a juvenile is dependent at the adjudicatory stage”); *In re A.B.*, 179 N.C. App. 605, 609 (2006) (“post-petition evidence is admissible for consideration of the child’s best interests in the dispositional hearing, but not an adjudication of neglect”). See also section 6.3.B and C, below (explaining exceptions and the separation of evidence for adjudication and disposition).

Practice Notes: If after a petition has been filed, DSS learns of additional incidents that were not included in the petition, DSS will need to seek permission of the court to amend the petition under G.S. 7B-800 to include a new condition and/or additional facts. The amendment will put the respondents on notice of the new allegations and/or conditions DSS seeks to prove. If DSS is unable to amend its petition, a second petition alleging the newly discovered incidents may need to be filed.

Regarding consent orders, when parties are negotiating to resolve a case by consent, they should exercise caution to avoid stipulations or agreements that do not accurately reflect the facts of the case or conditions in the petition. For example, if a petition alleges only neglect and the factual allegations relate only to neglect, a consent order adjudicating dependency is improper. Findings and conclusions in an order must be directly related to what is alleged in the petition and what the facts reflect. While parties may view amendment of a petition as a way to address the difference between what is alleged in the petition and what the parties want to agree to, the petition can be amended only with the court’s approval. G.S. 7B-800. See Chapter 4.2.C (relating to amendments) and section 6.5, below (relating to consent orders).

6.3 Evidence and Proof

This section addresses evidentiary standards, burden of proof, and case law related to the sufficiency of evidence and findings in abuse, neglect, or dependency cases. Additional evidence topics such as hearsay, experts, child witnesses, judicial notice, and other matters related to the admissibility of evidence are addressed in Chapter 11.

A. Child’s Status, Standard, and Burden of Proof

The allegations of the petition must be proved by clear and convincing evidence. G.S. 7B-805; *In re J.A.M.*, 372 N.C. 1 (2019). Clear and convincing evidence “should fully convince . . . [and] is more exacting than the preponderance of the evidence standard generally applied in civil cases, but less than the beyond a reasonable doubt standard applied in criminal

matters . . . such that a factfinder applying that evidentiary standard could reasonably find the fact in question.” *In re J.C.-B.*, 276 N.C. App. 180, 184 (2021) (quoting *In re A.C.*, 247 N.C. App. 528, 533 (2016)). See *In re H.N.D.*, 265 N.C. App. 10 (2019) (quoting *In re Mills*, 152 N.C. App. 1 (2002)).

The rules of evidence in civil cases apply to adjudication hearings. G.S. 7B-804; *In re A.J.*, 386 N.C. 409 (2024); *In re K.W.*, 272 N.C. App. 487 (2020). The evidence must be competent evidence. See *In re H.P.*, 278 N.C. App. 195 (2021) (reversing and remanding for dismissal of the juvenile petition; exhibit attached to petition and relied on by court had contradictory allegations and was not competent evidence). DSS is the petitioner and has the burden of proof. *In re N.N.*, 296 N.C. App. 159 (2024); *In re E.H.*, 227 N.C. App. 525 (2013); see *In re V.B.*, 239 N.C. App. 340 (2015).

The determination of whether a child is abused, neglected, or dependent is about the circumstances and conditions of the child, not the fault or culpability of the parent, guardian, custodian, or caretaker. See *In re Montgomery*, 311 N.C. 101 (1984) (addressing adjudication of neglect), quoted in *In re K.E.P.*, 298 N.C. App. 527 (2025) (rejecting argument that legislative amendments to the definition of neglected juvenile at G.S. 7B-101(15) shifts the focus to the parent’s actions and not the child’s circumstances; noting court of appeals is bound by supreme court precedent and *In re Montgomery* has not been overruled); see also *In re M.C.*, 286 N.C. App. 632, 633 (2022) (affirming adjudication of neglect; reiterating “the principle that an adjudication determines the status of the child, not the culpability of the parents or others that may have created the circumstances resulting in that status”), *In re A.B.*, 272 N.C. App. 13, 17 (2020) (addressing adjudication of abuse), *In re K.W.*, 272 N.C. App. 487, 493 (2020) (addressing adjudication of abuse; quoted in *In re A.H.-G.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, *7 (Dec. 17, 2025)), *In re Q.A.*, 245 N.C. App. 71, 74 (2016) (addressing adjudication of neglect) and *In re A.L.T.*, 241 N.C. App. 443, 451 (2015) (addressing adjudication of neglect) (all quoting *In re Montgomery*, 311 N.C. at 109). Cf. *In re K.L.*, 272 N.C. App. 30, 39 (2020) (emphasis in original) (distinguishing statement *In re Montgomery* that fault or culpability of the parent is not a factor in a neglect proceeding by stating “the same is not true in an abuse proceeding”; focusing on the language of G.S. 7B-101(1) where a parent, guardian, custodian, or caretaker “(a) inflicts or allows to be inflicted . . . (b) creates or allows to be created . . . (c) uses or allows to be used . . .”).

The court of appeals has stated:

The purpose of abuse, neglect and dependency proceedings is for the court to determine whether the juvenile should be adjudicated as having the status of abused, neglected, or dependent . . . The purpose of the adjudication and disposition proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent.

In re A.B., 272 N.C. App. 13, 17 (quoting *In re J.S.*, 182 N.C. App. 79, 86 (2007)) (*In re A.B.* affirming adjudication of abuse; *In re J.S.* affirming adjudication of abuse and neglect).

At adjudication, “the trial court is not required to determine the culpability of each parent as to the children.” *In re E.X.J.*, 191 N.C. App. 34, 45 (2008), *aff’d per curiam*, 363 N.C. 9 (2009); *In re J.S.*, 182 N.C. App. 79 (2007). It is not appropriate to enter separate adjudications of neglect based on each respondent’s conduct. *In re M.C.*, 286 N.C. App. 632 (2022). A child

may be adjudicated as abused or neglected because of the circumstances created by one respondent only. *See In re A.L.T.*, 241 N.C. App. 443 (2015) (affirming adjudication of neglect based on an injurious environment related to findings about circumstances created by respondent father and holding the lack of findings in the adjudication order about the respondent mother’s culpability in contributing to the child’s neglect was immaterial). A child may also be adjudicated without there being a finding as to which respondent is culpable for the abuse or neglect. *See In re R.S.*, 254 N.C. App. 678 (2017) (affirming an adjudication of abuse that found both respondents, who were the sole caretakers of a pre-mobile infant, jointly and individually responsible for the child’s serious and unexplained injuries); *In re L.Z.A.*, 249 N.C. App. 628, 638 (2016) (affirming adjudication of abuse and neglect of pre-mobile child with unexplained non-accidental injuries occurring while parents were the child’s sole caretakers; trial court noting at disposition its “pause and concern as there has not been any identified perpetrator”); *In re Y.Y.E.T.*, 205 N.C. App. 120 (2010) (finding that both respondent parents were jointly and individually responsible for their child’s injuries where infant suffered non-accidental injuries while in the care of both parents, but a perpetrator could not be identified).

Note that at disposition, identifying the “offending parent” may be an issue for the court in determining whether reasonable efforts for reunification should cease and/or whether reunification is possible and in the child’s best interest. *See In re Y.Y.E.T.*, 205 N.C. App. at 128 (at disposition, the court ordered parental capacity evaluations with the hope that they would identify who caused the child’s injuries and why, which would allow the court to “determine whether reunification could occur with a non-offending parent or if issues could be rectified with an offending parent so that the child could be returned to her home”); *see also In re D.A.*, 258 N.C. App. 247, 252 (2018) (vacating and remanding permanency planning order awarding custody to foster parents; stating “the court’s findings are unclear of which parent or parents the court assigned responsibility” for the child’s unexplained injuries, and “the trial court’s findings do not explain how Respondent-father was culpable for [child’s] injuries, unfit, or otherwise acted inconsistently with his constitutionally protected status” as a parent). Identification of the offending parent, guardian, custodian, or caretaker is also required for placement on the “Responsible Individuals List” (RIL). See Chapter 5.2.B (discussing the RIL).

The court of appeals has also addressed a child’s behaviors and a parent’s response to those behaviors and has held the child’s behaviors are not the determinative factor in deciding whether the child is abused, neglected, or dependent. *In re F.C.D.*, 244 N.C. App. 243 (2015) (abuse adjudication affirmed; abuse definition regarding use of cruel or grossly inappropriate procedures to correct a child’s behavior does not examine the child’s behavior that the procedures and devices were meant to correct); *In re K.G.*, 260 N.C. App. 373, 377 (2018) (reversing dependency adjudication; the court is not to look “to the juvenile’s willful acts to determine a parent’s ability to care for the [child]”).

Resource: See Sara DePasquale, [When Does Delinquency Result in Abuse, Neglect, or Dependency?](#), UNC SCH. OF GOV’T: ON THE CIVIL SIDE BLOG (May 28, 2019).

B. Post-Petition Evidence

1. General exclusion. In reaching an adjudication decision, the court considers only evidence that is relevant to a determination of the existence or nonexistence of the facts and conditions alleged in the petition. *See* G.S. 7B-802; 7B-807(a); *In re L.N.H.*, 382 N.C. 536 (2022). The general rule is that post-petition evidence should not be considered at the adjudication hearing. *See In re L.N.H.*, 382 N.C. at 543 (“conditions underlying [a] determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition”), *quoted in In re G.B.G.*, 297 N.C. App. 772, 783 (2025); *In re A.D.*, 278 N.C. App. 637, 641 (2021) (“Evidence of events after the petition is filed is irrelevant to the determination of whether the child is neglected”); *In re A.B.*, 179 N.C. App. 605, 609 (2006) (stating “[p]ost-petition evidence is admissible for consideration of the child’s best interest in the dispositional hearing, but not an adjudication of neglect”); *In re J.R.*, 243 N.C. App. 309, 315 (2015) (relying on *In re A.B.* when stating “[t]he fact that respondent-mother had just ten more days to stay at the Salvation Army at the time WCHS filed its petition does not alter our conclusion” that neglect was not proved).

The general exclusion of post-petition evidence appears to apply to new events or incidents rather than information that is obtained post-petition and submitted at the adjudication hearing to prove the existence or nonexistence of an allegation. For example, if the petition alleges abuse based on sexual abuse or non-accidental serious physical injury and a medical evaluation is completed after the petition is filed, the information in that evaluation may be introduced to prove the facts and condition that were alleged in the petition. *See, e.g., In re K.L.*, 272 N.C. App. 30 (2020) (petition filed June 4, 2018; medical evaluations conducted May 31, June 1, and June 18, 2018; doctor conducting evaluation testified at adjudication hearing; testimony supported finding injury was non-accidental); *see also* G.S. 7B-505.1(b), (c)(4) (addressing consent for child medical evaluation at nonsecure custody, after a petition has been filed).

2. Exceptions. The court of appeals has recognized limited exceptions to the prohibition of considering post-petition evidence at the adjudication, only one of which has been addressed by the supreme court.

(a) Dependency adjudication. One of the court of appeals exceptions requires the court to consider post-petition evidence in a dependency adjudication and look at the circumstances of the child at the time of the adjudicatory hearing. There was a split in the court of appeals opinions about whether evidence of changed circumstances must be considered for an adjudication of dependency or whether the evidence is limited to the child’s situation at the time of the filing of the petition. In *In re E.P.-L.M.*, 272 N.C. App. 585 (2020), the court of appeals surveyed the state of the law with the hopes that it would be clarified by the legislature or North Carolina Supreme Court. The supreme court, without addressing the differing court of appeals opinions, provided that clarification in *In re L.N.H.*, 382 N.C. 536 (2022). The supreme court reversed a court of appeals opinion that reversed an adjudication of dependency when the court of appeals determined the trial court erred by considering evidence at the time of the filing of the petition and not at the time of the adjudicatory hearing. The supreme court stated the court of appeals’ “holding does not follow the plain language of N.C.G.S. § 7B-802.” *In re L.N.H.*, 382 N.C. at 544. The supreme court explained that at the time the petition was filed, father’s paternity was

not established, his whereabouts were unknown, and relatives who could have provided care had not been approved through a home study. Although those circumstances differed at the time of the adjudication hearing, the trial court was correct in not considering that evidence for adjudication but in considering that evidence for disposition. The child was placed with one of the relatives at disposition. In its holding, the supreme court applied the plain language of G.S. 7B-802 and stated:

conditions underlying [a] determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of the party.

In re L.N.H., 382 N.C. at 543.

In a later opinion, *In re A.J.*, 386 N.C. 409 (2024), the supreme court vacated and remanded an adjudication of dependency based on insufficient findings and included language from the court of appeals related to both “the risk of harm to the child from return to a parent” and “the situation before the court at the time of the hearing” *In re A.J.*, 386 N.C. at 416 (citation omitted). Despite referencing the court of appeals’ language, the supreme court discussed the incidents that were alleged in the petition and not new events that occurred after the petition was filed, such as mother’s behavior at trial, when determining the evidence could support a dependency adjudication and remanding the case to the trial court. As a result of these two supreme court opinions, the dependency exception regarding post-petition evidence appears to be extinguished by the supreme court.

(b) Fixed and ongoing circumstance. There are two other court of appeals exceptions that allow for post-petition evidence that the court of appeals continues to apply. Evidence of a “fixed and ongoing circumstance” that is not a “discrete event or one-time occurrence” may be considered, such as paternity or mental illness. *In re G.W.*, 286 N.C. App. 587, 594 (2022); *In re Q.M., Jr.*, 275 N.C. App. 34, 41 (2020); *In re V.B.*, 239 N.C. App. 340, 344 (2015). In the cases of *In re Q.M., Jr.*, and *In re V.B.*, the trial court properly considered evidence that paternity had been established before the adjudication hearing but after the petition alleging dependency was filed because paternity was a fixed and ongoing circumstance that was extremely relevant to determining whether the child was dependent.

In *In re G.W.*, which was published one month after *In re L.N.H.*, the court of appeals applied this “fixed and ongoing circumstances” exception for post-petition evidence in a neglect proceeding. The court of appeals determined the parents’ post-petition failure to comply with the components of their case plan that addressed their respective mental illnesses was a fixed and ongoing circumstance that was relevant in determining the existence or nonexistence of the conditions alleged in the petition. The court of appeals also determined the parents’ behavior at visits that occurred after the petition was filed and the continued existence of holes in the floor of the home were ongoing circumstances because they related to the parents’ ability to provide proper care and supervision and whether the child resided in an injurious environment. However, drug screens and the

completion of parenting classes after the petition was filed were discrete or one-time occurrences that did not meet the exception for post-petition evidence.

In a more recent opinion published by the court of appeals, *In re K.C.*, 295 N.C. App. 363 (2024), the court again applied the fixed and ongoing circumstances exception related to a parent's mental health in a neglect proceeding. In *In re K.C.*, the infant and mother tested positive for substances at the child's birth, mother never completed a substance use assessment, and only completed a mental health assessment the week before the adjudicatory hearing. The court of appeals held that mother's mental health issues are a "fixed and ongoing circumstance" and that mental health assessments are relevant to assess the current circumstances of the child's environment. The court of appeals found mother's failure to complete a substance use assessment and timely complete a mental health assessment impacted her ability to address her mental health and posed a substantial risk of future neglect of the child. *In re K.C.*, 295 N.C. App. 363 (affirming neglect adjudication based on failure to provide proper care and to arrange necessary medical care for the child, and the child living in an injurious environment).

The supreme court in *In re L.N.H.*, 382 N.C. 536, did not discuss the fixed and ongoing circumstances exception and whether it applies. Factually, in *In re L.N.H.* paternity was adjudicated after the petition was filed, but the supreme court did not consider that paternity adjudication when determining whether the child was dependent based on circumstances that existed at the time the petition was filed. Regarding mental health, *In re A.J.*, 386 N.C. 409, involved mother's hostile and aggressive behavior, which the trial court observed during the hearing. Regarding those post-petition behaviors, the supreme court cited to *In re L.N.H.* and its explanation that the adjudication inquiry is focused on the child's status at the time the petition is filed and not on the post-petition actions of a party. There was not a discussion about a fixed and ongoing circumstance involving mother's mental health, perhaps because the supreme court determined that the findings about mother's mental health diagnoses were unsupported by the record. As a result, it is unclear if the supreme court recognizes the exception related to fixed and ongoing circumstances (a parent's mental health and the establishment of paternity).

