

## When Does Delinquency Result in Abuse, Neglect, or Dependency?

A juvenile may be involved with both the juvenile justice and child welfare systems. These youth are sometimes referred to as “dual jurisdiction” or “crossover youth.” Two of the ways a juvenile in North Carolina may be involved with both systems is **when the juvenile is the subject of a delinquency action**, and

- in that action, the court orders the juvenile placed in DSS custody or guardianship (G.S. 7B-1902?1907; -2506(1)c.; -2001); and/or
- there is also cause to suspect that the juvenile is abused, neglected, or dependent, which if substantiated by a county child welfare agency (hereinafter “DSS”) may result in a separate abuse, neglect, or dependency action that the juvenile is the subject of.

Both of these ways applied to one of the very few appellate opinions that address these dual jurisdiction youth: [In re K.G.](#), 817 S.E.2d 790 (2018). In that case, K.G. was adjudicated delinquent and placed in DSS custody through an order entered in the delinquency action. DSS then initiated a separate dependency action, which was based largely on the juvenile’s conduct and refusal to live with his parents. In that new action, K.G. was adjudicated dependent. That adjudication was appealed and reversed by the court of appeals, which held the petition failed to allege dependency and stated the juvenile’s willful acts do not determine a parent’s ability to care for their child.

So, when does delinquency result in abuse, neglect, or dependency?

### **Delinquency actions result in an adjudication of delinquency, not abuse, neglect, or dependency.**

In a delinquency action, the district court’s subject matter jurisdiction exists because of the filing of a verified petition alleging the juvenile’s delinquency. See G.S. 7B-1802?1804. The court’s authority to act is limited by the Juvenile Code (G.S. Chapter 7B). A delinquency dispositional order that places a juvenile in DSS custody does not result from an allegation, substantiation, or conclusion that the juvenile is abused, neglected, or dependent; instead it results from an adjudication of delinquency and is based on the delinquency dispositional factors found in [G.S. 7B-2501\(c\)](#). Additionally, the juvenile must need more adequate care, supervision, or placement. [G.S. 7B-2506\(1\)](#).

The court lacks authority to adjudicate a juvenile abused, neglected, and/or dependent in a delinquency action because the necessary statutory procedures for such an adjudication have not been followed. DSS has not completed an assessment substantiating that a juvenile is abused, neglected, or dependent. See [G.S. 7B-302](#); [In re S.D.A.](#), 170 N.C. App. 354 (2005) (vacating adjudication and disposition orders and remanding for dismissal due to a lack of subject matter

jurisdiction when the procedures of G.S. 7B-302 were not followed). And, DSS has not filed a properly verified petition making appropriate allegations of abuse, neglect, or dependency. See [In re T.R.P.](#), 360 N.C. 588 (2006) (affirming court of appeals decision vacating custody review order and dismissing neglect action for lack of subject matter jurisdiction because there was not a properly verified petition).

**Mandated reporting to DSS applies when there is cause to suspect abuse, neglect, or dependency.**

If the court, court counselor, DSS worker, or any other individual or institution has cause to suspect the juvenile is abused, neglected, or dependent, that individual or institution is mandated to make a report to the county DSS where the juvenile resides or is found. G.S. [7B-301](#); [-1700.1](#). There is no exception to the reporting mandate for a child who is currently placed in DSS custody. See [G.S. 7B-310](#). Upon receipt of a report, the county DSS determines whether an assessment is warranted, and if so, whether protective services and/or a petition alleging abuse, neglect, or dependency are required. G.S. 7B-302(a), (c), (d); [-403](#).

**A separate abuse, neglect, or dependency action must be initiated for an adjudication of abuse, neglect, or dependency.**

Any court action initiated by DSS filing a petition alleging a juvenile's abuse, neglect, or dependency proceeds as a separate action from the delinquency action. In the new action, DSS has the burden of proving by clear and convincing evidence that the allegations in the petition satisfy the criteria of the condition(s) alleged: the juvenile's abuse, neglect, and/or dependency. G.S. [7B-805](#); [-807\(a\)](#); [In re E.H.](#), 227 N.C. App. 525 (2013). If DSS meets its burden, the juvenile is adjudicated abused, neglected, or dependent and the case proceeds to disposition. See G.S. [7B-802](#); [-807](#); [-901](#). If DSS fails to meet its burden, the petition is dismissed with prejudice. G.S. 7B-807(a). With either result, the delinquency case proceeds on its own path because it is a separate proceeding.

