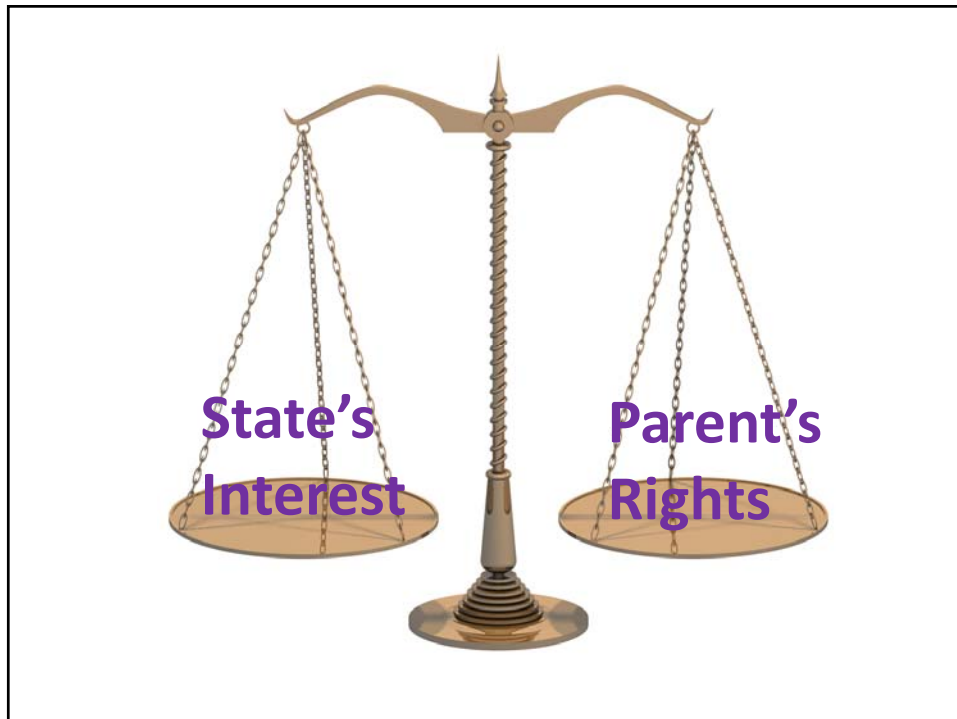


## Director's Authority to Consent to Health Care



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## The State's interest Why Does County Need to Consent?

- Ensure juvenile's health needs are timely met
  - Emergency
  - Routine
  - Other treatment
- Protect placement provider
  - Communicable diseases/viruses, lice, etc.

## Constitutional Rights



nor shall any state deprive any person  
of life, liberty, or property, without due  
process of law...

## What Does That Mean?

"[w]ithout doubt" the fourteenth amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, **establish a home and bring up children**, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390 (1923)

## What Does it Mean for Parents

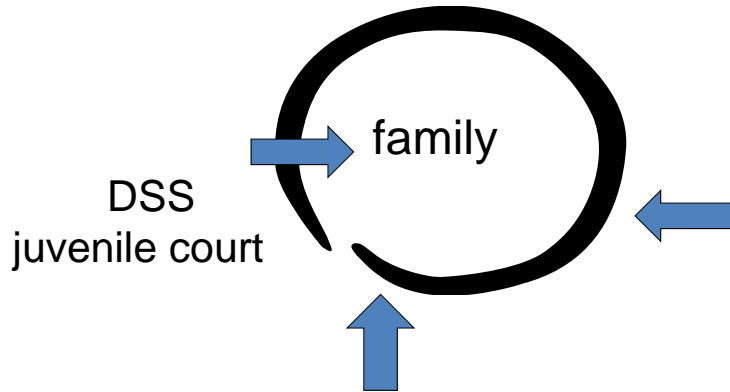
- Care
- Custody
- Control
- Companionship



*Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is **perhaps the oldest of the fundamental liberty interests** recognized by this Court."

## State Action Affecting Constitutional Rights

When and how may the state intervene in families for the purpose of child protection?



### Juvenile Code

Defines the Scope of Permissible Intervention  
[G.S. 7B-101]

- *Abused juvenile*
- *Neglected juvenile*
- *Dependent juvenile*



## The Fourteenth Amendment



The state may interfere with the parent-child relationship only when the parent is unfit OR has acted inconsistently with their constitutionally protected interest.

