Chapter 5
From Report through Pre-Adjudication in Abuse, Neglect, Dependency Cases

5.1 How a Case Enters the System

A. Reporting Suspected Abuse, Neglect, or Dependency

North Carolina has a universal mandated reporting statute. The Juvenile Code requires that any person or institution with cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, must report the information to the county department of social services (DSS) where the juvenile resides or is found. G.S. 7B-301(a). "Found" means where the child is physically present. *In re M.A.C.*, ___ N.C. App. ___, 893 S.E.2d 556 (2023) (relying on *In re J.L.K.*, 165 N.C. App. 311 (2004)).

Note, for purposes of this Manual, "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.

The phrase "cause to suspect" is not defined by statute or case law, and a determination of when a concern rises to that level is necessarily subjective. In *Dobson v. Harris*, 352 N.C. 77, 84 n.4 (2000), the supreme court noted that the phrase "gives wide margin to whatever prompts the reporter to notify DSS" and "does not call for scrutiny, analysis, or judgment by a finder of fact." It is reasonable, however, to view "cause to suspect" as more than a vague suspicion. For an individual, the "cause" may be based not only on objective facts and observations, but also on the context in which the concern arises, prior knowledge about a child's situation, and how the child is being affected by the circumstances. *See Rouse v. Forsyth Cnty. Dep't of Soc. Servs.*, 262 N.C. App. 262 (2018) (discussing cause to suspect in an employment discharge case of a DSS social worker), *rev'd and remanded on other grounds*, 373 N.C. 400 (2020). There is no obligation on the reporter to attempt to investigate their suspicion. The assessment is performed by DSS.

Resource: For a more detailed discussion of the topic of reporting and a county department of social services' response to a report, see JANET MASON, REPORTING CHILD ABUSE AND NEGLECT IN NORTH CAROLINA (UNC School of Government, 3d ed. 2013) with SARA DEPASQUALE, *Suspected Child Maltreatment Occurring in a Child Care Facility* (UNC School of Government, 2016) supplemental Chapter 13a. Note that although this publication is outdated regarding the laws (*e.g.*, amendments made to the definition of "abused juveniles" and "neglected juvenile"), the discussion is still relevant.

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1. Failure to report. Any person who knowingly or wantonly fails to make a required report or prevents someone else from making a required report commits a Class 1 misdemeanor. G.S. 7B-301(b). *See State v. Ditenhafer*, 373 N.C. 116 (2019) (noting in a case involving felony obstruction of justice and accessory after the fact charges against a mother whose daughter alleged she was sexually abused by her adoptive father/mother's husband that mother could be held criminally liable for failing to report as provided for in G.S. 7B-301).

2. Manner of report. Reports to a county department of social services may be made orally, by telephone, or in writing. The report should include information the reporter has about

- the juvenile's name, age, address, and present whereabouts;
- the name and address of the juvenile's parent, guardian, custodian, or caretaker;
- the names and ages of other juveniles in the home or facility;
- the nature and extent of the juvenile's condition or injuries resulting from the suspected abuse, neglect, or dependency; and
- any other information the reporter believes might be helpful.

G.S. 7B-301(a).

The law requires the person making a report to provide their name, address, and telephone number, but a reporter's failure or refusal to give their name does not affect DSS's responsibility to complete an assessment. G.S. 7B-301(a); *see* 10A N.C.A.C 70A.0105(a) (referring to anonymous reports); *In re N.X.A.*, 254 N.C. App. 670, 675 (2017) (stating "a person who reports suspected abuse, neglect, or dependency . . . has the right to remain anonymous"). Note that a reporter's identity (when it is provided to DSS) is subject to confidentiality requirements. See Chapter 14.1.A.3.

3. No privilege; narrow exception for attorneys. Child abuse reporting laws were enacted initially to encourage, then require, reporting by doctors and other professionals who, without the statutory mandate, would be prohibited from reporting because of privilege or confidentiality laws. The Juvenile Code (G.S. Chapter 7B) establishes a universal mandate where any person or institution who has cause to suspect a child's abuse, neglect, or dependency must make a report. The Juvenile Code does not recognize privilege as a ground for failing to report, except for one narrow exception. *See* G.S. 7B-310. The statutory exception is for attorneys but only with regard to knowledge an attorney gains from a client during representation in the abuse, neglect, or dependency case. It does not include an exception for an attorney who learns about a client's maltreatment of a child during representation in any other action. However, the U.S. Constitution may require a broader attorney exception to protect the rights of a client who has a constitutional right to the effective assistance of counsel. In addition, this duty to report may conflict with a lawyer's ethical duty to maintain a client's confidences pursuant to Rule 1.6 of the N.C. Revised Rules of Professional Conduct. The North Carolina State Bar Ethics Opinions, RPC 175 (1995) and RPC 120 (1992), address this subject and give the lawyer broad discretion in deciding how to resolve the conflict ethically.

Resource: Sara DePasquale, *Mandated Reporting of Child Abuse, Neglect, or Dependency: What's an Attorney to Do?*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Aug. 7, 2015).

For a discussion of privileges in the context of admissibility of evidence, see Chapter 11.11.

4. Immunity. Anyone who makes a report, cooperates with DSS in an assessment, testifies in a proceeding resulting from the assessment, provides information or assistance (including medical evaluations or consultations), or otherwise participates in the "program authorized by" the abuse, neglect, or dependency statutes is immune from any civil or criminal liability if acting in good faith. G.S. 7B-309. *See also Dobson v. Harris*, 352 N.C. 77 (2000); *Davis v. Durham City Sch.*, 91 N.C. App. 520 (1988) (decided under an earlier version of the Juvenile

Code). In a proceeding involving liability, good faith is presumed, but someone who makes a report "with malice" does not have that protection from liability. *See* G.S. 7B-309; *Kroh v. Kroh*, 152 N.C. App. 347 (2002).

5. Other reporting laws. The reporting law discussed in this Manual is in the Juvenile Code: G.S. 7B-301. It applies to everyone, focuses on protecting children, and relates to situations that may result in a district court abuse, neglect, or dependency proceeding. Reports are made to county departments of social services. North Carolina has other laws that require reports involving children be made to different government agencies.

(a) Reports to law enforcement. Some laws mandate that reports involving possible child maltreatment be made to law enforcement or punish the making of improper reports in certain circumstances. These laws address

- the duty to report to law enforcement the disappearance of a child under age sixteen (G.S. 14-318.5; 14-318.4(a6));
- failure to notify law enforcement of the death of a child, with the intent to conceal the child's death (G.S. 14-401.22);
- making false or misleading reports to law enforcement relating to the investigation of a child's disappearance or a child victim of a Class A, B1, B2, or C felony (G.S. 14-225);
- the duty of a school principal to report certain crimes that occur on school property to law enforcement (G.S. 115C-288(g)); and
- the duty of physicians and hospitals to report to law enforcement certain wounds, injuries, and illnesses, including any child's recurrent illness or serious physical injury, that appears to be the result of non-accidental trauma (G.S. 90-21.20).

Mandated reporting requirement to law enforcement for juvenile victims of certain crimes. Effective December 1, 2019, North Carolina enacted a universal mandated reporting law involving juveniles who are victims of certain crimes. *See* S.L. 2019-245, Part I. Under G.S. 14-318.6, any adult who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse must report that case to the appropriate local law enforcement agency where the juvenile resides or is found. *See State v. Lester*, ___ N.C. App. ___, 895 S.E.2d 905 (2023) (as mandated reporter, provider at Duke Hospital Clinic reported alleged sexual assault of 13 year old to law enforcement). The definition of juvenile incorporates G.S. 7B-101(14), which is a person who is younger than 18 years of age and is not married, emancipated, or a member of the Armed Forces and further states "[f]or the purposes of this section, the age of the juvenile at the time of the abuse or offense governs." G.S. 14-318.6(a)(1); *see* G.S. 7B-101(14). There are some limited exemptions to the reporting requirement for certain professionals who have a statutory privilege. Absent those professionals covered by the reporting exemption, a person 18 years of age or older who knowingly and willfully fails to make a report to law enforcement or prevents another from doing so is guilty of a Class 1 misdemeanor. A report under G.S. 14-318.6 does not relieve a person from making a report to DSS for the same juvenile if that person has cause to suspect the juvenile is also abused, neglected, or dependent. G.S. 14-318.6(d).

For a table comparing the criminal universal mandated reporting statute, G.S. 14-318.6, and the abuse, neglect, and dependency mandated reporting statute, G.S. 7B-301, see Appendix 5-1 at the end of this Chapter.

Resource: For a discussion of this fairly new mandated reporting law and questions regarding its interpretation, see Sara DePasquale, *BIG NEWS: S.L. 2019-245 Creates a New Universal Mandated Reporting Law for Child Victims of Crimes and Changes the Definition of Caretaker*, UNC SCH. OF GOV'T: NORTH CAROLINA CRIMINAL LAW BLOG (Nov. 13, 2019).

(b) Reports of suspected child maltreatment in child care. Effective January 1, 2016, the Juvenile Code was amended to remove reports and investigations of abuse and neglect occurring in child care facilities from a county DSS to the North Carolina Department of Health and Human Services (DHHS) Division of Child Development and Early Education (DCDEE). *See* S.L. 2015-123. Another universal reporting statute, G.S. 110-105.4(a), was enacted that requires any person with cause to suspect a child has been maltreated or died as a result of maltreatment in a child care facility to make a report to DHHS DCDEE. *See* G.S. 110-105.3(b) (definitions of "child care facilities" and "child maltreatment"). DHHS DCDEE, as the agency that administers the child care licensing system, is responsible for investigating the report and taking appropriate responsive action to the findings of its investigation. *See* G.S. 110-105.3 through -105.6.

Resources:

For more information about child maltreatment in a child care facility, see

- Sara DePasquale, *The New Law Addressing Child Maltreatment in Child Care Facilities: It's the State's Responsibility*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Jan. 6, 2016).
- SARA DEPASQUALE, *Suspected Child Maltreatment Occurring in a Child Care Facility* (UNC School of Government, 2016) supplemental CH. 13a *in* JANET MASON, REPORTING CHILD ABUSE AND NEGLECT IN NORTH CAROLINA, (UNC School of Government, 3d ed. 2013).
- The "Complaints" section of the N.C. Department of Health and Human Services Division of Child Development and Early Education website.

For an illustration of the reporting requirements under North Carolina's two universal mandated reporting laws related to a child's suspected abuse, neglect, dependency, or maltreatment in a child care facility, see Appendix 5-2 at the end of this Chapter.

6. Report may trigger DSS notification to other agencies. If DSS receives a report that a child was physically harmed in violation of a criminal law by someone who is not the parent, guardian, custodian, or caretaker, the director must make a report to local law enforcement and the district attorney within forty-eight hours. G.S. 7B-307(a). If the report alleges a child has been abused, neglected, or otherwise maltreated while in child care, the DSS director must notify the DHHS DCDEE within twenty-four hours or on the next working day after receiving the report. G.S. 7B-307(a); *see* G.S. 110-105.3(a), (c), (*l*).

7. DSS determines whether the report indicates abuse, neglect, or dependency. When DSS receives a report of suspected abuse, neglect, or dependency, its first task is to determine whether the facts as stated by the reporter, if true, fit within the definitions of abuse, neglect, or dependency in G.S. 7B-101. *See In re A.D.*, 278 N.C. App. 637 (2021) (citing G.S. 7B-302 and 7B-403). See Chapter 2.3.B (relating to definitions). If the facts do not, DSS will "screen out" the report, which requires a two-level review. 10A N.C.A.C. 70A.0105(g); *see* G.S.7B-300 (referring to "screening of reports"). When a report is screened out, DSS does not have a duty or even authority to investigate the matter. *See, e.g.*, *In re Stumbo*, 357 N.C. 279 (2003) (holding that a petition for an order to cease interference with a DSS investigation should not have been granted because the facts reported, even if true, did not fit within the definitions of abuse, neglect, or dependency). When the facts reported fit the definitions of abuse, neglect, or dependency, DSS will "screen in" the report.

Resource: The state policy for intake and screening of reports of suspected abuse, neglect, or dependency is set forth in the DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "CPS Intake," available here. The policy contains several intake decision trees based on the reported circumstances (e.g., physical injury, emotional abuse, improper care).

B. DSS Assessment of Report

When DSS receives a report and determines that information in the report, if true, fits the legal definition of abuse, neglect, or dependency, DSS must conduct an assessment. In the assessment, DSS will ascertain the facts of the case, the extent of any abuse or neglect, and the risk of harm to the juvenile. G.S. 7B-302(a). DSS must also collect information about the military affiliation of a parent, guardian, custodian, or caretaker when abuse or neglect has been alleged. G.S. 7B-302(a).

1. Conflict of Interest. The administrative rules identify situations where a county DSS has a conflict of interest requiring DSS to refer the report of abuse, neglect, or dependency to another county DSS for the assessment. Conflicts of interests exist when the alleged "perpetrator" is an

- employee of the DSS;
- foster parent supervised by the DSS;
- member of the DSS Board or governing structure of the county DSS, Board of County Commissioners, or the county manager;
- caretaker in a sole-source contract group home;
- incompetent adult who is a ward of the DSS; or
- minor parent who is also in foster care.

10A N.C.A.C. 70A.0103(a).

A conflict of interest also exists when in the professional judgement of the director, the DSS is perceived as having a conflict of interest. 10A N.C.A.C. 70A.0103(b).

Note that in an unpublished opinion, *In re T.C.M.*, 865 S.E.2d 375 (N.C. Ct. App. 2021), the court of appeals held that the conflict of interest rule does not affect standing in an abuse, neglect, or dependency action since the Juvenile Code allows for any county director to file a juvenile petition. See Chapter 3.2.B.1.(a) for a further discussion of standing and subject matter jurisdiction.

2. Multiple response system. The multiple response system (MRS) provides for different response procedures for different types of reports. DSS must determine what assessment type is appropriate. *See In re A.D.*, 278 N.C. App. 637 (2021). The "family assessment" response is used for reports meeting the statutory definitions of neglect and dependency. This response is a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the child's family, as well as the child's condition. G.S. 7B-101(11a); *see In re A.D.*, 278 N.C. App. 637. The "investigative assessment" response is used for reports alleging the statutory definition of abuse and director selected reports of neglect or dependency. This type of response uses a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent. G.S. 7B-101(11b); *see* G.S. 7B-320(a).

Investigative and family assessments have many procedures in common. Both use a structured decision-making process that requires that more than one person be involved in reaching a decision based on the legal definitions and on documented caretaker behavior that resulted in harm or a risk of harm to the child. An assessment must address and document findings about the frequency and severity of maltreatment, safety issues and risk of future harm, and the need for protection. A family assessment results in a determination of one of the following:

- services needed,
- services provided and protective services no longer needed, or
- services not needed.

DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Assessments," available here.

At the end of an assessment, DSS either substantiates abuse, neglect, serious neglect, or dependency or does not (sometimes referred to as "unsubstantiated"). *See In re A.D.*, 278 N.C. App. 637. The court of appeals has stated, "[a] determination of substantiated and services needed are treated similarly under DSS policy[,]" referring to North Carolina's Child Welfare Manual under "In-Home Services Policy, Protocol, and Guidance." *In re A.D.*, 278 N.C. App. at 645. In other words, " 'services needed' is not the same as 'unsubstantiated.' " *In re A.D.*, 278 N.C. App. at 645.

