

## Chapter 5

# **The Conditions Defined: Neglect, Abuse, Dependency, and Maltreatment**

This chapter may leave readers frustrated, because it will not answer some of the questions they want answered. When someone describes a child's situation and asks whether the child is an abused, neglected, or dependent juvenile and whether a report must be made, a quick yes or no answer often is not possible. The answer may be, "It depends," or simply, "It isn't clear." People trying to decide whether to make reports should not assume that they are alone in being uncertain about the applicability of particular terms.

The question of whether a given set of facts constitutes "abuse," "neglect," or "dependency" may be asked at several stages in a child protective services case, and it is not unusual for the question to be answered differently at different stages. To some extent that is because the degree of certainty required is not the same at every stage. For example, a person who has only "cause to suspect" that a child is abused, neglected, or dependent must make a report;<sup>1</sup> however, in order for a court to conclude that a child is abused, neglected, or dependent, the court must make findings based on "clear and convincing evidence."<sup>2</sup> In addition, at each stage a different person or entity is called on to interpret and apply the key definitions, and additional information usually becomes available as the case proceeds. Still, people with the same information at the same time may reach different conclusions, because the definitions are not very precise, and each person brings his or her own experiences, values, and perspectives to the question of whether abuse, neglect, or dependency exists.

Those who must interpret and apply the definitions, in addition to a person deciding whether to make a report, include the following:

1. county social services staff who screen a report by determining whether, if the information given in the report is true, the child is an abused, neglected, or dependent juvenile;
2. other social services staff who conduct an agency review if a report is screened out—that is, not accepted for purposes of conducting an assessment—and the person who made the report asks for a review of that decision;
3. a social worker who conducts an assessment and determines with others in the department how the findings should be characterized;
4. a prosecutor who is asked by the person who made a report to review a social services department’s decision not to file a petition in juvenile court alleging that the child is an abused, neglected, or dependent juvenile;
5. a social services department’s attorney advising the department about whether to file a petition or which condition(s) to allege in a petition;
6. a district court judge (or someone else to whom the chief district judge has delegated authority) deciding whether to grant a nonsecure custody order to remove a child from the home before a full hearing on a petition;
7. the guardian ad litem and attorney advocate appointed by the court to represent the child, and the parents and their attorneys, who must decide whether to contest a petition;
8. the district court judge who presides over the hearing on a petition alleging that a child is abused, neglected, or dependent;
9. a three-judge panel of the North Carolina Court of Appeals, when a district court judge’s order in a juvenile case is appealed;
10. the North Carolina Supreme Court, when it reviews a decision of the court of appeals;
11. the parties and the court in a termination of parental rights proceeding, when the petition includes allegations that the parent has abused or neglected the child or that the child is dependent; and
12. a magistrate, a prosecutor, and others in a case involving the criminal offense of contributing to a child’s being abused or neglected.

This chapter attempts to explain what is clear about the meaning of abuse, neglect, dependency, and maltreatment and to acknowledge some areas of uncertainty. The definitions of each of these conditions and their subparts are discussed below.

## Neglect

The Juvenile Code (the Code) defines a “neglected juvenile” as a child who

- does not receive proper care, supervision, or discipline from the child’s parent, guardian, custodian, or caretaker; or
- has been abandoned; or
- is not provided necessary medical care; or
- is not provided necessary remedial care; or
- lives in an environment that is injurious to the child’s welfare; or
- has been placed for care or adoption in violation of law.<sup>3</sup>

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

This definition has withstood judicial scrutiny when challenged on the ground that it was unconstitutionally vague.<sup>4</sup> In one case, the court found that the terms used in the definition are given “precise and understandable meaning by the normative standards imposed upon parents by our society.”<sup>5</sup> The court said, in effect, that people can use common sense and generally accepted values to determine what is meant by “proper care,” “necessary medical care,” or “injurious environment.”

Neglect may take a variety of forms, as described below.

### Lack of Proper Care and Supervision

Neglect may consist of a parent’s failure to provide for the child’s basic needs.<sup>6</sup> It is not necessary, however, for a child to suffer physical harm or be threatened with physical harm in order to be neglected. For example, depriving a child of needed therapeutic day care has been found to be neglect.<sup>7</sup> Proper care and supervision include providing a child with a basic education, so a parent’s willful failure to enroll a child in school can be neglect and require a report to social services.<sup>8</sup> When someone has concerns about

a child's school attendance or about the quality or quantity of instruction a home-schooled child is receiving, contacting the appropriate school authority is an appropriate first step.<sup>9</sup> Anyone with cause to suspect that abuse or neglect is occurring in the home-school setting must make a report to the county department of social services.

Leaving a young child unsupervised may be neglect; however, the law does not specify any particular age below which a child is considered neglected if left at home alone. Rather, it assumes that parents and others will exercise appropriate discretion based not only on the child's age, but also on the child's maturity and all of the relevant circumstances.<sup>10</sup>

Whether a child is neglected based on a lack of proper care and supervision depends not only on the conduct of a parent, guardian, custodian, or caretaker, but also on the effect that conduct has or could have on the child. The child is neglected only if, as a result of that conduct, the child is harmed in some way or placed at substantial risk of harm.<sup>11</sup> The fact that a parent has serious mental health or substance abuse issues does not, by itself, mean that the parent's children are neglected. It is necessary to examine the parent's conduct in relation to the quality of the care and supervision the children receive and whether the children have been harmed or placed at substantial risk of harm by the parent's conduct.<sup>12</sup>

### **Inappropriate Discipline**

Neglect may occur through a parent's failure to act or through a parent's actions. Inappropriate discipline that harms a child or creates a substantial risk of harm, if it is not severe enough to constitute abuse, is neglect. In the context of child protective services, excessive or inappropriate discipline constitutes abuse only if it causes (or creates a substantial risk of) serious physical injury or involves the use of cruel or grossly inappropriate procedures or devices.<sup>13</sup>

The North Carolina Court of Appeals held that a five-year-old child was neglected on the basis that her mother had hit her in the face with a belt, causing bruises, and had scrubbed her so hard during bathing (as discipline for the child's sexual curiosity) that the child bled.<sup>14</sup> In another case, the court upheld a neglect adjudication where evidence showed, among other things, that the mother struck her one-year-old child with a belt, "raising the distinct potential of physical, mental, or emotional harm."<sup>15</sup> Other examples of neglect in the form of inappropriate discipline have included hitting a

young child with a paddle on the soles of the child's feet,<sup>16</sup> forcing a child to stay in an uncomfortable position for an extended period of time, inflicting numerous whippings with switches or boards, and forcing a child to spend weekends in bed and to get out of bed only to go to the bathroom or eat.<sup>17</sup>

Where a parent's actions clearly constitute inappropriate discipline that is harmful or potentially harmful to the child, it is not important for the person making a report to be certain whether the child's condition is one of abuse or of neglect. The duty to report is the same.

