

ABUSE, NEGLECT, DEPENDENCY

An Overview for Parents' Attorneys

Janet Mason
School of Government
UNC at Chapel Hill
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State's Response to Child Maltreatment

Criminal Justice System

- focus on offender
- no reporting requirement
- local law enforcement response
- criminal court
- outcome – conviction and punishment of offender
- “State vs. Parent”

Child Welfare System

- **focus on child**
- **mandatory reporting**
- **county social services response**
- **civil (juvenile) court**
- **outcome – adjudication and protection of child**
- **“In re Child”**



Sources of Child Welfare Law and Policy



- N.C. Juvenile Code, G.S. Ch. 7B
 - 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



- **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
- **2008: Fostering Connections to Success and Increasing Adoptions Act**



Significance of Federal Child Welfare Laws Lies Primarily in

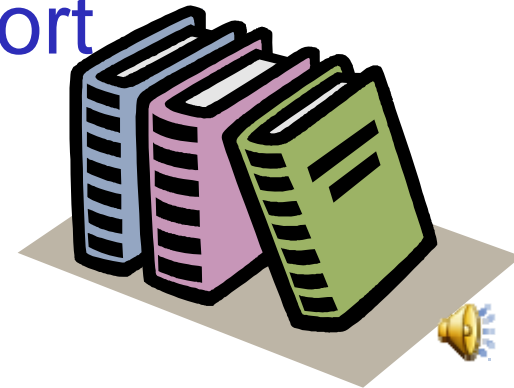


- state's eligibility to receive (and keep) federal child welfare funds.
- provisions in state law that derive from federal funding criteria.
- provisions in state law referring to and requiring compliance with federal laws.



State Laws

1. Juvenile Code, Subchapter I
 - ICPC: Interstate Compact on the Placement of Children
2. UCCJEA: Uniform Child Custody Jurisdiction and Enforcement Act
3. Rules of Civil Procedure
4. Rules of Evidence
5. Chapter 50 Custody & Support
6. Delinquency
7. Criminal



North Carolina Juvenile Code

G.S. Chapter 7B

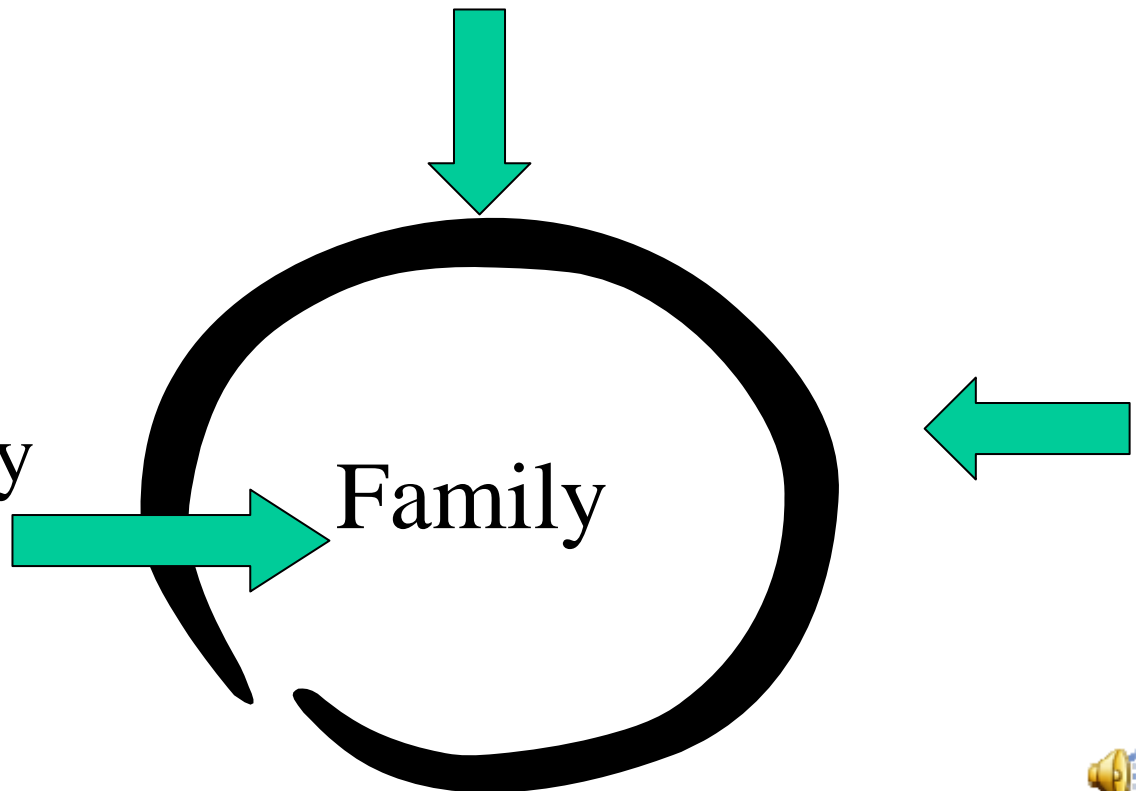
Subchapter I



The Juvenile Code answers 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



Parents' rights...



1. family integrity
2. a relationship with their child
3. determine suitable care and supervision
4. care, custody and management of children
5. control over whom child associates with on a daily basis
6. privacy
7. due process
8. bring up child as they choose



The state's interests...