A determination by DSS that abuse, neglect, or dependency has occurred triggers specific statutory responsibilities. DSS must determine whether protective services should be provided or whether a petition should be filed to initiate a juvenile court proceeding. *See* G.S. 7B-302(a), (c). In most cases where the assessment indicates abuse, neglect, or dependency, DSS does not file a petition but provides services to protect the child and may enter into a service agreement or protection plan with the family. These agreements are voluntary and are not legally enforceable. Nevertheless, a parent's failure to comply with a service agreement or

protection plan may be relevant later if DSS files a petition alleging abuse, neglect, or dependency. *See* G.S. 7B-302(c); *In re A.D.*, 278 N.C. App. 637; *In re H.L.*, 256 N.C. App. 450 (2017).

Resource*:* For policies and details of the multiple response system and what is involved in family and investigative assessments, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Assessments," available here.

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3. Timing of assessment. When abuse, abandonment, or the unlawful transfer of custody is alleged, DSS must initiate the assessment immediately and at least within twenty-four hours after receiving the report. When neglect (other than abandonment or the unlawful transfer of custody) or dependency is alleged, the assessment must be initiated within seventy-two hours. G.S. 7B-302(a); *see* G.S. 14-321.2 (unlawful transfer of custody).

4. Family privacy. As part of the assessment DSS is required to visit the place where the child resides. G.S. 7B-302(a). However, DSS may not enter a private residence for assessment purposes without at least one of the following:

- a reasonable belief that a child is in imminent danger of death or serious physical injury,
- permission of the parent or person responsible for the child's care,
- accompaniment of a law enforcement officer who has legal authority to enter, or
- a court order.

G.S. 7B-302(h).

See generally Renn v. Garrison, 100 F.3d 344, 349 (4th Cir. 1996) (holding that DSS workers alleged to have violated family privacy rights were entitled to qualified immunity where there was no showing that their actions exceeded the scope of the North Carolina state child protection statutes in effect at the time, which the court noted "plainly take into account" a family's right to privacy).

5. Confidentiality. DSS is required to hold all information it receives, including the identity of the reporter, in strictest confidence. G.S. 7B-302(a1). However, there are a number of exceptions to this requirement. For a discussion of confidentiality and information sharing, see Chapter 14.

6. Military affiliation of parent, guardian, custodian, or caretaker. Effective August 23, 2019, as part of its assessment of a report of abuse or neglect, DSS is required to collect information about the military affiliation of the juvenile's parent, guardian, custodian, or caretaker. G.S. 7B-302(a). If DSS finds evidence that a juvenile may have been abused or neglected by a parent, guardian, custodian, or caretaker with a military affiliation, the DSS director must notify the appropriate military authority. G.S. 7B-307(a); *see* G.S. 7B-302(a1)(1) (authorizing the disclosure).

7. Other juveniles. DSS must ascertain whether other juveniles who live in the home or who reside in the same facility are in need of protective services or require removal from the home

or facility. G.S. 7B-302(b).

8. Assessing need for immediate removal, providing protective services. If an assessment indicates that a juvenile is abused, neglected, or dependent, DSS must decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal is not necessary, DSS must immediately provide or arrange for protective services. G.S. 7B-302(c); *see In re A.D.*, 278 N.C. App. 637 (2021). *See also* G.S. 7B-300 (defining protective services). When a family is in need of services, "DSS is responsible for determining what services would help the family to meet the child's basic needs, keep the child safe, and prevent future harm," with a focus on the child's safety. *In re A.D.*, 278 N.C. App. at 644.

If immediate removal is necessary, DSS must file a petition and, in some circumstances, may assume temporary custody of the juvenile. G.S. 7B-302(d). See section 5.5.B, below (explaining temporary custody).

9. Parent refusing services. After a substantiation or a finding that a family is in need of services, if DSS does not file a petition, it provides or arranges for protective services based on the risks, needs, and strengths of the family identified during the assessment process. "If a parent, guardian, custodian, or caretaker refuses to accept the protective services arranged or provided for by DSS, then DSS is *required* to file a petition to protect the juvenile(s)." G.S. 7B-302(c); *see In re A.D.*, 278 N.C. App. 637, 644 (2021) (emphasis in original) (after determining services were needed, DSS transferred case to in-home services for case management; DSS filed petition alleging the juveniles were dependent and neglected after the custodian with whom the children lived refused to participate in in-home services and prevented the DSS social worker from seeing the children).

10. Physical abuse may require mental health evaluation. When a child is removed from the home based on physical abuse, DSS must thoroughly review the alleged abuser's background, which includes a criminal history check and review of available mental health records. If the review reveals a history of violent behavior against people, DSS must petition the court to order the alleged perpetrator to submit to a mental health evaluation. G.S. 7B-302(d1).

C. DSS Access to Information

In making the assessment of the child's status, DSS may consult with any public or private agencies or individuals, including law enforcement officers. G.S. 7B-302(e). See also Chapter 14 (relating to confidentiality and DSS access to information).

1. Access to all relevant information. DSS may make a written demand for information or reports, whether or not confidential, that may be relevant to the assessment or to providing protective services, and that information must be provided (to the extent permitted by federal law, described in Chapter 14) unless protected by attorney-client privilege. G.S. 7B-302(e). Refusals of DSS's written demands for information may result in interference proceedings pursuant to G.S. 7B-303, described in section 5.1.G, below.

2. Criminal investigative information. If a custodian of criminal investigative information believes release of the information will jeopardize the criminal case or the defendant's right to receive a fair trial, the custodian may seek a court order to prevent disclosure. This kind of action must be set for immediate hearing, and any subsequent proceedings in the action must be given priority by trial and appellate courts. G.S. 7B-302(e).

D. Notice to the Reporter

1. After DSS receipt of report. Within five days of receiving the report, DSS must give written notice to the reporter as to whether the report was accepted for assessment and whether it was referred to a law enforcement agency. The notice is not required if the reporter has asked not to receive notice or has not provided their name or contact information. G.S. 7B-302(f).

2. After DSS completion of assessment. Within five days after completing the assessment, DSS must give written notice to the reporter as to whether there is a finding of abuse, neglect, or dependency; what, if any, action DSS is taking to protect the child; and whether a petition has been filed. Notice is not required if the reporter has asked not to receive notice or has not provided their name or contact information. G.S. 7B-302(g).

3. Right to seek review. DSS must inform the reporter of the procedure allowing the reporter to request a prosecutor review the DSS decision not to file a petition. G.S. 7B-302(g).

E. Review by Prosecutor

When DSS decides not to file a petition alleging abuse, neglect, or dependency, the person who made the report can seek a review of that decision by the prosecutor. G.S. 7B-302(g); 7B-305; 7B-403(b).

1. Timing. Request for the review must be made within five days of receiving notice of a DSS decision not to file a petition. G.S. 7B-302(g); 7B-305. The prosecutor must review the DSS decision within twenty days after the reporter is notified of DSS's decision. G.S. 7B-306. The prosecutor notifies the reporter and DSS of the time and place for the review. G.S. 7B-305.

2. Substance of review. Once DSS receives notice of the time and place for review from the prosecutor, DSS must immediately transmit a copy of the summary of the assessment to the prosecutor. G.S. 7B-305. The prosecutor's review must include conferences with

- the person making the report,
- the DSS protective services worker,
- the child (if practicable), and
- other persons known to have pertinent information about the child or the child's family.

G.S. 7B-306.

3. Outcome of review. At the conclusion of the review, the prosecutor may

- affirm the DSS decision not to file a petition,
- ask an appropriate local law enforcement agency to investigate, or
- direct DSS to file a petition.

G.S. 7B-306.

Resource: For a further discussion of making a report, notice to the reporter, and the prosecutor review, see Sara DePasquale, *A/N/D Reporting: Rights, Protections, and Prosecutor Review*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 21, 2017).

F. Law Enforcement Involvement

1. DSS to report to law enforcement. If DSS finds evidence that a juvenile may have been abused, as defined in G.S. 7B-101, or receives a report of a crime involving physical harm to a juvenile by someone other than a parent, guardian, custodian, or caretaker, DSS must make immediate oral and subsequent written reports to the district attorney (or designee) and to appropriate local law enforcement within forty-eight hours of when DSS received the report. G.S. 7B-307(a). Under G.S. 14-318.6, if DSS knows or reasonably should have known the juvenile is or was a victim of a violent offense, sexual offense, or misdemeanor child abuse, it must make a report to local law enforcement where the juvenile resides or is found. See section 5.1.A.5.(a), above, discussing universal mandated reporting to local law enforcement.

2. The criminal investigation. Within forty-eight hours of receiving information from DSS, law enforcement must initiate a criminal investigation. If DSS is initiating an assessment, law enforcement's investigation must be coordinated with the protective services assessment. G.S. 7B-307(a). When law enforcement's investigation is complete, the district attorney must determine whether criminal prosecution is appropriate and may request that a DSS representative appear before a magistrate to seek the issuance of a warrant. G.S. 7B-307(a).

3. Abandonment reported. When a report alleges that the child is abandoned, the DSS assessment must include a request to law enforcement to investigate through the North Carolina Center for Missing Persons and other national and state resources whether the child is a missing child. G.S. 7B-302(a).

4. Relationship between DSS and law enforcement. Complications can arise when DSS and law enforcement are working on separate cases resulting from the same circumstances. DSS and law enforcement may pursue interviewing the same individuals, and sometimes they may conduct interviews jointly. Attention should be given to the circumstances under which *Miranda* warnings are applicable. Even if DSS conducts an interview, if information learned in the interview is used in a subsequent criminal trial, the issue of whether DSS was acting as an "agent" of law enforcement may arise. *See State v. Morrell*, 108 N.C. App. 465 (1993) (holding that a social worker's failure to advise the defendant of her *Miranda* rights caused the defendant's statements in an interview with the social worker to be inadmissible because the social worker became like an agent of the state where the social worker went beyond her

role and began working with the sheriff's department on the case prior to interviewing the defendant). For a discussion of admissions of a party-opponent, see Chapter 11.6.B.

5. DSS cooperation with law enforcement when minor victim of human trafficking. Minor victims of human trafficking are both abused and neglected juveniles. *See* G.S. 7B-101(1)(i) (definition of "abused juveniles") and 7B-101(15)(i) (definition of "neglected juvenile"). If DSS finds evidence that a child may be a victim of human trafficking, DSS is required to notify local law enforcement and the district attorney or their designee as discussed in subsection 1, above. G.S. 7B-307(a). Additionally, if DSS substantiates an individual (i) who is not the juvenile's parent, guardian, custodian, or caretaker as the responsible individual and (ii) who abused or seriously neglected the juvenile as a minor victim of human trafficking, DSS must first cooperate with local law enforcement and the district attorney before sending a notice to that individual under the laws governing the responsible individuals list (RIL). G.S. 7B-320(a1); *see* G.S. 7B-101(18b) (definition of "responsible individual"). DSS, local law enforcement, and the district attorney will address whether the notice will cause the juvenile mental or physical harm or danger, will undermine a criminal investigation (ongoing or future), or will jeopardize the State's ability to prosecute the individual. G.S. 7B-320(a1). See section 5.2.B, below (discussing the RIL).

G. Interference with DSS Assessment

When someone obstructs or interferes with a DSS assessment, DSS may file an interference petition naming that person as a respondent and asking the court to order that person to cease the obstruction or interference. G.S. 7B-303. The court has exclusive original jurisdiction of proceedings in which a person is alleged to have obstructed or interfered with a DSS assessment. G.S. 7B-200(a)(6).

1. Meaning of interference or obstruction. Interference or obstruction includes any of the following:

- refusing to disclose the juvenile's whereabouts,
- refusing to allow DSS to have personal access to the juvenile,
- refusing to allow DSS to observe or interview the juvenile in private (*see State v. Ditenhafer*, 258 N.C. App. 537 (2018) (referring to DSS's right to ask mother to leave child's interview and ability to seek an interference order to compel mother's nonattendance if she refused to leave the interview), *aff'd in part, rev'd in part and remanded*, 373 N.C. 116 (2019),
- refusing to allow DSS access to confidential information and records pursuant to a request under G.S. 7B-302,
- refusing to allow DSS to arrange for an examination of the juvenile by a physician or other expert (*see In re Browning*, 124 N.C. App. 190 (1996), in which a father was not successful in claiming religious beliefs as a reason for refusing to permit a mental health evaluation of his children), or
- other conduct that makes it impossible for DSS to carry out the duty to assess the juvenile's condition.

G.S. 7B-303(b); *see In re J.C.M.J.C.*, 268 N.C. App. 47 (2019) (facts in case show that DSS obtained an interference order against respondent parents who refused to cooperate with DSS or allow DSS access to their home and children).

2. Requirements for petition for interference. The petition must be verified and

- contain the child's name, date of birth, and address;
- state the basis for initiating an assessment; and
- include a description of conduct alleged to constitute obstruction or interference.

G.S. 7B-303(a).

3. File with clerk or magistrate. The interference petition is filed with the clerk of court when that office is open. In an emergency, when an interference order is needed and the clerk's office is closed, the magistrate must accept the petition for filing. A petition accepted by the magistrate must be delivered to the clerk's office for processing as soon as that office opens. G.S. 7B-404. Some judicial districts may have local rules or an administrative order issued by the chief district court judge addressing the appropriate procedure for after-hours filing.

4. Service and notice. Service of the interference petition, summons, and notice of hearing must be made "as provided by the Rules of Civil Procedure," on

- the person alleged to have obstructed or interfered with an assessment (the respondent);
- the juvenile's parent, guardian, custodian, or caretaker; and
- any other person determined by the court to be a necessary party.

G.S. 7B-303(c).

5. Hearing. The hearing on the interference petition must be held not less than five days after service of the petition and summons on the respondent. G.S. 7B-303(c). The burden of proof at the hearing is on DSS, and the standard of proof is clear, cogent, and convincing evidence. G.S. 7B-303(c). DSS must prove that the respondent both obstructed or interfered with the assessment and did so without a lawful excuse. As part of its case in chief, DSS should prove not only the conduct of the respondent and its effect on the assessment, but also that DSS was acting pursuant to a report that was sufficient to trigger DSS's duty and authority to conduct an assessment under G.S. 7B-302. Where the information in the report is not sufficient to constitute abuse, neglect, or dependency, filing an interference petition is improper. *See In re Stumbo*, 357 N.C. 279 (2003).

The scope of the hearing does not extend to the issue of whether the child is abused, neglected, or dependent, and the court does not have jurisdiction to change the child's custody. *See In re K.C.G.*, 171 N.C. App. 488 (2005); *see also In re J.C.M.J.C.*, 268 N.C. App. 47, 58 (2019) (stating "findings [of interference by respondent parents] do not support a conclusion that Respondents did 'not provide proper care, supervision, or discipline[,]' or that the children were living in an environment injurious to their welfare").

6. Cease interference order. If the court finds at the hearing by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with a required assessment, the court may order the respondent to cease the obstruction or interference. G.S. 7B-303(c).

7. Ex parte action and orders. When DSS believes the juvenile needs immediate help or protection, DSS can allege this in the interference petition and seek an ex parte order. G.S. 7B-303(d).

(a) Standard. The court may enter an ex parte order to cease obstruction or interference if it finds probable cause to believe that

- the juvenile is at risk of immediate harm and
- the respondent is obstructing or interfering with DSS's ability to assess the juvenile's condition.

