

JUVENILE LAW: Abuse, Neglect, and Dependency

I. Child Protection in North Carolina

- A. The first state juvenile courts were established in the early 1900s. For many decades the focus of child protective services and juvenile court was on protection, “rescue,” placement, and adjustment of children.
- B. County-administered social services system
 - 1. Some level of state supervision, training, and policy
 - 2. Supported by mix of federal, state, and county dollars
 - 3. Rule-making by state Social Services Commission
 - 4. County Social Services Boards hire director and make limited policy
 - 5. County agency represented in court by
 - a. in-house, agency attorney; or
 - b. county attorney or assistant county attorney; or
 - c. retained counsel.
- C. Statewide Guardian ad Litem Program through Administrative Office of the Courts
- D. Counsel for indigent parents appointed pursuant to IDS procedures

II. Pre-Adjudication Stages

- A. Mandatory reporting (G.S. 7B-301, -309, -310, -311)
 In North Carolina everyone, including judges and lawyers, must report to DSS whenever they have cause to suspect that a child is abused, neglected, or dependent—as the Juvenile Code defines those terms. Lawyers are exempt from the reporting requirement only “when the knowledge or suspicion is gained by an attorney from that attorney’s client during representation only in the abuse, neglect, or dependency case.” G.S. 7B-310.
- B. Investigative assessment (if abuse or serious neglect) or family assessment (all other cases) by DSS, and sometimes law enforcement (G.S. 7B-302, -307)
- C. Proceeding to address obstruction of or interference with required assessment (G.S. 7B-303)
 - DSS may file a petition if, for example, a parent or other person refuses to let them see the child or refuses to disclose the child’s whereabouts.
 - A hearing must be held; however, the court may issue an ex parte order if the court finds probable cause to believe that the child is at immediate risk of harm and that the person named as respondent is interfering with or obstructing DSS’s ability to conduct an assessment. See *In re Stumbo*, 357 N.C. 279, 582 S.E.2d 255, N.C. (2003) (trial court erred in entering non-interference order because the report DSS received did not rise to the level of requiring an investigation).
- D. DSS responsibilities following assessment (G.S. 7B-300, -302, -307)
 - Even if DSS “substantiates” the report or determines that a family is “in need of services,” in the great majority of cases the agency does not file a juvenile court petition. Rather, DSS provides services to protect the child and may enter into a service agreement or protection plan with the family.
 - If DSS does not file a petition, a person identified by DSS as a “responsible individual” may appeal that determination to the director and then to the district court, the district

attorney, or both. *See* G.S. 7B-320 through -324. [**Note: These statutory procedures were found to be unconstitutional under the N.C. Constitution in *In re W.B.M.* (NCApp, 3/2/10).**]

- DSS must file a petition if it assumes, or wants to assume, pre-adjudication custody of the child. The petition must be verified.
 - DSS must report evidence of abuse to law enforcement and the district attorney.
- E. Temporary custody (G.S. 7B-500, -501)
- A DSS worker or law enforcement officer may take a child into custody without a court order if the child is at risk of immediate harm or might not be found if custody is delayed.
 - Limited to 12 hours (24 if any of that time is a weekend or holiday).
- F. Authorized custody by medical professionals in abuse cases (G.S. 7B-308)
- Physician must obtain authorization from district court judge and document findings.
 - This procedure is used rarely because “temporary custody” usually is more efficient.
- G. Filing of petition and issuance of summons (G.S. 7B-400 through -407)
- Only DSS can file a petition alleging abuse, neglect, or dependency.
 - If DSS decides not to file a petition, the reporter may seek review of that decision by the prosecutor, who may overrule DSS’s decision.
- H. Nonsecure custody orders (G.S. 7B-502 through -505; 7B-508)
- May be issued:
1. by any district court judge or by anyone to whom the chief district court judge has delegated authority in an administrative order filed with the clerk.
 2. over the telephone or in person.
 3. only after a petition is filed with the clerk (or magistrate if clerk’s office is closed).
 4. only if there is a reasonable factual basis to believe that matters alleged in the petition are true, and that there is no other reasonable means available to protect the juvenile, and that
 - a. the juvenile has been abandoned; or
 - b. the juvenile has suffered physical injury or sexual abuse; or
 - c. the juvenile is exposed to substantial risk of physical injury or sexual abuse; or
 - d. the juvenile needs medical treatment to cure, alleviate, or prevent suffering serious physical harm that may result in death, disfigurement, or substantial impairment of bodily functions, and the parent, guardian, custodian, or caretaker is unable or unwilling to provide or consent to the treatment; or
 - e. the parent, guardian, custodian or caretaker consents to a nonsecure custody order; or
 - f. the juvenile is a runaway and consents to a nonsecure custody.
- I. Appointment of guardian, counsel, guardian ad litem (G.S. 7B-600 through –603)
- Parent is entitled to appointed counsel if indigent.
 - A guardian ad litem must be appointed for a parent under G.S. 1A-1, Rule 17, if the parent is under the age of 18 and is not emancipated.
 - The court may appoint a guardian ad litem for a parent pursuant to G.S. 1A-1, Rule 17, if the court finds a reasonable basis to believe the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest.
 - If abuse or neglect is alleged, the court must appoint a guardian ad litem for the child.
 - If only dependency is alleged, the court may appoint a guardian ad litem for the child.

