

North Carolina Adult Protective Services Proceedings

Meredith Smith, Associate Professor, UNC School of Government
October 2025 – District Court Judges Fall Conference



ADULT PROTECTION NETWORK



**SCHOOL OF
GOVERNMENT**

Connecting. Informing. Supporting.

2024-2025 Fiscal Year

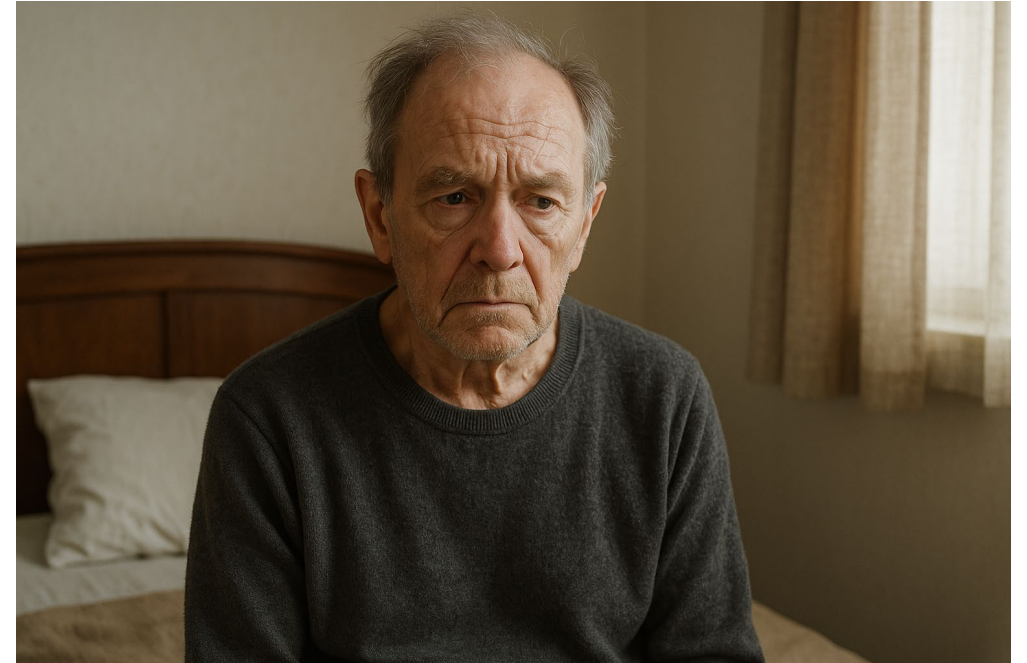
APS Petitions
Filed in NC:
358

The Story of Mr. Johnson

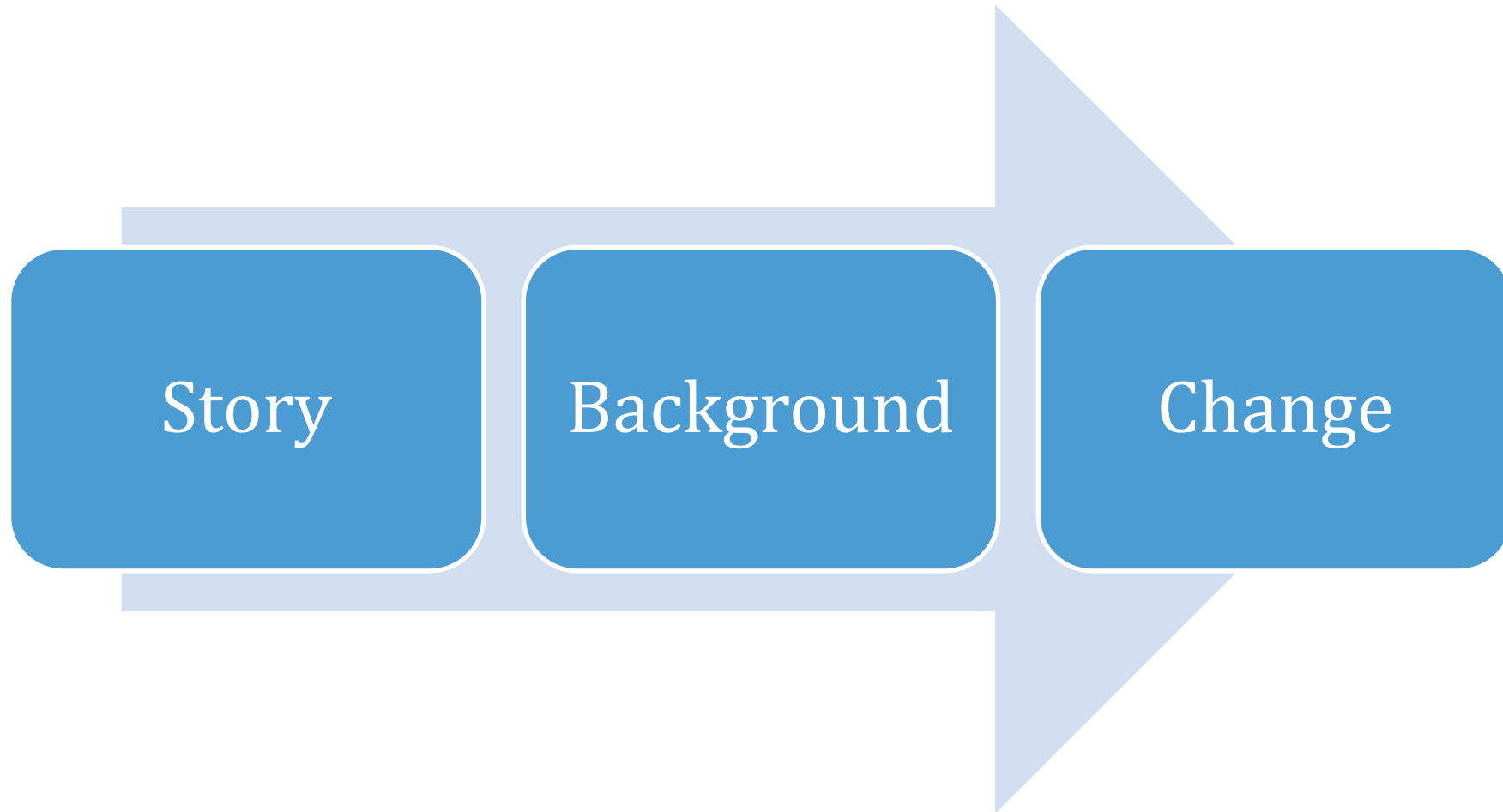
Mr. Johnson is a 78-year-old man with dementia who lives with his adult son, Frank. He has mobility issues and requires assistance getting in and out of bed. Frank helps him with meals, medication, and medical appointments. Mr. Johnson does not drive and relies on Frank for transportation.

