

# Chapter 1

## Overview of the North Carolina Child Welfare System

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## 1.1 Introduction to Child Welfare

### A. Child Welfare Services

Child welfare encompasses child protective, foster care placement, and adoption services. Protective services are intended to protect children who have been alleged to be abused, neglected, or dependent and are established in Chapter 7B of the North Carolina General Statutes<sup>1</sup>, which is commonly referred to as “the Juvenile Code.” Protective services encompass a myriad of actions, including screening and assessment of reports of a child’s suspected abuse, neglect, or dependency; providing casework and counseling to families; and pursuing necessary court action to protect a child. Foster care and adoption services apply to children who require care outside of their families. This type of substitute care is regulated by the State. The State has a duty to assure that the care is quality care that is as close as possible to the nurturing care society expects of a family. *See* Article 1A of G.S. Chapter 131D. The term “child welfare” is not defined in North Carolina law but is used as a general term in statutes, regulations, and state policy that discuss child protective, foster care placement, and adoption services.<sup>2</sup>

In North Carolina, child welfare services are provided by county departments, which are supervised by the North Carolina Department of Health and Human Services (NC DHHS). G.S. 108A-1; 108A-71; 108A-74. The Juvenile Code defines department as “each county’s child welfare agency” regardless of what it is named. G.S. 7B-101(8a). A county department is typically a department of social services (DSS) but may be a consolidated county human services agency created pursuant to G.S. 153A-77 or a regional social services department created under G.S. 108A-15.7 through -15.10 that carries out social services functions.<sup>3</sup>

**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.

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**Legislative Note:** Effective March 1, 2019, counties have the option to create a regional social services department that includes more than one county and incorporates all or only selected programs and services, such as child welfare. *See* S.L. 2017-41, Part IV creating G.S. 108A-15.3A through -15.3C (currently, G.S. 108A-15.7 through -15.10).

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The North Carolina courts are also part of the child welfare system. Court actions alleging a child’s abuse, neglect, or dependency are initiated by DSS in district court. Appeals are heard by the North Carolina appellate courts. Adoption proceedings are initiated in superior court

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<sup>1</sup> Throughout this Manual, the North Carolina General Statutes are referred to as “G.S.”

<sup>2</sup> *See, e.g.*, G.S. 131D-10.6A; 108A-74; 7B-101(8a); Title 10A of the North Carolina Administrative Code Subchapter 70G, Section 0402(3); DIV. OF SOC. SERVS., N.C. DEP’T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL (“NC CHILD WELFARE MANUAL”), available online [here](#).

<sup>3</sup> For information about how the department structure is determined, see G.S. 108A-1 and G.S. 153A-77. For more information on the structures, see AIMEE N. WALL, *Social Services*, CH. 39 in FRAYDA S. BLUESTEIN (ed.), COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA (UNC School of Government, 2d ed. 2014).

and are special proceedings that are heard by the clerk of superior court, unless a transfer is required to district court. See Chapters 2.1 (district court), 10.3 (adoptions), and 12 (appeals).

The child welfare system is based on an extensive body of state and federal laws that address both procedural and substantive issues. Child welfare services also impact the constitutional rights of children and parents. The various laws, procedures, and constitutional principles are discussed throughout this Manual. For a general discussion of state statutes, regulations, and policies governing child welfare in North Carolina as well as the impact of federal statutes and regulations on North Carolina's laws and policy, see section 1.3, below.

## B. Purpose

A state's child welfare system has the overall important purpose of preventing, identifying, and treating child abuse and neglect.

**1. Balancing the state's interests with constitutional rights of parents and children.** The child welfare system consists of governmental action (in North Carolina, it is a DSS) that involves itself in a family's private life. *See In re Stumbo*, 357 N.C. 279, 294 (2003) (Martin, J. concurring) ("Federal courts...have concluded, either explicitly or implicitly, that constitutional limitations apply to government officials who investigate child abuse.... State appellate courts have reached similar conclusions") and cases cited therein. As a result, constitutional rights of parents and children are affected and a balance between the government's interest in protecting children and the constitutional rights of parents and children must be made. *See G.S. 7B-100*.

Parents have a paramount constitutional right to care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Petersen v. Rogers*, 337 N.C. 397 (1994). However, a parent's right is not absolute. *Petersen*, 337 N.C. 397. The United States Supreme Court has consistently held that a state may interfere with constitutional interests if in so doing it is protecting the public interest and if the regulated behavior is reasonably related to a purpose within the state's competency to effect. Examples that a state has a wide range of power to limit parents' constitutional rights to the care, custody, and control of their children include regulation of child labor and compulsory school attendance laws. *See Prince v. Massachusetts*, 321 U.S. 158 (1944) (child labor); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (school attendance).

There is a presumption that a parent acts in their child's best interests. *Parham v. J.R.*, 442 U.S. 584 (1979); *Price v. Howard*, 346 N.C. 68 (1997). There is also a presumption that the government will not interfere with the parent-child relationship: "[S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *In re Stumbo*, 357 N.C. 279, 286 (quoting *Troxel v. Granville*, 530 U.S. 57, 68–69). However, these presumptions may be rebutted, and a state may interfere with a parent's constitutional rights when that parent is unfit or acts inconsistently with their protected interests to parent their child. *Petersen v. Rogers*, 337 N.C. 397; *Price*, 346 N.C. 68.

For a further discussion of the constitutional rights of parents, see Chapters 2.4 and 7.10.B.5 and for the rights of the child, see Chapter 2.3.

The North Carolina Juvenile Code provides the procedures and parameters for governmental intervention into the parent-child relationship when children are harmed, are at risk of harm, or do not receive minimally adequate care. Whether government intervention is warranted starts with the status or condition of the child – is the child abused, neglected, or dependent. Those conditions are defined by G.S. 7B-101(1) (abuse), (9) (dependency), and (15) (neglect). See Chapters 2.3.B and 6.3.D through F for further discussion of what constitutes abuse, neglect, or dependency.

Governmental intervention is limited by those statutory definitions. If an initial report about a child's circumstances does not satisfy the statutory criteria of abuse, neglect, or dependency, a DSS does not have the authority to interfere with or intervene in the parent-child relationship. See *In re Stumbo*, 357 N.C. 279 (2003) (holding a single, anonymous report of a naked 2-year-old child who was unsupervised in her driveway without any additional information was insufficient to constitute neglect that required DSS involvement with the family). Part of the respective definitions of abuse, neglect, or dependency revolve around the role of the person who creates the child's circumstance: a parent, guardian, custodian, or caretaker. For a discussion of those roles, see Chapter 2.2. The North Carolina Supreme Court recognized that “[n]ot every child who is a victim of serious criminal conduct is necessarily an abused and neglected juvenile under the Juvenile Code. Only when the family fails to provide proper care is DSS empowered to intervene.” *In re R.R.N.*, 368 N.C. 167, 169 (2015). As such, DSS is not authorized to intervene in the parent-child relationship when the child's condition results from circumstances created by a person who is not a parent, guardian, custodian, or caretaker. There is an exception, however, for any minor victim of human trafficking. A minor victim of human trafficking shall be alleged to be abused and neglected regardless of how or who created those circumstances. G.S. 7B-101(1)(i), (15)(i); see G.S. 14-43.15.

Note that a juvenile may be a victim of a crime other than human trafficking that warrants action from law enforcement rather than DSS involvement with a family. Separate from and in addition to a mandated report to DSS, as of December 1, 2019, 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 immediately make a report to the appropriate local law enforcement agency. G.S. 14-318.6(b). See Chapter 5.1.A.5 (discussing other mandated reporting laws).

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**Resource:** For more information about the mandatory reporting law to local law enforcement, 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 BLOG: NORTH CAROLINA CRIMINAL LAW (Nov. 13, 2019).

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Courts that preside over abuse, neglect, dependency, and termination of parental rights (TPR) cases are also bound by the provisions of the Juvenile Code. In determining whether DSS has proved that a child is abused, neglected, or dependent, the court must apply the statutory

definitions. See Chapter 6 for a discussion of adjudications. When a court adjudicates a child's condition or status as abused, neglected, or dependent, the adjudication may lead to "an array of possible adverse collateral consequences." *In re R.R.N.*, 368 N.C. at 171. The court proceeds to disposition and looks to the authority it is granted by the Juvenile Code to determine what actions it may order to address the child's circumstances while considering the best interests of the child. *See, e.g.*, G.S. 7B-901; 7B-904. "Collateral consequences" of an adjudication and subsequent disposition may include the temporary removal of the child from the home, a court order to participate in certain services or evaluations, the stigma attached to the adjudication, subjecting a family to ongoing DSS supervision, and for a parent, the possible permanent termination of parental rights. *See In re R.R.N.*, 368 N.C. 167. In a TPR proceeding, the court's focus shifts to whether a ground for termination as specified in the Juvenile Code exists based on the parent's conduct or culpability. If a ground is proved, the court then looks to the child's best interests to determine whether the TPR should be granted. The purpose is not to be punitive but instead looks to a child's safety and well-being. See Chapter 9 (discussing TPR).

**2. Purposes of North Carolina's Juvenile Code.** The Juvenile Code includes stated purposes that provide a big picture perspective that can be helpful. Attorneys and judges may find support for arguments or decisions in the statutory language setting out the purposes of the Juvenile Code or the case law interpreting that language.

G.S. 7B-100 states that the purposes of the Juvenile Code relating to abuse, neglect, dependency, and termination of parental rights must be interpreted and construed so as to implement the following purposes and policies:

1. To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;
2. To develop a disposition in each case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family;
3. To 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;
4. To 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; and
5. To provide standards, consistent with the Adoption and Safe Families Act of 1997 for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time.

Specific to abuse, neglect, or dependency dispositions, the purpose is stated at G.S. 7B-900:

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

Additional purposes with respect to termination of parental rights are set out in G.S. 7B-1100:

1. To provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile’s biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.
2. To recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.
3. Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile’s parents or other persons are in conflict.
4. An action to terminate parental rights shall not be used to circumvent the Uniform Child-Custody Jurisdiction and Enforcement Act.