(b) Limitation. This ex parte order is limited to provisions necessary to enable DSS to conduct an assessment to determine whether the juvenile is in need of immediate protection or assistance.

(c) Subsequent hearing. Within ten days of an ex parte order, a hearing must be held to determine whether there is good cause for the order to continue or whether there should be a different order.

(d) Service on respondent. The respondent must be served with the ex parte order along with a copy of the interference petition, summons, and notice of hearing.

8. Enforceability. An order to cease interference with or obstruction of a DSS assessment is enforceable by civil or criminal contempt as provided in G.S. Chapter 5A. G.S. 7B-303(f). *See In re J.C.M.J.C.*, 268 N.C. App. 47 (2019) (referring to the ability of DSS to obtain a contempt order against respondents who fail to comply with an interference order).

AOC Forms:

- AOC-J-120, Petition - Obstruction of or Interference with Juvenile Assessment (Abuse/Neglect/Dependency).
- AOC-J-121, Juvenile Summons and Notice of Hearing (Obstruction of or Interference with Juvenile Assessment).
- AOC-J-122, Ex Parte Order to Cease Obstruction of or Interference with Juvenile Assessment.
- AOC-J-123, Order to Cease Obstruction of or Interference with Juvenile Assessment .

5.2 Central Registry and Responsible Individuals List

A. Central Registry

The Department of Health and Human Services (DHHS) maintains a confidential Central Registry of reports of abuse, neglect, and dependency and child fatalities that are the result of alleged maltreatment. This statewide registry is maintained for study purposes and to identify cases of repeated maltreatment of a child. The data is furnished to DHHS by the county departments of social services which received the reports and completed the assessments. The data is confidential and cannot be used in court "unless based upon a final judgment of a court of law." G.S. 7B-311(a); *see Gorlesky v. Cabarrus Cnty. Dep't. of Social Servs*., 865 S.E.2d 373 (N.C. Ct. App. 2021) (unpublished).

The implementing regulations adopted by the Social Services Commission list the organizations and persons who are permitted to access Central Registry data and the limited purposes for which the data may be accessed. 10A N.C.A.C. 70A.0102; *see* G.S. 7B-311(a); *Gorlesky*, 865 S.E.2d 373 (unpublished). Information from the Central Registry that is allowed to be shared is released by DHHS, not a county DSS. *Gorlesky*, 865 S.E.2d 373 (unpublished).

A DSS may access the Central Registry to identify whether a child who is currently being assessed for abuse, neglect, or dependency has previously been reported as such or is a member of a family where another child died due to suspected abuse or neglect, but the information is limited to

- the child's name, date of birth, sex, and race;
- the county that investigated or assessed the report;
- the type of maltreatment reported and found, the date of the case decision, and the case decision; and
- the relationship of the perpetrator to the child victim.

10A N.C.A.C. 70A.0102(b)(3).

Confidentiality of Central Registry data is strictly enforced. A person who releases information from the Central Registry to a person who is not authorized to receive the information, and a person who is not authorized to receive the information but who attempts to access it, commit a Class 3 misdemeanor. G.S. 7B-311(c).

Practice Note: The Central Registry relates to children who have been reported and found to be abused, neglected, or dependent or who died as a result of suspected abuse or neglect. It is not a registry of perpetrators. Disclosure of information about the perpetrator, other than the perpetrator's relationship to the child, is not authorized. *See Gorlesky*, 865 S.E.2d 373 (unpublished) (discussing the Central Registry and Responsible Individuals List).

There are two different statewide lists maintained by DHHS that allow for disclosure of information about a perpetrator: the Responsible Individuals List and the Child Maltreatment

Registry. *See* G.S. 7B-311(b); 110-105.5. Unlike these two other lists, there is no procedure for a person to discover or challenge information in the Central Registry.

The Child Maltreatment Registry is a statewide registry of caregivers who have been substantiated for maltreating a child in a child care facility. Effective January 1, 2016, DHHS DCDEE is required to maintain this registry, which is a component of North Carolina's child care licensing system. The names of the caregivers listed in the Child Maltreatment Registry are available to the public. G.S. 110-105.5. See the Division of Child Development and Early Education Public Request Form for Child Maltreatment Registry, available here.

Resource: For more information about the DHHS Division of Social Services policy addressing the Central Registry, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Appendix 1. CPS Data Collection," available here.

B. Responsible Individuals List

DHHS also maintains a statewide registry of individuals determined by county departments of social services to be responsible for a child being abused or seriously neglected: the Responsible Individuals List (RIL). G.S. 7B-311(b); *see* G.S. 7B-101(18b) (definition of "responsible individual"); 7B-101(19b) (definition of "serious neglect"; *renumbered by* S.L. 2023-14, sec. 6.2.(b)); *see also Gorlesky v. Cabarrus Cnty. Dep't. of Social Servs*., 865 S.E.2d 373 (N.C. Ct. App. 2021) (unpublished) (discussing the RIL). The RIL may be accessed by child caring institutions, child-placing agencies, group homes, and providers of child care, foster care, or adoption services to determine a person's fitness to care for or adopt children. G.S. 7B-311(b). County departments of social services and child-placing agencies are providers of foster care or adoption services and have a right to access information on the RIL.

Placement on the RIL has negative consequences for the individual so named. It impacts the individual's ability to adopt, foster, or care for children and obtain and maintain employment in the child care field. *In re W.B.M.*, 202 N.C. App. 606 (2010). As a result, the court of appeals held that procedural due process requires the individual receive notice and have an opportunity to be heard before being placed on the RIL, with an evidentiary standard of at least preponderance of the evidence. *In re W.B.M.*, 202 N.C. App. 606 (holding the 2005 version of the RIL statutory procedures violated due process and were unconstitutional). The RIL statutory procedures were revised in 2010 after that court of appeals decision. *See* S.L. 2010-90, further amended by S.L. 2013-129. The RIL contains only the names of individuals for whom the procedures in place on or after July 11, 2010 were available. *See* DHHS Division of Social Services Dear County Directors Letter, CWS-23-10: Responsible Individuals List (RIL) Clearance Procedures (Oct. 15, 2010).

1. Abuse, serious neglect, responsible individual. When a DSS investigative assessment determines that a child has been abused or seriously neglected, whenever possible DSS also identifies the person(s) responsible for the child's condition. *See* G.S. 7B-320. Abuse is derived from the definition of "abused juvenile" in G.S. 7B-101(1). However, "serious

neglect" is distinguished from "neglected juvenile" through different definitions in the Juvenile Code. "Serious neglect" is defined as "[c]onduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse." G.S. 101(19b), *renumbered by* S.L. 2023-14, sec. 6.2.(b); *compare with* G.S. 7B-101(15) (definition of "neglected juvenile").

Practice Note: Petitions alleging that a child is abused or neglected do not allege "serious neglect." A child's adjudication is as a "neglected juvenile" as defined by G.S. 7B-101(15) and is not based on "serious neglect." Serious neglect relates only to placement on the Responsible Individuals List. *In re J.M.*, 255 N.C. App. 483 (2017) (holding a child's adjudication of "serious neglect" was a misapprehension of the law). See Chapters 2.3.B and 6.3.F for a discussion of neglected juvenile.

A responsible individual is defined as "a parent, guardian, custodian, caretaker, or individual responsible for subjecting a juvenile to human trafficking under G.S. 14-43.11 [human trafficking], 14-43.12 [involuntary servitude], or 14-43.13 [sexual servitude], who abuses or seriously neglects a juvenile." G.S. 7B-101(18b). To place someone on the RIL, DSS must identify the individual who caused the abuse or serious neglect. This showing of culpability is not required for a child to be adjudicated as an abused juvenile. *In re Montgomery*, 311 N.C. 101 (1984). A child may be adjudicated abused without DSS proving or the court finding who is responsible. *See In re L.Z.A.*, 249 N.C. App. 628 (2016) (holding abuse adjudication was supported by findings of unexplained non-accidental injuries to the child while the child was in the parents' sole custody); *In re Y.Y.E.T.*, 205 N.C. App. 120 (2010). A RIL placement will not occur when a child is adjudicated abused but DSS does not know who is responsible. When DSS is able to identify the responsible individual, it must take the necessary steps to place that individual on the RIL. *See* G.S. 7B-320; 7B-323. There is a limited exception to placement on the RIL of an alleged responsible individual who is not a parent, guardian, custodian, or caretaker to the juvenile who is abused as a minor victim of human trafficking. *See* G.S. 7B-320(a1) (discussed further in subsection 2, immediately below).

2. Notice to the responsible individual. Upon identifying a person as a "responsible individual," DSS must deliver a written notice to that individual that

- informs the individual whether DSS determined abuse, serious neglect, or both;
- states DSS has identified the person as a responsible individual;
- summarizes substantial evidence supporting DSS's determination, without identifying the reporter or collateral contacts;
- informs the individual that unless they petition for judicial review their name will be placed on the Responsible Individuals List, and describes DHHS's authority to release information on the list; and
- clearly describes steps the person must take to seek judicial review of DSS's determination, with a copy of a petition for judicial review form provided.

G.S. 7B-320(c), (d).

The notice is to be personally delivered by DSS to the individual in an expeditious manner after the investigative assessment is completed. G.S. 7B-320(a). Prior to October 1, 2019, DSS was required to personally deliver the notice to the alleged responsible individual within five working days of the completion of the investigation assessment. *See* S.L. 2019-33. In *In re Harris*, 265 N.C. App. 194 (2019), the court of appeals examined under due process grounds the effect of a lengthy delay on notifying the alleged responsible individual of DSS's intent to place the individual on the RIL. In that case, nearly four years after completion of the investigative assessment, DSS notified the individual that he was alleged to be a responsible individual based upon abuse of a child for whom he was a caretaker. The alleged responsible individual timely filed for a judicial review upon receipt of that notice and successfully argued that he should not be placed on the RIL due to the lengthy delay by DSS in providing the notice, which impacted his ability to prepare a defense. The court of appeals affirmed the trial court's order after concluding that the substantial delay in notifying the alleged responsible individual prejudiced his ability to adequately present a defense in an action that impacts his protected liberty interests.

At times, DSS will be unable to complete personal delivery of the notice to the alleged responsible individual. If personal written notice is not given within fifteen days of the DSS determination that a person is a responsible individual and DSS has made diligent efforts to locate the individual, the director must send the notice to the individual by registered or certified mail, return receipt requested, and addressed to the individual at their last known address. G.S. 7B-320(b).

Exception involving minor victims of human trafficking. Before sending notice to an alleged responsible individual who (i) is not the juvenile's parent, guardian, custodian, or caretaker and (ii) has been determined to be responsible for the juvenile's abuse as a minor victim of human trafficking, DSS must first cooperate with local law enforcement and the district attorney before attempting to send the notice. G.S. 7B-320(a1). The purpose of this interagency cooperation is to determine the safest way, if possible, to provide the notification. DSS must not send the notice or take any further action to place the alleged responsible individual on the RIL if the notice is likely to

- cause the juvenile physical or mental harm or danger,
- undermine a criminal investigation (ongoing or future), or
- jeopardize the State's ability to prosecute the individual.

G.S. 7B-320(a1).

3. Placement on the RIL. An individual's name may be placed on the Responsible Individuals List only after one of the following:

- the person is properly notified and fails to file a timely petition for judicial review;
- the person files a petition for judicial review and after a hearing the court determines by a preponderance of the evidence that the person is a responsible individual; or

- the person is criminally convicted as a result of the same incident.

G.S. 7B-311(b); *see* G.S. 7B-323(a), (d); 7B-324(a)(1), (a1).

A director may request an ex parte hearing to place the individual on the RIL when the director cannot show that the individual has received actual notice. The director may place the individual on the RIL when the district court judge determines the director made diligent efforts to find the individual. A finding that the individual is evading service is relevant to the court's determination. G.S. 7B-323(a1).

4. Right to judicial review. Within fifteen days of receiving the DSS notice determining the person is a responsible individual, the individual may file a petition for judicial review with the district court in the county where the abuse or serious neglect report arose. G.S. 7B-323(a). However, a person is not entitled to judicial review if they

- are convicted criminally as a result of the same incident or
- after proper notice, fail to file a timely petition for judicial review.

G.S. 7B-324(a)(1), (a)(4), (a1); *see* G.S. 7B-311(b)(1), (b)(3).

Regarding the first disqualifier, if the alleged responsible individual filed a petition for judicial review prior to any criminal conviction arising from the same incident, the court must dismiss the petition with prejudice if the individual is criminally convicted prior to the court holding the judicial review hearing. G.S. 7B-324(a1); *see* G.S. 7B-324(b) (authorizing court to grant a stay of the judicial review hearing).

Despite the second disqualifier, in extraordinary circumstances or if conducting a review would serve the interests of justice, the court in its discretion may conduct a hearing on a petition for judicial review that is not timely filed. If the individual's name has already been placed on the RIL and the court reverses the DSS determination, the court must order the person's name expunged from the RIL. G.S. 7B-323(e).

G.S. 7B-323(a) sets forth the contents of and service requirements for the petition for judicial review.

5. Scheduling the judicial review hearing. The clerk is required to maintain a separate docket for judicial review proceedings; schedule a hearing within forty-five days of the filing of a petition for judicial review or, if there is no juvenile court within that time, for the next session of juvenile court; and send a notice of hearing to the petitioner and the DSS director. G.S. 7B-323(b).

After receiving the notice from the clerk, the DSS director reviews the information from the investigative assessment. If the director determines there is insufficient evidence to support abuse, serious neglect, or that the person is the responsible individual, the director prepares a statement reversing the DSS determination to place the person on the RIL. The director's statement is delivered to the alleged responsible individual personally or by first-class mail

and provided to the clerk for placement in the court file and cancellation of the judicial review hearing. The clerk notifies the petitioner that the hearing is cancelled. G.S. 7B-323(b1).

If a person who files a petition for judicial review also is named as a respondent in an abuse, neglect, or dependency proceeding or a defendant in a criminal case resulting from the same incident, the court may stay the judicial review proceeding. G.S. 7B-324(b). The court exercises discretion in determining whether to grant a stay. *In re Patron*, 250 N.C. App. 375 (2016) (affirming denial of respondent's request for a stay when there was a pending criminal proceeding arising from the same incident).

The district court's jurisdiction to hear the judicial review is based on the age of the victim of the abuse or serious neglect at the time the incident that initiated the DSS investigative assessment occurred. If the victim turns 18 years old after the incident but before the judicial review is heard, the district court has jurisdiction to decide the action. *In re Patron*, 250 N.C. App. 375.

6. The hearing. At the request of a party, the court is required to close the hearing to everyone except the parties, witnesses, and law enforcement investigating the same allegations. DSS has the burden of proving by a preponderance of the evidence that the person identified by DSS is a responsible individual who abused or seriously neglected the child. The rules of evidence in civil cases apply, but the court may admit any evidence that is reliable and relevant, such as child medical evaluation reports and child and family evaluation reports that were relied upon by the DSS director when determining whether abuse or serious neglect occurred, if doing so will best serve the general purposes of the rules of evidence and the interests of justice. G.S. 7B-323(b).

At the hearing, the parties have the right to

- present sworn evidence, law, or rules;
- represent themselves or obtain representation by an attorney at their own expense; and
- subpoena witnesses, cross-examine witnesses, and make closing arguments.

G.S. 7B-323(c).

