

The Conditions Defined: Neglect, Abuse, Dependency, and Maltreatment

This chapter will leave some readers frustrated, because it will not answer some of the questions they hoped it would resolve. When someone points to a child's situation and asks "Is this abuse?" or "Is that neglect?" a *yes* or *no* answer often is not possible. The answer may be "It depends," or simply "No one knows for sure."

People trying to decide whether to make reports should not assume that they alone are uncertain about the applicability of particular terms. The question of whether a given set of facts constitutes "abuse," "neglect," or "dependency" will be asked at several stages in a child protective services case, and it is not unusual for the question to be answered differently at different stages. That is because the degree of certainty required is not the same at every stage¹ and also because at each stage, a different person or entity is called on to interpret and apply the key definitions. In addition to the person deciding whether to make a report, those may include

1. one or more individuals at the department of social services who must determine whether, if the information given in the report is true, the child is abused, neglected, or dependent;
2. other people in the department of social services who conduct an agency review if the report is not accepted for investigation and the person who made the report asks for a review of that decision;
3. a social worker who investigates a report and must determine (with others in the department) whether to substantiate the report;
4. a prosecutor who is asked by the person who made a report to review a social services department's decision not to substantiate abuse, neglect, or dependency;
5. a social services attorney advising the department in regard to whether to file a petition or which condition(s) to allege in a petition;
6. a judge (or the chief judge's designee) deciding whether to grant a nonsecure custody order to remove the child from the home before a full hearing on a petition;

7. the child's guardian ad litem and attorney advocate, and the parents and their attorneys, in deciding how to respond to a petition, including whether to contest it;
8. the district court judge who presides over the adjudication hearing;
9. a three-judge panel of the court of appeals, when a case is appealed; or
10. the North Carolina Supreme Court, when it reviews a decision of the court of appeals.

This chapter attempts to explain what is clear about the meaning of abuse, neglect, dependency, and maltreatment and to acknowledge some important areas of uncertainty.

Neglect

The Juvenile Code defines a “neglected juvenile” as a child who

- does not receive proper care, supervision, or discipline from the child's parent, guardian, custodian, or caretaker; or
- has been abandoned; or
- is not provided necessary medical care; or
- is not provided necessary remedial care; or
- lives in an environment that is injurious to the child's welfare; or
- has been placed for care or adoption in violation of law.²

This definition has withstood judicial scrutiny when challenged on the ground that it was unconstitutionally vague.³ In one case, the court found that the terms used in the definition are given “precise and understandable meaning by the normative standards imposed upon parents by our society.”⁴ The court said, in effect, that people can use common sense

and generally accepted values to determine what is meant by “proper care,” “necessary medical care,” or “an injurious environment.”

A determination that a child is neglected depends not only on the conduct of a parent, guardian, custodian, or caretaker, but also on the effect that conduct has on the child. The child must either be harmed or be placed at substantial risk of harm in order for neglect to exist.⁵ Neglect may take a variety of forms, as described below.

LACK OF PROPER CARE AND SUPERVISION

Neglect may consist of a parent's failure to meet the child's basic needs. It is not necessary, though, for a child to suffer physical harm or be threatened with physical harm in order to be neglected. For example, proper care and supervision include providing a child with a basic education, so willfully failing to enroll a child in school can be neglect.⁶ Keeping a child out of needed therapeutic day care also has been found to be neglect.⁷

Leaving a young child unsupervised may be neglect; however, the law does not specify any particular age below which a child cannot legally be left at home alone. Rather, it assumes that parents and others will exercise appropriate discretion based not only on the child's age, but also on the child's maturity and all of the relevant circumstances.⁸

INAPPROPRIATE DISCIPLINE

Neglect may occur through parents' actions as well as their failure to act. Inappropriate discipline that harms a child or creates a substantial risk of harm, but

does not cause *serious* physical injury, is neglect.⁹ This may be contrary to most people's assumption that inappropriate discipline that causes physical injuries, even if those are relatively minor, is abuse. One court held that a five-year-old child was neglected on the basis that her mother had hit her in the face with a belt, causing bruises, and had scrubbed her so hard during bathing (as discipline for the child's sexual exploration) that the child bled.¹⁰ In cases like that, where the parent's actions clearly constitute inappropriate discipline that is harmful to the child, it is not important for the person making a report to be certain whether the child's condition is one of abuse or of neglect.

Almost any method of disciplining a child—spanking, switching, time out, deprivation of privileges—can be inappropriate and harmful if taken too far. But how far is too far? The North Carolina Court of Appeals has stated the following rule of thumb: "In general, treatment of a child which falls below the normative standards imposed upon parents by our society is considered neglectful."¹¹ That rule can be difficult to apply. Strongly held beliefs about what constitutes proper discipline can vary greatly among parents, communities, religious groups, and cultures.