Almost any method of disciplining a child—time out, taking away privileges, spanking—can be inappropriate and harmful if taken too far. But how far is too far? The court of appeals has stated the following rule of thumb: “In general, treatment of a child which falls below the normative standards imposed upon parents by our society is considered neglectful.”<sup>18</sup> That rule can be difficult to apply. Strongly held beliefs about what constitutes proper discipline can vary greatly among parents, communities, religious groups, and cultures.<sup>19</sup>

### **Abandonment**

The courts have described *abandonment* as a parent's willful refusal to perform a parent's natural and legal obligations to care for and support a child, and also as a parent's willful conduct that shows an intent to forego all of the parent's duties and rights in relation to the child.<sup>20</sup> The fact that one parent abandons a child does not necessarily mean that the child is a neglected juvenile. The parent's conduct must be connected to harm or a substantial risk of harm to the child, and often abandonment by one parent occurs when the child is receiving very adequate care from the other parent. Most appellate court decisions involving abandonment deal with proceedings to terminate a parent's rights, in which the issue is the *parent's conduct*, not the child's condition and need for intervention, protection, or services.<sup>21</sup>

The type of abandonment that must be reported occurs, for example, when a newborn is left in a basket on the steps of a church, when a mother leaves the hospital after giving birth and cannot be found, or when a parent leaves a child with a temporary caregiver and does not return. The Juvenile Code contemplates this kind of abandonment when it requires a county department of social services to act immediately when it receives a report that a child has been abandoned.<sup>22</sup> The department is required to begin an assessment, assume custody of the child, file a petition, and seek a court

order allowing the department to retain custody pending a hearing. The department also must ask law enforcement to investigate through state and national resources to determine whether the abandoned child has been reported missing.<sup>23</sup>

Publicity about cases in which a parent killed a newborn infant or abandoned the newborn in an unsafe place, often after the mother had hidden her pregnancy from family and friends, has led a number of states to enact legislation aimed at deterring such acts. In 2001, the North Carolina General Assembly enacted legislation to shield from criminal prosecution a parent who, within the first seven days of a child's life, voluntarily leaves the child with another person and does not express an intent to return for the child.<sup>24</sup> The law requires certain professionals, and allows any other person, to accept physical custody of the infant in that situation. It requires the person receiving the child to take certain actions, including contacting the county department of social services or law enforcement authorities immediately.<sup>25</sup> A social services department receiving a report of a parent's abandonment of a child in this way must begin an assessment immediately and proceed as in any other case of reported neglect.

### **Lack of Necessary Medical or Remedial Care**

*Necessary medical care* and *necessary remedial care* have not been defined precisely. A court had no trouble concluding that a child was neglected when the child's father had both failed to seek treatment for the child's serious burns and refused to allow a social worker to do so.<sup>26</sup> Where parents failed to obtain medical care for their four-month-old child until at least three weeks after he suffered four broken ribs, the child was found to be both abused and neglected.<sup>27</sup>

Other deprivations of medical or remedial care may be less obvious, but this form of neglect clearly extends beyond physical harm. The court of appeals affirmed a finding of neglect based on a mother's refusal to allow treatment for her child's severe hearing and speech defects.<sup>28</sup> In that case, the court of appeals said, "To deprive a child of the opportunity for normal growth and development is perhaps the greatest neglect a parent can impose upon a child."<sup>29</sup>

North Carolina is among a minority of states with reporting laws that do not address parents' religious beliefs as the asserted reason for not seeking or consenting to medical care or treatment for a child. The definitions of

child abuse and neglect in thirty-one states include explicit exceptions for circumstances in which parents do not seek medical care for their children because of their religious beliefs, but many of those states also have laws that authorize the court to order medical treatment for a child over the parents' objections.<sup>30</sup>

In North Carolina, courts consider these issues as they are raised in individual cases, but no reported appellate court decisions involve allegations of medical neglect based on a parent's religious objections to obtaining treatment for a child. Courts generally would defer greatly, but not completely, to parents' wishes regarding the medical care their children receive. In one case, after children were adjudicated neglected for reasons unrelated to medical care and placed in the custody of social services, the trial court ordered that the children be immunized despite the parents' religious objections. The North Carolina Court of Appeals upheld the order, saying, "Our courts do not have a history of routinely ordering the performance of medical procedures on children without parental consent. However, when parents refuse to provide necessary medical care, their inaction can extinguish custody and support a finding of neglect."<sup>31</sup>

In another case, the court of appeals rejected a father's claim that his refusal to permit a mental health evaluation of his children during an abuse investigation was lawful because he objected to the evaluation on religious grounds. The court said the following:

One may not be compelled by governmental action to do that which is contrary to his religious belief in the absence of a 'compelling state interest in the regulation of a subject within the State's Constitutional power to regulate' . . . The intent of the statutes requiring the Department of Social Services to screen and investigate complaints of child abuse is the protection of neglected and abused children . . . which is undeniably a compelling state interest.<sup>32</sup>

A mother's strong, apparently non-religious, beliefs about medicine and diet led her to resist and interfere with her daughter's treatment for juvenile rheumatoid arthritis. The child became malnourished, lost a significant amount of weight, and suffered further damage to her joints, but she improved quickly when removed from her mother's custody. The appellate court, in an unpublished opinion, affirmed an adjudication that the twelve-year-old child was both abused and neglected.<sup>33</sup>

Medical neglect is not limited to the deprivation of medical or remedial treatment or care. Subjecting a child to inappropriate medical care also may be neglect, or abuse, or both. If inappropriate treatment causes or creates a substantial risk of serious physical injury to the child, it can be abuse. An adjudication of the abuse ground for terminating a parent's rights was affirmed when evidence showed that during a two-year period the mother regularly exaggerated the child's medical problems and "subjected the child to 25 different emergency room visits, 60 office visits to pediatricians, 143 prescriptions, and 8 admissions to the hospital."<sup>34</sup> A child was adjudicated to be both abused and neglected, and the court of appeals affirmed, when the child's symptoms appeared only when she was in her mother's exclusive care and repeated medical procedures showed no medical problem.<sup>35</sup>

A person deciding whether to make a report based on cause to suspect that a child is not receiving necessary medical care or is receiving inappropriate medical care or treatment need not be concerned about whether the child's condition is more appropriately characterized as neglect or as abuse. The duty to report is the same.