Frank regularly yells at him, belittles him, and locks him in his bedroom for long stretches of the day “so he won’t wander.” Mr. Johnson appears to have bed sores that are untreated and bruises that are consistent with falls.

Frank struggles with alcohol and substance use. He has recently failed to provide Mr. Johnson with meals and medications. Frank was arrested for a DUI and remains in jail. Mr. Johnson has no other family or friends.



Session Overview



Background on Adult Protective Services in North Carolina

**G.S. Chapter 108A, Article 6:
Protection of the Abused, Neglected or Exploited
Disabled Adult Act**

Adult Protective Services: Purpose

Provide (temporary) protection for disabled adults in North Carolina who are the subject of abuse, neglect, or exploitation.

G.S. 108A-100.

Adult Protective Services: Purpose

Provide (temporary) protection for **disabled adults** in North Carolina who are the subject of abuse, neglect, or exploitation.

G.S. 108A-100.

Who is a disabled adult?

Any person who is

1. 18 years of age or over or a lawfully emancipated minor
2. Present in N.C. and
3. Who is **physically or mentally incapacitated** due to
 - a. **(lifelong conditions)** an intellectual disability, cerebral palsy, epilepsy or autism;
 - b. **(conditions that occur later in life)** organic brain damage caused by advanced age or other physical degeneration in connection therewith; or
 - c. **(conditions incurred at any age)** the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

G.S. 108A-101(d).



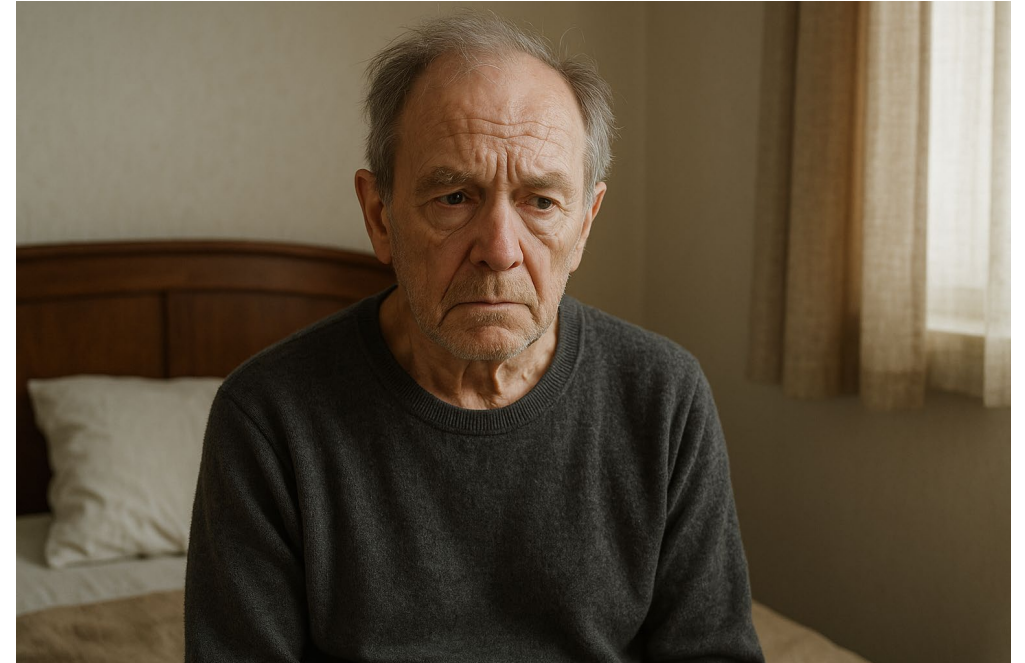
The Case of Mr. Johnson: Disabled Adult

Over 18

Present in North Carolina

Diagnosed with **dementia** which impairs his memory, judgment, and ability to make decisions and meet his basic needs

Physical limitations which make him unable to get out of bed or move around without assistance



Adult Protective Services: Purpose

Provide (temporary) protection for disabled adults in North Carolina who are the subject of abuse, neglect, or exploitation.

G.S. 108A-100.

Abuse

The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services necessary to maintain mental and physical health.

- Physical, sexual, or emotional abuse.

G.S. 108A-101(a).

Caretaker

An individual who has responsibility for care of the disabled adult

- as a result of family relationship or
- voluntarily or by contract.

G.S. 108A-101(b).

Neglect

A disabled adult who is

1. **Self-Neglect:** living alone and not able to provide for themselves the services necessary to maintain their mental or physical health
2. **Caretaker Neglect:** not receiving services from their caretaker.

G.S. 108A-101(m).

Exploitation

The illegal or improper use of a disabled adult or their resources for another's profit or advantage.

- Only prong not limited to self or caretaker.
- Includes but not limited to financial exploitation.

G.S. 108A-101(j).

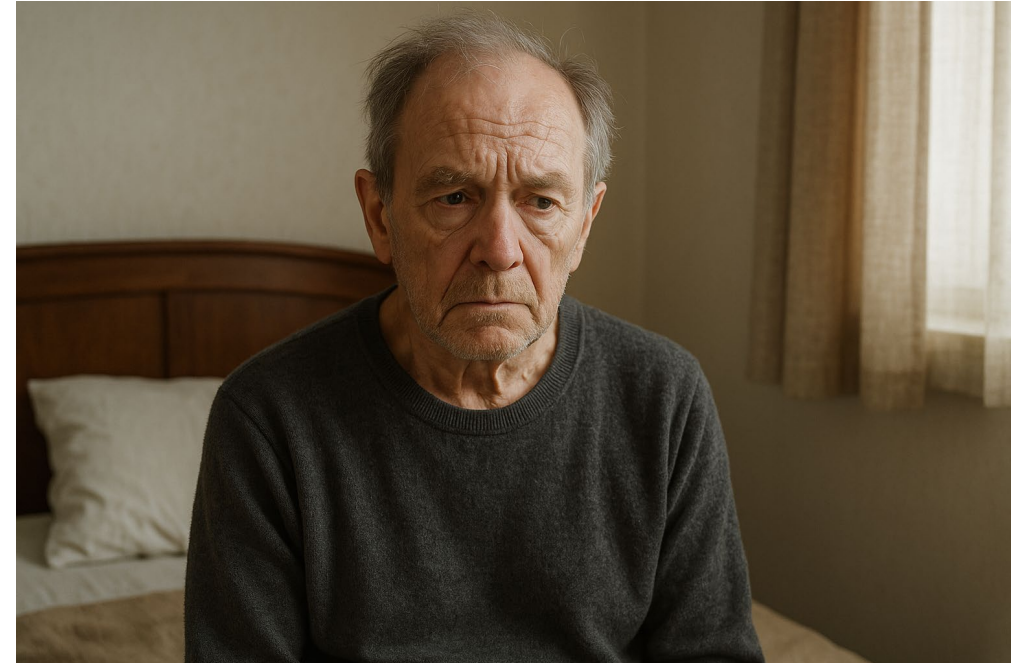
The Case of Mr. Johnson: Abuse, Neglect, or Exploitation

Abuse

- Willful infliction of mental anguish by a caretaker – berated him and yelled at him
- Unreasonable confinement in his room by caretaker – locked him in his room

Neglect

- Not receiving necessary services from caretaker – not providing meals and medication



Adult Protective Services: Purpose

Provide (temporary) **protection** for disabled adults in North Carolina who are the subject of abuse, neglect, or exploitation.

G.S. 108A-100.

Disabled Adult “In Need of” Protective Services

The person:

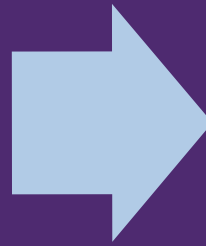
- **(personal limitation)** due to his physical or mental incapacity, is unable to perform or obtain for themselves essential services and
- **(external limitation)** is without able, responsible, and willing persons to perform or obtain for his essential services.

G.S. 108A-101(e).

Protective Services

(How)

- APS report; evaluation; substantiation
- Consent or court authorization for services
 - Case management; coordination
 - Referral; advocacy



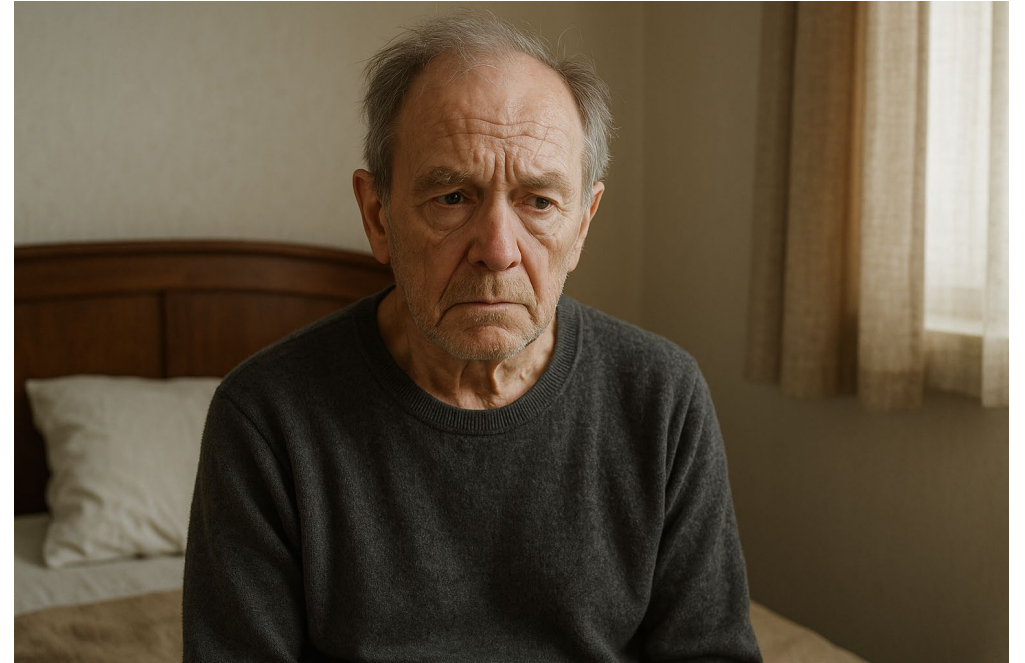
Essential Services

(What)

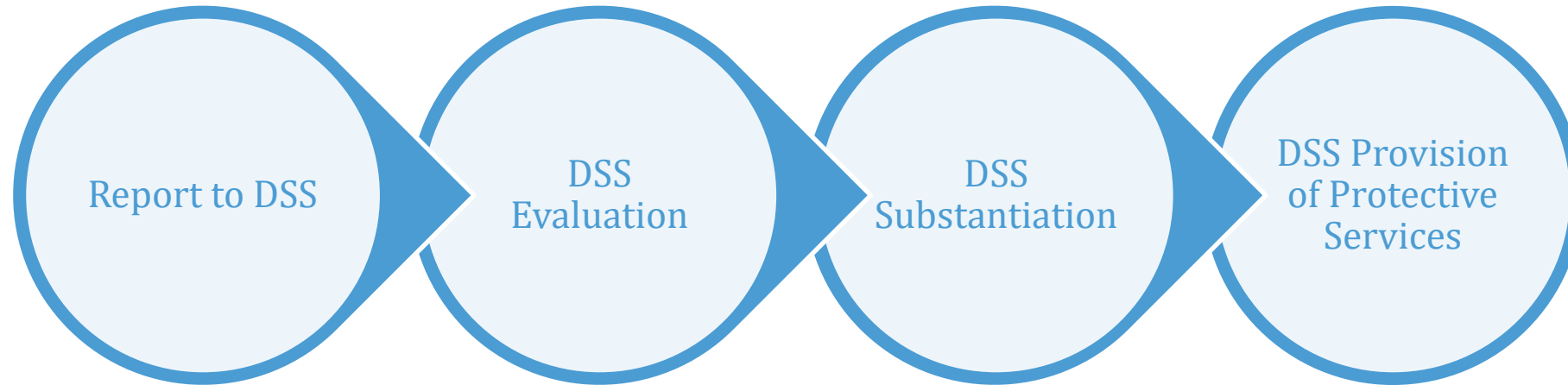
- Medical care; medication access
 - Food and nutrition
 - Shelter and safety
 - Personal care
 - Utility restoration

