

**DSS ADMINISTRATIVE LETTER
CHILD WELFARE SERVICES CWS-AL-03-15**

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

**ATTENTION: CHILD WELFARE PROGRAM ADMINISTRATORS, MANAGERS,
SUPERVISORS, AND SOCIAL WORKERS**

DATE: SEPTEMBER 1, 2015

SUBJECT: DEFINITION OF CARETAKER

EFFECTIVE: IMMEDIATELY

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

I. Intent and Background

On August 21, 2015, North Carolina's Supreme Court ruled on the case In re: R.R.N. (<https://appellate.nccourts.org/opinions/?c=1&pdf=33257>) interpreting the phrase "entrusted with the care" that appears in the caretaker definition found at N.C.G.S. § 7B-101(3). The statutory definition of "caretaker" includes relatives entrusted with the care of the juvenile. Policy has interpreted "relative" broadly to include relatives by marriage (see the Division's May 6, 2008, letter regarding the caretaker definition: http://info.dhhs.state.nc.us/olm/manuals/dss/csm-05/man/FSCWS_AL_09_08.htm#P6_0). Policy has also interpreted the phrase, "entrusted with the care" broadly to include caring for the child for short periods of time. Following the issuance of the In re: R.R.N. case, "relative" will remain broadly interpreted; however, "entrusted with the care" will be limited to situations where the relative has primary care and decision-making authority for the juvenile.

The Juvenile Code requires a balance between protecting children and parents' fundamental rights to parent their children. When applying the purpose of the Juvenile Code, the Supreme Court held, "[u]ltimately, the best interest of the child is the lodestar, but if parents act appropriately to protect their child, their constitutional right to rear that child is paramount," and DSS may not intervene in the private realm of the family."

II. Implications

The court ruled that a person entrusted with the care of a juvenile is "a person who has a significant degree of parental-type responsibility for the child". The court further advised that the "totality of the circumstances" must be considered. This includes "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". A temporary arrangement for supervision is not the equivalent of entrusting a person with the care of the juvenile. The In re: R.R.N. case is particularly applicable to screening decisions, case decisions, petitions, adjudications, and the decision to place an individual on the Responsible Individuals List. Persons may not be included as caretakers at any of these phases of the case, unless they have been "entrusted with the care" of the juvenile under this analysis.

County child welfare agencies are required screen child protective services reports considering whether the alleged perpetrator meets statutory requirements for a caretaker at the time the report is made. If the intake social worker cannot determine whether the adult meets the statutory requirements of a caretaker at the time the screening decision is being made, it may be appropriate to accept the report for assessment. The determination about the person's caretaker status may be combined with the determination of whether any abuse and/or neglect occurred, by considering the totality of the circumstances. County child welfare agencies may also need to assess whether the parent made an

appropriate decision regarding the child's safety and welfare when he/she placed the child with the relative, regardless of whether the alleged perpetrator meets the caretaker definition.

In instances where it is determined that the individual does not meet the criteria for being a relative entrusted with the child's care, it is appropriate, per policy, to refer those cases to the district attorney, as well as the local law enforcement agency in order to ensure the protection of the child victim(s). In light of this ruling, the county child welfare agencies may find it helpful to revisit their partnership with law enforcement. This could include meeting with the appropriate agencies; developing or revising a Memorandum of Agreement; and/or possibly offering training on child protection matters. The safety and wellbeing of children is the concern of the entire community and in cases where the alleged perpetrator is not considered a caretaker, the criminal system is the most appropriate setting for seeking justice.

This modification is the second one to the caretaker definition in the last month. (Please see CWS-02-15 for the other major change involving child care providers.)

If you have any questions regarding this guidance, please contact your Children's Program Representative or the Child Welfare Policy Team at (919) 527-6340.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Kelley". The signature is written in a cursive style with a large initial "K".

Kevin Kelley, Section Chief
Child Welfare Services

Attachment: NC Supreme Court Decision 186PA14 August 21, 2015

cc: Wayne Black
Jack Rogers
Kathy Sommese
Child Welfare Services Team Leaders
Children's Services Program Representatives
Local Business Liaisons