



North Carolina Department of Health and Human Services Division of Social Services

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Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

Sherry S. Bradsher, Director
(919) 733-3055

December 1, 2006

Dear County Director of Social Services

ATTENTION: Child Welfare Program Administrators and Supervisors

SUBJECT: Physical Abuse Petitions

In a recent decision, the North Carolina Court of Appeals overturned a district court ruling arising from a petition filed by the Pender County Department of Social Services. The full text of that decision can be accessed at:

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/051517-1.htm>. This letter is intended as a review of the impact that this decision has on child welfare policy and its attendant practice.

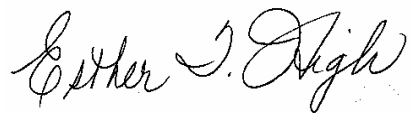
[North Carolina General Statute §7B-101\(1\)\(a\)](#) defines an abused juvenile as one whose caregiver “inflicts upon the juvenile a serious physical injury by other than accidental means.” In this recent decision, Judge James A. Wynn, Jr. stated, “...the only evidence in the record of abuse is a spanking or whipping by the father with a belt that resulted in a bruise on the buttocks. Because this evidence does not rise to the level of ‘serious injury’ to constitute abuse, we hold that the trial court erred in concluding the minor child was an abused juvenile.” Guidance from our child welfare attorneys indicates that this most recent ruling is consistent with previous decisions from the Court of Appeals, as cited in their opinion, and is also consistent with the interpretation of “serious physical injury” which appears in the abuse definition as well as in the felony child abuse statute, [North Carolina General Statute §14-318.4 \(a\)](#).

For county departments of social services, this ruling serves as a reminder to child welfare workers that what would be called “abuse” by many people, including themselves, may not legally constitute abuse under the statutes cited above. As stated in Structured Intake policy ([Family Services Manual Chapter VIII; Section 1407](#)), “[t]here may be instances where a child has bruises that do not rise to the level of abuse, but

are considered improper discipline.” Careful consideration must be given to all the dynamics involved in the use of the allegations of abuse at intake, and this consideration must continue throughout the life of a case. When filing petitions alleging injury as a result of corporal punishment, county department of social services are strongly encouraged to thoroughly examine all factors involved including the extent of the injury, the location of the injury (especially in relation to vital body parts), escalating patterns of improper discipline, the family’s history with the agency, etc. Petitions alleging abuse should be reserved for the most egregious cases where clear and convincing evidence demonstrates that the victim child has received an injury more severe than a temporary bruise as a result of corporal punishment. The need for accurately alleging the child’s legal status as abused or neglected is particularly important in cases where the neglect adjudication of some children hinges in part on the the abuse adjudication of one child. –

Please share this letter with your county attorneys. Any questions regarding this letter may be addressed to R. Patrick Betancourt at the Family Support and Child Welfare Services Section at (919) 733-4622, or by email at patrick.betancourt@ncmail.net.

Sincerely,

A handwritten signature in black ink that reads "Esther T. High". The signature is written in a cursive, flowing style.

Esther T. High, Acting Chief
Family Support and Child Welfare Services Section

ETH/rpb

cc: JoAnn Lamm
Sara Barham
Family Support and Child Welfare Services Team Leaders
Children’s Services Program Representatives
Work First Program Representatives
Local Business Liasons
Child Welfare Attorneys

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