- (c) Voluntary placement pre-petition.** Another court of appeals exception that requires post-petition evidence is in cases where the child had been voluntarily placed with an appropriate alternative caregiver and later, DSS files a petition alleging neglect. The court of appeals has treated these cases like those termination of parental rights cases that allege neglect when the child has not lived with the parent for a substantial period of time prior to the filing of the petition. See Chapter 9.11.A.4 (discussing neglect based on past neglect and likelihood of repetition of neglect). In these types of cases, the trial court looks at the past conditions and the probability of the repetition of neglect that poses a risk of harm to the child. The determinative factors are the child's best interests and "the fitness of the parent to care for the child *at the time of the [adjudication] proceeding.*" *In re K.J.D.*, 203 N.C. App. 653, 660 (2010) (emphasis in original) (citations omitted) (affirming adjudication of neglect; mother has not corrected the conditions that led to her placing the child with maternal grandmother); *In re H.L.*, 256 N.C. App. 450 (2017) (affirming adjudication of neglect; child was placed with her adult sibling and parents did not correct conditions that required the child's safety placement; parents could not provide proper care); *In re C.C.*, 260 N.C. App. 182 (2018) (affirming neglect adjudication; conditions

leading to child's placement outside of her home were not corrected at the time of the adjudication hearing); *In re F.S.*, 268 N.C. App. 34 (2019) (reversing neglect adjudication; no clear and convincing evidence of current circumstances or future probability of risk of harm to child if immediately returned to mother who had been engaging in services); *In re B.P.* 257 N.C. App. 424, 434 (2018) (quoting *In re K.J.D.*; vacating neglect adjudication; there were no findings of risk of harm).

The supreme court in *In re A.J.*, 386 N.C. at 416, looked to *In re K.J.D.*, 203 N.C. App. 653, to state “[a] juvenile may be adjudicated neglected even if not currently residing in the parent’s home. When the juvenile does not currently reside with the parent, the trial court must assess whether there is a substantial risk of future neglect based on the historical facts of the case.” Although the opinion does not address what evidence the court considers, it appears to adopt the exception allowing for post-petition evidence when a parent has been voluntarily separated from their child for a period of time prior to the petition being filed.

C. Combined Adjudication and Dispositional Hearing

Ordinarily, an adjudication hearing is conducted, and the court makes findings and conclusions related to adjudication before proceeding to a disposition hearing. Proceeding in this manner helps to ensure that the appropriate evidentiary standards are applied to the adjudication and disposition phases of the case – the standard at adjudication is clear and convincing evidence, and at disposition, it is the best interests of the child and placement is discretionary. *In re O.W.*, 164 N.C. App. 699 (2004). However, the Juvenile Code does not require two separate hearings and the appellate courts have held that it is not error for the trial court to consolidate the adjudication and disposition hearings if proper evidentiary standards and rules are applied. *In re O.W.*, 164 N.C. App. 699. If the hearings are consolidated, evidence that relates to facts occurring after the date of the petition (absent a recognized exception), or evidence relating to the needs and interests of the child or parents but not relevant to proving allegations of abuse, neglect, or dependency, may be considered only for the purpose of making dispositional determinations. Predisposition reports may not be submitted to or considered by the court until after adjudication. G.S. 7B-808(a).

Where failure to apply the appropriate evidentiary standards and rules to the separate phases of the case is asserted as error on appeal, appellate courts have refused to find error absent a showing that evidence was improperly considered. *See In re O.W.*, 164 N.C. App. 699. In a nonjury trial, if incompetent evidence is admitted and there is no showing that the judge acted on it, the trial court is presumed to have disregarded it. *See Powers v. Powers*, 130 N.C. App. 37 (1998) (presuming that the judge considered evidence related to post-petition occurrences, which had come in prior to the adjudication determination, only for dispositional purposes); *In re A.L.T.*, 241 N.C. App. 443 (2015) (trial court presumed to have disregarded hearsay statements at neglect adjudication hearing regarding father’s inappropriate touching of child when trial court made no findings as to the hearsay evidence in its adjudication order and

dismissed sexual abuse allegation against father; trial court was authorized to consider the hearsay evidence at disposition pursuant to G.S. 7B-901(a).

D. Evidence at Adjudication

1. Stipulations. Stipulations by a party may constitute evidence at adjudication that the court considers when making its conclusion of law. *See* G.S. 7B-807; *In re B.C.*, 298 N.C. App. 153 (2025) (finding no error when court accepted father’s stipulation that allegations of sexual abuse against him existed, but denying the allegations are true, at adjudication involving emotional abuse, neglect, and dependency based on circumstances created by mother); *In re R.L.G.*, 260 N.C. App. 70 (2018) (pursuant to G.S. 7B-807, factual stipulations may be used in support of an adjudication); *In re L.G.I.*, 227 N.C. App. 512 (2013) (affirming neglect adjudication after reviewing facts which included mother’s stipulation to using illegal drugs during pregnancy and child testing positive for morphine at birth and additional evidence of those facts contained in admitted medical records and a court summary).

The Juvenile Code sets forth a specific procedure for how the court accepts stipulated adjudicatory facts. A record of specific stipulated adjudicatory facts must be made by either

- submitting to the court written stipulated facts that are signed by each party stipulating to them or
- reading the stipulated facts into the record, followed by an oral statement of agreement by each party stipulating to them.

G.S. 7B-807(a); *see In re B.C.*, 298 N.C. App. 153 (finding father’s stipulation legally sufficient under G.S. 7B-807; father’s counsel stated for the record in open court that father stipulated to the fact that sexual abuse allegations had been made against him as alleged in the petitions but denied the allegations were true).

Parties stipulate to facts, not questions of law. *See* G.S. 7B-807(a); *In re R.L.G.*, 260 N.C. App. 70 (determination of whether a juvenile is neglected is a conclusion of law; mother’s “admission” that child was neglected was ineffective as support for an adjudication of neglect); *In re A.K.D.*, 227 N.C. App. 58 (2013) (holding that the parties’ stipulation that the TPR ground of willful abandonment existed was an invalid stipulation to a conclusion of law). The court of appeals has stated “stipulations as to questions of law are generally held invalid and ineffective, and not binding upon the courts, either trial or appellate.” *In re A.K.D.*, 227 N.C. App. at 60 (quoting *State v. Prush*, 185 N.C. App. 472, 480 (2007)).

Stipulations are binding admissions to the court, “preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish” what is stipulated to. *In re A.K.D.*, 227 N.C. App. at 60 (quoting *Thomas v. Poole*, 54 N.C. App. 239, 241 (1981)); *see In re A.E.*, 379 N.C. 177 (2021) (father’s stipulations in underlying adjudication of neglect regarding lack of proper care, supervision, or discipline were binding in later TPR proceeding). Facts stipulated to by a party are presumed to be supported by competent evidence and are binding on appeal. *In re G.T.*, 250 N.C. App. 50 (2016), *aff’d per curiam*, 370 N.C. 387 (2017). When construing a stipulation, the court must attempt to effectuate the intention of the stipulating party as to what facts are being stipulated to so as to avoid giving the stipulation the effect of admitting a fact

the party intends to contest. *In re A.K.D.*, 227 N.C. App. 58; *In re I.S.*, 170 N.C. App. 78 (2005).

The court of appeals has clarified that “[s]tipulations do not extend beyond what was agreed to, and do not extend to parties who did not agree to them either.” *In re T.C.*, 919 S.E.2d 513, 519 (N.C. Ct. App. 2025) (quoting *In re E.P.-L.M.*, 272 N.C. App. 585, 605 (2020)). As a result, a stipulation made by one party does not bind another party who has not also stipulated to the fact and objects to the use of the stipulation. *In re T.C.*, 919 S.E.2d 513 (vacating adjudication and resulting disposition orders and remanding for trial court to hold a hearing; stipulation by father as to mother’s alleged conduct is not binding on mother who objected to use of stipulation and is incompetent evidence to establish facts against mother; no other evidence regarding the allegations were admitted). The court cannot use a stipulation of one or more parties against a party who does not agree to it. *In re T.C.*, 919 S.E.2d 513 (adopting reasoning of concurrence in *In re E.P.-L.M.*, 272 N.C. App. 585).

2. Findings of facts must meet statutory definition. A court’s determination that a child is an abused, neglected, or dependent juvenile is a conclusion of law. At adjudication, the issue is whether the petitioner has presented clear and convincing evidence to support findings of fact from which the court can conclude that the child is abused, neglected, or dependent as alleged in the petition. However, it is not unusual for courts to refer to “evidence of abuse, neglect, or dependency” as shorthand for the same thing. The facts alleged in the petition and the evidence introduced to establish those facts must relate to the statutory meaning of the alleged status—abused, neglected, or dependent juvenile, as defined in G.S. 7B-101(1), (15), or (9). The statutory definitions are especially important given that they do not necessarily conform to common perceptions of what constitutes abuse, neglect, or dependency. See Chapter 2.3.B. (discussing the statutory definitions and case law interpreting them).

3. Evidence of abuse, neglect, or dependency in other types of hearings. Abuse, neglect, or dependency are, or are part of, some grounds for termination of parental rights (TPR), so case law addressing evidence to prove abuse, neglect, or dependency sometimes arises from TPR proceedings. However, in the TPR context the court may consider factors that differ from those it considers in an abuse, neglect, or dependency adjudication hearing because the issue in a TPR case is the conduct of the parent while the issue in an underlying adjudication is the condition or status of the child. As a result, some case law concerning evidence to prove abuse, neglect, or dependency as grounds for a TPR may not be directly applicable to abuse, neglect, or dependency adjudications. Some TPR cases do provide guidance regarding whether circumstances meet the definition of abuse or neglect since the definitions are the same in both types of proceedings. See *In re K.J.D.*, 203 N.C. App. 653 (2010) (stating that it is appropriate in examining an adjudication of neglect to look to TPR cases addressing whether circumstances meet the definition of neglect since the definition of neglect is the same in both types of proceedings). See Chapter 9.11.A (discussing abuse and neglect grounds for TPR and cases considering those grounds).

4. Live testimony required. In *In re N.N.*, 296 N.C. App. 159 (2024), the court of appeals addressed a challenge to the sufficiency of the evidence for an adjudication when the only evidence presented at the adjudication hearing was from DSS and involved (i) the brief testimony of the social worker that identified who she was, that she verified the petition, and that the allegations were true and accurate and (ii) the admission of the petition into evidence.

The court of appeals relied on the supreme court’s opinion, *In re Z.G.J.*, 378 N.C. 500 (2021), in a TPR case, that held the brief oral testimony of the social worker who reaffirmed the allegations in the TPR petition was sufficient evidence to support the TPR adjudication. The court of appeals held that the evidence in *In re N.N.* was sufficient because there was some live testimony at the hearing, the parents had the opportunity to cross-examine the witness although they chose not to do so, and the parents did not object to the admission of the verified petition as evidence. Further, the court of appeals held that there is no requirement that the witness “adopt” the contents of the petition as part of their testimony. In both *In re N.N.* and *In re Z.G.J.*, the appellate courts placed importance on there being live witness testimony that can be subject to cross-examination. See *In re N.R.R.N.*, 297 N.C. App. 673 (2025) (companion case to *In re N.N.*, involving sibling, where adjudication was affirmed after adjudicatory hearing consisted of brief social worker testimony regarding the verified petition and the admission of the petition into evidence).

E. Evidence to Establish Abuse

1. Definition of abuse. The Juvenile Code defines an abused juvenile as any juvenile less than 18 years of age

- who is found to be a minor victim of human trafficking under G.S. 14-43.15 or unlawful sale, surrender, or purchase of a minor under G.S. 14-43.14 or
- whose parent, guardian, custodian, or caretaker
 - inflicts or allows to be inflicted on the juvenile a serious physical injury by other than accidental means;
 - creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - uses or allows to be used on the juvenile cruel or grossly inappropriate procedures or devices to modify behavior;
 - commits, permits, or encourages the commission of a violation of laws involving a sexually violent offense under G.S. 14-208.6(5) and other specified public morality and decency offenses by, with, or upon the juvenile;
 - commits or allows to be committed against the juvenile an offense involving human trafficking, involuntary servitude, or sexual servitude;
 - creates or allows to be created serious emotional damage to the juvenile (serious emotional damage is evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward himself, herself, or others); or
 - encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

G.S. 7B-101(1), as amended by S.L. 2025-16, sec. 1.1, effective October 1, 2025. See Chapter 2.3.B (discussing the definition of abuse and cases interpreting it).

The appellate courts have recognized “[t]here is a commonality present in these criteria. Each definition states that a juvenile is abused when a caretaker harms the juvenile in some way, allows the juvenile to be harmed, or allows a substantial risk of harm.” *In re N.R.R.N.*, 297 N.C. App. 673, 687 (2025), quoting *In re M.G.*, 363 N.C. 570, 573 (2009). Unlike a neglected juvenile, the abuse of another juvenile, standing alone or with other factors, is insufficient for

also finding the juvenile at issue is abused. *In re N.R.R.N.*, 297 N.C. App. 673. Compare G.S. 7B-101(15) (definition of “neglected juvenile”) with G.S. 7B-101(1).

In a criminal case involving felony child abuse, the court of appeals discussed what it means when a parent “allows” the commission of any sexual act on their child. See G.S. 14-318.4(a2). In a case of first impression, the court of appeals looked to the dictionary definition of “allows” and held that allows consists of three prongs, none of which require the parent to be present when the act occurs. The parent must have

- actual knowledge of the conduct,
- the capacity to prevent further conduct, and
- fails to take reasonable steps to protect their child.

State v. Kleist, ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 5, 2025) (no error in denying motion to dismiss felony child abuse charge based on mother allowing sexual abuse of daughter by mother’s live-in partner; distinguishing “allowing” from “aiding and abetting”).

Although not in the definition of abused juvenile, a petition alleging abuse cannot be based solely on a child being raised consistently with their biological sex, including referring to the child in a way that is consistent with their biological sex. G.S. 7B-102, enacted by S.L. 2025-59, sec. 1(b), effective July 3, 2025.

2. Evidence related to abuse. Case law related to evidence for an adjudication of abuse is relatively limited, as compared to case law related to neglect. Since part of the definition of abuse specifies serious physical injury and grossly inappropriate procedures or devices to modify behavior, circumstances involving child maltreatment more often meet the definition of neglect, in the form of improper care, supervision, or discipline or an environment that is injurious to the child’s health and welfare than abuse. Where a child suffers physical injuries such as bone fractures or brain trauma there may be little dispute about whether the injuries actually occurred or are serious enough to come within the definition of an abused juvenile if the circumstances are created by a parent, guardian, custodian, or caretaker. Other situations are less clear regarding what constitutes abuse.

The court of appeals has stated, “when determining whether a ‘serious physical injury’ exists in the context of an abuse adjudication, . . . ‘the nature of the injury is dependent on the facts of each case.’ ” *In re L.T.R.*, 181 N.C. App. 376, 383 (2007). The Juvenile Code does not define “serious physical injury.” In addition to Black’s Law Dictionary definitions for “physical” and “injury,” the court of appeals has looked to the definition of serious physical injury in the context of felony child abuse, G.S. 14-318.4, to determine whether a serious physical injury exists for purposes of adjudicating a child as abused. *In re L.T.R.*, 181 N.C. App. 376 (cited by *In re A.D.W.*, 298 N.C. App. 515 (2025)). “Under [G.S.] 14-318.4, a ‘serious physical injury’ is defined as an injury that causes ‘great pain and suffering.’ ” *In re A.D.W.*, 298 N.C. App. at 522 (citation omitted).

Some common issues related to abuse have been discussed in appellate cases.

(a) Corporal punishment or discipline. The definition of abuse does not explicitly reference corporal punishment or discipline. If an abuse allegation is based on the inappropriate or excessive use of such discipline by a parent, guardian, custodian, or caretaker, that

discipline must satisfy one of the statutory criteria of the abused juvenile definition and be proved by clear and convincing evidence.