North Carolina appellate courts have helped shape these purposes and have cited them as support for some decisions. For example, the courts have considered the Juvenile Code’s stated purposes when determining whether a particular Rule of Civil Procedure furthered those purposes and should apply in juvenile proceedings. *See, e.g., In re B.L.H.*, 190 N.C. App. 142, *aff’d per curiam*, 362 N.C. 674 (2008); *In re S.D.W.*, 187 N.C. App. 416 (2007); *In re L.O.K.*, 174 N.C. App. 426 (2005); see also Chapter 4.1 (discussing the application of the Rules of Civil Procedure). In the case *In re R.R.N.*, 368 N.C. 167 (2015), the supreme court looked to the dual purpose of the Juvenile Code of protecting and promoting the child’s best interests while safeguarding the parent-child relationship from state interference. It held a relative who supervised a one-night sleepover and sexually abused the child during that sleepover was a not a “caretaker” who was entrusted with the child’s care warranting state intervention with the family who responded appropriately to the child’s disclosure. In the case *In re Eckard*, 148 N.C. App. 541, 548 (2002), the court of appeals held explicitly that an order ceasing reunification efforts was “not consistent with the purposes and policies of the statute.” Numerous cases have pointed to the Juvenile Code’s characterization of the child’s best interest as a paramount consideration in juvenile proceedings. *See, e.g., In re D.W.P.*, 373 N.C. 327 (2020); *In re A.U.D.*, 373 N.C. 3 (2019); *In re A.P.*, 371 N.C. 14 (2018); *In re*

*T.H.T.*, 362 N.C. 446 (2008); *In re T.R.P.*, 360 N.C. 588 (2006).

### C. Overview of a Child Welfare Case in North Carolina

The following narrative provides an overview of the primary stages and hearings in abuse, neglect, or dependency cases to give a big picture perspective of how these cases flow through North Carolina's child welfare system. Note that there are other hearings associated with these proceedings that are not included in this overview but are explained in the relevant Chapters of this Manual. For detailed explanations of each stage, which includes statutory citations and applicable case law, see the corresponding chapter.

- **Assessment after report.** After receiving a report, DSS determines whether an assessment is required, and if it is, DSS conducts the assessment. If DSS finds evidence of abuse, neglect, or dependency, DSS must determine whether to provide protective services to the family, whether to file a petition so that the court can become involved in the case, and whether removal of the child from the home is necessary to protect the child.
- **Immediate removal and nonsecure custody.** If immediate removal is necessary and there is no time to obtain a court order, DSS (or a law enforcement officer) may take a child into temporary custody for up to twelve hours (or if one of those hours falls on a weekend or legal holiday, for up to twenty-four hours) without a court order. At the end of that time period, DSS must return the child or obtain a temporary emergency custody order, which is called a nonsecure custody order.

A nonsecure custody order may be issued after DSS files a petition in district court and shows that the narrowly defined statutory criteria for nonsecure custody apply. Most initial nonsecure custody orders are issued *ex parte*. After the initial nonsecure custody order is issued, a hearing on the need for continued nonsecure custody (or the adjudicatory hearing) must be held within seven calendar days unless the parties consent to a continuance for up to ten business days. If the child remains in nonsecure custody the court must hold periodic hearings on the need for continued nonsecure custody at the statutorily prescribed intervals, unless waived by the parties. At these hearings, the court addresses the need for continued nonsecure custody, the child's placement, visitation, and in some cases, medical decision-making pending adjudication.

- **Adjudication and initial disposition.** Abuse, neglect, or dependency petitions are heard in district court by a judge, without a jury. The hearing on the merits involves two stages: (1) *adjudication*, during which the court hears evidence, makes findings, and determines whether allegations in the petition have been proved by clear and convincing evidence that the child is abused, neglected, or dependent; and (2) if the court adjudicates the child to be abused, neglected, or dependent, *disposition*, which is devoted to identifying the needs of the child and the parents, guardians, custodians, or caretakers, considering ways to address those needs, and developing a plan that is in the best interests of the child.

These two stages have different purposes, standards, and procedures, making it important that the court delineate clearly the end of one stage and the beginning of the other, even if both stages are handled in the same court session. At adjudication, the formal rules of evidence apply, and the burden is on DSS as the petitioner to prove the allegations in the petition by clear and convincing evidence. The court either adjudicates the child to be abused, neglected, or dependent, or dismisses the petition with prejudice. If there is an adjudication, at initial disposition, the rules of evidence do not apply. The court considers evidence that is found to be relevant, reliable, and necessary to determine the juvenile's needs and most appropriate disposition. The dispositional hearing may be informal. Although some oral testimony is required, the parties may submit written reports or other evidence concerning their perspectives on the family's needs, how those needs can be met, and what steps should be taken for the child's care and protection. No one party has the burden of proof. The guiding principle for the court's decisions in the dispositional phase is the child's best interests with a focus on the child's health and safety and the need for the child to achieve permanence within a reasonable period of time. After making findings and conclusions, the court may leave the child in the home; place custody with a parent, DSS, a relative, or other suitable person; and make other orders concerning the child or other parties, including provisions addressing visitation, decision-making, treatment or other services, and the payment of child support.

- **Disposition: initial, review, and permanency planning.** Dispositions occur in phases: initial disposition and then review or permanency planning. *See* S.L. 2021-132, sec. 1 (creating separate review hearing and permanency planning hearing tracks, effective October 1, 2021). The Juvenile Code sets forth the maximum time periods within which each type of dispositional hearing must be held. The Juvenile Code does not prohibit the scheduling of the different types of dispositional hearings on the same day.

The initial dispositional hearing immediately follows the adjudicatory hearing and must be completed within thirty days of the conclusion of the adjudicatory hearing. A review or permanency planning hearing, which is determined by whether custody has been removed from a parent, guardian, or custodian, is scheduled within ninety days of the initial dispositional hearing. If custody has not been removed, a review hearing is held. If custody has been removed from a parent, guardian, or custodian, a permanency planning hearing is held. A permanency planning hearing must be scheduled sooner than ninety days when the court orders DSS relieved of reunification efforts at the initial dispositional hearing. In that circumstance, a permanency planning hearing must be held within thirty days from an initial dispositional order that determined reasonable efforts for reunification are not required. Additionally, a case will switch from review hearings to permanency planning hearings if the court orders custody removed from a parent, guardian, or custodian as part of its disposition ordered at a review hearing.

Periodic review or permanency planning hearings must be held at least every six months absent statutory criteria that allows for a waiver of or longer duration between those hearings or the court orders the termination of its jurisdiction. If the child remains in the custody of a parent, guardian, or custodian, the court will either terminate jurisdiction or waive further hearings once the parent, guardian, or custodian has completed court-



ordered services and the juvenile resides in a safe home.

For the various dispositional hearings, the rules of evidence do not apply and the court considers evidence it finds to be relevant, reliable, and necessary to meet the juvenile's needs and develop the most appropriate disposition. The applicable standard is the best interests of the child.

At each review and permanency planning hearing, the court considers and makes findings about a variety of statutory criteria, including what services have been or should be offered; whether the child's placement is appropriate; and if the child has been removed from the home, whether the child's return home is likely. The presumptive goal in every case is for the child to remain at home safely or, if placed outside the home, to reunify with either parent or with the guardian or custodian from whose home the child was removed by court order.

In cases where permanency planning hearings are held, the court must order concurrent permanent plans until one has been achieved, with priority given to reunification unless certain written findings are made by the court. There are six permanent plans: reunification, adoption, guardianship to a non-parent, custody to a non-parent, Another Planned Permanent Living Arrangement (APPLA) (for juveniles who are 16 or 17 years old only), and reinstatement of parental rights. If one of the concurrent permanent plans for the child is adoption, a termination of parental rights (TPR) action may be necessary to implement that plan.

A TPR proceeding is also divided into two stages: adjudication and disposition. At adjudication, the court determines whether a statutory ground for termination of parental rights has been proved by clear, cogent, and convincing evidence. If not, the case is dismissed. If one or more grounds exist, the court moves on to the disposition where it determines whether a TPR is in the child's best interest. The court will terminate parental rights only if it finds both a ground and that it is in the child's best interests. If parental rights are terminated and the child is in the custody of DSS or a licensed child-placing agency, post-termination review hearings must be held at least every six months to examine progress toward achieving the child's permanent plan.

- **The end of the case.** The court retains jurisdiction and can enter orders in the abuse, neglect, or dependency case until the court enters an order that terminates its jurisdiction, a final order of adoption is entered, or the juvenile turns eighteen or is emancipated, whichever occurs first.

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**Resources:**

For a primer addressing the various stages, time requirements, and applicable rules and standards, with flowchart, see SARA DEPASQUALE, [STAGES OF ABUSE, NEGLECT, AND DEPENDENCY CASES IN NORTH CAROLINA: FROM REPORT TO FINAL DISPOSITION](#) (UNC School of Government, 2022).

To learn more about the process, starting with whether to make a report and ending with a final disposition listen to [Beyond the Bench: Season 02: Homelessness, Neglect, and the Child Welfare System in North Carolina](#), UNC SCHOOL OF GOVERNMENT, NORTH CAROLINA JUDICIAL COLLEGE (2016) (also available through iTunes and Stitcher). This podcast consists of six episodes, which focus on the different stages of a neglect case and features interviews with district court judges, DSS staff and attorney, a parent attorney, and the child’s guardian ad litem team.

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## D. Demographics

**1. National data.**<sup>4</sup> The U.S. Department of Health and Human Services, via the Children’s Bureau, collects and reports data relating to child maltreatment in the United States. For fiscal year 2020 (October 1, 2019 through September 30, 2020), child protective services agencies received an estimated 3.9 million referrals of alleged child maltreatment (abuse or neglect) that involved approximately 7.1 million children. Of those reports, approximately 2.1 million, representing an estimated 3.1 million children, were screened in (meaning action was taken) from the child protective agency. Of the reports that were screened in, more than seventeen percent (17%) were substantiated for abuse or neglect having occurred, and those substantiated reports involved an estimated 618,000 children. More than one in four child victims (28.6%) are two years old and younger with children younger than 1 having the highest rate of victimization. The vast majority of cases (76.1%) involved child neglect. A child’s death is the most tragic consequence of abuse or neglect and is what child protective services seeks to prevent. Nationally, an estimated 1,750 children died from abuse or neglect in fiscal year 2020, and two out of three of those fatalities (68%) were of children younger than 3 years old.

