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## In Re R.R.N.: Redefining "Caretaker" for North Carolina Child Protective Services

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# ***In Re R.R.N.: Redefining “Caretaker” for North Carolina Child Protective Services***

## ABSTRACT

*In 2015, the North Carolina Supreme Court interpreted for the first time the definition of “caretaker” as provided in the State’s Juvenile Code. The court narrowed the definition, providing that the statutory language “an adult relative entrusted with the juvenile’s care” means an adult relative who has “a significant degree of parental-type responsibility for the child.” The court’s interpretation has made caretaker equivalent to in loco parentis, which results in a heightened standard that likely was not intended by the legislature. This Comment discusses the far-reaching effects of the court’s decision on North Carolina’s child welfare services, law enforcement, and practitioners who represent or interact with these agencies. This Comment also explores solutions to bridge the widening gap in service provision to the families and children of North Carolina.*

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## INTRODUCTION

North Carolina, like most states, defines child abuse and neglect as maltreatment caused by a “parent, guardian, custodian, or caretaker” of the child.<sup>1</sup> This means that the jurisdiction of North Carolina’s child welfare agencies<sup>2</sup> does not encompass every situation in which a child is harmed. Situations involving maltreatment by someone other than a person responsible for the child’s care are either addressed by another agency—usually law enforcement—or not at all.<sup>3</sup>

In the fall of 2015, the North Carolina Supreme Court announced a decision interpreting the definition of who may be considered a “caretaker” in child welfare cases.<sup>4</sup> The case involved the sexual abuse of a twelve-year-old girl during an overnight visit at an adult relative’s home.<sup>5</sup> The court ultimately reversed the trial court’s determination that the girl was an

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1. An abused juvenile is “[a]ny juvenile less than 18 years of age whose *parent, guardian, custodian, or caretaker*: a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means . . . .” N.C. GEN. STAT. § 7B-101(1) (2015) (emphasis added). A neglected juvenile is “[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile’s *parent, guardian, custodian, or caretaker* . . . .” *Id.* § 7B-101(15) (emphasis added). Only Nebraska, Oregon, and Washington allow for juvenile abuse and neglect laws to apply to *any* person who harms a child; all other states restrict the application of civil abuse and neglect laws, in some shape or form, to persons responsible for the care of children. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., DEFINITIONS OF CHILD ABUSE AND NEGLECT 47, 62, 80 (2016), <https://perma.cc/49S9-FJLP>.

2. North Carolina’s child welfare services are administered through county departments of social services. *See* N.C. GEN. STAT. § 7B-300 (“The director of the department of social services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.”).

3. *See id.* § 7B-307 (providing that any report received by Child Protective Services that alleges that a child has been harmed in violation of a criminal statute must be referred to law enforcement and the district attorney’s office, whether or not the report will be screened in for assessment by Child Protective Services).

4. *In re R.R.N. (In re R.R.N. II)*, 775 S.E.2d 656 (N.C. 2015).

5. *Id.* at 658.

abused and neglected juvenile.<sup>6</sup> The court held that an overnight visit was not sufficient to qualify the adult relative as a person "entrusted with the juvenile's care" under North Carolina's definition of caretaker.<sup>7</sup> This holding presented questions and policy implications for North Carolina's child welfare system: What exactly are the parameters for determining whether a person is a caretaker? Does the court's holding further narrow the jurisdiction of child welfare agencies, thus increasing the number of cases in which redress is limited or nonexistent? What can be done to ensure that North Carolina has a cohesive policy in this area that protects both children's safety and parents' rights? This Comment seeks to answer these questions.

Part I of this Comment first provides a brief history of child welfare services, a synopsis of the training and expertise required of child welfare social workers, and a summary of the life of a typical Child Protective Services (CPS) case. Part I then examines the details of the case that led North Carolina courts to interpret the definition of caretaker. Part II addresses the new interpretation of caretaker and its impact on the scope of child welfare services and child safety in North Carolina. Particularly, Part II discusses how the courts have made caretaker equivalent to *in loco parentis*, which results in a heightened standard likely not intended by the legislature. By raising the standard of who may be a caretaker under the law, the courts have reduced CPS's jurisdiction and increased the number of child maltreatment cases for which there is no recourse. Part III offers suggestions for ways that the North Carolina General Assembly and the North Carolina Department of Health and Human Services can rectify the courts' decisions and improve service provision to families in this state.

#### I. THE ONGOING BALANCING ACT: THE BACKDROP OF *IN RE R.R.N.*

Child abuse is not simply "a serious physical injury [inflicted] by other than accidental means."<sup>8</sup> Nor is child neglect only a lack of "proper care, supervision, or discipline."<sup>9</sup> Both child abuse and neglect are further

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6. *Id.*

7. *Id.* at 660. Caretaker is defined in part as "[a]ny person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting." N.C. GEN. STAT. § 7B-101(3). "A person responsible for a juvenile's health and welfare" includes "a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, [and] a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department . . . ." *Id.*

8. See N.C. GEN. STAT. § 7B-101(1)(a); see also *supra* note 1 and accompanying text.

9. See *id.* § 7B-101(15); see also *supra* note 1 and accompanying text.

defined by who is responsible for the maltreatment.<sup>10</sup> In North Carolina, “who” includes only a child’s “parent, guardian, custodian, or caretaker.”<sup>11</sup> Child welfare agencies’ jurisdiction is directly dependent on the definitions of child abuse and neglect,<sup>12</sup> so any alterations to the definitions necessarily expand or contract the scope of agencies’ authority. Expansion or contraction of agencies’ authority has a direct impact on the balance between the competing interests of parents’ rights and children’s safety.<sup>13</sup> A broader scope of authority means greater protection of children, but it also means greater intrusion into parents’ rights. By contrast, reduced authority means greater protection of parents’ rights but decreased protection against child maltreatment.

Weighing parents’ rights against child safety has been, and always will be, a central issue in child welfare service provision.<sup>14</sup> To fully appreciate how a seemingly minor term such as caretaker fits into and affects the weighing of competing interests, it is critical to understand the historical background and evolution of child welfare, discussed in Section I.A. It is also important to understand the role of social workers, considered in Section I.B, as they are best suited to implement North Carolina’s child welfare objectives. Next, the workings of North Carolina’s child welfare system, described in Section I.C, constitute a necessary backdrop against which the issue of defining caretaker and its jurisdictional ramifications must be viewed. Lastly, in light of this history and background, the case of *In re R.R.N.*,<sup>15</sup> discussed in Section I.D, demonstrates the balancing act in which courts and legislatures engage, as well as the consequences of teetering in one direction or the other.

#### *A. A Brief History of Child Protective Services*

How and when to provide protective services for children has always required a balancing act. On the one hand, children are a vulnerable population that deserves protection from maltreatment. On the other hand, parents have a fundamental and constitutional right to parent their

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10. *Id.* §§ 7B-101(1), (15).

11. *Id.*

12. *Id.* § 7B-300 (providing that protective services must be established “for juveniles alleged to be abused, neglected, or dependent”).

13. See David Pimentel, *Fearing the Bogeyman: How the Legal System’s Overreaction to Perceived Danger Threatens Families and Children*, 42 PEPP. L. REV. 235, 244–45 (2015).

14. See *id.* at 240–41.

15. *In re R.R.N. II*, 775 S.E.2d 656 (N.C. 2015), *aff’g* 757 S.E.2d 503 (N.C. Ct. App. 2014).

children.<sup>16</sup> Those providing protection to children have long walked the line between keeping children safe and avoiding unnecessary intrusion into the rights of families.<sup>17</sup>

Until the late 1800s, there was no organized child protection entity.<sup>18</sup> Criminal prosecutions were reserved for the more heinous cases of abuse, leaving children largely unprotected from abuse and neglect.<sup>19</sup> This situation changed when the New York chapter of the American Society for the Prevention of Cruelty to Animals (ASPCA) took up the cause of an abused and neglected nine-year-old girl.<sup>20</sup> Subsequently, hundreds of child protection societies formed around the country.<sup>21</sup> However, as the role of government increased in the early 1900s and charitable giving dried up during the Great Depression, nongovernmental child protection societies began to disintegrate.<sup>22</sup> States created and increased child protective services throughout the early twentieth century, and the federal government

16. More specifically, the parents' rights at issue are the right to privacy and the right to raise their children as they see fit. See U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("[T]he relationship between parent and child is constitutionally protected."); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) ("[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.").

17. For in-depth discussions on the impact of Child Protective Services intervention (or, intrusion), see Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV. 413 (2005) and Pimentel, *supra* note 13, at 240–74.

18. John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 449 (2008).

19. *Id.*

20. *Id.* at 451. In 1874, the case of Mary Ellen Wilson became the impetus for the creation of child protection societies. *Id.* A missionary in New York City learned of the neglect and routine beatings nine-year-old Mary Ellen suffered and sought to rescue her. *Id.* However, the police refused to investigate, and the local "child helping charities . . . lacked authority to intervene in the family." *Id.* The missionary ultimately sought assistance from the ASPCA. *Id.* The ASPCA used a legal avenue similar to the writ of habeas corpus to rescue Mary Ellen from her abusive and neglectful home. *Id.*

21. *Id.* at 452. Those directly involved in the nine-year-old girl's case ultimately formed the New York Society for the Prevention of Cruelty to Children, making it "the world's first entity devoted entirely to child protection." *Id.* Around 300 nongovernmental child protection societies were formed throughout the United States between 1875 and 1922. *Id.* Additionally, local governments began establishing juvenile courts, starting with Chicago in 1899. *Id.*

22. *Id.* at 452–53.

also assisted by including support for child welfare services in the Social Security Act of 1935.<sup>23</sup>

Then, due to growing societal concerns regarding the identification and treatment of child abuse, Congress amended the Social Security Act in 1962.<sup>24</sup> The new provisions required states to provide statewide child welfare services by July 1975.<sup>25</sup> Additionally, from 1963 to 1967, all fifty states enacted child abuse reporting laws.<sup>26</sup> The combination of reporting laws and heightened social awareness of child abuse and neglect led to a dramatic rise in intervention by state agencies in the lives of families.<sup>27</sup> As the North Carolina Supreme Court noted, “Parents’ fundamental right to control their children at some point gives way to the state’s interest in the welfare of the child.”<sup>28</sup>

The dramatic rise in state intervention, however, included unnecessary and overly intrusive intervention.<sup>29</sup> In an effort to better preserve parents’ rights while establishing practices for determining what is in a child’s best interests, Congress enacted several pieces of legislation over the years, honing its child protection mandates.<sup>30</sup> Additionally, in several cases,

23. *Id.*

24. *Id.* at 455.

25. *Id.* Subsequently, Congress also enacted the Child Abuse Prevention and Treatment Act of 1974, authorizing expenditure of federal funds to improve child protective services. *Id.* at 457.

26. *Id.* at 456.

27. *Id.* at 459; *see also* ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2014 (2016), <https://perma.cc/2RXD-BV4V>. According to this report, in the 2014 federal fiscal year, approximately 3.6 million referrals, representing about 6.6 million children, were made to child protective services agencies nationwide. *Id.* Of the referrals made to CPS agencies in forty-six states (those reporting data specific to screening decisions), 60.7%, or about 2.2 million referrals, were screened in for further attention and 39.3% were screened out. *Id.* *See infra* Section I.C for further explanation of the intake screening process.

28. *In re R.T.W.*, 614 S.E.2d 489, 498 (N.C. 2005). The court went on to state, “In Subchapter I of our Juvenile Code, the General Assembly has established procedures to safeguard parental rights while simultaneously providing for the removal of children and even the termination of parental rights.” *Id.*

29. *See* Pimentel, *supra* note 13, at 276.

30. *See, e.g.*, Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (establishing the basic framework for child protective services); Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (responding to the disproportionate removal of Native American children by establishing standards for placement of Native American children within federally recognized tribes and promoting stable and secure tribal entities); Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (establishing requirements intended to eliminate unnecessary removals); Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (establishing goals for children in the child welfare system regarding safety, permanency, and well-being).

families have successfully challenged CPS intervention.<sup>31</sup> A prominent North Carolina example is the case of *In re Stumbo*.<sup>32</sup> In that case, the parents challenged the Department of Social Services' authority to enter their home and interview their children.<sup>33</sup> The North Carolina Supreme Court ultimately held that the reported allegations did not meet the legal definitions that gave county Departments of Social Services jurisdiction; thus, the agency had no power to intervene in the family.<sup>34</sup>

The history of child welfare and protection demonstrates the balancing act between protecting children's safety and protecting families' constitutional rights. The fact that animal protection societies pre-dated child protection agencies shows the initial hesitancy of government intervention and the almost complete, and at times detrimental, deference to parents' rights. However, in the current era of routine CPS intervention, where the mindset is often one of "better safe than sorry,"<sup>35</sup> child welfare agencies have had to be reined in due to violations of families' rights. Striking the right balance will always be difficult, particularly as the two aims lend themselves to the creation of a system that is both over- and

31. See, e.g., *In re J.A.G.*, 617 S.E.2d 325, 334 (N.C. Ct. App. 2005) (reversing the adjudication of neglect and dependency related to the juvenile's mother); *In re T.R.P.*, 636 S.E.2d 787, 795 (N.C. 2006) (dismissing the juvenile petition for lack of subject matter jurisdiction because the petition had not been verified as required by law); *In re H.M.*, 641 S.E.2d 715, 718–19 (N.C. Ct. App. 2007) (affirming the trial court's dismissal of the juvenile petition because the county department of social services failed to prove the allegations by clear and convincing evidence).

32. *In re Stumbo*, 582 S.E.2d 255 (N.C. 2003).

33. *Id.* at 256.

34. *Id.* at 261. In this case, the Cleveland County Department of Social Services (CCDSS) received an anonymous call alleging that a two-year-old child was naked and unsupervised in the driveway of his family's home. *Id.* at 256. A CCDSS social worker responded to the home shortly thereafter but "was rebuffed by first the mother and then the father" in her attempt to interview the children. *Id.* CCDSS filed a petition with the juvenile court, seeking to prohibit the parents from interfering with or obstructing a Child Protective Services investigation. *Id.* For the legislation governing this procedure, see N.C. GEN. STAT. § 7B-303(a) (2015) ("If any person obstructs or interferes with an assessment required by G.S. 7B-302, the director may file a petition naming that person as respondent and requesting an order directing the respondent to cease the obstruction or interference."). The trial court ordered the parents to comply with the investigation. *In re Stumbo*, 582 S.E.2d at 257. The parents ultimately appealed the decision to the North Carolina Supreme Court, "cloak[ing] their argument in the context of Fourth Amendment constitutional grounds." *Id.* While the supreme court did not decide the constitutional issue, the court stated that the allegations in this case, standing alone, did not constitute a report of child abuse, neglect, or dependency and, therefore, CPS's "investigative mandate . . . was not properly invoked." *Id.* at 260–61.

35. See Pimentel, *supra* note 13, at 239.



under-inclusive,<sup>36</sup> meaning that some parents will be placed unnecessarily under the microscope while some children slip through the cracks. This over- and under-inclusiveness is particularly evident in the choices states make regarding *whose* acts of child abuse or neglect will fall within CPS's jurisdiction.<sup>37</sup>

### *B. The Importance of Child Protective Services Social Workers*

As child welfare service provision has evolved over the last century, so has the training and expertise of the social workers who provide those services. During the advent of child protection organizations at the end of the nineteenth century, a majority of social workers were volunteers with little formal training.<sup>38</sup> Now, most social workers are required to have at least a bachelor's degree in social work.<sup>39</sup> Currently, there are more than 800 accredited Bachelor's and Master's of Social Work degree programs in the United States.<sup>40</sup> Thirty-five of those programs are located at colleges and universities in North Carolina.<sup>41</sup>

Social work is a wide-ranging profession and can be defined broadly as "a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people."<sup>42</sup> The National Association of Social Workers states that "[s]ocial workers assist people by helping them cope with issues in their everyday lives, deal with their relationships, and solve personal and family problems."<sup>43</sup> The purpose of the profession is "[g]uided by a person-in-environment framework, a global perspective, respect for human diversity, and knowledge based on scientific inquiry."<sup>44</sup>

36. See Myers, *supra* note 18, at 462.

37. See *infra* Section III.A.

38. Paul H. Stuart, *Social Work Profession: History*, in ENCYCLOPEDIA OF SOCIAL WORK 3 (2013), <https://perma.cc/WCK5-PJMY>. Columbia University offered the first social work class in 1898. *Social Work History*, NAT'L ASS'N SOC. WORKERS, <https://perma.cc/5ZN2-QEPU>.

39. Bureau of Labor Statistics, U.S. Dep't of Labor, *Social Workers*, OCCUPATIONAL OUTLOOK HANDBOOK, <https://perma.cc/FL6T-HHZN>.

40. See *Directory of Accredited Programs*, COUNCIL ON SOC. WORK EDUC., <https://perma.cc/A2QM-TD2V>.

41. *Id.*

42. *Global Definition of Social Work*, INT'L FED'N SOC. WORKERS, <https://perma.cc/46Q2-PPRV>; see also *About Social Workers*, NAT'L ASS'N SOC. WORKERS, <https://perma.cc/BRR3-DLW4>.

43. *About Social Workers*, *supra* note 42.

44. COUNCIL ON SOC. WORK EDUC., EDUCATIONAL POLICY AND ACCREDITATION STANDARDS 5 (2015), <https://perma.cc/8W3K-KFMJ>.

Degree programs in the United States emphasize the "generalist" model of social work.<sup>45</sup> This model trains social workers to use a multilevel approach, unique to the profession, to interact with clients on three levels: "the individual level (micro); the small group level (mezzo); and the agency or community level (macro)."<sup>46</sup> Social workers should "utiliz[e] their knowledge, professional values, and skills to target change" at the three different levels, and they "accomplish this by assuming a wide range of roles, using critical thinking skills, and carrying out a planned change process."<sup>47</sup>

While all degree programs train social workers as generalists, there are a wide variety of specializations, of which child welfare is just one.<sup>48</sup> The North Carolina Division of Social Services requires all child welfare social workers to attend a series of state-provided trainings.<sup>49</sup> Child welfare workers are trained to recognize the signs and symptoms of physical abuse, sexual abuse, and neglect, all of which can be complex issues.<sup>50</sup> These workers are also expected to have a working and ever-growing knowledge of other issues that play a significant role in the health and safety of families, such as child development, domestic violence, substance abuse, medical conditions, and mental health disorders.<sup>51</sup> Furthermore, social workers must strive to be "culturally competent" by learning and understanding community norms and families' cultures.<sup>52</sup> To be effective, these workers must know how to address all of these problems by connecting families with local resources, engaging in counseling and mediation during home visits, and taking legal action when necessary.<sup>53</sup>

With their broad skill set and focus, social workers are uniquely equipped to serve as a bridge between families and community and governmental services. As the primary conduits of the child welfare system, social workers serve a particularly crucial role in providing

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45. *Id.* at 11.

46. Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 WASH. U. J.L. & POL'Y 133, 140 (2004).

47. *Id.*

48. *See Types of Social Work*, NAT'L ASS'N SOC. WORKERS, <https://perma.cc/V4UX-BNJR>.

49. N.C. GEN. STAT. § 131D-10.6A(b) (2015). For training manuals and curricula, *see Child Welfare Training*, NCDHHS, <https://perma.cc/QUZ5-6UUT>.

50. *See CHILD WELFARE INFO. GATEWAY, WHAT IS CHILD ABUSE AND NEGLECT? RECOGNIZING THE SIGNS AND SYMPTOMS 1* (2013).

51. *Id.* at 3–4.

52. *See id.*; *Serving Immigrant Families*, VA. CHILD PROTECTION NEWSL. (Child Protective Servs. Unit, Va. Dep't Soc. Servs., Harrisonburg, Va.), Spring 2011, at 1, 2–3.

53. *See Child Welfare*, NAT'L ASS'N SOC. WORKERS, <https://perma.cc/Z27U-AH8L>.

appropriate services and reaching positive outcomes for abused and neglected children.

### *C. North Carolina's Child Welfare System: How It Works*

North Carolina's child welfare system is set out in North Carolina's Juvenile Code<sup>54</sup> and Administrative Code.<sup>55</sup> The Juvenile Code, often referred to as Chapter 7B, recognizes the need for balance between parents' rights and child safety. One purpose of the Juvenile Code is "[t]o provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence."<sup>56</sup> Efforts to address this purpose can be seen throughout the Juvenile Code and in corresponding administrative laws and agency policies. In particular, the current CPS system is the result of the realization that the cookie-cutter, investigation-style CPS response was not appropriate for all reports.<sup>57</sup> The resulting "Multiple Response System" provided options for agencies to better respect parents' rights and engage in family-centered practices while still maintaining child safety.<sup>58</sup>

The Juvenile Code mandates that each county's Department of Social Services (DSS) must establish child protective services for its citizens.<sup>59</sup> These protective services must include:

the screening of reports, the performance of an assessment using either a family assessment response or an investigative assessment response, casework, or other counseling services to parents, guardians, or other caretakers . . . to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.<sup>60</sup>

#### *1. CPS Jurisdiction*

When a North Carolina DSS agency receives a report containing allegations of child abuse, neglect, or dependency, it must become involved

54. N.C. GEN. STAT. § 7B (2015).

55. 10A N.C. ADMIN. CODE 70A (2016).

56. N.C. GEN. STAT. § 7B-100(3).

57. NICOLE LAWRENCE & ELIZABETH SNYDER, DUKE UNIV. CTR. FOR CHILD & FAMILY POLICY, MULTIPLE RESPONSE SYSTEM AND SYSTEM OF CARE: TWO POLICY REFORMS DESIGNED TO IMPROVE THE CHILD WELFARE SYSTEM 2 (2009).

58. *Id.* at 3.

59. N.C. GEN. STAT. § 7B-300.

60. *Id.*; see also *id.* § 108A-14(b) (providing that the director may designate employees to act in his or her stead).

with the family.<sup>61</sup> The report then immediately goes through a two-level review, generally by the worker who received the report and a supervisor.<sup>62</sup> The worker and the supervisor determine whether the reported allegations, if true, would constitute child abuse, neglect, or dependency according to the definitions laid out in Chapter 7B.<sup>63</sup> Because the definitions of abuse and neglect require that the person responsible for maltreatment be a parent, guardian, custodian, or caretaker,<sup>64</sup> an important part of this screening decision includes determining the relationship of the alleged perpetrator to the child.<sup>65</sup> Thus, there are situations that get screened out despite the report containing concerning information about a child because the alleged perpetrator is not a "parent, guardian, custodian, or caretaker."<sup>66</sup> A report that implicates a crime against a child, regardless of the identity of

61. *See id.* §§ 7B-300, -302(a). The report may be made anonymously, and it may be made by telephone, in writing, or orally. *Id.* § 7B-301(a). The worker receiving the information must document the report on the structured intake tool as thoroughly as possible at the time the report is received. N.C. DIV. OF SOC. SERVS., FAMILY SERVICES MANUAL VOLUME I: CHILDREN'S SERVICES CHAPTER VIII: CHILD PROTECTIVE SERVICES § 1407 II.B.1 (2017), <https://perma.cc/3ZK8-YYZ3> [hereinafter CPS MANUAL].

62. 10A N.C. ADMIN. CODE 70A.0105(g) (2016); *see also* CPS Manual, *supra* note 61, at § 1407 III.A.

63. CPS MANUAL, *supra* note 61, at § 1407 II.A. An "abused juvenile" is one whose "parent, guardian, custodian, or caretaker" engages in one of seven grounds of abuse. N.C. GEN. STAT. § 7B-101(1). These grounds for abuse are: (a) "serious physical injury by other than accidental means"; (b) "substantial risk of serious physical injury . . . by other than accidental means"; (c) use of "cruel or grossly inappropriate procedures or . . . devices to modify behavior"; (d) sexual offenses; (e) emotional abuse; (f) encouraging the juvenile to engage in "acts involving moral turpitude"; and (g) human trafficking, involuntary servitude, or sexual servitude. *Id.* A "neglected juvenile" is, among other things, one "who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare . . ." *Id.* § 7B-101(15). Lastly, a "dependent juvenile" is one who is "in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." *Id.* § 7B-101(9).

64. N.C. GEN. STAT. §§ 7B-101(1), -101(15) (defining abuse and neglect). The definition of dependency requires the responsible person to be a "parent, guardian, or custodian." *Id.* § 7B-101(9). This difference is explained by the fact that a "parent, guardian, or custodian" has legal rights to a child, whereas a caretaker generally does not. *See id.* § 7B-101(3) (defining caretaker).

65. *See* CPS MANUAL, *supra* note 61, at § 1407 II.A.

66. Consider, for example, a situation where a coach or youth pastor harms a child. Since neither person is the child's parent, guardian, custodian, or caretaker, CPS has no jurisdiction and would be required to screen out the report.

the alleged perpetrator, is forwarded to the local district attorney and law enforcement agency for investigation.<sup>67</sup> A report screened out by CPS may be dealt with by law enforcement, but otherwise the concerns generally will go unaddressed.<sup>68</sup>

## 2. CPS Investigations and Assessments

Once the intake worker and supervisor determine that CPS has jurisdiction, the report is screened in, assigned an assessment track,<sup>69</sup> and assigned to a social worker.<sup>70</sup> A determination that CPS has jurisdiction gives the agency significant authority over a family.<sup>71</sup> The social worker interviews all members of the household regarding the allegations, as well as other topics intended to identify any other concerns, needs, and strengths of the family.<sup>72</sup> The social worker makes follow-up visits as necessary,

67. N.C. GEN. STAT. § 7B-307; *see also* 10A N.C. ADMIN. CODE 70A.0105(c) (2016); CPS MANUAL, *supra* note 61, at § 1407 II.B.3.

68. CPS is the agency charged with investigating claims of child maltreatment. N.C. GEN. STAT. § 7B-300. Other entities, such as schools or nongovernmental agencies, may become aware of concerns for child abuse or neglect but lack the authority to address such concerns. Furthermore, because of the requirement of confidentiality, CPS generally cannot forward information to any entity other than law enforcement and the district attorney. *Id.* §§ 7B-302(a1), -307.

69. There are two assessment tracks: the Investigative Assessment track for abuse and selected neglect reports and the Family Assessment track for most reports of neglect and dependency. *Id.* § 7B-302(a); *see also* CPS MANUAL, *supra* note 61, at §§ 1408 II.A–B. The assessment track determines first how a social worker conducts the assessment. For example, in an investigative assessment, the social worker takes the child-safety-centered approach and may interview the child at school without the parents' knowledge. CPS MANUAL, *supra* note 61, at § 1408 IV.B. In a family assessment, the social worker takes the more family-centered approach by contacting the parents and arranging a time to meet with the entire family at the family's home. *Id.* at §§ 1408 II.B–C. The assessment track further determines the possible case decisions at the end of the assessment and whether certain services are available following the assessment. *Id.* at §§ 1408 II.A–B.

70. CPS MANUAL, *supra* note 61, at § 1407 II.B.2.i. The screened-in report is also given a time frame—immediate, twenty-four hours, or seventy-two hours—within which the agency must make contact with the family. N.C. GEN. STAT. § 7B-302(a). *See also* 10A N.C. ADMIN. CODE 70A.0105(d) (2016); CPS MANUAL, *supra* note 61, at §§ 1407 VII, 1408 II.C.1.

71. For example, “If any person obstructs or interferes with an assessment . . . the director may file a petition naming that person as respondent and requesting an order directing the respondent to cease the obstruction or interference.” N.C. GEN. STAT. § 7B-303(a). Additionally, a social worker “may make a written demand for any information or reports, *whether or not confidential*, that may in the [social worker's] opinion be relevant to the assessment or provision of protective services.” *Id.* § 7B-302(e) (emphasis added).

72. *See* 10A N.C. ADMIN. CODE 70A.0105(d) (2016) (“Initiation of an investigation is defined as having face-to-face contact with the alleged victim child or children.”); 10A N.C.

interviews other people who may have information about the reported concerns, contacts references for the family, and reviews any necessary records.<sup>73</sup>

After all steps of the assessment are complete, the social worker meets with her supervisor, and often with her entire team, to discuss the case and make a case decision.<sup>74</sup> Possible case decisions range from finding that concerns do not exist, cannot be proven, or do not warrant further attention, to identifying the existence of abuse, neglect, or dependency and the need for continued CPS involvement.<sup>75</sup> If the agency cannot prove the existence of abuse, neglect, or dependency, or if it finds that the concerns do not rise to a level that necessitates further attention, then the agency is without jurisdiction to continue involvement and closes the case.<sup>76</sup> On the other hand, if the agency finds that abuse, neglect, or dependency has occurred or is ongoing, the agency has authority to continue working with the family on an involuntary basis.<sup>77</sup> There is also a seldom-used middle ground, voluntary Family Support Services,<sup>78</sup> discussed in greater detail in Part III of this Comment.

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ADMIN. CODE 70A.0106 (2016) (describing the necessary components of an assessment or investigation); CPS MANUAL, *supra* note 61, at § 1408 II.E.

73. *See* 10A N.C. ADMIN. CODE 70A.0106 (2016); *see also* CPS MANUAL, *supra* note 61, at § 1408.

74. *See* CPS MANUAL, *supra* note 61, at § 1408 II.J. For Family Assessments, there are four possible case decisions. *Id.* at § 1408 III.E. The first is "services not recommended," for cases in which the allegations were not true or the identified concerns did not rise to a level that warranted continued CPS intervention. *Id.* The case is closed accordingly. *Id.* Second, where the social worker was able to front-load services and alleviate the reported concerns during the course of the assessment, the case decision may be "services provided." *Id.* The case is then closed. *Id.* Next, the case decision may be "services recommended," which generally means that there are services from which the family would benefit, but child safety and future risk of harm are not at issue. *Id.* Depending on a county's resources and policies, the family may choose to continue working voluntarily with a social worker through Family Support Services to obtain the recommended services, but the case is otherwise closed. *Id.* Finally, a case may be found "services needed" or "in need of services." *Id.* This means safety concerns were identified and further CPS intervention and services are needed to alleviate the concerns. *Id.*

For Investigative Assessments, there are two possible case decisions: "substantiate" and "unsubstantiate." *Id.* at § 1408 IV.F.2. If a case is "substantiated," CPS found that the child was abused and/or neglected. *Id.* If a case is "unsubstantiated," there was insufficient information to make a finding of abuse or neglect and the case is closed. *Id.*

75. *Id.* at §§ 1408 III.E, IV.F.2.

76. *Id.* at §§ 1408 III.E, IV.F.2.

77. *Id.* at §§ 1408 III.E, IV.F.2.

78. *Id.* at §§ 1408 III.B, III.E.

### 3. *Continued CPS Involvement: In-Home and Out-of-Home Services*

Upon identifying the occurrence of abuse, neglect, or dependency and determining the need for continued involuntary CPS involvement, the case is typically transferred to either In-Home Services or Out-of-Home Services.<sup>79</sup> In-Home Services, often the next phase for a family with identified safety concerns, is where the children remain in the home with their parents and a social worker develops a case plan with the family to resolve the safety concerns.<sup>80</sup> If the family is able to complete the activities on the case plan and provide a safe home for the children, the agency will close its case with the family.<sup>81</sup> Out-of-Home Services, often referred to as foster care, is used where the safety concerns rise to the level that the children cannot remain in the home safely and are removed by the CPS agency through the filing of a juvenile petition and a request for order for non-secure custody.<sup>82</sup> Removal can occur at any stage of a child welfare case if the need arises.<sup>83</sup> The foster care social worker also develops a case plan with the parents, but there is an added component of court involvement to address the issues of abuse, neglect, and dependency.<sup>84</sup>

### 4. *Court Involvement: The Juvenile Petition*

A juvenile petition is the legal device by which CPS invokes the jurisdiction of the juvenile court and by which the agency may request the court to make a judicial finding that a child is abused, neglected, or

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79. *See id.* at §§ 1408 II.1, 1412 I. There are some situations in which abuse or neglect is substantiated but the case is closed following the investigative assessment because, while the maltreatment occurred, the risk no longer exists or the family has the support it needs to prevent further maltreatment. *Id.*

80. *See* 10A N.C. ADMIN. CODE 70A.0107(d) (2016); *see generally* CPS MANUAL, *supra* note 61, at § 1412 VIII.

81. *See generally* CPS MANUAL, *supra* note 61, at § 1412.

82. N.C. GEN. STAT. § 7B-500 (2015); *see also* CPS MANUAL, *supra* note 61, at § 1408 II.1.2.

83. *See* N.C. GEN. STAT. § 7B-503; *see also* CPS MANUAL, *supra* note 61, at § 1408 II.1.2.

84. *See* 10A N.C. ADMIN. CODE 70A.0107(d); N.C. DIV. OF SOC. SERVS., FAMILY SERVICES MANUAL VOLUME I: CHILDREN'S SERVICES 1201 CHILD PLACEMENT SERVICES § II (2017), <https://perma.cc/8RJ5-9ETP>. Once a petition and order for nonsecure custody are filed and the case is before the court, there are several types of hearings that the case moves through. I do not detail the juvenile court process here, as the case at issue did not involve a removal of custody and did not go beyond the adjudication hearing (the hearing where a judicial determination on the facts is made). For more information on the life of a juvenile court case, *see* N.C. DIV. OF SOC. SERVS., FAMILY SERVICES MANUAL VOLUME I: CHILDREN'S SERVICES CHAPTER X: THE JUVENILE COURT AND CHILD WELFARE (2017), <https://perma.cc/Z5QJ-D8HN> [hereinafter CHILD WELFARE MANUAL: JUVENILE COURT].

dependent.<sup>85</sup> Filing a petition is a serious act and should be used only after other avenues of family-centered case planning have proven ineffective.<sup>86</sup> CPS may choose to file a petition regarding a child when the family is unwilling "to accept critically needed services," there exist "safety related circumstances that necessitate the need for immediate removal," or "the family has made no progress towards providing adequate care for the child" despite CPS's efforts.<sup>87</sup>

The juvenile petition must "contain the name, date of birth, [and] address of the juvenile, the name and last known address of each party as determined by G.S. 7B-401.1, and allegations of facts sufficient to invoke jurisdiction over the juvenile."<sup>88</sup> Section 7B-401.1 provides that a child's parent,<sup>89</sup> guardian, or custodian<sup>90</sup> must be made party to the petition.<sup>91</sup> However, a caretaker shall be made a party to a petition "only if (i) the petition includes allegations relating to the caretaker, (ii) the caretaker has assumed the status and obligation of a parent, or (iii) the court orders that the caretaker be made a party."<sup>92</sup> In sum, a juvenile petition is about the status of the child,<sup>93</sup> and any adult who has legal rights to the child or, in

85. CHILD WELFARE MANUAL: JUVENILE COURT, *supra* note 84, at § VI. The juvenile petition form is available through the North Carolina Administrative Office of the Courts. See *Juvenile Petition (Abuse/Neglect/Dependency)*, AOC, <https://perma.cc/TR5B-YDWD>.

86. CHILD WELFARE MANUAL: JUVENILE COURT, *supra* note 84, at § VI.

87. *Id.*

88. N.C. GEN. STAT. § 7B-402 (2015).

89. Parents shall be made parties to a petition unless their rights have been previously terminated, they have relinquished the child for adoption, or they have been convicted of rape "that resulted in the conception of the juvenile." *Id.* § 7B-401.1(b). A petition must also address whether there are any missing, absent, or unknown parents. See *id.* § 7B-506(h)(1).

90. "Custodian" is defined as "[t]he person or agency that has been awarded legal custody of a juvenile by a court." *Id.* § 7B-101(8).

91. *Id.* § 7B-401.1(b)-(d).

92. *Id.* § 7B-401.1(e). This provision was enacted in 2013, after the case at issue in this Comment commenced. At the time the juvenile petition was filed in *In re R.R.N.* in 2012, the statute read as follows:

The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian, and allegations of facts sufficient to invoke jurisdiction over the juvenile. A petition alleging that a juvenile is abused or neglected may also allege and seek a determination that a respondent is a responsible individual as defined in G.S. 7B-101(18a).

*Id.* § 7B-402(a) (2011). Section 7B-101(18a) then, as now, provides that a "responsible individual" is "[a] parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile." *Id.* § 7B-101(18a) (2015).

93. Under Chapter 7B, "The [juvenile] court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This



the case of a caretaker, who is alleged to have abused or neglected the child, must be named as a respondent in the action.

At the adjudication hearing, “[t]he allegations in [the] petition . . . shall be proved by clear and convincing evidence”<sup>94</sup>—a higher burden than most civil proceedings but lower than the demanding burden of criminal proceedings.<sup>95</sup> Failure to prove the allegations by clear and convincing evidence results in a dismissal of the petition with prejudice.<sup>96</sup> Once the court adjudicates the child as abused, neglected, and/or dependent, the court “may order the parents or caretaker to take certain steps to remediate the behaviors or conditions that led to the filing of the petition.”<sup>97</sup>

A juvenile petition is different from a request for an Order for Nonsecure Custody, which is “[a] temporary order that places the care, control, placement authority, and maintenance” of a child with CPS.<sup>98</sup> In other words, the granting of a juvenile petition determines the status of the child and gives the court jurisdiction over the family, while the granting of a nonsecure custody order gives legal custody of the child to CPS. While the two documents are often filed at the same time, that is not always the case.<sup>99</sup> The petition-without-custody option is ultimately what was used in *In re R.R.N.*, as CPS unnecessarily sought a judicial determination that the child at the center of the case was abused and neglected.<sup>100</sup>

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jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.” *Id.* § 7B-200(a) (emphasis added).

94. *Id.* § 7B-805; see also *id.* § 7B-807(a); CHILD WELFARE MANUAL: JUVENILE COURT, *supra* note 84, at § VII.H.

95. See *In re Winship*, 397 U.S. 358 (1970) (discussing the differences between the “preponderance of the evidence” standard used in most civil cases and the “beyond a reasonable doubt” standard used in criminal cases).

96. N.C. GEN. STAT. § 7B-807(a).

97. CHILD WELFARE MANUAL: JUVENILE COURT, *supra* note 84, at § VI.B.3; see also N.C. GEN. STAT. § 7B-904.

98. CHILD WELFARE MANUAL: JUVENILE COURT, *supra* note 84, at § III. The form is available through the North Carolina Administrative Office of the Courts. See *Order for Nonsecure Custody (Abuse/Neglect/Dependency)*, AOC, <https://perma.cc/R88N-Y6G5>.

99. See N.C. GEN. STAT. §§ 7B-200, -807; CPS MANUAL, *supra* note 61, at § 1408 II.L.2 (“It should be noted that a juvenile petition can be filed, asking for an adjudication of abuse, neglect, and/or dependency, even when the county child welfare agency is not requesting legal custody of the child. This can be particularly helpful when dealing with uncooperative parents who refuse to work with the county child welfare agency. Once abuse, neglect, and/or dependency have been adjudicated, the judge may order the parents/caretaker to take certain steps, and if they continue to refuse, they will have to answer to the court.”).

100. *In re R.R.N. II*, 775 S.E.2d 656, 658–60 (N.C. 2015).

*D. In re R.R.N.*

In 2012, Rachel,<sup>101</sup> a twelve-year-old girl who resided with her mother, stepfather, brother, and stepbrother, was sexually abused while visiting an adult relative.<sup>102</sup> The family occasionally visited with extended family members, including the stepfather's thirty-six-year-old cousin, Mr. Brown,<sup>103</sup> and his wife and children.<sup>104</sup> Over the course of several visits between the two families during the spring and summer of 2012, Mr. Brown engaged in sexual acts with Rachel.<sup>105</sup> Rachel believed Mr. Brown to be her boyfriend, and Mr. Brown told her to keep their relationship a secret so that he would not go to jail.<sup>106</sup>

On August 18, 2012, Rachel was allowed to spend the night at Mr. Brown's home with Mr. and Mrs. Brown and their three children.<sup>107</sup> After Mrs. Brown fell asleep, Mr. Brown went into the room where Rachel and one of the other girls were sleeping, moved the other girl to another room, and returned to Rachel.<sup>108</sup> Mr. Brown again engaged in sexual acts with Rachel.<sup>109</sup> After Rachel's mother picked her up from the Browns' home the following day, Rachel learned that Mr. Brown had been with another woman other than his wife.<sup>110</sup> Rachel was hurt, and she revealed to her mother that she considered Mr. Brown her boyfriend.<sup>111</sup> Rachel further revealed that they had kissed and that Mr. Brown had fondled her

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101. For ease of reading, a pseudonym is used in place of the juvenile R.R.N.'s initials.