Serious physical injury inflicted by non-accidental means: G.S. 7B-101(1)(ii)a. Appellate decisions examining the type of injuries sustained from corporal punishment have varied in determining what constitutes abuse. The child’s age is taken into consideration. In one case, the court of appeals found that temporary bruising or temporary marks resulting from a spanking were insufficient to rise to the level of “serious injury” on a 13-year-old child. *In re C.B.*, 180 N.C. App. 221 (2006), *aff’d per curiam*, 361 N.C. 345 (2007). However, serious injury constituting abuse was found to have occurred where an almost 4-year-old child was hit with a brush, which left a dark, six-inch bruise on his thigh that lasted well over a week and caused the child to still experience sufficient discomfort to complain of pain several days later, and a doctor testified that it would have taken considerable force to cause such a bruise. *In re L.T.R.*, 181 N.C. App. 376 (2007). The court of appeals noted in *In re L.T.R.* that neither the statute nor case law requires that the injured child receive immediate medical attention to sustain a determination that the injury is serious. *See State v. Freeman*, 295 N.C. App. 209 (2024) (affirming instruction on felony child abuse without an instruction on misdemeanor child abuse given the serious physical injury child suffered from discipline, which included swelling, bruising, statements he was in pain, and difficulty walking).

Some cases involving an assessment of injuries resulting from physical discipline are examined in the context of neglect allegations, as opposed to abuse. Because neglect does not require a finding of serious physical injury or cruelty, the analysis is different, making it difficult to compare corporal punishment cases alleged as neglect versus those alleged as abuse. See section 6.3.F.2(f), below (discussing lack of proper discipline as neglect).

Use of cruel or grossly inappropriate procedures or devices to modify behavior: G.S. 7B-101(1)(ii)c. This definition of an abused juvenile addresses discipline without explicitly referring to the term. According to the court of appeals, “the term ‘cruel or grossly inappropriate’ typically refers to ‘extreme examples of discipline’ beyond what a reasonable parent would employ.” *In re E.P.-L.M.*, 272 N.C. App. 585, 594–95 (2020). The court of appeals has held that this definition of abuse focuses on the severity and brutality of the procedures and devices used by the parent, guardian, custodian, or caretaker and does not examine the child’s behavior that the procedures and devices were meant to correct. *In re F.C.D.*, 244 N.C. App. 243 (2015).

The first published appellate opinion that discussed this ground was in 2014. In the case *In re H.H.*, 237 N.C. App. 431 (2014), *overruled by implication in part on other grounds by In re B.O.A.*, 372 N.C. 372 (2019) (*see In re S.G.*, 268 N.C. App. 360 (2019) (recognizing *In re B.O.A.* overruled *In re H.H.*)), the petition alleged abuse under this prong of the abuse definition due to the mother’s physical discipline of her 8-year-old son. The court of appeals determined that sufficient findings were made to support the adjudication, including that the mother struck the child five times with a belt, leaving multiple bruises on the inside and outside of his legs that were still visible the next day, and the child described “a beating.” In another published opinion, the court of appeals affirmed the adjudication of abuse based on the findings that the child was (1) forced to sleep outside on at least two cold nights in February, (2) bound to a tree, (3) required to conduct a “self-

baptism” in a bathtub full of water, (4) ordered to pray while his caretaker held a firearm, (5) struck with a belt all over his body and (6) repeatedly told that he was possessed by a demon to the point that the child began to believe that was true. *In re F.C.D.*, 244 N.C. App. 243.

In a supreme court opinion addressing abuse stemming from discipline, *In re A.J.L.H.*, 384 N.C. 45 (2023), the supreme court affirmed an abuse adjudication (and reversed the court of appeals opinion that vacated and remanded the adjudication) when determining that the frequent use of physical discipline resulting in marks and a bruise on a 9-year-old child and the requirement that the child stand in the corner for hours and sleep on the floor was abuse based on cruel or inappropriate devices or procedures to modify the child’s behavior. The supreme court acknowledged that “when used sparingly, none of respondents’ chosen forms of discipline... would *compel* a finding of abuse” but here, the discipline was not used sparingly as it was used for days at a time and for possibly two months. *In re A.J.L.H.*, 384 N.C. at 54 (emphasis in original).

Resources:

For a further discussion on discipline and abuse under the Juvenile Code, see

- Sara DePasquale, [When Parental Discipline Goes Too Far, It’s Child Abuse](#), UNC SCH. OF GOV’T: ON THE CIVIL SIDE BLOG (May 25, 2016).
 - Sara DePasquale, [Parental Discipline: When Is It Abuse and/or a Crime?](#), UNC SCH. OF GOV’T: NORTH CAROLINA CRIMINAL LAW BLOG (Nov. 13, 2014).
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(b) Serious emotional damage: G.S. 7B-101(1)(ii)e. Serious emotional damage is evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward themselves or others. G.S. 7B-101(1)(ii)e. The statute does not require a formal psychiatric diagnosis of any of the psychological conditions set out in the statute. *In re K.W.*, 272 N.C. App. 487 (2020); *In re A.M.*, 247 N.C. App. 672 (2016).

- Evidence mother coached the children regarding allegations of sexual abuse against father, subjected the children to unnecessary evaluations, alienated the children from their father, discussed the children’s sexual behavior with numerous others, did not cooperate with the court-ordered forensic examination, and sabotaged DSS’s investigation was sufficient to support an adjudication of abuse based on serious emotional damage, whether or not the allegations against father were true. *In re B.C.*, 298 N.C. App. 153 (2025).
- Evidence of mother’s repeated false allegations of physical abuse by father resulted in emotional abuse of child based on child’s severe anxiety stemming from “the high level of acrimony and vilification of Respondent/father by Respondent/mother.” *In re K.W.*, 272 N.C. App. at 490–91.
- Evidence of mother’s false allegations of child’s sexual abuse by father, resulting in repeated and unnecessary invasive medical procedures and interviews, resulted in daughter displaying signs of emotional abuse. *In re E.P.-L.M.*, 272 N.C. App. 585 (2020).
- Evidence of child’s emotional damage resulting from her parents’ actions during their custody disputes was supported by clear and convincing evidence. The findings that child lived in a constant state of chronic emotional abuse because of the stress related

to the parents' conflict and father's actions of questioning her and talking about mother, resulting in child's anxiety and health issues, supported adjudication of abuse. *In re M.M.*, 272 N.C. App. 55 (2020).

- Evidence of child's emotional withdrawal as a coping mechanism for the child's feelings of hopelessness and anxiety, arising from mother's continued foul, abusive language and maltreatment of child, was sufficient to support an adjudication of abuse based on serious emotional damage. *In re A.M.*, 247 N.C. App. 672.
- Evidence of serious emotional damage due to the parents' long-standing, acrimonious marital dispute, resulting in chronic adjustment disorder and depression in their children, was sufficient to support a finding of emotional abuse and a conclusion that the children were abused juveniles. *Powers v. Powers*, 130 N.C. App. 37 (1998).

(c) Commission of sexually violent offense and other specified crimes by, with, or upon a child: G.S. 7B-101(1)(ii)d. An adjudication of abuse under this prong is not a question of whether the respondent is guilty of the alleged crime but is instead whether the findings resulting in the adjudication of an abused juvenile are supported by clear and convincing evidence. *In re N.K.*, 274 N.C. App. 5 (2020).

By a child. An older sibling who repeatedly sexually abused a younger sibling and the younger sibling victim were both abused juveniles (abuse includes a parent who permits or encourages the commission of certain sex crimes by, with, or upon a child). Evidence supported the findings of abuse by the older sibling, established that respondent parents were aware of the abuse based on the younger sibling's repeated disclosures to them over a period of two years as well as disclosures made to other family members, and showed that the older sibling had been adjudicated delinquent after admitting to multiple counts of second degree sexual offenses against the younger sibling. *In re M.A.E.*, 242 N.C. App. 312 (2015).

With or upon a child.

- "Evidence of the creation, dissemination, or maintenance of pornographic photos of a child is evidence of abuse." *In re N.K.*, 274 N.C. App. 5, 8 (2020). Evidence, through a detective's testimony, was sufficient to establish abuse where mother took pornographic photographs of her son on her phone to falsely accuse her brother of doing so and disseminated the photos to others, including law enforcement. Regardless of the purpose mother claims for the distribution of the photos, she disseminated the photos.
- Evidence was sufficient to establish abuse where the child had made statements that the father had asked the child to touch his penis, asked her to look at magazines with pictures of naked people, and put his hand on her crotch in bed; and in response to the trial court's question about what she saw when she was in the basement with the child and her father, the child's cousin made a drawing that depicted a man exposing himself. *In re Cogdill*, 137 N.C. App. 504 (2000).
- Evidence was sufficient to support a determination of abuse where the father grabbed the child from behind and fondled her breasts and on another occasion inappropriately touched her in the vaginal area. *In re M.G.*, 187 N.C. App. 536 (2007), *rev'd in part on other grounds*, 363 N.C. 570 (2009).

(d) Serious physical injury inflicted by non-accidental means: G.S. 7B-101(1)(ii)a. A child may be adjudicated abused when they sustain unexplained non-accidental injuries. *In re E.H.*, 294 N.C. App. 139 (2024), *rev'd in part on other grounds*, 388 N.C. 100 (2025); *In re W.C.T.*, 280 N.C. App. 17 (2021); *In re K.L.*, 272 N.C. App. 30 (2020); *In re L.Z.A.*, 249 N.C. App. 628 (2016). There is no requirement that a finding that the injury was non-accidental be supported by witness (medical or otherwise) testimony. *In re W.C.T.*, 280 N.C. App. 17; *In re S.G.*, 268 N.C. App. 360 (2019).

However, unexplained injuries alone cannot support an adjudication of abuse; there must be some evidence to show the injuries were inflicted or allowed to be inflicted by a respondent. *In re L.B.*, 296 N.C. App. 498 (2024); *In re K.L.*, 272 N.C. App. 30. A parent's, guardian's, custodian's, or caretaker's exclusive custody of a child who suffers non-accidental injuries that were not self-inflicted can support an inference that the adult inflicted the injuries. *In re A.H.-G.*, ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 17, 2025); *In re W.C.T.*, 280 N.C. App. 17; *see State v. Wilson*, 181 N.C. App. 540 (2007). There must be clear and convincing evidence to support the inference that the parent, guardian, custodian, or caretaker inflicted the injuries or allowed them to be inflicted. *In re L.B.*, 296 N.C. App. 498. An abuse adjudication may be based on non-accidental injuries without a finding of a pattern of abuse or the presence of risk factors. *In re L.B.*, 296 N.C. App. 498; *In re K.L.*, 272 N.C. App. 30; *In re L.Z.A.*, 249 N.C. App. 628. There is also no requirement to prove abuse beyond a reasonable doubt or to rule out "every remote possibility" of the cause of the injury. *In re L.Z.A.*, 249 N.C. App. at 638. There is no minimum threshold for a serious injury as the determination is dependent on the facts of each case. *In re S.G.*, 268 N.C. App. 360.

Unexplained serious injuries sustained by a sibling alone are insufficient to support the adjudication of another child in the home as abused. There must be evidence of direct action by the parent harming the child or placing the child at substantial risk of harm. *In re N.R.R.N.*, 297 N.C. App. 673 (2025) (reversing abuse adjudication and affirming neglect adjudication; only evidence presented was of unexplained serious injuries sustained by the sibling at a similar age; holding that unlike adjudicating a child as neglected based on prior abuse of a sibling, past abuse of a sibling is insufficient grounds for also finding another child presently abused).

Evidence was sufficient to find abuse based on serious physical injury inflicted by non-accidental means.

- Findings supported the adjudication of 9-year-old child as abused based on serious physical injury to the child by non-accidental means where father was aware of the risk to the child's life and health associated with the child's diabetes being unmonitored by an adult and failed to provide necessary medical care or take any necessary steps to protect the child. The child was repeatedly admitted to the ICU for multiple days, at times near death, and suffered acute kidney damage due to father's inaction, refusal to take responsibility for monitoring and managing the child's diabetes, and blaming the child for his inability to care for himself. The CME determined the child was at high risk for death and further organ damage due to mismanagement of the child's diet, blood sugar, and medication administration. *In re*

A.D.W., 298 N.C. App. 515. Note that child was also adjudicated neglected for same circumstances.

- Adjudication of a 4-month old infant as abused based on unexplained non-accidental serious physical injury was supported by findings that the infant suffered multiple injuries that were a near-fatality event when parents acknowledged they were their child’s sole caregivers. Findings included father’s rough handling of the infant while in the NICU, parents being denied access to the NICU, and the infant’s severe injuries after being discharged home to their parents’ exclusive care and being in good health during a social worker visit two days before being brought to the hospital emergency department. *In re N.N.*, 296 N.C. App. 159 (2024).
- Adjudication of 3-week-old infant as abused based on non-accidental serious physical injury was supported by findings that the infant suffered several acute bone fractures on his body; the infant’s injuries occurred while in the sole care of mother and father; and mother and father gave no plausible explanation for the infant’s injuries. The challenged findings were supported by social worker and expert testimony. The court weighed conflicting expert testimony offered by parents regarding other possible medical explanations for the child’s serious injuries, ultimately exercising its discretion and finding evidence presented by the DSS expert testimony more credible than parents’ experts. *In re E.H.*, 294 N.C. App. 139 (2024), *rev’d in part on other grounds*, 388 N.C. 100 (2025).
- Undisputed evidence showed the juvenile was in the exclusive care of his caretaker (grandmother) when the injury occurred. Unchallenged findings support the inference that the child’s injury, significant burns, was non-accidental. The findings included (1) the caretaker’s threatening behaviors and concern of doctors and social workers about potential domestic abuse committed by the caretaker in the home; (2) the caretaker and parents, who lived together, conspiring to create false explanations for the child’s injury and failing to cooperate with DSS and law enforcement; and (3) a delay in seeking immediate medical treatment for the child. *In re W.C.T.*, 280 N.C. App. 17.
- Findings that a 3-year-old child had distinct patterned bruising on his forehead and upper eyelid, visible at least four days after the incident, supported the trial court’s conclusion of a serious injury. While no medical expert explicitly testified that the injuries occurred through non-accidental means, two medical professionals testified without objection that mother’s explanation was inconsistent with the nature of the child’s injuries and that the bruising was “definitely consistent with having been hit with a belt buckle”, which supported the determination that the injuries were non-accidental. *In re S.G.*, 268 N.C. App. at 365.
- An abuse adjudication based on respondent inflicting or allowing to be inflicted serious physical injury, and by creating a substantial risk of serious physical injury, both by non-accidental means was supported by findings that (1) the child did not experience any substantial injuries when placed in residential care outside the home; (2) the child gave conflicting explanations for injuries sustained after discharge; (3) the extent of the child’s injuries and the lack of explanation supported a conclusion of abuse based in part on respondents allowing the child to injure himself; and (4) the child’s injuries arose from respondent’s failure to maintain the child’s prescribed medication, which respondent acknowledged caused behavior problems, and failure to

provide adequate supervision of a child known to have significant mental health and behavioral issues. *In re K.B.*, 253 N.C. App. 423 (2017).

- An abuse adjudication was affirmed where there were findings of fact that the child was seen at a hospital for scratches, bruises, swelling, and a skull fracture; a pediatrician concluded that the skull fracture was caused by non-accidental means; the mother's explanations were inconsistent with the injuries; the injuries occurred during the dates the mother had physical custody of the child; and the mother failed to obtain medical attention for the child even though the injuries were obvious and severe. *In re T.H.T.*, 185 N.C. App. 337 (2007), *aff'd as modified on other grounds*, 362 N.C. 446 (2008).
- Non-accidental injury was established where an infant had multiple rib fractures that were several weeks old and in different stages of healing, the parents were the primary caretakers but had not sought medical attention for the child, and there was an undisputed finding that the injury would have caused the child to cry. *In re S.W.*, 187 N.C. App. 505 (2007).
- Evidence was sufficient to show non-accidental injury where doctors testified that the child had suffered a severe blow to the head resulting in extensive bleeding over the surface of the brain within a relatively short time before being brought to the hospital. Doctors could not specify exactly where or how the injury occurred, but three of four doctors testified that the injuries were likely non-accidental. *In re C.M.*, 198 N.C. App. 53 (2009). *See also In re L.Z.A.*, 249 N.C. App. 628 (abuse adjudication affirmed based on findings that showed pre-mobile infant, while in the sole care of her parents, suffered a skull fracture, subdural hematomas, and an arm fracture that expert witness determined were likely the result of non-accidental trauma).

Evidence was not sufficient to find abuse based on serious physical injury inflicted by non-accidental means.

