

# Consideration of Substance Abuse in Custody Cases

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# 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

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## **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

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

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

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*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

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# Fitness and Best Interests

Substance abuse 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 abuse 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 abuse 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).