102. *In re R.R.N. II*, 775 S.E.2d at 658.

103. Again, a pseudonym is used for ease of reading.

104. *In re R.R.N. II*, 775 S.E.2d at 658. The children in Mr. Brown's home were his biological son, J.C.B., and two nieces, C.R.R. and H.F.R.; his nieces were placed in the shared custody of Mr. and Mrs. Brown and the girls' maternal grandmother because their own parents had difficulties with domestic violence and substance abuse. *In re J.C.B.*, 757 S.E.2d 487, 488 (N.C. Ct. App. 2014) (companion case to *In re R.R.N.*).

105. *In re R.R.N. II*, 775 S.E.2d at 658. At one get-together, Mr. Brown went behind a barn at his house with Rachel, where he kissed her on the mouth and kissed her using his tongue. *Id.* Another time, Mr. Brown took Rachel on a four-wheeler ride into the woods, where Mr. Brown fondled Rachel's breasts and Rachel performed oral sex on Mr. Brown. *Id.* On yet another occasion, Mr. Brown took Rachel to buy a birthday present for her and, on the way back, pulled over on the side of the road, where he fondled Rachel's breasts again and had her perform oral sex on him. *Id.* Mr. Brown and Rachel made plans for Rachel to spend the night at Mr. Brown's home so that they could have sex. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* While Mr. Brown and Rachel did not have sex, Rachel again performed oral sex on Mr. Brown, and Mr. Brown digitally penetrated Rachel's vagina. *Id.*

110. *Id.*

111. *Id.*

breasts.<sup>112</sup> Rachel's mother and stepfather responded by not allowing any further contact between Rachel and Mr. Brown and by seeking counseling for Rachel.<sup>113</sup> Rachel's mother also reported the matter to the Wilson County Department of Social Services (WCDSS).<sup>114</sup>

WCDSS opened a CPS assessment on the family to investigate the allegations of sexual abuse, at which time Rachel disclosed further details to the social worker regarding the sexual acts that occurred with Mr. Brown.<sup>115</sup> Rachel's disclosure remained consistent at the Child Medical Evaluation a few weeks later.<sup>116</sup> Subsequently, WCDSS filed a juvenile petition seeking adjudication of Rachel as an abused and neglected juvenile.<sup>117</sup>

First, WCDSS alleged in its petition that Rachel was "an abused juvenile because her 'parent, guardian or caretaker' 'created or allowed to be created serious emotional damage'" to Rachel on August 18, 2012.<sup>118</sup> It is interesting, or perhaps concerning, that WCDSS's petition alleges emotional abuse rather than sexual abuse. It is unclear but seems likely that the allegation was framed in this manner because the mother was named as a co-respondent pursuant to the requirements of the Juvenile Code,<sup>119</sup> and she was not the person responsible for the sexual abuse.

Second, WCDSS alleged that Rachel was "a neglected juvenile because she 'lived' in an environment injurious to her welfare."<sup>120</sup> However, as both the Court of Appeals and the Supreme Court note, WCDSS maintained throughout the proceedings that Rachel's mother and stepfather acted appropriately and were protective parents.<sup>121</sup> It seems, then, that the injurious environment alleged in the petition was the Browns' home, which would make sense, as Mr. Brown was the perpetrator. This allegation, however, is incongruous with WCDSS's abuse allegation, which

112. *Id.* See also *In re R.R.N. (In re R.R.N. I)*, 757 S.E.2d 503, 505 (N.C. Ct. App. 2014).

113. *In re R.R.N. II*, 775 S.E.2d at 658.

114. *Id.*

115. See *In re R.R.N. I*, 757 S.E.2d at 505.

116. *Id.* The Child Medical Evaluation Program provides "[m]edical and medico-diagnostic studies and evaluations" to assist in the determination of whether a child has suffered abuse or neglect. CPS MANUAL, *supra* note 61, at § 1422 I. The medical evaluation itself includes a diagnostic interview of the child and a thorough physical examination. *Id.* at § 1422 II.D.

117. *In re R.R.N. I*, 757 S.E.2d at 505.

118. *Id.* at 506.

119. See *supra* notes 88–91 and accompanying text.

120. *In re R.R.N. I*, 757 S.E.2d at 506.

121. See *id.* at 506–07; *In re R.R.N. II*, 775 S.E.2d 656, 658 (N.C. 2015).

seems to refer to the mother and stepfather's home. WCDSS's petition was flawed from the start.

Rachel's mother, as a co-respondent in this action having to answer to WCDSS's petition alongside Mr. Brown, unsuccessfully moved to dismiss the case.<sup>122</sup> She argued that Mr. Brown was not a caretaker to Rachel according to the Juvenile Code,<sup>123</sup> which states that a caretaker is

[a]ny 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.<sup>124</sup>

WCDSS argued, and the trial court agreed, that Mr. Brown was in fact a caretaker, as he was "an adult relative entrusted with the juvenile's care."<sup>125</sup> Mr. Brown's status as a caretaker brought Rachel's case within the purview of the Juvenile Code, and the trial court ultimately adjudicated Rachel as an abused and neglected juvenile.<sup>126</sup> This meant that Rachel's parents, who had been protective and supportive, were also placed under the authority of the court.<sup>127</sup>

Rachel's mother appealed the decision to the North Carolina Court of Appeals.<sup>128</sup> In reversing the trial court, the court of appeals agreed with

122. *In re R.R.N. I*, 757 S.E.2d at 505.

123. *Id.*

124. N.C. GEN. STAT. § 7B-101(3) (2013) (emphasis added). Revisions to this statute took effect in July 2016, but the revised portions are not at issue here. One of the revisions added another category to the caretaker definition, such that the pertinent part of the statute now reads:

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, *a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department*, any person such as a house parent or cottage parent . . . .

Current Operations and Capital Improvements Appropriations Act of 2016, sec. 12C.1.(d), § 7B-101(3), 2016 N.C. Sess. Laws 303, 386 (emphasis on amended language).

125. N.C. GEN. STAT. § 7B-101(3) (2015); see *In re R.R.N. I*, 757 S.E.2d at 505.

126. *In re R.R.N. I*, 757 S.E.2d at 505.

127. N.C. GEN. STAT. § 7B-200(b) ("The court shall have jurisdiction over the parent, guardian, custodian, or caretaker of a juvenile who has been adjudicated abused, neglected, or dependent . . .").

128. *In re R.R.N. I*, 757 S.E.2d at 505.

Rachel's mother, holding that Mr. Brown was not "entrusted" with Rachel's care as contemplated by the statute but instead was only temporarily supervising her.<sup>129</sup> By reversing the trial court's order, the court of appeals ended the court's jurisdiction over the case, which in turn ended WCDSS's authority to continue involuntary services with the family.<sup>130</sup> WCDSS appealed to the North Carolina Supreme Court, which affirmed the court of appeals's decision that Rachel was not an abused or neglected juvenile according to the Juvenile Code.<sup>131</sup>

The situation in *In re R.R.N.*, on its face, appears to be one in which an adult relative, who was responsible for caring for a child when the child was away from her parents, abused that child. The child's mother trusted an adult relative to provide a safe environment for the child, so why can it not be said that the mother "entrusted" Mr. Brown with Rachel's care? And, much more broadly, how has this impacted the provision of Child Protective Services in North Carolina?

## II. THE ROLE OF "CARETAKER" IN WEIGHING PARENTS' RIGHTS AGAINST CHILD SAFETY

The outcome of *In re R.R.N.* solved an immediate problem for the family—the court protected the mother's rights by ending unnecessary juvenile court intervention—but caused long-term consequences for CPS, law enforcement, and the community at large.<sup>132</sup> Caretaker shapes CPS's

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129. *See id.* at 505–06.

130. N.C. GEN. STAT. § 7B-807(a) ("If the court finds that the allegations have not been proven [by clear and convincing evidence], the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker.").

131. *In re R.R.N. II*, 775 S.E.2d 656, 660 (N.C. 2015).

132. The supreme court's decision was most likely not intended to have these consequences. This case presented a situation to the court in which the parents were not afforded justice at the trial level. The child's parents were protective and responded appropriately when they learned of the abuse; thus, WCDSS had no need to invoke the court's authority or seek a judicial determination. The appropriate decision would have been to substantiate sexual abuse against Mr. Brown, place him on the Responsible Individuals List (RIL), and then close the case regarding Rachel and her parents. *See infra* note 165 and accompanying text. Although court proceedings may have resulted if Mr. Brown challenged his placement on the RIL, *see* N.C. GEN. STAT. § 7B-323 (providing a mechanism for judicial review of an alleged perpetrator's placement on the RIL), at least then the protective parents would not have had to stand on the same side of the courtroom as the man who abused their child.

However, because WCDSS did file the petition, the courts had to rule on it. For the trial court to dismiss this case, it would have had to do so by either holding that Mr. Brown was not a caretaker or that Rachel was not abused or neglected. Based on the facts of this

jurisdiction as much as the definitions of abuse, neglect, and dependency do, so changing the definition changes CPS's authority to act. This Part delves into the reasoning and meaning of the appellate courts' decisions and then discusses the significant impact these decisions have on child safety in North Carolina.