- Evidence that the infant suffered multiple unexplained bruises for which mother and caretaker did not seek medical attention was insufficient to support the inference that mother and caretaker inflicted the injuries or allowed them to be inflicted. There were no findings made as to the severity of the bruises or whether they were sustained by non-accidental means. The court found mother and caretaker claimed the bruises were on the infant when they picked the child up from daycare but made no findings as to the credibility of their statements. *In re L.B.*, 296 N.C. App. 498.
- Evidence showed the juvenile infant was not in the exclusive care of his parents when the unexplained injuries (bone fractures) resulting from non-accidental means were believed to have occurred. The infant had been with a babysitter on two days, and although in the parents' care on two different days, the infant was held by several family members at different family events. Evidence was also insufficient to show parents inflicted or allowed to be inflicted injuries to their child as there were no red flags regarding the parents' care for their child. *In re K.L.*, 272 N.C. App. 30.
- Evidence was not sufficient to support a conclusion that a child with unusual fractures had been abused and neglected where medical testimony from eight physicians ranged from conclusions that the child's injuries were due to shaken baby syndrome to "I don't know what happened to this child;" the child's regular pediatrician reported no concerns or "red flags" for child abuse in her dealings with the child's family; there

was no evidence that the child’s parents were anything other than loving and caring, nor was there any evidence of marital problems between parents or any psychiatric condition that affected their ability to parent the child appropriately. *In re A.R.H.*, 177 N.C. App. 797, 800 (2006).

(e) Failure to prevent harm. Failure to prevent harm or allowing situations to occur that would tend to promote harm can be considered abuse. The court of appeals “has repeatedly held that when the parent is aware of the existence of the risk and ‘fail[s] to take the necessary steps to protect [the] minor’ the element of ‘allow[s] to be created a substantial risk’ under N.C. Gen. Stat. § 7B-101(1)(b) is met.” *In re A.D.W.*, 298 N.C. App. at 521 (citations omitted) (affirming abuse adjudication; holding father was aware of risk of not monitoring and taking necessary steps to treat child’s Type I diabetes; father’s inaction resulted in child’s organ damage and near death). Additionally, “[w]hen a parent is aware of their child’s serious medical issue and fails to provide or acquire the necessary medical care, which causes injury to the child and places the child at risk of serious physical harm or death, this failure can constitute both abuse and neglect of the child.” *In re A.D.W.*, 298 N.C. App. at 527.

In one case, where the mother knew of the father’s violent and abusive nature and alcohol abuse, witnessed many incidents where the father would consume alcohol to excess and act out against her and the children, allowed the father to drive the children after he had consumed a large quantity of alcoholic beverages, and failed to take necessary steps to protect the children, the evidence was sufficient to support an adjudication of abuse in that the mother allowed to be created a substantial risk of serious physical injury to the children by other than accidental means. *In re M.G.*, 187 N.C. App. 536 (2007), *rev’d in part on other grounds*, 363 N.C. 570 (2009). *See also In re Y.Y.E.T.*, 205 N.C. App. 120 (2010) (holding that where non-accidental injuries occurred to infant while under the care of both parents and the perpetrator could not be identified, both parents were deemed responsible, either for directly causing the injury or for failing to prevent it); *In re Gwaltney*, 68 N.C. App. 686 (1984) (affirming adjudication of abuse and neglect where evidence showed that mother acquiesced in sexual abuse of the child).

F. Evidence to Establish Neglect

1. Definition of neglect. The Juvenile Code in G.S. 7B-101(15) defines a neglected juvenile as

- one who is found to be a minor victim of human trafficking under G.S. 14-43.15;
- one whose parent, guardian, custodian, or caretaker
 - does not provide proper care, supervision, or discipline to the juvenile;
 - has abandoned the juvenile;
 - has not provided necessary medical or remedial care for the juvenile;
 - creates or allows to be created a living environment that is injurious to the juvenile’s welfare;
 - has unlawfully transferred custody of the juvenile under G.S. 14-321.2; or
 - has illegally placed the juvenile for care or adoption in violation of the law; or

- one whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team regarding a “vulnerable juvenile” who is receiving juvenile consultation services from a juvenile court counselor. *See* G.S. 7B-1501(27b) (definition of “vulnerable juvenile”); 7B-1706.1 (juvenile consultation services); 7B-2715 through -2718 (describing authority over parents, guardians, and custodians of vulnerable juveniles receiving consultation services including the makeup of the Juvenile and Family Team).

Although not in the definition of neglected juvenile, a petition alleging neglect cannot be based solely on a child being raised consistently with their biological sex, including referring to the child in a way that is consistent with their biological sex. G.S. 7B-102, enacted by S.L. 2025-59, sec. 1(b), effective July 3, 2025.

See Chapter 2.3.B (discussing the definition of neglect and cases interpreting the definition).

Legislative Note: Effective October 1, 2021, the definition of “neglected juvenile” was amended to create subsections a. through g., mirroring the format of “abused juvenile” found at G.S. 7B-101(1). Corresponding changes were made to the language in G.S. 7B-101(15) to comport with the format change from a run-on sentence to the new subsections. *See* S.L. 2021-132, sec. 1.(a); *In re K.E.P.*, 298 N.C. App. 527 (2025) (rejecting argument that legislative amendments to the definition of neglected juvenile at G.S. 7B-101(15) shifts the focus to the parent’s actions and not the child’s circumstances; noting court of appeals is bound by supreme court precedent and *In re Montgomery*, 311 N.C. 101 (1984), has not been overruled).

Resource: For more information about a “vulnerable juvenile” and the amendments made to the juvenile delinquency laws, see Jacquelyn Greene, [From 6 to 10: New Minimum Age for Juvenile Delinquency and Undisciplined Jurisdiction](#), UNC SCH. OF GOV’T: ON THE CIVIL SIDE BLOG (Oct. 4, 2021).

In determining whether a juvenile is neglected, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or has been subjected to abuse or neglect by an adult who regularly lives in the home. G.S. 7B-101(15). Note this same provision does not apply when determining whether a juvenile is abused. *In re N.R.R.N.*, 297 N.C. App. 673 (2025).

The Juvenile Code defines a neglected juvenile at G.S. 7B-101(15), and a court is not required to examine or apply the criminal statutes when determining whether neglect exists. *In re D.S.*, 286 N.C. App. 1 (2022) (rejecting argument by DSS that court should look to the misdemeanor crime of leaving a child under 8 alone and confined in a dwelling, potentially exposing the child to a risk of fire). In *In re D.S.*, the court of appeals explained that the legislature specifically divided the Juvenile Code and Criminal Code, and unless they reference one another, there is no reason to link these two separate Chapters together. To do so “would result in harsh, undesirable consequences...[and] is directly contrary to the purpose of Chapter 7B as described in § 7B-100....” *In re D.S.*, 286 N.C. App at 19.

The definition in G.S. 7B-101(15) pertains to the adjudication of a juvenile as neglected. The definition of “serious neglect” in G.S. 7B-101(19a) is not to be applied to the adjudication of a juvenile in an abuse, neglect, or dependency case. “Serious neglect” is used only in

connection with the placement of an individual on the Responsible Individuals List. *In re J.M.*, 255 N.C. App. 483 (2017). For more on the Responsible Individuals List, see Chapter 5.2.B.

North Carolina appellate courts have held that “not every act of negligence on the part of parents or other caregivers constitutes ‘neglect’ under the law and results in a ‘neglected juvenile.’ ” *In re Stumbo*, 357 N.C. 279, 283 (2003) (reversing adjudication of neglect; one anonymous report of a 2-year-old child in the driveway, naked and unsupervised, was insufficient to trigger DSS involvement); *In re D.S.*, 286 N.C. App. 1 (reversing adjudication of neglect; applying criminal statutes to definition of neglected juvenile would result in neglect when a parent leaves their home to complete minimal household tasks and would lead to an absurd result and contravene the purpose of the Juvenile Code); *In re V.M.*, 273 N.C. App. 294 (2020) (paraphrasing *In re Stumbo*) (reversing and remanding adjudication of neglect where mother mistakenly used water bottle that others had filled with liquor to feed her baby his formula, causing baby’s acute alcohol intoxication). Instead, neglect involves conduct that is “either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury.” *In re Stumbo*, 357 N.C. at 283, quoted in *In re G.B.G.*, 297 N.C. App. 772, 781 (2025) and *In re V.M.*, 273 N.C. App. at 297. Neglect involves “treatment of a child which falls below the normative standards imposed upon parents by our society” *In re V.M.*, 273 N.C. App. at 297. See *In re A.H.*, 385 N.C. 666 (2024) (per curiam) (affirming neglect adjudication; relying on the reasoning stated in the dissenting opinion of the court of appeals, 289 N.C. 501, 510-25 (2023), quoting *In re Stumbo* and *In re V.M.*; single incident where father knowingly left child running into a busy road and failed to check on her well-being supported a conclusion of neglect).

Some aspects of the definition of neglect are relatively vague, making it especially important for the court and parties to take into account community and cultural values as well as the purposes of the Juvenile Code when determining the meaning of phrases like “proper care [and] supervision,” “necessary medical care,” or “environment injurious to the juvenile’s welfare.” However, the statutory definition of neglect has been found to be constitutional and not void for vagueness. See *In re Moore*, 306 N.C. 394 (1982); *In re Huber*, 57 N.C. App. 453 (1982); *In re Biggers*, 50 N.C. App. 332 (1981). Note that these cases dealt with a previous, but similar, version of the definition.

Some of the case law related to what constitutes neglect is in the context of termination of parental rights (TPR) proceedings as opposed to proceedings on petitions alleging neglect. Appellate cases have distinguished neglect in the two types of proceedings, noting that in a TPR case, the child has usually been removed from the parent’s home for a significant period of time, but an adjudication resulting from a petition alleging neglect typically occurs immediately after the child has been removed. *In re K.J.D.*, 203 N.C. App. 653 (2010). However, both types of proceedings use the definition of neglect found at G.S. 7B-101(15) and so the court “may look to cases arising in either context to determine if neglect has been demonstrated in the case.” *In re K.J.D.*, 203 N.C. App. at 659. See Chapter 9.11.A relating to neglect in the context of TPR cases.

2. Evidence related to neglect. Appellate cases typically deal with a trial court’s adjudication of neglect that is based on more than one aspect of the definition of neglect (e.g., a combination of lack of proper care, lack of proper supervision, and an injurious environment).

In a neglect determination, the evidence must be reviewed on a case-by-case basis considering the totality of the evidence. *In re L.T.R.*, 181 N.C. App. 376 (2007). See *In re A.H.*, 385 N.C. 666 (2024) (per curiam), *relying on reasoning stated in* 289 N.C. 501, 510-25 (2023) (Floods, J., dissenting); *In re J.R.*, 243 N.C. App. 309 (2015). Evidence that the parent loves or is concerned about their child will not necessarily prevent the court from making a determination that the child is neglected. *In re Montgomery*, 311 N.C. 101 (1984).

The following cases highlight some aspects of neglect or factors contributing to neglect that have been discussed by appellate courts.

(a) Harm or risk of harm. Although not in the definition of neglected juvenile in G.S. 7B-101(15), when evaluating evidence to establish neglect, the appellate courts have said that the evidence must show that a child suffers a physical, mental, or emotional impairment or is at substantial risk of such impairment as a result of the parent’s, guardian’s, custodian’s, or caretaker’s failure to provide proper care, supervision, discipline, or medical care, or as a result of the child living in an injurious environment. See *In re L.C.*, 387 N.C. 475 (2025); *In re A.H.*, 385 N.C. 666; *In re K.J.M.*, 288 N.C. App. 332 (2023); *In re A.W.*, 377 N.C. 238 (2021); *In re J.A.M.*, 372 N.C. 1 (2019); *In re K.J.B.*, 248 N.C. App. 352 (2016); *In re J.R.*, 243 N.C. App. 309 (2015). Actual harm is not required but rather a substantial risk of harm is sufficient. *In re A.J.L.H.*, 384 N.C. 45 (2023); *In re D.B.J.*, 197 N.C. App. 752 (2009). This additional requirement of harm or substantial risk of harm results from the State’s “authority ... to regulate the parent’s constitutional right to rear their children, *Meyer v. Nebraska*, 262 U.S. 390 ... (1923), only when ‘it appears that parental decisions will jeopardize the health or safety of the child.’ ” *In re K.J.M.*, 288 N.C. App. at 347 (citation omitted).

The trial court has “some discretion in determining whether children are at risk for a particular kind of harm given their age and the environment in which they reside.” *In re M.C.*, 286 N.C. App. 632, 645 (2022) and *In re A.D.*, 278 N.C. App. 637, 642 (2021) (both quoting *In re C.M.*, 183 N.C. App. 207, 210 (2007)); *In re E.P.-L.M.*, 272 N.C. App. 585, 596 (2020). Conduct that may cause or potentially cause injury to the child “may include alcohol or substance abuse by the parent, driving while impaired with a child as a passenger, or physical abuse or injury to a child inflicted by the parent...., exposing the child to acts of domestic violence, abuse of illegal substances, and threatening or abusive behavior toward social workers and police officers in the presence of the children.” *In re D.B.J.*, 197 N.C. App. at 755. Other situations involve leaving a child alone and unsupervised. The court of appeals determined that a 6-year-old child was at substantial risk of harm based on a lack of proper care or supervision and living in an injurious environment when his mother was incarcerated, father was deceased, caretaker was arrested, and no other caretaker was available for an indefinite period of time. *In re K.J.M.*, 288 N.C. App. 332. In examining a prior case that involved a 16-month-old being left unsupervised in a motel for thirty minutes, *In re D.C.*, 183 N.C. App. 344 (2007), the court of appeals explained that the location and age of the juvenile did not distinguish the cases because a 6-year-old can explore and encounter various hazards when left alone.

In 2023, the supreme court held that a finding regarding harm or a substantial risk of harm to the juvenile is not required by statute or by precedent. *In re G.C.*, 384 N.C. 62 (2023) (reversing court of appeals opinion that vacated and remanded neglect adjudication due to

lack of findings about harm or substantial risk of harm to the juvenile), *cited by In re L.C.*, 387 N.C. 475. Any court of appeals opinions that require a written finding of fact of harm or a substantial risk of a physical, mental, or emotional impairment to the juvenile is overruled. *In re G.C.*, 384 N.C. 62 (cited by *In re L.C.*, 387 N.C. 475). Although the court of appeals required a finding, which is now overruled, it also recognized that where the finding was not made, “there is no error if all the evidence supports such a finding.” *In re R.B.*, 280 N.C. App. 424, 433 (2021) (citations omitted). Further, the court of appeals has stated, that although evidence of some type of harm or substantial risk of harm – physical, mental, or emotional – is required, “. . . there is no requirement that the court make a specific finding where the facts support a finding of harm or substantial risk of harm.” *In re A.D.*, 278 N.C. App. at 642 (citing *In re Safriet*, 112 N.C. App. 747, 753 (1993)).

In a 2025 opinion, the supreme court held that “a trial court does not need to specify whether the impairment in question is physical, mental, or emotional.” *In re L.C.*, 387 N.C. at 481 n.9. Recognizing that impairments may not fall clearly into one of these three categories, the supreme court stated that the trial court need only “conclude the existence of impairment (or a substantial risk thereof) based on a reasonable interpretation of the evidentiary findings.” *In re L.C.*, 387 N.C. at 481 n.9 (citing to *In re Stumbo*, 357 N.C. 279 (2003)) (holding the trial court did not err in failing to determine in its findings of fact whether mother’s statements to DSS that rats were in the walls of her home were credible or due to hallucinations from mother’s drug use; stating either possibility demonstrate a mental or physical impairment and risk of substantial harm to the child under *In re G.C.*, 384 N.C. 62).

- (b) Other children living in the home.** Language in G.S. 7B-101(15) about the relevance of abuse or neglect of other children does not mandate a conclusion that a child is neglected when another child in the home has been abused or neglected. *See In re J.A.M.*, 372 N.C. 1, 9 (2019) (a juvenile may not be adjudicated as neglected “solely based upon previous Department of Social Services involvement relating to other children[,]” which in this case referred to termination of respondent mother’s rights to six older children; adjudication of neglect affirmed based on findings supported by the evidence of present risk factors and evaluations of past adjudications of other children).

The trial court has the discretion to determine the weight to be given to evidence related to abuse or neglect of other children. *See In re J.A.M.*, 372 N.C. 1; *In re S.M.L.*, 272 N.C. App. 499 (2020); *In re S.G.*, 268 N.C. App. 360 (2019); *In re A.S.*, 190 N.C. App. 679 (2008), *aff’d per curiam*, 363 N.C. 254 (2009). One critical factor is “whether the respondent indicates a willingness to ‘remedy the injurious environment that existed’ with respect to the [other] child[,]” and conduct such as failing to acknowledge the abuse or denying responsibility for the abuse indicates a parent’s unwillingness to remedy the injurious environment. *In re A.J.L.H.*, 384 N.C. 45, 56 (2023) (citation omitted) (affirming adjudication of abuse; respondents did not recognize their form of discipline was abuse and would not commit to not repeating it), *quoted in In re N.R.R.N.*, 297 N.C. App. 673, 685 (2025). In *In re E.H.*, 388 N.C. 100 (2025), the supreme court reaffirmed its precedent that when respondents do not provide a plausible explanation for a child’s severe nonaccidental injuries and cannot assure the abuse will not happen again, such as failing to acknowledge responsibility, other children in the home are at substantial risk of abuse and live in an injurious environment such that they are neglected. Reversing the court of

appeals and affirming the neglect adjudication, the supreme court stated, “[t]here is no need for the trial court to find a specific pattern of past abuse or specific facts that predict when and how future abuse might occur.” *In re E.H.*, 388 N.C. at 107.

A trial court may not adjudicate a juvenile neglected based solely on previous DSS involvement or the conclusion that another child was abused or neglected. *In re E.H.*, 388 N.C. 100; *In re A.J.L.H.*, 384 N.C. 45; *In re J.A.M.*, 372 N.C. 1. There must be clear and convincing evidence that there are “current circumstances that present a risk to the juvenile.” *In re J.A.M.*, 372 N.C. at 8 (quoted in *In re G.C.*, 384 N.C. 62, 68 (2023)). When a trial court relies on past abuse or neglect of other children when determining whether a juvenile is neglected, “the court is required to find ‘the presence of other factors to suggest that the neglect or abuse will be repeated.’ ” *In re S.M.L.*, 272 N.C. App. at 516 (citations omitted). Other “factors ‘include the presence of domestic violence in the home and current and ongoing substance abuse issues, unwillingness to engage in recommended services or work with or communicate with DSS regarding prior abuse and neglect, and failing to accept responsibility for prior adjudications.’ ” *In re J.C.*, 283 N.C. App. 486, 494–95 (2022). The court of appeals has stated that a “ ‘lack of knowledge’ of what caused an injury to one child, standing alone, is not sufficient to support an adjudication of neglect of another child.” *In re K.L.*, 272 N.C. App. 30, 54 (2020). However, the supreme court has stated “ ‘other factors’ can be circumstances surrounding the abuse itself that indicate other children in the home could face similar harm[,]” which may include how and why the other child was harmed, “whether other children in the home could be subject to that same harm, and whether the parents display a willingness to ‘remedy the injurious environment’ that caused the harm so that it cannot occur again.” *In re E.H.*, 388 N.C. at 105 (citation omitted).

There must be evidence to prove that another child was in fact abused or neglected by an adult that regularly lives in the home of the child who is the subject of the neglect proceeding, or that another child died as a result of suspected abuse or neglect. *See In re K.J.B.*, 248 N.C. App. 352 (2016) (reversing adjudication of neglect after determining (1) there was no evidence regarding where another child of the mother’s died or that the death was suspected to be from abuse or neglect as the evidence showed the child died of Sudden Infant Death Syndrome, and (2) there was no evidence that respondent mother’s rights to two of her other children were terminated because of abuse or neglect or that those children were abused or neglected). A finding by the trial court that another juvenile’s death was caused by one or both respondents, when those respondents continue to be together, may be considered when determining whether the juvenile lives in the home where the adult (in this case, respondent) regularly lives. *See In re A.W.*, 377 N.C. 238 (2021) (findings that there was no plausible explanation by either parent to explain the juvenile’s injuries, that the death of that juvenile was caused by one or both respondents, and that those respondents were still together and continued to be so were unchallenged).

Child who is the subject of the neglect proceeding is a newborn.

- When considering neglect of a newborn, the trial court’s decision must be “predictive in nature” as it must assess, based on the historical facts of the case, whether there is a substantial risk of future abuse or neglect. *In re J.A.M.*, 372 N.C. 1, 9; *In re A.W.*, 377 N.C. at 248 (quoting *In re J.A.M.*) (both affirming neglect adjudication of newborn).

- Appellate courts have not applied a literal interpretation of the language in G.S. 7B-101(15) that a child “lives in a home” where another child has died as a result of suspected abuse or neglect, or where another child has been abused or neglected by an adult who regularly lives in the home, with respect to newborns who are still in the hospital. *See, e.g., In re M.C.*, 286 N.C. App. 632 (2022). Appellate courts have held that the abuse or neglect of siblings or other children in the home, including events that occurred prior to the birth of the newborn, is relevant in assessing the risk to a newborn. *See, e.g., In re A.S.*, 190 N.C. App. 679, *aff’d per curiam*, 363 N.C. 254; *In re A.B.*, 179 N.C. App. 605 (2006); *In re E.N.S.*, 164 N.C. App. 146 (2004).
- Reversible error was found where an adjudication that a newborn was neglected was based on a prior adjudication of a sibling, when the trial court relied solely on prior orders concerning the sibling. The only prior order that could have been properly considered was from a hearing occurring many months earlier, and there was no evidence as to the parents’ progress since that time or whether they still denied knowing the cause of the sibling’s injuries. *In re A.K.*, 178 N.C. App. 727 (2006).

Consideration of adjudication of one child based in part on another child’s adjudication of abuse or neglect at the same adjudicatory hearing.

- When one child is adjudicated abused and neglected at the same hearing in which another child is alleged to be neglected, the trial court has the discretion to consider that adjudication relevant as an “other child in the home” who has been subjected to abuse and neglect. *See In re D.B.J.*, 197 N.C. App. 752 (2009) (conclusion that child was neglected was supported in part by findings that child’s sister had been physically abused by an adult who regularly lived in the home). *See also In re C.M.*, 198 N.C. App. 53 (2009) (trial court was permitted, although not required, to conclude at the same hearing that daughter was neglected based on evidence that son was abused and neglected).
- Where a child with serious mental health issues was adjudicated neglected and dependent, the sibling of that child also was neglected when the mother of both children (1) allowed the sibling to be continually exposed to the erratic, troubling, and violent behavior of the child with mental health issues; (2) failed to obtain mental health services for the child in need of those services, which could have mitigated her behavior; and (3) showed no concern for the effect that the behavior of the child with mental health issues had on the sibling. *In re C.B.*, 245 N.C. App. 197 (2016).

Adjudication of neglect as to child who is the subject of the proceeding requires assessment of substantial risk of harm.

Evidence of substantial risk of harm was sufficient to support adjudication of neglect.

- Neglect adjudication of older sibling who was of “tender” age to his younger sibling who suffered unexplained nonaccidental severe injuries was affirmed. The child’s young age, lack of any “plausible explanation” for the sibling’s injuries, and respondent’s denial of responsibility for those injuries created an unacceptable risk of harm to another child in the home and resulted in an environment that was injurious to that child’s welfare. *In re E.H.*, 388 N.C. 100.
- Where neither parent provided an explanation for the sibling’s near-fatal injuries

- sustained while in their exclusive care in the few days after the sibling’s discharge from the NICU or acknowledged or remedied the injurious environment created for the sibling, there was sufficient evidence the child, who was the same age as the sibling when the serious injuries occurred, was at a substantial risk of physical harm. *In re N.R.R.N.*, 297 N.C. App. 673.
- Adjudication of neglect was supported by findings that the juvenile lived in the same residence as her mother, who had been convicted of misdemeanor child abuse of the older siblings, who also had been previously adjudicated abused, neglected, and dependent, and of the younger sibling who died while not receiving proper care and supervision by mother when she placed him in a crib with blankets and his cause of death could not rule out an accidental asphyxia event when mother had been informed of proper sleeping arrangements for children. *In re G.C.*, 384 N.C. 62.
 - A trial court does not have to wait for actual harm to happen when there is a substantial risk of harm. The parents’ failure to acknowledge their discipline of their oldest child was abuse and their inability to commit to not using that form of discipline was evidence of a substantial risk of harm to the younger siblings. *In re A.J.L.H.*, 384 N.C. 45.
 - Failure to acknowledge responsibility for abuse or neglect of another child can contribute to a conclusion that there is a substantial risk of future abuse or neglect. *See In re A.W.*, 377 N.C. 238 (affirming neglect adjudication when mother failed to explain the cause for her other child’s injuries and death and provided an implausible explanation; continued to be in a relationship with father, who was charged with causing the other juvenile’s death; and colluded to deceive the court about that relationship); *In re N.G.*, 186 N.C. App. 1 (2007), *aff’d per curiam*, 362 N.C. 229 (2008).
 - Adjudication of two children as neglected was not supported solely by a finding that another child was abused and neglected. Respondent parents denied responsibility for injuries to the one child, and mother would not agree to keep children from the father, preferring to be with him and have the children stay elsewhere. These findings supported the court’s determination that that children were at risk of future harm if they remained with respondents. *In re S.G.*, 268 N.C. App. 360.
 - Where one child was adjudicated abused and neglected, the younger sibling was also neglected when she was exposed to her older sibling’s abuse and neglect. The court of appeals stated “the exposure of a child to the ‘infliction of injury by a parent to another child or parent, can be conduct causing or potentially causing injury’ to that child.” *In re F.C.D.*, 244 N.C. App. 243, 254 (2015) (citations omitted) (adjudication affirmed; younger sister’s exposure to her brother’s abuse was distressing and could cause fear and worry that the same would happen to her).

Evidence of substantial risk of harm was insufficient to support adjudication of neglect.

- The findings addressing the circumstances involving the neglect of 15-year-old sibling consisted of her untreated mental health issues resulting in self-harm and her involvement in the parents’ incidents of domestic violence. These same issues did not exist for the younger sibling such that the circumstances were inherently different for the two juveniles. The trial court was correct in dismissing the neglect petition for the

younger child as there was no risk of harm to that child. *In re G.B.G.*, 297 N.C. App. 772 (2025).

- Findings that the infant sibling suffered multiple unexplained bruises, which standing alone were insufficient to support the adjudication of the infant sibling as abused and neglected, were insufficient to support the adjudication of the older sibling who lived in the home as neglected. The only findings made as to the older sibling were that the child was “emotionless” and “singing in the backseat” when removed from the home. No findings were made as to whether there was a substantial risk of future abuse or neglect of the older sibling. *In re L.B.*, 296 N.C. App. 498 (2024).
- The trial court based its adjudication of neglect for one child after adjudicating the younger sibling abused and neglected and did not consider other factors that would show a substantial risk of harm to the older child or that the neglect or abuse will be repeated. Parents were cooperative, forthcoming, and willing to work with DSS and medical providers and did not have other risk factors in their home. *In re K.L.*, 272 N.C. App. 30 (reversing adjudication of neglect; summarizing prior opinions addressing other factors that suggest abuse or neglect will be repeated, which included domestic violence in the home, ongoing substance use, prior DSS involvement, or an unwillingness to engage in services).
- Findings do not support the adjudication of neglect as the findings did not address presence of other factors suggesting prior neglect would be repeated with this juvenile and how discharge from hospital to father would present a substantial risk of harm. The approximate five minutes the child was left alone sleeping when father was not home is not a substantial risk of harm as it poses the same risk as if father had been sleeping in another room. *In re D.S.*, 286 N.C. App. 1 (2022).

(c) Lack of proper care or supervision. The court must make findings from the evidence to support the ultimate fact that the juvenile did not receive proper care and supervision from a parent, guardian, custodian, or caretaker. A “token conclusion” that the child did not receive proper care and supervision is insufficient. *See In re V.M.*, 273 N.C. App. 294 (2020) (reversing and remanding adjudication of neglect; court’s conclusion of neglected juvenile was not supported by the cursory facts that failed to explain the steps mother should have taken or that the danger to the juvenile was foreseen; the cursory findings support a determination that the mother accidentally fed her child formula with alcohol).

Evidence was not sufficient to find lack of proper care or supervision.

- Findings that the infant suffered multiple unexplained bruises, standing alone, was insufficient to find that the infant did not receive proper care or supervision or that the parent or caretaker created or allowed the children to live in an injurious environment. The court made no findings as to the severity of the bruises or the credibility of mother’s and caretaker’s statements that the bruises were on the infant when the infant was picked up from daycare. *In re L.B.*, 296 N.C. App. 498.
- An anonymous call to DSS reporting a naked 2-year-old child playing unsupervised in a driveway was not sufficient, standing alone, to constitute a report of neglect or warrant an investigation by DSS. *In re Stumbo*, 357 N.C. 279 (2003).
- A mother’s lack of stable housing, causing frequent moves, did not impede her ability to care for and supervise her child or expose him to an injurious environment. *In re J.R.*, 243 N.C. App. 309 (2015).

- Evidence of the parents' habit of placing an infant on the sofa without surrounding him with pillows or other forms of restraint was not sufficient to establish neglect where there was also evidence that the infant was unable to roll over, was not mobile when placed on the sofa, had never missed any appointments with his pediatrician, was developing appropriately, and had no prior injuries (although other conduct on the part of the father was deemed abuse by the trial court). *In re J.A.G.*, 172 N.C. App. 708 (2005).
- Factual stipulations that mother did not insure child's regular school attendance, that child had missed twenty-five days and was tardy thirty-seven times during one school year, and had failed three core classes, were insufficient to support conclusion that child was neglected, without findings (i) as to the reasons for the attendance and tardiness issues, or (ii) that the failure to pass core classes was directly related to the child's absences or to mother's failure to provide proper care, supervision, or discipline. *In re R.L.G.*, 260 N.C. App. 70 (2018). *See also In re J.C.M.J.C.*, 268 N.C. App. 47 (2019) (multiple absences from school, without findings as to the reasons or explaining the degree to which the children were academically behind, were insufficient to show the children were denied an education such that they were neglected).

Evidence was sufficient to find lack of proper care or supervision.

- Evidence was sufficient to find that the child lacked proper care, supervision, or discipline and lived in an injurious environment where the child tested positive for substances at birth; mother admitted to using substances at the time of the child's younger twin siblings' birth; mother admitted to her history of substance use and continued use of a combination of illegal substances; the child had access to unsecured needles; mother was concerned there was a rat infestation in the home (either in reality or due to hallucinations); mother was uncooperative with DSS with regards to drug testing of herself and the juvenile; and mother violated a safety plan two days after signing the plan. *In re L.C.*, 387 N.C. 475.
- Where evidence showed father was repeatedly informed of the risk associated with the child's diabetes not being monitored by an adult, was educated how to monitor and medicate the child, witnessed the child's repeated hospitalizations for diabetic ketoacidosis and refused to accept responsibility for monitoring and managing the child's diabetes, including missing the child's medical appointments and failing to continuously monitor his diet, blood sugar levels, and medication administration, the findings established father's pattern of conduct caused the child injury and placed the child at risk for serious physical injury or death. The child suffered acute kidney damage and was determined to be at high risk for further organ damage or death due to the mismanagement of his diabetes. *In re A.D.W.*, 298 N.C. App. 515 (2025). Note the child was also adjudicated abused for the same circumstances.
- Findings that the infant and mother tested positive for substances at the infant's birth, mother failed to complete a substance use assessment and only completed a mental health assessment the week before the adjudication hearing held over a year since the child's birth, and mother failed to ensure the child's attendance at a substantial number of necessary medical appointments during the child's first year were sufficient to support the court's conclusion that the child was not receiving proper care or medical

care, and was living in an injurious environment. *In re K.C.*, 295 N.C. App. 363 (2024).

- After mother became aware that her partner was sexually abusing her daughter, mother initially acted to stop the abuse. Later, mother did not demonstrate a willingness or ability to protect her daughter as mother failed to support her daughter, prioritized her relationship with her partner, did not keep her partner out of her home, and tried to discredit her daughter in therapy sessions. *In re S.M.L.*, 272 N.C. App. 499 (2020).
- Mother failed to provide proper care or supervision of a child with emotional difficulties and behavioral issues who sustained “a pattern of injuries [that] any conscientious parent would take into account” and which required more supervision than had been provided. *In re K.B.*, 253 N.C. App. 423, 431 (2017).
- Evidence that a mother had left a 16-month-old child alone in a motel room for more than thirty minutes and that the child was later found by a motel employee after a guest reported continuous crying was sufficient to support an adjudication of neglect. *In re D.C.*, 183 N.C. App. 344 (2007).
- Evidence that while in South Carolina a 9-year-old child shared a bed with two other children, including a 7-year-old male cousin who tried five times to kiss her or touch her private parts, was significant evidence that that child did not receive proper care or supervision, regardless of whether the incidents between the children rose to the level of sexual abuse. *In re T.N.G.*, 244 N.C. App. 398 (2015) (note that respondent father’s argument that court could not consider events that occurred outside of North Carolina was rejected).
- Pre-mobile child who suffered a skull fracture, subdural hematomas, and an arm fracture while in the sole care of her parents, which expert witness determined were likely the result of non-accidental trauma, either did not receive proper care or supervision or lived in an injurious environment and suffered a physical impairment as a result. *In re L.Z.A.*, 249 N.C. App. 628 (2016).
- Where findings were that mother had previous problems with drugs and had previously injured the child while abusing drugs, was continuing to use drugs illegally, had hit and kicked the child, refused to cooperate with DSS, and had a friend-like relationship with child that seemed to contribute to the child’s defiant behavior (child was diagnosed with oppositional defiant disorder), these findings supported the trial court’s conclusion that the child was not receiving proper care and supervision and was living in an injurious environment. *In re J.D.R.*, 239 N.C. App. 63 (2015).
- Findings supported a neglect adjudication based on lack of supervision and substance use where mother had an opiate dependency impairing her ability to parent; child was locked out of his house when mother was home, requiring law enforcement assistance to regain access; mother screamed obscenities at DSS in front of children for forty-five minutes; children frequently missed school and mother did not respond to notices related to absences; and baby had not had routine immunizations and also had yeast infection, eczema, and cradle cap. *In re H.D.F.*, 197 N.C. App. 480 (2009).
- Lack of cleanliness or food have been found to be factors contributing to neglect. For example, lack of cleanliness was a primary factor in a finding of neglect where a disabled child who attended a special school was repeatedly coming to school in a “filthy condition” and other children made fun of him, the staff would have to bathe him, and he was not taught hygiene at home. *In re Safriet*, 112 N.C. App. 747 (1993).

Finding that a child's home is clean or that the child is well-fed will not prevent a finding of neglect; where there is a physical, mental, or emotional impairment, or risk of impairment, a child may be considered neglected. *See In re Thompson*, 64 N.C. App. 95 (1983).

- Failure to educate a child has been found to be lack of proper care in some circumstances. *See In re McMillan*, 30 N.C. App. 235 (1976) (affirming the determination of neglect where the parents did not send the children to school because school did not teach about Indian culture and heritage, and the parents failed to provide the children with an alternative education); *In re Devone*, 86 N.C. App. 57 (1987) (upholding determination that a child with a mental disability was neglected when the father refused to send the child to school to receive remedial education and special education classes were critical to the child's development and welfare). Note that G.S. 115C-378 describes a school principal's responsibilities in relation to children who are repeatedly absent and sets out circumstances in which a principal is required to notify the district attorney or DSS regarding unlawful absences.

(d) Child placed with alternative caregiver prior to DSS involvement. A parent's voluntary placement of their child with a caretaker does not automatically preclude an adjudication of neglect based on a lack of proper care or supervision. The court of appeals has treated these cases like those termination of parental rights cases that allege neglect when the child has not lived with the parent for a substantial period of time prior to the filing of the petition. See Chapter 9.11.A.4 (discussing neglect based on past neglect and likelihood of repetition of neglect). In these types of cases, the trial court looks at the past conditions that resulted in the parent placing the child with a caretaker before the petition alleging neglect has been filed and evidence of changed conditions in light of the probability of the repetition of neglect that poses a risk of harm to the child at the time of the adjudication hearing. *See In re A.J.*, 386 N.C. 409 (2024); *In re K.J.D.*, 203 N.C. App. 653 (2010); *In re B.P.*, 257 N.C. App. 424 (2018); *In re C.C.*, 260 N.C. App. 182 (2018); *In re H.L.*, 256 N.C. App. 450 (2017). See Section 6.3.B., above (discussing post-petition evidence).

Evidence sufficient to find lack of proper care and supervision.

- On appeal, respondent mother argued that the child should not have been adjudicated neglected, because at the time of the petition the child was in a kinship placement where care was appropriate and the child was safe. The findings supported an adjudication of neglect. The child was placed in kinship care due to both parents' inability to care for the child and this inability continued; the mother continued to engage in assaultive behavior; she had not completed counseling to address anger issues or sought treatment for her mental disorder; and the mother did not have stable housing or a job. The court concluded that the child would be endangered if the mother removed the child from the relative's home, which legally she could do. *In re K.J.D.*, 203 N.C. App. 653.
- Child placed in a voluntary kinship placement approved by DSS when petition was filed. Evidence was sufficient to support a finding that child would be at a substantial risk of impairment if she was returned to mother's care as conditions that led to the kinship placement, namely, mother's substance use and mental health issues and respondent father's incarceration, had not been corrected at the time of the adjudication hearing. *In re C.C.*, 260 N.C. App. 182.

- Child was placed with her adult sibling pursuant to a safety plan with DSS when petition was filed. Supported findings established an altercation where the parents engaged in a tug of war with the child, that parents had failed multiple drug tests, and that child was placed with a safety resource due to parents' drug use. Trial court properly concluded that child was neglected as parents had failed to remedy the conditions that required child's placement pursuant to a safety plan and failed to address their substance use issues while child was in safety placement, such that the parents were unable to provide child proper care. *In re H.L.*, 256 N.C. App. 450.

Evidence not sufficient to find lack of proper care and supervision.

- Before petition was filed, mother placed child with caretakers, whose home was found appropriate by both DSS and the trial court. Mother made placement "on her own, without DSS's input" and child was in that placement when the petition was filed. Findings did not support mother's continuing inability to care for the child or an ultimate finding that the child would be at substantial risk of harm if removed from caretakers and returned to mother. Mother was receiving treatment for her mental health issues and child was in a placement mother arranged for during period of homelessness. *In re B.P.*, 257 N.C. App. 424 (adjudication of neglect vacated and remanded).
- Child was in a placement because of a previous neglect action that was ultimately reversed on appeal. After the mandate in that appeal, a new petition was filed, and the child was adjudicated neglected. The court of appeals reversed the second adjudication as there was no clear and convincing evidence of current circumstances indicating a future probability of neglect based on a present risk to the child. Mother had a history of substance use and hospitalizations but was engaging in treatment and working with DSS on her plan (during the first neglect case while the appeal of that action was pending). *In re F.S.*, 268 N.C. App. 34 (2019).

(e) Lack of necessary medical or remedial care.

A respondent's failure to provide or arrange for a child's necessary medical care, when the respondent is aware of the child's serious medical condition and the lack of care causes injury and a risk of serious physical harm to the child, can constitute both abuse and neglect. *In re A.D.W.*, 298 N.C. App. 515 (affirming adjudication of abuse and neglect based on father's failure to provide necessary medical care to juvenile with Type I diabetes, who suffered organ damage and almost died as a result).

Evidence was sufficient to find neglect based on a lack of necessary medical or remedial care.

- Where evidence showed father was repeatedly informed of the risk associated with the child's diabetes not being monitored by an adult, was educated how to monitor and medicate the child, witnessed the child's repeated hospitalizations for diabetic ketoacidosis and refused to accept responsibility for monitoring and managing the child's diabetes, including missing the child's medical appointments and failing to continuously monitor his diet, blood sugar levels, and medication administration, the findings were sufficient to find neglect based on lack of necessary medical care. The child suffered acute kidney damage and was determined to be at high risk for further

- organ damage or death due to the mismanagement of his diabetes. *In re A.D.W.*, 298 N.C. App. 515.
- Neglect was established where findings showed that mother cancelled or did not show up for twenty-four of her infant's forty-one medical appointments during the child's first year of life, including necessary surgical appointments to remove a hernia, despite mother qualifying for Medicaid and its transportation services and evidence that she was able to arrange transportation when necessary. Missing a substantial number of the child's necessary medical appointments constituted failure to provide necessary medical care. *In re K.C.*, 295 N.C. App. 363.
 - Conclusion of neglect was supported by findings that mother failed to follow the discharge recommendations from a residential care placement to obtain a psychiatrist to manage the child's prescriptions. Mother's failure resulted in the child being without prescribed medication for two weeks, which could result in side effects for the child and which mother acknowledged caused behavior problems. *In re K.B.*, 253 N.C. App. 423 (2017).
 - Neglect was established by evidence that the respondent mother delayed seeking medical treatment of significant injuries to her child for two days after the child was injured when left in the care of a person who was barred by a safety plan from having contact with the child. *In re L.C.*, 253 N.C. App. 67 (2017).
 - A child was neglected when mother continuously failed to obtain meaningful mental health services for her child. Findings established that the child had serious mental health issues requiring five psychiatric hospitalizations over a period of four months, that the respondent mother minimized and denied the seriousness of the child's condition and at times exacerbated it, and that the mother refused to participate in discharge planning for the child. The child was at a substantial risk of physical, mental, and emotional impairment as a result of lack of medical care. *In re C.B.*, 245 N.C. App. 197 (2016).
 - Neglect was established where findings of fact showed that respondents engaged in multiple acts of domestic violence including an incident resulting in an injury to the infant child, after which respondents did not seek medical treatment for the child. Mother also informed a social worker that the child had other serious health issues, but the mother had cancelled medical appointments for the child. *In re A.R.*, 227 N.C. App. 518 (2013).
 - A finding of neglect was supported by evidence that the children did not receive proper medical attention as they did not receive their immunizations or regular medical follow-up, and the 6-month-old infant had never been to a doctor (also discussing lack of proper nutrition and failure to allow participation in available program that would provide for the children's adequate stimulation and socialization; adjudication was not based on value judgment of mother's socio-economic status). *In re Bell*, 107 N.C. App. 566 (1992).
 - Neglect was shown where the mother delayed seeking medical help to find the cause of serious bruising on much of child's body (found to be due to blood disorder) and delayed seeking help for disciplinary, behavioral, and developmental problems displayed by the children. *In re C.P.*, 181 N.C. App. 698 (2007). Similarly, the parent's failure to seek a recommended evaluation to determine whether a child was

- developing normally and to seek treatment if necessary supported a finding of neglect. *In re Thompson*, 64 N.C. App. 95 (1983).
- A finding of neglect was supported by evidence showing that the child had a severe speech defect that was treatable and that the mother refused to allow the child to receive the necessary medical and remedial care that would allow the child to develop to her full educational and emotional potential. *In re Huber*, 57 N.C. App. 453 (1982).

Evidence was not sufficient to find neglect based on a lack of necessary medical or remedial care.

- Mother’s failure to take child to “well care visits”, without more, did not support an adjudication of neglect based on lack of medical care. *In re R.L.G.*, 260 N.C. App. 70 (2018) (trial court made no findings as the actual numbers of visits missed, the reasons for missing visits, the medical conditions requiring the visits, or any adverse effects on the child’s health arising from having missed the visits).
- (f) Lack of proper discipline.** A child who does not receive proper discipline may be a neglected juvenile. Neglect in this form may involve overly severe discipline that does not result in “serious physical injury” or constitute “cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior” within the statutory definition of abuse. The supreme court has stated that “[w]hether a child is neglected is a fact-specific determination” and that “[t]here are scenarios where discipline of a child can constitute neglect even when the discipline causes little or no physical injury.” *In re A.J.*, 386 N.C. at 417 n.5, *rev’g In re A.J.*, 289 N.C. App. 632, 640-41 (2023) (rejecting the categorical statement of the court of appeals that the “use of corporal punishment, with no evidence of any resulting marks, bruising, or other injury, does not constitute neglect.”) Where a parent is using inappropriate discipline, the court may also find that the child is living in an environment injurious to the child’s welfare. The variance in appellate analysis of corporal punishment and its impact on a child depends in part on whether the petition alleges the punishment as constituting abuse or neglect. See section 6.3.E.2(a), above (cases analyzing corporal punishment in the context of abuse allegations).
- Evidence that custodian, the children’s aunt, (i) admitted to using physical discipline; (ii) hit one child in the face causing a bloody nose; and (iii) another child was spanked and hit when she got in trouble supported the allegations of neglect for improper discipline when custodian failed to attend parenting classes or therapy to address her parenting as part of the protective services developed by DSS prior to the filing of the petition alleging neglect. *In re A.D.*, 278 N.C. App. 637 (2021).
 - Evidence contributing to the affirmation of an adjudication of neglect was the fact that the father had beaten a child with various instruments for disciplinary purposes resulting in pain for several days and sustained deep bruising and scarring. *In re S.H.*, 217 N.C. App. 140 (2011).
 - Hitting children with a belt as a form of discipline, along with failing to fully comply with a mental health evaluation and resulting therapy and missing arranged visits with the children, was determined to be neglect. *In re A.J.M.*, 177 N.C. App. 745 (2006).
 - Evidence was sufficient to withstand a motion to dismiss a neglect petition at the close of petitioner’s evidence, where the evidence showed that an 8-year-old child had been left alone for three hours as a form of discipline; she had a cut on her lip and bruising

on her face; mother's boyfriend (known for damaging a wall and car in anger) had spanked her and hit her face when she misbehaved; and the mother refused to cooperate with DSS. *In re Gleisner*, 141 N.C. App. 475 (2000) (remanding with instructions for trial court to make proper findings of fact and clear conclusions of law).

- A mother's actions resulting in bruises and other injuries were found to be inappropriately severe discipline establishing neglect. *In re Thompson*, 64 N.C. App. 95.

(g) Injurious environment: instability, substance use, and domestic violence. An injurious environment may be an environment that puts the child at substantial risk of harm as well as one in which the child has been harmed. *In re Helms*, 127 N.C. App. 505 (1997); *In re Safriet*, 112 N.C. App. 747 (1993). When all children are subjected to the same circumstances, it is error to adjudicate some but not all of the children neglected based on an injurious environment. *In re Q.A.*, 245 N.C. App. 71 (2016) (when five siblings were without plumbing, electricity, food, and a home while in their grandmother's care, trial court erred when it found two siblings neglected but dismissed the petition as to three other siblings because placement with their father was an option).

Evidence considered when determining whether an injurious environment exists often overlaps with evidence of improper care, supervision, or discipline. *See In re L.C.*, 387 N.C. 475 (findings describing mother's substance use, child's testing positive for substances at birth, safety concerns in the home, and mother's failure to cooperate with DSS with regards to drug testing and a safety plan support the conclusion the child lacked proper care, supervision or discipline and lived in an injurious environment); *In re A.D.W.*, 298 N.C. App. 515 (findings support conclusion of abuse and neglect based on injurious environment, lack of proper care or supervision, and failure to provide necessary medical care when father failed to manage his son's Type 1 diabetes, resulting in son's organ damage and near-death); *In re K.C.*, 295 N.C. App. 363 (findings and evidence support a conclusion the infant was not receiving proper care or necessary medical care, and was living in an injurious environment); *In re J.C.M.J.C.*, 268 N.C. App. 47 (2019) (findings describing respondents' refusal to communicate with DSS and their efforts to obstruct the DSS investigation did not support a conclusion of an injurious environment or improper care, supervision, or discipline); *In re B.P.*, 257 N.C. App. 424 (2018) (findings and evidence in the case did not support a conclusion, at the time the petition was filed, that the child was living in an environment injurious to her welfare and was not receiving proper care and supervision).

Evidence was sufficient to find neglect based on an injurious environment.

- Evidence was sufficient to find that the child lacked proper care, supervision, or discipline and lived in an injurious environment where the child tested positive for substances at birth; mother admitted to her history of substance use and continued use of a combination of illegal substances, including using substances at the time of the child's younger twin siblings' birth; the child had access to unsecured needles; mother was concerned there was a rat infestation in the home (either in reality or due to hallucinations); mother was uncooperative with DSS with regards to drug testing of

- herself and the juvenile; and mother violated the safety plan two days after signing the plan. *In re L.C.*, 387 N.C. 475.
- Findings that mother coached the children regarding allegations of sexual abuse against father, subjected the children to unnecessary evaluations, alienated the children from their father, discussed the children’s sexual behavior with numerous others, and interfered with DSS’s investigation of father, were sufficient to support a conclusion that mother created an injurious environment such that mother’s actions caused or escalated significant emotional harm to the children. *In re B.C.*, 298 N.C. App. 153 (2025).
 - Based on a single incident following an argument with their father where the child exited the vehicle before reaching their destination, evidence that father knew the child ran into a busy road, left the child at the side of the road, and did not attempt to check on their well-being was sufficient to support a conclusion of neglect. The supreme court held that the trial court did not err in adjudicating the child as neglected when father left the child in an environment injurious to the child’s welfare and the child was at substantial risk of harm. *In re A.H.*, 385 N.C. 666, *rev’g and remanding in part, aff’g in part* 289 N.C. App. 501.
 - The parent’s failure to acknowledge their discipline constituted abuse (the juvenile was adjudicated abused because of grossly inappropriate devices or procedures used to modify the child’s behavior), their belief the discipline was appropriate, and their refusal to agree they would not continue to use that method of discipline supported an adjudication of neglect based on the finding that the juvenile lived in an injurious environment. *In re A.J.L.H.*, 384 N.C. 45 (2023).
 - Although a parent’s substance use is not per se neglect, findings that show the parents’ use of substances, the presence of drug paraphernalia in the home where the 10-month-old juvenile was crawling and pulling up and able to access the paraphernalia, and two overdoses requiring emergency medical responses occurring in the toddler’s home, all show a substantial risk of harm to the juvenile who was exposed to a prolonged period of drug use in his home. Further, harm to the juvenile was shown by the juvenile’s positive test for marijuana, methamphetamine, opiates, morphine, and heroin. *In re K.H.*, 281 N.C. App. 259 (2022).
 - Evidence of child’s emotional damage resulting from her parents’ actions during their custody disputes was supported by clear and convincing evidence. The findings that child lived in a constant state of chronic emotional abuse because of the stress related to the parents’ conflict and father’s actions of questioning her and talking about mother, resulting in child’s anxiety and health issues, supported adjudication of neglect based on an injurious environment and emotional impairment to the child. *In re M.M.*, 272 N.C. App. 55 (2020).
 - Evidence of mother’s unsubstantiated allegations of sexual abuse of her daughter, resulting in daughter receiving repeated and unnecessary invasive medical procedures and interviews created an injurious environment. *In re E.P.-L.M.*, 272 N.C. App. 585 (2020).
 - Child was neglected based on an injurious environment when trial court found that respondent mother failed to take responsibility for her role in the termination of her rights to six other children, denied the need for and thus refused services, and became involved with father of the child when she was aware of his history of domestic

- violence, even though domestic violence was one of the reasons for removal of her other children. *In re J.A.M.*, 372 N.C. 1 (2019).
- Children were neglected when the trial court found the mother had taken out a protective order against the father for strangling her and attempting to rape her but she continued to be in contact with him, stated she could not care for the children and asked DSS to place them in foster care but often changed her mind about her children's placement, had a history of problems with her children requiring DSS intervention, behaved inappropriately during some visits with children, and had a history of drug use and mental health issues. *In re J.W.*, 241 N.C. App. 44 (2015).
 - Findings of fact set out a longstanding and abusive relationship between respondent parents and sufficiently detailed the impact and potential harm father's violence toward mother had on their four children, all of whom were aware of the arguments and physical altercations. Adjudication that all four children were neglected was affirmed. *In re M.K.*, 241 N.C. App. 467 (2015).
 - Neglect adjudication of two children was supported by findings that father, when angry, punched holes in walls, engaged in aggressive and violent behaviors in the home, and had struck each child at least once that caused older child to fear father. *In re A.L.T.*, 241 N.C. App. 443 (2015).
 - The trial court's findings related to the parents' history of domestic violence and the negative impact of the violence on the children, along with a refusal to develop an in-home services agreement, were sufficient to support the conclusion that the children were neglected. *In re J.C.*, 235 N.C. App. 69 (2014), *rev'd in part per curiam on other grounds*, 368 N.C. 89 (2015).
 - Evidence was sufficient to support an adjudication of neglect where respondent mother and her boyfriend had a physical altercation while mother was holding 1-month-old child which caused mother to fall and become injured (child was not injured); mother failed to report the incident to law enforcement when they were called to the scene; mother was being treated for bipolar disorder but did not believe her treatment was working. *In re A.N.L.*, 213 N.C. App. 266 (2011).
 - Neglect adjudication supported by stipulated findings of fact that mother used controlled substances during pregnancy, which resulted in child being born with a rapid heartbeat and signs of withdrawal; that mother was belligerent and combative with hospital staff, refused to take her psychiatric medication, had infant removed from her, and was held on an involuntary commitment; and that father was at the hospital following child's birth despite being subject to a domestic violence protective order ordering no contact with mother after he stabbed her, dislocated her jaw, and held a gun on her. *In re G.T.*, 250 N.C. App. 50 (2016), *aff'd per curiam*, 370 N.C. 387 (2017).
 - Findings that while in South Carolina, the 9-year-old child was present when adults used marijuana, had to share a bed with a 7-year-old male cousin who tried five times to kiss her or touch her private parts, and was sent to live in different homes with different adult caretakers without any determination by respondent father that the successive caretakers were fit, established that child was at a substantial risk of harm or impairment supporting neglect adjudication. *In re T.N.G.*, 244 N.C. App. 398 (2015) (father's argument that court could not consider events that occurred outside of North Carolina was rejected).

- Evidence of an inability to maintain a secure living situation where mother moved six times during four months and failed to maintain an environment free of drugs, violence, and attempted sexual assaults, supported a conclusion of neglect. *In re Helms*, 127 N.C. App. 505.
- Evidence of cocaine use during pregnancy, the newborn's positive cocaine test, the mother's refusal to sign a safety plan, and domestic violence between respondents was sufficient to support a conclusion of neglect of the newborn. *In re B.M.*, 183 N.C. App. 84 (2007).

Evidence was not sufficient to find neglect based on an injurious environment.

- The trial court determines the weight to give the evidence and the reasonable inferences to be drawn from that evidence. Although there was testimony about and pictures of household cleaning products and bug spray that were left on kitchen countertops and stove and that the home was cluttered, the finding that the young child was not affected by or at risk of injury was a reasonable inference made by the trial court when dismissing the neglect petition. *In re G.B.G.*, 297 N.C. App. 772.
- "[W]ithout evidence of the conditions of the storage unit or other access to necessities, . . . taking temporary shelter in a storage unit is not *per se* neglect." *In re H.P.*, 278 N.C. App. 195, 205 (2021). Allegations mother and children were residing in a storage unit were not substantiated by DSS when it found the family living in a motel and later a camper. The fact that the refrigerator was broken without any findings about the children's nutrition does not resolve the ultimate finding of fact regarding the children's risk of harm resulting from an injurious environment. Regarding other circumstances related to the children, there was no evidence and no findings of harm or substantial risk of harm to the children.
- "A parent's substance abuse alone is not grounds for adjudicating neglect." *In re L.C.*, 387 N.C. at 481 n.8. Substance use by a parent may contribute to a finding of neglect but, without proof of an adverse impact on the child or a substantial risk of harm, is not sufficient itself to support a finding of neglect. *See In re F.S.*, 268 N.C. App. 34 (2019); *In re J.C.M.J.C.*, 268 N.C. App. 47; *In re K.J.B.*, 248 N.C. App. 352 (2016); *In re E.P.*, 183 N.C. App. 301, *aff'd per curiam*, 362 N.C. 82 (2007); *Powers v. Powers*, 130 N.C. App. 37 (1998); *In re McDonald*, 72 N.C. App. 234 (1984); *In re Phifer*, 67 N.C. App. 16 (1984).
- A petition for neglect was filed after law enforcement had been called to a home where parents argued in the presence of their four children, the father left home taking the three older children with him, and mother obtained warrants charging father with assault by pointing a gun and communicating threats. The court of appeals affirmed the trial court's decision that DSS failed to prove that the children were neglected: the mother's statements were conflicting and she did not proceed with the case against the father, which the district attorney's office dismissed; the father was not in possession of a firearm when arrested; children had left with father voluntarily; and there was no evidence of domestic violence or that the children were put in danger. *In re H.M.*, 182 N.C. App. 308 (2007).

(h) Abandonment. A juvenile who has been abandoned is considered neglected. G.S. 7B-101(15). Abandonment has been described as "willful or intentional conduct" that "evinces a settled purpose to forego all parental duties and relinquish all parental claims to

the child,” or a “refusal to perform the natural and legal obligations of parental care and support,” including withholding the parent’s “presence, . . . love, . . . [and] the opportunity to display filial affection.” *Pratt v. Bishop*, 257 N.C. 486, 501 (1962); *see also In re Adoption of Searle*, 82 N.C. App. 273, 275 (1986); *In re Apa*, 59 N.C. App. 322, 325 (1982); *In re Stroud*, 38 N.C. App. 373 (1978). A parent bringing their child out of the home and placing them in the DSS social worker’s car is not abandonment. *In re L.B.*, 296 N.C. App. 498. *See generally* Chapter 2.3.B.2(b) (discussing abandonment as a form of neglect). Most appellate cases address abandonment as a ground for termination of parental rights (TPR). To the extent that those cases discuss the definition of abandonment, they may be relevant to abandonment in the context of neglect. *See* Chapter 9.11.A.7 (cases discussing neglect by abandonment) and 9.11.G (cases discussing evidence to establish abandonment as a TPR ground).

G. Evidence to Establish Dependency

1. Definition of dependency. G.S. 7B-101(9) defines a dependent juvenile as one in need of assistance or placement because

- the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision; or
- the juvenile’s parent, guardian, or custodian is unable to provide for the child’s care or supervision *and* lacks an appropriate alternative child care arrangement.

Note that caretaker is not included in this definition.

When dependency is based on the inability to provide care and supervision and a lack of appropriate alternative child care, both prongs of the definition must be satisfied, and the court must make findings about both prongs. *See In re A.W.*, 377 N.C. 238, 249 (2021) (quoting *In re K.D.C.*, 375 N.C. 784, 795 (2020)); *In re R.B.*, 280 N.C. App. 424 (2021) (reversing adjudication of dependency when no findings or evidence that mother lacked an appropriate alternative child care arrangement); *In re H.L.*, 256 N.C. App. 450 (2017) (reversing adjudication of dependency when order did not include a finding that the parents lacked an alternative child care arrangement and did not address care or supervision by a parent, guardian or custodian); *In re L.C.*, 253 N.C. App. 67 (2017) (vacating and remanding for findings of fact; trial court’s failure to make findings addressing both prongs is reversible error; court failed to make findings of either prong).

Although the statutory definition refers to the singular word “the parent, guardian, or custodian,” a child is not dependent when there is one parent who can care for their child or make arrangements for appropriate alternative child care. *In re L.B.*, 296 N.C. App. 498 (2024) (vacating and remanding adjudication order of abuse, neglect, and dependency); *In re Q.M., Jr.*, 275 N.C. App. 34 (2020) (vacating adjudication of dependency) and *In re V.B.*, 239 N.C. App. 340 (2015) (reversing adjudication of dependency) (in both cases there were no allegations and no evidence of respondent father’s ability to provide proper care or supervision to the child). *See also* G.S. 7B-101 (“[t]he singular includes the plural . . . unless otherwise specified”). An adjudication of dependency will be reversed when the petitioner fails to prove both parents are incapable of providing care for the child or arranging for appropriate alternative child care. *In re L.B.*, 296 N.C. App. 498 (vacating dependency adjudication where no findings were made as to respondent mother’s or respondent father’s

ability to provide care to the children or arrange for alternative child care other than a bare recitation of the statutory definition); *In re J.D.R.*, 239 N.C. App. 63 (2015) (reversing dependency adjudication because there was no evidence and finding of fact about the mother’s lack of an appropriate alternative child care arrangement); *In re H.H.*, 237 N.C. App. 431 (2014) (reversing dependency adjudication when before petition was filed the children were living with their father as a result of mother leaving them with him; father was properly caring for the children), *overruled by implication in part on other grounds by In re B.O.A.*, 372 N.C. 372 (2019) (*see In re S.G.*, 268 N.C. App. 360 (2019) (recognizing *In re B.O.A.* overruled *In re H.H.*); *In re J.A.G.*, 172 N.C. App. 708 (2005) (where an infant suffered head trauma while in the father’s care, evidence was insufficient to adjudicate the infant dependent because the mother was capable of providing care and supervision).

2. Evidence related to dependency. Allegations of dependency are often combined with allegations of neglect and sometimes with abuse as well. Therefore, some appellate cases examining evidence related to dependency often discuss the totality of facts supporting dependency, neglect, and/or abuse. A few cases isolate discussions regarding facts supporting dependency.

(a) Unable to provide care or supervision (first prong of G.S. 7B-101(9)(ii)).

Appellate court did not find lack of proper care or supervision.

- Trial court’s inference that mother had unstable housing impairing her ability to provide proper care and supervision was not supported by the evidence. Evidence showed mother was residing with a friend and was able to stay there for an extended period of time despite mother not being on the lease. No evidence showed mother was unlikely to be able to continue to reside with her friend for the foreseeable future. The juvenile was living with a parent who was willing and able to provide for her care and supervision. *In re M.H.*, 272 N.C. App. 283 (2020).
- Allegations in the petition, taken as true, did not address either prong required for a dependency adjudication and instead “at best” established that the child was delinquent or undisciplined, matters that would be addressed in a pending juvenile delinquency case. *In re K.G.*, 260 N.C. App. 373, 377 (2018) (trial court erred in denying respondents’ Rule 12(b)(6) motion to dismiss the dependency petition, rejecting argument of DSS and GAL that respondents’ failure “to rein in” the child’s behavior made them unable to care for the child; court will not look “to the juvenile’s willful acts to determine a parent’s ability to care for the child”).
- A dependency adjudication based solely on the trial judge’s conversations in chambers with child was reversed as there was no evidence presented by petitioner or respondent addressing respondent’s ability to provide care or supervision for the child. *In re T.N.G.*, 244 N.C. App. 398 (2015).
- Where the trial court did not find that the father was unable to care for the child and lacked an alternative child care arrangement, a finding that the child was conceived as a result of the father’s commission of statutory rape was not sufficient to support a conclusion that the child was dependent. Father was not convicted, nor is this particular rape offense one which affects custody or inheritance rights regarding the child. Findings of potential criminal liability for statutory rape under now G.S. 14-

27.25 does not per se constitute that parent's inability to care for the child. *In re J.L.*, 183 N.C. App. 126 (2007).

Appellate court found lack of proper care and supervision.

- Mother was unable to provide proper care and supervision for her infant when mother (i) worked with father to conceal the truth about the cause of her other child's non-accidental injuries and death and (ii) continued her relationship with father, who was charged in the death of the juvenile. *In re A.W.*, 377 N.C. 238 (2021).
- Unchallenged findings established that the parents' lack of care and supervision over their youngest child resulted in his serious injury, and the parents did not meet the oldest child's educational or medical needs. *In re W.C.T.*, 280 N.C. App. 17 (2021).
- Mother's alleged emotional abuse of her child due to mother's unsubstantiated allegations of physical and sexual abuse of her daughter, resulting in repeated and unnecessary invasive medical procedures and interviews made mother unavailable. Father was not available at time petition was filed as mother and maternal grandmother were alleging father had abused the child. *In re E.P.-L.M.*, 272 N.C. App. 585 (2020).
- Where the mother had severe psychological problems and the children had psychological problems, learning disabilities, and behavioral and other problems that were not being addressed by the mother and her significant other, the children were adjudicated dependent. *See In re T.B.*, 203 N.C. App. 497 (2010).
- A child was dependent when mother continuously failed to obtain meaningful mental health services for the child when the child was in her custody. Findings established that child had serious mental health issues requiring five psychiatric hospitalizations over a period of four months, and that mother minimized and denied the seriousness of the child's condition and at times exacerbated it and was unable to provide proper care and supervision to the child. *In re C.B.*, 245 N.C. App. 197 (2016).

(b) Lacking alternative child care arrangement (second prong of G.S. 7B-101(9)(ii)).

An adjudication of dependency requires evidence and findings establishing that the parent does not have an appropriate alternative child care arrangement. *In re K.D.*, 178 N.C. App. 322 (2006); *In re P.M.*, 169 N.C. App. 423 (2005). DSS has the burden of proving that a parent needs an appropriate alternative child care arrangement and did not have one. *In re G.B.G.*, 297 N.C. App. 772 (2025). An appropriate alternative child care arrangement requires that a parent has taken some action to identify a viable caregiver. *In re C.B.*, 245 N.C. App. 197 (2016); *In re L.H.*, 210 N.C. App. 355 (2011); *see In re M.H.*, 272 N.C. App. 283, 290 n.2 (2020) (mother took action to identify appropriate alternative child care arrangement). For a parent to have an alternative caregiver arrangement, "the parent must have taken some action to identify the alternative arrangement" and not merely have gone along with DSS's plan for the child. *In re B.P.*, 257 N.C. App. 424, 435 (2018). The proposed caregiver must be appropriate. *In re A.W.*, 377 N.C. 238 (2021) (potential caregivers were not appropriate when they believed mother's implausible explanation for her other child's injuries and resulting death).