There is no statutory or constitutional right to a jury trial. *In re Duncan, Jr.*, 262 N.C. App. 395, 402 (2018) (stating "DSS's placement of a person on the RIL cannot itself constitute anything akin to an action for defamation, and does not provide the 'responsible individual' with any constitutional right to a trial by jury").

7. The court order. The court must enter an order within thirty days of the completion of the hearing. The order must contain findings of fact and conclusions of law. If the court concludes DSS did not prove by a preponderance of the evidence both (i) abuse and/or serious neglect and (ii) that the person is a responsible individual, it must order DSS to not place the person's name on the RIL. If the court concludes DSS did meet its burden, it must order DSS to place the individual's name on the RIL. G.S. 7B-311(b)(2); 7B-323(d); *In re*

Patron, 250 N.C. App. 375 (2016).

A party may appeal the court's decision under G.S. 7A-27(b)(2), as a final judgment of a district court in a civil action. G.S. 7B-323(f). It is not an order that is appealed under G.S. 7B-1001.

8. Confidentiality. Information on the RIL is confidential and may only be accessed by "authorized persons" designated by the rules of the Social Services Commission for the purpose of determining current or prospective employability or fitness to care for or adopt children. *See* G.S. 7B-311(b), (d); 10A N.C.A.C. 70A.0102(c)–(e) and 70A.0104(b)(1) (definition of "authorized persons"). A person who releases information from the RIL to a person who is not authorized to receive the information, and a person who is not authorized to receive the information but who attempts to access it, commit a Class 3 misdemeanor. G.S. 7B-311(c).

AOC Forms:

- AOC-J-131, Petition for Judicial Review Responsible Individuals List.
- AOC-J-132, Notice of Hearing Judicial Review Responsible Individuals List.

Resources:

For more information about the DHHS Division of Social Services policy addressing the Responsible Individuals List, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Appendix 1. CPS Data Collection," available here.

Sara DePasquale, *What Is the Responsible Individuals List and Why Is Someone on It?*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (April 27, 2016).

Timothy Heinle, *The Relationship Between Juvenile Abuse, Neglect, and Dependency, and the Responsible Individual's List*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 14, 2023),

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5.3 Starting the Abuse, Neglect, Dependency Court Action

A. The Petition

The petition alleging abuse, neglect, or dependency is the initial pleading in the court action. G.S. 7B-401. The filing of the petition is the means by which DSS commences an abuse, neglect, or dependency proceeding and by which the court obtains subject matter jurisdiction over the case and all of its stages. *See* G.S. 7B-405; *In re T.R.P.*, 360 N.C. 588, 593 (2006) (*quoted in In re K.S.D.-F.*, 375 N.C. 626, 633 (2020)). See Chapter 3.1−3.3 for a discussion of subject matter jurisdiction.

1. Proper petitioner. Only DSS can file a petition alleging abuse, neglect, or dependency. *See* G.S. 7B-401.1(a); 7B-403(a). See Chapter 3.2.B.1 for a discussion of standing.

2. Venue. Where to file the petition alleging abuse, neglect, or dependency involves venue. The petition may be filed in the judicial district where the child resides or is present at the time the petition is filed. G.S. 7B-400. Improper venue can be waived, and even if venue is proper, the court can grant a motion for change of venue for good cause. See Chapter 3.5 (discussing venue in detail).

3. File with clerk or magistrate. DSS must file the petition with the clerk of court when that office is open. In an emergency, when a nonsecure custody order (or an order to cease obstruction of or interference with a DSS assessment) is needed and the clerk's office is closed, the magistrate must accept the petition for filing. A petition accepted by the magistrate must be delivered to the clerk's office for processing as soon as that office opens. G.S. 7B-404. Some judicial districts may have local rules or an administrative order issued by the chief district court judge addressing the appropriate procedure for after-hours filing.

The court action commences when DSS files the petition with the clerk when the clerk's office is open or when the magistrate accepts the petition for filing when the clerk's office is closed. G.S. 7B-405.

4. Substance of petition. The petition must contain

- the juvenile's name, date of birth, and address (*but see In re A.R.G.*, 361 N.C. 392 (2007) (holding that failure to list the juvenile's address did not deprive the trial court of subject matter jurisdiction));
- the name and last known address of each party as designated in G.S. 7B-401.1; and
- facts sufficient to invoke jurisdiction over the juvenile.

G.S. 7B-402(a).

The petition should name and contain information about both parents, even if one of them has no involvement in the circumstances leading to the filing of the petition or is unknown or missing. *See* G.S. 7B-401.1(b) (note exceptions for when a parent is not named as a party).

Regarding facts sufficient to invoke the court's jurisdiction, the petition must include specific factual allegations to put the respondent on notice as to each alleged ground for adjudication – abuse, neglect, or dependency. Without such notice, 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 (2020) (noting in footnote 2 the trial court lacked authority to adjudicate the juvenile dependent when dependency was not alleged in the neglect petition, citing G.S. 7B-802). See Chapter 3.2.B (discussing key issues in determining subject matter jurisdiction).

The petition or an attached affidavit must also contain information required by the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) under G.S. 50A-209, as to the places and person(s) the child has lived with over the past five years and any other court actions concerning custody of the child. However, if a party alleges in an affidavit or pleading that the health, safety, or liberty of a party or child would be jeopardized by the

disclosure of identifying information, the information must be sealed and may be disclosed to the other party or to the public only pursuant to a court order after a hearing in which the court considers the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice. G.S. 50A-209.

See Chapter 3.2.C.2 (discussing problems with petitions that do not impact subject matter jurisdiction).

AOC Forms:

- AOC-J-130, Juvenile Petition (Abuse/Neglect/Dependency).
- AOC-CV-609, Affidavit as to Status of Minor Child.

Resource: Timothy Heinle, *You are on Notice: Pleading Requirements, a Recent N.C. Supreme Court Opinion, and Parent Representation*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Sept. 21, 2022)

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5. More than one child. A petition may contain information on more than one child when the children are from the same home and are before the court for the same reason. G.S. 7B-402(a). The petition must contain a separate file number for each child and the clerk must maintain a file for each child regardless of whether more than one child is named in a petition. See Chapter XII, Rules of Recordkeeping Procedure for the Office of the Clerk of Superior Court in Appendix at the end of this Manual. Separate petitions are preferable for children who live together but have different fathers or mothers and where the facts asserted to support the allegations of abuse, neglect, or dependency differ substantially from one child to another.

6. Verification essential. The petition must be signed and verified or the petition will be fatally defective and the court will not have subject matter jurisdiction. G.S. 7B-403(a); *In re T.R.P.*, 360 N.C. 588 (2006). See Chapter 3.2.B.3 (discussing in detail verification of the petition, including who may sign and verify).

7. DSS dismissal of petition. The Juvenile Code does not address the voluntary dismissal of a petition by DSS, but the court of appeals has held that the voluntary dismissal of a juvenile petition by DSS is permissible. *In re E.H.*, 227 N.C. App. 525 (2013). The court of appeals found that the application of Rule 41(a)(1)(i) of the Rules of Civil Procedure to abuse, neglect, or dependency cases advances the purposes of the Juvenile Code and does not conflict with its provisions. The court of appeals reasoned that the legislature has entrusted DSS with the duty to determine whether allegations of abuse, neglect, or dependency are credible and what action to take (subject only to limited review by the prosecutor), and that requiring the GAL or parents to consent to a dismissal would impermissibly shift this responsibility away from DSS. The court also discussed the need for judicial efficiency and conservation of limited social services resources.

8. Amendment of the petition. The court in its discretion may allow amendment of the petition. If the court allows an amendment, the court must also direct how the amended petition must be served and how much time a party has to prepare after the amendment. G.S. 7B-800. See Chapter 4.2.C (discussing amendments and supplemental pleadings).

B. The Summons and Process

The summons is the process in an abuse, neglect, or dependency action. G.S. 7B-401(a). See Chapter 4.3 (discussing civil procedure related to summons) and 4.4 (discussing civil procedure related to service).

1. Timing. Immediately after the filing of the petition, the clerk issues the summons. G.S. 7B-406(a). Although the court action commences when a magistrate accepts the petition for filing during an emergency when the clerk's office is closed, the magistrate is not authorized to issue the summons. The clerk should issue the summons when the petition is delivered to the clerk's office when it is open for business. *See* G.S. 7B-404.

2. Substance of summons. The summons is a printed AOC form that contains the detailed types of notice required by G.S. 7B-406(a) through (c), including

(a) Notice of hearing. The summons directs the respondent to appear for a hearing at the time and place stated in the summons. G.S. 7B-406(a).

(b) Nature of proceedings. The summons must include notice of the nature of the proceeding. G.S. 7B-406(b)(1).

(c) Counsel. The clerk's appointment of provisional counsel for each respondent parent must be indicated on the summons or an attached notice. G.S. 7B-602(a). In addition, the summons must include notice of the right to counsel and information about how a parent may seek the appointment of counsel prior to a hearing if provisional counsel is not identified. G.S. 7B-406(b)(2).

(d) Court determinations. The summons must include notice that if the court determines at the hearing that the allegations of abuse, neglect, or dependency in the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the state. G.S. 7B-406(b)(3).

(e) Potential outcomes. The summons must include notice that the dispositional order or a subsequent order

- may remove the juvenile from the custody of the parent, guardian, or custodian;
- may require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment;
- may require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of the parent;
- may order the parent to pay for treatment that is ordered for the juvenile or the parent; and

- may terminate the parent's parental rights after proper notice, a hearing, and a finding that grounds for termination exist.

G.S. 7B-406(b)(4).

(f) Jurisdiction. The summons must advise the parent that once served, the court has jurisdiction over the parent and that failure to comply with orders of the court may result in a finding of contempt. G.S. 7B-406(c).

(g) Petition. A copy of the petition must be attached to each summons. G.S. 7B-406(a).

3. Who receives summons. The summons is issued to each party named in the petition, except the juvenile. G.S. 7B-406(a). The petition should name as respondents those parties designated in G.S. 7B-401.1(b) through (e). Unless a statutory exception applies or a parent is deceased, both parents should be named as respondents. *See* G.S. 7B-401.1(b). The clerk must send a copy of the summons, any notice of appointment, and petition to the attorney appointed as provisional counsel for each respondent parent. *See* G.S. 7B-602(a).

4. Petition and notice to the child's GAL. Immediately after a petition alleging abuse or neglect is filed, the clerk must provide a copy of the petition and any notices of hearings to the local guardian ad litem (GAL) office. G.S. 7B-408. The court has discretion to appoint a GAL to the child when only dependency is alleged. G.S. 7B-601(a). If a GAL is appointed for an alleged dependent juvenile, a copy of the petition and notice of hearing should be provided to the GAL. The Juvenile Code does not address the provision of notice for a juvenile who is alleged to be dependent only and who is not appointed a GAL, but the juvenile is a party to the court action. *See* G.S. 7B-401.1(f); 7B-601(a). See Chapter 2.3.C and D (discussing the child as a party and the appointment of a GAL).

5. Service of petition and summons. Service of the summons and petition is according to Rule 4 of the Rules of Civil Procedure. Unless waived by the court, service must occur not less than five days prior to the date of the scheduled hearing. G.S. 7B-407. See Chapter 4.4 (discussing details related to service).

AOC Forms:

- AOC-J-141, Notice of Hearing in Juvenile Proceeding (Abuse/Neglect/Dependency).
- AOC-J-142, Juvenile Summons and Notice of Hearing (Abuse/Neglect/Dependency).
- AOC-J-155, Motion and Order to Show Cause (Parent, Guardian, Custodian or Caretaker in Abuse/Neglect/Dependency Case).

5.4 Parties, Appointment of Counsel, and Guardians ad Litem

A. Parties to the Proceeding

Abuse, neglect, or dependency proceedings tend to involve many people, and it is important to sort out who the actual "parties" are and what rights those parties have in the proceedings.

Relatives, foster parents, other caregivers, service providers, and law enforcement all can become involved in a case, but the Juvenile Code specifically limits parties in an abuse, neglect, or dependency proceeding to: DSS; the juvenile's parents (with limited exceptions); the juvenile's guardian, custodian, and caretaker (when statutory criteria are met); and the juvenile. G.S. 7B-401.1.

For a discussion of key people involved in an abuse, neglect, or dependency case who are not parties, see Chapter 2.1 and 2.2.

B. Parents and Other Care Providers

1. Parent is a party. The juvenile's parent is a party to the case unless

- the parent's rights have been terminated;
- the parent has relinquished the child for adoption, unless the court orders that the parent be made a party;
- the parent has safely surrendered their infant on or after October 1, 2023, unless the court orders that the parent be made a party or the parent seeks to regain custody of their infant; or
- the parent has been convicted of first- or second-degree forcible rape, statutory rape of a child by an adult, or first-degree statutory rape and that criminal act resulted in the conception of the child.

G.S. 7B-401.1, amended by S.L. 2023-14, sec. 6.2.(c); *see* G.S. 14-27.21; 14-27.22; 14-27.23; 14-27.24; *see also* G.S. 7B-908(b)(1).

2. Guardians, custodians, and caretakers. Guardians, custodians, and caretakers are parties in certain circumstances.

- At the time the petition is filed, any court-appointed guardian of the person or general guardian of the child is a party to the abuse, neglect, or dependency action. In North Carolina, a guardian of the person for the child is appointed either in an abuse, neglect, or dependency action or in a guardianship proceeding before the clerk of court. Note that the clerk's authority to appoint a guardian of the person or a general guardian for a minor is limited to when the minor has no natural guardian or pursuant to a standby guardianship. G.S. 35A-1221; 35A-1224(a); 35A-1370 through -1382. Any person appointed as the child's guardian in the abuse, neglect, or dependency action pursuant to G.S. 7B-600 automatically becomes a party in that action if the court has found that the guardianship is the child's permanent plan. G.S. 7B-401.1(c).
- The child's custodian at the time a petition is filed is a party to the abuse, neglect, or dependency action. A person who is awarded custody in the abuse, neglect, or dependency proceeding automatically becomes a party in that action if the court has found that the custody arrangement is the child's permanent plan. G.S. 7B-401.1(d).
- A caretaker, as defined in G.S. 7B-101(3), is a party only if the petition includes allegations relating to the caretaker, the caretaker has assumed the status and obligations of a parent, or the court orders that the caretaker be made a party. G.S. 7B-401.1(e).

Although a foster parent is included in the definition of caretaker, a foster parent who is providing care to the child after the petition is filed is not a party. G.S. 7B-401.1(e1). A foster parent may seek to intervene as a party if the foster parent meets the criteria set forth at G.S. 7B-401.1(e1).

A guardian, custodian, or caretaker who is a party to the case may be removed as a party if the court finds that the person does not have legal rights that may be affected by the action and that the person's continuation as a party is not necessary to meet the juvenile's needs. G.S. 7B-401.1(g). The court must make both findings prior to removing any guardian, custodian, or caretaker as a party. *See In re J.R.S.*, 258 N.C. App. 612 (2018) (reversing and remanding the order removing grandparents who were custodians through a Chapter 50 order when the neglect and dependency action was initiated; noting that due to the Chapter 50 custody order awarding legal and physical custody to grandparents, the district court hearing the juvenile proceeding in its discretion may be prevented from making the first finding required by G.S. 7B-401.1(g)). Additionally, a guardian, custodian, or another DSS with an interest in the proceeding who are not named as parties may seek to intervene in the action pursuant to G.S. 7B-401.1(h). See Chapter 4.7.A for a discussion on intervention.