ABANDONMENT

The courts have described "abandonment" as a parent's willful refusal to perform a parent's natural and legal obligations to care for and support a child, and also as a parent's willful conduct that shows an intent to forego all the parent's duties and rights in relation to the child.¹² The newborn left in a basket on the steps of

a hospital or agency would fit within these definitions, but abandonment also may occur over a period of time. Most appellate court decisions dealing with abandonment arise in the context of proceedings to terminate parental rights, where the issue is whether a parent's abandonment has continued for six months or longer.¹³ The case law, therefore, usually involves the issue of whether a parent's conduct over an extended period of time constitutes abandonment, rather than whether initial intervention on the child's behalf was warranted.¹⁴

Publicity about cases in which parents killed their newborn infants or abandoned them in unsafe places, often after the mother had hidden her pregnancy from family and friends, led a number of states to enact legislation aimed at deterring such acts. In 2001, the North Carolina General Assembly amended the Juvenile Code (1) to allow a parent, within the first seven days of a child's life, to "give" the child to another person without providing any information except the parent's intent not to return for the child; (2) to require certain professionals, and allow any other person, to accept physical custody of the infant in that situation; and (3) to require the person receiving the child to take certain actions, including contacting the department of social services or law enforcement authorities immediately.¹⁵ In that circumstance the parent is absolved of criminal liability for abandonment.¹⁶ A social services department receiving a report of a parent's surrender of a child in this way, however, must begin an investigation immediately and proceed as in any other case of reported abuse or neglect.

LACK OF NECESSARY MEDICAL OR REMEDIAL CARE

“Necessary medical care” and “necessary remedial care” have not been defined precisely. A court had no trouble concluding that a child was neglected when the child’s father had both failed to seek treatment for the child’s serious burns and refused to allow a social worker to do so.¹⁷ Other deprivations of medical or remedial care may not be as clear-cut, but this form of neglect clearly extends beyond physical harm. The court of appeals affirmed a finding of neglect based on a mother’s refusal to allow treatment for her child’s severe hearing and speech defects.¹⁸ In that case the court of appeals said, “To deprive a child of the opportunity for normal growth and development is perhaps the greatest neglect a parent can impose upon a child.”¹⁹

A rule issued by the state Social Services Commission specifies that medical neglect includes depriving certain disabled infants of treatment. A disabled infant (under one year of age) with a life-threatening condition or conditions is neglected if

1. the infant is being denied appropriate nutrition, hydration, or medication; or
2. the infant is not receiving the medically indicated treatment that, in the treating physician’s reasonable medical judgment, would be most likely to be effective in ameliorating or correcting the life-threatening conditions, unless it is also the physician’s reasonable medical judgment that
 - a. the infant is chronically ill and irreversibly comatose, or
 - b. medical treatment would merely prolong dying, would not ameliorate or correct all of the life-threatening conditions, or

would otherwise be futile in terms of the infant’s survival, or

- c. provision of medical treatment would be virtually futile in terms of the infant’s survival, and under the circumstances the treatment would be inhumane.²⁰

North Carolina is in a minority of states that do not make reference in their reporting laws to parents’ religious beliefs as a basis for depriving a child of medical care. Some states include limited exceptions for these cases within the definition of neglect; others have statutes that describe how parents’ religious beliefs should be considered in determining whether a child is neglected.²¹ In North Carolina, courts consider these issues when parents raise them in individual cases.²² For a person deciding whether to make a report, however, there is no exception based on a parent’s religious beliefs that changes or lessens the duty to report.

INJURIOUS ENVIRONMENT

A child is neglected if the child lives in an environment that is injurious to the child’s welfare. As with other forms of neglect, an injurious environment may be one that puts the child at substantial risk of harm as well as one in which the child actually has been harmed.²³ In one case, the court found that a child was substantially at risk because the child’s mother had moved frequently and exposed the child to an environment that involved drugs and violence.²⁴ In other cases, the court has found that a mother’s severe problem with alcohol abuse created an injurious environment for her children²⁵ and that a parent’s inability to maintain secure living arrangements is relevant to a determination of whether a child is neglected.²⁶

ILLEGAL PLACEMENT

Placing a child illegally for care or adoption is a form of neglect, although one that has rarely been the basis for court action. Several statutes govern the placement of children, however, and cause to suspect that a child's placement violates any of these statutes can form the basis of a duty to report. These include laws that specify licensing requirements for (a) operating, establishing, or providing foster care for children and (b) receiving or placing children in residential care facilities, foster homes, or adoptive homes.²⁷ A child placed in a foster home by an agency that was not licensed as required by these laws, for example, would be neglected under this part of the definition.

A child also may be neglected if someone who is not legally authorized to place children for adoption places the child for that purpose. Under the state's adoption laws a child may be placed for adoption in North Carolina only by

- a county department of social services;
- another legally authorized agency;
- the child's guardian (but not a guardian appointed in a juvenile proceeding);
- both parents acting jointly; or
- one parent who has both legal and physical custody of the child (unless the parents are married and still living together).²⁸

Another group of laws regulates the placement of children for foster care or adoption in another state. Under the Interstate Compact on the Placement of Children,²⁹ it is unlawful to bring or send a child across state lines for placement without providing the receiving state with certain information, receiving that state's determination that the proposed place-

ment does not appear to be contrary to the child's interests, and complying with other requirements of the compact. These laws do not apply when a child's parent, guardian, or relative is placing the child with a parent, guardian, or specified relative in another state. But a child would be neglected if, for example, a court or agency in another state placed the child with a relative in North Carolina without complying with the compact.

Oddly, North Carolina does not have a statute that criminalizes or specifically prohibits the selling of children. The adoption law, however, makes it a misdemeanor to offer, pay, or accept money (or anything of value) either for the placement of a child for adoption or for a parent's consent to adoption, unless the payment is one specifically authorized by statute.³⁰

Abuse

The Juvenile Code considers a juvenile "abused" when the child's parent, guardian, custodian, or caretaker acts in certain specified ways and, as a result, the child is harmed or is at risk of being harmed.³¹ Conduct covered by the definition falls into several main categories, discussed below.

CAUSING OR ALLOWING SERIOUS INJURY

A child is abused, for purposes of the reporting law, if the child's parent, guardian, custodian, or caretaker inflicts—or allows someone else to inflict—on the child a serious, nonaccidental physical injury. A child also is abused if one of those persons creates—or allows to be created—a substantial risk of serious,

nonaccidental physical injury. No statute defines “serious physical injury.” The appellate courts have said that the injury “must be serious but . . . fall short of causing death,” and that “[f]urther definition seems neither wise nor desirable.”³² A statute that makes child abuse a crime, G.S. 14-318.4, uses the phrase “serious physical injury” to describe a Class E felony of child abuse. The same statute, describing a more serious offense of Class C felony child abuse, uses the phrase “serious bodily injury,” which it defines as

. . . bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Serious physical injury does not have to be that severe, but there is no clear minimal threshold for classifying a physical injury as serious. As explained above, however, a child who is put at risk of or receives an injury that cannot be characterized as serious, but that results from inappropriate care, supervision, or discipline, may be neglected.

CRUELTY

A child is abused if the parent, guardian, custodian, or caretaker uses—or allows someone else to use—cruel or grossly inappropriate procedures or devices to modify the child’s behavior. Trying to change a child’s behavior by using electrical shocks, tying the child to a bedpost, depriving the child of food, or

forcing the child to consume inordinate amounts of water are examples of the ways parents and others can abuse children in this manner.

SEXUAL ABUSE

Sexual abuse, for purposes of the reporting law, occurs when a child’s parent, guardian, custodian, or caretaker commits, permits, or encourages *the commission of any of the following criminal offenses* by, with, or upon the juvenile:

- first- or second-degree rape (G.S. 14-27.2, G.S. 14-27.3);
- first- or second-degree sexual offense (G.S. 14-27.4, G.S. 14-27.5);
- sexual act by a custodian (G.S. 14-27.7);
- crime against nature (G.S. 14-177);
- incest (G.S. 14-178);³³
- preparation of obscene photographs, slides, or motion pictures of the juvenile (G.S. 14-190.5);
- employing or permitting the juvenile to assist in a violation of the obscenity laws (G.S. 14-190.6);
- dissemination of obscene material to the juvenile (G.S. 14-190.7, G.S. 14-190.8);
- displaying or disseminating material harmful to the juvenile (G.S. 14-190.14, G.S. 14-190.15);
- first- or second-degree sexual exploitation of the juvenile (G.S. 14-190.16, G.S. 14-190.17);
- promoting the prostitution of the juvenile (G.S. 14-190.18); and
- taking indecent liberties with the juvenile (G.S. 14-202.1), regardless of the age of the parties.

The elements of these offenses and of other criminal offenses involving child victims are set out in Appendix B.

It is important to remember that most of the acts covered by these offenses constitute criminal conduct on the part of the adult, and therefore also constitute abuse for purposes of the reporting law, even if the child apparently participates in them voluntarily. In determining whether a child's situation gives a person cause to suspect that the child is abused, it helps to be familiar with this list, but the person need not master the intricacies of criminal law. If conduct that is harmful to a child does not constitute one of these criminal offenses, the child's situation still may be reportable under another part of the definition of abuse or as neglect.

EMOTIONAL ABUSE

A child is emotionally abused if the parent, guardian, custodian, or caretaker either creates—or allows others to create—serious emotional damage to the child. The statute states that evidence of serious emotional damage includes a child's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or herself or others.

This definition is not always easy to apply, and few cases go into court solely on the basis of emotional abuse. Obviously, serious emotional damage is not always caused by emotional abuse. Children may suffer from depression or anxiety, or be aggressive, for a variety of reasons. Because causation is so hard to prove, many cases of emotional abuse probably are treated as cases of neglect. A parent who creates or allows serious emotional damage to a child probably is not providing the child with proper care, supervision, or discipline, so that the child is a neglected juvenile. In one case involving both neglect and

emotional abuse, the court found that the children had suffered serious emotional damage as a result of the parents' long-standing and acrimonious marital disputes.³⁴

CONTRIBUTING TO DELINQUENCY

Finally, a child is considered to be abused, for purposes of the reporting law, if the parent, guardian, custodian, or caretaker encourages the juvenile to commit delinquent acts that involve moral turpitude.³⁵ Abuse also exists if one of those persons directs or approves of the juvenile's commission of such acts. In North Carolina a "delinquent act" is conduct by a juvenile who is at least six but not yet sixteen that would be a crime if committed by an adult.³⁶

Dependency

A juvenile is "dependent," for purposes of the reporting law, if

- the child needs assistance or placement because the child has no parent, guardian, or custodian responsible for the child's care or supervision, or
- the child's parent, guardian, or custodian is not able to provide for the child's care or supervision and lacks an appropriate alternative child care arrangement.³⁷

Dependency usually results from a parent's inability to provide for the child rather than from the child's having no parent, guardian, or custodian. The cause of the parent's inability to care for the child is not relevant.³⁸ A parent's inability might be due to the parent's physical or mental illness, an injury, the parent's arrest, or a natural disaster; and it may be temporary or permanent.