Appellate court found a lack of alternative child care arrangement.

- Although potential relatives were identified, home studies of those relatives were not completed at the time the petition alleging dependency was filed. The trial court correctly found that at the time the petition was filed there was no appropriate alternative child care arrangement when mother was incarcerated and information about putative father's location and means to communicate with him was unknown. *In re L.N.H.*, 382 N.C. 536 (2022).
- Parents identified maternal grandparents as a temporary safety placement, which children were later removed from after DSS terminated the placement due to concerns identified by social workers during an unannounced visit to the grandparents' home. After another temporary placement ended, parents were unable to identify any other alternative child care arrangement. *In re W.C.T.*, 280 N.C. App. 17 (2021).
- Caregivers who were proposed by mother were not appropriate when the trial court found those proposed friends and family members believed the mother's implausible explanation for her other child's injuries and resulting death. The trial court reasonably inferred that the proposed caregivers would not follow a safety plan for the juvenile who was the subject of the proceeding and would not provide a safe home. *In re A.W.*, 377 N.C. 238.
- Mother lacked an appropriate alternative child care arrangement for child with serious mental health issues requiring five psychiatric hospitalizations over a period of four months. Mother failed to identify any viable placement alternative outside of placement in her home and refused to participate in and obstructed the development of a hospital discharge plan for the child. *In re C.B.*, 245 N.C. App. 197.
- Evidence was sufficient to support an adjudication of dependency where neither the mother nor the father was able to care for the children, the father's proposed alternate placement was with an aunt to whom he had not spoken in five years, and there was no evidence that the aunt was willing or able to care for the children. *In re D.J.D.*, 171 N.C. App. 230 (2005).
- Where the mother's significant other had been acting in a parental role for twelve or thirteen years, during which the children exhibited multiple problems and had needs that were not met, the significant other could not be considered an appropriate alternate child care arrangement. *In re T.B.*, 203 N.C. App. 497 (2010).

Appellate court did not find a lack of alternative child care arrangement.

- The record contained no evidence of either parent's offer or lack of alternative child care options for the children to support the finding that both parents lacked the ability to provide an appropriate alternative child care arrangement. The finding was disregarded. The children were in kinship placement at the time of the adjudication hearings and that placement was continued at disposition. *In re B.C.*, 298 N.C. App. 153 (2025).
- The record evidence that resulted from multiple sources showed that prior to the neglect and dependency petition being filed, mother sought appropriate respite care for her child when she believed respite care was necessary given her mental health issues. *In re R.B.*, 280 N.C. App. 424 (2021).
- There were no findings addressing the availability or appropriateness of an alternative child care arrangement, which in this case was an adult friend with whom mother was

- living prior to and after her child’s birth. Evidence included the friend’s testimony that mother had asked her to care for mother’s child should mother be unable to, and friend said yes. *In re M.H.*, 272 N.C. App. 283.
- Before petition was filed, mother placed child with caretakers, whose home was found appropriate by both DSS and the trial court. Mother made placement “on her own, without DSS’s input” and child was in that placement when petition alleging dependency was filed. There was no lack of an appropriate alternative caregiver arrangement when mother had taken action to identify the caretakers and had not “merely acquiesced in DSS’s plan” for the child. *In re B.P.*, 257 N.C. App. at 434, 435.

6.4 Adjudication Order

For further discussion of technical aspects of orders in juvenile proceedings, including timing and drafting of the order and proper findings of fact and conclusions of law, see Chapter 4.9.

AOC Form:

AOC-J-153, [Juvenile Adjudication Order \(Abuse/Neglect/Dependency\)](#)

Resource: Janet Mason, [Drafting Good Court Orders in Juvenile Cases](#), JUVENILE LAW BULLETIN No. 2013/02 (UNC School of Government, Sept. 2013).

A. General Requirements

The Juvenile Code requires that an adjudication order

- be in writing;
- contain appropriate findings of fact;
- contain appropriate conclusions of law; and
- be reduced to writing, signed, and filed with the clerk no later than thirty days following the completion of the hearing.

G.S. 7B-807(b). See Chapter 4.9.D (discussing the clerk’s responsibility to schedule a special hearing when the order is not entered within thirty days from the completion of the adjudication hearing, as well as the appropriate remedy for untimely orders).

Practice Note: Just as it is permissible for more than one child to be named in a petition (when the children are from the same home and are brought to court for the same reason), one order may serve as the order in the case of each child named in the petition. If the findings or conclusions, or both, differ significantly from child to child, or if the adult respondents in each child’s case are not the same, the entry of a separate order for each child may be preferable. Any order that is being entered in more than one child’s case should clearly indicate which findings relate to which child and must include the file number for each child.

1. Condition not proved. If the allegations are not proved by clear and convincing evidence, the court must dismiss the petition with prejudice. If the child is in nonsecure custody, the

child must be released to their parent, guardian, custodian, or caretaker. G.S. 7B-807(a); *In re R.B.*, 280 N.C. App. 424, 430 (2021) (quoting *In re A.K.*, 360 N.C. 449, 454–55 (2006)) (remanding for additional findings to support adjudication of neglect or to dismiss petition if findings are not made); see *In re H.P.*, 278 N.C. App. 195 (reversing and remanding adjudication order for dismissal of the juvenile petition). If the court dismisses the petition, the court terminates its jurisdiction and lacks subject matter jurisdiction to hear any motions filed in that action; instead, an appeal of the order involuntarily dismissing the petition must be made. *In re K.C.*, 292 N.C. App. 231 (2024) (vacating adjudication and dispositional orders entered after the court dismissed the petition and later granted a Rule 59 and 60 motion resulting in the appealed adjudication and dispositional orders; court lacked subject matter jurisdiction to hear the motion; Rules 59 and 60 are not a substitute for an appeal); see G.S. 7B-1001(a)(2).

If the petition alleges more than one status (abuse, neglect, or dependency) and the court adjudicates one but not another, it must dismiss the allegation that is not proved. See *In re R.B.*, 280 N.C. App. 424 (reversing for dismissal adjudication of dependency; remanding adjudication of neglect); *In re T.B.*, 203 N.C. App. 497 (2010) (holding that trial court erred when it adjudicated children dependent but purported to hold in abeyance its ruling on the neglect allegation, when nothing in the record indicated that a future adjudication hearing was to be scheduled).

2. Condition proved. An order that adjudicates a child to be abused, neglected, or dependent must state that the findings of fact are based on clear and convincing evidence. Failure to state the standard of proof in the order is reversible error; however, there is no requirement as to how or where a recital of the clear and convincing standard should be included. *In re O.W.*, 164 N.C. App. 699, 702 (2004) (holding that the statement in the trial court’s order that it “concludes through clear, cogent, and convincing evidence . . .” was acceptable).

B. Findings of Fact and Conclusions of Law

Findings of fact and conclusions of law must be stated in the order separately and specifically. Common issues on appeal include whether the evidence supports the findings of fact and whether the findings of fact support the court’s conclusion of law that a child is abused, neglected, or dependent. The topic of what constitutes proper findings of fact and conclusions of law is addressed in detail in Chapter 4.9.B.

Appellate cases have pointed out that in an adjudication order, a conclusion of law that a juvenile is abused, neglected, or dependent is about the status of the child and should not be connected to whose actions resulted in the adjudication. The supreme court has said, “[i]n determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent.” *In re M.A.W.*, 370 N.C. 149, 154 (2017) (quoting *In re Montgomery*, 311 N.C. 101, 109 (1984)); *In re A.L.T.*, 241 N.C. App. 443, 451 (2015) (quoting *In re Montgomery*). Other cases have said the same about adjudications of abuse and dependency – “[b]y determining that a juvenile is abused, neglected or dependent, the court . . . determines the status of the juvenile so that his or her best interests may be ascertained.” *In re B.M.*, 183 N.C. App. 84, 87 (2007). See also *In re L.N.H.*, 382 N.C. 536, 543 (2022) (stating the inquiry at adjudication “focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party”); *In re A.S.*,

181 N.C. App. 706, 714 (2007) (Levinson, J., concurring in part and dissenting in part) (emphasis in original) (stating that it is “*unhelpful and confusing*” for conclusions of law regarding the status of the child to include language such as “as to” [father, mother, guardian] or “because” of [father, mother, guardian]); *In re J.S.*, 182 N.C. App. 79, 86 (2007) (stating “[t]he purpose of the adjudication and disposition proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent. The question this Court must look at on review is whether the court made the proper determination in making findings and conclusions as to the status of the juvenile”), *quoted in In re A.B.*, 272 N.C. App. 13, 17 (2020).

6.5 Consent Orders

An adjudication may result from a consent order in lieu of an adjudicatory hearing. *See* G.S. 7B-801(b1). A consent order is an agreement of all the parties, their decree, entered on the record and sanctioned by the court. *In re R.L.G.*, 260 N.C. App. 70 (2018); *In re Thrift*, 137 N.C. App. 559 (2000). It is not a judicial determination representative of the court’s judgment but is instead a record of the parties’ agreement, which has been approved by the judge. *McRary v. McRary*, 228 N.C. 714 (1948).

The Juvenile Code allows the court to enter a consent adjudication order on a petition alleging abuse, neglect, or dependency only if

- all parties are present or represented by counsel who is present and authorized to consent;
- the child is represented by counsel; and
- the court makes sufficient findings of fact.

G.S. 7B-801(b1); *In re R.L.G.*, 260 N.C. App. 70.

A consent order that conforms to statutory requirements operates as a judgment on the merits and acquires the status of a final judgment. *See In re Thrift*, 137 N.C. App. 559; *Buckingham v. Buckingham*, 134 N.C. App. 82 (1999). If the consent order does not meet the statutory requirements, it is not a valid order. *See In re K.P.*, 249 N.C. App. 620 (2016) (adjudication reversed where there was no adjudication hearing or valid consent order; the order did not contain findings that the parties stipulated to facts or consented to the adjudication; there was no draft consent order or evidence the parties reached a consent agreement); *In re Shaw*, 152 N.C. App. 126 (2002) (reversed and remanded for an adjudicatory hearing after holding the consent of one respondent in the absence of the other respondent’s presence was insufficient to dispense with the need to hold an adjudicatory hearing).

Stipulations of fact are not consent orders. *See In re R.L.G.*, 260 N.C. App. at 74 (an adjudication order that “simply contained a stipulation by the parties as to certain facts” pursuant to G.S. 7B-807 was not a valid consent adjudication order under G.S. 7B-801(b1)). The court is not bound by an agreement of the parties where the evidence and facts support a different result. *In re L.G.I.*, 227 N.C. App. 512 (2013) (affirming adjudication of neglect and rejection of the parties’ plan of reunification, where the parties had stipulated to facts supporting an adjudication and later the parties indicated that the agreement was contingent on

DSS's working toward reunification; the requirements of a consent order had not been met but instead and at most respondent mother stipulated to certain facts).

When there is a proper consent, the adjudication part of a consent order must comply with all requirements for adjudication orders. See section 6.4, above. However, in the case of *In re J.S.C.*, 253 N.C. App. 291 (2017), the court of appeals held that there was no reversible error where a consent adjudication order of abuse and neglect, which was based entirely on stipulated facts, did not state that the adjudicatory findings were based on the clear and convincing evidentiary standard required by G.S. 7B-805. The opinion discussed how an adjudication by consent based entirely on stipulated facts is not an adjudication hearing and so G.S. 7B-805, which addresses the required quantum of proof in an adjudication hearing, does not apply since the court does not engage in the process of fact-finding. The opinion did not address the requirement under G.S. 7B-807(a) that if the court finds from the evidence, including stipulations by a party, that the allegations have been proved by clear and convincing evidence, it "shall so state" because the issue was not timely raised on appeal.

6.6 Consequences of Adjudication

A. Continued Jurisdiction and Authority for Disposition

An adjudication of abuse, neglect, or dependency enables the court to proceed to the dispositional phase of the case in which the court determines the needs of the child and family and makes orders accordingly. An adjudication allows the court to continue exercising jurisdiction over the child and the respondents (if the respondents are properly served or have waived sufficiency of process and/or service of process) until the child reaches age 18 or is emancipated, is adopted, dies, or until the court orders its jurisdiction terminated, whichever occurs first. See G.S. 7B-200; 7B-201(a), as amended by S.L. 2025-16, sec. 1.2(a), effective June 26, 2025; 48-2-102(b). See Chapter 3.1.C (discussing continuing and ending jurisdiction). Note that the court continues to have jurisdiction over placement review hearings of young adults participating in Foster Care 18–21. G.S. 7B-200(a)(5a); 7B-910.1 See Chapter 8.3 (discussing Foster Care 18–21).

B. Impact on Parents and Future Proceedings

An adjudication that a child is abused, neglected, or dependent allows the state to intervene in the constitutionally protected parent-child relationship. See Chapter 2.4.B (discussing the protection of parent-child relationships). An adjudication is a prerequisite to disposition, in which the court has the authority not only to remove the child from the home, but also to order the parents to take specific actions to address the causes of the adjudication and, if the child is removed from the home, the reasons for the removal. See G.S. 7B-903; 7B-904. See also Chapter 7.7 (relating to disposition and the court's authority over parents).

An adjudication may affect parents in future proceedings. An adjudication that a child is abused or neglected can contribute to a later adjudication that another child living in the same home is neglected because the Juvenile Code makes abuse or neglect of other children living in the home relevant to a determination of neglect. See G.S. 7B-101(15). See also section 6.3.F.2(b), above (discussing other children in the home). Also, evidence of an adjudication of

abuse, neglect, or dependency can be introduced in a subsequent action to terminate the parents' rights (TPR). See Chapter 9.11.A.4 (discussing the grounds for TPR and the use of prior adjudications of abuse, neglect, or dependency in a TPR proceeding).

The doctrine of collateral estoppel precludes parties from retrying fully litigated issues that were decided in any prior determination and were necessary to the prior determination. See *In re F.S.*, 268 N.C. App. 34, 43 (2019) (collateral and judicial estoppel precluded DSS from retrying the fully litigated issue that was decided in a proceeding initiated by petition; collateral estoppel did not preclude a "trial court's adjudication of facts from new allegations and events" that took place after entry of an adjudication order in the initial proceeding on May 15, 2017). So, a critical finding of fact in an adjudication order may be adopted by the court and may not be challenged in a subsequent action involving another child of the parent or in a later termination of parental rights action. See *In re A.E.*, 379 N.C. 177 (2021) (in a TPR proceeding, parents stipulated to conditions of neglect in prior adjudication order and did not appeal that order, which trial court considered at TPR hearing); *In re J.M.J.-J.*, 374 N.C. 553 (2020) (in a TPR proceeding, juvenile neglect adjudication order made findings that mother did not have placement options for the juvenile and order was not appealed by father who was a party to the proceeding; father was collaterally estopped at the TPR hearing from raising the fact that he was available and appropriate but not considered by DSS in the underlying neglect action); *In re N.G.*, 186 N.C. App. 1 (2007), *aff'd per curiam*, 362 N.C. 229 (2008); *In re Wheeler*, 87 N.C. App. 189 (1987). See Chapter 11.7.D.2 (discussing the doctrine of collateral estoppel).

Courts have recognized that an adjudication may have "collateral consequences" that can affect the parent regardless of the dispositional outcome of the case in which the adjudication occurred. In the case *In re A.K.*, 360 N.C. 449 (2006), the North Carolina Supreme Court reversed the court of appeals' dismissal of an appeal as moot. The appeal had been deemed moot because custody of the child was returned to the parent before the court of appeals considered the parent's appeal of an order adjudicating the child neglected and placing the child in DSS custody. The supreme court held that the appeal was not moot because a "neglect adjudication can reasonably result in collateral legal consequences." *In re A.K.*, 360 N.C. at 459 (discussing the potential impact of the adjudication on future proceedings as well as the social stigma involved for the parents in having their child adjudicated abused, neglected, or dependent).