



North Carolina Board of Licensed Professional Counselors

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NCBLPC Professional Brief

Content Area: Chapter 7B-101 Article 1 – Purpose; Definitions
(Abuse, neglect, dependency)

Brief Overview/Description:

Abused Juveniles - any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

- a) inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b) creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- c) uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
- d) commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile:
 - 1) first degree rape;
 - 2) second degree rape;
 - 3) first-degree sexual offense;
 - 4) sexual offense with a child by an adult offender;
 - 5) second degree sexual offense;
 - 6) sexual act by a custodian;
 - 7) crime against nature;
 - 8) incest;
 - 9) preparation of obscene photographs, slides, or motion pictures of the juvenile;
 - 10) employing or permitting the juvenile to assist in a violation of the obscenity laws;
 - 11) dissemination of obscene material to the juvenile;
 - 12) displaying or disseminating material harmful to the juvenile;
 - 13) first and second degree sexual exploitation of the juvenile;
 - 14) promoting the prostitution of the juvenile; and
 - 15) taking indecent liberties with the juvenile.
- e) creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
- f) encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

Aggravated Circumstances - any circumstance, in the commission of an act of abuse or neglect, which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

Caretaker - any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of

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a juvenile in a child care facility and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider

Community-Based Program - a program providing nonresidential or residential treatment, to a juvenile, in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

Custodian - the person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

Dependent Juvenile - a juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

Family Assessment Response - a response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

Investigative Assessment Response - a response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

Juvenile - a person who has not reached the person's eighteenth birthday and is not married, emancipated or a member of the armed forces of the United States.

Neglected Juvenile - a juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. To deprive a child of the opportunity for normal growth and development is perhaps the greatest neglect a parent can impose upon a child.

Refusal to educate as neglect - it is fundamental that a child who receives proper care and supervision in modern times is provided a basic education. A child does not receive "proper care" and lives in an "environment injurious to his welfare" when he is deliberately refused this education, and he is "neglected". Failure to provide medical care or remedial care constitutes neglect. Failure to provide clean home and childcare is neglect.

Safe Home - a home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

Serious Neglect - conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

Shelter Care - the temporary care of a juvenile in a physically unrestricting facility pending court disposition.

Substantial Evidence - Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

Working day - any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions.

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Abandonment Defined - Abandonment imports any willful or intentional conduct on the part of the parent to forego all parental duties and relinquish all parental claims to the child. Abandonment has also been defined as willful neglect and refusal to perform the natural and legal obligations of parental care and support. It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance such parent relinquishes all parental claims and abandons the child.

Neglect Based on Abandonment - Mother neglected child by way of abandonment where the mother had willfully refused to perform her obligations as a parent, had withheld her presence, love, care, and opportunity to display filial affection from the child, and failed to financially contribute to the support of the child for a significant period of time.

Key Legal Factors:

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, shall report the case to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. Refusal of the person making the report to give a name shall not preclude the department's assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition.

- 1) When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment.
- 2) When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report.
- 3) When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for non-secure custody of the juvenile.

The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility.

- 1) When a report alleges abuse or neglect in a child care facility, a visit to the place where the juvenile resides is not required.
- 2) When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child.

All information shall be held in strictest confidence, except that:

- 1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect.
- 2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.
- 3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information. The department of social services may surrender, for in camera review, if the surrender is necessary to make the required determinations.
- 4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records, except those records the defendant or juvenile is entitled to review.

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If the director determines that the juvenile's legal residence is in another county, the director in the other county shall be notified and the two directors shall coordinate efforts to ensure that appropriate actions are taken.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a non-institutional setting is received, the director shall ascertain if other juveniles live in the home, and, if so, initiate an assessment in order to determine whether they require protective services or whether removal of the juveniles from the home is necessary. When a report of a juvenile's death, as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional is received, the director shall ascertain if other juveniles in the facility are subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles to determine whether they require protective services or whether removal from the facility is necessary.

The director or the director's representative may not enter a private residence for assessment purposes without at least one of the following:

- 1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.
- 2) The permission of the parent or person responsible for the juvenile's care.
- 3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.
- 4) An order from a court of competent jurisdiction.

If the assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide if removal of the juvenile or any other juveniles in the home is necessary. If removal does not seem necessary, the director shall provide for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services, the director shall sign a petition seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a petition that invokes the jurisdiction of the court. Where the assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile.

Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for assessment and whether the report was referred to the appropriate State or local law enforcement agency.

Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the director shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the assessment there is reason to suspect that sexual abuse has occurred, the director shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report.

Real Issues to Consider:

If any person obstructs or interferes with an assessment the director may file a petition requesting an order directing the respondent to cease the obstruction or interference. The petition shall contain:

- a) the name and date of birth and address of the juvenile,
- b) a statement of the basis for initiating the assessment,
- c) describe the alleged obstruction of or interference with the assessment.

Obstruction of or interference with an assessment:

- a) refusing to disclose the whereabouts of the juvenile,

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- b) refusing to allow the director to have personal access to the juvenile,
- c) (c)refusing to allow the director to observe or interview the juvenile in private,
- d) refusing to allow the director access to confidential information and records,
- e) refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert,
- f) other conduct that makes it impossible for the director to carry out the duty to assess the juvenile's condition.

When the petition is filed, the court shall schedule a hearing not less than five days after service of the petition and summons. Service of the petition and summons and notice of hearing shall be made on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court. The burden of proof shall be on the petitioner.

If the juvenile is in need of protection or assistance, the director shall petition and seek an order from the court. If the court upholds the petition the respondent must cease the obstruction or interference. The order shall enable the director to conduct an assessment to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order.

The director may be required to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency.

Within five working days after completion of the protective services assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

Catch 22:

In practice, abuse may not always be neglect. We must be careful to stay within our areas of expertise. If you are not the director of social services or an attorney, try not to assume or allow yourself to be placed in either role. If a counselor is asked to provide information regarding an assessment, they should be mindful of the professional responsibility regarding ACA Code of Ethics, Professional Disclosure Statements, and N.C. General Statutes.

Summary Statement:

Knowledge of the definitions for juvenile abuse, neglect and dependency is important. Any person can report a case of juvenile abuse, neglect, dependency, or death due to maltreatment. The report is made to the director of social services in the county where the juvenile resides or is found. The reporter does not have to give their name. In a child care facility there is a time line on when a report must be made.

If any person obstructs or interferes with an assessment the director may file a petition requesting an order directing the respondent to cease the obstruction or interference. The director may be required to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency.