

**Representing Parents in Abuse,
Neglect, and Dependency Cases:
Setting the Stage**

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Clara, 13, goes to the health department to be tested for STD and learns that she is pregnant.

- A. Clara tells the nurse that she has had sex only with her 19-year-old boyfriend.
- B. When Clara's baby is born, both Clara and the baby test positive for marijuana.



C. Clara has hidden her pregnancy from her family and friends. She has the baby in a hospital in another county, uses a false name, and leaves the baby at the hospital.

D. Several months later Clara tells Billy, the baby's father, about the baby. He learns that DSS has custody, and he and his mother want to get custody of the child.



With respect to each scenario:

1. What interests does the state (the government) have?
2. What rights do Clara, her parents, Billy, his parents, and the baby have?
3. What authority should government have?
4. What if anything should government mandate?
5. What protections should be afforded Clara, her parents, Billy, his parents, and the baby ?

If we narrow and compress those questions, we might ask:

1. **When and how should the state respond when a child is maltreated or at risk of maltreatment?**
2. **Who gets to define “maltreatment”?**



How Does the State Respond to Child Maltreatment?

Criminal Justice System

- Focus on offender
- No reporting requirement
- Local law enforcement response
- Criminal court
- Outcome – conviction and punishment



Child Welfare System

- **Focus on child**
- **Mandatory reporting**
- **County social services response**
- **Civil (juvenile) court**
- **Outcome – adjudication and protection**



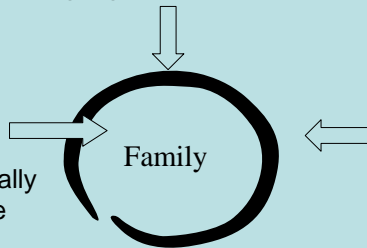
**North Carolina Juvenile
Code
G.S. Chapter 7B
Subchapter I**



**The Juvenile Code is North Carolina's
primary answer to the question:**

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

- Harm
- Risk of harm
- Lack of minimally adequate care



Definitions in the Juvenile Code
Set the Limits of State Intervention

- | | |
|----------------------|----------------------|
| “Juvenile” | “Abused Juvenile” |
| “Neglected Juvenile” | “Dependent Juvenile” |
| | “Caretaker” |
| | “Custodian” |



Neglected Juvenile:

- Does not receive proper care, supervision or discipline from a parent, guardian, custodian, or caretaker;
- Is not provided necessary medical or remedial care;
- Is abandoned;
- Lives in an injurious environment; or
- Is placed for care or adoption in violation of law

Dependent Juvenile:

Needs assistance or placement because

1. Child has no parent, guardian, or custodian responsible for his care, or
2. Parent
 - a. is not able to provide for child's care and supervision and
 - b. lacks an appropriate alternative child care arrangement.

Abused Juvenile:

A juvenile whose parent, guardian, custodian or caretaker:

- Inflicts, allows, or creates substantial risk of serious, non-accidental physical injury
- Uses cruel or grossly inappropriate procedure or device to modify behavior
- Commits or allows various sexual offenses against child
- Creates or allows serious emotional damage

Sources of Child Welfare Law and Policy



- North Carolina Juvenile Code, G.S. Ch. 7B, and other state statutes
 - State administrative rules
 - Policy manuals developed by state Division of Social Services
 - Appellate court decisions
-
- Federal funding criteria set out in federal statutes and regulations

Major Federal Enactments

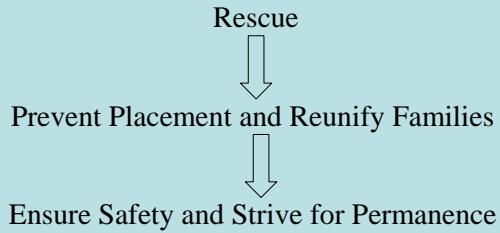
- 1960s: AFDC for some foster care costs
- **1974: Child Abuse Prevention and Treatment Act**
- 1978: Indian Child Welfare Act
- 1980: Adoption Assistance and Child Welfare Act
- 1993: Family Preservation and Support Act
- 1994: Multi-Ethnic Placement Act (MEPA)
- **1997: Adoption and Safe Families Act**
- 1999: Chafee Foster Care Independence Act
- 2000: Strengthening Abuse and Neglect Courts Act
- 2003: Keeping Children and Families Safe Act
- 2006: Safe and Timely Interstate Placement of Foster Children Act

Significance of Federal Child Welfare Laws Lies Primarily in

- The state's eligibility to receive (and keep) federal child welfare funding.
- Provisions in state law that derive from federal funding criteria.
- Provisions in state law referring to and requiring compliance with federal laws.