The Case of Mr. Johnson: In Need of Protective Services

- Lacks essential services: food, medication, medical care, transportation, safe housing
- Unable to provide for himself due to dementia and physical limitations
- His only caregiver, Frank, is in jail and he has no other able, responsible, and willing person to perform or obtain services for him (no other friends, family, agent under a POA, guardian, etc.)

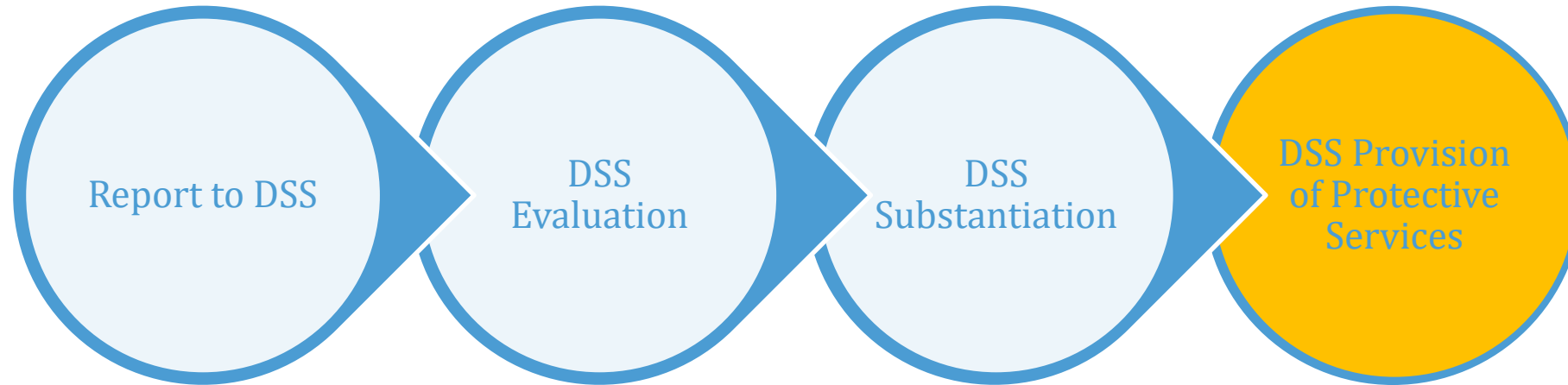


The APS Model in North Carolina



**Why is a court order needed in
Mr. Johnson's case?**

The APS Model in North Carolina



APS and the Role of Consent

Adult with capacity

- DSS must seek consent
 - If consent received, DSS mobilizes essential services
 - If consent **not** received, DSS may not provide services

Adult lacks capacity*

- DSS petitions the court for authorization to act on the disabled adult's behalf
 - APS order
 - Guardianship order

*“Lacks Capacity to Consent to Services” - The person lacks sufficient understanding or capacity to **make or communicate responsible decisions** concerning his **person**.
G.S. 108A-101(l).

What are the primary types of APS orders?

APS Protective Order: G.S. Chapter 108A, Article 6

Ex Parte
Order
Authorizing
Emergency
Services
G.S. 108A-106(d)

Order
Authorizing
Emergency
Services
G.S. 108A-106

Order
Authorizing
Protective
Services
G.S. 108A-105

Grounds: Order Authorizing Protective Services, G.S. 108A-105

1. Disabled adult
2. Subject to abuse, neglect, or exploitation
3. In need of protective services
4. Lacks the capacity to consent to services

Quick Picture:

Petition and Order Authorizing Protective Services, G.S. 108A-105

1. Hearing must be **held 14 days** from filing of the petition
2. Disabled adult entitled to at **least 5 days notice** prior to the hearing
3. If the disabled adult lacks capacity to consent to waive right to counsel, entitled to **appointment of an attorney guardian ad litem**
4. The order:
 - Authorizes the provision of protective services
 - Identifies who is authorized to provide or arrange for services
5. Authorization in the order may be up to **60 days**, with an option to extend for an **additional 60 days** for good cause

APS Protective Order: G.S. Chapter 108A, Article 6

Ex Parte
Order
Authorizing
Emergency
Services
G.S. 108A-106(d)

Order
Authorizing
Emergency
Services
G.S. 108A-106

Order
Authorizing
Protective
Services
G.S. 108A-105

Grounds: Order Authorizing Emergency Services, G.S. 108A-106

1. Disabled adult
2. Subject to abuse, neglect, or exploitation
3. In need of protective services
4. Lacks the capacity to consent to services
5. An emergency* exists
6. No other person authorized by law or order to give consent for the respondent is available and willing to arrange for emergency services

*Substantial danger of death or irreparable harm if protective services are not provided immediately together with other elements in G.S. 108A-101(g).

