

Abuse, Neglect, Dependency:
Excerpts of Relevant North Carolina Statutes and Regulations

ADJUDICATION

§ 7B-101. Definitions. As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
- d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or g. Commits or allows to be committed 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.

(9) Dependent juvenile. – A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

(15) Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

NONSECURE CUSTODY

§ 7B-503. Criteria for nonsecure custody.

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and any of the following apply:

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

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

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§ 7B-505.1. Juvenile placed in nonsecure custody of a department of social services.

(a) Unless the court orders otherwise, when a juvenile is placed in the nonsecure custody of a county department of social services, the director may arrange for, provide, or consent to any of the following:

- (1) Routine medical and dental care or treatment.
- (2) Emergency medical, surgical, psychiatric, psychological, or mental health care or treatment.
- (3) Testing and evaluation in exigent circumstances.

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(b) When placing a juvenile in nonsecure custody of a county department of social services pursuant to G.S. 7B-502, the court may authorize the director to consent to a Child Medical Evaluation upon written findings that demonstrate the director's compelling interest in having the juvenile evaluated prior to the hearing required by G.S. 7B-506.

(c) The director shall obtain consent from the juvenile's parent, guardian, or custodian for all care or treatment not covered by subsection (a) or (b) of this section, except that the court may authorize the director to provide consent after a hearing at which the court finds by clear and convincing evidence that the care, treatment, or evaluation requested is in the juvenile's best interest. Care and treatment covered by this subsection includes:

(1) Prescriptions for psychotropic medications.

(2) Participation in clinical trials.

(3) Immunizations when it is known that the parent has a bona fide religious objection to the standard schedule of immunizations.

(4) Child Medical Evaluations not governed by subsection (b) of this section, comprehensive clinical assessments, or other mental health evaluations.

(5) Surgical, medical, or dental procedures or tests that require informed consent.

(6) Psychiatric, psychological, or mental health care or treatment that requires informed consent.

(d) For any care or treatment provided, the director shall make reasonable efforts to promptly notify the parent, guardian, or custodian that care or treatment will be or has been provided and give the parent or guardian frequent status reports on the juvenile's treatment and the care provided. Upon request of the juvenile's parent, guardian, or custodian, the director shall make available to the parent, guardian, or custodian any results or records of the aforementioned evaluations, except when prohibited by G.S. 122C-53(d). The results of a Child Medical Evaluation shall only be disclosed according to the provisions of G.S. 7B-700.

[Note: § 122C-53. Exceptions; client: a client shall have access to confidential information in the client's record; except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to the legally responsible person, the legally responsible person may request that the information be sent to a physician or psychologist of the legally responsible person's choice, and in this event the information shall be so provided.]

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(e) Except as prohibited by federal law, the department may disclose confidential information deemed necessary for the juvenile's assessment and treatment to a health care provider serving the juvenile.

(f) Unless the court has ordered otherwise, except as prohibited by federal law, a health care provider shall disclose confidential information about a juvenile to a director of a county department of social services with custody of the juvenile and a parent, guardian, or custodian.

DISPOSITION

§ 7B-900. Purpose.

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

§ 7B-808. Predisposition report.

(a) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.

(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs.

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§ 7B-903.1. Juvenile placed in custody of a department of social services

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(e) When a juvenile is placed in the custody of a county department of social services, the provisions of G.S. 7B-505.1 apply.

§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.

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(d) The court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the

county commissioners, of the juvenile's residence shall be notified of the hearing and allowed to be heard. Subject to G.S. 7B-903.1, if the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

(e) If the court determines that the juvenile may be mentally ill or developmentally disabled, the court may order the county department of social services to coordinate with the appropriate representative of the area mental health, developmental disabilities, and substance abuse services authority or other managed care organization responsible for managing public funds for mental health and developmental disabilities to develop a treatment plan for the juvenile. The court shall not commit a juvenile directly to a State hospital or developmental center for persons with intellectual and developmental disabilities and orders purporting to commit a juvenile directly to a State hospital or developmental center for persons with intellectual and developmental disabilities shall be void and of no effect. If the court determines that institutionalization is the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian refuses to consent to admission to a mental hospital or developmental center for persons with intellectual and developmental disabilities, the signature and consent of the court may be substituted for that purpose. A State hospital or developmental center for persons with intellectual and developmental disabilities that refuses admission to a juvenile referred for admission by a court, or discharges a juvenile previously admitted on court referral prior to completion of treatment, shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness or intellectual and developmental disabilities, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or dependent.