### **Injurious Environment**

A child is neglected if the child lives in an environment that is injurious to the child's welfare. As with other forms of neglect, an injurious environment may be one that puts the child at substantial risk of harm as well as one in which the child actually has been harmed. An injurious environment might be one in which the child is at risk of physical harm due to faulty wiring, exposure to dangerous substances or objects, or an extreme lack of sanitation. The conduct of the adults in the home also can render an environment injurious. For example, the court of appeals affirmed a trial court's conclusion that a child whose older sister had been sexually abused in the home lived in an injurious environment.<sup>36</sup> A child who lives in an injurious environment ordinarily also is not receiving proper care or supervision from the child's parent, guardian, custodian, or caretaker, and the cases involving these two types of neglect often overlap.

The instability of a child's living situation can be a factor in a court's determination that the environment in which the child lives is injurious. A parent's inability to maintain secure living arrangements is relevant to a determination of whether a child is neglected.<sup>37</sup> In one case, the court held



that frequent moves combined with the exposure of the child to drugs and violence constituted an injurious environment.<sup>38</sup>

Domestic violence in the home has been cited independently in support of a determination that an environment is injurious to a child.<sup>39</sup> Violence aimed at the child also may contribute to an environment's being injurious. In one case, the court held that a child's credible testimony that her father used forced sexual intercourse as discipline was sufficient to support a determination that she lived in an injurious environment and was neglected as well as abused.<sup>40</sup>

Substance abuse also is mentioned frequently, often in combination with other factors, in relation to injurious environments.<sup>41</sup> However, the presence or use of drugs or alcohol must be linked to harm or a risk of harm to the child in order for it to support or contribute to a determination that the child is neglected. In one case, the court found that a mother's severe problem with alcohol abuse created an injurious environment for her children.<sup>42</sup> The evidence and the court's findings addressed not only the severity of the mother's alcohol problem, but also the ways in which her conduct placed the children at risk and the fact that her drinking contributed to the older children's emotional problems.<sup>43</sup>

### **Illegal Placement**

Placing a child illegally for care or adoption is a form of neglect, although one that is rarely the basis for court action. Several statutes govern the placement of children, however, and cause to suspect that a child's placement violates any of these statutes could form the basis of a duty to report. These include laws that specify licensing requirements for establishing, operating, or providing foster care for children and for receiving or placing children in residential care facilities, foster homes, or adoptive homes.<sup>44</sup> A child placed in a foster home by an agency that was not licensed as required by these laws, for example, might be neglected under this part of the definition.

A child also may be neglected if someone who is not legally authorized to place children for adoption places the child for that purpose. Under the state's adoption laws, a child may be placed for adoption in North Carolina only by

- a county department of social services;
- another legally authorized agency;

- the child’s guardian (but not a guardian appointed in a juvenile proceeding or a guardian ad litem);
- both parents acting jointly; or
- one parent who has both legal and physical custody of the child (unless the parents are married and still living together).<sup>45</sup>

Another group of laws regulates bringing a child into North Carolina or sending a child from here to another state for placement in foster care or for adoption. Under the Interstate Compact on the Placement of Children,<sup>46</sup> it is unlawful to bring or send a child across state lines for this type of placement without providing the receiving state with certain information, receiving that state’s determination that the proposed placement does not appear to be contrary to the child’s interests, and complying with other requirements of the compact. These laws do not apply when a child’s parent, guardian, or relative is placing the child with a parent, guardian, or specified relative in another state. A child’s placement would violate the compact, though, if a parent, court, or agency in another state placed the child in an adoptive home in North Carolina without first obtaining a favorable home study from a North Carolina agency.

The adoption law makes it a misdemeanor to offer, pay, or accept money (or anything of value) either for the placement of a child for adoption or for a parent’s consent to adoption, unless the payment is one specifically authorized by statute.<sup>47</sup> In addition, criminal statutes address human trafficking, which occurs when a person “knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.”<sup>48</sup> Until December 1, 2012, however, no North Carolina statute criminalized or specifically prohibited the selling of children, and it was not always clear which if any criminal offense occurred when someone did buy or sell a child.<sup>49</sup>

In 2012, the General Assembly created the offense of unlawful sale, surrender, or purchase of a child.<sup>50</sup> A person commits the offense if he or she, “acting with willful or reckless disregard for the life or safety of a child,” participates in “the acceptance, solicitation, offer, payment, or transfer of any form of compensation in connection with the unlawful acquisition or transfer of physical custody of a child.”<sup>51</sup> When the offense is committed or attempted by the child’s parent, guardian, or custodian, the new statute

provides explicitly that the child “is an abused juvenile for purposes of the Juvenile Code [G.S. 7B-101(1)] and [that] the court may place the child in the custody of a county department of social services or any person, as the court finds to be in the child’s best interest.”

## Abuse

The Juvenile Code considers a child to be an “abused juvenile” when the child’s parent, guardian, custodian, or caretaker acts in certain specified ways with respect to the child. Conduct covered by the definition falls into several main categories—physical abuse, emotional abuse, sexual abuse—and these may overlap in a given case.<sup>52</sup> Although abuse may take a variety of forms, the North Carolina Supreme Court has said that its fundamental nature, “based upon its statutory definition, is the existence or serious risk of some nonaccidental harm inflicted or allowed by one’s caretaker.”<sup>53</sup>

As defined in the Code, an abused juvenile is a child whose parent, guardian, custodian, or caretaker

- inflicts, or allows someone else to inflict, on the child a serious physical injury that is not accidental;
- creates, or allows someone else to create, a substantial risk that the child will suffer a serious physical injury that is not accidental;
- uses, or allows someone else to use, cruel or grossly inappropriate procedures or devices to modify the child’s behavior;
- commits, or permits or encourages someone else to commit, any of a number of specified sexual offenses “by, with, or upon the juvenile”;
- commits, permits, or encourages someone else to commit the offense of unlawfully selling, surrendering, or purchasing the child;
- creates, or allows someone else to create, serious emotional damage to the child;
- encourages, directs, or approves of delinquent acts involving moral turpitude committed by the child; or
- commits or allows someone else to commit an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.<sup>54</sup>

### Causing or Allowing Serious Injury

A child is abused, for purposes of the reporting law, if the child’s parent, guardian, custodian, or caretaker inflicts—or allows someone else to inflict—on the child a serious, nonaccidental physical injury. A child also is abused if one of those persons creates—or allows to be created—a substantial risk of serious, nonaccidental physical injury to the child. The Juvenile Code does not define *serious physical injury*. However, the criminal statute that describes offenses constituting felony child abuse defines “serious physical injury” as a “[p]hysical injury that causes great pain and suffering” and specifies that it includes “serious mental injury.”<sup>55</sup> The North Carolina Court of Appeals agreed with a trial court’s determination that a three-year-old child had suffered a serious, nonaccidental physical injury and was an abused juvenile when a spanking resulted in a dark, six-inch bruise on the child’s thigh, the child experienced discomfort for several days, and the bruise lasted for over a week.<sup>56</sup>

Serious physical injury does not have to be severe, but it must cause great pain and suffering or constitute a serious mental injury. Bruising alone will not always be sufficient to support a determination of abuse.<sup>57</sup> As explained above, however, a child who receives or is put at risk of a nonaccidental injury that is not serious enough to constitute abuse may be a neglected juvenile if the injury results from inappropriate care, supervision, or discipline.

### Cruelty

A child is abused if the parent, guardian, custodian, or caretaker uses, or allows someone else to use, cruel or grossly inappropriate procedures or devices to modify the child’s behavior. In an unpublished opinion, the court of appeals affirmed an adjudication that a child was abused based on the mother’s “cruel or grossly inappropriate” disciplinary methods. The mother had forced the six-year-old child to stand holding his arms out by his side for up to five minutes at a time, or longer if his behavior did not improve; placed duct tape over the child’s mouth; and struck the child with a belt, paddle, switch, or other object, causing injuries to his arms and legs.<sup>58</sup>

Trying to change a child’s behavior by using electrical shocks, tying the child to a bedpost, depriving the child of food, or forcing the child to consume inordinate amounts of water are examples of the ways parents and others can abuse children in this manner. In appellate court decisions, instances of abuse in the form of cruelty show up in criminal appeals more

often than in juvenile abuse or neglect cases.<sup>59</sup> If the person who harmed the child is out of the home and is charged with criminal child abuse, there may be no need for social services to initiate a juvenile court proceeding if the child is safe with the remaining parent, guardian, custodian, or caretaker.

### **Sexual Abuse**

*Sexual abuse*, for purposes of the reporting law, occurs when a child's parent, guardian, custodian, or caretaker commits, permits, or encourages the commission by, with, or upon the juvenile of any of the criminal offenses listed below. When the child's age is relevant to whether the offense has occurred, that is indicated.

- First-degree rape (G.S. 14-27.2). Unless by force, the offense occurs only if the victim is younger than thirteen and the person committing the act is at least twelve and four years older than the victim.
- Second-degree rape (G.S. 14-27.3). Unless by force, the offense occurs only if the person committing the act knows or reasonably should know that the victim is mentally disabled, mentally incapacitated, or physically helpless.
- Rape of a child by an adult offender (G.S. 14-27.2A). The offense occurs if a person who is eighteen or older engages in sexual intercourse with a child younger than thirteen.
- First-degree sexual offense (G.S. 14-27.4). If not by force, the offense occurs only if the child is younger than thirteen and the person committing the act is at least twelve and at least four years older than the victim.
- Second-degree sexual offense (G.S. 14-27.5). If not by force, the offense occurs only if the person committing the act knows or reasonably should know that the victim is mentally disabled, mentally incapacitated, or physically helpless.
- Sexual offense with a child by an adult offender (G.S. 14-27.4A). The offense occurs if a person who is eighteen or older engages in a sexual act with a child younger than thirteen.
- Sexual act by a custodian or school personnel (G.S. 14-27.7).
  - Age is not a factor if the person committing the act has assumed the position of a parent in the child's home, has custody of the child, or is an agent or employee of a person or institution that has custody of the child.

- If the person committing the act is a teacher, school administrator, student teacher, school safety officer, or coach at the school the victim attends, age is not a factor.
- If the act is committed by any other school personnel at the school the child attends, the offense occurs only if that person is at least four years older than the student.
- Crime against nature (G.S. 14-177). This common law offense is not further defined by statute. Courts have described it as sexual intercourse that is “contrary to the order of nature” and have held that it includes acts such as fellatio, sodomy, and buggery.<sup>60</sup>
- Incest (G.S. 14-178). This offense occurs if intercourse takes place between a child and a parent, grandparent, step-parent, brother or sister (whether whole or half blood), or aunt or uncle. Age is a factor with respect to punishment but does not affect whether the offense occurred.
- Preparation of obscene photographs, slides, or motion pictures of the juvenile (G.S. 14-190.5).
- Employing or permitting the juvenile to assist in a violation of the obscenity laws (G.S. 14-190.6). The offense occurs only if the person committing the act is at least eighteen and the child is younger than sixteen.
- Dissemination of obscene material to a minor younger than sixteen (G.S. 14-190.7). The offense occurs only if the person committing the act is at least eighteen and the minor is younger than sixteen.
- Dissemination of obscene material to a minor younger than thirteen (G.S. 14-190.8). The offense occurs only if the person committing the act is at least eighteen and the minor is younger than thirteen.
- Displaying material harmful to minors at a commercial establishment (G.S. 14-190.14).
- Disseminating material harmful to minors or exhibiting a performance harmful to minors (G.S. 14-190.15). It is a defense if the person committing the act is the minor’s parent or legal guardian or if the minor’s parent or legal guardian consents.
- First-degree sexual exploitation of a minor (G.S. 14-190.16).
- Second-degree sexual exploitation of a minor (G.S. 14-190.17).
- Promoting the prostitution of a child (G.S. 14-205.3(b)).

- Taking indecent liberties with a child (G.S. 14-202.1). This offense occurs only if the person committing the act is at least sixteen and is at least five years older than the child and the child is younger than sixteen.<sup>61</sup>

In 2012, the General Assembly added to this list the new offense of unlawfully selling, surrendering, or purchasing a child (G.S. 14-43.14) and provided that a child whose parent, guardian, or custodian has sold or attempted to sell a child in violation of the statute is an abused juvenile for purposes of the Juvenile Code.<sup>62</sup>

In 2013, the General Assembly added three additional offenses: human trafficking (G.S. 14-43.11), involuntary servitude (G.S. 14-43.12), and sexual servitude (G.S. 14-43.13).<sup>63</sup>

Some of these offenses involve the use of force. Even when they do not, the acts covered by these offenses constitute criminal offenses even if the child apparently consents or participates in them voluntarily.

In determining whether a child's situation gives a person cause to suspect that the child is sexually abused, it helps to be familiar with this list. However, a person need not master or research the intricacies of criminal law. If inappropriate sexual conduct involving a child does not constitute one of these criminal offenses, the child still may be an abused or neglected juvenile and a report may be required based on other parts of the definitions.