Definitions of "caretaker", "guardian", and "custodian" are addressed Chapter 2.2.B.9. The rights of the parent are addressed in Chapter 2.4.

3. Appointment of respondent's counsel.

(a) Parent. When a petition is filed, the clerk must appoint provisional counsel for each parent named in the petition and indicate the appointment on the summons or attached notice. At the first hearing, the court must affirm the appointment of counsel unless the respondent parent: (1) does not appear at the hearing, (2) does not qualify for court-appointed counsel, (3) has retained counsel, or (4) makes a knowing and voluntary waiver of the right to counsel. If the court finds at the first hearing that any of those conditions exist, the court must dismiss the provisional counsel. Even after dismissing provisional counsel, however, the court can consider a parent's eligibility and desire for appointed counsel at any stage in the proceedings. The appointment of provisional counsel must be pursuant to rules adopted by the Office of Indigent Defense Services. G.S. 7B-602(a), (a1).

See Chapter 2.4.D (providing further detail related to appointment of counsel, waiver or forfeiture of counsel, withdrawal of counsel, pro se representation, and ineffective assistance of counsel).

AOC Form:
AOC-J-143, Waiver of Parent's Right to Counsel.

(b) Guardian, custodian, caretaker. The Juvenile Code specifies only that a parent has a right to appointed counsel if indigent and, unlike some other states' statutes, is silent with respect to representation of a guardian, custodian, or caretaker. (*See, e.g.*, KY. REV. STAT. ANN. § 620.100(1)(d): "[t]he court may, in the interest of justice, appoint separate counsel

for a nonparent who exercises custodial control or supervision of the child, if the person is unable to afford counsel . . . ").

The policy of the North Carolina Office of Indigent Defense Services (IDS) states that IDS will pay for representation of an indigent non-parent respondent, pursuant to G.S. 7A-498.3(a)(1), if the judge concludes the respondent is constitutionally entitled to appointed counsel in an abuse, neglect, or dependency proceeding. The IDS policy refers to the respondent's right to due process and the three-prong balancing test established by the U.S. Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319 (1976).

Resources:
N.C. OFFICE OF INDIGENT DEFENSE SERVICES, "Appointment of Counsel for Non-Parent Respondents in Abuse, Neglect, and Dependency Proceedings" (July 2, 2008).

Austine Long, *Non-Parents' Right to Counsel in Abuse, Neglect and Dependency Cases*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Feb. 5, 2016).

4. Appointment of guardian ad litem for parent. The Juvenile Code, in G.S. 7B-602, addresses the appointment of a Rule 17 guardian ad litem (GAL) for a respondent parent in an abuse, neglect, or dependency proceeding. *See* N.C. R. CIV. P. 17. The court must appoint a Rule 17 GAL for a respondent parent who is an unemancipated minor. G.S. 7B-602(b). The court may appoint a Rule 17 GAL for a respondent parent who is incompetent. G.S. 7B-602(c). The appointment of a GAL and GAL representation for respondent parents is discussed in Chapter 2.4.F.

5. Significance of uninvolved, missing, or unknown parents. Even when allegations of a child's abuse, neglect, or dependency relate primarily or solely to one parent, both parents should be named as respondents in the petition and provisional counsel should be appointed for each known parent. Abuse, neglect, or dependency petitions are not filed "against" parents, and a parent who is not involved, whose whereabouts are unknown, or even whose identity is unknown has rights that may be affected by the proceeding. That parent or their relatives may be important resources for the child. All petitions should include information about both parents' identity, location, and involvement or lack of involvement with the child.

The court is required to address the issue of missing or unidentified parents throughout the abuse, neglect, or dependency proceeding, starting with the hearing on the need for continued nonsecure custody (if applicable) and continuing at the pre-adjudication hearing and initial dispositional hearing. The court must make findings of the efforts to locate and serve any missing parents and may order specific efforts be made to determine the identity and location of any missing parent. G.S. 7B-506(h)(1); 7B-800.1(a)(3); 7B-901(b).

6. Serving a missing parent. Service of the summons and petition may be made by publication when a party named in the petition cannot be found by diligent effort. G.S. 7B-407; N.C. R. CIV. P. 4(j1). If a missing parent is believed to be in a foreign county, service may be made pursuant to N.C. R. CIV. P. 4(j3). See Chapter 4.4.B.2 (providing more detail on service by publication) and 4.4.B.3 (discussing service in a foreign country).

7. Paternity and putative fathers. The Juvenile Code does not define parent. It also does not address the different statuses of fathers: biological father, legal father, and putative father. *See In re E.Y.B.*, 277 N.C. App. 385, ¶ 48 (2021) (unpublished) (recognizing "legal parent" and "legal father" are not defined in the Juvenile Code or consistently defined in caselaw). When paternity has not been established for the juvenile who is the subject of the abuse, neglect, or dependency proceeding, several different possible fathers may be named in the action.

Although these terms are not defined by the Juvenile Code, for purposes of this Manual, a "legal father" is the man who is legally presumed to be the child's father. In North Carolina, if a mother is married at the time of either the child's conception or birth, or between conception and birth, the child is presumed to be the legitimate child of the marriage. This presumption is rebuttable by clear, cogent, and convincing evidence. *See Eubanks v. Eubanks*, 273 N.C. 189 (1968); *In re Papathanassiou*, 195 N.C. App. 278 (2009); G.S. 49-12.1(b). Based on this presumption, the spouse is the "legal father" or "legal parent." For purposes of this Manual, the term "putative father" refers to the person who is believed to be the father of the child but whose paternity is not a recognized legal presumption and has not been legally established by a court determination. A putative father includes a man who has acknowledged the child, either formally or informally, but has not had his paternity adjudicated by a court.

(a) Mandatory court inquiry and findings on parent's identity and paternity. Through various stages in an abuse, neglect or dependency action, the court must inquire into the identity and location of missing parents and make findings of efforts made to identify and locate missing parents. The court must also inquire into whether paternity is an issue and make findings of any efforts that have been taken to establish paternity. The court may order specific efforts be taken to identify a missing parent or to establish paternity when paternity is an issue. G.S. 7B-506(h)(1) (continued nonsecure custody hearing); 7B-800.1(a)(3) (pre-adjudication hearing); 7B-901(b) (initial dispositional hearing).

A known parent and other adult caregivers or relatives may have information about the identity and/or location of a missing parent as well as whether paternity has been established. Parents may also be identified through the child's birth certificate, marriage records, affidavits of parentage, and/or court orders. A parent's identity may also be discovered through the IV-D parent locator service.

The North Carolina Department of Health and Human Services is required to "attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents [and] to assist any governmental agency or department in locating an absent parent . . . ." G.S. 110-139(a). DSS or the court may initiate a request for parent locator services. *See* G.S. 110-139(a); 110-139.1. The state's Child Support Enforcement Program (CSE) can obtain information about parents from the Federal Parent Locator Service and through the State Parent Locator Service. If the child support program has not already undertaken efforts to locate an absent parent in an effort to obtain child support from that parent, a county DSS can request location services when the child is receiving protective or foster care services

under Title IV-B or Title IV-E of the Social Security Act. 45 C.F.R. 302.35(d). The locator services can be used to obtain information about the location of a parent or putative father in relation to DSS's efforts to keep a child within a family unit, to terminate parental rights, or to facilitate the child's adoption.

Resource: Information about North Carolina Department of Health and Human Services (NCDHHS) policies relating to parent locator services are available in the "Locate" section of the NCDHHS Child Support Services Manual. Specific provisions for DSS to request "locate only" services can be found in the "Locate Overview" section of the Child Support Services Manual.

A birth certificate identifies a parent but does not establish paternity and is not definitive. If a mother is married at the time of either the child's conception or birth, or any time between conception and birth, the name of her spouse must be entered on the birth certificate as the father (or second parent) of the child. G.S. 130A-101(e). There are two exceptions to naming the spouse as the child's second parent: (1) paternity has been otherwise established by a court, or (2) the child's mother, the spouse, and the putative father complete an affidavit that complies with G.S. 130A-101(e) and includes results of genetic testing confirming the paternity of the putative father. G.S. 130A-101(e); *see* G.S. 12-3(16) (statutory construction of "husband" and "wife" includes any two individuals who are then lawfully married to one another).

Practice Note: Although birth certificates sometimes state "refused" for the father's name, G.S. 130A-101 does not allow for such refusal when the legal presumption of the child's legitimacy applies. Marriage and divorce records for the mother may assist DSS in determining whether there is a legal parent who should be named as a respondent parent in the abuse, neglect, or dependency action.

If a mother is unmarried at all times from the date of the child's conception through and including birth, a father's name can be entered on a birth certificate only if both the mother and putative father complete an affidavit acknowledging paternity pursuant to G.S. 130A-101(f). That statute does not include a presumption of paternity resulting from an executed affidavit of parentage, but it does authorize the use of a certified copy of the affidavit of parentage as evidence in an action involving paternity. G.S. 130A-101(f*); see In re E.Y.B.*, 277 N.C. App. 385 (unpublished) (no presumption of paternity from placement of father's name on child's birth certificate based on an affidavit of parentage). Note, a presumption of paternity exists for affidavits of parentage that were executed between October 1, 1993 and December 13, 2005. *See* S.L. 1993-333, sec. 1 and S.L. 2005-389, sec. 4. An affidavit of parentage may also be executed for the purpose of establishing a child support obligation. *See* G.S. 110-132.

AOC Form:
AOC-CV-604, Affidavit of Parentage.

NCDHHS DSS Form:
DSS-6246, Affidavit of Paternity.

North Carolina does not maintain a putative father registry. Instead, a man may complete an "Affidavit of Paternity" and file it with NCDHHS, which maintains the affidavit in a central registry. *See* G.S. 7B-1111(a)(5)a.

Practice Note: To file an affidavit of paternity or inquire as to whether one has been filed, contact:
North Carolina Division of Social Services
Adoption Review and Indexing Team
820 S. Boylan Ave.
2425 Mail Service Center
Raleigh, NC 27699-2425
Telephone: 919-527-6370.

(b) Determining whether paternity is an issue. The identification of a parent does not necessarily mean the issue of paternity is resolved. The court determines whether paternity is an issue. Examples of when paternity is an issue include when (1) there is a legal father and a putative father; (2) there is more than one putative father; or (3) there is a putative father whose paternity has not been established through a judicial determination even when there is no dispute about him being the father and/or an affidavit of parentage has been executed and he is named on the child's birth certificate as the father.

A court may look to other court proceedings to see if paternity has been established. Those actions include

- a special proceeding before the clerk of superior court to legitimate the child (G.S. 49-10; 49-12.1);
- a civil action to establish paternity pursuant to G.S. 49-14;
- a judicial determination of paternity where paternity is an element or issue in the action that is addressed by the court, such as certain child custody, divorce, child support, or a prior abuse, neglect, or dependency proceeding involving the same child;
- a criminal action for nonsupport where parentage must be proved beyond a reasonable doubt as an element of the crime (G.S. 49-2; 49-7; 14-322); or
- a declaratory judgment (G.S. 1-253).

A court may also look to see if a birth certificate has been amended. A birth certificate may be amended pursuant to G.S. 130A-118(b). If the amendment is based on a judicial determination of parentage, the amended birth certificate would be definitive regarding the child's parentage. Note that the court of appeals has held that in the context of a termination of parental rights proceeding, an amended birth certificate creates a rebuttable presumption that the respondent has established paternity either judicially or by affidavit as required by G.S. 7B-1111(a)(5). *In re J.K.C.*, 218 N.C. App. 22 (2012), superseded in part by statute as stated in *In re A.L.S.*, 375 N.C. 708 (2020).

(c) Establishing paternity in the abuse, neglect, dependency action. While the Juvenile Code requires the court to address the issue of paternity, it does not explicitly provide a procedure for establishing paternity. Although the Juvenile Code does not set forth a

specific procedure, paternity may be established in the abuse, neglect, or dependency proceeding. *See, e.g.*, *In re S.D.*, 374 N.C. 67 (2020) and *In re S.D.C.*, 373 N.C. 285 (2020) (both include summarized facts that show the respondent fathers submitted to paternity tests in neglect and dependency actions and were determined to be the biological fathers of their children); *In re S.J.T.H.*, 258 N.C. App. 277 (2018) (at adjudicatory hearing, both father's paternity and child's status as neglected were adjudicated); *In re A.E.C.*, 239 N.C. App. 36 (2015) (at permanency planning hearing, the court ordered paternity testing); *In re V.B.*, 239 N.C. App. 340 (2015) (paternity established at the adjudicatory hearing); *see also In re Estate of Chambers*, 864 S.E.2d 542 (N.C. Ct. App. 2021) (unpublished) (holding order in juvenile proceeding was an adjudication of paternity under G.S. Chapter 49 for purposes of intestate succession under G.S. 29-19(b)(1)).

Statutory provisions relating to paternity that apply to abuse, neglect, or dependency proceedings include

- **Blood or genetic marker testing.** In any civil action in which the question of paternity arises, on motion of a party the court must order the mother, the child, and the "alleged father-defendant" to submit to one or more blood or genetic marker tests. The court may order the party seeking the test to pay for it. *See* G.S. 8-50.1(b1) (setting out procedures and standards for admissibility of test results). An abuse, neglect, or dependency proceeding is a civil action. *State v. Adams*, 345 N.C. 745 (1997). *See In re J.S.L.*, 218 N.C. App. 610 (2012) (holding trial court lacked discretion to deny motion for paternity testing in a TPR case).
- **Presumed father or mother as witness.** When an issue of paternity of a child born or conceived during a marriage arises in any civil or criminal proceeding, the presumed father or the mother of such child is competent to give evidence as to any relevant matter regarding the child's paternity, including nonaccess to the present or former spouse, regardless of any privilege which may otherwise apply. G.S. 8-57.2. A court may also hear testimony from a mother and/or putative father when paternity is an issue, even if the mother was not married at any time during the child's conception or birth.
- **Physical examination of a party.** When the physical condition, including the blood group, of a party or a person in the custody of a party is in controversy, a judge of the court where the action is pending may order the party or the person in the party's custody to submit to a physical examination. N.C. R. CIV. P. Rule 35.

Unlike other states, North Carolina law does not address parentage related to artificial reproductive technology with the exception of one statute that applies to heterologous artificial insemination between spouses when there is a written consent. *See* G.S. 49A-1. If another state is involved (e.g., the child was conceived by artificial reproductive technology in another state), the court will have to apply a choice of laws analysis to decide which laws apply. The court of appeals held that the doctrine of lex loci – the laws of the state where the cause of action arose – applies to paternity determinations since paternity involves parenthood, which is a fundamental right. *Warren Cnty Dept. of Soc. Srvs. ex rel. Glenn v. Garrelts*, 278 N.C. App. 140 (2021) (vacating and remanding

paternity and child support order for application of Virginia and not North Carolina paternity law when agreement to and conception by artificial insemination and birth of child occurred in Virginia).

