

SUPREME COURT OF NORTH CAROLINA

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IN THE MATTER OF JOANIE	)	
STUMBO, STEVEN STUMBO,	)	<u>From Cleveland County</u>
SCOTT STUMBO, UNKNOWN	)	99-J-156-158
STUMBO	)	COA00-408

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*Amici Curiae* Brief of the  
National Association of Social Workers  
and its North Carolina Chapter  
in support of  
Cleveland County Department of Social Services

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As stated in the Motion for Leave to File Brief as *Amici Curiae*, the National Association of Social Workers (NASW) is a professional membership organization comprised of over 150,000 social workers, with chapters both internationally and in every state and the District of Columbia. The North Carolina Chapter of NASW has three thousand five hundred (3,500) members, many are actively involved in matters affecting the safety and protection of children. as was Tasha Lowery, the child protective services investigator for the Cleveland County Department of Social Services involved in this case. The NASW and its North Carolina chapter have significant interest in this case as a reversal of the Court of Appeals' decision would adversely impact the daily work of social workers and the children and families they are trained to assist.

STATEMENT OF THE FACTS

*Amici* adopt and incorporate by reference Cleveland County Department of Social Services' statement of the facts.

ARGUMENT

Child abuse is a distressing and pervasive problem throughout the United States. In 1999, state child protective services agencies nationwide received nearly three million (2,974,000) reports of suspected child abuse. U.S. Department of Health and Human Services, Administration for Children and Families, *Child Maltreatment 1999: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, D.C.: U.S. Government Printing Office, 2001). Of the reports that were substantiated, the highest victimization rates were for children three years old and younger. *Id.* In almost ninety percent (87.3%) of the cases, the maltreatment was at the hands of at least one parent, most commonly a female parent acting alone. *Id.* In 1999, approximately 1,100 children died as a result of maltreatment, at least three children every day. *Id.*

In North Carolina, the county Departments of Social Services received over 102,000 reports of suspected abuse, neglect or dependency in 2000, 32,581 of which were substantiated as cases of child maltreatment. North Carolina Child Abuse Statistics, 1997 to 2001, North Carolina Department of Health and Human Services, Division of Social Services, Central Registry for Child Maltreatment, State Fiscal Year 2000/2001. In 1997, child maltreatment accounted for at least 36 fatalities in North Carolina. North Carolina Child Fatality Task Force, *Our Children, Our Future, Our Responsibility*, 1999-2000 Report to the Governor and General Assembly. It is because of the unfortunate reality of child maltreatment that child protective services agencies such as Appellee,

the Cleveland County Department of Social Services (DSS), have been established with the sole purpose of assessing and ensuring the welfare of children. DSS does this by providing a wide range of “protective services” designed to prevent abuse, neglect and dependency and to remedy harm that has already occurred as a result of child maltreatment.

The General Assembly is serious about protecting North Carolina’s children.

[A]ll fifty states have codified mandatory reporting statutes that impose a duty to report suspected or observed child abuse upon specified persons or institutions, particularly those that work regularly with children. [Citation.] North Carolina’s reporting statutes, however, impose this duty universally -- everyone, not just officers of the state, physicians, teachers, administrators, social workers or clergy, shares the state’s role as *parens patriae* in this regard for all North Carolina children.

*Dobson v. Harris*, 352 N.C. 77, 80, 530 S.E.2d 829, 833-34 (2000); N.C. Gen. Stat. §§7B-300 & -301.

When a citizen makes a report of suspected child maltreatment, DSS conducts an initial screening assessment in which certain specific information is obtained from the person making the report to assess the validity and seriousness of the report. N.C. Admin. Code tit. 10 §411.0304(b) & (g). After this initial review, DSS then has a statutory obligation to investigate every report of suspected child maltreatment to ascertain the well-being of the child and assess whether protective services are needed. N.C. Gen. Stat. §§7B-302(a). It is customary that, as in the instant investigation, a social worker is assigned to interview the child/children and parents under procedures established by DSS. Respondents-Appellants James and Mary Stumbo (the Stumbos) ask this Court to mandate that DSS social workers be generally required to obtain a search warrant

as a prerequisite to the commencement of every investigation of a report of suspected abuse, neglect or dependency.

In this brief, *Amici* first provide the Court with a brief historical foundation of the development and purpose of both child abuse prevention and treatment laws and child protective services. Second, *Amici* demonstrate that the function of DSS, a DSS investigative assessment, and the scope of DSS' statutory obligation to report evidence of possible abuse to law enforcement are misunderstood and mischaracterized in the briefs filed in this Court by and on behalf of the Stumbos, which rely in significant part on the dissenting opinion in the court of appeals below -- *In the Matter of Joanie Stumbo, et al*, 143 N.C.App. 375, 547 S.E.2d 451, 456 (2001) (Greene, J., dissenting). Third, *Amici* support DSS by demonstrating that a social worker's investigatory assessment of a child's well being to ensure the child's welfare does not implicate the Fourth Amendment; and finally, that even if the Fourth Amendment were implicated, the "special needs" found in the protection of the welfare of North Carolina's children render DSS' investigations constitutional.

A. Historical Background on Reporting Laws and Child Protective Services

1. Development and Goals of Child Maltreatment Reporting And Prevention Laws

"The early-to mid-twentieth century saw a growing recognition of the 'state's responsibility for the ultimate protection of children.'" Caroline T. Trost, Note, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 Vand.L.Rev. 183, 190 (1998) (citing, 2 Donald T. Kramer, Legal Rights of Children §16.01, at 8 (2d ed. 1994)). That responsibility focused primarily on issues such as child labor laws. *See, e.g., Starnes v. Albion Mfg. Co.*, 147 N.C. 556, 61 S.E. 525, 526 (1908) (child labor laws, "are founded upon the principle that the supreme right of the state to the guardianship of children controls the natural rights of the parent, when the welfare of society or of

the children themselves conflict with parental rights.”) Throughout this period little public attention was focused on child abuse and neglect. Within the medical community, however, practitioners began to consider the possibility that certain traumatic injuries in children, especially evident in children hospitalized with repeated bone fractures and chronic subdural hemotoma (the collection of blood under the skull), were the result of parental abuse. *See*, Cynthia Croson Tower, *Understanding Child Abuse and Neglect*, 12 (3d ed. 1996); *See also*, Barbara Daly, *Willful Child Abuse and State Reporting Statutes*, 23 U. Miami L.Rev. 283, 284 (1969) (citing, John Caffey, *Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hemotoma*, 56 Am.J. of Roentgenology 163-73 (1946)).

