

ADMINISTRATIVE LETTER

#C.S. 5-00

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

SUBJECT: CPS Investigations in Juvenile Justice Facilities

DATE: November 10, 2000

EFFECTIVE DATE: Immediate

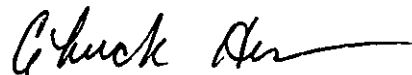
ATTENTION: County Directors
Children's Services Supervisors

A question has arisen about the responsibility and authority of a county Department of Social Services to investigate allegations of child abuse or neglect within secure facilities operated by the Department of Juvenile Justice and/or in county secure detention facilities. This question arose when the Department of Juvenile Justice was separated administratively from the Department of Health and Human Services, thus negating the requirements of DHHS Directive 61. The attached letter contains an advisory opinion from the Department of Justice.

In summary, Directive 61 does not apply to investigations in institutions operated by the Office of Juvenile Justice or secure county facilities. This means that non-caretaking employees and volunteers, such as cafeteria staff, groundskeepers, custodians, or teachers in these facilities are not included in the caretaker definition under 7B-301(3). However, facility staff who "have primary responsibility for supervising the child's health and welfare" in the facility are included as caretakers and are, therefore, subject to CPS investigative assessments. It is necessary to determine upon intake whether or not the alleged perpetrator in these facilities had caretaking responsibilities.

Please inform your Children's Services Staff about this important policy clarification.

Sincerely,



Charles C. Harris, Chief
Children's Services

Attachment

CCH/jsm

cc: E.C. Modlin
Nancy Coston
Children's Services Team Leaders
Children's Program Representatives
Local Support Managers
Melinda Hamrick



State of North Carolina
Department of Justice

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September 11, 2000

Mr. Lowell L. Siler, Esq.
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RE: Advisory Opinion: Authority Of The Department Of Social Services To Investigate An Abuse Complaint Involving A Juvenile Which Allegedly Occurred In A County Secure Detention Facility Which Is Licensed By The State of North Carolina Office Of Juvenile Justice; G.S. §7B-101, G.S. §7B-302, G.S. §7B-1501, and G.S. §§131D-10.2 and 10.4

Dear Mr. Siler:

You have asked for an Attorney General Opinion regarding the authority of the department of social services to investigate an abuse complaint involving a juvenile which allegedly occurred at a county operated secure detention facility. The specific questions you have asked are as follows:

1. Does the Department of Social Services have the authority to investigate an abuse complaint (involving a juvenile) which allegedly occurred in a county operated secure detention facility which is licensed by the North Carolina Office of Juvenile Justice?
2. Whether a county operated secure detention facility, licensed by the North Carolina Office of Juvenile Justice, is a residential child care facility as the term is used in G.S. §7B-101(3)?
3. What effect, if any, does the exemption provided by G.S. §131D-10.4(3) for secure detention facilities have on the answer to the questions above?

G. S. §7B-302(a) provides, in pertinent part: "When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition." The authority of the department of social services to investigate is triggered when a report of child abuse alleges three things: (1) a juvenile victim, (2) information, if true, that fits one of the categories as defined in G.S. §7B-101(1), and (3) a perpetrator who is the juvenile's parent, guardian, custodian, or caretaker. G.S. §7B-101(1).

The term "caretaker" is defined, in pertinent part, as follows:

"Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services." G.S. § 7B-101(3).

The term "residential child care facility" is not defined in the Juvenile Code. However, in the interpretation of statutes, "We may call to our aid other laws or statutes relating to the particular subject, or to the one under construction, so that we may know what the mischief was which the Legislature intended to remove or to remedy." *In re Hickerson*, 235 N.C. 716, 721, 71 S.E.2d 129, 132 (1952) (quoting *Abernethy v. Board of Commissioners*, 169 N.C. 631, 86 S.E. 577 (1915)).

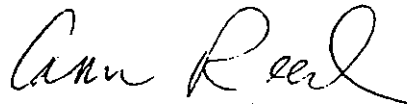
Reading the term in question in the context of Article 1A of Chapter 131D pertaining to the licensing and inspection of family foster homes, child placing agencies, and residential child care facilities, it is clear that the term "residential child care facility" set forth in G.S. §7B-101(3) encompasses a county operated secure detention facility. G.S. §131D-10.2(13) provides that a "residential child care facility" means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care and includes child caring institutions, group homes, and children's camps which provide foster care. In addition, "foster care" is defined in G.S. §131D-10.2(9), as follows:

"...the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision."

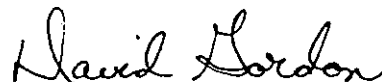
The above conclusion is also consistent with the definition of a "detention facility" set forth in Subchapter II of Chapter 7B. As defined in G.S. §7B-1501, a detention facility means, "a facility approved to provide secure confinement and care for juveniles. (Emphasis Added). Detention facilities include both State and locally administered detention homes, centers, and facilities." When construing a statutory provision, the words in the statute are to be given their natural or ordinary meaning, unless the context of the provision indicates that they should be interpreted differently. Whittington v. N.C. Dept. of Human Resources, 100 N.C. App. 603, 606, 398 S.E.2d 40, 42 (1990) (citing Abernethy v. Board of Commissioners, 169 N.C. 631, 86 S.E. 577 (1915)). "Care" ordinarily means: "Charge, supervision, management, responsibility for or attention to safety and well-being..." Webster's Third New International Dictionary Unabridged. Springfield: Merriam-Webster, Inc., 1981.

Finally, the fact that secure detention facilities are exempt from licensure pursuant to G.S. §131D-10.4(3) has no impact on the question of whether a department of social services has the authority to investigate a report of an abused juvenile that allegedly occurred in such a facility. These are two separate issues. Furthermore, a remedial statute should be liberally construed, according to its intent, so as to advance the remedy and repress the evil. Di Donato v. Wortman, 320 N.C. 423, 430, 358 S.E.2d 489, 493 (1987) (quoting Cape Lookout Co. v. Gold, 167 N.C. 63, 83 S.E. 3 (1914)). As stated by our Supreme Court in the recent case of Dobson v. Harris, _____ N.C. _____, 530 S.E.2d 829 (2000), "government has no nobler duty than that of protecting its country's lifeblood -- the children." Clearly, the purpose of Subchapter I of the Juvenile Code is not only to protect a juvenile from abuse in his own home but also to protect a juvenile from abuse, when due to the juvenile's behavior or other circumstances, the juvenile is living apart from his parents, guardian, or custodian.

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Attorney General



Ann Reed
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