

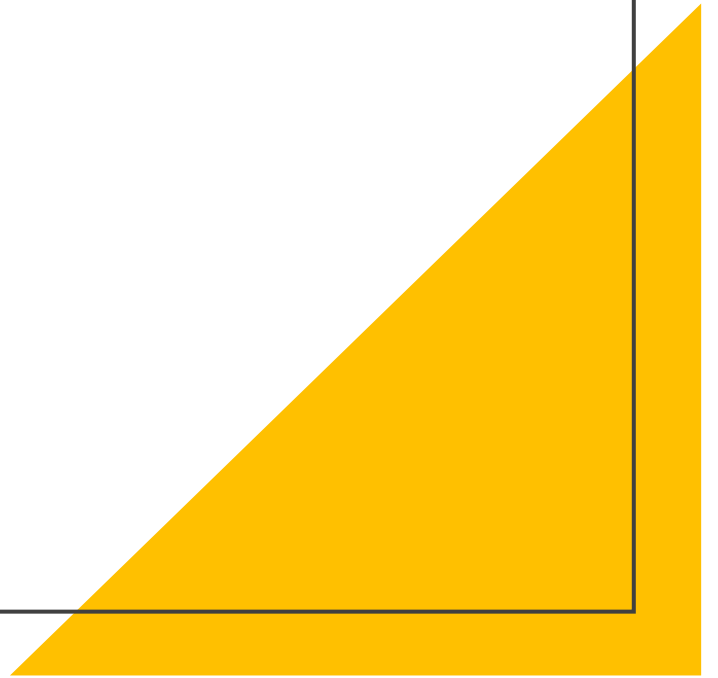


The Laws Addressing Substance Use Child Custody Child Welfare Delinquency

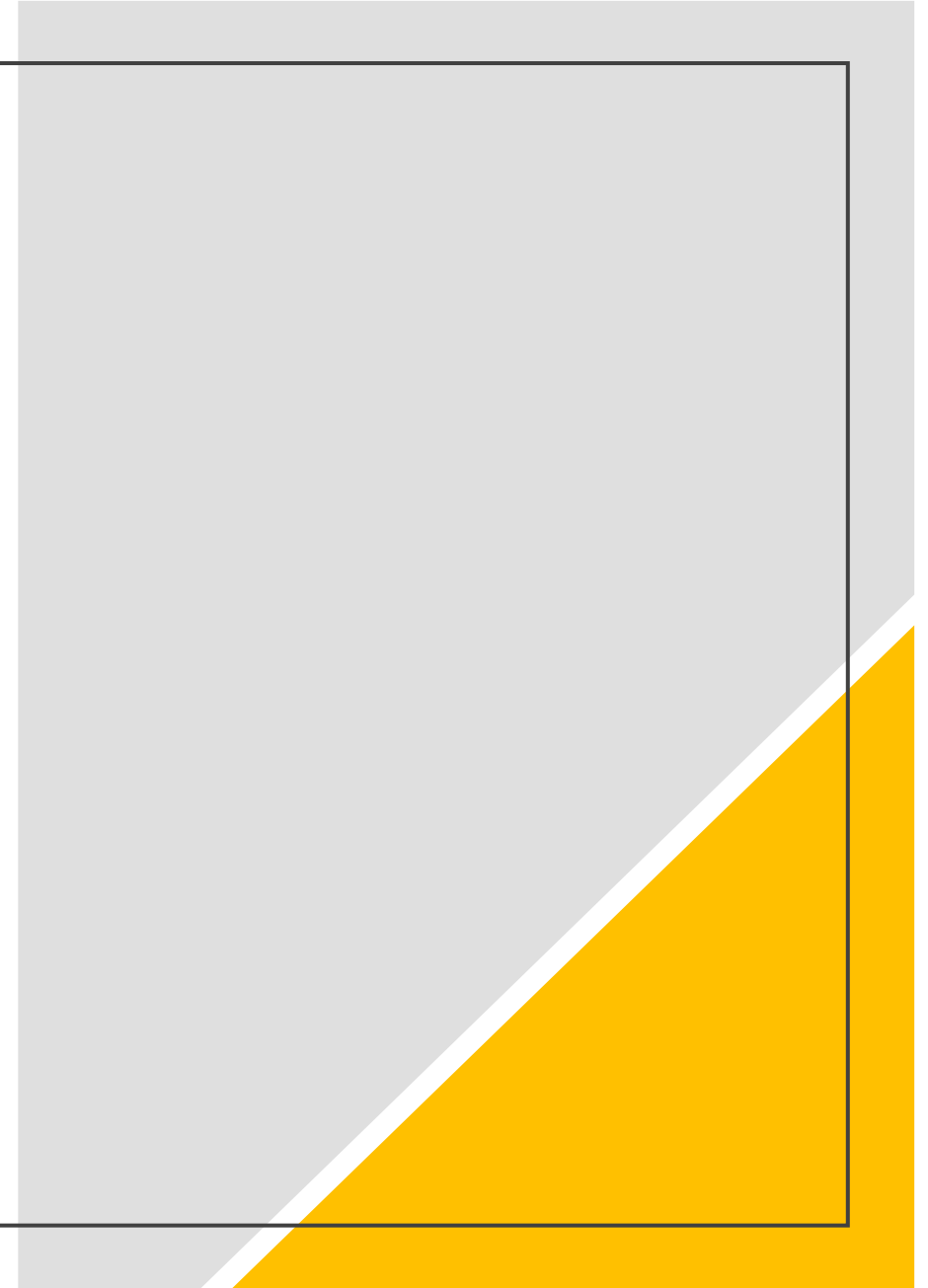
*Understanding Substance Use Disorder:
A Course for District Court Judges (May 2026)*