- J. Petition/hearing on evaluation of alleged abuser (G.S. 7B-302(d1) and –503(b))
- If a juvenile is removed from the home due to physical abuse, the DSS director must conduct a thorough review of the alleged abuser’s background, including a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser has a history of violent behavior against people, the DSS director must petition the court to order that person to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.
 - The court must rule on the petition before returning the child to a home in which the alleged abuser is present. If the court finds that the alleged abuser has a history of violent behavior against people, the court must order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist, and may order the alleged abuser to pay the cost of the evaluation.
- K. Hearing on the need for continued nonsecure custody (G.S. 7B-503, -506, -507)
- Purpose of the hearing is to determine whether there is a need for continued nonsecure custody pending the adjudicatory hearing.
 - Some districts precede this with a “child planning conference” or similar meeting.
 - Timing
 1. If nonsecure custody was ordered by someone other than a judge, with authority delegated by chief district court judge, a hearing must be held on the day of the next regularly scheduled session of district court (unless that is more than 7 days).
 2. If nonsecure custody was ordered by a judge, a hearing must be held within 7 calendar days after the child was removed from home. This hearing may be continued for up to 10 business days with consent of the parent, guardian, custodian, or caretaker and the guardian ad litem if there is one.
 3. If the child remains in custody, a second hearing must be held within 7 business days.
 4. A third and subsequent hearings must be held at least every 30 business days.
 5. Hearings after the first hearing may be waived, but only with consent of the parent, guardian, custodian, or caretaker and the child’s guardian ad litem if there is one.
 - At the hearing:
 1. The state [county] has the burden to provide clear and convincing evidence that the juvenile’s placement in custody is necessary.
 2. The court must allow the parties and the guardian ad litem to offer evidence and cross-examine witnesses.
 3. The court is not bound by the usual rules of evidence.
 4. The court is bound by the criteria for issuing a nonsecure custody order (H, above).
 5. The court must inquire about:
 - a. the identity and location of any missing parent, must make findings about efforts to locate and serve the parent, and may provide for specific efforts to do so.
 - b. whether paternity is at issue and, if it is, efforts that have been made or should be made to establish paternity.
 - c. whether a relative is willing and able to care for the child in a safe home. [Any placement must take into account any applicable provisions of the Indian Child Welfare Act, the Multethnic Placement Act, and the Interstate Compact on the Placement of Children.]
 - d. whether other juveniles remain in the home and, if so, findings of the DSS assessment and actions taken by DSS to protect those children.

- 6. Before returning a child home, the court must consider the opinion of any mental health professional who evaluated an alleged abuser (under J., above).
- An order for continued nonsecure custody must be in writing, include appropriate findings of fact, and be entered (signed by judge and filed with clerk) within 30 days of the hearing.