Evolution of Child Welfare Policy and Law



What Does Intervention Look Like?

- Reporting Requirement
- Family Assessment or Investigative Assessment
 - Only about a third of assessments lead to substantiation or finding of “in need of services”
 - Of those, only a small number result in the filing of juvenile petitions

Case History

In most cases, petitions are not filed or, before petition is filed, there is a voluntary case plan or child protection plan.

- It is critical for parent’s attorney to know full history of client’s involvement with DSS.

Temporary Custody

- DSS or law enforcement may assume immediate custody of a child only if:
 - there are reasonable grounds to believe the child is abused, neglected, or dependent and
 - the child would be harmed or could not be taken into custody later if a court order were obtained first.

Court May Order Nonsecure Custody only after:

- first considering release to a parent, relative or other responsible adult and
- finding a reasonable factual basis to believe allegations in petition are true and that
 - child has been abandoned,
 - child has suffered physical injury or sexual abuse,
 - child is exposed to substantial risk of physical injury or sexual abuse,

... Nonsecure Custody

- child needs medical treatment to cure, alleviate, or prevent serious physical harm that may result in death, disfigurement, or substantial impairment of bodily functions and the parent (or guardian, custodian, or caretaker) is unwilling or unable to provide or consent to the treatment
- parent (or guardian, custodian, or caretaker) consents
- the child has run away and consents

Hearings in Juvenile Court

- Interference Hearing [See *Stumbo*]
- Nonsecure Custody Hearings
- Adjudicatory Hearing
- Dispositional Hearing
- Review Hearings
- Permanency Planning Review Hearings



Hearings

- Juvenile proceedings are **civil actions**.
- **Rules of Evidence** apply at adjudication.
- At other hearings, court may consider evidence (including hearsay) the court finds to be
 - relevant,
 - reliable, and
 - necessary to determine the child's needs and most appropriate disposition.

Hearings

- The **Rules of Civil Procedure** apply unless the Juvenile Code provides a different procedure.
- Pay close attention to sufficiency of
 - Petition
 - Summons
 - Service of process
 - Notice
 - etc.

The law reflects a policy that every child should have “a safe, permanent home within a reasonable period of time,”

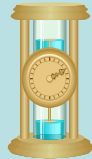
with high priority given to

1. keeping the child in his own home that is safe.
2. removing child from the home temporarily and returning him home quickly, when it is safe.



Alternative, less preferred, forms of “permanence” include:

- Adoption
- Guardianship
- Legal custody to a relative or other suitable person



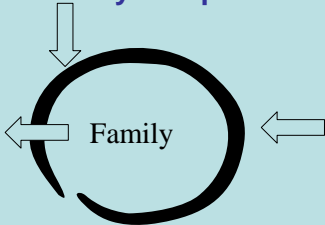
The key questions are not whether

- the parent has cooperated with DSS
- the parent has complied with everything in a case plan
- the parent has kept all appointments or completed treatment
- the child would have more opportunities or a “better” life with someone else

At every stage after petition, ask:

- ❖ **Can a case be made that state intervention is no longer necessary to ensure that the child will be safe and receive minimally adequate care?**

- Harm
- Risk of harm
- Lack of minimally adequate care



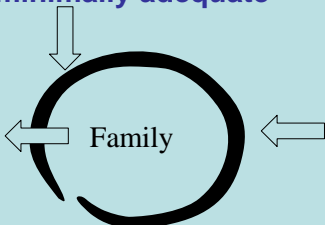
Spotlight needs to be on

- the child
- the parent's rights
- the state's limited right to intervene in the parent-child relationship

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Tensions

- Evolution of group of laws
 - designed to provide procedures for temporary intervention to protect children
 - expanded to address issues of “permanence”
- A social services system that is
 - primary intervener
 - primary resource for parents and family
 - sometimes a legal adversary
 - often short on resources