***Lehr. V. Robertson***, 463 U.S. 248 (1983)

## North Carolina Cases



- ***Petersen v. Rogers***, 337 N.C. 397 (1994)

Absent a finding that parents are **unfit or have neglected the welfare of their children**, the constitutionally-protected paramount right of parents to custody, care and control of their children must prevail.”

- ***Price v. Howard*** 346 N.C. 68 (1997)

The state may interfere with the parent-child relationship only when the parent is **unfit OR has acted inconsistently with the parent’s constitutionally protected interest**.



- “Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy.” Price v. Rogers
- “Here, the children have been adjudicated dependent and neglected by their parents... and their legal custody now resides with DSS. The children have been removed from their home and placed in foster care because their parents failed to provide adequate shelter, clothing, food, medical care and formal education. By their failure to provide basic necessities for their children, appellants have acted in a manner inconsistent with their constitutionally protected parental relationship.” In re Stratton, 153 N.C. App. 428 (2002)

## Dependency?

- “A finding that defendant's children had been adjudicated dependent in an earlier proceeding is not alone sufficient to establish that defendant has acted in a manner inconsistent with her parental status.”

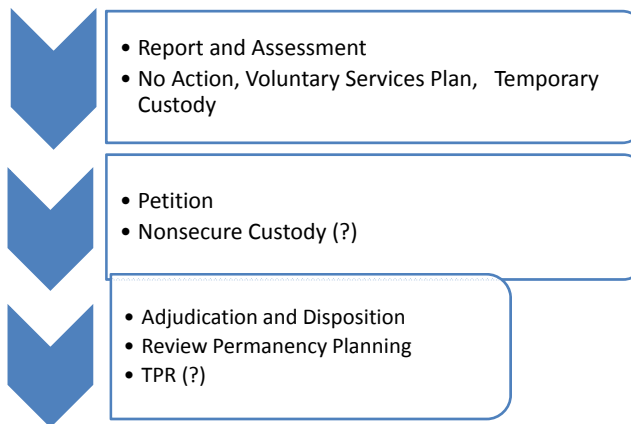
Rodriguez v. Rodriguez, 211 N.C. App. 267, 278, 710 S.E.2d 235, 243 (2011)

## Procedural Due Process

- Right to Receive Notice of Proceedings
- Right to Participate in Hearings
- Appropriate Standard of Proof

**Impacts DSS Authority on Decision-Making**

## Stages of DSS Involvement



## Grounds for Temporary Custody by DSS (G.S. 7B-500)

*Reasonable grounds to believe* the child

1. is abused, neglected or dependent, and
2. would be injured or could not be taken into custody if court order obtained first

## Request for Nonsecure Custody Order [G.S. 7B-502 through 505, 507]

1. a petition has been filed
2. *reasonable factual basis to believe*
  - a. allegations in petition are true,
  - b. 1 of 6 grounds exist
  - c. no other reasonable means to protect child
3. must first consider release to parent, relative, other responsible adult.

The image shows a small, low-resolution thumbnail of a legal form. The header of the form reads "STATE OF NORTH CAROLINA DEPARTMENT OF SOCIAL SERVICES". Below the header, there are several lines of text and checkboxes, which appear to be part of a petition or request form. The text is too small to read clearly, but it seems to contain fields for names, addresses, and possibly dates or signatures.



## Nonsecure Custody AOC-J-150, J-151

Upon the verified petition, this Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile.

1. As grounds for the issuance of this Order, the Court finds that there is a reasonable factual basis to believe that the matters alleged in the petition are true, that there are no other reasonable means available to protect the juvenile, and (check one or more)

- a. the juvenile has been abandoned.
- b. the juvenile has suffered physical injury or sexual abuse.
- c. the juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
- d. 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.
- e. the parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
- f. the juvenile is a runaway and consents to nonsecure custody.