### A. *Who Is a Caretaker?*

#### 1. *North Carolina Courts Require Significant Parental-Type Responsibility*

In deciding Rachel's case, the court of appeals stated that the issue was whether Mr. Brown was "an adult relative who has been entrusted with responsibility for the health and welfare of the child."<sup>133</sup> The court explained that a "relative," according to the DSS manual, is a person related to the child by blood or marriage and includes extended step-relatives.<sup>134</sup> Mr. Brown was clearly a relative because he was Rachel's stepfather's cousin; the issue, then, was whether he was "'entrusted' with the juvenile's care."<sup>135</sup> This was an issue of first impression for North Carolina.<sup>136</sup>

Prior to this case reaching the court of appeals, CPS policy interpreted "entrusted with the care" broadly to include providing care to a child for short periods of time.<sup>137</sup> The court of appeals took a decidedly narrower

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case, it would have been absurd and detrimental to hold that Rachel was not abused. If the trial court had dismissed this case for lack of jurisdiction due to Mr. Brown not being a caretaker, WCDSS may have appealed, and the appellate courts would still have had to decide the same issue. The supreme court ultimately had to make the decision that it made to provide justice to Rachel's parents. There was no denying that Rachel had been abused, so the only way to remove Rachel's mother as a respondent on a petition alleging that her child was abused and neglected was to find that Mr. Brown was not a caretaker. The case was flawed; to undo the injustice, the decision had to be reversed.

133. *In re R.R.N. I*, 757 S.E.2d at 505–06.

134. *Id.* at 506. See also CPS MANUAL, *supra* note 61, at § 1407 IIA.1.

135. *In re R.R.N. I*, 757 S.E.2d at 505–06 (quoting N.C. GEN. STAT. § 7B-101(3)).

136. *Id.* at 505. Not only have there been no prior juvenile court cases interpreting this clause of the caretaker definition, there are no criminal cases doing so, either. Criminal courts have relied on the definition of caretaker provided in the Juvenile Code to interpret certain criminal statutes, but these cases provide little guidance for interpretation. For example, in *State v. Carrilo*, the defendant was convicted of felony child abuse, which the court defined as "'the intentional infliction of serious injuries by a caretaker to a child.'" 562 S.E.2d 47, 51 (N.C. Ct. App. 2002) (emphasis in original) (quoting *State v. Phillips*, 399 S.E.2d 293, 302 (N.C. 1991)). The court held that the defendant was a caretaker, as he was an adult member of the child's household. *Id.*

137. Letter from Kevin Kelley, Section Chief, Child Welfare Servs., to County Directors of Social Services (Sept. 1, 2015), <https://perma.cc/XLL3-6BMU> [hereinafter Dear County

view than CPS's interpretation. The court held that to determine whether an adult relative has been entrusted with caring for a child, the trial court must consider the totality of the circumstances and look at whether there is an "extended-care situation" or just a situation of "temporary supervision."<sup>138</sup> An extended-care situation, the court stated, is a "prolonged visit . . . during which time the relative gains apparent or actual authority over the juvenile's health and welfare."<sup>139</sup> Additionally, a relative may become entrusted "inadvertently," as in a case where the mother left the child with an uncle for a night but then did not come back for several weeks.<sup>140</sup> However, in this case, the court stated that Mr. Brown "was not [Rachel's] caretaker because he was not 'entrusted' with her care by virtue of supervising the sleepover."<sup>141</sup>

Likewise, when the case was again appealed to the North Carolina Supreme Court, the court held that "'an adult relative entrusted with the juvenile's care' is a person who has a significant degree of parental-type responsibility for the child."<sup>142</sup> The court also stated that the test is totality of circumstances, explaining that the trial court should look to "the duration and frequency of care provided by the adult, the location in which that care is provided, and the decision-making authority granted to the adult."<sup>143</sup>

Both the court of appeals and the supreme court agreed that an overnight visit is not sufficient to bestow caretaker status to an adult.<sup>144</sup> Instead, to be a caretaker, the adult must have some decision-making authority over the child, meaning that the adult must have "apparent or actual authority over"<sup>145</sup> the child or "a significant degree of parental-type responsibility for the child."<sup>146</sup>

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Director Letter]. Letters like this one are generally referred to as "Dear County Director" letters. The North Carolina Department of Health and Human Services uses these letters to notify county agencies of changes in an expedient manner. The letter here was released less than two weeks after the North Carolina Supreme Court's decision; the CPS Manual was then updated later, in August 2016, with language from the letter.

138. *In re R.R.N. I*, 757 S.E.2d at 506.

139. *Id.*

140. *Id.*

141. *Id.*

142. *In re R.R.N. II*, 775 S.E.2d 656, 659 (N.C. 2015) (quoting N.C. GEN. STAT. § 7B-101(3) (2013)).

143. *Id.*

144. *In re R.R.N. I*, 757 S.E.2d at 506; *In re R.R.N. II*, 775 S.E.2d at 659.

145. *In re R.R.N. I*, 757 S.E.2d at 506.

146. *In re R.R.N. II*, 775 S.E.2d at 659.

## 2. Conflation of *In Loco Parentis* and *Caretaker*

By requiring that an adult have parental-type decision-making authority over a child in order to be considered a caretaker, the courts made caretaker tantamount to a person acting *in loco parentis*. According to North Carolina's former Juvenile Code, "A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court."<sup>147</sup> *In loco parentis* has also been defined in case law as a relationship between an adult and child that "is established only when the person with whom the child is placed intends to assume the status of a parent—by taking on the obligations incidental to the parental relationship, particularly that of support and maintenance."<sup>148</sup> An *in loco parentis* relationship "does not arise from the mere placing of a child in the temporary care of other persons by a parent or guardian of such child."<sup>149</sup> Additionally, while a stepparent is not automatically conferred the status of *in loco parentis* upon marriage to the biological parent, a stepparent will be assigned this relationship to his stepchild when he "voluntarily takes the child into his home or under his care . . ."<sup>150</sup> This characterization aligns with the "prolonged" duration discussed by the court of appeals and supreme court as being a circumstance to consider in determining caretaker status.<sup>151</sup>

It is understandably tempting to interpret "an adult relative entrusted with the juvenile's care"<sup>152</sup> in terms of *in loco parentis* or to otherwise require circumstances greater than temporary care, as the supreme court did in its analysis. The court pointed out that "adult relative" is listed in the caretaker definition alongside stepparents, foster parents, and cottage or house parents.<sup>153</sup> It concluded, based on this list, that "[t]he 'caretaker' statute protects children from abuse and neglect inflicted by people with significant, parental-type responsibility for the daily care of a child in the child's residential setting."<sup>154</sup> However, the list of persons provided in the definition also includes "adult member of the juvenile's household."<sup>155</sup>

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147. N.C. GEN. STAT. § 7A-517(16.1) (1981) (repealed in 1999 when the Juvenile Code was rewritten and codified under Chapter 7B).

148. *State v. Pittard*, 263 S.E.2d 809, 811 (N.C. Ct. App. 1980).

149. *Id.*

150. *Moyer v. Moyer*, 471 S.E.2d 676, 678 (N.C. Ct. App. 1996).

151. *In re R.R.N. I*, 757 S.E.2d 503, 506 (N.C. Ct. App. 2014).

152. N.C. GEN. STAT. § 7B-101(3) (2015).

153. *In re R.R.N. II*, 775 S.E.2d 656, 659 (N.C. 2015).

154. *Id.*

155. N.C. GEN. STAT. § 7B-101(3).



Contrary to the court's assessment that adult members of the household also have "parental-type responsibility" for children,<sup>156</sup> this clause of the statute speaks more to the access that a perpetrator has to a child rather than to parent-like authority over a child. Adults, related or unrelated to the family, may reside in the home without being given so much as occasional babysitting responsibilities and nevertheless have regular access to the children living there.

In a 2017 unpublished opinion, the North Carolina Court of Appeals recognized this very issue, stating that an "adult member of the juvenile's household . . . has unfettered and unsupervised access to the child on a daily basis, which necessarily makes it much easier for that person to repeatedly abuse the juvenile than a person who does not live in the same house as the juvenile."<sup>157</sup> The court stated that it did "not construe [the supreme court's] holding to limit its reach to *only* those with parental-type roles in a child's life" and held that "an adult living as a boarder in a home with unrelated juveniles is an 'adult member of the juvenile's household'" and, thus, a caretaker for purposes of the Juvenile Code.<sup>158</sup>

Furthermore, had the general assembly intended for caretakers to be treated in terms of *in loco parentis*, the definition of caretaker surely would have been written to reflect that interpretation. The definition of *in loco parentis* was added to the Juvenile Code in 1981 and remained in effect until the Juvenile Code was rewritten and re-codified under Chapter 7B in 1998.<sup>159</sup> *In loco parentis* was used throughout the Juvenile Code when the caretaker definition was amended in 1993 to include the clause "adult relative entrusted with the juvenile's care."<sup>160</sup> The general assembly chose to include "adult relatives entrusted with the juvenile's care" and not, for example, "adult relatives acting *in loco parentis*" as caretakers for the purposes of the Juvenile Code. It therefore seems unlikely that the general assembly considered "entrusted" adult relatives to mean those with "a significant degree of parental-type responsibilities."

More recently, a 2013 revision to the Juvenile Code provides that a caretaker may only be made a party to a juvenile court case "if (i) the petition includes allegations relating to the caretaker, (ii) *the caretaker has assumed the status and obligation of a parent*, or (iii) the court orders that

156. *In re R.R.N. II*, 775 S.E.2d at 659.

157. *In re E.V.R.*, No. COA16-1250, 2017 N.C. App. LEXIS 549, at \*18 (N.C. Ct. App. July 5, 2017) (unpublished).

158. *Id.* at \*17–18.

159. See Act of May 28, 1981, ch. 469, sec. 2, § 7A-517(16.1), 1981 N.C. Sess. Laws 733, 733; Act of Nov. 6, 1998, sec. 25.1, § 7B-906.1, 1998 N.C. Sess. Laws 1543, 1587.

160. See Act of July 24, 1993, ch. 516, 2, § 7A-517(5), 1993 N.C. Sess. Laws 2099, 2100.

the caretaker be made a party.”<sup>161</sup> This revision also highlighted that lawmakers did not consider caretakers to be solely those with a parental relationship to a child.<sup>162</sup>

This shift in interpretation may seem slight or inconsequential, but, in reality, it has a big impact on CPS, law enforcement, and the community at large. By restricting who may be considered a caretaker, the supreme court narrowed the jurisdiction of CPS. The definition of caretaker is equal in importance to the definitions of abuse, neglect, and dependency in outlining the scope of CPS jurisdiction. Additionally, the cases which no longer fall under the authority of CPS are now shifted to law enforcement or worse—they may not be addressed at all if they are outside the purview of law enforcement.