1. protecting children
2. ensuring that children receive minimally adequate care
3. ensuring that every child has a
 - safe, permanent home
 - within a reasonable period of time
4. ensuring that children have opportunity for normal growth and development
5. preventing unnecessary or inappropriate separation of juveniles from their parents



Definitions in Juvenile Code set the limits of state intervention

“Juvenile”

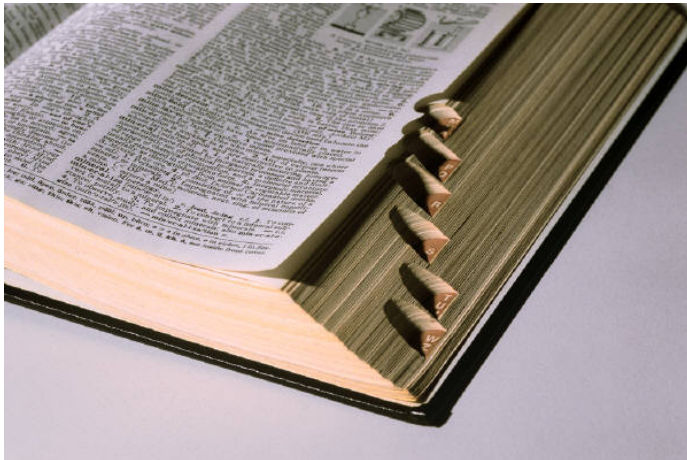
“Abused Juvenile”

“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



Variety of Thresholds

• duty to report	→	cause to suspect
• screening	→	if true, would it be abuse/ neglect/dependency?
• in need of services	→	substantial evidence
• substantiation	→	substantial evidence
• identify responsible individual	→	substantial evidence of abuse or serious neglect
• filing a petition	→	???
• adjudication	→	clear and convincing evidence



What does intervention look like?

Pre-petition Stages

- reporting requirement
- assessment (was “investigation”)
 - family assessment
 - investigatory assessment
- “interference” petition
- case decision
- “responsible individual list” appeal
- temporary custody



Case Initiation

- Petition
 - sufficient allegations?
 - verified?
- Summons
 - issued properly?
 - timely?
- Service
 - was service proper? was it waived?
 - if by publication, were there “diligent efforts”?

From beginning, be alert for issues of subject matter or personal jurisdiction.



Nonsecure custody order is proper only if

1. petition has been filed;
2. reasonable factual basis to believe
 - allegations are true,
 - statutory ground exists, and
 - no other reasonable means to protect juvenile; and
3. court first considered release to parent, relative, other responsible adult.



Nonsecure Custody Hearings

(compare child planning conference)

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

DSS has burden

- clear and convincing evidence that placement is necessary

Court must inquire about

- other children in home
- missing parent
- relatives
- reasonable efforts



Adjudication Hearing

- within 60 days after petition filed
- DSS has burden =
clear and convincing evidence
- rules of evidence apply
- order must be entered within 30 days
after hearing
 - remedy = hearing with clerk, then
mandamus



Adjudication

- Is child an abused, neglected, or dependent juvenile as alleged in petition and defined in Code?
- Adjudication is about the child – not “against,” “as to,” or “with respect to” parent(s)
- Findings in adjudication order are critical



Disposition

- within 30 days after adjudication
- exchange of pre-disposition reports before day of hearing
- rules of evidence relaxed, but relevant
- order within 30 days
- specific findings required if child placed in DSS custody



Post-Disposition

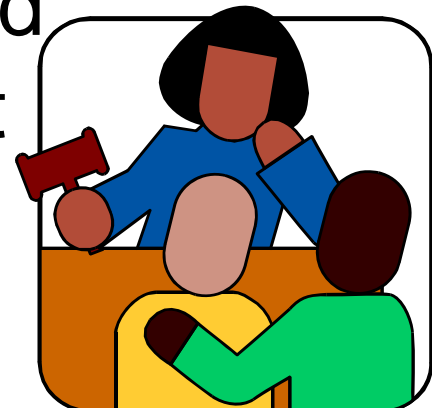
If the child is removed from the home:

- review hearing within 90 days after disposition
- another review within 6 months
- permanency planning review within one year after first placement – then every 6 months



At disposition or any review, court may

- leave child in custody of parent(s)
- place child in DSS custody
- place child in custody of someone else
- appoint a guardian for the child
- approve or change a permanent plan or concurrent plans
- approve an alternative planned permanent living arrangement



At disposition or any review, court

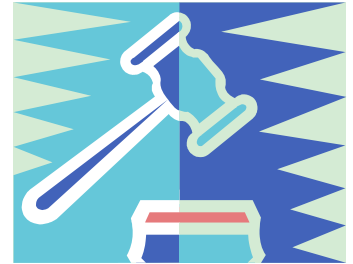
- may order parents to
 - receive treatment
 - attend parenting classes
 - take specific steps to correct problems
 - pay child support
- if child placed outside the home, must
 - specify visitation
 - continue or cease reunification efforts
 - make reasonable efforts findings



When and how does a case “end”?

Jurisdiction continues until

1. child is 18, married, or otherwise emancipated; or
 2. court terminates jurisdiction.
- G.S. 7B-911 allows court to create or modify a Chapter 50 custody order and terminate jurisdiction in the juvenile case.



Court order should never say
that the case “is closed.”

Court should either retain or
terminate jurisdiction.



Spotlight needs to be on

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



What can be complicating factors?

- paternity issues
- service of process issues
- competency issues
- language issues
- domestic violence
- interstate issues



What can be complicating factors?

- poverty
- transportation and other resources
- pending or potential criminal proceedings
- Indian Child Welfare Act
- Multi-ethnic Placement Act
- calendaring and court



At every stage after petition, ask:



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

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