A parent also might be unable to provide for a child because of the child's extraordinary needs. A child's severe illness or disability may create such special needs that a parent's best efforts are not sufficient to provide adequate care for the child.³⁹

Even when parents are not able to care for their children, the responsibility for developing an alternative plan of care falls first on the parents themselves. The child is dependent only if the parent who is not able to care for his or her child has no alternate plan or the parent's plan is inappropriate. A child might be dependent, for example, if her single parent had to undergo major surgery and neither the other parent nor relatives nor anyone else was available to care for the child. If the hospitalized parent had arranged for the child to stay temporarily with a responsible neighbor, however, the parent's inability to care for the child would not make the child dependent. If a parent has the ability to make appropriate alternative arrangements but fails to do so, the line between dependency and neglect can blur. If the hospitalized parent left a six-year-old child at home with instructions to take care of herself for a week, the child probably would be neglected rather than dependent.

For the person considering making a report, it does not matter whether "dependent" or "neglected" or "abused" is the more appropriate characterization of the child's condition. If the person has cause to suspect that a child falls within the definition of one or more of these categories, the law requires that person to make a report.

Maltreatment

Any person or institution with cause to suspect that a child has died as the result of maltreatment must report the case of that child to the county department of social services.⁴⁰ The Juvenile Code does not define "maltreatment." When a child's death is the result of suspected abuse or neglect, as the Code defines those terms, the law almost certainly requires a report to social services. Maltreatment, though, appears to be a broader term, since the legislature easily could have said "children who die as the result of suspected abuse or neglect." Maltreatment might include, for example, harmful actions by persons other than parents, guardians, custodians, and caretakers.

Interpreting maltreatment as being broader than abuse and neglect is consistent with the General Assembly's creation of a child fatality prevention system, which includes reviews of children's deaths as one means of better understanding the causes of and methods for preventing these deaths.⁴¹ The reviews are conducted by state and local multidisciplinary teams that have access to records of all deaths of children in North Carolina, from birth to age eighteen. One purpose of the teams' reviews is to identify any deficiencies in the delivery of public services designed to prevent future child abuse, neglect, or death.

A county social services department's immediate response to a report of a child's death due to maltreatment, however, focuses on determining whether other children remain in the home (or institutional setting) and, if they do, determining whether those children

require protective services or need to be removed for their protection.⁴²

Difficulty in Applying the Definitions

Obviously, terms like “proper care,” “proper supervision,” “necessary medical care,” “substantial risk,” and “injurious environment” lend themselves to varying interpretations. Questions framed in terms of whether particular facts are covered by these or other terms often do not yield the unequivocal answers people want. The following are examples of questions that people have asked in trying to understand their duty to report and social services departments’ responses to reports, including, in some instances, responses that appear to be inconsistent to someone who reports similar facts to different county social services departments:⁴³

1. *If a child is born with fetal alcohol syndrome or tests positive at birth for illegal drugs, is the child abused (or neglected or dependent)?*

A number of states have amended their reporting laws to address these children specifically.⁴⁴ North Carolina has not amended its laws, but most, if not all, county social services departments would consider the child’s condition, in and of itself, “cause to suspect” that the infant is abused, neglected, or dependent. They would expect the hospital to make a report and would accept the report and conduct an investigation. Some counties, however, might accept the report and conduct an investigation only if there was additional information indicating cause to suspect (1) that the child is not receiving or will

not receive proper care from the child’s parent, guardian, custodian, or caretaker, or (2) that the parent is not able to provide proper care and does not have a suitable alternative arrangement. The first group of counties would consider this additional information in deciding whether to substantiate a report, not whether to investigate it.

Policy of the state Division of Social Services—a strong guide for counties even though it does not legally bind them—supports the approach of the majority of counties, described above. It states that “reports of children born prenatally exposed to illegal substances should be accepted for CPS [Child Protective Services] investigative assessment to determine if the home environment will offer minimally sufficient care and supervision.”⁴⁵ The policy also states, however, that “prenatal drug exposure does not constitute neglect per se.”⁴⁶

2. *Is a child neglected if the child comes to school inadequately clothed, dirty, or with untreated head lice?*

If there are no other indications of abuse or neglect, a school is not likely to report these conditions the first time they occur, and social services departments likely would not investigate them if they were reported. If the report indicates that the problem has occurred repeatedly, that it is having a harmful effect on the child, and that the parents are not responding appropriately, most departments would accept this as a report of neglect at some point. When that point is reached will depend to some extent on other information that is available about the

child and family. It may be affected as well by policies of the county department of social services. Some departments may take the position that the fact that a child is dirty or has head lice, even repeatedly, is never a sufficient basis for a report.