In 1962, the Journal of the American Medical Association published the now famous study entitled, *The Battered Child Syndrome*. 181 J.A.M.A. 17 (1962). The authors of the study, Dr. Henry Kempe and his colleagues, confirmed the frightening and unfortunate reality that too many children were being abused by their parents. Studies by Dr. Kempe and others demonstrated that medical evidence of bruises and other injuries inflicted upon children did not comport with the parents’ explanations for the injury. *See*, *Willful Child Abuse, supra*, 23 U. Miami L.Rev. at 287 (“To the informed physician, the bones tell a story the child is too young or too frightened to tell.” (quoting, 181 J.A.M.A. at 18)). Additional research found that most professionals did not report cases of abuse either ignoring, rationalizing, or failing to recognize signs of abuse. *Id.* The case studies recounted in such research are chilling. “In response to an enlightened public outcry, legislatures acted, often without regard to party lines, and within four years all fifty states, the District of Columbia and the Virgin Islands had enacted statutes requiring cases of child abuse to be

reported to authorities.”<sup>1</sup> *Id.* at 285.

Within a decade child maltreatment was recognized as a national epidemic and in 1974 the federal Child Abuse Prevention and Treatment Act (CAPTA) was enacted and the National Center on Child Abuse and Neglect was established. P.L. 93-247 (1974). CAPTA provides a federal framework to investigate, compile data, and research issues relating to child abuse and to augment state efforts to identify, prevent and treat child abuse and neglect. *Id.*; *See also*, S.R. 93-308 (1973) (“During the last decade, nearly every state has revised its child abuse reporting laws. Yet it is common for cases to come to light only after the victim has suffered permanent psychological and or physical damage or death. One reason for this situation is that most laws do not require any followup or treatment once a case of abuse has been reported.”); H.R. 93-685 (1973) (same). Federal grants to states under CAPTA mandate that the state have child abuse and neglect laws in effect which meet minimum requirements. P.L. 93-247 (1974); *See also*, 42 U.S.C.A. §§ 5101, *et seq* (2001).

In accordance with CAPTA, North Carolina requires the reporting of suspected abuse or

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<sup>1</sup> “During the 1980s the public recognized the parallel problem that children are also sexually abused by their parents.” Michael W. Weber, *The Assessment of Child Abuse: A Primary Function of Child Protective Services*, in *The Battered Child* 120, 122 (Mary E. Helfer, *et al.* eds., 5<sup>th</sup> ed. 1997).

neglect and that all such reports be investigated to substantiate the accuracy of the report. *Compare*, P.L. 93-247 (1974) (CAPTA requires, *inter alia*, “the reporting of known and suspected instances of child abuse and neglect,” and “that upon receipt of a report of known or suspected instances of child abuse or neglect an investigation shall be initiated promptly to substantiate the accuracy of the report.”) *with* N.C. Gen. Stat. §§7B-301, - 302. In doing so, the General Assembly has implemented a framework to ensure its goal of preventing maltreatment at its earliest stages. *See*, N.C. Gen. Stat. §1300 (prevention of abuse and neglect is, “a priority of this State.”); *See also*, *Dobson, supra*, 352 N.C. at 80 (“North Carolina’s reporting statutes similarly give rein to th[e] doctrine [of *parens patriae*], providing procedures clearly intended to encourage the participation of all citizens in swiftly detecting and remedying child abuse or neglect.”)

The importance of prevention of child maltreatment has become a recognized necessity as the psychosocial and economic costs of abuse, neglect and dependency on both the child and society are astronomical.

Child abuse and neglect have known detrimental effects on the physical, psychological, cognitive, and behavioral development of children [citation]. These consequences range from minor to severe and include physical injuries, brain damage, chronic low self-esteem, problems with bonding and forming relationships, developmental delays, learning disorders, and aggressive behavior. Clinical conditions associated with abuse and neglect include depression, post-traumatic stress disorder, and conduct disorders. Beyond the trauma inflicted on individual children, child maltreatment also has been linked with long-term, negative societal consequences. For example, studies associate child maltreatment with increased risk of low academic achievement, drug use, teen pregnancy, juvenile delinquency, and adult criminality [citations]. Further, these consequences cost society by expanding the need for mental health and substance abuse treatment programs, police and court interventions, correctional facilities, and public assistance programs, and by causing losses in productivity. Calculation of the total financial cost of child maltreatment must account for both the direct costs as well as the indirect costs of its long-term consequences.

U.S. Department of Health and Human Services. Administration for Children and Families. National Clearinghouse on Child Abuse and Neglect Information. *Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect* (Washington, D.C.: U.S. Government Printing Office, 2001):  
*See also*. Susan J. Wells, *Child Abuse and Neglect Overview*, in 1 *Encyclopedia of Social Work* 348, 351 (Richard L. Edwards, *et al*, eds., 19<sup>th</sup> ed. 1995) 19<sup>th</sup> ed. 1995) (“it is abused and neglected children who will transfer what they have learned to their own children.”)

It is the recognition of the short and long-term violence which child maltreatment inflicts on both the child and our society that:

has prompted the promulgation of laws like those before us here, which recognize that, when a child’s welfare is jeopardized, swiftly engaging the state’s protective mechanisms is paramount.

Government has no nobler duty than that of protecting its country’s lifeblood - - the children.

*Dobson, supra*, 352 N.C. at 80.

## 2. The Role of Child Protective Services

The traditional policy of the law has been that the parents, and not government, are responsible for nurturing, raising, and providing for their children. Due to their inability to care for themselves, infants and children have to put up with whatever care is given to them. A parent’s rights are not, however, without limits. Every child has a right to receive at least minimally adequate care, *i.e.*, they not be abused or neglected. For obvious reasons, neither children who are victims of abuse or neglect nor abusive parents or caretakers can be relied upon to report such maltreatment. And, while the government’s authority to intervene to preserve the welfare of its children is not unlimited, reporting requirements serve an obvious need, “[k]nowledge of children’s safety depends

on obtaining information about their current health, development, and supervision.” Donald C. Bross, *The Legal Context of Child Abuse and Neglect: Balancing the Rights of Children and Parents in a Democratic Society*, in *The Battered Child*, *supra*, at 62. So, while the ills of child abuse and neglect have become apparent, and the success of prevention recognized, one matter that is often overlooked is that child abuse or neglect is not an easy subject to discuss, the less confrontational the better. And so, professionally trained protective services workers are designated to meet the challenging task of responding to reports of suspected child maltreatment.

“Changes in the 1970s brought legislation that mandated the identification and reporting of child maltreatment to designated social service agencies.” *Understanding Child Abuse and Neglect*, *supra*, at 227. This was done because such agencies were established to provide “protective services.” *See*, Mason P. Thomas, *Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. Rev. 293, 346 (1972). The protective services approach being premised then, as it is today, on the idea that, “the child can be left in his own home while efforts are being made to correct the causes of parental abuse.” *Id.* at 337; *See also*, N.C. Gen. Stat. §7B-300 (“protective services” includes casework, or other counseling services to parents to prevent maltreatment “and to preserve and stabilize family life.”) Reporting to social service agencies not only reduced the antagonism inherent in police responding to reports of maltreatment, thus enhancing the prospects of more successful intervention, but it fostered reporting by eliminating the concern that one was calling the cops on a relative, friend or neighbor.<sup>2</sup>

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<sup>2</sup> The first reporting laws enacted in the 1960s required doctors to report abuse to police out of concern that protective services agencies would not have adequate resources to respond to the added duties whereas the police were available twenty-four hours a day. *See*, Thomas, *supra*, 50 N.C. L. Rev. at 331.

The typical strategy of protective services is for a social agency (public or private) to initiate contact with parents whose children are reported to be neglected or abused. The general method is to provide casework and other supportive services to the parents in order to help them make the changes necessary for protection of the children. This is a difficult assignment, for the caseworker must initiate a professional service with clients who have not asked for help.

Thomas, *supra*, 50 N.C. L. Rev. at 347; *See also*, Sheryl Brissett-Chapman, *Child Abuse and Neglect: Direct Practice*, in 1 Encyclopedia of Social Work, *supra*, at 363 (“In cases of child abuse and neglect, the primary goal is to protect the children by enabling parents to recognize and correct conditions that are harmful to their children and to fulfill their parenting roles; providing services that stabilize the family situation; and maintaining and supporting the family when appropriate.”)

The assessment of suspected maltreatment cases necessitates an informal approach and process combining both broad-based policy and specific practice guidelines. *See, id.* at 361. This is because of the fact driven nature of each abuse or neglect case which can introduce complex dynamics based on various cultural and socio-economic factors, resistance to discussing and/or receiving aid, and acknowledging that there is neglect or abuse. Accordingly, in addition to the specialized undergraduate and/or graduate training and separate requirements for licensure as a social worker, social service agencies require (often by legislative mandate) that their workers receive additional specialized training and meet continuing education requirements annually. *See, e.g.*, N.C. Gen. Stat. §131D-10.6A (mandating DSS workers complete 72 hours of preservice training, 18 additional hours for child protective services workers, and 24 hours of continuing education annually.) Such training is designed to ensure that the workers that attend to the welfare of children are professional, competent, and committed to ensuring and preserving stable, safe, and nurturing families for children. This fosters the goals of attending to the best interests of the child by means

of an informal, respectful and non-confrontational process.

B. Understanding North Carolina's "Abuse, Neglect, Dependency" Law

1. In Order to Protect Children and Prevent Child Abuse and Neglect, North Carolina's Citizens Have a Duty to Report Suspected Child Maltreatment

The statutory framework of North Carolina's Juvenile Code dealing with abuse, neglect and dependency is carefully crafted to protect children and prevent child maltreatment while simultaneously respecting the constitutional rights of juveniles and parents. *See*, N.C. Gen. Stat. §7B-100. The reporting laws at issue in this case ensure that the state does not turn a blind eye to children whose welfare may be in jeopardy while simultaneously providing procedures that assure fairness and equity. N.C. Gen. Stat. §7B-300 - §7B-311. The function of the reporting law is to funnel reports of suspected child maltreatment to DSS whose employees specialize in the "screening of abuse and neglect complaints." *Id.*

Children who are victims of child abuse or neglect are generally not in a position to report such maltreatment (be it by fear, infancy, or otherwise) and those who cause the maltreatment generally do not seek aid voluntarily. Thus, North Carolina law mandates that "[a]ny person who has cause to suspect" child abuse, neglect or dependency report the case to the department of social services in that county. N.C. Gen. Stat. §7B-301; *See also*, N.C. Gen. Stat. §7B-310; *Dobson, supra*, 352 N.C. at 80; *Understanding Child Abuse and Neglect, supra*, at 230 ("Reporting suspected child abuse and neglect is not easy, but the step is vital to securing help for children and their families.")

Thus, the initial reporting and "screening" phase of North Carolina's "Abuse, Neglect, Dependency" laws foster the State's interest in preventing child maltreatment and promoting the safety and well-being of children and families before permanent psychological and/or physical harm

or death occurs. *See, Dobson, supra*, 352 N.C. at 78 (“It is clear that the legislative intent of these statutes is that citizens are to be vigilant in assuring the safety and welfare of the children of North Carolina.”); *See also, In the Matter of Browning*, 124 N.C. App. 190, 194, 476 S.E.2d 465, 467 (1996) (“The intent of the statutes requiring [DSS] to screen and investigate complaints of child abuse is the protection of neglected and abused children [citation] which is undeniably a compelling state interest.”).

2. Screening Reports of Child Maltreatment -- DSS Does Not Initiate an Investigation Arbitrarily

North Carolina law mandates:

[w]hen a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition.

N.C. Gen. Stat. §7B-302(a). The investigation requirement should not, however, be overread nor misunderstood to mean that DSS initiates investigations arbitrarily based upon any and all calls it receives. *See, Understanding Child Abuse and Neglect, supra*, at 230 (“The reporter is questioned on the phone or sometimes interviewed to determine the validity of his or her concerns.”)

The statute requires that a report “shall include information” and specifies what information is needed to justify an investigation. N.C. Gen. Stat. §7B-302(a). Accordingly, when DSS is contacted, an initial screening assessment is conducted by trained workers in order that all necessary and specific information is obtained from the person making the report. N.C. Admin. Code tit. 10 §41I.0304(b) & (g). This is done so that DSS can assess the information and determine whether the

alleged maltreatment rises to a statutory definition of abuse, neglect or dependency and, if so, make a deliberate decision as to how the agency will respond. *Id.*

Once DSS obtains sufficient information from which it can determine that the welfare of a child may legitimately be in jeopardy in terms of the statutory definitions of abuse, neglect or dependency, then it is considered a report of suspected child maltreatment and an investigation must be initiated by DSS.<sup>3</sup> N.C. Gen. Stat. §7B-302(a). Investigations of reports of abuse must be initiated within 24 hours and reports of neglect or dependency must be initiated “within 72 hours following receipt of the report.” N.C. Gen. Stat. §7B-302(a); *See also*, N.C. Admin. Code tit. 10 §41I.0304(d). “Initiation of an investigation is defined as having face-to-face contact with the alleged victim child or children.” N.C. Admin. Code tit. 10 §41I.0304(d). In addition, “face to face contact with other children residing in the home shall be made as soon as possible.”<sup>4</sup> N.C. Admin. Code tit. 10 §41I.0305(c).

A private interview with the child is also necessary as is an interview with the child’s parents. N.C. Gen. Stat. §7B-303(b); N.C. Admin. Code tit. 10 §41I.0305.

This preliminary investigation requires the worker to talk with the children and their parents, and perhaps other family members as well. Children are often interviewed

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<sup>3</sup> While N.C. Gen. Stat. §7B-302(a) does not preclude DSS from accepting anonymous reports, such reports are also not accepted for investigation unless and until DSS obtains the necessary information to ascertain whether the substance of the report meets the necessary qualifications. Notably, less than 8% of the more than 102,000 reports of child maltreatment in 2000 were anonymous. North Carolina Department of Health and Human Services, Division of Social Services, Central Registry for Child Maltreatment, State Fiscal Year 2000/2001.

<sup>4</sup> In the instant case where there was a report of a naked two-year outside and unsupervised, *i.e.* neglect (not receiving proper supervision), there was concern for imminent harm to the child so DSS social worker, Tasha Lowery, was sent to assess the report right away. (T pp. 11 - 13.)

at school or in another neutral setting, providing an opportunity for the worker to see the child alone. This is important to prevent the child from feeling overwhelmed or inhibited by the presence of the parent(s) who may also be the abuser(s).

Understanding Child Abuse and Neglect, *supra*, at 231; *See also*, Weber, *Assessment of Child Abuse, supra*, at 129 (“The requirement that the investigator actually see the child has assumed major importance as the result of cases in which investigators were assured by parents of a child’s well-being only to detect later that severe child abuse had ensued.”); *See also*, 1984 WL 182156 (N.C.A.G.) (“Since it is the parent(s), more often than not, who are the alleged perpetrators of the abuse or neglect, the presence of parent(s) at the [DSS] interview can substantially impede the abuse or neglect investigation.”)

3. The Immediate Purpose of an Investigative Assessment by DSS is to Assess the Welfare of the Child -- It is Not a Criminal Investigation of the Alleged Abuser

While DSS is required by statute to report evidence of possible abuse that it finds in the course of its investigation to law enforcement authorities, the Stumbos’ characterization of DSS social workers as investigators in a criminal process is unfounded. Respondent-Appellants’ New Brief (Stumbo Brief) at 26 - 27; *See also*, American Civil Liberties Union of North Carolina Legal Foundation, Inc. (ACLU) *Amicus Curiae* Brief at 15; *In the Matter of Joanie Stumbo, et al*, 143 N.C.App. 375, 547 S.E.2d 451, 457 (Greene, J., dissenting). A DSS investigation:

means the assessment process by which sufficient information is gathered to determine whether protective services are required and what services would be most helpful to the child and the parents or other caretakers.

N.C. Admin. Code tit. 10 §41L.0303(9). That is, the purpose of conducting an investigative assessment is to assess the welfare of the child to determine whether social services are even needed.

*Id.*; *See also*, N.C. Admin. Code tit. 10 §41I.0305 - .0307. DSS does not investigate to assess the culpability of the parent. *See, e.g., In the Matter of D. Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984) (“[o]ur discussion would not be complete unless we re-emphasized the fundamental principle underlying North Carolina’s approach to controversies involving neglect and custody, to wit, that the best interest of the child is the polar star. ... In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault of the parent.”); *See also, Franz v. Lytle*, 997 F.2d 784, 791 (10<sup>th</sup> Cir. 1993) (police officer’s, “focus was not so much on the child as it was on the potential criminal culpability of her parents. That focus is the hallmark of a criminal investigation. In contrast, a social worker’s principal focus is the welfare of the child. While a criminal prosecution may emanate from the social worker’s activity, that prospect is not a part of the social worker’s cachet.”) This reflects the fundamental distinctions between civil processes in the juvenile system, philosophically a non-adversarial and more informal forum, and criminal proceedings where a commitment to prosecute by the state solidifies the adversarial positions of the government and the defendant.

Even a DSS petition alleging abuse or neglect, several steps beyond the proceeding in the trial court in this case, is not a criminal matter. *See, State v. Adams*, 345 N.C. 745, 748, 483 S.E.2d 156, 157 (1997) (“When the DSS filed the petition alleging abuse and neglect, the State was not committed to prosecute the defendant. The filing of a petition alleging abuse and neglect commences a civil proceeding. By its terms, the Sixth Amendment applies only to criminal cases. We cannot say, as did the Court of Appeals, that the civil and criminal proceedings are so intertwined that the commencement of a civil proceeding triggers the protection involved in a criminal case.”) The Stumbos, however, confuse and collapse this structure in an effort to both

criminalize the DSS' assessment of reports of suspected child maltreatment and require judicial participation at the outset of the initial screening and assessment process.

Contrary to the Stumbos' assertion, DSS is not obligated under N.C. Gen. Stat. §7B-307(a) to "make an immediate oral and subsequent written report" of every investigative assessment to law enforcement for potential prosecution. DSS need only report to law enforcement, "[i]f the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101." N.C. Gen. Stat. §7B-307(a) (emphasis added). Abuse is separate and distinct from neglect or dependency. N.C. Gen. Stat. §7B-101(1), (9) & (15). DSS is only required to report evidence of "abuse or neglect" to the Department of Health and Human Services, not law enforcement. N.C. Gen. Stat. §7B-307(a).

Accordingly, DSS is not required to, and does not, "make an immediate oral and subsequent written report" to the District Attorney's Office when it handles cases of neglect or dependency. *Id.*

The vast majority of assessments by DSS do not involve abuse and are resolved without court or police intervention.<sup>5</sup> In the cases in which DSS finds evidence that a child may have been abused (*e.g.*, serious physical injury by other than accidental means, rape, child pornography, or promoting the prostitution of the juvenile), it is up to the local law enforcement agency to "initiate and coordinate a criminal investigation with the protective services investigation being conducted by the county department of social services." N.C. Gen. Stat. §7B-307(a). So, while police may

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<sup>5</sup> Of the 102,158 reports of suspected child maltreatment in 2000, 87,853 were reports of neglect and 8,414 were reports of abuse. Of the 32,581 substantiated cases of maltreatment in 2000, 29,308 were cases of neglect whereas 1,710 involved abuse.

It should be noted that because a report is not "substantiated" that does not mean that the report was erroneous. "Substantiated" is an investigation disposition that concludes that the allegation of maltreatment or risk of maltreatment was supported or founded by state law or state policy." "Not Substantiated" is an investigation disposition that determines that there is not sufficient evidence under state law or policy to conclude that the child has been maltreated or is at

coordinate their investigation with DSS, the “criminal investigation” is plainly distinct from the “protective services investigation being conducted” by DSS.<sup>6</sup> *Id.*

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risk of being maltreated.” *Child Maltreatment 1999, supra.*

<sup>6</sup> It would be ironic to interpret such ‘cooperation’ to mean that law enforcement and social workers have the same goals. The express separation of their responsibilities is intended to reduce tension between the two.

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Child protection staff were often accused of contaminating the criminal investigation, either by precipitately warning the parents of the pending charges or by mishandling the physical evidence. Conversely, [child protective services] staff often accused law enforcement personnel of caring more about prosecution than about the safety of children. Because these strained relationships were developing throughout the country, a number of efforts were initiated to establish guidelines for cooperation between law enforcement and child protective services. The guidelines led in many jurisdictions to the development of written interagency agreements delineating the respective roles of the two systems.

Weber, *The Assessment of Child Abuse, supra*, at 130.

4. The Interference or Obstruction Hearing is a Procedural Safeguard that Ensures that DSS' Authority to Investigate is Not Unchecked

If a person “obstructs or interferes” with an investigative assessment by DSS, then DSS “may” petition the court to order the respondent to cease the obstruction. N.C. Gen. Stat. §7B-303(b).<sup>7</sup> This procedure acknowledges that any person may take exception to an aspect of a DSS investigation and provides the Juvenile Court as an impartial forum to decide the matter. If after

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<sup>7</sup> Under the statute, obstruction or interference:

means [1] refusing to disclose the whereabouts of the juvenile, [2] refusing to allow the director to have personal access to the juvenile, [3] refusing to allow the director to observe or interview the juvenile in private, [4] refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B-302, [5] refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or [6] other conduct that makes it impossible for the director to carry out the duty to investigate.

N.C. Gen. Stat. §7B-303(b).

notice and a hearing, the court

finds by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an investigation required by G.S. 7B-302, the court may order the respondent to cease such obstruction or interference.

N.C. Gen. Stat. §7B-303(c).<sup>8</sup> While the hearing is a procedural safeguard to resolve a narrow field of disputes, *i.e.*, the identified obstruction or interference, this hearing is not a dispositional hearing based on a petition of abuse, neglect or dependency by DSS (§§7B-900, *et seq.*) nor is it a hearing to terminate parental rights.<sup>9</sup> N.C. Gen. Stat. §§7B-1100 *et seq.* The sole question at this hearing is whether the respondent(s) obstructed or interfered with the investigation without a lawful excuse. N.C. Gen. Stat. §7B-303.

In the instant case, the trial court was familiar with the statutory framework and understood that at a hearing for a noninterference order it was not in a position to consider the merits of the parents' explanation of the events surrounding the allegation of neglect. (T pp. 35, 40 & 42.) The majority of the court of appeals also understood this point. *In the Matter of Joanie Stumbo, et al*,

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<sup>8</sup> If the child under investigation needs "immediate protection or assistance," DSS may seek an *ex parte* non-interference order from the court and receive one only if the court "finds probable cause" to believe the child is at risk of immediate harm and there is obstruction or interference. N.C. Gen. Stat. §7B-303(d). If the respondent fails to comply with the court's order, as with *any* court order, the respondent is subject to contempt proceedings. *Id.* at -303(f).

<sup>9</sup> The Stumbos contention that N.C. Gen. Stat. §7B-303(c) requires "some showing that abuse or neglect has occurred before a court may issue a noninterference order," (Respondent's-Appellants' New Brief (herein "Stumbo Brief") at 6) demonstrates a misunderstanding of the purpose of a noninterference hearing. They assert that DSS is required to make a showing that abuse or neglect has occurred in order to get either a search warrant or a noninterference order so that DSS can then, accompanied by law enforcement, conduct an investigative assessment to determine whether the report of suspected abuse, neglect or dependency may be substantiated. Stumbo Brief at 6-7. But, to make a showing of abuse, neglect or dependency before initiating or completing a prompt investigation to substantiate the accuracy of the report of suspected maltreatment is illogical and renders the purpose of a DSS investigation a nullity.

143 N.C.App. 375, 547 S.E.2d 451. There is no dispute that the Stumbos interfered with and obstructed the DSS investigation at issue. (T p. 59 “[counsel for the Stumbos]: I would submit that my clients refused a private interview with the four children.”) That of course means that there was “clear, cogent, and convincing evidence” that the Stumbos obstructed or interfered with the investigation. N.C. Gen. Stat. §7B-303(b)&(c). And based on such evidence the trial court could properly issue a noninterference order. *Id.* The question then, and now, was whether the Stumbos’ had a “lawful excuse” to permit them to interfere with or obstruct the DSS’ investigation.

C. DSS’ Investigative Assessment of a Report of Suspected Abuse, Neglect or Dependency Does Not Implicate the Fourth Amendment

1. The assertion that a “lawful excuse” includes a parent’s “common-sense” determination that a DSS investigation is unnecessary lacks merit

Before delving into the privacy issues raised by the Stumbos, *Amici* believe it is important to dispel the contention that parents may lawfully interfere with or obstruct an investigative assessment by DSS based on their assertion that a private interview with the subject of alleged neglect was unnecessary. Before this Court, and below, the Stumbos maintain that their explanation of events and the appearance of their children at the time that DSS social worker Tasha Lowery arrived at the home are sufficient and negated any need for a DSS investigation. Stumbo Brief at 7 & 13; *See also*, (T pp. 43, 45, 64 & 65 - 66.)

The Stumbos’ self-serving conclusion that they did not see any evidence of neglect and that there was no need for DSS to investigate the report of suspected neglect, *i.e.*, to interview the children, because by the time DSS arrived the children were fed, clothed, and supervised, is not a lawful excuse to interfere with a DSS investigation. Permitting parents or caretakers, who in a

significant percentage of cases ultimately turn out to be the actual abusers. to assert such an excuse would be ignoring all that we have learned about child abuse over the past four decades. The contention is meritless not only because it is illogical, (T pp. 64 - 65) but because it denies the unfortunate reality that assessing and preventing child maltreatment is more complicated than accepting a cursory observation and the caretaker's version of events.

The requirement that the investigator actually see the child has assumed major importance as the result of cases in which investigators were assured by parents of a child's well-being only to detect later that severe child abuse had ensued.

Weber, *Assessment of Child Abuse, supra*, at 129.

2. The Stumbos Right to Be Free From an Unreasonable Search of Their Home was Not Violated Because There was No Search

The Stumbos contend that their Fourth Amendment rights were violated because DSS' investigation in this case constituted an unreasonable search of their home. Their contention presents a conundrum: how can a search be unreasonable if there was no search, *i.e.*, no entry into the home, no request or demand to enter the home, and no order to enter the home? The Stumbos try to resolve this dilemma by arguing that the trial court and the court of appeals got the facts wrong. Stumbo Brief at 19-24.

It is undisputed, however, that Ms. Lowery did not enter the home. (T pp. 15, 16,17, 19, & 22). Contrary to the Stumbo's assertion, there is no evidence that Ms. Lowery asked to enter the home let alone demanded entry. (T p. 39 ("Q. [By counsel for the Stumbos] Now, did you ask to go inside the home? A. [by Tasha Lowery]: No.) In fact, it appears that Ms. Lowery never even got to the front door, but was relegated to the driveway and the Stumbo's back deck. Because of a barking dog she did not exit her car when she arrived at the Stumbo home, but "tooted the horn and

someone [Mrs. Stumbo] came out.” (T p. 14.) There was no search.

There was no entry into the Stumbo’s home. DSS did not ask to enter the home nor demand entry into the home, and the trial court did not order entry into the home nor a search of the home.

This means that the Stumbos were never subject to a home search and are not now subject to a home search. Therefore, any contention that their fourth amendment right to be secure from an unreasonable search of their home was violated is unfounded.

3. N.C. Gen. Stat. §7B-302 Requires that DSS Make A Prompt and Thorough Investigation

The Stumbos contend that §7B-302 requires that every DSS investigation of a report of suspected child maltreatment must include physical entry into the home where the child resides and that this amounts to a search without probable cause. The dissent in the Court of Appeals agrees. Stumbo Brief at 18-29; *See also, In the Matter of Joanie Stumbo, et al, supra*, 547 S.E.2d at 456 (Greene, J. dissenting). The Stumbos and the dissent are wrong. There is no such requirement in the statute. N.C. Gen. Stat. §7B-302. As the majority of the court of appeals held, the plain terms of N.C. Gen. Stat. §7B-302(a) do not require physical entry into a home to conduct a DSS investigation. *In the Matter of Joanie Stumbo, et al*, 547 S.E.2d at 455. DSS can investigate a report of suspected child maltreatment without entering the home in every case and there is no basis to engraft a requirement that DSS enter the home of every child that is the subject of a DSS investigation.

4. Even If §7B-302 Requires Physical Entry into a Home, Such an In-home Visit by

DSS Is Not an Unreasonable Search.

Even assuming *arguendo*, that N.C. Gen. Stat. §7B-302(a) mandates physical entry into a private residence, such an in-home visit by DSS would neither be a search nor an unreasonable search in the context of the Fourth Amendment. In *Wyman v. James*, 400 U.S. 309, 318, 91 S.Ct. 381, 386, 27 L.Ed.2d 408 (1971), a beneficiary of the federal and New York State Aid to Families with Dependent Children program objected to a “visit in her home” by a caseworker from the New York City Department of Social Services on the grounds that the visit constituted a violation of the Fourth Amendment. The United States Supreme Court acknowledged the need to be protective of personal security in a private home, but held that:

[t]his natural and quite proper protective attitude, however, is not a factor in this case, for the seemingly obvious and simple reason that we are not concerned here with any search by the New York social service agency in the Fourth Amendment meaning of that term.

*Wyman, supra*, 400 U.S. at 317. The Court further considered that, even if because of its interview nature the “in” home visit by the department of social services possessed “some of the characteristics of a search in the traditional sense”:

we nevertheless conclude that the visit does not fall within the Fourth Amendment’s proscription. This is because it does not descend to the level of unreasonableness. It is unreasonableness which is the Fourth Amendment’s standard.

*Wyman, supra*, 400 U.S. at 318; *See also*, U.S. Const. Amend. IV; *State v. Mickey*, 347 N.C. 508, 516, 495 S.E.2d 669, 674 (1998) (“[i]t must always be remembered that what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.” (quoting, *State v. Scott*, 343 N.C. 313, 328, 471 S.E.2d 605, 614 (1996))). Similarly, in the instant case, a visit “in” the home where the juvenile resides by DSS to assess the welfare of a child that is the subject of a

report of suspected neglect, abuse or dependency would not constitute a search. However, if the Court determined that the visit could be construed as a search within the Fourth Amendment, it would not be unreasonable.

The Court in *Wyman* noted that the statute and regulations at issue appeared to require an in home visit before and subsequent to the beneficiary's qualification for aid. And, in practice, if one wanted the aid, a home visit was required. The Court explained:

the caseworker's posture in the home visit is perhaps, in a sense, both rehabilitative and investigative. But this latter aspect is given too broad a character and far more emphasis than it deserves if it is equated with a search in the traditional criminal law context.

*Wyman, supra*, 400 U.S. at 317.

In *Wyman*, there were several factors that led the United States Supreme Court to conclude that even if the in home visit by the department of social services was considered a search, it was not unreasonable. Primary among those factors was, as in the instant case, the public's interest in the protection and aid for the dependent child.

The focus is on the child and, further, it is on the child who is dependent. There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights.

*Wyman, supra*, 400 U.S. at 318; *Cf, In the Matter of D. Montgomery; supra*, 311 N.C. at 115 ("The courts in weighing the parent's rights against the child's best interest must follow the legislature's mandate that the child's welfare is paramount.") In addition, the Court found that the record before it, as in this case, presented:

no specific complaint of any unreasonable intrusion of her home and nothing that supports an inference that the desired home visit had as its purpose the obtaining of information as to criminal activity. She complains of no proposed visitation at an

awkward or retirement hour. She suggests no forcible entry. She refers to no snooping. She describes no impolite or reprehensible conduct of any kind.

*Wyman, supra*, 400 U.S. at 321. The Court explained further that:

[t]he visit is not one by police or uniformed authority. It is made by a caseworker of some training [fn omitted] whose primary objective is, or should be, the welfare, not the prosecution, of the aid recipient for whom the worker has profound responsibility. As has already been stressed, the program concerns dependent children and the needy families of those children. It does not deal with crime or with the actual or suspected perpetrators of crime. The caseworker is not a sleuth but rather, we trust, is a friend to one in need.

*Id.* at 322-23. And, again:

[t]he home visit is not a criminal investigation, does not equate with a criminal investigation, and despite the announced fears of Mrs. James and those who would join her, is not in aid of any criminal proceeding. If the visitation serves to discourage misrepresentation or fraud, such a byproduct of that visit does not impress upon the visit itself a dominant criminal investigative aspect. And if the visit should, by chance, lead to the discovery of fraud and a criminal prosecution should follow, [fn omitted] then, even assuming that the evidence discovered upon the home visitation is admissible, an issue upon which we express no opinion, that is a routine and expected fact of life and a consequence no greater than that which necessarily ensues upon any other discovery by a citizen of criminal conduct.

*Id.* at 323 (underline added); *See also*, N.C. Gen. Stat. §7B-307(a) (“criminal investigation” distinct from “protective services investigation being conducted by the county department of social services.”); *Franz v. Lytle, supra*, 997 F.2d at 791 (“a social worker’s principal focus is the welfare of the child.”) Accordingly, even if the Court decided that an in-home visit was required and that it constituted a search for purposes of the Fourth Amendment, a search in accordance with the statutory and administrative framework and requirements would not be unreasonable; and so, would not violate the Fourth Amendment. Of course, because there was no search here, these issues go beyond the facts of the case before the Court.

5. The Trial Court’s Order that the Stumbos Permit DSS to Interview the Children In

Private Does Not Violate the Children's Fourth Amendment Right to Be Free From Unreasonable Seizures

The Stumbos contend that the trial court's Order that they not obstruct or interfere with DSS' investigation (and so permit DSS to interview the children in private) constitutes a seizure within the meaning of the Fourth Amendment. Stumbo Brief at 29-36. The Stumbos assert this position in a representative capacity on behalf of their children. *Id.* at 35-36.

- a. A DSS social worker's interview of a child pursuant to N.C. Gen. Stat. §7B-303(b) is neither a seizure nor a custodial interrogation

In this Court, the Stumbos argue that there was no justification for the trial court to order a "custodial interrogation" of their children (Stumbo Brief at 36) and that, in any event, any noninterference order issued pursuant to N.C. Gen. Stat. §7B-303 allowing DSS "to observe or interview the juvenile in private" is a seizure within the meaning of the Fourth Amendment.<sup>10</sup> Stumbo Brief at 31. The Stumbos' conclusions are founded on the faulty premise that DSS social workers are criminal investigators.

Custodial interrogation "means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of

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<sup>10</sup> On the issue of the purported seizure the Stumbos offered only the following conclusory argument to the court of appeals:

[t]he [trial court's] order was a warrant for seizure because a temporary seizure of children during a child abuse investigation is still a seizure, for Fourth Amendment purposes. *See, e.g., Wallis v. Spencer*, 202 F.3d 1126 (9<sup>th</sup> Cir. 2000); *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999); *Robison v. Via*, 821 F.2d 913 (2<sup>nd</sup> Cir. 1987). Respondents-Appellants' Brief in the Court of Appeals at 21. The court of appeals correctly found that the three cases cited, "do not stand for the proposition that a private interview with a child for purposes of a DSS investigation of neglect or abuse is a 'seizure.'" *In the Matter of Joanie Stumbo, supra*, 547 S.E.2d at 455. Despite the conclusion they proffered below, the Stumbos chastise the court of appeals for not analyzing the issue under a different framework which they offer for the first time in this Court. Stumbo Brief at 34 ("the correct standard that the Court of Appeals should have applied is whether the child would have felt free to leave the interview.")

action in any significant way.’

*State v. Gaines*, 345 N.C. 647, 661-62, 483 S.E.2d 396, 405 (1997). And,

‘Only when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.’

*Id.* at 663 (quoting, *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 20 L.Ed.2d 889(1968)).

Even reading “officer” as “state actor” there is no basis in the instant record to suggest a significant deprivation of freedom or restraint of liberty was or is contemplated by an interview between a DSS social worker and the child. More analogous to the reasoning in *Wyman*, a private interview between a trained DSS social worker and a child who is the subject of a report of suspected abuse, neglect or dependency does not equate with a seizure in the traditional criminal law context. *Wyman*, *supra*, 400 U.S. at 317; *Cf.*, 1984 WL 182156 (N.C.A.G.) (“It should be noted, initially, there is a vast difference between the circumstances here [*i.e.*, DSS interviewing a child without prior parental consent or notice] and those in a case in which the juvenile is being investigated as the suspected perpetrator of a juvenile or criminal offense.”)

- b. Assuming *arguendo* that a DSS social worker’s interview of a child pursuant to N.C. Gen. Stat. §7B-303(b) is a seizure -- it is not unreasonable

Even assuming that the Court determines that the private interview set out in N.C. Gen. Stat. §7B-303(b) constitutes a seizure within the scope of the Fourth Amendment, such a seizure would not violate the Fourth Amendment because it is not unreasonable. *See, Wyman, supra*, 400 U.S. at 318 (“It is unreasonableness which is the Fourth Amendment’s standard.”); *See also, State v. Mickey, supra*, 347 N.C. at 516 (same); *State v. Scott, supra*, 343 N.C. at 328 (same).

‘In determining whether the seizure and search were ‘unreasonable’ our inquiry is a dual one - - whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference

in the first place.’

*State v. Scott, supra*, 343 N.C. at 328 (quoting, *Terry v. Ohio, supra*, 392 U.S. at 19-20). Assuming Tasha Lowery is the “officer” in question, her action in this case was justified at its inception by legislative mandate and her conduct was reasonably related in scope to the circumstances which justified interviewing the children in the first place.

Ms. Lowery’s only request at the Stumbo home was that she be permitted to speak with the Stumbo children. The Stumbos contend that there was no justification for an interview because DSS had not met, “its burden of demonstrating that neglect had occurred before ordering the interviews.” Stumbo Brief at 31. As demonstrated above, neither the statute nor the Constitution requires that DSS prove neglect at the preliminary investigation stage. The justification for the interview is, nonetheless, the legislative mandate that DSS establish protective services for children “alleged to be abused, neglected or dependent” in order to “prevent” such maltreatment. N.C. Gen. Stat. §7B-300. Even counsel for the Stumbos acknowledged that a private interview was a necessity under the statute. (T p. 34 (“the statute that they had filed this petition under authorizes them to have a private interview with the subject - - with the juvenile who is the subject of the child abuse or neglect investigation.”)); *See also*, ACLU *Amicus* Brief at 7. Such a private interview is reasonable when one balances the states interest in preventing and remedying child maltreatment against the purported invasion of the child’s privacy right as professed by the parents.

The state has a compelling interest in protecting its children from child maltreatment.

Protecting children from parental neglect is a sufficient reason to warrant State intervention in the traditional rights of parents to the care, custody and control of their children. The state has long practiced its role as *parens patriae* in determining what is in the best interest of neglected or abused children. [Citation.] The courts in weighing the parent’s rights against the child’s best interest must follow the

legislature's mandate that the child's welfare is paramount.

*In re Montgomery, supra*, 311 N.C. at 115. The instant issue, however, does not weigh the parent's rights against the child's best interests. Here, the Stumbos' claim is asserted on behalf of the child, *i.e.*, the balance is between the child's right to be free from arbitrary and unreasonable seizures and the State's interest in preventing and protecting the same child from maltreatment. That balance weighs in favor of the state over the objections of the child as voiced through his or her parent.

As discussed above, the past four decades have taught that a private interview with the child is important to, "prevent the child from feeling overwhelmed or inhibited by the presence of the parent(s) who may also be the abuser(s)." *Understanding Child Abuse and Neglect, supra*, at 231. In addition, child abuse reporting laws recognize the importance of preventing child maltreatment at its inception because of the costs that child maltreatment have on our society. *See, Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect, supra*, (In addition to economic costs and, "[b]eyond the trauma inflicted on individual children, child maltreatment also has been linked with long-term societal consequences," *e.g.*, "drug use, teen pregnancy, juvenile delinquency, and adult criminality.") In light of the state's compelling interest to prevent child maltreatment and protect the welfare of its children and the known costs associated with failing to prevent maltreatment as early as possible, permitting a DSS social worker to conduct a private interview with a child who is the subject of a report of suspected abuse, neglect or dependence is reasonable.

D. The "Special Need" to Protect the Welfare of North Carolina's Children Justifies An Investigative Assessment of a Screened Report of Abuse, Neglect or Dependency

Assuming *arguendo*, that a DSS social workers' private interview of a child while following up on a report of suspected child maltreatment is a seizure and that a search of the home is required

by §7B-302 -- then DSS' investigative assessment under N.C. Gen. Stat. §7B-302 falls within the "special needs" exception to the Fourth Amendment.

"[I]n limited circumstances, a search unsupported by either warrant or probable cause can be constitutional when 'special needs' other than the normal need for law enforcement provide sufficient justification." *Ferguson v. City of Charleston*, 121 S.Ct. 1281, 1287, fn 7, 532 U.S. 67, 149 L.Ed.2d 205 (2001). The Stumbos and *Amicus curiae* on their behalf, contend that the recent decision in *Ferguson* supports their position. Stumbo Brief at 26; ACLU *Amicus Curiae* Brief at 15-16. To the contrary, *Ferguson* supports DSS' position. As *Amicus* for the Stumbos acknowledge, DSS' "primary interest" does not lie in law enforcement. ACLU *Amicus Curiae* Brief at 15. And, in *Ferguson*, the Supreme Court of the United States explained that it is the "direct and primary purpose" of the conduct at issue that is critical to determining whether that conduct falls within the "special needs" doctrine. *Ferguson, supra*, 121 S.Ct. at 1289-92.

Unlike the instant case, the conduct at issue in *Ferguson* was not based on a legislative enactment with a "primary purpose" of preventing child maltreatment and protecting the welfare of children. In *Ferguson*, local police and hospital workers devised their own scheme to use the results of drug-tests to threaten pregnant women with criminal sanctions to force them into a drug-treatment program. *Ferguson, supra*, 121 S.Ct. at 1289 ("the central and indispensable feature of the policy from its inception was the use of law enforcement to coerce the patients into substance abuse treatment.") The Court explained that the ultimate goal of the policy was irrelevant, what mattered was that, "the immediate objective of the searches [*i.e.*, drug-testing] was to generate evidence for law enforcement purposes. ... In our opinion, this distinction is critical." *Ferguson, supra*, 121 S.Ct. at 1291 (underline added, italics in original). The fact that DSS's "primary

interest,” or “immediate objective,” is protecting the welfare of North Carolina’s children is then precisely the reason that DSS’ investigation falls within the special needs doctrine.

The “immediate purpose” of a DSS investigation is to assess the child’s well-being, it does not generate evidence for law enforcement; rather, as demonstrated above, its interests are distinct from the State’s general interest in law enforcement. This Court has long recognized the distinction between criminal proceedings aimed at determining the culpability of the parent (the realm of law enforcement and prosecution) as opposed to juvenile proceedings which focus on the welfare of the child (the realm of DSS and protective services). *See, In the Matter of D. Montgomery, supra*, 311 N.C. at 109; *See also, State v. Adams, supra*, 345 N.C. at 748. In accordance with the reasoning in *Ferguson*, it is these well-established but critical distinctions which demonstrate that a DSS investigation falls within the “special needs” doctrine.

#### CONCLUSION

The General Assembly has carefully crafted the child abuse reporting statute to further the State’s interest in preventing and remedying child maltreatment. Because DSS investigations under N.C. Gen. Stat. §302(a) are not criminal, but rather have the welfare of the children involved as their primary and immediate purpose, the Fourth Amendment concerns raised by the Stumbos are inappropriate. Engrafting Fourth Amendment requirements onto the statute, particularly at the early stage at which the Stumbos would have the Court do this, would frustrate the ability of DSS and its trained social workers properly to fulfill their responsibilities to North Carolina’s children and would thwart the will of the legislature and the people of North Carolina.

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted this 11<sup>th</sup> day of January, 2001:

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