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**Resource:** For more statistics and information relating to the reporters, the type of maltreatment, demographics of children, alleged perpetrators, child deaths, and state specific data, see the CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVICES, “[Child Maltreatment 2020](#)” (2020).

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**2. North Carolina data.**<sup>5</sup> Statistics on North Carolina reports of abuse, neglect, and dependency as well as child placement data are maintained through a joint project of the Jordan Institute for Families at the School of Social Work at The University of North Carolina at Chapel Hill and the Division of Social Services in the North Carolina Department of Health and Human Services.

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<sup>4</sup> Information for this section was obtained from CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVICES, “Child Maltreatment 2020” (2020) (based on information gathered from the National Child Abuse and Neglect Data System (NCANDS), which collects annual data that is voluntarily submitted by the fifty states, the District of Columbia, and the Commonwealth of Puerto Rico), available at [www.acf.hhs.gov/cb/report/child-maltreatment-2020](http://www.acf.hhs.gov/cb/report/child-maltreatment-2020) (last visited January 24, 2022).

<sup>5</sup> Information for this section was obtained from D. F. Duncan, K. A. Flair, C. J. Stewart, S. Guest, R.A. Rose, K.M.D. Malley, and W. Reives “Management Assistance for Child Welfare, Work First, and Food & Nutrition Services in North Carolina,” (v3.2, 2020) for “[Child Welfare](#).” Retrieved on February 1, 2022, from the University of North Carolina at Chapel Hill Jordan Institute for Families website.

The data show that in state fiscal year 2020-2021, there were 112,576 investigated reports of abuse, neglect, or dependency. Forty percent (40%) of those children were 5 years old or younger. Findings resulting from investigations or assessments are characterized in nine ways, and one report may result in multiple characterizations.

From July 2020 through June 2021 the data show the following findings:

Finding	Total Number SFY 2020-2021
• abuse and neglect	1,287
• abuse	811
• neglect	5,076
• dependency	174
• services needed	12,209
• services provided, no longer needed	3,590
• services recommended	34,202
• unsubstantiated	15,090
• services not recommended	40,137

The data also includes information about children in foster care in North Carolina. During the 2020-2021 state fiscal year, there were 16,672 children who were in foster care in North Carolina at some point during that year. This number reflects the different children who moved into and out of foster care over the course of that year. The data also provides a snapshot in time of the number of children in foster care on the last day of any given month; for example, on November 30, 2021, there were 11,162 children in foster care in North Carolina.

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**Resource:** For more information about children alleged or found to be abused, neglected, or dependent (e.g., such as referral source, race, age, gender, ethnicity, number of placements, length of time in foster care, or reason for exit from foster care) on a statewide or individual county or judicial district basis, see footnote 5 for link to the website data.

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## 1.2 Federal-State-County System

### A. County-State Structure and Relationship

North Carolina is in the small minority of states that has a state-supervised, county-administered child welfare system.<sup>6</sup> Each county has either a department of social services (DSS) or a consolidated human services agency that includes social services. *See* G.S. 108A-1. Rather than one centralized state administered system, the 100 different county departments provide child welfare services to families.

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<sup>6</sup> [“Statutory Changes Will Promote County Flexibility in Social Services Administration”](#) “Final Report” to the Joint Legislative Program Evaluation Oversight Committee, Report No. 2011-03 (May 2011), Program Evaluation Division, the North Carolina General Assembly.

The North Carolina Department of Health and Human Services (NC DHHS) is designated as the single state agency responsible for administering or supervising the administration of social services programs under the Social Security Act. G.S. 108A-71. Through its Division of Social Services, NC DHHS provides oversight, technical assistance, and training to the county departments. *See* G.S. 131D-10.6A; 108A-74. The Division of Social Services has a Child Welfare Services section that develops extensive state child welfare policies (published primarily as an online manual, setting out best practice guidelines to be used by DSS staff), provides consultations, and monitors counties' compliance and performance.<sup>7</sup> Starting in 2018, each county DSS is required to enter into a written agreement with NC DHHS (referred to as a memorandum of understanding (MOU)) that sets out specific mandated performance requirements and administrative responsibilities for all social services programs, including child welfare, with the exception of Medicaid. G.S. 108A-74. An MOU must be executed each year. When a county department is not providing or making reasonable efforts to provide child welfare services in accordance with North Carolina statutes and regulations, NC DHHS has the authority to provide technical assistance, withhold state and federal child welfare services administrative funds, create and implement a corrective action plan, and ultimately control service delivery directly or through a contract with a public or private agency. G.S. 108A-74. The procedures for NC DHHS intervention are set forth in G.S. 108A-74.

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**Resource:**

In 2017, S.L. 2017-41 included several provisions affecting the state's child welfare system. Several components related to increasing state supervision through the creation of a new system of regional supervision for local administration. A Social Services Working Group (SSWG) was tasked with making recommendations about the role of NC DHHS and regional supervision of the counties. The two required reports were published in March and December of 2018. The work of the SSWG is available on the UNC School of Government website, on the Social Services microsite, [here](#).

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NC DHHS maintains two statewide registries related to abuse, neglect, or dependency: (1) the central registry of abuse, neglect, and dependency cases and child fatalities resulting from alleged maltreatment (central registry) and (2) the responsible individuals list (RIL). G.S. 7B-311. The information maintained in these registries is provided to NC DHHS by the county departments and may be accessed by other county departments. G.S. 7B-311. For more information about these registries, see Chapter 5.2.

NC DHHS is also responsible for approving, periodically reviewing, suspending, and revoking licenses for foster care, residential child care, and adoptive homes. G.S. 131D-10.3; 131D-10.6. The Division of Social Services keeps a registry of all licensed family foster and therapeutic foster homes. G.S. 131D-10.6C.

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<sup>7</sup> NC CHILD WELFARE MANUAL, available online [here](#).

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**Resources:**

For additional information regarding the Division of Social Services, see the “Social Services” home page under “Divisions” on the N.C. Department of Health and Human Services website, [here](#).

For additional information about child welfare programs and services within the Division of Social Services, including child protective services, foster care, etc., see “[Child Welfare Services](#)” on the Division of Social Services, N.C. Department of Health and Human Services website.

For information about the structure of child welfare systems in other states, see CHILD WELFARE INFORMATION GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVICES, “[State vs. County Administration of Child Welfare Services](#)” (2018).

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**B. The County DSS**

**1. Governing structure and staff.** Each county department has a governing board, which may be a social services board, a consolidated human services board, or a board of county commissioners that has assumed the powers and duties of either a county social services board or consolidated human services agency (CHSA). County social services boards select DSS directors, who hire staff and administer county programs. In counties with a consolidated human services board, the county manager appoints and supervises a county director of human services, who appoints staff only on approval of the county manager. *See* Article I of G.S. Chapter 108A; 153A-77. In a county with a CHSA that includes social services, the consolidated human services director acquires the statutory powers and duties of a DSS director but may delegate these powers and duties to a separate individual or to multiple staff members within the CHSA. G.S. 153A-77(e).

Statutes and regulations related to DSS responsibilities usually reference “the director” as the one carrying out DSS responsibilities. The Juvenile Code defines the “director” as the director of the department of social services in the county where the child resides or is found, or the director’s representative. G.S. 7B-101(10). The director’s duties and authority to delegate responsibilities to staff are set out in G.S. 108A-14. It is therefore understood that most responsibilities belonging to the “director” are carried out through authorized representatives of the director. In this Manual, the term “DSS director” typically refers to the director of a county department of social services or CHSA and the staff members to whom the director delegates.

County DSS and human services agencies are departments within county government, and their directors and employees are county employees. However, the director and agency are also guided by and accountable to the state in many respects. State appellate courts have held in several child welfare contexts that the county DSS operates as an agent of the state. *See, e.g., In re N.X.A.*, 254 N.C. App. 670 (2017) (verification requirements for abuse, neglect, dependency petition); *Gammons v. N.C. Dep’t of Human Res.*, 344 N.C. 51 (1996) (child protective services); *Vaughn v. N.C. Dep’t of Human Res.*, 296 N.C. 683 (1979) (foster care); *In re Z.D.H.*, 184 N.C. App. 183 (2007) (appeal in a juvenile case); *Parham v. Iredell County*

*Dep't of Soc. Servs.*, 127 N.C. App. 144 (1997) (adoption).

Individual county DSS agencies may have local policies and procedures developed by the county social services or human services board or director. However, most policies and procedures related to child welfare are determined by statutory requirements, administrative rules adopted by the Social Services Commission (found in 10A N.C.A.C. 70A), and policies adopted by the NC DHHS Division of Social Services. Moreover, despite being county employees, county DSS directors and employees are subject by law to the provisions of the State Human Resources Act (SHRA) with respect to recruitment, selection, and dismissal procedures. G.S. 126-5(a)(2). CHSA directors and employees are not subject to the SHRA unless county commissioners explicitly elect to keep them subject to the SHRA. G.S. 153A-77(d).

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**Resources:**

For more information on social services boards, see JOHN L. SAXON, [HANDBOOK FOR COUNTY SOCIAL SERVICES BOARDS](#) (UNC School of Government, 2009). Note that this book was written prior to changes in the law in 2012 regarding the organization and governance of North Carolina human services agencies. An updated School of Government book for human services boards (including boards of social services and CHS boards) is currently in progress.

For further information about social services, see also AIMEE N. WALL, [Social Services](#), CH. 39 in FRAYDA S. BLUESTEIN (ed.), *COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA* (UNC School of Government, 2d ed. 2014).

For information about consolidated human services agencies, see “[Consolidated Human Services Agencies \(CHSAs\)](#)” on the UNC School of Government’s North Carolina Public Health Law microsite.

For information about CHSA directors and personnel, including the delegation of authority, see KRISTI A. NICKODEM, [Personnel Decisions for North Carolina’s Consolidated Human Services Agencies](#), SOCIAL SERVICES LAW BULLETIN No. 2021/49 (UNC School of Government, Dec. 2021).

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**2. DSS role and responsibilities.** Child welfare services provided by DSS include intake and assessment of abuse, neglect, and dependency reports; casework; initiation of and participation in court proceedings; provision of reasonable efforts and permanency planning services related to those proceedings; foster care and other placement services; and adoption services.

**(a) Protective services.** DSS’s responsibility for protective services includes

- screening reports of suspected abuse, neglect, or dependency;
- performing assessments;
- providing casework services; and



- providing other counseling services to parents, guardians, or other caretakers to help those individuals and the court prevent abuse or neglect; improve the quality of child care; be more adequate parents, guardians, or caretakers; and preserve and stabilize family life.

G.S. 7B-300.

**Intake and screening.** DSS has the duty to screen reports of suspected child abuse, neglect, or dependency to determine whether the facts reported, if true, meet the statutory definitions of abuse, neglect, or dependency. *See* G.S. 7B-302; 7B-403. If they do, DSS must determine what type of assessment response is appropriate. *See* G.S. 7B-302(a). *See* Chapter 5.1 for a discussion of the statutory requirements for the intake and screening process. For DSS policies and procedures related to intake and screening, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, NC CHILD WELFARE MANUAL “CPS Intake,” available [here](#).

**Assessment.** A multiple response system (MRS) provides different responsive procedures for different types of situations. A “family assessment” response is used for reports meeting the statutory definitions of neglect and dependency and applies a family-centered approach that focuses on the strengths and needs of the family as well as the child’s alleged condition. G.S. 7B-101(11a). A more formal “investigative assessment” response is used for reports containing allegations meeting the statutory definitions of abuse as well as selected reports of neglect or dependency as determined by the director. G.S. 7B-101(11b). At the end of an assessment, DSS determines (or substantiates) whether abuse, neglect, serious neglect, or dependency occurred. Serious neglect is for purposes of placing an individual on the Responsible Individuals List and is not in reference to a child’s status. *In re J.M.*, 255 N.C. App. 483 (2017).

If DSS substantiates a report or determines that the family is in need of services, DSS must provide protective services and may file a petition with or without requesting a nonsecure custody order removing the child from the home immediately. *See* G.S. 7B-302(c), (d); 108A-14(a)(11). Without a substantiation or a finding of a need for services, DSS may make appropriate referrals for the family but must close its protective services case. Both types of assessments as well as the statutory requirements of the assessment stage are discussed in Chapter 5.1.B. For an explanation of DSS policies and procedures related to assessments and the multiple response system (MRS), see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL “Purpose, Philosophy, Legal Basis and Staffing” and “Assessments,” available [here](#).

**Casework and other services.** After substantiation or a finding that a family requires 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. DSS must determine and arrange for the most appropriate services, focusing on the child’s safety and, in cases where a child has been removed from the home, returning the child to a safe home. *See* G.S. 7B-101(19) (definition of “safe home”). Part of the casework requires DSS to make “reasonable efforts” to prevent or eliminate the need for the child’s placement outside the

home. *See* G.S. 7B-101(18) (definition of “reasonable efforts”). The court may order DSS to provide specific efforts. *See* G.S. 7B-906.2(b). For a discussion of DSS services and related policies and procedures, see DIV. OF SOC. SERVS., N.C. DEP’T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL “In-Home Services,” “Permanency Planning,” and “Cross Function,” available [here](#).

**(b) Child placement services.** A child may be placed in an out-of-home placement through either a voluntary action on the parent’s part or by court order. Occasionally a parent and DSS will enter into a voluntary foster care placement agreement. G.S. 7B-910. *See* Chapter 8.2 (discussing voluntary placements). If a parent relinquishes a child to DSS (or licensed child-placing agency) for adoption, the agency acquires legal and physical custody of the child and assumes placement responsibility for the child under the adoption law. G.S. 48-3-705. *See* Chapter 10.2.B (discussing relinquishments). Otherwise, DSS’s authority to place children is derived from the following types of court orders giving DSS custody or placement responsibility for children:

- nonsecure custody orders entered before the adjudication hearing;
- initial disposition, review, or permanency planning orders entered after a child’s adjudication; or
- termination of parental rights orders that have the effect of vesting or ordering custody and placement responsibility in DSS.

*See* G.S. 7B-507; 7B-905; 7B-906.1(h), (i); 7B-1112(1), (2).

DSS plays a role in the state’s foster care licensing process and is responsible for supervising foster care placements. *See* G.S. 108A-14(a)(12). Some of DSS’s authority in relation to children in DSS custody is specified by statute. *See, e.g.,* G.S. 7B-505.1; 7B-903.1; 48-3-705. Individual court orders may include provisions relating to the child’s placement and DSS’s authority and duties. For detailed provisions relating to DSS placement responsibilities, see DIV. OF SOC. SERVS., N.C. DEP’T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL “Cross Function,” “Permanency Planning,” and “Interstate Compact on the Placement of Children,” available [here](#). *See* also Chapter 7.4 (relating to out-of-home placements in the dispositional phase of the case).

DSS (or the licensed child-placing agency with placement authority for the child) selects the child’s prospective adoptive parents. G.S. 7B-1112.1. DSS also investigates and supervises adoptive placements. G.S. 108A-14(a)(6) and (13); *see* G.S. 48-3-201 to -207 (preplacement assessment for adoption); 48-2-501 to -504 (report for court in adoption proceeding). *See also* DIV. OF SOC. SERVS., N.C. DEP’T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL “Adoptions” and “Permanency Planning,” available [here](#). *See* Chapter 10.3 (discussing selected North Carolina laws related to adoptions).



### C. Federal-State-County Funding<sup>8</sup>

Funding for child welfare services that are provided by the county departments of social services comes from a complicated mix of federal, state, and county sources.

Significant federal involvement with the protection of children began with the Social Security Act of 1935, which included funding to states for services “. . . for the protection and care of homeless, dependent, and neglected children.” Today, the largest federally funded programs that support state child welfare programs and activities are authorized by the Social Security Act: Title IV-B for the Child Welfare Services and Promoting Safe and Stable Families (formerly known as Family Preservation) programs and Title IV-E for the Foster Care Program, Adoption Assistance Program, and the Chafee Foster Care Independence Program. These programs are administered by the U.S. Department of Health and Human Services. In addition, the Social Services Block Grant (SSBG) is authorized under Title XX of the Social Security Act and funds a wide range of programs that support social policy goals specified in the Social Security Act.

Some sources of the federal funding, such as the Social Services Block Grant (SSBG) under Title XX, are capped at an amount determined by federal legislation. Other sources of federal funding, such as foster care payments provided under Title IV-E, are uncapped, meaning that total funding depends on the number of eligible children in the state. These and other sources of federal funding require some matching funds from the state as well as compliance with numerous program requirements contained in federal laws and regulations.

The state legislature determines how the state and counties share responsibility for the non-federal share of the cost of federally funded programs. The General Assembly appropriates state funds for the state’s portion of the non-federal share, allocates federal block grant funds, and appropriates additional state funds for child welfare services and programs.

Counties’ primary funding responsibilities for child welfare fall into two categories:

- matching funds and maintenance of effort funds required by the state and
- any amounts above those available from federal and state funds and required matches that are necessary for the county to carry out its statutory duties to provide child welfare services.

Both are the responsibility of boards of county commissioners. A county that fails to provide services due to insufficient county funding could have NC DHHS implement a corrective action plan with the county board of commissioners, DSS board, and DSS director; withhold funding; and eventually take over the county’s child welfare programs. G.S. 108A-74.

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<sup>8</sup> Some of the content for this section was sourced from CHILD WELFARE INFORMATION GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVICES, “[Major Federal Legislation Concerned With Child Protection, Child Welfare, and Adoption](#)” (2019).

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**Resource:** For a detailed explanation of child welfare funding in North Carolina, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL Appendices 1 through 3.7, available [here](#).

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## D. Federal-State Relationship

States are primarily responsible for the laws and programs that address the needs of children and families but there are also many federal statutes and regulations that apply to some of the programs and services. Federal funding and the conditions attached to states receiving it have influenced states' child welfare systems, such as the enactment of certain state statutes.

Periodically, the federal Children's Bureau (in the Administration for Children and Families in the U.S. Department of Health and Human Services) reviews North Carolina cases to assess compliance with federal laws. Two significant audits are the Child and Family Services Review (CFSR) and the IV-E Eligibility Review.

**1. Child and Family Service Review (CFSR).<sup>9</sup>** The CFSR evaluates a state's child welfare system with the three-fold purpose of ensuring the state is complying with federal requirements, determining what is actually happening to children and families who are receiving child welfare services, and assisting states in helping children and families achieve positive outcomes. The CFSR measures seven outcomes related to safety, permanency, and well-being and seven systemic factors.

<b>Safety, Permanency, and Well-being Outcomes</b>	<b>Systemic Factors for the State</b>
Are children under the care of the state protected from abuse and neglect	Statewide information system
Are children safely maintained in their own homes whenever possible and appropriate	Case review system
Do children have permanency and stability in their living conditions	Quality assurance system
Are the continuity of family relationships and connections preserved for children	Staff and provider training
Do families have enhanced capacity to provide for their children's needs	Service array and resource development to meet the needs of children and families
Do children receive appropriate services to meet their educational needs	Agency responsiveness to the community
Do children receive adequate services to meet their physical and mental health needs	Foster and adoptive parent licensing, recruitment, and retention

If a state is out of conformance with any of the fourteen measured outcomes, it must submit a Program Improvement Plan (PIP) to identify corrective actions that need to be taken to improve compliance with federal laws. A finding of substantial conformity requires that

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<sup>9</sup> The content for this section is sourced from the website for the Children's Bureau, U.S. Department of Health and Human Services, "[Child & Family Service Reviews \(CFSRs\)](#)."

ninety-five percent (95%) of the reviewed cases be rated as having substantially achieved the outcome. The standards are intentionally set high.

North Carolina has completed three CFSRs (2001, 2007, 2015). Because North Carolina does not have statewide data, the CFSRs were based on a small random sampling of cases from a few counties. Like all other states, North Carolina has not been in substantial conformity with all fourteen outcomes. However, in 2015 although certain strengths were identified, North Carolina was found not to be in substantial conformity with any of the fourteen measured outcomes. North Carolina created a PIP, which went into effect in January 2017.

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**Resources:**

To view North Carolina’s and other states’ CFSR reports and PIPs, see “[Reports and Results of the Child and Family Services Reviews \(CFSRs\)](#)” on the Children’s Bureau, U.S. Department of Health and Human Services website. The Round 3 CFSR report and PIP are also available on the N.C. Department of Health and Human Services website, searched under “Child and Family Services Performance Improvement Plan,” available [here](#).

For information about the CFSR, see “[Child and Family Services Reviews](#)” on the website for the Children’s Bureau, U.S. Department of Health and Human Services.