3. *Is a child neglected if the child is repeatedly tardy or absent from school?*

In two cases the North Carolina Court of Appeals has held that a parent's failure to enroll a child in school was neglect.⁴⁷ In one case, the court found that a father's insistence on home schooling his developmentally disabled son was neglect because it deprived the child of the socialization and special education classes that public school could provide and that were critical to the child's development and welfare.⁴⁸ In the other case, parents refused to enroll their children in school because the school failed to teach about Indians and Indian heritage and culture, and the parents did not provide a sufficient alternative education. "It is fundamental," the court said, "that a child who receives proper care and supervision in modern times is provided a basic education."⁴⁹ Social services departments and the protective services laws, however, are not the appropriate avenues for responding to most school attendance issues. Children who deliberately miss school may be "undisciplined juveniles" and subject to juvenile justice procedures designed to address the child's behavior.⁵⁰ A parent who violates the compulsory attendance law by willfully failing to send a child to school can be charged with a misdemeanor.⁵¹

The initial responsibility for dealing with attendance issues clearly rests with the school principal, who has very specific

responsibilities in relation to attendance problems.⁵² When a child has accumulated ten unexcused absences, the principal must take steps to determine whether the parent has made good faith efforts to comply with the compulsory attendance law. If the principal determines that the parent has made those efforts, the principal is authorized to refer the matter to a juvenile court counselor on the basis that the juvenile is "undisciplined." If the principal determines that the parent has not made a good faith effort, the principal is required to notify the district attorney.⁵³

A parent's failure to make a good faith effort to comply with the compulsory attendance law, or a parent's deliberately keeping a child out of school for inappropriate reasons, also may be neglect or dependency. The younger the child, the more likely it is that parental neglect or incapacity is the cause of a child's school attendance problem. Again, county social services departments' policies may vary in regard to when, if ever, a report based on a parent's failure to send a child to school will be accepted for investigation or substantiated as neglect or dependency.

4. *Does the fact that a minor female is living with her older boyfriend mean that she is abused, neglected, or dependent?*

A minor (someone under age eighteen) who leaves home, with or without parental consent, is not emancipated unless she marries or obtains a court order of emancipation. Her parents remain legally responsible for her care and supervision, and the reporting law continues to apply

to her. This remains true even if she becomes pregnant or gives birth to a child.

If the minor is under the age of thirteen and the boyfriend is at least four years older than she is, the boyfriend's having intercourse with her is first-degree rape, even if the relationship is totally voluntary on the girl's part.⁵⁴ If the same couple engages in other sexual acts, the male is committing first-degree sexual offense.⁵⁵ There is no law requiring that these crimes be reported. A report to social services about the child is required, however, on the basis that the girl is abused, if a parent (or guardian, custodian, or caretaker) is permitting or encouraging the commission of the offense against her. (In some cases the minor might be neglected or dependent, instead of abused, if the parent is not permitting or encouraging the conduct but is not providing or is not able to provide proper care and supervision for the child.)

If the minor is thirteen, fourteen, or fifteen years old and the male is at least four years older than she is, the boyfriend's engaging in intercourse or sexual acts with her is statutory rape or statutory sexual offense.⁵⁶ Again, this is true even if the relationship is totally voluntary on the girl's part. There is no law requiring that these crimes be reported; however, a report to social services about the child may be required on the basis that the girl is

- abused, if a parent (or guardian, custodian, or caretaker) is permitting or encouraging the commission of one of those offenses against her;⁵⁷
- neglected, on the basis that her parents are not providing proper care and supervision for her; or

- dependent, if her parents are not able to provide proper care and supervision for her (for example, because she came here from another country without her family).

Any time a report to social services involves allegations of statutory rape or statutory sexual offense (or other crimes), the department must make a report to law enforcement and the district attorney if the report indicates that the juvenile "may have been physically harmed . . . by [a] person other than the juvenile's parent, guardian, custodian, or caretaker."⁵⁸ The law does not provide guidance as to what constitutes "physical harm" for purposes of that requirement.

When the girl is sixteen or seventeen years old, there is no crime of statutory rape or statutory sexual offense, regardless of the boyfriend's age. Still, the minor may be neglected or dependent if her parents are not providing or are not able to provide her with proper care and supervision. Occasionally there may be a question as to whether the element of harm or risk of harm is present for purposes of neglect—for example, if the minor is almost eighteen, the relationship is stable, and the couple have a child for whom they are providing good care. That determination might be made more appropriately after an investigation than at the reporting stage.