(a) If the court orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7B-903, the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) At the dispositional hearing or a subsequent hearing if the court finds that it is in the best interests of the juvenile for the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to be directly involved in the juvenile's treatment, the court may order the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to participate in medical, psychiatric, psychological, or other treatment of the juvenile. The cost of the treatment shall be paid pursuant to G.S. 7B-903.

...

(d) At the dispositional hearing or a subsequent hearing, when legal custody of a juvenile is vested in someone other than the juvenile's parent, if the court finds that the parent is able to do so, the court may order that the parent pay a reasonable sum that will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(d1) At the dispositional hearing or a subsequent hearing, the court may order the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to do any of the following:

- (1) Attend and participate in parental responsibility classes if those classes are available in the judicial district in which the parent, guardian, custodian, or caretaker resides.
- (2) Provide, to the extent that person is able to do so, transportation for the juvenile to keep appointments for medical, psychiatric, psychological, or other treatment ordered by the court if the juvenile remains in or is returned to the home.
- (3) Take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker.

(e) Upon motion of a party or upon the court's own motion, the court may issue an order directing the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to appear and show cause why the parent, guardian, custodian, or caretaker should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this section.

§ 7B-406. Issuance of summons.

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(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include each of the following:

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(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State.

(4) Notice that the dispositional order or a subsequent order:

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- a. May remove the juvenile from the custody of the parent, guardian, or custodian.
- b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.
- c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.
- d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.
- e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent.

(c) The summons shall advise the parent that upon service, jurisdiction over that person is obtained and that failure to comply with any order of the court pursuant to G.S. 7B-904 may cause the court to issue a show cause order for contempt.

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EDUCATIONAL DECISION-MAKING: Special Education Services

§ 115C-106.3. Definitions.

The following definitions apply in this Article:

(1) "Child with a disability" means a child with at least one disability who because of that disability requires special education and related services.

(2) "Disability" includes mental retardation; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.

[Note, 34 C.F.R. 300.8 identifies 3 other categories of disability: Deaf-Blind, Deafness, Multiple Disabilities]

NC Policies Governing Services for Children with Disabilities, NC 1500-2.4

(b)(4) Developmental delay means a child aged 3 through 7, whose development and/or behavior is delayed or atypical, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who, by reason of the delay, needs special education and related services.

(b)(5) Serious emotional disability (hereafter referred to as emotional disability)

(i) means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to make educational progress that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Serious emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (b)(5)(i) of this section.

(b)(10) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome, etc.; and

(ii) Adversely affects a child's educational performance.

(3a) "Educational services" means all of the following:

- a. The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and State law. The instruction shall be delivered by an appropriately qualified teacher to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.
- b. Related services included in the child's IEP.
- c. Behavior intervention services to the extent required by federal law.

20 U.S.C. §1401(26) Related services

(A) In general

The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

§ 115C-109.2. Adult children with disabilities; surrogate parents.

...

(c) A reasonable effort must be made to appoint a surrogate for a child with a disability within 30 days of a determination that one of the following conditions exists and that the child needs a surrogate:

- (1) The parents of that child are not known;
 - (2) The parents, after reasonable efforts, cannot be located; or
 - (3) The child is a ward of the State.
- (d) A person must be eligible under IDEA to be appointed as a child's surrogate.

§ 115C-106.3(14) "Parent" means:

- a. A natural, adoptive, or foster parent;
- b. A guardian, but not the State if the child is a ward of the State;
- c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child lives;
- d. An individual who is legally responsible for the child's welfare; or
- e. A surrogate if one is appointed under G.S. 115C-109.2.

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See also: 20 U.S.C. §1401(23)

20 USC §1401(36) Ward of the State

(A) In general

The term “ward of the State” means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

NC Policies Governing Services for Children with Disabilities, NC 1500-2.24: Parent

(a) Parent means—

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent (e.g. therapeutic foster parent);

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b)

(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section. (Authority: 20 U.S.C. 1401(23); 34 CFR 300.30)

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34 C.F.R. 300.519: Surrogate Parent

...

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

- (1) The public agency may select a surrogate parent in any way permitted under State law.
- (2) Public agencies must ensure that a person selected as a surrogate parent—
 - (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
 - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.

[Note, this federal law prohibits the department from making educational decisions that are generally made by a juvenile's custodian pursuant to G.S. 7B-903.1(a), which says "except as prohibited by federal law..."]

...

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.