### **Emotional Abuse**

A child is *emotionally abused* if the child's parent, guardian, custodian, or caretaker creates—or allows others to create—serious emotional damage to the child. Evidence of serious emotional damage may include a child's "severe anxiety, depression, withdrawal, or aggressive behavior toward himself or herself or others."<sup>64</sup> This description is not always easy to apply, and few cases go to court solely on the basis of emotional abuse. In one case that involved both neglect and emotional abuse, the court found that the children had suffered serious emotional damage as a result of the parents' long-standing and acrimonious marital disputes.<sup>65</sup> In another, the court found that the mother's emotionally abusive conduct included force-feeding the child, humiliating him by displaying his wet pants to his classmates after he wet himself at school, and subjecting him to verbal abuse, bullying, and intimidation.<sup>66</sup>

Obviously, serious emotional damage is not always caused by emotional abuse, and children may suffer from depression or anxiety or be aggressive for a variety of reasons. Because causation is so hard to prove, many cases of emotional abuse probably are treated as neglect. A parent who creates or allows serious emotional damage to a child most likely is not providing the child with proper care, supervision, or discipline, so that the child is a neglected juvenile. A person deciding whether to make a report does not need to be concerned about whether the child's condition is more appropriately characterized as abused or neglected.

### **Contributing to Delinquency**

Finally, a child is considered to be abused, for purposes of the reporting law, if the child's parent, guardian, custodian, or caretaker "encourages, directs, or approves" of the child's commission of delinquent acts involving moral turpitude.<sup>67</sup> In North Carolina a "delinquent act" is conduct by a juvenile who is at least six but not yet sixteen that would be a crime if committed by an adult.<sup>68</sup> Among the crimes that courts have said involve moral turpitude are conspiracy to possess with intent to distribute marijuana;<sup>69</sup> burglary;<sup>70</sup> and common law robbery, felonious larceny, and credit card fraud.<sup>71</sup>

### **Dependency**

A juvenile is "dependent," for purposes of the reporting law, if the child needs assistance or placement because

1. no parent, guardian, or custodian is responsible for the child's care or supervision; or
2. the child's parent, guardian, or custodian is not able to provide for the child's care or supervision and does not have an appropriate alternative child care arrangement.<sup>72</sup>

Dependency results from a parent's inability to provide for the child more often than from the child's having no parent, guardian, or custodian to be responsible for the child's care. The cause of the parent's inability to care for the child is not important.<sup>73</sup> A parent's inability might be due to the parent's physical or mental illness or disability, an injury, the parent's arrest, or a natural disaster, and it may be temporary or permanent.



A parent also might be unable to provide for a child because of the child's own conduct or the child's extraordinary needs.<sup>74</sup> A child's severe illness or disability may place such demands on the parents that their best efforts are not sufficient to provide adequate care for the child or for both that child and other children in the home. Even when parents are not able to care for their children, for whatever reason, the responsibility for developing an alternative plan of care falls first on the parents themselves. The child is dependent only if the parent who is not able to care for his or her child has no alternate plan for the child's care or if the parent's plan is inappropriate or inadequate. A child might be dependent, for example, if her single parent had to undergo major surgery and no one else was available to care for the child in her absence. If the hospitalized parent had arranged for the child to stay temporarily with a responsible relative, however, the child would not be dependent despite the parent's inability to care for the child.

If a parent who cannot care for a child has the ability to make appropriate alternative arrangements but fails to do so, the line between dependency and neglect can blur. For example, if the hospitalized parent left an eight-year-old child at home with instructions to take care of herself for a week, the child probably would be neglected rather than dependent, or she might be both. For the person considering whether to make a report, it does not matter whether dependent or neglected is the more appropriate characterization of the child's condition. If the person has cause to suspect that a child's condition falls within either definition, the law requires that person to make a report to social services.

## **Maltreatment**

Any person or institution with cause to suspect that a child has died as the result of maltreatment must report the case of that child to the county department of social services.<sup>75</sup> The Juvenile Code does not define *maltreatment*. When a child's death is the result of suspected abuse or neglect, as the Code defines those terms, the law almost certainly requires a report to social services. Maltreatment, though, appears to be a broader term, since the legislature easily could have said "children who die as the result of suspected abuse or neglect." Maltreatment might include, for example, action by someone other than a child's parent, guardian, custodian, or caretaker that results in the child's death.

Interpreting maltreatment as being broader than abuse and neglect is consistent with the General Assembly’s creation of a child fatality prevention system that includes the North Carolina Child Fatality Task Force, state and local Child Fatality Prevention Teams, and county Community Child Protection Teams.<sup>76</sup> This system provides for multidisciplinary state and local teams to review all deaths of children under age eighteen in North Carolina, with one purpose being to identify any deficiencies in the delivery of public services that are designed to prevent child abuse, neglect, or death.<sup>77</sup>

A county social services department’s immediate response to a report of a child’s death due to maltreatment focuses on determining whether other children remain in the home (or the institutional setting) and, if they do, determining whether those children require protective services or need to be removed for their protection.<sup>78</sup>

### **Difficulty in Applying the Definitions—An Example**

Obviously, terms like “proper care,” “necessary medical care,” “substantial risk,” and “injurious environment” lend themselves to varying interpretations. Questions framed in terms of whether particular facts are covered by these or other terms often do not yield the unequivocal answers that people want. Some frequently asked questions about applying the definitions are discussed in Chapter 14, “Schools and School Personnel,” and Chapter 15, “Health and Mental Health Professionals and Facilities.”<sup>79</sup> The question discussed below illustrates the kind of quandary someone who wants to comply with the reporting law might face.

*Does the fact that a minor female is living with or regularly having sexual intercourse with her older boyfriend mean that she is abused, neglected, or dependent?*

A minor (someone under age eighteen) who leaves home, with or without parental consent, is not emancipated unless the minor marries or obtains a court order of emancipation. The minor’s parents remain legally responsible for the minor’s care and supervision,<sup>80</sup> and the reporting law continues to apply. This remains true even if the minor becomes pregnant, gives birth to a child, or fathers a child.

If the girl is thirteen, fourteen, or fifteen years old and the boyfriend is at least four years older than she is, the boyfriend’s engaging in intercourse or

sexual acts with her is statutory rape or statutory sexual offense.<sup>81</sup> This is true even if the relationship is totally voluntary on the girl's part. No law requires that these crimes be reported to law enforcement. The offenses of statutory rape and statutory sexual offense against thirteen-, fourteen-, and fifteen-year-olds were added to the criminal laws in 1995. The part of the Juvenile Code definition of "abused juvenile" that references a variety of criminal sex offenses has never been amended to include these offenses. Thus, the Code does not explicitly provide that a juvenile is abused if a parent, guardian, custodian, or caretaker permits or encourages the commission of statutory rape or statutory sexual offense against a child who is thirteen, fourteen, or fifteen years of age. Nevertheless, a report in that circumstance almost certainly would be required on the basis that the parent is not providing proper care and supervision and that the girl is therefore neglected. Even if the parent is not committing, permitting, or encouraging the conduct, a report may be required on the basis that the parent is not providing or is not able to provide proper care and supervision for the child.