A court's adjudication of one man's paternity directly affects the rights of another man who is presumed to be the child's father. For example, a legal father has recognized rights to the child (e.g., care of the child; the right to inherit from the child). A judicial determination that another man is the father terminates the legal father's rights to the child. As such, the legal father is a necessary party to the proceeding establishing another man's paternity. *In re Papathanassiou*, 195 N.C. App. 278. The court should not proceed with a paternity adjudication until all necessary parties are named and the court has personal jurisdiction over them. Otherwise, "[w]hen a necessary party to a claim in an action has not been joined, the portion of an order related to that claim is void. A void judgment is in legal effect no judgment. No rights are acquired or divested by it. It neither binds nor bars any one, and all proceedings founded upon it are worthless." *In re T.R.P.*, 360 N.C. 588, 590 (2006) (citations omitted).

Resources:
Issues related to paternity are complicated. For a detailed discussion of relevant topics including identifying fathers; determining whether paternity is an issue; establishing paternity in abuse, neglect, or dependency proceedings; and the impact of establishing paternity in those proceedings, along with worksheets for diligent searches and the application of collateral estoppel, see SARA DEPASQUALE, FATHERS AND PATERNITY: APPLYING THE LAW IN NORTH CAROLINA CHILD WELFARE CASES (UNC School of Government, 2016).

For a shorter discussion, see

- Sara DePasquale, *New Book! Fathers and Paternity: Applying the Law in North Carolina Child Welfare Cases*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 17, 2016).
- Sara DePasquale, *Legitimation versus Paternity: What's the Difference?*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (March 23, 2016).

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8. Same-sex parents. With the exception of one statute addressing a child born during a marriage as a result of heterologous artificial insemination, North Carolina laws do not address artificial reproductive technology. *See* G.S. 49A-1. They also do not address parentage related to same sex-marriages. As a result, many questions regarding the rights and legally recognized status of a same-sex partner or spouse who is not a child's biological parent remain unanswered.

However, some answers are provided to same-sex spouses. The spouse of a parent of a minor child may adopt that child in a stepparent adoption. G.S. 48-4-101; *see* G.S. 48-1-101(18). That stepparent becomes the child's parent as a result of the adoption. *See* G.S. 48-1-106.

Effective July 12, 2017, the law addressing statutory construction in North Carolina, G.S. 12-3, requires that statutes using the terms "husband and wife", "man and wife", "woman and husband", or other terms suggesting a lawful marriage must be construed to include any two individuals who are then lawfully married to each other. Based on this statutory construction,

if the mother was married during the period of the child's conception, birth, or anytime in between, the mother's spouse must be named on the child's birth certificate. *See* G.S. 130A-101(e). Note that although the female spouse of the birth mother will be recognized as the child's legal parent, the marital presumption of legitimacy is rebuttable by clear and convincing evidence. *See Eubanks v. Eubanks*, 273 N.C. 189 (1968); *In re Papathanassiou*, 195 N.C. App. 278 (2009); G.S. 49-12.1(b). Additionally, the language in the birth certificate statute does not appear to apply to a husband and his spouse since neither one is a mother who conceives and gives birth to the child.

The one artificial insemination statute in North Carolina refers to a husband and wife, which must be read to mean two lawfully married persons when determining whether the criteria of that statute are met. *See* G.S. 49A-1; 12-3(16); *see also Pavan v. Smith*, 582 U.S. 563 (2017) (reversing decision of Arkansas Supreme Court; holding the Arkansas state law that applies when a married woman conceives a child by artificial insemination and requires her male spouse to be listed on the child's birth certificate applies to a married woman's female spouse).

In those situations where a same-sex spouse or partner is not recognized as a parent, the spouse or partner may be named as a respondent guardian, custodian, or caretaker depending on the circumstances and relationship with the child.

Resource: Cheryl Howell, *New Legislation Acknowledges Same-Sex Marriage*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Aug. 8, 2017).

C. The Child

1. Child is a party. The Juvenile Code specifically states that the child who is the subject of an abuse, neglect, or dependency proceeding is a party to the case. G.S. 7B-401.1(f); 7B-601(a). However, the child is not always treated the same as other parties in the action, as explained in Chapter 2.3 and other relevant sections in this Manual.

2. Appointment of a guardian ad litem under G.S. 7B-601. In cases alleging abuse or neglect, the court *must* appoint a guardian ad litem (GAL) to represent the child. If the GAL is not an attorney, the court also must appoint an attorney advocate. In cases alleging only dependency, the court *may* appoint a GAL to represent the child. G.S. 7B-601. Neither the Juvenile Code nor case law provides criteria for when GALs are appropriate in dependency cases. Although the GAL appointment is discretionary, when deciding whether to appoint a GAL, the court may want to consider the child's constitutional due process rights and how the child, as a party to the proceeding, receives notice and has a meaningful opportunity to be heard in the action. *See* G.S. 7B-100(1) (one purpose of the Juvenile Code is to provide procedures that protect the constitutional rights of juveniles); 7B-601(a) (an attorney advocate assures protection of the juvenile's legal rights); *see also In re P.T.W.*, 250 N.C. App. 589 (2016) (discussing discretionary GAL appointment for a child in a TPR proceeding when holding no abuse of discretion). If the court determines that a GAL under G.S. 7B-601 is not needed, the court may consider whether a Rule 17 GAL for the child should be appointed instead. *See* N.C. R. CIV. P. 17; G.S. 7B-1002(2).

See Chapter 2.3.C and D for a discussion of the rights of the child, including a GAL appointment under G.S. 7B-601.

AOC Form:
AOC-J-207, Order to Appoint or Release Guardian ad Litem and Attorney Advocate.

D. Department of Social Services

The director of the county department of social services is the only permitted petitioner in an abuse, neglect, or dependency case and therefore is always a party to the proceeding. G.S. 7B-401.1(a); *see In re A.P.*, 371 N.C. 14 (2018). DSS remains a party until the court terminates jurisdiction in the case. G.S. 7B-401.1(a). However, the Juvenile Code allows for the petitioning county DSS to be substituted by another county DSS when venue is changed to another county after the child's adjudication. The court also has the option of joining the second county DSS rather than substituting the petitioning DSS when granting a post-adjudication change in venue. G.S. 7B-900.1(c). When a pre-adjudication change of venue is granted, the DSS petitioner remains the same. G.S. 7B-400(c). Regardless of whether the action is pre- or post-adjudication, a DSS that is not the petitioner in the abuse, neglect, or dependency action may also seek to intervene in the proceeding when it has an interest in the case. G.S. 7B-401.1(h). In those actions where a county DSS is either joined as a party because of a post-adjudication change of venue or is permitted to intervene, there will be two county departments that are parties to the action.

See Chapter 3.5.C.2 discussing post-adjudication change of venue.

5.5 Purpose and Requirements of Temporary and Nonsecure Custody

A. Purpose of Temporary and Nonsecure Custody

DSS may determine that to protect the child, immediate removal of the child from the home is necessary.

One of the purposes of the Juvenile Code is "[t]o provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents." G.S. 7B-100(4). Another purpose is "[t]o provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence." G.S. 7B-100(2). The language of the statutes addressing temporary custody and nonsecure custody reflects the purpose of protecting the child while putting requirements and time limitations in place to prevent unnecessary or inappropriate placements.

B. Temporary Custody

Temporary custody is extraordinary state intervention. It allows the state (through DSS or law enforcement) to take physical custody of a child without notice, a hearing, representation, and a court order. Therefore, the statutory grounds for temporary custody are very narrow. Temporary custody is used only briefly to protect a child while a petition or motion is filed, and a court order for nonsecure custody is sought.

1. Circumstances for temporary custody. A child may be taken into custody without a court order by law enforcement or DSS, but only if there are reasonable grounds to believe that the child

- is abused, neglected, or dependent and
- would be injured or could not be taken into custody if it were first necessary to obtain a court order.

G.S. 7B-500(a).

When DSS takes a child into temporary custody, it may arrange for the placement, care, supervision, and transportation of the child. G.S. 7B-500(a). When law enforcement takes a child into temporary custody, it should contact DSS immediately as a mandated reporter. *See* G.S. 7B-301.

2. Length of temporary custody. Once the juvenile is taken into temporary custody, they cannot be held for more than twelve hours — or for more than twenty-four hours if any of the twelve hours falls on a Saturday, Sunday, or legal holiday — unless a petition or motion for review has been filed *and* an order for nonsecure custody has been issued. G.S. 7B-501(b).

3. Medical professionals. Medical professionals can seek authorization from the court to retain physical custody of a juvenile suspected of being abused when the medical professional examines the juvenile and certifies in writing that the juvenile must remain for medical treatment or that it is unsafe for the juvenile to return home. The medical professional must then make a report to DSS. G.S. 7B-308. This statute is lengthy, with detailed requirements concerning procedures that are in addition to regular provisions concerning reporting and temporary custody.

Practice Note: This provision is rarely used by medical professionals, who are more likely to call DSS or law enforcement than to seek authority to assume temporary custody.

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4. Duties of person with temporary custody. When a law enforcement officer or DSS worker takes a child into temporary custody under G.S. 7B-500, that person must do the following:

- notify the child's parent, guardian, custodian, or caretaker that the child has been taken into temporary custody and advise that person of their right to be present with the child until a determination is made as to the need for nonsecure custody (failure to comply with this requirement is not grounds for releasing the child);

- release the child to the parent, guardian, custodian, or caretaker if the officer or social worker decides continued custody is unnecessary;
- communicate with appropriate DSS personnel who can determine whether a petition should be filed and, if appropriate, can seek an order for nonsecure custody.

G.S. 7B-501(a).

C. Nonsecure Custody

After a petition alleging abuse, neglect, or dependency has been filed with the district court, when DSS believes it is not safe for the child to remain in the home pending an adjudicatory hearing on the petition, DSS must obtain a nonsecure custody order to remove the child from their parent, guardian, custodian, or caretaker. DSS may seek an order for nonsecure custody even when the child was not initially taken into temporary custody, as the grounds for nonsecure custody are substantially broader than those for temporary custody. However, DSS is not required, and it is not appropriate, to request nonsecure custody in every case where a petition is filed given that the criteria for nonsecure custody differs than that for an adjudication of the juvenile as abused, neglected, or dependent. The court of appeals has recognized that a petition may be filed without requesting a nonsecure custody order that immediately removes the child from the home. *See In re A.D.*, 278 N.C. App. 637 (2021).

Although nonsecure custody orders are designed to be used as a pre-adjudication procedure, in one instance, the North Carolina Supreme Court addressed the district court's subject matter jurisdiction to enter a nonsecure custody order years after the juvenile had been adjudicated and after DSS filed a motion for review in the action. The supreme court reasoned that the district court had subject matter jurisdiction to enter the nonsecure custody order because the petition, giving the court subject matter jurisdiction, had been filed years earlier and the court retained jurisdiction in the action. *In re K.S.D.-F.*, 375 N.C. 626 (2020) (rejecting respondents' argument that the court did not have jurisdiction to enter a nonsecure custody order after a juvenile's adjudication when a new petition was not filed; the opinion does not discuss the criteria for entering a nonsecure custody order set forth in G.S. 7B-503 which refers to the allegations in the petition).

Practice Note: The Juvenile Code makes distinctions between secure custody, nonsecure custody, custody, and placement. This section refers to nonsecure custody. "Secure" custody is within a locked facility and is available only in cases of delinquent or undisciplined juveniles. *See* Article 19 of G.S. Chapter 7B. A juvenile who is alleged to be abused, neglected, or dependent may not be placed in secure custody. G.S. 7B-503(a). "Nonsecure" custody does not involve a locked facility or placement and, therefore, is not "secure."

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1. Procedure to obtain the initial nonsecure custody order.

(a) Petition. A petition alleging abuse, neglect, or dependency must have been filed for the court to have jurisdiction to enter a nonsecure custody order. *See In re K.S.D.-F.*, 375 N.C. 626 (2020) (*citing In re T.R.P.*, 360 N.C. 588 (2006); holding trial court had subject matter jurisdiction to enter nonsecure custody order when court had retained jurisdiction after

petition was filed and juvenile was adjudicated); *In re Ivey*, 156 N.C. App. 398 (2003) (holding that the trial court erred in ordering DSS to assume nonsecure custody of an infant when a petition had been filed naming only the infant's siblings); *see also In re T.R.P.*, 360 N.C. at 593 (stating that "[a] trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action is initiated with the filing of a properly verified petition."); *cf. In re L.B.*, 181 N.C. App. 174 (2007) (holding that the trial court gained subject matter jurisdiction when a DSS representative signed and verified the petition two days after a nonsecure custody order was filed and one day after the summons was issued).

(b) Ex parte and notice. Nonsecure custody orders usually are requested and granted ex parte, after the petition is filed and before the parents have been served or are appointed counsel. *See* G.S. 7B-502(a). Although the statute allows for an ex parte order, when nonsecure custody is being sought at a time when the court is open for business, DSS must notify by telephone an attorney or employee of the attorney's firm that it will be seeking nonsecure custody when (1) DSS has received written notification that a respondent has an attorney for the juvenile matter or (2) the respondent is represented by an attorney in a juvenile proceeding within the same county for another child of the respondent. This notification requirement does not apply to provisional counsel. G.S. 7B-502(a). The statute does not designate how much advance notice must be given; however, some local rules do.

(c) Authority to issue a nonsecure custody order. Any district court judge can issue a nonsecure custody order. In addition, the chief district court judge may delegate the authority to issue nonsecure custody orders to others by filing with the clerk an administrative order designating those persons to whom authority is delegated. G.S. 7B-502(b). The statute does not limit the chief judge's options with respect to whom they may designate. The inherent conflict of interest strongly suggests that it should not be an official or employee of the county DSS. It should, however, be someone who understands the context and the extraordinary nature of nonsecure custody orders. Ultimately, the chief district court judge determines who is authorized to issue such orders. Entry of a nonsecure custody order by someone with delegated authority accelerates the timing of the first hearing on the need for continued nonsecure custody. See section 5.6.B, below (relating to timing).

(d) In person or by telephone. The nonsecure custody order must be in writing and direct an authorized person to take physical custody of the child. G.S. 7B-504. However, a judge (or a person to whom the chief district court judge has delegated authority) may authorize nonsecure custody by telephone when other means of communication are impractical. G.S. 7B-508. Even if authorized by telephone, the order must be in writing and must include

- the name and title of the person communicating by telephone,
- the signature and title of the official entering the written order pursuant to the telephonic authorization, and

- the hour and date of the telephonic authorization.

G.S. 7B-508.

The role of the magistrate or other official completing the written order does not involve the exercise of discretion. They simply record who gave the telephonic authorization for nonsecure custody and when that occurred, then sign the order and indicate their title. In some judicial districts the same magistrate or official might be authorized by administrative order to actually make the decision about nonsecure custody when it is not possible to contact a judge. Because telephonic authorization may occur when the court is not open for business, each judicial district or county should have clear procedures for ensuring that the petition and nonsecure custody order is delivered to the clerk's office as soon as the office opens.

(e) Inquires required under federal laws.

The federal Servicemembers Civil Relief Act (SCRA). The SCRA applies to abuse, neglect, or dependency proceedings. DSS must try to determine whether any respondents are in military service. DSS must file an affidavit (or include in its verified petition) information about a respondent's military status before the court can enter an order, including a nonsecure custody order, against any respondent who has not appeared in the action. *See* 50 U.S.C. 3931. If the respondent is in military service, additional protections under the SCRA apply. See Chapter 13.6 (discussing the SCRA).