## Nonsecure Custody Hearings (G.S. 7B-506)

- 7 calendar days
- 7 business days
- every 30 calendar days

DSS burden = *clear and convincing evidence*



## Adjudication

[G.S. 7B-800 to -807]

- within 60 days after petition is filed
- DSS burden = *clear and convincing evidence*
- Status of Child: abused, neglected, dependent



## Disposition

[G.S. 7B-900 to -905.1]

- hearing within 30 days after adjudication
- **Best Interests of the Child**

### Review and permanency planning hearings

[G.S. 7B-906.1]

- Review within 90 days after disposition, and then every 6 months
- **Best Interests of the Child**

## NC Pediatric Society: Fostering Health NC

To obtain pdf on  
Best Practices for DSS Social Workers  
<http://www.ncpeds.org/county-dept-social-services-professionals-online-library>

### Fostering Health NC Recommends

- Initial visit within 72 hours
  - Assessment of acute care needs
- 30-day comprehensive visit
- Follow up well-visits
  - Should start between 60 to 90 days of placement
  - Include any evaluations needed based on child's age:
    - Mental health
    - Developmental
    - Educational
    - Dental

## Who can consent

### Minors: G.S. 90-21.5



Venereal Disease  
Pregnancy  
Substance abuse  
Emotional disturbance



## G.S. 90-21.1

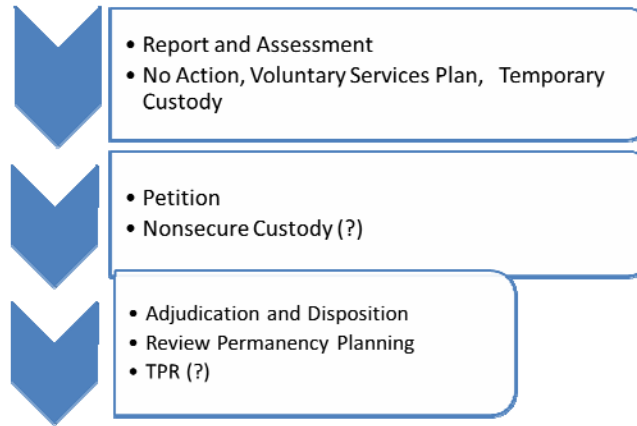


- Mother or Father
- Guardian
- Person in loco parentis

### Exceptions:

- Unknown child
- Necessity of Tx so apparent, delay would endanger child's life
- Cannot be located with reasonable diligence in time minor needs Tx
- Delay would seriously worsen condition
- Where the parents refuse to consent & the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child. But, first physician shall first obtain 2nd opinion of another NC licensed physician that such procedure is necessary to prevent immediate harm to the child.

## DSS consent, Depends on Stage



## Nonsecure Custody AOC-J-150, J-151

and upon the verified petition, this Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile.

1. As grounds for the issuance of this Order, the Court finds that there is a reasonable factual basis to believe that the matters alleged in the petition are true, that there are no other reasonable means available to protect the juvenile, and (check one or more)

- a. the juvenile has been abandoned.
- b. the juvenile has suffered physical injury or sexual abuse.
- c. the juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
- d. 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.
- e. the parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
- f. the juvenile is a runaway and consents to nonsecure custody.

# Initial NonSecure Custody

AOC-J-150

- The Department of Social Services is authorized to arrange and consent to:
- a. treatment the medical provider recommends in order to cure, alleviate, or prevent the juvenile from suffering physical harm pursuant to 1(d) set forth above as a ground for nonsecure custody.
  - b. only the following types of evaluation and/or treatment, after first attempting to obtain consent from the juvenile's parent, guardian, custodian, or caretaker:

# Continued NonSecure Custody

AOC-J-151

- The Department Of Social Services is authorized to arrange and consent to:
- a. treatment the medical provider recommends in order to cure, alleviate, or prevent the juvenile from suffering physical harm pursuant to 6(d) set forth on the reverse as a ground for nonsecure custody.
  - b. only the following types of evaluation and/or treatment, after first attempting to obtain consent from the juvenile's parent, guardian, custodian, or caretaker:

## What is the Adjudication Ground?

**STATE OF NORTH CAROLINA** File No. \_\_\_\_\_

\_\_\_\_\_ County In The General Court Of Justice  
District Court Division

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**IN THE MATTER OF:**

Name And Address Of Juvenile \_\_\_\_\_

Juvenile's Date Of Birth \_\_\_\_\_ Age \_\_\_\_\_

Date Of Hearing \_\_\_\_\_ G.S. 7B-101, -805, -807

This case was heard at a session for juvenile hearings on a Petition alleging the above named juvenile to be:

Abused     Neglected     Dependent

The following persons were present at the hearing:

NAME	RELATIONSHIP/TITLE	NAME	RELATIONSHIP/TITLE

**FINDINGS**

For purposes of adjudication, the Court finds as follows:

1. The Court has jurisdiction over the parties and the subject matter.
2. Based on the evidence presented:
  - a. the allegations in the petition have not been proven by clear and convincing evidence.
  - b. the following facts have been proven by clear and convincing evidence: *(continue facts on reverse and/or on attached page(s) if necessary.)*

# What is the Disposition Order? Who Has Custody? Does it Address Medical Care?

<b>STATE OF NORTH CAROLINA</b>			File No. _____
_____ County			In The General Court Of Justice District Court Division
<b>IN THE MATTER OF:</b>			
Name And Address Of Juvenile _____ _____			<b>JUVENILE DISPOSITION ORDER (ABUSE/NEGLECT/DEPENDENCY)</b>
Juvenile's Date Of Birth	Age	Date Of Hearing	G.S. 7B-101, -905
This case came on for disposition, the above named juvenile having been found within the juvenile jurisdiction of the Court as: <input type="checkbox"/> Abused <input type="checkbox"/> Neglected <input type="checkbox"/> Dependent			
The following persons were present at the hearing:			

## G.S. 7B-903(a)(2)c.

- The director may, unless otherwise ordered by the court,
  - arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment.
  - In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes.
  - Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d).

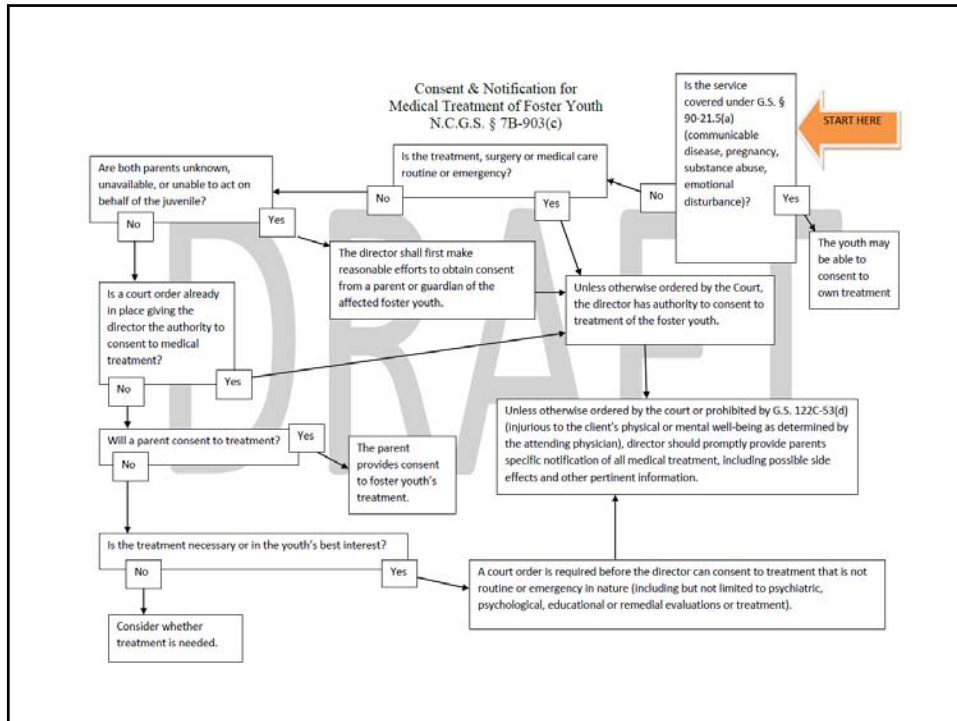
## What is Routine?

Physical?  
Immunizations?  
Teeth Cleaning?  
Antibiotic for Ear Infection?

## What is Non-Routine?

- Any mental health treatment
- Psychotropic medications
- Participation in clinical trials
- Surgical, medical, or dental procedures requiring informed consent
- Immunizations, only if bona fide religious objection\
- CME





## Increased Parental Involvement

- Short term limitations
- Long term limitations
- Older child’s wishes
- Past medical decisions
- Transportation