***In re K.G.* distinguishes a juvenile's delinquent behaviors and parents' responses from dependency.**

In *In re K.G.*, DSS filed a dependency petition after the court in the delinquency proceeding ordered K.G. to DSS custody. The dependency petition alleged (1) DSS received a recent report and one report seven months earlier; (2) the juvenile was in jail (on new criminal charges) for stealing from his parents, was refusing to return home, and had a history of running away from home; and (3) the parents wanted their child to return home, reported all incidences of the child's running away to law enforcement, tried different tactics to manage their child's behavior including having him sleep in a tent outside with access to the bathroom, and sought services from the Department of Juvenile Justice. The trial court adjudicated the juvenile dependent after denying the respondent parents' motion to dismiss for failure to state a claim upon which relief may be granted.

The court of appeals reversed, holding the petition failed to allege dependency. Dependency requires that the parents (1) be unable to provide for the juvenile's care or supervision and (2) lack an appropriate alternative child care arrangement. [G.S. 7B-101\(9\)](#). The court of appeals reasoned "the allegations at best establish that [the juvenile] is a delinquent or undisciplined juvenile" and that the parents' failure to correct their child's behavior did not render them "unable" to care for him. *In re K.G.*, 817 S.E.2d at 792. The Court of Appeals further stated "[w]e do not look, however, to the juvenile's willful acts to determine a parent's ability to care for the juvenile, because doing so would necessarily require every undisciplined juvenile to be adjudicated a dependent juvenile." *Id.* In this case, the juvenile's refusal to return home did not negate the parents' willingness or ability to care for and supervise their child. Based on this opinion, it is reasonable to presume that a parent's intentions and actions, not the child's behaviors, are determinative factors.

### **A juvenile's actions and parents' responses may satisfy the abuse criteria.**

The acts of a juvenile that violate certain specified criminal laws satisfy the criteria for abuse when the juvenile's parent, guardian, custodian, or caretaker permitted or encouraged the juvenile's behavior. The definition of "abused juveniles" identifies twenty-three criminal statutes related to sexual and public morality and decency offenses that are committed *by*, *with*, or upon a juvenile and also includes a generic reference to "delinquent acts involving moral turpitude." [G.S. 7B-101\(1\)\(ii\)d. & f.](#) (emphasis added); *In re M.A.E.*, 242 N.C. App. 312 (2015) (originally unpublished but subsequently published) (affirming adjudication of both juveniles as abused in case involving older sibling committing sexual offenses against younger sibling when parents were aware of the abuse and failed to take action to prevent it from continuing). This definition allows for consideration of both the parent's, guardian's, custodian's, or caretaker's and the juvenile's actions when determining whether the child is an "abused juvenile." If appropriate, DSS may initiate a separate action by filing a petition alleging the juvenile is abused.

Another definition of abuse involves a parent, guardian, custodian, or caretaker who "uses or allows to be used on the juvenile cruel or grossly inappropriate procedures or ... devices to modify behavior." [G.S. 7B-101\(1\)\(ii\)d.](#) This definition of abuse "focuses on the severity and brutality of the procedures and devices employed by the parent[, guardian, custodian,] or caretaker against the juvenile rather than the juvenile's behavior that those procedures and devices were designed to correct." *In re F.C.D.*, 244 N.C. App. 243, 250 (2015). Under this definition, the focus is back on the actions of the parent, guardian, custodian, or caretaker.

### **What about neglect?**

One of the criteria for a "neglected juvenile" is that the juvenile does not receive proper care, supervision, or discipline from a parent, guardian, custodian, or caretaker (hereinafter "parent"). [G.S. 7B-101\(15\)](#). One can look to *In re K.G.* and *In re F.C.D.* for guidance. Reading those two opinions together, the juvenile's willful actions do not determine whether a parent has a willingness or ability to provide proper care or supervision. When examining discipline, the focus is

on the parent's actions not the juvenile's behaviors for which the discipline is designed to correct.

**A case specific analysis is required.**

A juvenile who has been adjudicated delinquent may also meet the criteria of an abused, neglected, or dependent juvenile. The specific facts of each case must be examined in light of how those facts apply to the definitions of abused, neglected, or dependent juveniles. See G.S. 7B-101(1), (9), (15). If DSS conducts an assessment and finds the juvenile is abused, neglected, or dependent, it may file a petition to commence the separate abuse, neglect, or dependency action. Any placement of the juvenile in DSS custody through a delinquency order does not render the abuse, neglect, or dependency action moot. The court's adjudication in an abuse, neglect, or dependency action focuses on a different conclusion of law regarding the juvenile's status, and the options and remedies available to the court differ in an abuse, neglect, or dependency action. See G.S. 7B-805 (adjudication); Chapter 7B, Subchapter I, Article 9 (Dispositions).

**Want to know more about how DSS custody in a delinquency action works?**

My colleague, Jacqui Greene, and I can help with that. Our new bulletin, *Delinquency and DSS Custody without Abuse, Neglect, or Dependency: How Does That Work?* will be coming out in less than a month and will be available [here](#) (description available now). We'll be sure to announce it when it's posted on the School's website.