Quick Picture:

Petition and Order Authorizing Emergency Services, G.S. 108A-106

1. Hearing held **as soon as possible** after filing of the petition
2. Disabled adult entitled to **24 hours notice** prior to the hearing
3. If the disabled adult lacks capacity to consent to waive right to counsel, entitled to appointment of an attorney guardian ad litem
4. The order:
 - Authorizes the provision of **emergency services (necessary to protect vital functions); may include physical custody**
 - Identifies who is authorized to provide or arrange for services
5. Authorization in the order may be up to **14 days** (if longer period needed, then protective order must be sought)

APS Protective Order: G.S. Chapter 108A, Article 6

Ex Parte
Order
Authorizing
Emergency
Services
G.S. 108A-106(d)

Order
Authorizing
Emergency
Services
G.S. 108A-106

Order
Authorizing
Protective
Services
G.S. 108A-105

Grounds:

Ex Parte Order Authorizing Emergency Services, G.S. 108A-106(d)

1. Disabled adult
2. Subject to abuse, neglect, or exploitation
3. In need of protective services
4. Lacks the capacity to consent to services
5. An emergency exists
6. No other person authorized by law or order to give consent for the respondent is available and willing to arrange for emergency services
7. There is a likelihood the respondent may suffer irreparable injury or death if the emergency services order is delayed
8. Reasonable attempts have been made to locate interested parties and secure emergency services from them or their consent to services for the respondent

Quick Picture: Petition and Ex Parte Order Authorizing Emergency Services, G.S. 108A-106(d)

1. Heard **as soon as possible** after filing of the petition
2. Disabled adult **not entitled to notice** prior to entry of the order
3. **No appointment of counsel prior to entry of ex parte order**
4. The order:
 - Authorizes the provision of **emergency services (necessary to protect vital functions); may include physical custody**
 - Identifies who is authorized to provide or arrange for services
5. Authorization in the order may be up to **14 days, until dissolved or modified by the court, or until hearing and order on the emergency services petition**

Legislative Changes Affecting APS

G.S. Chapter 108A, Article 6: Types of APS Orders

Ex Parte

Order
Authorizing
Emergency
Services

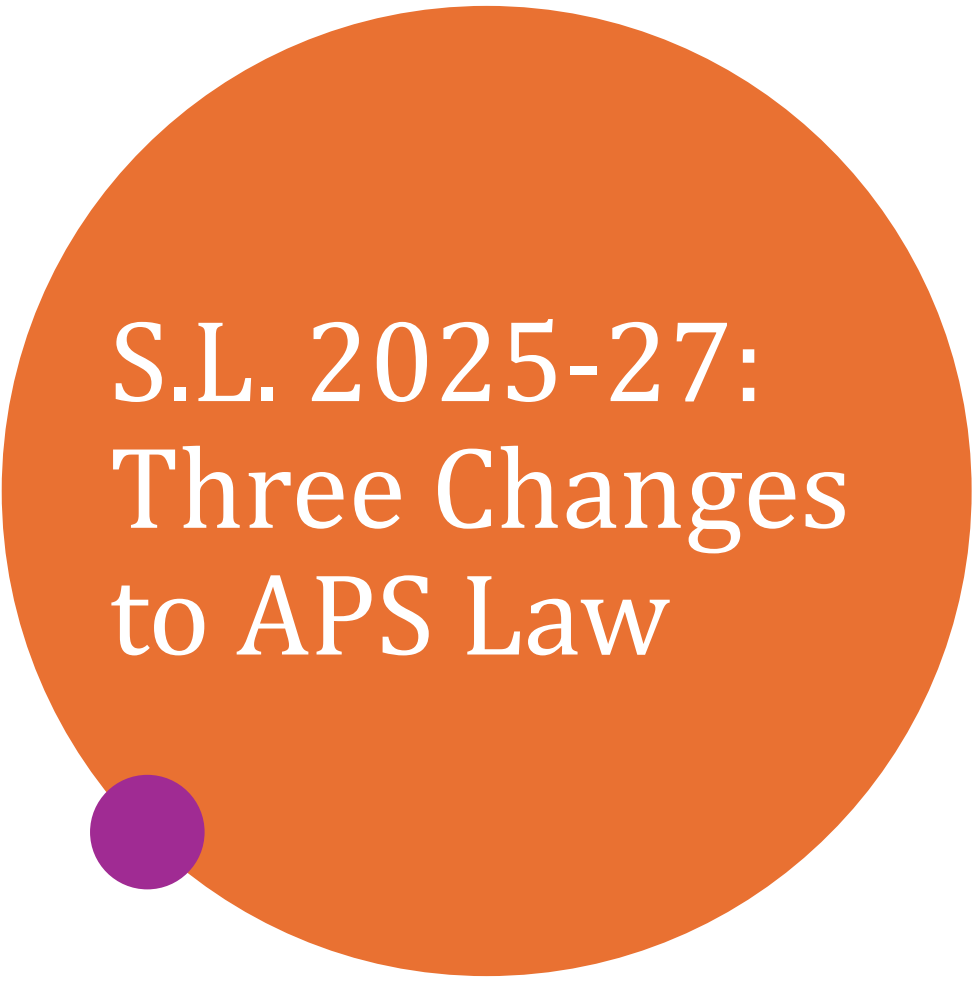
G.S. 108A-106(d)

Order
Authorizing
Emergency
Services

G.S. 108A-106

Order
Authorizing
Protective
Services

G.S. 108A-105



S.L. 2025-27: Three Changes to APS Law



#1: DSS may file an emergency APS petition after hours that seeks ex parte relief

#2: “Authorized Magistrates” may hear ex parte petitions for emergency services and enter ex parte orders

#3: District court judges and Authorized Magistrates to may authorize ex parte emergency services orders telephonically

Effective November 1, 2025

#1: New G.S. 108A-106.1 – Filing When Clerk's Office is Closed

- (a) **When the office of the clerk is closed, a magistrate** shall accept for filing a **petition for an order authorizing the provision of emergency services** to a disabled adult and shall note the date of the filing.
- (b) The authority of the magistrate under this section is limited to **emergency situations in which a petition is filed under G.S. 108A-106 seeking an order ex parte** for the provision of emergency services to a disabled adult. Any magistrate who accepts a petition for filing under this section shall deliver the petition to the clerk's office for processing as soon as that office is open for business.