Consideration of Substance Use in Custody Cases

By: Cheryl Howell



Statutory References



GS 50-13.01

- It is the policy of the State of North Carolina to:
 - (1) Encourage focused, good faith, and child-centered parenting agreements to reduce needless litigation over child custody matters and to promote the best interest of the child.
 - (2) Encourage parents to take responsibility for their child by setting the expectation that parenthood will be a significant and ongoing responsibility.
 - (3) Encourage programs and court practices that reflect the active and ongoing participation of both parents in the child's life and contact with both parents when such is in the child's best interest, regardless of the parents' present marital status, subject to laws regarding abuse, neglect, and dependency.
 - (4) Encourage both parents to share equitably in the rights and responsibilities of raising their child, even after dissolution of marriage or unwed relationship.
 - (5) **Encourage each parent to establish and maintain a healthy relationship with the other parent when such is determined to be in the best interest of the child, taking into account mental illness, substance abuse, domestic violence, or any other factor the court deems appropriate.**

GS 50-13.2(b2)

“Any order for custody, including visitation, may, as a condition of such custody or visitation, require either or both parents, or any other person seeking custody or visitation, **to abstain from consuming alcohol** and may require submission to a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, to verify compliance with this condition of custody or visitation. Any order pursuant to this subsection shall include an order to the monitoring provider to report any violation of the order to the court and each party to the action. Failure to comply with this condition shall be grounds for civil or criminal contempt.”

GS 1A, Rule 35

Physical and mental examination of persons.

(a) Order for examination. - When the mental or physical condition (including the blood group) of a party, or of an agent or a person in the custody or under the legal control of a party, is in controversy, a judge of the court in which the action is pending as defined by Rule 30(h) may order the party to submit to a physical or mental examination by a physician or to produce for examination his agent or the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

Rule 35 Cases

Jones v. Patience, 121 NC App 434 (1996)((Rule 35 can be used to order psychological counseling of parent in custody case)

Williams v. Williams, 29 NC App 509 (1976)(Rule 35 can be used to order psychiatric evaluation of parent in custody case)

Cf. Maxwell v. Maxwell, 212 NC App 614 (2011)(trial court has “broad authority” in custody cases that authorized order for mental health evaluation) and *Thamos v. Oxendine*, NC App (Dec. 7, 2021)(same)



Case Law

Fitness and Best Interests

Substance use alone does not establish a lack of fitness or justify a denial or limitation of a parent's custody of a child.

Trial court must resolve all issues relating to how substance use affects the welfare of the child.

Carpenter v. Carpenter, 225 NC App 269 (2013)(findings of fact insufficient where trial court failed to show that parent's alcohol consumption adversely affected the child).