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**2. The IV-E eligibility review.**<sup>10</sup> The on-site IV-E Eligibility Review is conducted every three years to assess compliance with Title IV-E of the Social Security Act. However, due to the COVID-19 pandemic, all IV-E eligibility reviews have been indefinitely postponed, effective April 10, 2020. *See* U.S. Department of Health and Human Services Administration for Children and Families letter dated April 10, 2020, [here](#).

The review determines whether children in foster care meet the eligibility requirements for federal foster care maintenance payments. For this review, sample cases from a few counties are evaluated. Reviewers have access to the child’s case records, court orders, placement and payment histories, and provider licensing and safety documentation. The state’s “score” is based on the number of cases with errors. There are numerous eligibility factors that are examined, including whether court orders in the sample cases comply with federal requirements, such as those relating to

- judicial determinations of “reasonable efforts” and “contrary to the welfare,”
- voluntary foster care placements (*see* G.S. 7B-910), and
- vesting responsibility for the child’s placement and care with the state (or county) agency.

If the state is not in substantial compliance, it must develop and implement a Program Improvement Plan (PIP) to correct the deficiencies, improve performance, and strengthen program operation.

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<sup>10</sup> The content for this section is sourced from the website for the Children’s Bureau, U.S. Department of Health and Human Services, “[Title IV-E Reviews](#).”

In 2017, North Carolina was in substantial compliance for the period under review. Some areas were noted for needing improvement, such as obtaining judicial determinations of “contrary to the welfare” and “reasonable efforts to prevent removal” findings and documenting accurate payment histories to providers.

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**Resources:**

To access selected Final Reports for North Carolina’s (and other states’) IV-E review, see the “[Title IV-E State Reports and PIPs](#)” page on the website for Children’s Bureau, U.S. Department of Health and Human Services.

For information about the IV-E Eligibility Review, see the website link at footnote 11 and [TITLE IV-E FOSTER CARE ELIGIBILITY REVIEW GUIDE](#) (2012). For supplementary information in the Federal Register explaining 45 C.F.R. Parts 1355, 1356, and 1357; Title IV-E Foster Care Eligibility Reviews; and Child and Family Services State Plan Reviews, see [65 Fed. Reg. 4020](#) (Jan. 25, 2000).

For federal policy in a Q&A format related to Titles IV-B and IV-E, see the [CHILD WELFARE POLICY MANUAL](#) under the “Laws and Policies” section of the Children’s Bureau, U.S. Department of Health and Human Services website, specifically “7. Title IV-B” and “8. Title IV-E”.

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### 1.3 State and Federal Sources of Authority: Laws, Rules, and Policy

Although North Carolina’s child welfare system is primarily governed by state laws and regulations, those laws and regulations must meet the minimum requirements established by federal laws. Many requirements of relevant federal laws have been integrated into the North Carolina Juvenile Code, and some are explicitly referenced in the Juvenile Code but not codified. Requirements of federal and state laws also are integrated into state regulations and policies.

#### A. North Carolina

**1. The Juvenile Code: G.S. Chapter 7B.** North Carolina enacted its first Juvenile Code in 1919. Major rewrites took effect in 1970, 1980, and, most recently, in 1999 when the current Juvenile Code (G.S. Chapter 7B) became effective. The 1919 Juvenile Code applied to juveniles who were neglected, dependent, abandoned, destitute or homeless, delinquent, truant, unruly, wayward, misdirected, disobedient to or beyond the control of their parents, or in danger of becoming any of these things. Over the years these evolved into the current categories of abused, neglected, dependent, delinquent, and undisciplined juveniles.

The 1999 Code was the first to separate within the Juvenile Code provisions relating to juveniles who need protection (abused, neglected, or dependent juveniles) and those whose conduct brings them before the court (delinquent and undisciplined juveniles). The Juvenile Code is organized into five subchapters:

- Subchapter I: abuse, neglect, dependency, and termination of parental rights;
- Subchapter II: undisciplined and delinquent juveniles;
- Subchapter III: juvenile records (including those arising from abuse, neglect, dependency, and termination of parental rights cases);
- Subchapter IV: parental authority and emancipation; and
- Subchapter V: the interstate placement of children.

The Juvenile Code establishes both the procedural and substantive laws that apply to abuse, neglect, dependency, and termination of parental rights cases as well as the legislature’s purpose in enacting the Juvenile Code. The legislature amends the Juvenile Code in some respect almost every session—to ensure compliance with federal funding conditions, respond to North Carolina appellate court decisions, conform to changes in other laws, or for other reasons.

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**Resources:**

The Juvenile Code, along with other North Carolina statutes, may be accessed online at the North Carolina General Assembly website; see “[General Statutes](#)” under “Bills & Laws.”

For a summary of North Carolina legislation from 1997 through 2005 and its impact on the Juvenile Code, see DIV. OF SOC. SERVS., N.C. DEP’T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL “Purpose, Philosophy, Legal Basis and Staffing,” available [here](#).

For annual summaries of North Carolina legislation, beginning with the 1998 session, see “[Legislative Summaries](#)” on the “Legislative Reporting Service” page on the UNC School of Government website.

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**2. The Administrative Code: Title 10A.** In North Carolina, binding agency regulations are referred to as “Rules” that are set forth in the North Carolina Administrative Code (N.C.A.C.). The Rules regulating child welfare services are adopted by the Social Services Commission. G.S. 143B-153; *see, e.g.*, G.S. 108A-25(a); 108A-80(d); 7B-311; 131D-10.3; 131D-10.5. The Social Services Commission consists of one member from each of the state’s thirteen congressional districts. G.S. 143B-154. Each member is appointed by the Governor for a four-year term. G.S. 143B-154.

Rules regulating health and human services are found in Title 10A of the N.C.A.C. Children’s services are found in Chapter 70, which consists of sixteen subchapters (Subchapter A through P). Because child welfare services are part of social services, Rules for social services also apply to the extent they do not conflict with federal and state laws. Chapter 69 regulates confidentiality and access to client records (see Chapter 14 of this Manual for a further discussion on confidentiality and information sharing), and Chapters 67 and 68 regulate social services procedures and rulemaking respectively. The Rules are enforced by NC DHHS. G.S. 143B-153(7); *see* G.S. 108A-74.

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**Resource:** The N.C.A.C. is available online at the North Carolina Office of Administrative Hearings website, under the “[Rules](#)” section. For a table of contents of 10A N.C.A.C. Chapter 70, see [Title 10A – Health and Human Services – Chapter 70](#).

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**3. Child Welfare Manual.** The Division of Social Services at NC DHHS develops policies that comply with state and federal laws and represent best practice guidance. The North Carolina Court of Appeals has, in its discretion, taken judicial notice of the policies and protocols found in the Child Welfare Manual. *See In re J.M.*, 276 N.C. App. 291 (2021) (taking judicial notice of the CPS Family and Investigative Assessments, Policy, Protocol, and Guidance).

The policies, along with technical assistance and consultation, training for county staff, program reviews, and program improvement plans (when needed), are used by the Division of Social Services as part of its supervision over county departments. DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Purpose, Philosophy, Legal Basis and Staffing," available [here](#). Note, however, that the failure to follow the policies does not authorize NC DHHS to withhold state and federal child welfare services administration funds or to assume control of the delivery of services. *See* G.S. 108A-74 (referencing State law and applicable rules adopted by the Social Services Commission). The NC Child Welfare Manual is an extensive resource for anyone who deals with or is interested in abuse, neglect, dependency, and termination of parental rights proceedings in North Carolina.

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**Resource:** The policies and procedures contained in the NC Child Welfare Manual are currently available on the NC DHHS Policies and Manuals website under "Divisional," "Social Services," "Child Welfare Services," "[Policy/Manuals](#)."

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**4. Other relevant North Carolina statutes.** The Juvenile Code refers to other statutes that apply to abuse, neglect, dependency, and termination of parental rights proceedings.

G.S. Citation	Substantive Issue
G.S. 1A-1	The North Carolina Rules of Civil Procedure
Chapter 8C	The Rules of Evidence
Chapter 14	Certain criminal statutes are incorporated in the definition of "abused juvenile", "neglected juvenile", and "responsible individual"; other criminal statutes relate to when a parent is excluded from being a party in an abuse, neglect, dependency, or adoption proceeding and are included in aggravating factors related to eliminating reasonable efforts at initial disposition
Chapter 48	Adoptions of minor children
Chapter 50	Child custody actions and orders
Chapter 50A	The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)
Chapter 108A	Social services law including confidentiality, director's duties, and foster care and adoption assistance
Chapter 122C	Mental health, development disabilities, and substance abuse laws



Additionally, issues relating to families and children may arise in the context of an abuse, neglect, dependency, or termination of parental rights action that require the attorneys or court to look to other substantive laws that are outside of the Juvenile Code.

Examples include

G.S. Citation	Substantive Issue
Chapter 35A	Incompetency definition and procedures as related to a respondent parent's need for Rule 17 GAL
G.S. 8-50.1(b1)	Ordering genetic marker testing when paternity is an issue
Chapter 49	Determining whether paternity is an issue and what efforts have been made to establish paternity
Chapters 50	Child support and child custody orders help to identify missing parents, determine if paternity is an issue, and identify custodians (if any); applicable as a possible final disposition of the abuse, neglect, or dependency action through G.S. 7B-911
Chapter 110	Child support and parent locator services to help identify missing parents
Chapter 115C	Education issues, including school assignment, decision-making authority for students with disabilities, school discipline
Chapter 131D	Addressing foster care, including two Bill of Rights (one for foster children and one for foster parents), the reasonable and prudent parent standard, and extended foster care

**5. Local court rules.** In some judicial districts, chief district court judges have adopted local court rules governing the procedures to be followed in juvenile cases. *See* G.S. 7B-700(b); 7B-808(c). To access local rules, see "[Local Rules and Forms](#)" on the North Carolina Administrative Office of the Courts website.

## B. Influence of Federal Law<sup>11</sup>

Various federal laws provide states with funding for programs related to child welfare services and tie the receipt of that funding to a state's compliance with conditions set out in federal laws and regulations. Compliance with the federal requirements is often assured by the state plan that is submitted to and approved by the U.S. Department of Health and Human Services, *see e.g.*, 42 U.S.C. 622; 42 U.S.C. 671.