After-Hours Filings: Implications for District Court Judges

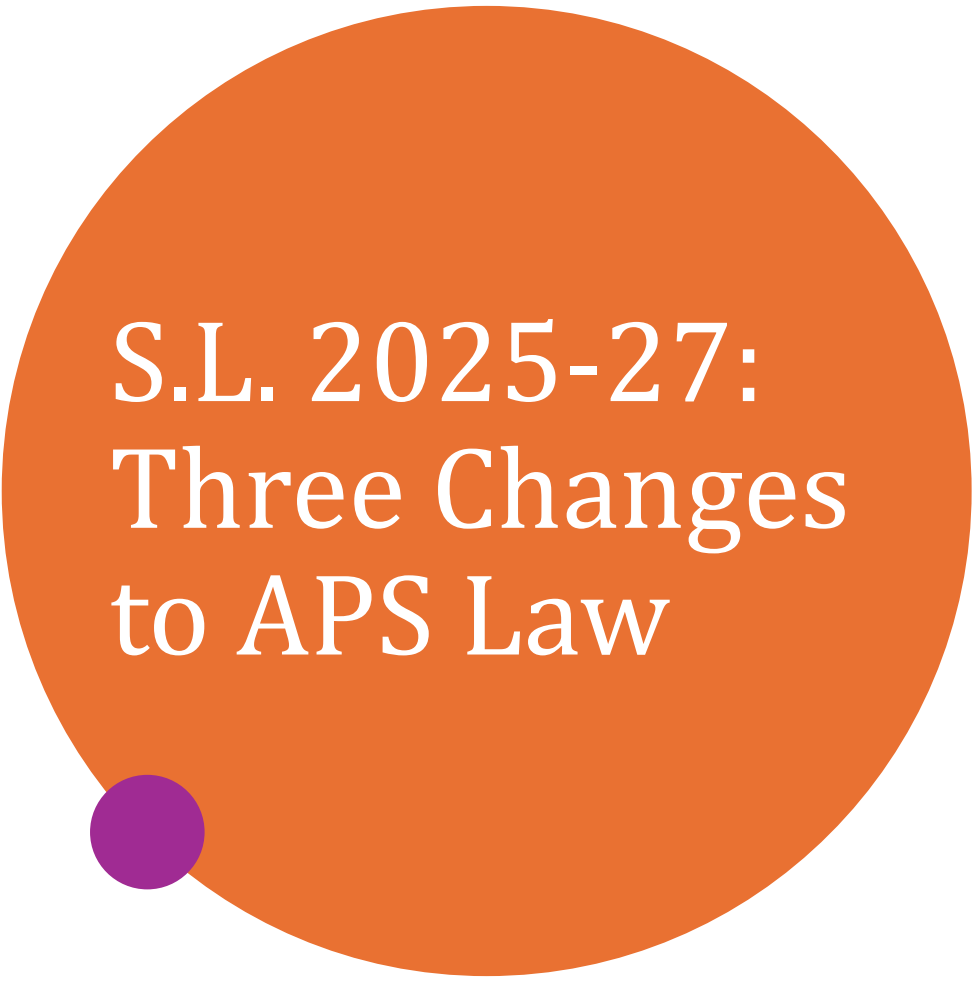
May be asked to hear and decide a petition for an order authorizing ex parte emergency services after-hours.

Key issues to consider in advance:

1. **Appointment of a GAL attorney** in the ex parte order – who to appoint; what list, if any, to use.

☐ 5. The Court appoints (name) _____, Attorney at Law as guardian ad litem for the respondent in this action.

2. **Procedure to contact a district court judge to hear** the ex parte motion and enter the order after hours or when the district court is not in session.



S.L. 2025-27: Three Changes to APS Law



#1: DSS may file an emergency APS petition after hours that seeks ex parte relief

#2: “Authorized Magistrates” may hear ex parte petitions for emergency services and enter ex parte orders

#3: District court judges and Authorized Magistrates to may authorize ex parte emergency services orders telephonically

Effective November 1, 2025

#2: New G.S. 108A-106.2 – Ex Parte Emergency Orders by Authorized Magistrates

- (a) The **chief district court judge may authorize one or more magistrates** to hear **ex parte motions** for the provision of emergency services to disabled adults and **issue a show-cause notice in the order** as required by G.S. 108A-106(d). A magistrate may proceed with hearing a motion ex parte and issuing a show-cause notice under this subsection only if, prior to the hearing, the magistrate determines that at the time the party is seeking emergency services ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion.

#2: New G.S. 108A-106.2 – Ex Parte Emergency Orders by Authorized Magistrates

- (a) The chief district court judge may authorize one or more magistrates to hear ex parte motions for the provision of emergency services to disabled adults and issue a show-cause notice in the order as required by G.S. 108A-106(d). **A magistrate may proceed with hearing a motion ex parte and issuing a show-cause notice under this subsection only if, prior to the hearing, the magistrate determines that at the time the party is seeking emergency services ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion.**

“Authorized Magistrate” to Enter Ex Parte Orders

1. Chief district court judge authorized the magistrate to hear the petition and enter the ex parte order,
2. District court is not in session, and
3. A district court judge is not and will not be available to hear the motion.

G.S. 108A-106.2(a).

If Do Authorize Magistrates

Chief district court judge:

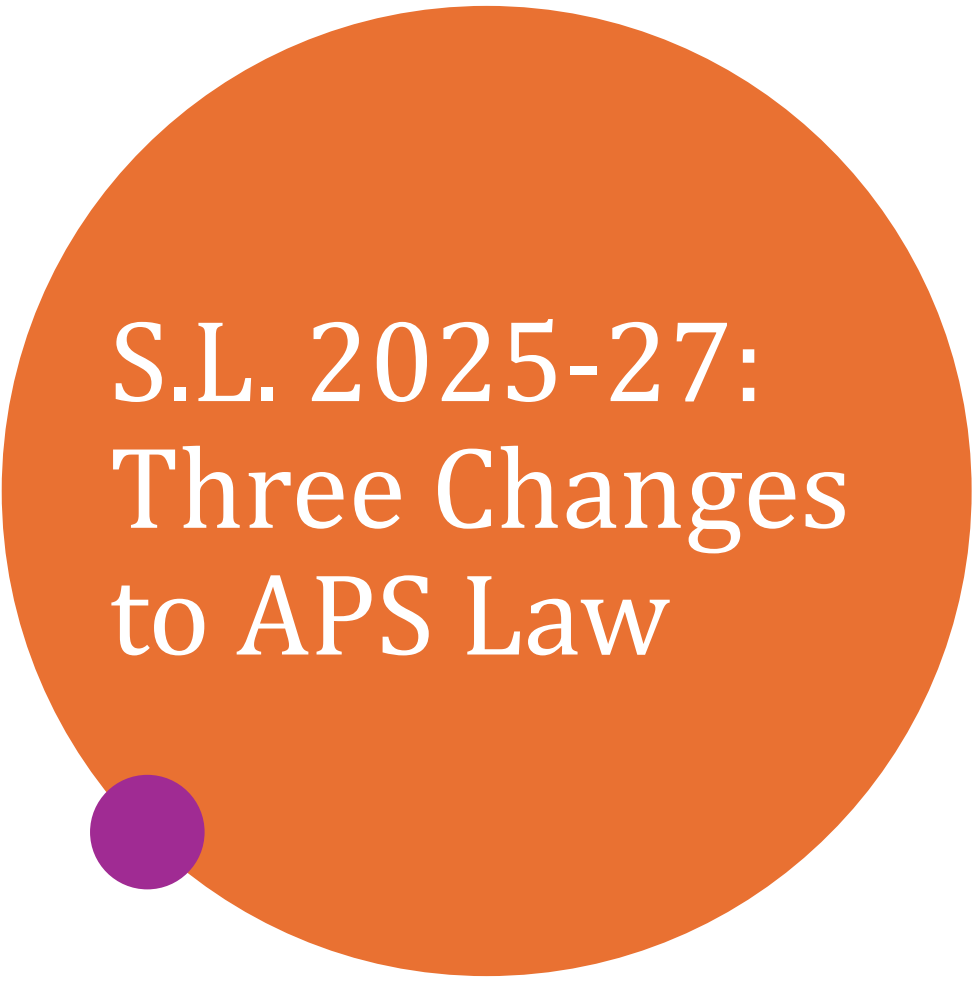
1. Document authorization – administrative order?
 - Identify which magistrates are authorized
 - Define conditions for when a judge “is not and will not be available to hear the ex parte motion”
2. Provide guidance on appointment of a GAL attorney – how determine who to appoint

Whether or Not Authorize Magistrates

Chief district court judge:

If an order is entered granting or denying ex parte relief when the clerk's office is closed, establish guidance on scheduling emergency services hearing.

- What session of court?



S.L. 2025-27: Three Changes to APS Law

#1: DSS may file an emergency APS petition after hours that seeks ex parte relief

#2: “Authorized Magistrates” may hear ex parte petitions for emergency services and enter ex parte orders

#3: District court judges and Authorized Magistrates to may authorize ex parte emergency services orders telephonically

Effective November 1, 2025

New G.S. 108A-106.2(c) - Telephonic authorizations

All authorizations for ex parte orders for emergency services may be made by telephone when other means of communication are impractical.



New G.S. 108A-106.2(c) - Telephonic authorizations

Copy of the Petition. A copy of the petition for an order authorizing the provision of emergency services shall be provided to the **district court judge or the authorized magistrate** by any appropriate method, including hand delivery, facsimile, or electronic means.

Ex Parte Order. Any order entered pursuant to telephonic communication must bear:

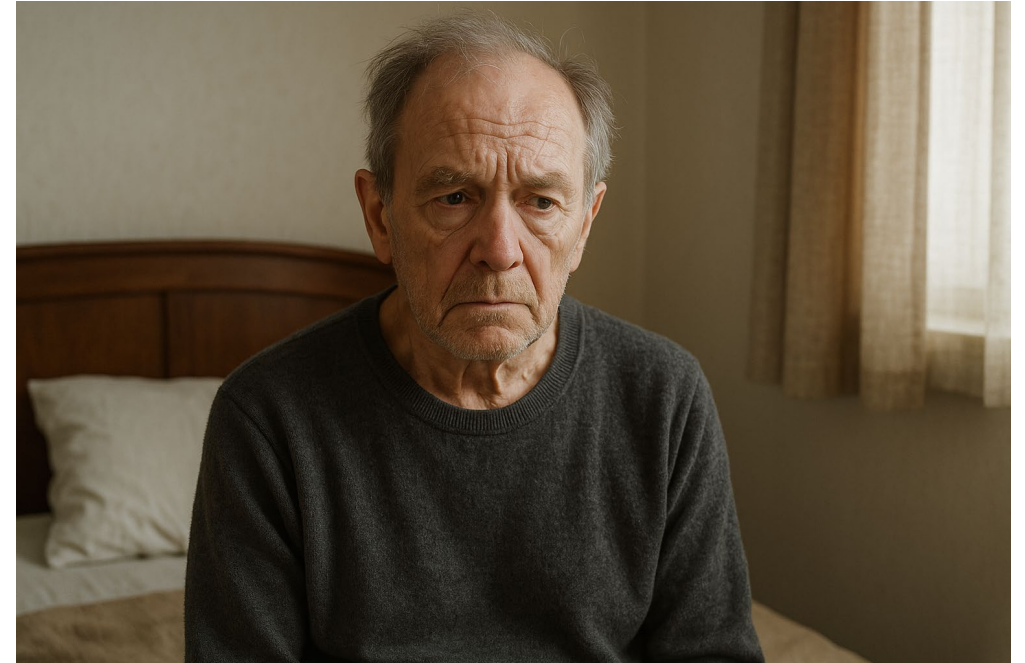
- the name and the title of the DSS director,
- the name and the title of the district court judge or Authorized Magistrate issuing the ex parte order,
- the hour and date of the telephonic authorization, and
- the signature and the title of the clerk or magistrate receiving the authorization and entering the order and who accepted the petition for filing.