In cases in which a minor's parents do not condone her living arrangement and have made real but unsuccessful efforts to get her to return home, she might be considered an undisciplined juvenile—a category for which no report is required.⁵⁹ In that case, the parents could seek help from the local juvenile justice office⁶⁰ or file a civil

action in district court asking the court to order the minor to return home and the boyfriend to stop allowing her to stay with him.⁶¹

Other questions that have similarly imprecise answers include:

- Should the fact that a twelve-year-old girl is pregnant or has a venereal disease always create “cause to suspect” that she is abused or neglected? What if the girl is thirteen? or fifteen? or seventeen? or ten?
- Can a parent’s refusal to give a child Ritalin or similar medication ever constitute neglect?⁶²
- At what point is a child abused or neglected on the basis that the child witnesses domestic violence or lives in a home where domestic violence occurs regularly?⁶³

Sometimes the answers become clear with the addition of other relevant information. Nevertheless, until the General Assembly provides more guidance through legislation or the appellate courts are called on to decide cases involving these issues, they will continue to require (1) very individual assessment in light of the purposes of the reporting law and (2) local collaboration to find the best way to address the needs of families and children.⁶⁴

Notes to Chapter 5

1. For example, a person who has only “cause to suspect” that a child is abused, neglected, or dependent must report. In order to adjudicate a child abused, neglected, or dependent, the district court must make findings based on “clear and convincing evidence.”

2. G.S. 7B-101(15). The statute states that, in determining whether a child is neglected, it is relevant whether the child lives in a home where another child has (1) died as a result of suspected abuse or neglect or (2) been

subjected to abuse or neglect by an adult who regularly lives in the home.

3. See, e.g., *In re Moore*, 306 N.C. 394, 293 S.E.2d 127 (1982), *appeal dismissed*, 459 U.S. 1139 (1983); *In re Clark*, 303 N.C. 592, 281 S.E.2d 47 (1981); *In re Allen*, 58 N.C. App. 322, 293 S.E.2d 607 (1982); *In re Huber*, 57 N.C. App. 453, 291 S.E.2d 916, *appeal dismissed and cert. denied*, 306 N.C. 557, 294 S.E.2d 223 (1982).

4. *In re Biggers*, 50 N.C. App. 332, 341, 274 S.E.2d 236, 241–42 (1981).

5. See, e.g., *In re Everette*, 133 N.C. App. 84, 514 S.E.2d 523 (1999) (vacating adjudication of neglect because although trial court found that parent did not provide proper care, supervision, or discipline, it did not make any findings that the child was impaired or at substantial risk of impairment as a result); *Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398 (1998) (evidence showing that mother drove with children in the car while under the influence, that her drinking sometimes rendered her unable to care for the children, and that her problem with alcohol contributed to the children’s emotional problems was sufficient to establish neglect).

6. *In re McMillan*, 30 N.C. App. 235, 226 S.E.2d 693 (1976); *In re Devone*, 86 N.C. App. 57, 356 S.E.2d 389 (1987). See “Difficulty in Applying the Definitions,” below.

7. *In re Cusson*, 43 N.C. App. 333, 258 S.E.2d 858 (1979).

8. Several criminal laws do specify particular ages in relation to the proper supervision of children. For example, G.S. 14-318 makes it a misdemeanor for any person to leave a child under the age of eight “locked or otherwise confined in a dwelling, building or enclosure without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire.” Under G.S. 14-316, it is a misdemeanor for a parent (or others in parent-like positions) to permit a child under the age of twelve to possess or use a dangerous firearm, regardless of whether it is loaded, except under the supervision of that adult person.

9. Children are “abused” if disciplined in ways that cause (or create a substantial risk of) serious physical injury or involve the use of cruel or grossly inappropriate procedures or devices. G.S. 7B-101(1).

10. *In re Thompson*, 64 N.C. App. 95, 100, 306 S.E.2d 792, 795 (1983).

11. *In re Thompson*, 64 N.C. App. at 99, 306 S.E.2d at 794.

12. *See Pratt v. Bishop*, 257 N.C. 486, 126 S.E.2d 597 (1962); *In re Adoption of Searle*, 82 N.C. App. 273, 346 S.E.2d 511 (1986).

13. G.S. 7B-1111(a)(7).

14. *See, e.g., In re Young*, 346 N.C. 244, 485 S.E.2d 612 (1997) (insufficient evidence of willfulness to establish abandonment); *In re Graham*, 63 N.C. App. 146, 303 S.E.2d 624, *disc. rev. denied*, 309 N.C. 320, 307 S.E.2d 170 (1983) (lack of involvement with children for more than two years established a pattern of abandonment and neglect).

15. SL 2001-291, amending G.S. 7B-302(a) and G.S. 7B-500, effective July 19, 2001.

16. G.S. 14-318.2(c), G.S. 14-318.4(c), and G.S. 14-322.3.

17. *In re Hayden*, 96 N.C. App. 77, 384 S.E.2d 558 (1989).

18. *In re Huber*, 57 N.C. App. 453, 291 S.E.2d 916, *appeal dismissed and cert. denied*, 306 N.C. 557, 294 S.E.2d 223 (1982).

19. *In re Huber*, 57 N.C. App. at 458, 291 S.E.2d at 919.

