

**ISSUES IN ADVOCACY:
MAKING A CASE FOR THE
RECOVERING PARENT**

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Think from the beginning of the case about long-term placement of the child that will be friendly to your client. Ask the client for placement suggestions at your first conference before the Non-Secure Custody hearing(s). Keep asking.

- Friendly placement of child is critical, & the younger the child, the more important it is.

- Sources of friendly placement:
 - family
 - friends
 - godparents
 - church members
 - neighbors

§ 7B-100 - Purpose of Abuse Neglect Dependency

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

- (1) To provide procedures for the hearing of juvenile cases that assure **fairness and equity** and that protect the **constitutional rights of juveniles and parents**;
- (2) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family.
- (3) To 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; and
- (4) To provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with **preventing the unnecessary or inappropriate separation of juveniles from their parents**.
- (5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2003-140, § 5, eff. June 4, 2003.

N.C.G.S.A. § **7B-100**, NC ST § **7B-100**

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§ 7B-503 - Criteria for Nonsecure Custody

(a) When a request is made for nonsecure custody, the court **shall first consider** release of the juvenile to **the juvenile's parent, relative, guardian, custodian, or other responsible adult**. An order for nonsecure custody shall be made **only** when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

- (1) The juvenile has been abandoned; or
- (2) The juvenile has suffered physical injury or sexual abuse; or
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or
- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or
- (6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody **only** when there is a reasonable factual basis to believe that there are **no other reasonable means available to protect the juvenile**. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

(b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the petition prior to returning the child to a home where the alleged abuser or abusers are or have been present. If the court finds that the alleged abuser or abusers have a history of violent behavior against people, the court shall order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court may order the alleged abuser or abusers to pay the cost of any mental health evaluation required under this section.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999-318, § 4, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999.

N.C.G.S.A. § 7B-503, NC ST § 7B-503

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§ 7B-505. Place of Nonsecure Custody

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care; or
- (2) A facility operated by the department of social services; or
- * (3) Any other home or facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95- 608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter.

Nonsecure Custody Hearing

- Hearing on merits or for NSC within 7 days; may be continued up to 10 days with consent of parent, guardian, custodian, & juvenile's GAL, if appointed (7B-506 (a))
- Court must hear testimony& allow juvenile, juvenile's GAL, parent, guardian, etc. to speak in his own behalf, present evidence, & examine witnesses. (7B-506 (b))
- “State” bears the burden at every stage of the proceedings. (7B-506 (b))
- Standard of proof: State must provide clear and convincing evidence that the juvenile's placement in custody is necessary. (7B-506 (b))
- The court is not bound by the usual rules of evidence at such hearings. (7B-506 (b))
- The court is bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is necessary. (7B-506 (c)). 7B-503 requires return to parent as 1st alternative if there is a reasonable factual basis to believe some other means will serve to protect the child in the home. 7B-505 requires the court to place child with relative willing & able to provide a safe home.
- If, at the first NSC hearing required in subsection (a) 7B-506, the court orders that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within 7 business days of that hearing, and pending a hearing on the merits, hearings thereafter shall be held every 30 calendar days or less. (7B-506 (e))

Nonsecure Custody Hearing (continued)

•At each NSC hearing, the court shall:

(1) Inquire about any missing parent, and whether paternity is at issue & may make orders to determine the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity.

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile, except that placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children (Article 38 of this Chapter).

(7B-506(h))

(3) Court is **not** required to take all juveniles in the home into NSC, but must inquire as to what services or actions taken have been provided for the protection of the other juveniles remaining in the home. (7B-506 (h))

Before Adjudication:

If you are not going to fight Adjudication, then start working with DSS:

- Get your client to have a drug and alcohol assessment
- Get your client into drug treatment or on a drug treatment waiting list
 - consent to release records or not
- Get client to start parenting classes or get on a waiting list
- Have client find NA/AA meetings that he or she can get to with available transportation, and start attending meetings. Find where they feel comfortable and fit in.

If you are fighting Adjudication, you may do many of the same things listed above in #1, but don't release the information to DSS:

- Get the drug alcohol assessment
- Find available treatment alternatives or get on a waiting list for the appropriate treatment
- Start parenting classes or get on waiting list
- Any cooperation with DSS and the GAL is voluntary before Adjudication
- Caveat - GAL for child can get client's substance abuse or other records before adjudication (7B- 601(c))

*Mental Health evaluation

Adjudication (7B-801, 7B-807)

Legal requirements

1. Burden of Proof is on DSS at adjudication stage. (7B-805) (In re M.D.S.T., 183 N.C.App. 155, 643 S.E.2d 679 (Unpublished opinion)(May 01, 2007); See, Matter of Evans, 81 N.C.App. 449, 344 S.E.2d 325 (1986))
2. Standard of Proof is clear, cogent* (caselaw) and convincing evidence. (7B-805, 7B-807)
3. Rules of Civil Procedure apply! (See 7B-804; also summons tells parent a civil action has been commenced against him/her)
4. The Rules of Evidence in civil cases apply! (7B-804)
*keep out as much of that unsworn hearsay as you can!
5. Petition cannot be amended if the amendment changes the nature of the conditions upon which the petition is based. (7B-800)
6. Hearing is to be conducted so as to protect the due process rights of the child & the parent. (7B-802)

Disposition:

1. Formal Rules of Evidence don't apply. Hearsay evidence is admissible if relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. (7B-901)
2. 7B-900 states that court's first approach at disposition should be to work with child's family in his own home to strengthen the home situation.

After Adjudication, then the advocacy for your client really begins.

1. Review proposed Court Orders. Get your evidence into the Order. (Rule of Civil Procedure Rule 52, 58, & Rules of Professional Conduct 3.5)
2. Attend the DSS permanency planning action team meetings or PPAT meetings.
 - Be aware that DSS uses these meetings for discovery purposes to get your clients to say things you don't want them to say at those PPAT meetings that take place before Adjudication.
 - After Adjudication, this is an opportunity for you to assist your client to tell the team of social workers, adoption workers, foster care workers, therapists, and foster parents what your client is doing to successfully accomplish those tasks that have been ordered by the Court or in formulating the tasks that you want DSS to recommend to the Court because your client is going to be able to do them.
3. Touch base with client's service providers: Ask them what progress they've seen in client. Ask them to write letters to you regarding client's progress, client's prognosis for success, etc. Attend Permanency Planning Team meetings or bring their letters, etc. Get SW to attach them to her report!
4. Touch base with friendly placement providers regarding progress. Keep them friendly. Make them your witnesses. Try to de-fuse any negatives before court.

7B-906 -Review Hearing

c) At every review hearing, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.
- (2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.
- (3) Goals of the foster care placement and the appropriateness of the foster care plan.
- (4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
- (5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.
- (6) An appropriate visitation plan.
- (7) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.
- (8) When and if termination of parental rights should be considered.
- (9) Any other criteria the court deems necessary.

Child 12 or older has a right to notice & to attend, along with foster parent, pre-adoptive parent, relatives, GAL, & any person or agency with custody. They all may be heard. (7B-906(c))

Review Hearings

Legal requirements

- No burden of proof on DSS
- Statute 7B-906 (c) allows hearsay evidence but only if it is relevant, reliable, and necessary
- Timing
 - When custody removed from parent, guardian, or custodian, first Review must be held within 90 days of disposition
 - Subsequent Reviews within 6 months after first Review
- Court may waive Reviews under some circumstances. See 7B-906 (b).

Present Evidence for the Parent of Progress & Efforts

(not just argument about DSS evidence)

- Use written letters or testimony from your client's substance abuse counselors, employers, & therapists.
- Mental (and physical) health providers can send medical records or letters or both re: your client's attendance and participation.
- "Show and Tell" approach vs Parent Reports

Dispositional Alternatives At Review Hearing

At any Review hearing, the court can, after making findings of fact :

- Appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600
- Make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. 7B-903 (a)(1) lists dismissing the case after adjudication, or continuing case to allow parent to take specific action, if that's in best interest of child - so remember to ASK in an appropriate case.
- The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. (7B-906(d))
- Court can give custody to the non-removal parent at any time after adjudication by entering a Civil Custody Order authorized by 7B-911, then close case with no further reviews.

Any time custody is restored to a parent, guardian, custodian, or caretaker the court is relieved of the duty to conduct periodic reviews of the placement. (7B-906(d))

Dispositional Alternatives- Civil Custody Order under 7B-911

Court can enter Civil Custody Order ONLY IF:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the child is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

- a. There's no further need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and
- b. Custody is being given to a parent or to a person to whom child was living when the juvenile petition was filed; OR at least 6 months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile.

Any time custody is restored to a parent, guardian, custodian, or caretaker the court is relieved of the duty to conduct periodic reviews of the placement. (7B-906(d))

Cease Reunification Order

At any hearing where court Orders that DSS may cease reunification efforts to reunify the family, a Permanency Planning hearing must take place within 30 days.(7B-507)

- You are entitled to make a detailed offer of proof to preserve for the record on appeal any evidence that you sought to offer that the court did not admit or did not consider. (7B-507) (Importance of Show & Tell)
- Then your client is on his or her own to find & get services he/she needs.

Parent may give notice of intent to preserve the cessation of reunification efforts for appeal. Notice may be given in open court or in writing within 10 days of the hearing. (7B-507) Cease reunification Order can be appealed IF parents rights are terminated by TPR & client gives timely notice of appeal & cease reunification order is assigned as error on appeal.(7B-1001)

Permanency Planning Review hearings (7B-907)

The court must consider the following criteria and make written findings regarding those that are relevant, if the juvenile is not returned home at the end of the hearing:

1. Whether it is possible for the child to be returned home immediately or within the next six months, and if not, why it is not in the child's best interests to return home;
2. Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
3. Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
4. Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
5. Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
6. Any other criteria the court deems necessary.

Permanency Planning Hearing (7B-907) - set up for TPR

7B-907 (d) states DSS SHALL initiate a TPR proceeding to terminate the parental rights of the parent when a child is in DSS custody (or DSS has placement responsibility), and child has been in placement outside the home for 12 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, UNLESS THE COURT FINDS:

- The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;
- The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or
- The department of social services has not provided the juvenile's family with such services as DSS deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

DSS must file petition to TPR within 60 calendar days from the date of the permanency planning hearing UNLESS the court makes written findings why the petition cannot be filed within 60 days; then court must specify the time frame in which the petition to TPR shall be filed.

Termination of Parental Rights

1. Rules of Civil Procedure apply! (See, e.g., 7B-1102, 7B-1106, 7B-1106.1, 7B-1109) Get extensions of time in accordance with the Rules of Civil Procedure if that will assist your client.
2. Use discovery: *get visitation reports- show positive relationship between client & children, drug tests, records of participation in court ordered activities & therapy, etc.
3. Burden of proof is on the petitioner or movant. (7B-1109)
4. Standard of Proof: all findings of fact shall be based on clear, cogent, and convincing evidence. (7B-1109)
5. Challenge every ground in a TPR
6. Consider filing an Answer that alleges your affirmative defenses and get the client to verify it, rather than a general denial. Allege that the child is over the age of 12 and does not want to be adopted and hasn't consented to adoption. (See 48-3-601) Don't forget R.C.P. Rule 12 defenses.
7. Put on every scrap of evidence showing reasonable progress under the circumstances.
8. Make DSS put the child over 12 on to testify rather than allow the GAL to say what the child's wishes are. It is the child who must consent to adoption, not some GAL on behalf of the child. (See 48-3-601)

Right to Appeal (7B-1001)

(a) Appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

- (1) Any order finding absence of jurisdiction.
- (2) Any order which determines the action and prevents a judgment from which appeal might be taken, including involuntary dismissal of a petition.
- (3) Any initial adjudication & disposition order.
- (4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.
- (5) An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:
 - a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:
 1. A motion or petition to terminate the parent's rights is heard and granted.
 2. The order terminating parental rights is appealed in a proper and timely manner.
 3. The order to cease reunification is assigned as an error in the record on appeal of the termination of parental rights.
 - b. A party who is a parent has the right to appeal the order if no TPR petition or motion is filed within 180 days of the order.
 - c. The Custodian or guardian has the right to immediately appeal the order.
- (6) Any Order that terminates parental rights, or denies termination of parental rights.

(b) Except for orders covered in subdivision (a)(5) of this section, notice of appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58. Notice of appeal for orders covered in subdivision (a)(5) of this section shall be given in writing by a proper party as defined in G.S. 7B-1002.

(c) Attorney for the appealing party must sign Notice of appeal & only on direct instruction of the appealing party after the conclusion of the proceeding. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate.

Factors that affect your advocacy on behalf of a client:

- Build trust with your client
- Age of a child - whether they are easily adoptable or not
- Age of parent
- Mental illness
- Mental retardation
- Education of parent and employability
- Competency/IQ
- Physical health of the parent (strokes, debilitating diseases)
- Friendly or hostile foster parent or other placement - whether there are independent or pro-parent assessors or assistants available
- Lazy, incompetent or hostile social worker
- Lazy, incompetent or hostile GAL for the child
- Client's homelessness
- Client's resources: family support, job, employer, positive significant other
- Quirks of your Judge
- Bias of the wealthy
- Bias against drugs/ drug users - the belief that anyone who has done drugs doesn't deserve to raise their children
- Misconception that a child is better off with a stranger than with a flawed parent
- *Exhaustion factor*

PERSISTENCE

“Nothing in the world can take the place of persistence.
Talent will not, nothing is more common than unsuccessful men with talent.
Genius will not, unrewarded genius is almost a proverb.
Education will not, the world is full of educated derelicts.
Persistence and determination alone are omnipotent.”

Calvin Coolidge