Cf. Raynor v. Odom, 124 NC App 724 (1996)(findings were sufficient to show substance use impacted mother's ability to care for child)

Third Party Custody

Substance abuse alone does not establish that parent has engaged in conduct inconsistent with their constitutionally protected status as a parent.

Findings of fact must link substance abuse to welfare of child and otherwise show how parent's conduct was inconsistent with their constitutionally protected status.

Weideman v. Shelton, 247 NC App 412 (2016)(mother did not lose her constitutional right to custody when she left children with grandmother for 5-year period while mother dealt with mental health and substance abuse issues)

Owenby v. Young, 357 NC 142 (2003)(evidence that dad drank on a regular basis and had 2 DWI convictions not sufficient to establish that he waived his constitutional right to custody without evidence of impact on welfare of the children).

Child Welfare and Substance Use

By: Sara DePasquale

A/N/D ADJUDICATION

Not in definition of neglected juvenile

- G.S. 7B-101(15)
- Care & Supervision
- Injurious Environment

Not per se neglect

- *In re K.H.*, 281 N.C. App. 259 (2022)
- *In re K.J.B.*, 248 N.C. App. 352 (2016)

Harm or risk of harm

- Examples?

Relieve DSS of Reunification Efforts at Initial Disposition

“Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.”

G.S. 7B-901(c)(1)e.

A/N/D Court Ordered Case Plans

G.S. 7B-904(c)

- If BIC to require psychiatric, psychological, or other **treatment or counseling** directed toward remedying the conditions or behaviors that led to or contributed to the child's removal or adjudication and to comply with treatment
- Case Law: **NEXUS REQUIRED**

G.S. 7B-904(c1): **MAT compliance**

- *In re A.B.C.*, 374 N.C. 752 (2020)

Visitation

G.S. 7B-905.1(b1)

- + drug screen alone cannot deny parent visitation
- Unsupervised and +, DSS file motion for review for hearing w/in 30 days; supervision temporarily imposed
- Cancel if at time of visit, parent appears actively impaired