The following explains selected components of some of the federal laws that affect child welfare proceedings and have helped shape the North Carolina Juvenile Code and related statutes.

<sup>11</sup> Some content for this section is adapted or reproduced from CHILD WELFARE INFORMATION GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVICES, "[Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption](#)" (2019).

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**Resource:** Information on all of the federal laws mentioned or summarized in this Chapter (and other laws not discussed herein) is available on the Child Welfare Information Gateway, U.S. Department of Health and Human Services website. See “[Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption](#)” and “[Major Federal Legislation Index and Search](#).”

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**1. The Child Abuse Prevention and Treatment Act (CAPTA).** The Child Abuse Prevention and Treatment Act (CAPTA), Pub. L. No. 93-247, 88 Stat. 4, was enacted in 1974 and has since been rewritten through a number of amendments and additions. CAPTA is codified at 42 U.S.C. 5101 *et seq.* and 42 U.S.C. 5116 *et seq.* Effective June 29, 2015, the federal regulations (45 C.F.R. Part 1340) were removed in their entirety by the Administration for Children and Families at the U.S. Department of Health and Human Services after they were found to be obsolete and unnecessary given the major changes to and clarity provided by statute. See [80 Fed. Reg. 16577](#).

CAPTA provides funds to states to establish programs to prevent and treat child abuse and neglect. It links federal funding to specific requirements, such as

- **Reporting requirements.** CAPTA requires states to have mandatory child abuse and neglect reporting laws and immunity for people who report abuse or neglect in good faith. North Carolina has a universal mandated reporting law, where any person or institution with cause to suspect a child is abused, neglected, or dependent must make a report to a DSS. G.S. 7B-301. The reporter is immune from civil or criminal liability when acting in good faith, which is presumed. G.S. 7B-309. See Chapter 5.1.A (discussing mandated reporting in North Carolina).
- **Child representation.** CAPTA requires that if a child is alleged to be abused or neglected and the case results in a judicial proceeding, the child must be represented by an appropriately trained guardian ad litem or attorney. In North Carolina, children who are alleged to be abused or neglected must have a guardian ad litem (GAL) appointed to represent them in the court action. Children who are alleged to be dependent only (a status not covered by CAPTA) may have a GAL appointed. G.S. 7B-601. In North Carolina, the child’s GAL is a team that consists of a guardian ad litem program staff member, an attorney advocate, and a guardian ad litem volunteer. The state GAL program is a division of the North Carolina Administrative Office of the Courts and is responsible for providing training to those involved with the program. G.S. 7B-1200. See Chapter 2.3.D (discussing the child’s GAL).
- **No reasonable efforts.** CAPTA sets forth specific criteria for when reasonable efforts for reunification are not required. In North Carolina, some of the enumerated factors for when reasonable efforts for reunification are not required incorporate criteria specified in CAPTA: the parent has been found by a court of competent jurisdiction to have committed murder or voluntary manslaughter of another child of the parent; aided, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; committed felony assault resulting in serious bodily injury to the child or another child of the parent; committed sexual abuse against the child or another child of the parent; or has been



required to register on a sex offender registry. G.S. 7B-901(c)(3). See Chapter 7.8 (discussing findings regarding reasonable efforts at different dispositional hearings) and 7.9 (discussing reasonable efforts).

- **Confidentiality of records.** CAPTA requires that the confidentiality of records be preserved to protect the rights of children, parents, and guardians. Certain disclosures are authorized, such as disclosures to individuals who are the subject of a report, government entities that need the information to carry out their responsibilities to protect children from abuse or neglect, and child fatality and citizen review panels. The Juvenile Code addresses confidentiality of information obtained by DSS, including the circumstances of when it may be shared, in G.S. 7B-302(a1), 7B-2901, 7B- 2902, 7B-1413, and 7B-3100. See Chapter 14.1 (discussing confidentiality and access to information).
- **Child fatality review panels and child abuse citizen review panels.** CAPTA requires citizen reviews and child fatality reviews to help determine whether the state is effectively discharging its child protective responsibilities. Article 14 of the Juvenile Code establishes the North Carolina Child Fatality Prevention System. The system is a multidisciplinary review system that consists of state and local components. At the state level, there is the North Carolina Child Fatality Task Force, which develops and analyzes the operation of the child fatality prevention system and makes recommendations regarding laws, rules, and policies governing that system. There is also the North Carolina Child Fatality Prevention Team, which reviews child deaths that are attributed to abuse or neglect or involve a child who had been reported to DSS for suspected abuse or neglect, provides technical assistance to local county teams, and periodically assesses the operations of the child fatality prevention system and makes recommendations to the state Task Force as needed. At the county level, each county has a local Community Child Protection Team (CCPT), which functions as the citizen review panel, and a local Child Fatality Prevention Team (CFPT); in some counties, these teams are blended. The local CCPT reviews selected active child protective cases and cases in which a child died as a result of suspected abuse or neglect when there was a report made to or the family was receiving child protective services from a DSS within the previous twelve months. The local CFPT reviews records of all other child deaths. These local teams report annually to their county commissioners with recommendations, if any, and advocate for system improvements and needed resources where gaps and deficiencies may exist. *See* G.S. 7B-1400 through -1414. In addition to the child fatality prevention system established by the Juvenile Code, North Carolina also has a State Child Fatality Review Team, which provides intensive reviews of child fatalities when the child or family was involved with DSS child protective services in the twelve months preceding the child's death. *See* G.S. 143B-150.20. See Chapter 14.1.A.3(b) (discussing review of child fatalities by these various teams related to access to and disclosure of information).

CAPTA also authorized government research into child abuse prevention and treatment, created the National Center on Child Abuse and Neglect, which has been replaced by the Office on Child Abuse and Neglect, and established the National Clearinghouse on Child Abuse and Neglect Information. CAPTA funds training programs, recruitment of volunteers, and the establishment of resource centers in fields related to abuse and neglect.

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**Resources:**

For a summary of CAPTA amendments, see CHILD WELFARE INFORMATION GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVICES, "[About CAPTA: A Legislative History](#)" (Feb. 2019).

Information on some of the legislation reauthorizing and/or amending CAPTA in 1978, 1988, 1992, 1996, 2003, and 2010 to present is available at "[Major Federal Legislation Index and Search](#)," on the Child Welfare Information Gateway, U.S. Department of Health and Human Services website.

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**2. The Indian Child Welfare Act (ICWA).** In 1978, the Indian Child Welfare Act (ICWA), Pub. L. No. 95-608, 92 Stat. 3069, was enacted after Congress found that American Indian children of federally recognized Indian tribes were being disproportionately and inappropriately removed from their families and tribal communities. ICWA is codified as amended at 25 U.S.C.1901 *et seq.* The U.S. Department of the Interior, Bureau of Indian Affairs adopted federal regulations implementing ICWA, effective December 12, 2016. The regulations are at 25 C.F.R. Part 23.

The purpose of ICWA is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families and the placement of those children in foster or adoptive homes that reflect the unique values of Indian culture. ICWA gives Indian tribes jurisdiction over or the right to intervene in certain types of child custody proceedings involving Indian children, including abuse, neglect, dependency; termination of parental rights; and adoption proceedings. It also imposes specific requirements on state courts that exercise jurisdiction in those proceedings when an Indian child is the subject of the action.

ICWA is specifically referenced in the Juvenile Code at G.S. 7B-505(d) and 7B-506(h)(2). ICWA is also explicitly incorporated in North Carolina adoption laws. *See* G.S. 48-1-108; 48-3-605(f); 48-3-702(b).

For further discussion of ICWA, see Chapter 13.2.

**3. Adoption Assistance and Child Welfare Act.** In 1980, Congress enacted the Adoption Assistance and Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 500, to address problems in the foster care system and the unnecessary separation of children and families. The Act is codified as amended in various sections of 42 U.S.C.

The Act provides federal funds for foster care and adoption assistance. As a condition of receiving funds for foster care, it requires

- **Reasonable efforts.** States are required to make "reasonable efforts" to (1) prevent the need to place children outside their homes or (2) reunify children with their families. "Reasonable efforts" originated with this Act and was the genesis of the reasonable efforts requirements set out in North Carolina's Juvenile Code. *See* G.S. 7B-101(18); 7B-507(a)(2); 7B-901(c); 7B-903(a3); 7B-906.1(e)(5), (f)(3). *See* Chapter 7.8 (discussing findings regarding reasonable efforts at different dispositional hearings) and 7.9

(discussing reasonable efforts).

- **Periodic reviews.** The Act also requires periodic review of cases of children in foster care every six months, and that a permanent plan be made for every child placed away from home within eighteen months after the child’s initial placement. Some of the time requirements in the North Carolina Juvenile Code are based on the Act. See Chapter 7.2.A (discussing timing of dispositional hearings).
- **Placement setting.** A child’s case plan must be designed to achieve a placement in the least restrictive, meaning most family like, setting available and in close proximity to the parent’s home when it is consistent with the child’s best interests and needs. The Juvenile Code requires the court to consider whether it is in the child’s best interests to remain in the child’s community of residence. G.S. 7B-505(d); 7B-903(a1).
- **Foster home licensure standards.** The Act also establishes standards for foster family homes and for periodic review of those standards. Article 1A of G.S. Chapter 131D and 10A N.C.A.C 70E regulate the licensure of foster homes in North Carolina.

The Act also requires maintenance of a data collection and reporting system about children in care.

**4. Family Preservation and Support Services Program Act.** In 1993, the Family Preservation and Support Services Program Act, Pub. L. No. 103-66, 107 Stat. 312, was enacted. Among its many provisions, the Act strengthened family preservation and support services by focusing on prevention services, such as parent education programs.

It also established the Court Improvement Program. North Carolina received its initial grant for its Court Improvement Program (NC-CIP) in 1995. NC-CIP is based in the North Carolina Administrative Office of the Courts. The purpose of this federally funded program is to improve court practice in child abuse, neglect, or dependency cases. NC-CIP funds have been used to support several different types of initiatives over the years, including

- providing staff to twenty-three judicial districts to provide case management support and/or training and implementing best practices (such as one judge-one family case assignment, child planning conferences, and shared decision-making);
- implementing Family Drug Treatment Courts in four districts; and
- enhancing J Wise, which is the information system used to store data on cases of abuse, neglect, or dependency in the North Carolina courts.