### B. In re R.R.N.'s Impact on Child Protection

In response to the decision in *In re R.R.N.*, the North Carolina Department of Health and Human Services amended CPS policy to reflect the change and to guide CPS workers and supervisors.<sup>163</sup> The “Dear County Director” letter (the letter) distributed to the counties explained the supreme court’s decision and its implications for CPS.<sup>164</sup> The letter advised counties that this decision “is particularly applicable to screening decisions, case decisions, petitions, adjudications, and the decision to place an individual on the Responsible Individuals List.”<sup>165</sup> The letter reminded

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161. Act of June 13, 2013, 2013 N.C. Sess. Laws 305, 308 (codified at N.C. GEN. STAT. § 7B-401.1(e)) (emphasis added). This statute was enacted in 2013, following the filing of the petition in *In re R.R.N.* but the year before this case was heard in the North Carolina Court of Appeals.

162. The term *in loco parentis* has also been utilized in other areas of law, such as public health, child support, and criminal law. See, e.g., N.C. GEN. STAT. § 130A-440(a) (2015) (requiring “[e]very parent, guardian, or person standing in loco parentis” to submit proof of a health assessment for any child who is entering school); *id.* § 50-13.4(b) (providing that any “person, agency, organization or institution standing in loco parentis” to an unemancipated minor parent may be held liable for child support arrearages); *id.* § 14-269.7(b)(4) (prohibiting the possession of firearms by a minor unless the minor is hunting or trapping and has “on his person written permission from a parent, guardian, or other person standing in loco parentis”). This further indicates that legislators are aware of the various relationships that exist between adults and children, and they chose not to require caretakers under the Juvenile Code to be quasi-parents.

163. Dear County Director Letter, *supra* note 137.

164. *Id.*

165. *Id.* See also N.C. GEN. STAT. § 7B-101(18a) (defining a “Responsible individual” as “[a] parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile”); see also *id.* § 7B-311(b) (establishing the Responsible Individuals List, or RIL; the Department of Health and Human Services “may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers

county agencies that they are required to consider “whether the alleged perpetrator meets statutory requirements for a caretaker at the time the report is made.”<sup>166</sup> However, if the alleged perpetrator’s relationship to the child is unclear, “it may be appropriate to accept the report for assessment.”<sup>167</sup> If an agency accepts a report for assessment, it may determine an alleged perpetrator’s status as a caretaker at the same time it determines whether any abuse or neglect occurred.<sup>168</sup> The letter also pointed out that if it appears that an alleged perpetrator is not a caretaker, it may still be appropriate to “assess whether the parent made an appropriate decision regarding the child’s safety and welfare when he [or] she placed the child with the relative.”<sup>169</sup>

This new policy, which tracks the supreme court’s decision, narrows the category of child maltreatment cases within CPS’s jurisdiction. There will now be more cases in which CPS can only screen out the report and refer to law enforcement and the district attorney’s office. This situation is problematic because law enforcement and prosecutors may or may not be able to assist as a result of different policies related to the heightened standard of proof required in criminal cases. Typically in criminal cases, the standard of proof is “beyond a reasonable doubt,”<sup>170</sup> while in the Juvenile Code, the standard of proof is lower: “clear and convincing” evidence.<sup>171</sup> The difference in the two standards means that CPS and the juvenile courts will generally have an easier time holding perpetrators accountable, or at least flagging serious offenders to protect the public, than law enforcement and the criminal courts.<sup>172</sup>

Additionally, there will be more cases of child maltreatment in which CPS turns its eye on the parents rather than on the adult relative who did

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of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children”).

166. Dear County Director Letter, *supra* note 137.

167. *Id.*

168. *Id.*

169. *Id.*

170. *See In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring) (holding that “due process, as an expression of fundamental procedural fairness, requires a more stringent standard for criminal trials than for ordinary civil litigation,” which is “beyond a reasonable doubt”).

171. N.C. GEN. STAT. § 7B-805 (2015) (“The allegations in a petition alleging that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence.”).

172. Although the RIL is not a public list, such as the sex offender registry, it nonetheless allows day care facilities and adoption agencies to have an additional layer of protection in background checks for potential employees or adoptive parents. *See id.* § 7B-311(b).

the harm. Consider, for example, if the supreme court's interpretation of caretaker had been in effect at the time Rachel's mother called CPS. The intake social worker would have first asked questions about Mr. Brown to ascertain whether he met the definition of caretaker. Upon determining that he was not a caretaker, the intake worker would have then been required to ask Rachel's mother if she had still allowed Rachel to visit Mr. Brown after learning of the abuse. Once Rachel's mother answered "no," the intake worker would have explained to her that the report was being referred to law enforcement but that CPS—the agency that most people would expect to assist families in this situation—had no authority to look into the sexual abuse of her child. Or, perhaps the agency may have still accepted the report, but its investigation would have focused on whether the parents knew about the abuse, rather than the abuse itself, with Mr. Brown as the perpetrator.

The new policy also emphasizes that "county child welfare agencies may find it helpful to revisit their partnership with law enforcement," including "possibly offering training on child protection matters."<sup>173</sup> CPS social workers are educated and trained in child welfare matters and are, arguably, the most appropriate persons to address child protection issues in our communities.<sup>174</sup> However, as a result of the supreme court's narrowing of CPS jurisdiction in *In re R.R.N.*, law enforcement officers will have to fill this role for many families—a role which requires a level and quality of attention most officers will be unable to provide.

Lastly, this new interpretation of the definition of caretaker poses problems in the prosecution of those charged with crimes related to child abuse. To be charged with misdemeanor or felony child abuse in North Carolina, the perpetrator must be a "person providing care to or supervision of" the child.<sup>175</sup> The North Carolina Supreme Court has restated the definition of felony child abuse as "the intentional infliction of serious injuries by a *caretaker* to a child."<sup>176</sup> The North Carolina Court of Appeals has looked to the Juvenile Code's definition of caretaker to determine whether a defendant charged with felony child abuse was, in fact, the victim child's caretaker—an element that the court notes is "essential" to proving the offense.<sup>177</sup> If the courts continue to import the meaning of caretaker from the Juvenile Code, even law enforcement and the criminal justice system will be unable to protect the children to whom the services

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173. CPS MANUAL, *supra* note 61, at § 1407 II.A.1.

174. *See supra* Section I.B.

175. N.C. GEN. STAT. §§ 14-318.2(a), -318.4(a).

176. *State v. Phillips*, 399 S.E.2d 293, 302 (N.C. 1991) (emphasis added).

177. *State v. Carrilo*, 562 S.E.2d 47, 50–51 (N.C. Ct. App. 2002).

of CPS were unavailable. A narrower definition of caretaker means that fewer perpetrators may be charged and more defendants may successfully use a defense that was previously unavailable to them.

Considering that many adult relatives are not given parental-type responsibility or decision-making authority over a child, the North Carolina courts altered the definition of caretaker to exclude a great number of potential perpetrators. In doing so, the courts reduced the jurisdiction of CPS, making it more difficult for agencies to protect the children in their communities. Although parents' rights must be recognized and protected, child safety is more adequately addressed when CPS has broad jurisdiction. Limiting CPS's authority does not make child maltreatment go away; it merely punts cases to other agencies that are not intended to take on those cases and widens the crack through which more children may fall. Moreover, this new definition of caretaker carries over into the criminal justice system, where perpetrators may have a new ground on which to avoid liability.

### III. REBALANCING

In light of the above consequences, the North Carolina General Assembly should take steps to remedy the balance that was upset by the courts' decisions in *In re R.R.N.* This Part proposes two solutions that the general assembly should consider. First, the general assembly could begin by revising the statutory definition of caretaker in order to abrogate the North Carolina Supreme Court's interpretation of that term. Second, the general assembly could increase the scope of and funding for voluntary child welfare services that would fill a gap for families like Rachel's.

#### A. *The General Assembly and Revising the Caretaker Definition*

The North Carolina Supreme Court's interpretation of who may be considered a caretaker muddies the waters more than it provides guidance. It also widens gaps in child protective service provision, leaving more children without protection and more families without resources.<sup>178</sup> Now, however, the implications of the supreme court's decision need to be addressed. The best course is for the North Carolina General Assembly to amend the caretaker definition statute to more clearly express CPS's jurisdiction to intervene when concerns for child maltreatment arise. Families' constitutional rights must be protected, and CPS should not have unbridled authority to intervene in every family, but CPS's primary purpose is to protect children from harm by those responsible for their care.

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178. See *supra* Section II.B.

Further, CPS can be a useful tool to support families and protect the wider community when a trusted person harms a child.<sup>179</sup>

North Carolina can look to the statutes of other states and U.S. territories for guidance. In their definitions of persons responsible for child maltreatment, some states include babysitters,<sup>180</sup> parents' paramours,<sup>181</sup> or others who have regular contact or access to a child through the parents.<sup>182</sup> These definitions make sense, for these are people who have access to children and whom the parents trust not to harm their children. Granted, a parent who becomes aware of maltreatment by the babysitter or significant other should discontinue contact between the child and that person; otherwise, the parent could be held responsible for placing the child in an injurious environment.<sup>183</sup> One jurisdiction that takes an even broader approach is the Northern Mariana Islands, a United States territory. There, persons responsible for child maltreatment and subject to the jurisdiction of CPS include persons in positions of authority over a child, such as an "employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position."<sup>184</sup>

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179. Children are rarely harmed by people they do not know, particularly when it comes to sexual abuse. Most sexual abuse is committed by trusted adults, adults who have considerable access to children, and adults in positions of authority over children. One study found that "about 60% of perpetrators are non-relative acquaintances, such as a friend of the family, babysitter, or neighbor" and that "[a]bout 30% of those who sexually abuse children are relatives of the child, such as fathers, uncles, or cousins." Julia Whealin & Erin Barnett, *Child Sexual Abuse*, U.S. DEP'T VETERANS AFF.: PTSD: NAT'L CTR. FOR PTSD, <https://perma.cc/9GMJ-7GEW>.

180. For example, some states that include babysitters are Florida, Iowa, Massachusetts, Minnesota, and Mississippi. See CHILDREN'S BUREAU, *supra* note 1, at 22, 31, 39, 42–43.