20. N.C. Admin. Code tit. 10, subchap. 41I, § .0303(2) (July 1993). The state Social Services Commission adopted this rule in 1985 in response to the federal Child Abuse Amendments of 1984 and federal regulations that require states to include it in their definitions of “neglect” in order to remain eligible for federal child welfare funds. *See* 42 U.S.C.A. §§ 5106a(b)(10) and 5106g(10) (1999); 45 C.F.R. § 1340.15 (2002).

21. *See* National Clearinghouse on Child Abuse and Neglect Information, “Current Trends in Child Maltreatment Reporting Laws,” *Child Abuse and Neglect State Statutes Series* (Washington, D.C.: U.S. Department of Health and Human Services, 1999), 12–14.

22. The North Carolina Court of Appeals upheld a trial court’s order that children who had been adjudicated neglected and placed in social services’ custody be immunized despite the parents’ religious objection. The court said, “[O]ur courts do not have a history of routinely ordering the performance of medical procedures on children without parental consent. However, when parents refuse to provide necessary medical care, their inaction can extinguish custody and support a finding of neglect.” *In re Stratton*, 153 N.C. App. 428, 433, 571 S.E.2d 234, 237, *appeal dismissed and*

discretionary review denied, 356 N.C. 436, 573 S.E.2d 512 (2002). In *Stratton* the neglect adjudication was not based on the parents’ refusal to have the children immunized. G.S. 130A-157 provides an exemption from the immunization requirements based on a parent’s bona fide religious beliefs. The issue was whether the parents lost their right to claim that exemption when the children were adjudicated neglected and removed from their custody.

In another case the court of appeals rejected a father’s claim that his refusal to permit a mental health evaluation of his children during an abuse investigation was lawful because he objected to the evaluation on religious grounds. The court said, “One may not be compelled by governmental action to do that which is contrary to his religious belief in the absence of a ‘compelling state interest in the regulation of a subject within the State’s Constitutional power to regulate.’ . . . The intent of the statutes requiring the Department of Social Services to screen and investigate complaints of child abuse is the protection of neglected and abused children, . . . which is undeniably a compelling state interest.” *In re Browning*, 124 N.C. App. 190, 193–4, 476 S.E.2d 465, 467 (2002).

23. *In re Safriet*, 112 N.C. App. 747, 436 S.E.2d 898 (1993).

24. *In re Helms*, 127 N.C. App. 505, 491 S.E.2d 672 (1997).

25. *Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398 (1998).

26. *See In re Evans*, 81 N.C. App. 449, 344 S.E.2d 325 (1986); *In re Adcock*, 69 N.C. App. 222, 316 S.E.2d 347 (1984) (moving eight times within a year and a half is evidence of instability relevant to a neglect determination).

27. G.S. Chapter 131D, Article 1A. Unless specifically exempted, a person or agency that violates these requirements is guilty of a misdemeanor.

28. G.S. 48-3-201. Placement of a child by anyone else for adoption is a misdemeanor. G.S. 48-10-101.

29. G.S. 7B-3800 through 7B-3806.

30. G.S. 48-10-102, G.S. 48-10-103.

31. The term “abused juveniles” is defined in G.S. 7B-101(1), which is reproduced in full in Appendix A.

32. *State v. Hannah*, 149 N.C. App. 713, 718, 563 S.E.2d 1, 4 (2002), *review denied*, 355 N.C.

754, 566 S.E.2d 81 (2002), quoting *State v. Ramseur*, 338 N.C. 502, 507, 450 S.E.2d 467, 471 (1994).

33. The Juvenile Code also refers here to G.S. 14-179, which was repealed effective December 1, 2002, by SL 2002-119, s. 2. That legislation also rewrote G.S. 14-178 so that it covers all incest offenses.

34. *Powers v. Powers*, 130 N.C. App. 37, 502 S.E.2d 398 (1998).

35. The North Carolina Supreme Court has referred to “moral turpitude” as involving “an act of inherent baseness in the private, social, or public duties which one owes to his fellowmen or to society, or to his country, her institutions and her government.” *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986). See also *Dobson v. Harris*, 351 N.C. 353, 341 S.E.2d 728 (1999) (child abuse involves moral turpitude); *State v. Collins*, 334 N.C. 54, 431 S.E.2d 188 (1993) (burglary involves moral turpitude); *Dew v. State ex rel. North Carolina Dep’t of Motor Vehicles*, 127 N.C. App. 309, 488 S.E.2d 836, (1997) (conspiracy to possess with intent to distribute marijuana is crime involving moral turpitude).

36. G.S. 7B-1501(7). In North Carolina, a sixteen- or seventeen-year-old is treated as an adult for purposes of his or her criminal behavior. A sixteen-year-old whose parent encouraged him to steal, therefore, would not be covered by this part of the abuse definition, because a sixteen-year-old does not commit delinquent acts—he or she commits crimes. Still, the sixteen-year-old could be considered neglected, because the parent is failing to provide proper supervision and discipline.

37. G.S. 7B-101(9).

38. In 1997 the General Assembly amended the definition of “dependent juvenile” to delete a requirement that the parent’s, guardian’s, or custodian’s inability to care for the child be “due to physical or mental incapacity.” SL 1997-113.