ADA: Reasonable Accommodations

Time to raise at dispositional hearing

Methadone use: PA

- Foster parent
- Probation and drug court

Suboxone: WV

- Relative placement

TPR Grounds

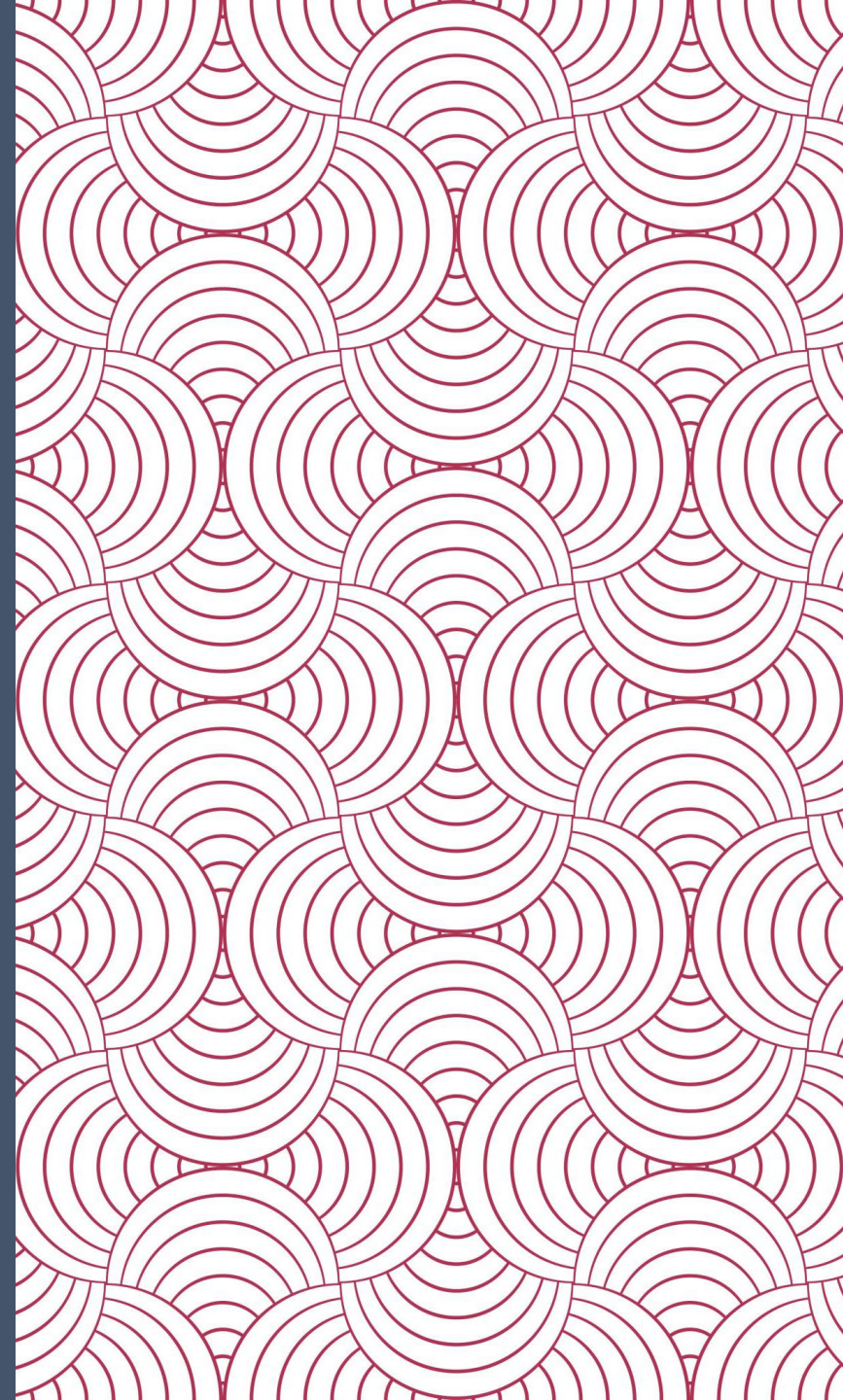
Neglect

Failure to make reasonable progress

Dependency

Delinquency Law Addressing Substance Use

Jacqui Greene



Agenda

Offenses and system processing

Juvenile evaluation and treatment

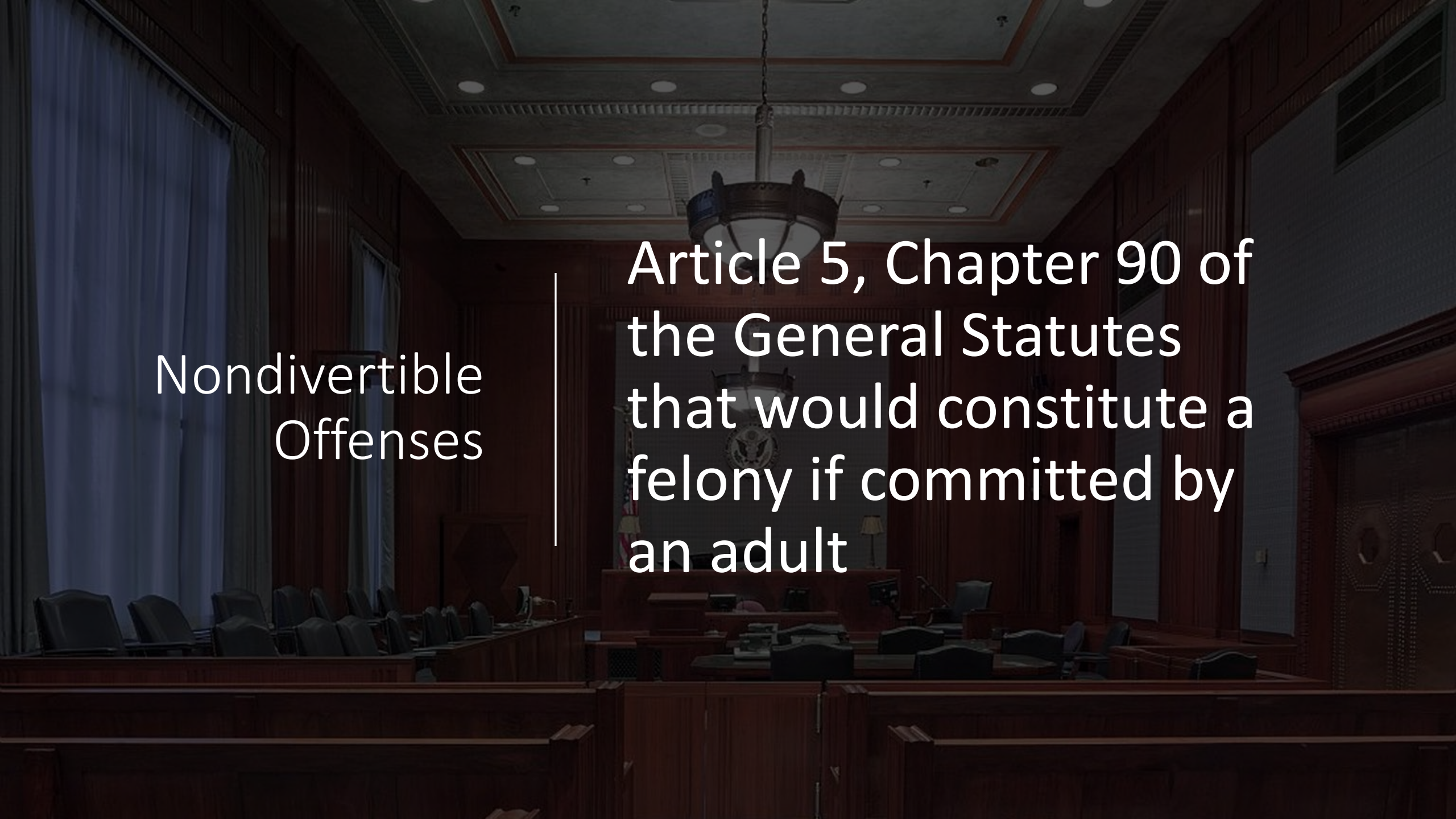
Parent evaluation and treatment

Disposition and substance use disorders

Offenses and System Processing







Nondivertible
Offenses

Article 5, Chapter 90 of
the General Statutes
that would constitute a
felony if committed by
an adult

Diversion Restriction – Teen Court Ineligibility

1. Impaired driving, driving after consuming, transporting an open container
2. Controlled substance offenses other than possession of Schedule VI drug or alcohol

Agenda

Offenses and system processing

Juvenile evaluation and treatment

Parent evaluation and treatment

Disposition and substance use disorders



Juvenile Evaluation and Treatment

G.S. 7B-2502 (a) – discretion to order evaluation, hold hearing, and order treatment recommended

G.S. 7B-2502(a1) – mandatory initial drug test when adjudicated for drug offenses; discretion to order drug testing following any other adjudication. ONLY for evaluation and treatment purposes



Parent Involvement in Juvenile Evaluation and Treatment

At disposition or after, may order parental involvement in juvenile's evaluation and treatment on finding it is in the best interests of the juvenile

G.S. 7B-2702(b)