The North Carolina Servicemembers Civil Relief Act (NC SCRA). Effective October 1, 2019, North Carolina has a state SCRA, codified at Article 4 of G.S. Chapter 127B. The NC SCRA incorporates the rights, benefits, and protections of the federal SCRA but extends those rights to (1) members of the North Carolina National Guard who are serving on active duty and (2) members of other states' National Guard members who are serving on active duty who reside in North Carolina. G.S. 127B-26. See Chapter 13.6 (discussing the SCRA).

Resources:
For more information about the NC SCRA, see Ann Anderson, *SCRA is now North Carolina law and its protections are broader*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Oct. 4, 2019).

For more information about the federal SCRA in abuse, neglect, or dependency proceedings, see Sara DePasquale, *The SCRA and Juvenile Proceedings*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (April 29, 2015).

AOC Form:
AOC-G-250, Servicemember Civil Relief Act Declaration.

The Indian Child Welfare Act (ICWA). ICWA requires that at the commencement of every emergency and child-custody proceeding the court inquire of all the participants whether they know or have reason to know the child is an "Indian child" as defined by ICWA. The participants' responses should be made on the record. If the child is an Indian child or there is reason to know the child is an Indian child, ICWA applies until it is determined that the child does not meet the definition of an "Indian child." 25 C.F.R. 23.107; *see* 25 U.S.C. 1903(4) (definition of "Indian child"). See Chapter 13.2 (discussing ICWA).

(f) The initial nonsecure custody order. An order for nonsecure custody is directed to a law enforcement officer or "other authorized person" to take physical custody of the child. The order, after making certain findings under G.S. 7B-504, may authorize the officer or authorized person to enter private property to take physical custody of the child. An officer or authorized person receiving a nonsecure custody order may execute it according to its terms without inquiring into its validity and will not incur criminal or civil liability for its service. The officer or authorized person is required to give a copy of the order to the child's parent, guardian, custodian, or caretaker. G.S. 7B-504.

The order includes notice of a hearing. See section 5.6.B.1, below, for the timing of the first hearing on the need for continued nonsecure custody.

AOC Form:
AOC-J-150, Order for Nonsecure Custody (Abuse/Neglect/Dependency).

Practice Note*:* Nothing in the statute prevents another party from seeking a nonsecure custody order. Although unusual, this might occur if DSS files a petition but does not seek nonsecure custody and another party believes nonsecure custody is necessary.

Resource: For a brief discussion on a child's removal and the implications on constitutional rights, see Sara DePasquale, *Initial Removal of a Child from a Home Because of Suspected Abuse, Neglect, or Dependency, Amended G.S. 7B-504*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 24, 2015).

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2. Criteria for initial and continued nonsecure custody orders. A nonsecure custody order may only be made if the criteria in G.S. 7B-503(a) are met.

There must be a reasonable factual basis to believe that matters alleged in the petition are true and that

- the juvenile has been abandoned;
- the juvenile has suffered physical injury, sexual abuse, or serious emotional damage;
- the juvenile is exposed to substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection;
- the juvenile needs medical treatment to cure, alleviate, or prevent suffering serious

physical harm that may result in death, disfigurement, or substantial impairment of bodily functions, and the parent, guardian, custodian, or caretaker is unable or unwilling to provide or consent to the treatment;
- the parent, guardian, custodian, or caretaker consents to a nonsecure custody order; or
- the juvenile is a runaway and consents to nonsecure custody.

There must also be a reasonable factual basis to believe that there are no other means available to protect the child. In making its decision, the court must first consider whether the child can be released to a parent, relative, guardian, custodian, or other responsible adult.

G.S. 7B-503(a).

If the G.S. 7B-503(a) criteria are not present, nonsecure custody is denied. *See In re M.H.*, 272 N.C. App. 283 (2020) (facts show request by DSS for nonsecure custody was denied).

3. Place of nonsecure custody. Any order for nonsecure custody may direct that the child be placed in nonsecure custody with DSS or an individual designated in the order for temporary residential placement in

- the home of a parent, relative, nonrelative kin, other person with legal custody of the child's sibling, or any other home or facility approved by the court and designated in the order;
- a licensed foster home or home authorized to provide foster care; or
- a facility operated by DSS.

G.S. 7B-505(a).

(a) Preference for placement with relatives. The court first must consider whether a relative is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to do this, then the court must order placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the juvenile's best interests. G.S. 7B-505(b). *See* G.S. 7B-101(19) (definition of "safe home"); *In re L.L.*, 172 N.C. App. 689 (2005) (analyzing an identical requirement for disposition under G.S. 7B-903(a1) and determining that the trial court's failure to make a finding that it was contrary to the child's best interest to place her with willing relatives before placing her with foster parents was error), *abrogated in part on other grounds by In re T.H.T.*, 362 N.C. 446 (2008). Placement with a relative who lives in another state must comply with the Interstate Compact on the Placement of Children (ICPC). See Article 38 of the Juvenile Code. For more information on the ICPC, see Chapter 7.4.H.

(b) Sibling Placement. Both the Juvenile Code and federal law have a preference for placing siblings together so long as it is not contrary to the safety or well-being of any of the siblings. *See* G.S. 7B-505(a1); 7B-903.1(c1); 42 U.S.C. 671(a)(31). When siblings are removed from their home and placed in the nonsecure custody of a DSS, DSS is required to make reasonable efforts to place the siblings together. Reasonable efforts are not

required if DSS documents that placing the siblings together would be contrary to the safety or well-being of any of the siblings. If reasonable efforts to place the siblings together are unsuccessful, DSS must make reasonable efforts to provide for frequent sibling visits and ongoing interaction between the siblings. These efforts are not required if DSS documents that visits or interaction between the siblings would be contrary to the safety or well-being of any of the siblings. G.S. 7B-505(a1); 7B-903.1(c1); *see* 42 U.S.C. 671(a)(31).

(c) Nonrelative kin, former foster parent, and other persons with legal custody of the child's sibling. If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin, an appropriate former foster parent, or a person with legal custody of the child's sibling is willing and able to provide proper care and supervision of the juvenile in a safe home and order such placement if it finds that it is in the juvenile's best interests. G.S. 7B-505(c). "Nonrelative kin" is defined as an individual having a substantial relationship with the juvenile. If the juvenile is a member of a State-recognized Indian tribe, nonrelative kin includes any member of a state or federally recognized tribe, regardless of whether a substantial relationship with the juvenile exists. G.S. 7B-101(15a).

(d) Consideration of child's community. In determining placement, the court must consider whether it is in the child's best interest to remain in their community. G.S. 7B-505(d).

Note that under federal education and child welfare laws, DSS is required to consider the child's educational stability and make assurances that the placement takes into account the appropriateness of the child's current educational setting and proximity of the placement to the school the child was enrolled in at the time of the placement (school of origin). DSS must ensure the child remains in the school of origin, unless there is a determination that it is not in the child's best interests to do so. See Chapter 13.7 (discussing the Every Student Succeeds Act and the Fostering Connections to Success and Increasing Adoptions Act).

(e) ICWA and MEPA Considerations. In placing a juvenile in nonsecure custody, the court must consider the application of the Indian Child Welfare Act (ICWA) and the Multiethnic Placement Act (MEPA). G.S. 7B-505(d). ICWA establishes specific placement preferences, and MEPA prohibits discrimination in the placement of children on the basis of the child's or foster parent's race, color, or national origin. See Chapter 13.2 and 13.3 (discussing ICWA and MEPA).

(f) ICPC. Placement of a juvenile with a person, including relatives, outside of this state must be in accordance with the Interstate Compact on the Placement of Children (ICPC). G.S. 7B-505(d); *see* G.S. 7B-3800. See Chapter 7.4.H (discussing the ICPC).

Practice Note: When a nonsecure custody order is issued ex parte, the court is unlikely to have enough information to fully consider potential relatives and kin, unless DSS has some history with the family and is making specific recommendations. These issues will likely receive greater attention at hearings on the need for continued nonsecure custody.

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4. Visitation. Orders on the need for continued nonsecure custody must address visitation. The provisions of G.S. 7B-905.1 apply, which require the court to provide for visitation that is in the child's best interests and consistent with the child's health and safety and may include no visitation. G.S. 7B-506(g1); *see* G.S. 7B-905.1(a). Although the court focuses on ordering visitation between the juvenile and their parent, guardian, or custodian, if the siblings are not placed together, the court may also order sibling visitation. *See* G.S. 7B-905.1(a) (the court shall order visitation that is in the juvenile's best interests); 7B-505(a1) (addressing reasonable efforts for sibling visitation and frequent contact if reasonable efforts for a joint sibling placement were unsuccessful).

When the child is in the custody or placement responsibility of DSS, the court may order the director to arrange, facilitate, and supervise a visitation plan approved by the court that establishes the minimum frequency and length of visits and whether the visits shall be supervised. G.S. 7B-905.1(b). See Chapter 7.5 (discussing visitation).

5. Medical decision-making. When a child is placed in the nonsecure custody of DSS, the director may arrange for, provide, or consent to the child's routine medical and dental care (including treatment for common pediatric illnesses and injuries that require prompt intervention); emergency medical, surgical, or mental health care or treatment; and testing and evaluations in exigent circumstances. G.S. 7B-505.1(a). However, a DSS may not consent to non-routine and non-emergency medical care for a child in its custody without authorization from the child's parent, guardian, or custodian or a court order that authorizes the director to consent to such care after finding by clear and convincing evidence that the care, treatment or evaluation requested is in the juvenile's best interests. G.S. 7B-505.1(c). DSS's consent for a Child Medical Evaluation requires a court order with findings specified in either G.S. 7B-505.1(b) or (c).

For further discussion on consent to medical treatment for a child in DSS custody, see Chapter 7.4.D.3.

Resource: Sara DePasquale, *New Law: Consenting to Medical Treatment for a Child Placed in the Custody of County Department*, UNC SCH. OF GOV'T: COATES' CANONS: NC LOCAL GOVERNMENT LAW BLOG (Nov. 6, 2015).

NCDHHS DSS Forms:

- DSS-1812, General Authorization for Treatment and Medication.
- DSS-1812ins, General Authorization for Treatment and Medication Instructions.
- DSS-5143, Consent/Authorization For Medical/Mental Health Evaluation.

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6. Violent caregivers. In cases involving allegations of physical abuse, special rules apply to returning a child to the home in which the alleged abuser lives. When a child is removed from a home due to physical abuse, DSS must thoroughly review the alleged abuser's background. This review must include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser has a history of violent behavior against people, DSS must petition the court to order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. If DSS files a petition for a mental

health evaluation and requests a nonsecure custody order, the court must rule on the petition for an evaluation before returning the child to a home where the alleged abuser is or has been present. *See* G.S. 7B-302(d1); 7B-503(b).

5.6 Nonsecure Custody Hearings

A. Summary

The initial nonsecure custody order is the mechanism for quickly authorizing placement of the child for up to seven calendar days. Keeping the child in nonsecure custody for a longer period requires a hearing and after that, if the child remains in nonsecure custody pending adjudication, opportunities for further hearings. The first hearing on the need for continued nonsecure custody cannot be waived, although it can be continued for up to ten business days with the parties' consent. In hearings to determine the need for continued nonsecure custody, the court must determine whether the criteria for placing a child in nonsecure custody exist *and* must address a variety of additional issues if the child remains in nonsecure custody. In some judicial districts the first hearing on the need for continued nonsecure custody is preceded by an informal meeting or conference of the parties without the judge. Hearings on the need for continued nonsecure custody may be combined with required pre-adjudication hearings (discussed in section 5.7, below). The hearings are open unless the court orders it closed pursuant to G.S. 7B-801 (see Chapters 6.2.C and 7.2.D).

B. Timing

1. The first hearing on the need for continued nonsecure custody.

(a) When initial nonsecure custody order entered by judge. The court must conduct a hearing within seven calendar days of when the juvenile is placed in nonsecure custody. As a result, this hearing is often referred to as the "7-day hearing." This initial hearing may be continued for up to ten business days with the consent of the parents, guardian, custodian, or caretaker and the child's guardian ad litem (if appointed). G.S. 7B-506(a).

(b) When initial nonsecure custody order entered by authorized designee. If the initial nonsecure custody order was issued by someone designated by the chief district court judge in an administrative order, the hearing must be conducted on the day of the next regularly scheduled session of court in the city or county where the order was entered, but within seven days in any event. G.S. 7B-506(a).

2. Second and subsequent hearings. After the first hearing on the need for continued nonsecure custody and pending the adjudicatory hearing, there must be a second hearing on the need for continued nonsecure custody within seven business days of the first hearing and hearings at least every thirty calendar days thereafter. These hearings may be waived with the consent of the juvenile's parent, guardian, custodian, or caretaker and the child's guardian ad litem (if appointed). G.S. 7B-506(e), (f).

3. Hearings by party request. In addition to the required hearings, any party may schedule a hearing on the issue of placement. G.S. 7B-506(g). This request can be made even after a party initially waived subsequent continued nonsecure custody hearings.

AOC Forms:

- AOC-J-141, Notice of Hearing in Juvenile Proceeding (Abuse/Neglect/Dependency).
- AOC-J-142, Juvenile Summons and Notice of Hearing (Abuse/Neglect/Dependency).

C. Jurisdictional Inquiry

Early in the nonsecure custody stage, the court should consider information in the "status of child" affidavit filed with or included in the petition pursuant to G.S. 50A-209 and other information related to where the child is living or has lived; whether a custody order relating to the child has ever been entered in another court; and whether any other action involving the custody of the child is pending in any court. The hearing should proceed only after the court concludes that it has jurisdiction under the UCCJEA. See Chapter 3 related to jurisdiction and 3.3 in particular for UCCJEA requirements. The court also should consider whether proper service of process has occurred or been waived and, if not, whether appropriate efforts are being made to accomplish service of process. Note that G.S. 7B-800.1, addressing pre-adjudication hearings, which may be combined with a hearing on the need for continued nonsecure custody, requires the court to make inquiries related to service, a verified petition, jurisdiction, and other factors prior to the adjudicatory hearing.

D. Nature of Hearing: Evidence and Burden of Proof

DSS bears the burden to provide clear and convincing evidence that the juvenile's continued placement in nonsecure custody is necessary. The court is not bound by the usual rules of evidence. However, the court must receive testimony and allow the parties to introduce evidence, to be heard, and to examine witnesses. G.S. 7B-506(b). Evidence should be limited to that which relates to the need for continued nonsecure custody prior to adjudication. This hearing should not be a full hearing on the allegations in the petition unless all parties have consented to proceed with an adjudicatory hearing.

E. Findings and Other Issues at the Hearing on the Need for Continued Nonsecure Custody

At hearings on the need for continued nonsecure custody, in addition to addressing the criteria authorizing a child's placement in nonsecure custody, the placement and visitation provisions, and medical consent issues (if any), the court must inquire and make findings about

- the identity and location of any missing parent and efforts that have been made to identify, locate, and serve that parent (the court may order specific efforts to determine the identity and location of a missing parent);
- whether paternity is at issue and, if it is, efforts that have been made to establish paternity (the court may order specific efforts to establish paternity);
- whether there are other juveniles in the home and, if there are, DSS's assessment findings

and any actions taken or services provided by DSS to protect those children (even though the court does not have jurisdiction over a child who is not named in a petition, *see In re Ivey*, 156 N.C. App. 398 (2003));

- the diligent efforts made by DSS to identify and notify relatives as potential resources for placement and support; DSS must make those efforts within thirty days of the initial nonsecure custody order and file with the court information about its attempts; unless the court finds it is contrary to the child's best interests, the court must also order DSS to make diligent efforts to notify relatives and other persons with legal custody of the child's sibling that the child is in nonsecure custody and of any hearings on the need for continued nonsecure custody; and
- if the juvenile is a member of a State-recognized tribe, whether DSS should be ordered to notify the tribe in order to locate relatives or nonrelative kin for placement.