Any time a report to a social services department involves allegations of a crime committed against a child, the department must notify law enforcement and the district attorney if the report indicates that the child "may have been physically harmed . . . by [a] person other than the juvenile's parent, guardian, custodian, or caretaker."<sup>82</sup> The law does not provide guidance as to what constitutes *physical harm* for purposes of that requirement.

When sexual activity occurs and the girl is sixteen or seventeen years old, or any time the boyfriend is not four or more years older than the girl, none of the criminal sex offense statutes apply if the conduct is consensual. Still, the girl—and the boy if he is younger than eighteen—may be neglected or dependent if the parents are not providing or are not able to provide the minor with proper care and supervision. By itself, consensual sexual activity between older teens—although it may cause family, social, medical, or other concerns—usually is not an appropriate basis for a report to social services. Each situation should be assessed in terms of likely harm or risk of harm to the minor and the purposes of the reporting law.

In cases in which a minor's parents do not condone the minor's living arrangement or conduct and have made real but unsuccessful efforts to get the minor to return home or stop seeing a boyfriend or girlfriend, the minor might be considered an undisciplined juvenile. There is no reporting requirement related to this category of juveniles, which includes a juvenile who "is regularly disobedient to and beyond the disciplinary control of the

juvenile’s parent, guardian, or custodian; or . . . has run away from home for a period of more than 24 hours.”<sup>83</sup> In that case, the parents could seek help from juvenile court counselors in the local Juvenile Justice office.<sup>84</sup> In the case of a runaway who has been away from home for more than twenty-four hours, a law enforcement officer is authorized to take the juvenile into custody and release the juvenile to the parents.<sup>85</sup>

Other questions that have similarly imprecise answers and that require case by case analysis include the following:

- Should the fact that a twelve-year-old girl is pregnant or has a venereal disease always create “cause to suspect” that she is abused or neglected and require a report? What if the girl is thirteen? Or fifteen? Or seventeen? Or ten?
- Is a parent’s insistence on using only alternative medicine in response to a child’s medical needs ever neglect that must be reported?<sup>86</sup>
- When does knowing that a child has witnessed domestic violence or that the child lives in a home where domestic violence occurs require a report?<sup>87</sup>

Sometimes the answers become clear with the addition of other relevant information. In some cases additional guidance may come from legislative changes, appellate court decisions, or state social services policy. For social services departments and courts, these and other questions require careful individual assessment in light of available information and the purposes of the child protective services system. On a broader scale, they require local collaboration to find the best ways to direct appropriate information and services to the affected families and children.

Someone deciding whether to make a report also should carefully assess all available information and consider the purposes of the reporting law and child protective services system. Rather than feeling stymied by the kinds of uncertainty described above, however, he or she should keep in mind that the threshold for reporting is “cause to suspect” and that the social services department will screen out a report it determines was not required.

## Notes

1. North Carolina General Statutes (hereinafter G.S.) § 7B-301. The North Carolina General Statutes can be viewed online at [www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl](http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl).

2. G.S. 7B-805.

3. G.S. 7B-101(15).

4. *See, e.g., In re Moore*, 306 N.C. 394, 293 S.E.2d 127 (1982), *appeal dismissed*, 459 U.S. 1139 (1983); *In re Clark*, 303 N.C. 592, 281 S.E.2d 47 (1981); *In re Allen*, 58 N.C. App. 322, 293 S.E.2d 607 (1982); *In re Huber*, 57 N.C. App. 453, 291 S.E.2d 916, *appeal dismissed and review denied*, 306 N.C. 557, 294 S.E.2d 223 (1982).

5. *In re Biggers*, 50 N.C. App. 332, 341, 274 S.E.2d 236, 241 (1981).

6. Unless a different meaning is clear from the context, the term “parent” should be read to include guardian, custodian, or caretaker in this discussion of the definitions.

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

8. *In re Devone*, 86 N.C. App. 57, 356 S.E.2d 389 (1987); *In re McMillan*, 30 N.C. App. 235, 226 S.E.2d 693 (1976). See the section below entitled “Difficulty in Applying the Definitions—An Example.”

9. Home schooling in North Carolina is overseen by the North Carolina Division of Non-Public Education (DNPE) in the state Department of Administration. Complaints about a home school that is registered with DNPE should be made to that division. Concerns about a home school that is not registered should be directed to local school officials. The procedures for home-school complaints and a home-school citizen complaint form are available at [www.ncdnpe.org/cc125.aspx](http://www.ncdnpe.org/cc125.aspx) and [www.ncdnpe.org/documents/cc126.pdf](http://www.ncdnpe.org/documents/cc126.pdf).

10. Several criminal laws do specify particular ages in relation to the proper supervision of children. For example, G.S. 14-318 makes it a misdemeanor for any person to leave a child under the age of eight “locked or otherwise confined in any dwelling, building or enclosure, and go away from such dwelling, building or enclosure without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire.” Under G.S. 14-316, it is a misdemeanor for a parent (or others in parent-like positions) to permit a child under the age of twelve to possess or use a dangerous firearm, regardless of whether it is loaded, except under the supervision of that adult.

11. See, for example, *In re W.V.*, 204 N.C. App. 290, 293, 693 S.E.2d 383, 386 (2010), quoting the following statement from *In re Safriet*, 112 N.C. App. 747, 752, 436 S.E.2d 898, 901–02 (1993): “[T]his Court has consistently required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide ‘proper care, supervision, or discipline.’” See also *In re D.B.J.*, 197 N.C. App. 752, 678 S.E.2d 778 (2009) (affirming a neglect adjudication based on a substantial risk to the child based on the parents’ abuse and neglect of another child in the home, domestic violence, and substance abuse).

12. *See, e.g., Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398 (affirming a neglect adjudication where evidence showed not only that the mother had a serious problem with alcohol but also that she drove with the children in the car while intoxicated,

she had become so intoxicated at home that she was unable to care for the children, and her alcohol problem contributed to the children's emotional problems), *review denied*, 349 N.C. 530, 526 S.E.2d 180 (1998).

13. G.S. 7B-101(1).

14. *In re* Thompson, 64 N.C. App. 95, 100, 306 S.E.2d 792, 795 (1983).

15. *In re* A.J.M., 177 N.C. App. 745, 751, 630 S.E.2d 33, 36 (2006).