L. Required contents of any order placing or continuing the placement of a child in DSS custody (G.S. 7B-507)

- The order must contain
 1. a finding that the juvenile's remaining at home or returning home would be contrary to the juvenile's best interest.
 2. findings as to whether DSS has made reasonable efforts to prevent or eliminate the need for placement (unless court has determined those efforts are not required).
 3. findings as to whether DSS should continue to make such efforts (unless the court has determined those efforts are not required).
- The order must specify that the child's placement and care are the responsibility of DSS, and that DSS is to provide or arrange for the foster care or other placement of the child.
- The order may provide for services or other efforts aimed at returning the juvenile to a safe home or achieving another permanent plan for the child.
- The court may direct that reasonable efforts to eliminate the need for placement are not required or shall cease, if the court makes written findings that:
 1. the efforts would be either futile or inconsistent with the juvenile's health, safety, and need for a safe permanent home within a reasonable period of time;
 2. a court has terminated involuntarily the parent's rights to another child; or
 3. a court has determined that the parent has
 - a. subjected the child to "aggravated circumstances";
 - b. committed murder or voluntary manslaughter of another child of the parent;
 - c. aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or
 - d. committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

If the court orders that efforts to eliminate the need for placement are no longer required, the court must direct that a "permanency planning" hearing be held within 30 days.

- The court may order that efforts to eliminate the need for placement be made concurrently with efforts to plan for another permanent placement for the child.

M. Discovery – G.S. 7B-700.

- DSS may share relevant information, and any party may move for discovery.
- For good cause, the court may order that discovery be denied, restricted, or deferred.
- See G.S. 7B-700, which was rewritten effective 10/1/09 by S.L. 2009-311.

IV. Adjudication – G.S. 7B-800 through -807; 7B-101(1), (9), and (15)

A. Preliminary inquiries

1. Jurisdiction
 - a. Personal jurisdiction
 - b. Subject matter jurisdiction
 - c. Uniform Child Custody Jurisdiction and Enforcement Act

2. Service of process
3. Necessary parties
4. Guardian ad litem (and attorney advocate, if GAL not an attorney) for juvenile
5. Counsel and/or guardian ad litem for parent(s)
6. Sufficiency of petition

B. Definitions (See G.S. 7B-101)

1. The definitions of *abused juvenile*, *neglected juvenile*, and *dependent juvenile* prescribe
 - a. every person's legal duty to make a report to the county DSS when a person has "cause to suspect" that a juvenile fits within one of the definitions,
 - b. social services' authority and duties to respond to reports and conduct assessments,
 - c. the court's jurisdiction,
 - d. the petitioner's burden at adjudication.
2. A neglected juvenile includes a juvenile placed for care or adoption in violation of law. Examples of possibly unlawful placements include those that violate statutes relating to
 - a. unlicensed group homes (*see* G.S. 131D-10.1, *et seq.*),
 - b. unlawful payments related to adoption (*see* G.S. 48-10-102),
 - c. prohibited activities relating to placement for adoption (*see* G.S. 48-10-101),
 - d. violation of Interstate Compact on the Placement of Children (G.S. 110-57.1, *et seq.*).

C. Procedure

1. Timing. The adjudication hearing must be held within 60 days after the petition is filed unless the court orders otherwise. [G.S. 7B-801]
2. Open or closed hearing. The judge *may* exclude the public from a hearing, but
 - a. only after considering factors listed in the statute, and
 - b. only if the juvenile does not move that the hearing be open.[G.S. 7B-801]
3. Continuances. For good cause, the court may continue a hearing for as long as reasonably required to receive additional evidence, reports, assessments, or other information needed in the best interest of the juvenile and to allow a reasonable time for expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interest of the juvenile. [G.S. 7B-803]
4. Record of hearing. Adjudicatory hearings must be recorded by stenographic notes or electronic or mechanical means. The record is to be reduced to a written transcript only when timely notice of appeal has been given. [G.S. 7B-806]
5. Predisposition report. No predisposition report shall be submitted to or considered by the judge before completion of the adjudicatory hearing. [G.S. 7B-808]

D. Evidence and Proof

1. When the juvenile is alleged to be abused, neglected, or dependent, the rules of evidence in civil cases apply. [G.S. 7B-804]
2. Allegations must be proved by clear and convincing evidence. [G.S. 7B-805]

E. Orders

1. An adjudication order must include findings of fact and conclusions of law and be entered (signed by the judge and filed with the clerk) within 30 days after the hearing.
2. The judge may enter a consent order on a petition for abuse, neglect, or dependency if

- a. all parties are present,
 - b. the juvenile is represented by counsel,
 - c. all other parties are either represented by counsel or have waived counsel, and
 - d. the judge makes sufficient findings of fact.
- [G.S. 7B-807 and -902.]