See G.S. 7B-506(h); 7B-505(b). See sections 5.4.B.5–7, above (discussing missing parents and paternity), and Chapters 2.2.B.10−11 and 7.4.C.1 (discussing relatives and nonrelative kin).

Additionally, at the first hearing on the need for continued nonsecure custody, the court should inquire about the child's Indian status as required by ICWA. 25 C.F.R. 23.107. Although the law requires the court to make the inquiry at the commencement of the proceeding, which is when an ex parte request for nonsecure custody is made, DSS is likely to be the only participant present to ask. The first hearing after the parties have been served and where the parties and other participants are present provides the court the opportunity to conduct a full inquiry regarding the child's Indian status, which will implicate whether the additional procedures required by ICWA must be followed. See Chapter 13.2 for discussion of ICWA.

When an order continues the placement of a juvenile in DSS custody, the court also must adhere to G.S. 7B-507, which requires that the order

- determine whether DSS made reasonable efforts to prevent or eliminate the need for the juvenile's placement,
- make a finding that the child's continuation in or return to their own home would be contrary to the child's health and safety, and
- specify that the juvenile's placement and care are the responsibility of DSS and that DSS is to provide or arrange for foster care or another placement of the juvenile unless the court orders a specific placement.

Additionally, the court may order services or other efforts aimed at returning the juvenile to a safe home. G.S. 7B-507(a)(5). See Chapter 7.9 (discussing reasonable efforts).

When the hearing on the need for nonsecure custody is combined with a pre-adjudication hearing pursuant to G.S. 7B-800.1, there are additional factors the court is required to consider, which are detailed in section 5.7.A, below.

F. Limits on Court's Authority at Nonsecure Custody Stage

After making proper findings, the court may order that the child remain in nonsecure custody or return the child to the parent but may not dismiss the petition for reasons other than a conclusion that the court lacks subject matter jurisdiction. *In re Guarante*, 109 N.C. App. 598 (1993). The court at this stage may not award permanent custody to a parent or any other person; that authority exists only after an adjudication that the child is abused, neglected, or dependent. *In re O.S.*, 175 N.C. App. 745 (2006). The court's authority to direct orders to parents under G.S. 7B-904 also exists only after an adjudication. This limitation does not apply to the court's authority to order visitation restricting a parent's access to the child; a complete mental health evaluation of, and payment by, an alleged abuser; and services or other efforts aimed at returning the juvenile to a safe home. G.S. 7B-506(g1); 7B-507(a)(5).

G. Requirements for Court Orders

An order for continued nonsecure custody must

- be in writing;
- contain findings of fact, including the evidence relied on in reaching the decision and the purpose of continued nonsecure custody; and
- be entered, meaning signed and filed with the clerk, within thirty days after the hearing.

G.S. 7B-506(d).

Although not addressed in the Juvenile Code, specific requirements and language must be included in the order for purposes of obtaining Title IV-E funding for the child's placement. See Chapter 1.2.C and D.2. discussing Title IV-E.

See Chapter 4.9 (relating to court orders). See Checklist 1, Nonsecure Custody Orders, at the end of this Manual.

AOC Form:
AOC-J-151, Order on Need for Continued Nonsecure Custody (Abuse/Neglect/Dependency).

H. Nonsecure Custody Order Is Not Appealable

Nonsecure custody orders are specifically excluded from the list of appealable orders in G.S. 7B-1001. G.S. 7B-1001(a)(4). *See also In re A.T.*, 191 N.C. App. 372 (2008).

5.7 Pre-adjudication Hearings, Conferences, and Mediation

A. Pre-adjudication Hearing

Before the adjudicatory hearing the court must address specific matters in a pre-adjudication hearing, but this hearing may be combined with a hearing on the need for continued nonsecure custody or any pretrial hearing conducted according to local rules. G.S. 800.1(b).

Under G.S. 7B-800.1, the court must consider the following:

- retention or release of provisional counsel;
- identification of the parties to the proceeding;
- whether paternity has been established or efforts made to establish paternity, including the identity and location of a missing parent;
- whether relatives, parents, or other persons with legal custody of a sibling of the juvenile have been identified and notified as potential resources for placement or support;
- whether all summons, service of process, and notice requirements have been met;
- whether the petition has been properly verified and invokes jurisdiction;
- any pretrial motions, including motions for appointment of a GAL for a parent, for discovery, to amend the petition, or for a continuance;
- any other issue that can properly be addressed as a preliminary matter.

At the hearing, the parties may enter stipulations in accordance with G.S. 7B-807 or enter a consent order in accordance with G.S. 7B-801. G.S. 7B-800.1(c).

B. Child Planning Conferences

Some judicial districts have “child planning” or “day-one” conferences in cases in which a child is placed outside the home pending an adjudication hearing. These conferences are held soon after a petition is filed and a nonsecure custody order is issued. The parties and their attorneys, as well as others with an interest in the case, are notified and encouraged to attend. To varying degrees, participants share information, identify issues, explore options, discuss resources, resolve problems, and hear recommendations about or agree on such things as child placement, visitation, health and education services, paternity, and child support. Child planning conferences are not provided for by statute and do not involve the judge. They do not take the place of the required hearings on the need for continued nonsecure custody. However, they may expedite those hearings, and sometimes they provide a less adversarial method of resolving issues that otherwise would be addressed at those hearings. They focus more on communication among the parties than on the resolution of legal issues.

Child planning conferences generally seek to

- facilitate the exchange of information, saving the parties time and effort and ensuring that everyone has the same information;
- expedite the delivery of services by identifying needs and appropriate community resources and contacts;

- aid in the early identification and involvement of relatives when appropriate;
- promote a problem-solving rather than adversarial approach to the resolution of issues;
- minimize court delays by coordinating schedules and addressing potential problems that might cause delay; and
- move the case more quickly toward the next stage, minimizing the time the child spends out of the home or speeding the process toward another permanent placement.

In some judicial districts, local court rules establish procedures for these conferences.

Since 2013, G.S. 7B-800.1 has required pre-adjudication hearings to address many of the same issues addressed in child planning conferences.

Resources:
Local rules for judicial districts are available on the North Carolina Administrative Office of the Courts website. Use the search box on the AOC website for the term "local rules."

C. Permanency Mediation

G.S. 7B-202, in the Juvenile Code, directs the Administrative Office of the Courts to establish, in stages, a statewide Permanency Mediation Program. Only a few districts have implemented permanency mediation. The purpose of the program is to provide mediation services to resolve issues in cases in which a juvenile is alleged to be abused, neglected, or dependent or in which a petition or motion to terminate parental rights has been filed. The goals of permanency mediation include improving the parties' understanding of juvenile proceedings, clarifying the issues for all participants, enhancing the quality of case plans, and reducing the number of court hearings and the amount of relitigation. While each of the programs operates somewhat differently, the primary goal of permanency mediation is to facilitate the permanent placement of children in a timely manner. Cases identified as appropriate for permanency mediation are typically ordered to mediation by the judge at the first court hearing after a child is removed from the home. In other cases, the child's guardian ad litem, a parent's attorney, or DSS may request permanency mediation. G.S. 7B-202 addresses the participants in mediation, confidentiality and privileges with respect to mediation, and the manner in which agreements reached in mediation should be used by the court.

5.8 Infant Safe Surrender

North Carolina's infant safe surrender law was significantly amended for infants who are safely surrendered on or after October 1, 2023. A new Article 5A was added to the Juvenile Code by S.L. 2023-14, sec. 6.2, which is lengthy, has detailed procedural and confidentiality requirements, and addresses the rights of a surrendering parent, non-surrendering parent, and county DSS.

Under the new laws, a parent may safely surrender their infant, who is no more than 30 days old and is without signs of abuse or neglect. *See* G.S. 7B-520(b); 7B-525(b)(1); 7B-101(19a)

(definition of "safely surrendered infant"), *renumbered by* S.L. 2023-14, sec. 6.2.(b). Certain individuals (health care providers, law enforcement officers, DSS workers, emergency medical workers) must take into temporary custody an infant under 30 days old if the infant is voluntarily delivered to that individual by the infant's parent who does not express an intent to return for the infant. G.S. 7B-521. Those who take custody of the infant must do what is necessary to protect the infant and immediately notify DSS in the county where the infant is surrendered. G.S. 7B-522. The person taking temporary custody can ask the parent questions about the parents' identities and marital status, the infant's date of birth, and any relevant medical history, but the parent is not required to give any information and must be informed by the person taking custody of the surrendered infant that the parent is not required to provide the information. G.S. 7B-522. When practical, the person who takes custody of the safely surrendered infant must give the surrendering parent written information created by the Department of Health and Human Services (DHHS). G.S. 7B-522; *see* G.S. 7B-528 (information to surrendering parent). A person who takes custody of an infant in this circumstance is immune from civil or criminal liability if the person acts in good faith. G.S. 7B-523. The parent is also immune from civil liability or criminal prosecution for abandonment of an infant who is safely surrendered. G.S. 7B-527(c); *see* G.S. 14-322.3 (relating to criminal abandonment), *amended by* S.L. 2023-14, sec. 6.4, effective for offenses committed on or after December 1, 2023; G.S. 14-318.2(c) (relating to misdemeanor child abuse); 14-318.4(c) (relating to felony child abuse).

Prior to October 1, 2023, an infant who was safely surrendered was treated as a dependent juvenile resulting in DSS filing a dependency petition. This practice was not addressed in law but was the policy enacted by the Department of Health and Human Services in the North Carolina Child Welfare Manual. Under the new Article 5A of the Juvenile Code, a petition alleging dependency is not filed by the county DSS for a safely surrendered infant. Instead, DSS obtains the surrendering parent's legal and physical custody rights to the infant by operation of law. G.S. 7B-525(a). DSS must publish notice of the infant's safe surrender within fourteen days from the date of the surrender. G.S. 7B-526. The contents of the notice are specified in G.S. 7B-526.

There are two statutory exceptions for when DSS may conduct an assessment of an abused, neglected, or dependent juvenile when that juvenile is a safely surrendered infant. One, if the surrendering parent seeks to regain custody of their child before DSS files a termination of parental rights petition (which can occur after sixty days from the surrender), DSS must treat the request as a report of neglect and complete an assessment. G.S. 7B-525(e); 7B-527(a). See section 5.1.B. and G., above (discussing assessments and interference petitions). Two, if the non-surrendering parent seeks custody of the infant and DSS has cause to suspect the infant is abused, neglected, or dependent because of circumstances created by the non-surrendering parent, DSS must treat that case as a report of abuse, neglect, or dependency. G.S. 7B-525(d). However, the surrendering parent is not included in the assessment. G.S. 7B-525(d). If the director determines a petition must be filed, the surrendering parent is not a party to that action unless the court orders otherwise or the surrendering parent requests to regain custody. G.S. 7B-525(d); *see* G.S. 7B-401.1(b)(2), *amended by* S.L. 2023-14, sec. 6.2.(c).

Ultimately, DSS may need to initiate a termination of parental rights (TPR) action against the surrendering and non-surrendering parent without there ever being an underlying abuse, neglect, or dependency proceeding. *See* G.S. 7B-525(b)(7). See Chapter 9.6.C. and 9.6.D. for a discussion about the procedure required in a TPR action involving a safely surrendered infant.

Resource: For a detailed discussion on the new infant safe surrender law in North Carolina, see Sara DePasquale, *Infant Safe Surrender in North Carolina: Significant Changes in 2023*, JUVENILE LAW BULLETIN No. 2023/02 (UNC School of Government, 2023).

Appendix 5-1: Table of Differences for Mandated Reporting under G.S. 7B-301 & 14-318.6

	G.S. 7B-301	G.S. 14-318.6
Who is obligated to report	Any person or institution	Any person 18 or older
Who is exempt from reporting	Attorneys who gain knowledge or suspicion from representation in the abuse, neglect, or dependency case (*See* G.S. 7B-310)	Those with privilege as • Attorneys • Licensed psychologists, associates, and employees • Licensed psychiatrists (*see* S.L. 2023-134, sec. 9L.1.(a), effective October 3, 2023) • Licensed or certified social workers engaged in private social work services • Licensed clinical mental health counselors and associates • Licensed marriage and family therapists as applied to the primary client (the person contracting with the therapist for professional services for diagnosis and treatment) only and not other family members (*see* S.L. 2023-134, sec. 9L.1.(a), effective October 3, 2023) • Agents of rape crisis centers and domestic violence programs
Standard	Cause to suspect	Knows or should have reasonably known
Victim	Juvenile (under 18 years old, not emancipated, married, or in the U.S. Armed Forces) (*See* G.S. 7B-101(14))	Juvenile (under 18 years old, not emancipated, married, or in the U.S. Armed Forces). "[T]he age of the juvenile at the time of the abuse or offense governs."
What	• Abuse, • Neglect, or • Dependency	Has been or is the victim of a • Violent offense, • Sexual offense, or

	(*See* definitions in G.S. 7B-101(1), (9), (15))	• Misdemeanor child abuse
Report made to	Department of social services in the county where juvenile resides or is found	Appropriate local law enforcement agency in county where juvenile resides or is found
When	Unspecified	Immediately
How	Orally, by telephone, or in writing	Orally or by telephone
Information to include	• Juvenile's name, address, age, and present whereabouts (if not at home) • Name/address of juvenile's parent, guardian, custodian, or caretaker • Nature and extent of any injury or condition resulting from the abuse, neglect, or dependency • Names and ages of other juveniles in the home • Any other information that may be helpful to establish need for protective services or court intervention	• Juvenile's name, address, age, and present whereabouts (if not at home) • Name/address of juvenile's parent, guardian, custodian, or caretaker • Alleged perpetrator's name, age, and address • Location of alleged offense • Nature and extent of any injury or condition resulting from the offense • Names and ages of other juveniles present or in danger • Any other information that may be helpful to establish need for law enforcement involvement
Reporter Identity	• Reporter must give name, address, and telephone number but refusal to do so shall not preclude a DSS assessment • Identity is protected and may only be disclosed under criteria of G.S. 7B-302(a1)(1a) or 7B-303(e)	• Reporter must give name, address, and telephone number • Identity is protected and may only be revealed when meeting criteria for 911 or emergency telephone call disclosure under G.S. 132-1.4(c)(4)
Immunity for Reporter	• From civil or criminal liability when reporter in good faith makes a report, cooperates with DSS assessment, testifies in judicial proceeding resulting from report, or participates in child welfare program	From civil or criminal liability when reporter in good faith makes a report, cooperates with law enforcement investigation, or testifies in judicial proceeding

	• Good faith is presumed (*See* G.S. 7B-309)	
Violation	Knowingly or wantonly fails to report or prevents another person from reporting	Knowingly or willfully fails to report or prevents another person from reporting
Penalty	Class 1 misdemeanor	Class 1 misdemeanor
Statute of limitations	Within 10 years of commission of crime (*See* G.S. 15-1(b)(1))	Within 10 years of commission of crime (*See* G.S. 15-1(b)(5))

Appendix 5-2: Mandated Reporting Flowchart