16. *In re* Mashburn, 162 N.C. App. 386, 591 S.E.2d 584 (2004).

17. *In re* Kennedy, 103 N.C. App. 632, 406 S.E.2d 307 (1991).

18. *Thompson*, 64 N.C. App. at 99, 306 S.E.2d at 794.

19. See U.S. Department of Health & Human Services, Administration for Children & Families, Child Welfare Information Gateway, "Discipline Versus Abuse," identifying resources related to the difference between physical discipline and physical abuse and to cultural contexts and ethnic differences relating to discipline, [www.childwelfare.gov/can/defining/disc\\_abuse.cfm](http://www.childwelfare.gov/can/defining/disc_abuse.cfm).

20. See *Pratt v. Bishop*, 257 N.C. 486, 126 S.E.2d 597 (1962); *In re* Adoption of Searle, 82 N.C. App. 273, 346 S.E.2d 511 (1986).

21. See G.S. 7B-1111(a)(7). See also *In re* Young, 346 N.C. 244, 485 S.E.2d 612 (1997) (holding that evidence of willfulness was insufficient to establish abandonment); *In re* M.D., 200 N.C. App. 35, 682 S.E.2d 780 (2009) (affirming termination of parental rights on grounds of abandonment where father visited one daughter only once in three years and had not seen his other daughter for more than three years); *In re* Graham, 63 N.C. App. 146, 303 S.E.2d 624 (holding that lack of involvement with children for more than two years established a pattern of abandonment and neglect), *review denied*, 309 N.C. 320, 307 S.E.2d 170 (1983); *In re* Apa, 59 N.C. App. 322, 296 S.E.2d 811 (1982) (holding that a father's willful failure to support or visit his child for a period of eleven years constituted abandonment and neglect).

22. G.S. 7B-302(a).

23. *Id.*

24. See G.S. 14-318.2(c), -318.4(c), and -322.3. The legislation, S.L. 2001-291, became effective July 19, 2001. For a more thorough discussion of this law, see Janet Mason, "Legal Abandonment of Newborns: North Carolina's Safe Surrender Law," *Popular Government* 75 (Fall 2009): 29–36, <http://sogpubs.unc.edu/electronicversions/pg/pgfal09/article5.pdf>.

25. See G.S. 7B-500.

26. *In re* Hayden, 96 N.C. App. 77, 384 S.E.2d 558 (1989).

27. *In re* S.W., 187 N.C. App. 505, 653 S.E.2d 425 (2007). See also *In re* C.M., 183 N.C. App. 207, 644 S.E.2d 588 (2007) (affirming a neglect adjudication where evidence showed, among other things, that the child's father delayed seeking medical attention for the child despite having been encouraged by a social worker to do so); *In re* C.P., 181 N.C. App. 698, 641 S.E.2d 13 (2007) (affirming a neglect adjudication where the mother delayed seeking necessary medical care for the child for his bruising and his disciplinary, behavioral, and developmental problems).

28. *In re* Huber, 57 N.C. App. 453, 291 S.E.2d 916, *appeal dismissed and review denied*, 306 N.C. 557, 294 S.E.2d 223 (1982).

29. *Id.* at 458, 291 S.E.2d at 919.

30. U.S. Department of Health & Human Services, Child Welfare Information Gateway, “Definitions of Child Abuse and Neglect” (current through Feb. 2011), [www.childwelfare.gov/systemwide/laws\\_policies/statutes/define.pdf#Page=1&view=Fit](http://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf#Page=1&view=Fit). The federal Child Abuse Prevention and Treatment Act makes clear that it does not establish a federal requirement that a parent provide a child with medical services or treatment that is against the parent’s religious beliefs. See 42 U.S.C. § 5106i(a)(1).

31. *In re Stratton*, 153 N.C. App. 428, 433, 571 S.E.2d 234, 237 (2002) (citations omitted). G.S. 130A-157 provides an exemption from the immunization requirements based on a parent’s bona fide religious beliefs. The issue in *Stratton* was whether the parents lost their right to claim that exemption when the children were adjudicated neglected and removed from their custody.

32. *In re Browning*, 124 N.C. App. 190, 193–94, 476 S.E.2d 465, 467 (2002) (citations omitted).

33. *In re N.F.*, 194 N.C. App. 820, 671 S.E.2d 599 (2009) (unpublished).

34. *In re Greene*, 152 N.C. App. 410, 417, 568 S.E.2d 634, 638 (2002).

35. *In re McCabe*, 157 N.C. App. 673, 674–76, 580 S.E.2d 69, 70–71 (2003). Doctors in this case had diagnosed Munchausen syndrome by proxy, which involves a parent’s causing real or apparent indications of illness in a child, and the opinion discusses the medical evidence.

36. *In re Morales*, 159 N.C. App. 429, 583 S.E.2d 692 (2003).

37. See *In re Evans*, 81 N.C. App. 449, 344 S.E.2d 325 (1986); *In re Adcock*, 69 N.C. App. 222, 316 S.E.2d 347 (1984) (holding that moving eight times within a year and a half was evidence of instability relevant to a neglect determination).

38. *In re Helms*, 127 N.C. App. 505, 491 S.E.2d 672 (1997).

39. See, e.g., *In re W.V.*, 204 N.C. App. 290, 294, 693 S.E.2d 383, 386–87 (2010) (citing, among other things, the fact that the parent engaged in domestic violence in the child’s presence); *In re C.M.*, 198 N.C. App. 53, 678 S.E.2d 794 (2009) (stating that the environment in which the children lived was injurious because it involved violence).

40. *In re K.W.*, 192 N.C. App. 646, 666 S.E.2d 490 (2008).

41. See, e.g., *W.V.*, 204 N.C. App. at 294, 693 S.E.2d at 387 (citing, among other things, the fact that the parent grew and consumed an illegal controlled substance in the home).

42. *Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398, *review denied*, 349 N.C. 530, 526 S.E.2d 180 (1998).

43. *Id.* at 43, 502 S.E.2d at 402.

44. See G.S. Chapter 131D, Article 1A. Unless specifically exempted, a person or agency that violates these requirements is guilty of a misdemeanor.

45. G.S. 48-3-201. Placement of a child for adoption by anyone else is a Class 1 misdemeanor. G.S. 48-10-101(c).

46. G.S. 7B-3800 through -3806.

47. G.S. 48-10-102, -103.

48. G.S. 14-43.11(a); see generally G.S. 14-43.10 through -43.13.

49. See Jeff Welty, “Is It a Crime to Sell a Baby?” *North Carolina Criminal Law: UNC School of Government* (blog), April 26, 2010, <http://sogweb.sog.unc.edu/blogs/nclaw/?p=1232>.