The Case of Mr. Johnson: (Ex Parte) Emergency Services

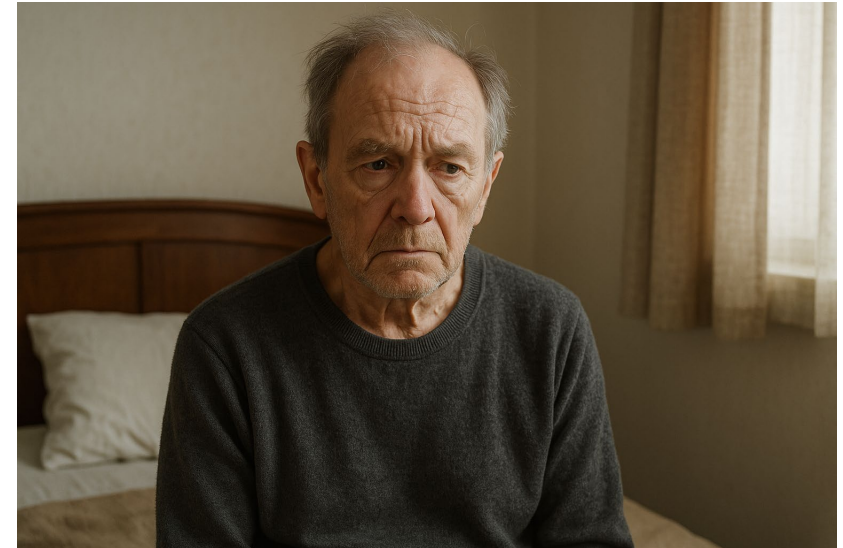
No access to food, medication, or transportation.

Home alone; no other means of support; caretaker who he is dependent on is in jail; no agent under a power of attorney, guardian, or other authorized on his behalf



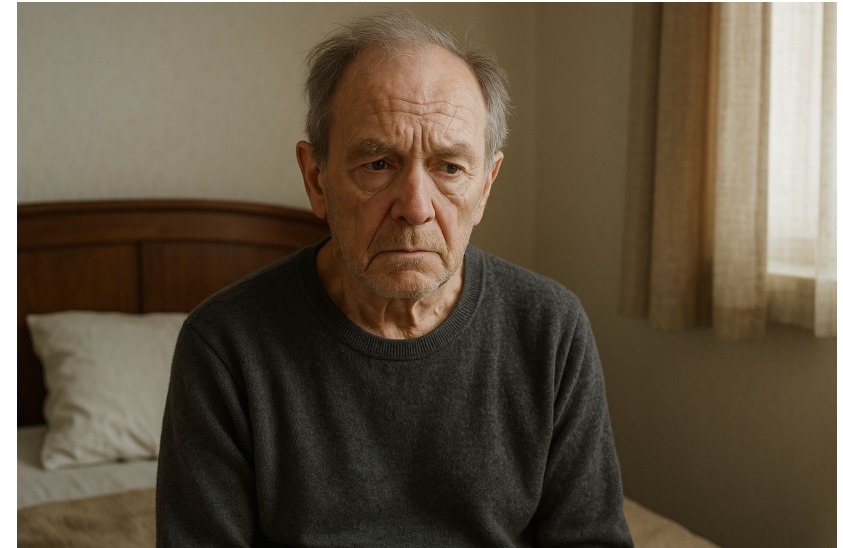
The Case of Mr. Johnson: **Ex Parte Order for Emergency Services / Order for Emergency Services**

- Authorization to provide or consent to emergency services reasonably necessary to remove the conditions creating the emergency
- Who is authorized to provide or give consent to provide: DSS (petitioner)
- Emergency services:
 - Authority to enter the premises
 - Authority to take physical custody of Mr. Johnson
 - Consent to medical evaluation and treatment
 - Provide nutritional support (food and fluids)
 - Arrange temporary safe placement



The Case of Mr. Johnson: **Order for Protective Services**

- **Authorization to provide or consent to protective services**
- **Who is authorized to provide or give consent to provide: DSS (petitioner)**
- **Protective services:**
 - Consent to continuing medical care
 - Provide nutritional support (Meals on Wheels)
 - Arrange housing repairs/modifications
 - Arrange for in home aide
 - Arrange for transportation supports



Materials for this Session



[Home](#) | [About](#) | [Contributors](#) | [Categories](#) | [Subscribe to the Blog](#)



Legislative Changes to Ex Parte Proceedings for the Provision of Emergency Services to Disabled Adults



This entry was contributed by Meredith Smith on September 30, 2025 at 12:20 pm and is filed under Adult Protective Services.

On November 1, 2025, legislative changes to North Carolina adult protective services (APS) law take effect pursuant to [Session Law 2025-27, Part V](#). There are three primary changes reflected in two new statutes, G.S. 108A-106.1 and -106.2.

1. Magistrates are authorized to accept for filing petitions for the provision of emergency services to disabled adults when the clerk's office is closed and the petitioner requests the court enter an ex parte emergency services order. S. 108A-106.1.
2. Certain "Authorized Magistrates" (defined below) may hear petitions for the provision of emergency services to disabled adults and enter ex parte emergency services orders. G.S. 108A-106.2(a), (b).
3. District court judges and Authorized Magistrates may authorize ex parte emergency services

*Fall District Court Judges Conference
October 2025
APS Proceedings: Handout*

Issues for Consideration by the Chief District Court Judge and Magistrates as a Result of Session Law 2025-27

Effective Date: November 1, 2025

Applicable Statutes: New G.S. 108A-106.1 and -106.2

[Session Law 2025-27, Part V](#) makes changes to North Carolina adult protective services law related to emergency petitions and ex parte orders authorizing the provision of emergency services to a disabled adult. The following topics identify key issues for consideration and decision-making at the local level to assist in implementation of this new law. For more information about the legislative changes resulting from S.L. 2025-27, refer to [this blog post](#).

1. Decision Whether to Authorize Magistrates.

The chief district court judge (the "chief") has discretion to authorize magistrates to hear ex parte motions for the provision of emergency services and enter an ex parte order for emergency services. G.S. 108A-106.2(a).

- a. Authorization decision: The chief considers whether or not to authorize one or more magistrates.
- b. Recommended practice: If the chief authorizes one or more magistrates, the authorization may be documented in a written administrative order.

New/Revised AOC Forms are Coming.....

Revised **Petition** for Protective Services, Emergency Services, and Ex Parte Emergency Services (CV-770)

New Separate **Ex Parte Order** for Emergency Services (CV-785; replaces CV-775)

New Separate **Order for Emergency Services** (CV-786 ; replaces CV-775)

Revised **Order for Protective Services** Order (CV-773)



Questions?

Meredith Smith

UNC School of Government

meredith.smith@sog.unc.edu