Agenda

Offenses and system processing

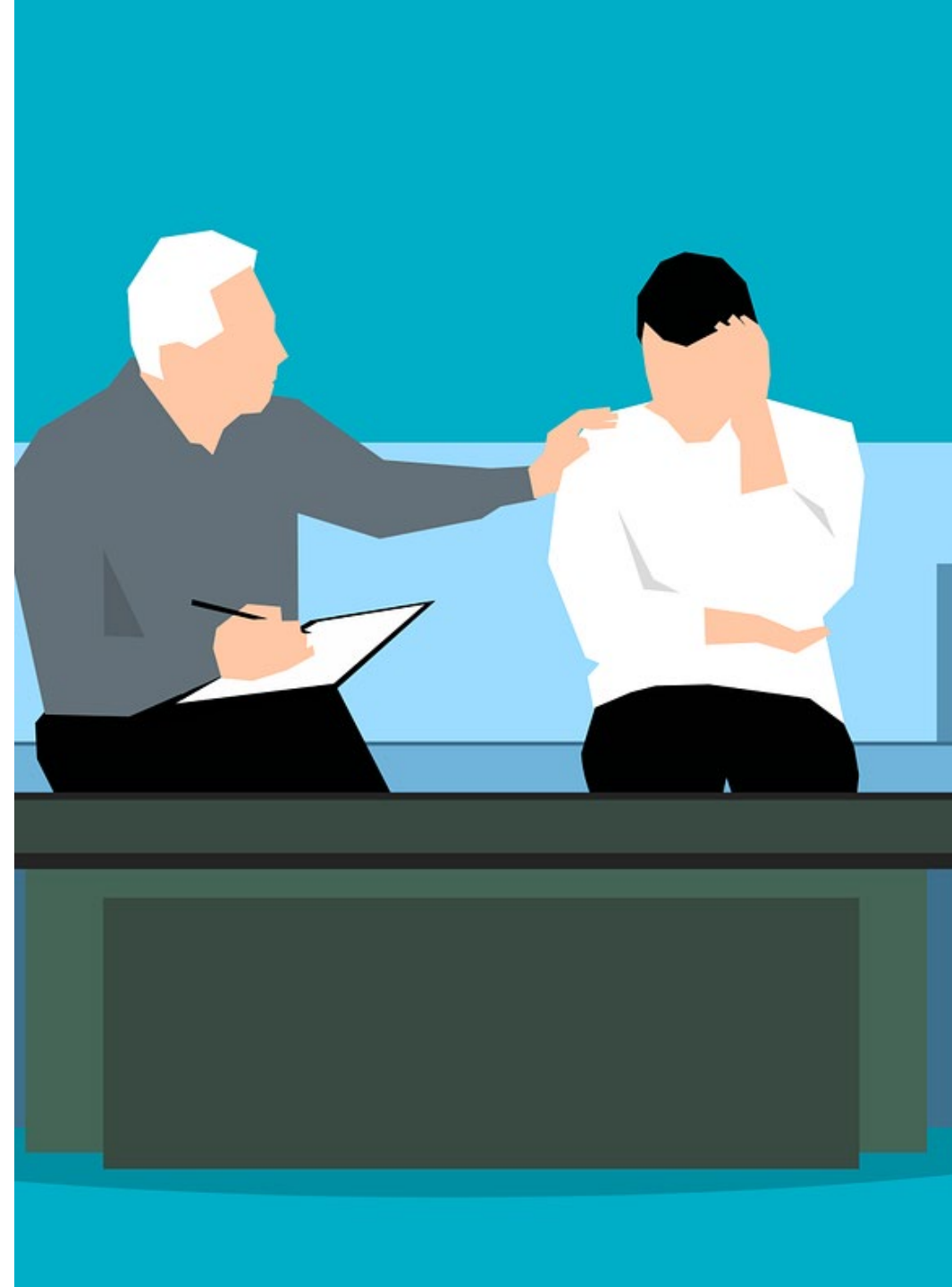
Juvenile evaluation and treatment

Parent evaluation and treatment

Disposition and substance use disorders

Parent Evaluation and Treatment - G.S. 7B-2702(c)

- At dispositional or subsequent hearing
- Can order evaluation or treatment of parent when:
 - Required by best interests of the juvenile, and
 - Evaluation or treatment are (1) directed toward remedying behavior or conditions that led to or contributed to adjudication OR (2) the court's decision to remove custody from the parent
- May order compliance with court-approved evaluation or treatment plan
- May condition legal custody or physical placement of the juvenile with the parent on compliance with evaluation or treatment plan



Agenda

Offenses and system processing

Juvenile evaluation and treatment

Parent evaluation and treatment

Disposition and substance use disorders

Dispositional Alternatives

G.S. 7B-2506

Level 1

(3) Order the juvenile to cooperate with a community-based program, **an intensive substance abuse treatment program**, or a residential or nonresidential treatment program. Participation in the programs shall not exceed 12 months.

Level 2

(14) Order the juvenile to cooperate with placement in a residential treatment facility, an intensive nonresidential treatment program, **an intensive substance abuse program**, or in a group home other than a multipurpose group home operated by a State agency.



Requiring substance abuse monitoring
and treatment can be delegated to the
chief court counselor as part of
probation conditions

G.S. 7B-2510(b)(2)

YDC Commitment Mandatory Testing

- Initial drug test required
- For evaluation and treatment purposes only
- Results must be incorporated into plan of care for the juvenile

G.S. 7B-2513(i)



Recent Research Tells Us

Connection between substance use and reoffending significant for youth age 14 and younger

“courts and probation departments should see substance use as a more pronounced public safety red flag for younger adolescents on probation even though it’s less prevalent among this population.”

Youth Protective Factors Study, *Youth Reoffending: Prevalence and Predictive Risk Factors in Two States* (in materials)