50. S.L. 2012-153 created the new offense, a Class F felony, in G.S. 14-43.14, which became effective December 1, 2012.

51. G.S. 14-43.14.

52. *See In re M.G.*, 363 N.C. 570, 573–74, 681 S.E.2d 290, 292 (2009).

53. *Id.* at 574, 681 S.E.2d at 292. Clearly the court was giving the term “caretaker” a broader meaning than the one found in the Juvenile Code’s definition of that term.

54. G.S. 7B-101(1).

55. G.S. 14-318.4(d)(2). The statute distinguishes between “serious physical injury” and “serious bodily injury.” The latter, which is required for a conviction of the more serious offense of Class B2 felony child abuse, is defined as an “injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.” G.S. 14-318.4(d)(1).

56. *In re L.T.R.*, 181 N.C. App. 376, 639 S.E.2d 122 (2007).

57. *See, e.g., In re C.B.*, 180 N.C. App. 221, 221–22, 636 S.E.2d 336, 337 (2006) (holding that where the only evidence of abuse in the record was the father’s spanking or whipping of the child with a belt, resulting in a bruise on the child’s buttocks, the evidence did not support a finding of “serious injury” or an adjudication that the child was abused), *aff’d per curiam*, 361 N.C. 345, 643 S.E.2d 587 (2007).

58. *In re K.A.*, \_\_\_ N.C. App. \_\_\_, 720 S.E.2d 461 (2011) (unpublished).

59. *See, e.g., State v. Paddock*, 204 N.C. App. 280, 287, 696 S.E.2d 529, 534 (2010) (affirming convictions of first-degree murder and felonious child abuse inflicting serious bodily injury and finding no error in the admission of expert testimony that a child “was the victim of ritualistic child abuse, sadistic child abuse, and torture”), *review denied*, 364 N.C. 330, 701 S.E.2d 251.

60. *See, e.g., In re R.L.C.*, 361 N.C. 287, 643 S.E.2d 920 (2007); *State v. Harward*, 264 N.C. 746, 142 S.E.2d 691 (1965).

61. The statutes defining the criminal offenses listed here can be accessed at [www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0014](http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0014).

62. S.L. 2012-153 created this statute, which applies only to offenses committed on or after December 1, 2012.

63. S.L. 2013-368, sec. 16, which made these additions, applies to offenses committed on or after October 1, 2013.

64. G.S. 7B-101(1)e.

65. *Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398, *review denied*, 349 N.C. 530, 526 S.E.2d 180 (1998).

66. *In re J.H.S.*, \_\_\_ N.C. App. \_\_\_, 714 S.E.2d 866 (2011) (unpublished).

67. G.S. 7B-101(1)f. The North Carolina Supreme Court has referred to “moral turpitude” as involving “an act of inherent baseness in the private, social, or public duties which one owes to his fellowmen or to society, or to his country, her institutions and her government.” *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986) (internal quotation marks, citations omitted).

68. G.S. 7B-1501(7). In North Carolina, a sixteen- or seventeen-year-old is treated as an adult for purposes of his or her criminal behavior. A sixteen-year-old whose parent encouraged him or her to steal, therefore, probably is not covered by this part of the abuse definition because a sixteen-year-old does not commit delinquent acts—he



or she commits crimes. Still, the sixteen-year-old could be considered neglected because the parent is failing to provide proper supervision and discipline. Or a court might determine that the context and purpose of the statute indicate a legislative intent to include criminal conduct by sixteen- and seventeen-year-old juveniles as well as delinquent conduct by younger children.

69. *Dew v. State ex rel.* N.C. Dep't of Motor Vehicles, 127 N.C. App. 309, 488 S.E.2d 836 (1997).

70. *State v. Collins*, 334 N.C. 54, 431 S.E.2d 188 (1993).

71. *State v. Shelly*, 176 N.C. App. 575, 584, 627 S.E.2d 287, 295 (2006).

72. G.S. 7B-101(9).

73. Older cases may reflect the pre-1997 wording of the statute, which required that the parent, guardian, or custodian's inability to care for the child be "due to physical or mental incapacity." See S.L. 1997-113.

74. While such children are not necessarily excluded from the definition of "dependent juvenile," their needs generally can be addressed more appropriately through systems other than child protective services, such as mental health, developmental disabilities, and substance abuse services; juvenile justice and delinquency prevention services; or other community resources.

75. G.S. 7B-301.

76. See G.S. 7B-1400 *et seq.*

77. G.S. 7B-1400.

78. G.S. 7B-302(b).

79. See Chapter 11 for a related discussion of screening—the process by which social services departments decide whether to accept reports for assessment.

80. G.S. 7B-3400.

81. G.S. 14-27.7A. Offenses involving a minor who is under the age of thirteen are described in G.S. 14-27.2, -27.2A(a), -27.4, and -27.4A(a). Each of these offenses (but not G.S. 14-27.7A) is listed in the definition of "abused juvenile" in G.S. 7B-101(1)d. and requires a report to social services if the offense is committed, encouraged, or allowed by the minor's parent, guardian, custodian, or caretaker.

82. See G.S. 7B-307(a).

83. G.S. 7B-1501(27).

84. See G.S. Chapter 7B, Article 17 (Screening of Delinquency and Undisciplined Complaints).

85. G.S. 7B-1900, -1901. A rarely used statute authorizes a parent to file a civil action in district court asking the court to order a minor to return home and to order another person not to harbor the juvenile or allow the juvenile to remain in that person's home or on that person's premises. See G.S. 7B-3404. The status of that law is unclear, however. In 1998, the court of appeals held that it applied only with respect to sixteen- and seventeen-year-olds, who at that time were not included in the definition of "undisciplined juvenile." With respect to other juveniles, the court said, the Juvenile Code provisions relating to undisciplined juveniles are exclusive. See *Taylor v. Robinson*, 131 N.C. App. 337, 508 S.E.2d 289 (1998). Subsequently the definition of undisciplined juvenile was amended to include sixteen- and seventeen-year-olds.

86. See Kavitha V. Neerukonda, J.D., M.H.A., "Choosing Alternative Treatments for Children," *American Medical Association Journal of Ethics, Virtual Mentor* 13, no. 6 (June 2011): 369–73, <http://virtualmentor.ama-assn.org/2011/06/hlaw1-1106.html>.

87. See *In re A.N.L.*, \_\_\_ N.C. App. \_\_\_, 714 S.E.2d 189 (2011) (affirming an order adjudicating an infant to be abused and neglected based on evidence that a physical altercation occurred between the parents while the mother was holding the infant). State social services policies relating to domestic violence and child protective services can be found at <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/CS1409.htm#TopOfPage>.