39. Parents of some adolescents probably feel “unable” to provide care and supervision to children who refuse to accept either. While these children are not necessarily excluded from the definition of “dependent juvenile,” their needs usually can be addressed more appropriately through systems other than child protective services, such as mental health, juvenile justice and delinquency prevention, or other community resources.

40. G.S. 7B-301.

41. G.S. 7B-1400.

42. G.S. 7B-302(b).

43. See Chapter 11 for related discussion of “screening”—the process by which social services departments decide whether to accept reports for investigation.

44. Some states include these conditions in the definition of “abused juvenile” or “neglected juvenile.” Others have special reporting requirements that apply to these children. See National Clearinghouse on Child Abuse and Neglect Information, “Reporting Laws: Drug Exposed Infants,” *Child Abuse and Neglect State Statutes Series Ready Reference 2002* (Washington, D.C.: U.S. Department of Health and Human Services, 2002). Retrieved 8 April 2003 from <http://www.calib.com/nccanch/pubs/readref/drugex.cfm>.

45. North Carolina Department of Health and Human Services, “The Impact of Drug and Alcohol Abuse,” *Children’s Services Manual*, Ch. VIII (Protective Services), § 1440 xi. Retrieved 8 April 2003 from http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/CS1440-10.htm#P163_28739.

46. *Id.*

47. *In re McMillan*, 30 N.C. App. 235, 226 S.E.2d 693 (1976); *In re Devone*, 86 N.C. App. 57, 356 S.E.2d 389 (1987).

48. *In re Devone*, 86 N.C. App. at 60, 356 S.E.2d at 391.

49. *In re McMillan*, 30 N.C. App. at 238, 226 S.E.2d at 695.

50. These procedures are set out in Subchapter II of the Juvenile Code, G.S. 7B-1500 through 7B-2827.

51. G.S. 115C-380. The likelihood of these cases’ being prosecuted varies substantially among judicial districts.

52. See G.S. 115C-378 and 115C-381.

53. Two bills introduced in the 2003 session of the General Assembly would amend G.S. 115C-378 to require the principal in this circumstance to notify the county director of social services as well as the district attorney. House Bill 203 was introduced on March 4, 2003, and Senate Bill 421 was introduced on March 17, 2003.

54. See G.S. 14-27.2.

55. See G.S. 14-27.4. Sexual acts include cunnilingus, fellatio, analingus, anal intercourse, or penetration by any object into the genital or anal opening of another person’s body for nonmedical purposes. G.S. 14-27.1(4).

56. See G.S. 14-27.7A. If the defendant is at

least six years older than the victim the offense is a Class B1 felony. If the defendant is at least four but less than six years older, the offense is a Class C felony.

57. It is not completely clear that “abused juvenile” is the appropriate characterization of the child in this situation. The offenses of statutory rape and sexual offense against thirteen-, fourteen-, and fifteen-year-olds were added to the criminal laws in 1995. The part of the Juvenile Code definition of “abused juvenile” that references a variety of criminal sex offenses has never been amended to include these offenses. Thus, the Code does not explicitly provide that a juvenile is abused if a parent, guardian, custodian, or caretaker permits or encourages the commission of one of these offenses against the child.

58. See G.S. 7B-307(a).

59. A juvenile is “undisciplined” if he or she runs away from home for more than twenty-four hours; is beyond the disciplinary control of his or her parent, guardian, or custodian; or is younger than sixteen and is unlawfully absent from school. G.S. 7B-1501(27).

60. See G.S. Chapter 7B, Article 17 (Screening of Delinquency and Undisciplined Complaints).

61. See G.S. Chapter 7B, Article 34 (Parental Authority over Juveniles).

62. This and other issues relating to medicating children are the subject of growing national attention. See, e.g., the Web site of the Public Broadcasting System, which includes links to the 2001 Frontline documentary, “Medicating Kids: A Report on Parents,

Educators, and Doctors Trying to Make Sense of a Mysterious and Controversial Mental Diagnosis: ADHD,” and related information. Retrieved 8 April 2003 from <http://www.pbs.org/wgbh/pages/frontline/shows/medicating/>.

63. This issue also is the subject of growing national concern and of legislative changes in some states. See National Clearinghouse on Child Abuse and Neglect Information, “Domestic Violence: Child Witnesses to Domestic Violence,” *Child Abuse and Neglect State Statutes Series* (Washington, D.C.: U.S. Department of Health and Human Services, 2002).

North Carolina does not have specific legislation dealing with domestic violence in relation to child abuse and neglect. In early 2002, however, Chief Justice I. Beverly Lake and Secretary of Health and Human Services Carmen Hooker Odom appointed and began chairing the Child Well-Being and Domestic Violence Task Force, which issued a final report and recommendations in February 2003. Retrieved 7 May 2003 from <http://www.doa.state.nc.us/cfw/cfw.htm>.

64. Since June 1, 2003, the Division of Social Services in the state Department of Health and Human Services has provided additional guidance in the form of state policy regarding structured intake and screening tools for child protective services cases. North Carolina Division of Social Services, “Structured Intake,” *Children’s Services Manual*, Ch. VIII (Protective Services), § 1407. Retrieved 1 May 2003 from <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/CS1407.htm#TopOfPage>.