CIP staff has broadened the program's reach to a more statewide audience for court improvement activities, including trainings for attorneys, judges, and other legal professionals involved in child welfare cases and providing financial support for this Manual.

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**Resource:** For more information about the Court Improvement Program in North Carolina, see [“Juvenile Court Improvement Program”](#) on the North Carolina Administrative Office of the Courts website.

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**5. Multiethnic Placement Act (MEPA-IEP).** In 1994, the Multiethnic Placement Act (MEPA), Pub. L. No. 103-382, 108 Stat. 4056, was enacted as Title V, Part E, subpart 1 of the Improving America’s Schools Act, amending Title IV-E of the Social Security Act. In 1996, the Interethnic Adoption Provisions (IEP) of the Small Business Job Protection Act, Pub. L. No. 104-188, 100 Stat. 1744, made significant amendments to MEPA to remove barriers to interethnic adoptions. It is codified in various sections of 42 U.S.C.

MEPA prohibits the delay or denial of a child’s foster care or adoptive placement based on the race, color, or national origin of the prospective foster or adoptive parent or child; prohibits the denial of a prospective foster or adoptive parent from becoming such a parent on the basis of race, color, or national origin; and requires the recruitment of a diverse pool of foster and adoptive parents. MEPA is specifically referenced in the Juvenile Code at G.S. 7B-505(d) and 7B-506(h)(2). Failure to comply with MEPA is a violation of Title VI of the Civil Rights Act.

For more information about MEPA and Title VI, see Chapter 13.3 and 13.4.

**6. Adoption and Safe Families Act (ASFA).** In 1997, Congress passed the Adoption and Safe Families Act (ASFA), Pub. L. No. 105-89, 111 Stat. 2115. ASFA amended the Adoption Assistance and Child Welfare Act of 1980. It is codified in various sections of 42 U.S.C.

The Juvenile Code refers directly to ASFA in G.S. 7B-100(5), which sets forth the purposes of the Juvenile Code. In addition, many of the ASFA requirements have been integrated into the Juvenile Code. ASFA emphasizes, among other things,

- **The safety of abused and neglected children as the paramount concern.** ASFA provides that when determining reasonable efforts, the child’s health and safety must be the paramount concern. In addition, consideration of the “safety of the child” was added to the case plan and review process. Various provisions in the Juvenile Code reference the court’s consideration of the child’s health and safety. *See, e.g.*, G.S. 7B-507(a); 7B-903(a2); 7B-905.1(a).

ASFA also requires criminal records checks for foster and adoptive parents who receive federal funds on behalf of a child. Note that the subsequently enacted Adam Walsh Child Protection and Safety Act of 2005 prohibits states from opting out of this provision and additionally requires fingerprinting and a child abuse and neglect registry check of prospective adoptive or foster parents and other adults living in the home. In North Carolina, mandatory criminal history checks are required for foster parents, individuals applying for foster care licensure, and adults who reside in a family foster home. G.S. 131D-10.3A. They are also required for adoptive placements made by DSS, which includes the prospective adoptive parents and all the adults who reside in the home. G.S. 48-3-309.

- **Clarified reasonable efforts.** ASFA requires states to specify situations in which reasonable efforts for reunification are not required because of aggravating circumstances (as defined by the state) or the involuntary termination of the parent’s rights to the child’s sibling. ASFA further requires that a hearing be held within thirty days after a

determination to cease reasonable efforts. It also expanded reasonable efforts to achieve a permanent placement that was not reunification and emphasized children’s health and safety. Aggravating circumstances in North Carolina are identified at G.S. 7B-901(c)(1), and the other provisions regarding reasonable efforts that ASFA requires are found at G.S. 7B-901(c)(2) and (d).

ASFA also allowed for (but did not require) concurrent reasonable efforts to place a child in an adoption or legal guardianship with reasonable efforts for reunification. As of October 1, 2015, in North Carolina, concurrent permanent plans are required until a permanent plan is achieved. *See* S.L. 2015-136, sec. 14, amended by S.L. 2016-94, sec. 12C.1.(h) (effective July 2016). The court must adopt concurrent permanent plans, identify the primary plan and secondary plan, and order DSS to make reasonable efforts toward each plan until a final permanent plan is achieved. G.S. 7B-906.2(a1), (b).

See Chapter 7.8 (discussing findings regarding reasonable efforts at different dispositional hearings); 7.9 (discussing reasonable efforts); and 7.10 (discussing concurrent permanency planning).

- **Participation in case reviews and hearings.** ASFA requires foster parents, pre-adoptive parents, or relatives providing care to a child to be given notice and an opportunity to be heard in any review hearing for the child and clarified that such participation does not make the care provider a party. The Juvenile Code incorporates this provision with respect to review, permanency planning, and post termination of parental rights (TPR) placement review hearings. G.S. 7B-906.1(b), (c); 7B-908(b)(1). See Chapters 7.2.B and C (discussing notice and participation at review and permanency planning hearings) and 10.1.C (discussing notice and participation at post-TPR placement review hearings).
- **Timely permanent placements.** ASFA requires states to initiate court proceedings to free a child for adoption when the child had been in foster care for at least fifteen of the most recent twenty-two months, unless one of several exceptions applied. North Carolina’s version of this requirement refers to when a child has been placed out of the home for twelve of the most recent twenty-two months. G.S. 7B-906.1(f). ASFA also requires that the first permanency planning hearing be held no later than twelve months after a child entered foster care. Effective October 1, 2021, the Juvenile Code requires that a permanency planning hearing be held within ninety days of an initial dispositional hearing when custody of the child has been removed from a parent, guardian, or custodian. G.S. 7B-906.1(a); *see* S.L. 2021-132, sec. 1.(h). This time period is faster than but complies with the time requirement in ASFA. (Note that prior to the 2021 amendment to G.S. 7B-906.1(a), the timeline for the first permanency planning hearing mirrored the ASFA timeline.)

The concepts of permanence and timeliness for children received increased focus with the enactment of ASFA, which led to the addition of references to the need for the child to have a “safe, permanent home within a reasonable amount of time.” *See, e.g.,* G.S. 7B-100(5); 7B-101(18); 7B-906.1(d)(3), (g); 7B-906.2(d)(1). See Chapter 7.2.A (discussing timing of dispositional hearings) and 7.8.D (discussing considerations for initiation of

termination of parental rights).

- **Promoted adoptions.** ASFA provided incentive funds to states that increased adoptions. It required states to document and report child-specific recruitment efforts for adoption. States are prohibited from denying or delaying an approved adoptive placement because of the geographic location of the prospective adoptive family.

**7. John H. Chafee Foster Care Independence Act.** In 1999, Congress enacted the John H. Chafee Foster Care Independence Act, Pub. L. No. 106-169, 113 Stat. 1822. It has been amended since its first enactment. The purpose of the Act is to help older children who age out of foster care make the transition from foster care to self-sufficiency. It provides states with more funding for an Independent Living Program for these young adults who are participating in education, training, or services to obtain employment. The Act allows funds to be used to pay for room and board for former foster youth who are 18 years old up to 21 years of age and provides states with the option to extend Medicaid coverage to 18- to 21-year-old young adults who have been emancipated from foster care.

North Carolina has the NC LINKS program, a foster care independence program that focuses on a youth's successful transition from foster care to adulthood. Additionally, as of January 1, 2017, youth who have aged out of foster care may participate in Foster Care 18–21, which is the state's extended foster care program for eligible young adults. *See* G.S. 131D-10.2B; 7B-910.1; 108A-48. *See* also Chapter 8.3 (discussing Foster Care 18–21).

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#### Resources:

For more information about Foster Care 18–21, see

- DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Permanency Planning," available [here](#).
- Sara DePasquale, *Foster Care Extended to Age 21*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Jan. 11, 2017).

For more information about NC LINKS, see DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD WELFARE MANUAL "Permanency Planning," available [here](#).

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**8. Safe and Timely Interstate Placement of Foster Children Act.** In 2006, the Safe and Timely Interstate Placement of Foster Children Act, Pub. L. No. 109-239, 120 Stat. 508, was enacted. The purpose of the Act was to improve protections for children and to hold states accountable for the safe and timely placement of children across state lines. This Act, along with other measures to expedite interstate placements, set out specific timelines for completion and acceptance of home studies. The Act encouraged states to ratify the Interstate Compact for the Placement of Children (ICPC). North Carolina adopted the ICPC in 1971; it is currently codified at G.S. Chapter 7B, Article 38. Other sections of the Juvenile Code specifically refer to the ICPC for out-of-state placements. G.S. 7B-505(d); 7B-506(h)(2); 7B-903(a1). *See* Chapter 7.4.H for an explanation of interstate placements and the ICPC.

**9. Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections).** In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions

Act, Pub. L. No. 110-351, 122 Stat. 3949. It is codified in various sections of 42 U.S.C.

A main purpose of the Act was to connect and support relative caregivers. Among many provisions, Fostering Connections promoted and supported funding and programs related to kinship placements, guardianship, and adoptions of foster children; extended and increased adoption incentives; expanded Title IV-E assistance to older youth in foster care and those transitioning out of foster care; required transition plans before a foster child's emancipation; and required case plans that ensured educational stability of children in foster care.

- **Kinship placements.** Fostering Connections requires states to exercise due diligence to identify and provide notice to the child's grandparents and other adult relatives (with exceptions for family or domestic violence) that the child is being or has been removed from the parents. The notice must include options the relative has to participate in the child's care and placement, including services and support available to them if they become a family foster home. The Juvenile Code requires the court to make an inquiry into those efforts at continued nonsecure custody, pre-adjudication, and initial dispositional hearings. G.S. 7B-506(h)(2); 7B-800.1(a)(4); 7B-901(b). Effective October 1, 2021, DSS must make efforts to contact relatives and other persons with legal custody of the juvenile's siblings within thirty days after the initial nonsecure custody order and file information about those efforts with the court. G.S. 7B-505(b); *see* S.L. 2021-132, sec. 1.(d). The court must order DSS to make diligent efforts and notify relatives of the child's placement in and hearings for nonsecure custody unless the notification would be contrary to the child's best interests. G.S. 7B-505(b). The Foster Care Children's Bill of Rights also incorporates this requirement of Fostering Connections. G.S. 131D-10.1(a)(5).

