



ADULT PROTECTIVE SERVICES

FEBRUARY 25, 2010



DUTY TO REPORT

- Any person
- With reasonable cause to believe a disabled adult needs protective services
- **SHALL** report
- To the director.



THE REPORT

- Orally or in writing.
- Name and address of disabled adult.
- Name and address of caretaker.
- Age of the disabled adult.
- Nature and extent of injury or
- Condition resulting from abuse or neglect.
- Other pertinent information.



REPORTER IMMUNITY

- Immune from civil and criminal liability
- For reporting
- For giving testimony
- For participating in a required evaluation.
- Exception: bad faith or with a malicious purpose



TIME FRAMES

Initiate:

- Immediately if complaint alleges danger of death if services not provided now.
- Within 24 hours if complaint alleges danger of irreparable harm.
- Within 72 hours if neither danger of death nor irreparable harm is alleged.



THE EVALUATION

- Prompt and thorough
- Includes a visit with the person and consultation with others with information about the situation.
- Social worker entitled to visit with disabled adult without anyone else present



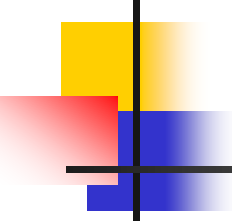
AGENCY ACCESS TO RECORDS

Authority to review and copy records related to care and treatment of disabled adult maintained by any individual, facility, or agency acting as a **CARETAKER** for the disabled adult.



DISABLED ADULT

- Defined as a physically or mentally incapacitated person 18 year of age or older or an emancipated minor.
- The statute sets out a list of specific causes of incapacities that are due to problems from birth, damages from disease and accidents, advanced age, and use of substances.



“DISABLED ADULT... IN NEED OF PROTECTIVE SERVICES”

Defined in the statute:

- If due to physical or mental incapacity, the disabled adult is unable to perform or obtain for himself essential services, and
- The person is without able, responsible, and willing person to perform or obtain the essential services.



WHAT ARE PROTECTIVE SERVICES?

- After the need is determined, protective services are to be mobilized.
- By definition, protective services are services provided by the State or by government or by private organizations or by individuals
- Services to protect the disabled adult from abuse, neglect, or exploitation.



ESSENTIAL SERVICES

- Services necessary to protect the disabled adult are “essential services”.
- Essential services include social, medical, psychiatric, psychological or legal services.
- Services must “safeguard” the “disabled adult’s rights and resources and maintain the physical and mental well-being of the individual.”



SPECIFIC SERVICES

- Medical care for physical and mental health needs.
- Assistance with personal hygiene.
- Food.
- Clothing.
- Adequately heated and ventilated shelter.
- Protection from health and safety hazards.
- Protection from physical mistreatment.
- Protection from exploitation



STATUTORY PARTNERS

- Staff and physicians of local health departments, area mental health, development disabilities, and substance abuse authorities,
- Other public and private agencies
- To cooperate fully with the director in the performance of these duties.



PARTNERS' DUTIES

- Immediate accessible evaluations
- In-Home evaluations the director deems necessary.



ALTERNATIVES

- The director may contract with an agency or private physician to provide immediate accessible medical evaluations.
- The director determines the most appropriate location.



COMPLETING THE EVALUATION

- For allegations of abuse and neglect, the evaluation must be completed within 30 days.
- For allegations of exploitation the evaluation must be completed within 45 days.
- The director must make a written report of the case.



APS & CPS

- BOTH PROTECT
- ALIKE AND DIFFERENT



APS & CPS STATUTORILY

- Statutes:
 - APS: one single article, Article 6 of Chapter 108A, the Social Services Chapter of the General Statutes.—about 6 ½ pages in 2009 ed., including, editor's notes, cross references, and case notes (2 cases).
 - CPS: Juvenile Code, 11 articles in Chapter 7B, Subchapter I. Abuse, Neglect, Dependency, about 200 pages with editor's notes, legal periodical, and case summaries.



APS & CPS CASE LAW

- APS: Few cases appealed. 2 cited. Cases remain in court only long enough to solve a problem—14-180 days.
- CPS: Hundreds of juvenile cases have been appealed to Court of Appeals and Supreme Court in the last few years. A case may remain active for years.

APS & CPS

Definition of Neglect

- Both consider the role of a caretaker in neglect.
- Both include living in an injurious environment as neglect.
- Someone else is responsible for seeing that a juvenile receives proper care, supervision, or discipline, and necessary medical care.
- A disabled adult is neglected if he or she fails to receive services needed to maintain the person's mental and physical health.
- A juvenile is neglected if abandoned; if a disabled adult is abandoned by someone legally responsible, that may be neglect but is more likely a criminal act.



MORE CPS NEGLECT

- The juvenile is not provided remedial care.
- The juvenile is placed for adoption in violation of the law.
- It is also relevant to look at whether another child lives in the home where a child has died as a result of suspected abuse or
- Lives in a home where another child has been subjected to abuse or neglect by an adult who regularly lives in the home.



MORE APS NEGLECT

- A caretaker is neglecting a disabled adult if the disabled adult is a resident of a Chapter 122C State-Owned Mental Health Facility,
- If the professional staff of that facility is of the opinion that the disabled adult is incompetent to
 - Give consent to medical treatment,
 - Has no legal guardian, and
 - Needs medical treatment.



SELF-NEGLECT

- If a disabled adult, due to physical or mental incapacity, is unable to perform or obtain for himself or herself essential services, and
- If that person is without able, responsible, and willing persons to perform or
- Obtain for himself or herself essential services.

APS

ABUSE DEFINED

- The “willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.”
- A part of the definition of exploitation is also abuse: illegal or improper use of a disabled adult for another’s advantage. This may also be a crime.



CPS

ABUSE DEFINED

- 7B-101(1) sets out a comprehensive definition of the abuse of any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker inflicts, creates, commits, permits, encourages, allows, or directs specific acts. A number of criminal statutes are incorporated in the definition.



FINANCIAL EXPLOITATION

- In APS financial exploitation is one part of exploitation.
- Exploitation is defined as “ the illegal or improper use of a disabled adult or his resources for another’s profit or advantage.”
- Major issue with disabled adults. Issue in juvenile cases usually included in neglect.
- In APS and CPS usually by family members.



SELECTED STATUTES DISABLED ADULTS

- G.S. 108A-14. Director of Social Services
- G.S. 108A-80. Confidentiality of Records
- G.S. 108A, Article 6. Disabled Adults
- G.S. 14-27.3. Second-degree Rape.
- G.S. 14-27.5. Second-degree Sexual Offense.
- G.S. 14-27.5A. Sexual Battery.
- G.S. 14-32.1. Assaults on Handicapped Persons.
- G.S. 14-32.3. Domestic Abuse...of Disabled or elder adults.
- G.S. 14-43.12. Involuntary Servitude.



NORTH CAROLINA ADMINISTRATIVE CODE (NCAC)

- 10 NCAC, Subchapter 24B, Confidentiality and Access to Client Records
- 10 NCAC, Subchapter 42V, Protective Services for Adults, Section .0800. Confidentiality.



Manual

- NC DHHS Manual, Chapter VII
Protective Services for Adults
- <http://info.dhhs.state.nc.us>