181. Pennsylvania's definition of "perpetrator" includes "[a] paramour or former paramour of the child's parent." CHILDREN'S BUREAU, *supra* note 1, at 64.

182. For example, Michigan and Missouri include "substantial and regular contact" and "access to the child," respectively, in their definitions of persons responsible for child abuse or neglect. CHILDREN'S BUREAU, *supra* note 1 at 40, 44. Overall there is a wide variety in child abuse and neglect laws. Some states have narrow definitions that limit the application of abuse and neglect laws to only parents, guardians, and custodians—persons with legal authority over children. Other states, like North Carolina, have broader definitions, recognizing that children are regularly cared for by people other than their parents or legal custodians. Some states' definitions are broader still, allowing their child welfare agencies to have jurisdiction over situations where any person abuses or neglects a child. See generally CHILDREN'S BUREAU, *supra* note 1.

183. Dear County Director Letter, *supra* note 137; see also CPS MANUAL, *supra* note 61, at § 1407 II.A.

184. CHILDREN'S BUREAU, *supra* note 1, at 57.

Were North Carolina to adopt a similar view of caretaker as any one of the above-mentioned jurisdictions, an alleged perpetrator like Mr. Brown in *In re R.R.N.* would be considered a caretaker. The substantiation of child abuse would stand, and he would be placed on the Responsible Individuals List, flagging him as a potential danger to children.<sup>185</sup> Furthermore, in addition to holding a perpetrator responsible, CPS would have the ability to support the family as it deals with the trauma of child maltreatment.

### *B. Increasing the Availability of Voluntary Family Support Services*

Another option for addressing the concerns resulting from *In re R.R.N.* is to increase the availability of voluntary Family Support Services in North Carolina. Family Support Services “are designed to increase the strength and stability of families; to increase parents’ confidence and competence in their parenting abilities; to afford children a stable and supportive family environment; and to enhance child development.”<sup>186</sup> These services can include linking families to transportation services, child care programs, or housing; assisting families with living conditions or employment situations; and helping families navigate complex systems, such as education, mental health, or medical care.<sup>187</sup>

The family may choose to work voluntarily with a social worker, either by self-referral<sup>188</sup> or after a CPS assessment concludes in a finding of “services recommended.”<sup>189</sup> To make a finding of “services recommended,” CPS determines that there are services from which the family would benefit, but child safety and future risk of harm are not at issue, and the agency can otherwise close its case.<sup>190</sup> Family Support Services are not for families who are in need of CPS In-Home or Out-of-Home Services.<sup>191</sup> If the family chooses to accept voluntary services, the

185. See *supra* note 165 and accompanying text.

186. N.C. DIV. OF SOC. SERVS., FAMILY SERVICES MANUAL VOLUME I: CHILDREN’S SERVICES CHAPTER XIII: CHILD FUNDING MANUAL § 1300 I.B (2009), <https://perma.cc/T3GR-SSJG> [hereinafter CHILD WELFARE FUNDING MANUAL].

187. *What do we Offer?*, WAKE COUNTY GOV’T HUM. SERVS., <https://perma.cc/JG92-E7GU>.

188. CHILD WELFARE FUNDING MANUAL, *supra* note 186.

189. CPS MANUAL, *supra* note 61, at § 1408 III.E.

190. *Id.*

191. A “services recommended” case decision “is not appropriate for cases in which the agency feels it needs to monitor compliance with the service recommendation due to safety or future risk of harm.” *Id.* Examples of situations wherein “services recommended” would be appropriate include “[w]hen well-being (not safety-related) needs were identified during the CPS Assessment . . . , but at no time during the CPS Assessment did the potential risk of

CPS social worker transfers the family's case to a Family Support Services worker,<sup>192</sup> who links the family to the recommended services and otherwise acts as a support for the family.<sup>193</sup>

These services are not widely available, however.<sup>194</sup> Some counties have a team of social workers devoted to this service area and have a mechanism for families to self-refer.<sup>195</sup> Other counties give some workers dual roles, where the workers provide Family Support Services but primarily fill another role within the agency.<sup>196</sup> Still other counties have no Family Support Services at all.<sup>197</sup>

The General Assembly should increase funding to Voluntary Family Support Services so that it is available across all counties in North Carolina. Further, the program should be expanded and restructured to include trauma-focused services and allow a greater advocacy role for social workers. When a child has been harmed, the family comes face-to-face with several agencies and entities that compose "the system," so to speak. It can be difficult to navigate the system on a good day, and it can be much harder when a family is coping with trauma or heightened stress. Having the option to have a social worker who is well-versed in child

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child maltreatment approach the level that involuntary services would be required." *Id.* CPS In-Home and Out-of-Home Services are discussed in Section II.C. During the course of In-Home or Out-of-Home service provision, families can request voluntary services, but those services would be in addition to the involuntary services mandated by the agency. *Id.* at § 1412 V.B.

192. Family Support Services "are administered by the Division of Social Services, but may be provided under contract by other public and private agencies." N.C. DIV. OF SOC. SERVS., FAMILY SERVICES MANUAL VOLUME I: CHILDREN'S SERVICES CHAPTER IV: CHILD PLACEMENT § 1201 IIL.C.5 (2008), <https://perma.cc/CA8L-CG5H> [hereinafter CHILD PLACEMENT]

193. CHILD WELFARE FUNDING MANUAL, *supra* note 186.

194. *Id.*

195. Wake County, for example, has a unit of workers devoted to Family Support Services to whom families may be referred or to whom families may self-refer. *What is Family Services?*, WAKE COUNTY GOV'T HUM. SERVS., <https://perma.cc/6CWJ-TH3K>.

196. For example, workers primarily administer Work First or child care subsidy programs but also act like a catch-all by assisting families with referrals to other services. *See, e.g., Family Support Services*, HOKE COUNTY, <https://perma.cc/TH4B-9EVD>; *Family Support*, FRANKLIN COUNTY SOC. SERVS., <https://perma.cc/4JH5-FUN7>.

197. CHILD PLACEMENT, *supra* note 192. Many counties in North Carolina have very small populations; services, public and private, are limited. To address this dearth of services and the inefficiencies attendant to having 100 separate county agencies, the North Carolina General Assembly enacted House Bill 630 in June 2017. Act of June 21, 2017, 2017 N.C. Sess. Laws 186. This new legislation requires the North Carolina Department of Health and Human Services to develop a plan for consolidating service provision through the establishment of regional offices, in the hope that it can more adequately provide for North Carolina's residents. *Id.*



welfare matters and community resources can assist a family going through a difficult time by educating, linking the family to resources, and, ultimately, working with the family achieve greater outcomes.

Consider, for example, a child who has been abused by someone other than a “parent, guardian, custodian, or caretaker” and is reported to CPS. CPS screens out the report but refers the report to law enforcement for investigation. The child has very similar needs as a child who was abused by a “parent, guardian, custodian, or caretaker,” but the family may receive far less support. Giving the family the option at the outset to receive the assistance of a social worker would go a long way toward supporting child and family well-being.

Expanding the scope and availability of voluntary Family Support Services would have the benefit of supporting families dealing with tough situations while simultaneously respecting families’ rights to privacy and autonomy. The parents would have a choice about whether to accept or decline child welfare services in situations where involuntary intervention and intrusion would be inappropriate or unnecessary.

Under the current system and with the consequences of *In re R.R.N.*, if law enforcement officers do not take on the role of social worker, certain cases of child abuse and neglect, or certain facets of such cases, will go unaddressed. As discussed above, law enforcement agencies are often instrumental in certain types of child maltreatment cases, but they are typically not equipped to meet the majority of needs of families that have experienced child maltreatment.

In 2012, the North Carolina Department of Health and Human Services took a step in the right direction by beginning a pilot program through four agencies to test out an expanded type of voluntary services.<sup>198</sup> Called the “Community Response Program,” these services “fill[] a gap in the continuum of child maltreatment prevention programming by reaching out to families who have been reported to child protection services, but whose cases have been screened out at CPS intake or closed” following a CPS investigation or assessment.<sup>199</sup> In 2016, the North Carolina Division of Social Services increased the funding of this program and increased the number of agencies involved from four to eight.<sup>200</sup> The funding period for this second pilot ends in 2019.<sup>201</sup> While this is a big step in the right

198. CHILD WELFARE SERVS., N.C. DEP’T OF HEALTH & HUMAN SERVS., 2018 ANNUAL PROGRESS & SERVICES REPORT 18–19 (2017), <https://perma.cc/ZGE7-PCST>.

199. *Id.*

200. *Id.* at 19. The report also states that “NC DSS anticipates these services will reach 285 caregivers and 415 children in eight NC counties (Alamance, Catawba, Durham, Henderson, Iredell, Rutherford, Wake, and Wilson) in [fiscal year] 2017–18.” *Id.*

201. *Id.*

direction, the North Carolina General Assembly could assist by providing more funding sooner so that families in all 100 of North Carolina's counties have access to this program.

In sum, by altering the definition of caretaker and by providing the means by which agencies across the state can offer voluntary services, the general assembly can provide for the safety and well-being of children while maintaining parents' rights. By developing a more comprehensive statutory definition of caretaker that better reflects the realities of who has access to and harms children, and by filling the inevitable gaps in child welfare services provision, the general assembly can ensure that more children are safe and that more families avoid unnecessary intrusion.

#### CONCLUSION

The heart of it all is that Rachel was abused by a caretaker. He was someone whom her parents trusted to keep her safe and healthy while she was in his care. Rachel's parents expected Mr. Brown to provide appropriate supervision and good decision-making while Rachel was in his care. Of course, he was not going to sign off on educational decisions or take Rachel for medical care, but if that is our definition of caring for a child, then it is a very narrow definition indeed. The North Carolina Court of Appeals and North Carolina Supreme Court were right to reverse the trial court's decision in Rachel's case, as it was inappropriate for WCDSS to bring the family to court in the first place. However, the only avenue by which the courts could reverse the decision, and the language the courts used to do so, had an impact that will continue to trickle down into county agencies and the community at large. CPS, whose failures, not successes, are publicized, will likely become even more of an enigma and a frustration to citizens seeking assistance for children who have been abused or neglected. The agency's authority already did not reach a significant number of people who have the opportunity to harm children, and under the supreme court's interpretation of caretaker, that number has increased.

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