See Chapters 5.6.E (discussing inquiry at nonsecure custody hearing); 5.5.C.3 (discussing nonsecure custody placement); 7.8.A.1 (discussing inquiry at initial dispositional hearing); and 7.4.C.1 (discussing out-of-home placement priority).

- **Siblings.** Fostering Connections requires that reasonable efforts be made to place siblings who are removed from their home in the same placement, unless there is documentation that a joint placement would be contrary to the safety or well-being of any of the siblings. When a joint placement does not occur, frequent visitation or communication should occur. Effective October 1, 2021, the Juvenile Code incorporates this provision for out-of-home placements made at the nonsecure custody and dispositional stages. *See* G.S. 7B-505(a1); 7B-903.1(c1); S.L. 2021-100. Additionally, the Foster Care Children's Bill of Rights addresses this requirement. *See* G.S. 131D-10.1(a)(2), (10). Visitation generally is codified at G.S. 7B-905.1.
- **Educational stability.** Fostering Connections requires that any child of compulsory school age who is receiving federal foster care maintenance or adoption assistance payments be a full-time student, unless the child has completed secondary school or is incapable of attending school full-time because of a medical condition. A child's case plan must address the child's educational stability by providing assurances that when placing the child in out-of-home care, the appropriateness of the child's current

educational setting and the proximity of the placement to the child's school were considered. The child is to remain in that school unless it is not in the child's best interests. If the child is required to change schools, the child welfare agency and the school district must assure the child's immediate and appropriate enrollment. Payments to cover the cost of a child's reasonable travel to the school in which the child was enrolled at the time of placement was added to "foster care maintenance payments." Fostering Connections applies to child welfare agencies. In 2015, Congress passed the Every Student Succeeds Act (ESSA), which applies these provisions to educational agencies effective December 10, 2016. See Chapter 13.7 (discussing ESSA).

The Juvenile Code does not specifically reference a child's school enrollment or attendance; however, the predisposition report provided by DSS to the court should contain educational information. G.S. 7B-808(a). The court also considers whether it is in the child's best interests to remain in the child's community of residence. G.S. 7B-505(d); 7B-903(a1). The Foster Care Children's Bill of Rights promotes allowing a child to remain enrolled in the school they attended before being placed in foster care when possible. G.S. 131D-10.1(a)(4).

Note that the Foster Care Children's Bill of Rights sets forth the State's policy regarding a child's placement in foster care but does not create any private cause of action for a violation of its provisions. G.S. 131D-10.1.

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#### Resources:

For an explanation of the Act, federal guidance, tools and resources related to its provisions, see

- [“Fostering Connections to Success and Increasing Adoption Act of 2008”](#) on the Child Welfare Information Gateway website.
- CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVICES, [Program Instruction ACYF-CB-PI-08-05](#) (Oct. 23, 2008).

For an explanation of the Act's connection to existing North Carolina social services policies and procedures, see NC DHHS Division of Social Services Dear County Directors Letter, [CWS-02-09: New Federal Legislation – the Foster Connections to Success and Increasing Adoptions Act of 2008](#) (March 17, 2009).

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**10. Preventing Sex Trafficking and Strengthening Families Act.** In 2014, Congress enacted the Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919. It makes amendments to Titles IV-B and IV-E of the Social Security Act and is codified in various sections of 42 U.S.C.

The Act has multiple purposes that include

- **A focus on at-risk foster children who may become victims of sex trafficking.** States are required to provide training to caseworkers and develop policies and procedures that identify, document, and determine appropriate services for any child involved in the child welfare system who is believed to be or is at risk of being a sex trafficking victim; to



notify law enforcement of instances of sex trafficking; and to locate and respond to children who run away from foster care. The Division of Social Services created the required policy, which can be found at DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES CHILD WELFARE MANUAL “Permanency Planning” and “Cross Function,” available [here](#).

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**Resources:**

For a further discussion of the law and North Carolina policy, see Sara DePasquale, *Children in Foster Care and Sex Trafficking: New NC Policy to Know About*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Jan. 19, 2016).

For a discussion about identifying and responding to human trafficking involving children and young adults, see Margaret Henderson, Sara DePasquale, Nancy Hagan, and Christy Croft, *Human Trafficking of Minors and Young Adults: What Local Governments Need to Know* (PUBLIC MANAGEMENT BULLETIN No. 2019/18 (UNC School of Government, Dec. 2019).

For more information about the Act, see “[Implementing the Preventing Sex Trafficking and Strengthening Families Act to Benefit Children and Youth](#)” (Jan. 14, 2015), available on The Children’s Defense Fund website.

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- **“Reasonable and prudent parenting standard”.** States are required to implement a “reasonable and prudent parent” standard that authorizes foster parents to make decisions that allow children in foster care to engage in “age or developmentally appropriate” activities and specifically references extracurricular and social activities including sleepovers. North Carolina codified the federal definition of “reasonable and prudent parent standard” and includes additional provisions regarding the standard in G.S. 131D-10.2A. The Juvenile Code incorporates this provision in G.S. 7B-903.1(b). The NC DHHS Division of Social Services addresses the reasonable and prudent parent standard in DIV. OF SOC. SERVS., N.C. DEP'T OF HEALTH & HUMAN SERVICES CHILD WELFARE MANUAL “Permanency Planning,” available [here](#). See Chapter 7.4.D.4 (discussing the reasonable and prudent parent standard).
- **A focus on older youth.** The Act requires that children in foster care who are 14 years old and older participate in the development and revision of their case plans. The Act also focuses on older youth transitioning out of foster care by limiting a permanent plan of Another Planned Permanent Living Arrangement (APPLA) to 16- and 17-year-old juveniles. It also requires that children who are aging out of foster care receive certain documents that will help them transition to adulthood, including a certified copy of their birth certificate, a social security card, health insurance information, medical records, and a driver’s license or state ID. The Juvenile Code, at G.S. 7B-912, specifically addresses these provisions. See Chapter 7.8.C.9 (discussing the requirements of G.S. 7B-912) and 7.10.B.6 (discussing APPLA).
- **Contacting parents of siblings.** The Act also expanded who must receive notice of the child’s removal and opportunities for those persons to become a possible placement for

the child to include parents with legal custody of the child’s siblings. North Carolina included and expanded this requirement to “other persons with legal custody” of the child’s sibling. *See* G.S. 7B-505(b); 7B-800.1(a)(4); 7B-901(b). *See* Chapters 5.6.E (discussing inquiry at nonsecure custody hearing); 5.5.C.3 (discussing placement in nonsecure custody); and 7.8.A.1 (discussing inquiry at initial dispositional hearing).

**11. Justice for Victims of Trafficking Act.**<sup>12</sup> In 2015, Congress enacted the Justice for Victims of Trafficking Act, Pub. L. 114-22, effective May 29, 2017. This Act amends CAPTA.

States are required to include procedures to

- identify and assess reports involving suspected child sex trafficking victims;
- provide training for child protective workers;
- make efforts to coordinate law enforcement, juvenile justice, and social services agencies such as runaway and homeless shelters; and
- to the extent possible, collect and report the number of children who are victims of sex trafficking to the National Child Abuse and Neglect Data System.

Amendments were also made to the Crime Control Act of 1990 to require notification to the National Center for Missing and Exploited Children of each report of a child missing from foster care, including providing a recent photo of the child (if available), and shortened the time to verify and update records on missing children in state law enforcement systems and the National Crime Information Center.

Effective October 1, 2018, North Carolina amended its definitions of “abused juveniles” and “neglected juvenile” to include minor victims of human trafficking. G.S. 7B-101(1)(i), (15)(i). Note that prior to the enactment of the federal law, North Carolina included in its definition of “abused juvenile” a child whose parent, guardian, custodian, or caretaker commits or allows to be committed an offense of human trafficking, involuntary servitude, or sexual servitude against the child. G.S. 7B-101(1)(ii)g. The 2018 amendments expand the former definition of “abused juveniles” by eliminating the condition that circumstances be created by the juvenile’s parent, guardian, custodian, or caretaker. Effective October 1, 2021, DSS must cooperate with local law enforcement and the district attorney to determine the safest way, if possible, to provide notice to an alleged responsible individual who is not a parent, guardian, custodian, or caretaker to the juvenile who is a minor victim of human trafficking. *See* G.S. 7B-320(a1); S.L. 2021-132. *See* Chapter 5.2.B. for a discussion of the Responsible Individuals List.

**12. Family First Prevention Services Act (FFPSA).** In 2018, the Family First Prevention Services Act (FFPSA), Pub. L. No. 115-123, 132 Stat. 64, was enacted as Division E, Title VII of the Bipartisan Budget Act of 2018. FFPSA amends various federal laws pertaining to child welfare and is codified in various sections of 42 U.S.C. The stated purpose of the act is to enable States to use Title IV-B and IV-E funding to provide enhanced support to children

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<sup>12</sup> Additional source for the content in this section is from the website for the Children’s Bureau, U.S. Department of Health and Human Services, [Information Memorandum ACYF-CB-IM-15-05](#) (July 16, 2015).

and families and prevent foster care placements as well as limit payment for placements in congregate care. Some of the FFPSA provisions include

- the expansion of the definition of family reunification services to include services provided to the family after the child has been returned home for a period of fifteen months;
- the optional use of funding for up to one year of prevention services related to mental health and substance use issues and in-home parenting for parents and caregivers of children who are a “candidate for foster care;”
- a limitation on payment for the placement of children in congregate care in a facility that is not a licensed residential based treatment program to two weeks;
- mandatory criminal background and child abuse and neglect registry checks for any adult working in a child care institution, group home, residential treatment center, or other congregate care setting;
- and the implementation of an electronic interstate case processing system for interstate placements.

North Carolina opted to delay implementation of the prevention and congregate care provisions until September 2021 as permitted by the FFPSA. The provisions regarding mandatory background checks for adults working in child care institutions were codified by S.L. 2019-240, Part III-O, Section 25, which created G.S. 108A-133 and G.S. 143B-972, effective November 6, 2019.

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**Resources:**

For information on the FFPSA implementation in North Carolina, see the “[Family First Prevention Services Act](#)” on the NC DHHS website under “Divisions,” “Social Services,” “Child Welfare Services.”

For more information about FFPSA, see “[Family First Prevention Services Act](#)” on the Child Welfare Information Gateway, U.S. Department of Health and Human Services website.

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