

## When Parental Discipline Goes Too Far, It's Child Abuse

Before On the Civil Side existed, the story about NFL running back, Adrian Peterson, pleading no contest to a misdemeanor reckless assault charge for disciplining his 4-year old son with a switch was national news. I wrote about what I thought would happen to him here in NC for our Criminal Law Blog: [Parental Discipline: When Is It Abuse and/or a Crime?](#) Since I wrote that post, the NC Court of Appeals published its first opinions interpreting the **definition of abuse** as applied to a child protective case that says:

a child is abused when his or her parent, guardian, custodian, or caretaker **uses or allows to be used cruel or grossly inappropriate procedures or devices to modify the child's behavior.**

[G.S. 7B-101\(1\)c.](#)

In other words, a child is abused when parental discipline goes too far. How does a court determine whether a parent has gone too far?

**The First Case:** [In re H.H., 767 S.E.2d. 347 \(2014\)](#)

### 1. Cruelty

A mother disciplined her 8-year old son by **hitting him with a belt** five times. The next day, the child had multiple visible **bruises** on his legs from the belt. The child described the discipline as “**a beating.**” The court adjudicated the child abused based on G.S. 7B-101(1)c., and the mother appealed.

There were no published opinions interpreting G.S. 7B-101(1)c., but there were 3 unpublished opinions that the court of appeals looked to for guidance. In all 3 cases the adjudications of abuse based on the use of cruel or grossly inappropriate procedures or devices to modify a child's behavior were affirmed. In one case, when a child did not do his chores, his grandmother custodian pointed a 9 mm handgun at him while he pleaded with her to not shoot him; and when he did not clean up dog feces in his room, she threatened to force him to eat the feces. [In re C.A.G.](#), 231 N.C. App. 713 (2014) (unpublished). In another case, a mother disciplined her son when he misbehaved at school by forcing him to stand with his arms out from his sides in a “T” shape for up to 5 minutes, duct taping his mouth shut, and hitting him with a belt, paddle, switch, or other object that left marks on his arms and legs days later. [In re K.A.](#), 217 N.C. App. 641 (2011) (unpublished). In a third case, a mother disciplined her daughter for contacting the police and county department (DSS) by slapping her daughter in the face and kicking her hard enough in the stomach to leave a red mark 1.5 hours later. [In re Simone](#), 154 N.C. App. 520 (2002) (unpublished).

The type of parental discipline used in these cases is very different and range from what almost everyone would consider cruel or grossly inappropriate to the type of physical discipline that some

would say is not great parenting but is not grossly inappropriate or cruel. When deciding *In re H.H.*, the court of appeals compared the physical discipline used by the mother in that case to the physical discipline used by the mother, custodian, and caretaker in the other 3 cases. The court held that striking a child five times with a belt that caused multiple bruises was no less cruel than hitting a child in the face and kicking her in the stomach leaving a red mark more than an hour later. Based on that reasoning the court of appeals affirmed the child's adjudication as abused because the mother used cruel devices or procedures to modify her son's behavior.

## 2. Serious Physical Injury Not Required

The definition of abuse consists of 7 different subsections, each one of which has different criteria. [G.S. 7B-101\(1\)a. – g.](#) One definition requires the parent, guardian, custodian, or caretaker to inflict or allow to be inflicted serious physical injury on the child by non-accidental means. G.S. 7B-101(1)a. The case law that discusses whether the use of corporal punishment caused serious physical injury resulting in a child being abused under G.S. 7B-101(1)a. does not apply to a court's determination as to whether a child is abused because of the use of cruel or grossly inappropriate devices or procedures to modify a child's behavior. The two definitions have different criteria.

The criteria a court considers when determining whether a child is abused will depend on what definition of abuse is alleged by DSS when it files its petition with the court.

## 3. Case by Case Determination Required

The court of appeals was clear that **corporal punishment in and of itself is not automatically abuse**. *Reaffirming In re C.B.*, 180 N.C. App. 221 (2006). Each case presents its own unique set of facts. A court must look at each case individually and examine the totality of the evidence when determining whether a child has been subjected to cruel or grossly inappropriate discipline from a parent, guardian, custodian, or caretaker.

### **The Second Case: [In re F.C.D.](#), 780 S.E.2d. 214 (2015)**

#### 1. Cruel and Grossly Inappropriate

One year after deciding *In re H.H.*, the court of appeals published its second opinion interpreting G.S. 7B-101(1)c. In this case, a mother and her son and daughter lived with her friend in his home. The mother and her friend, who is a caretaker to her children (see [G.S. 7B-101\(3\)](#)) believed her son was possessed by demons. They used devices and procedures to modify the son's "demonic" behavior that included (i) forcing him to sleep outside for two cold February nights, (ii) duct taping him to a tree, (iii) hitting him with a belt repeatedly all over his body, (iv) making him walk in the woods and pray while the caretaker was holding a firearm, and (v) performing a self-baptism in a bathtub by being blind-folded and told to go under water seven times while saying "save me." The court determined those devices and procedures were cruel and grossly

inappropriate such that the child was abused.

## 2. Child's Behavior Is Irrelevant

The mother argued that the court, when determining if her son was abused, should have considered her son's behaviors that she was trying to correct. The court of appeals held that the language defining abuse focuses on the severity and brutality of the procedures and devices used on the child. The definition does not look at the child's behaviors.

### **What Do These Cases Mean?**

A parent has a right to discipline his or her child, but there is a limit to what a parent may impose without triggering an assessment by DSS and/or court action. There is a continuum of parental discipline techniques that starts with appropriate and acceptable and ends with grossly inappropriate and cruel. The court of appeals has not provided a rule that tells us where the tipping point falls. These cases provide guidance of what may cross the line: visible lasting marks and/or the use of a firearm, duct tape, or belt. Ultimately, the court decides if the child is abused based on whether DSS proved by clear and convincing evidence that the child was subjected to cruel or grossly inappropriate devices or procedures used to modify his or her behavior.