V. Dispositions (G.S. 7B-507, -806, -808, -900 through -905)

A. Purposes (G.S. 7B-100 and 7B-900)

1. Develop a disposition that reflects the facts, the needs and limitations of the child, and the strengths and weaknesses of the family.
2. Provide for services for the protection of juveniles, while respecting both the right to family autonomy and juveniles' needs for safety, continuity, and permanence.
3. Prevent the unnecessary or inappropriate separation of juveniles from their parents.
4. Design an appropriate plan to meet the child's needs and achieve the state's objectives.
5. If possible, work with the juvenile and family in their own home.
6. Involve appropriate community resources in the care, supervision, and treatment, according to the juvenile's needs.
7. Arrange for appropriate community-level services to be provided to the juvenile and family, to strengthen the home situation.

B. The Dispositional Hearing (G.S. 7B-901)

1. The hearing may be held immediately after adjudication or scheduled for a later date.
2. The court may exclude the public from the hearing unless the juvenile moves that it be open. (*See* G.S. 7B-801 for required factors to consider before closing a hearing.)
3. The hearing may be informal.
4. The court may consider any evidence, including hearsay, that the court finds to be "relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.
5. The juvenile and the juvenile's parent, guardian, or custodian may present evidence and advise the court as to the disposition they believe to be in the juvenile's best interest.

C. Dispositional Alternatives (G.S. 7B-903)

1. The court may order the following, as the court finds to be in the child's best interest:
 - a. Dismiss the case.
 - b. Continue the case, to allow the juvenile, parent, or others to take appropriate action.
 - c. If the juvenile needs more adequate care or supervision or needs placement:
 - (1) Require that the juvenile be supervised in his/her own home by DSS or other personnel available to the court, subject to conditions the court specifies applicable to the parent or the juvenile.
 - (2) Place the juvenile in the custody of a parent, a relative, a private agency offering placement services, or some other suitable person.
 - (3) Place the juvenile in the custody of DSS in the county of the juvenile's residence.
 - (4) If the juvenile has residence outside the state, place the juvenile in the physical custody of DSS in the county where the juvenile is found so the agency may return the juvenile to authorities in the juvenile's home state.
 - d. Order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert to determine the juvenile's needs.

- e. If the court finds that the juvenile needs medical, surgical, psychiatric, psychological, or other treatment:
 - (1) Allow the parent or other responsible persons to arrange for treatment.
 - (2) If the parent declines or is unable to make necessary arrangements, order the needed treatment, surgery or care, and order the parent to pay the cost or, if the parent is unable to pay the cost, charge the cost to the county. (Note: County manager or other county official must be given notice of and an opportunity to be heard at the hearing.)
 - f. If the court believes or evidence is presented that the juvenile is mentally ill or mentally retarded, refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director. (The juvenile may not be committed directly to a state hospital or mental retardation center.) The area director is responsible for arranging an interdisciplinary evaluation of the juvenile and “mobilizing resources” to meet the juvenile’s needs. If institutionalization is determined to be needed:
 - (1) admission shall be with the consent of the parent or guardian,
 - (2) if the parent, guardian, or custodian refuses to consent after the area director recommends institutionalization, the signature and consent of the judge may substitute for that of the parents.
 - g. Appoint a guardian of the person for the juvenile, to have care, custody, and control of the juvenile or to arrange a suitable placement for the juvenile.
2. Out-of-Home Placement
- a. Before ordering out-of-home placement, the court must consider whether a relative is willing and able to provide proper care and supervision of the juvenile in a safe home.
 - b. If the court finds that such a relative is available, the court must order placement with the relative unless the court finds that is contrary to the child’s best interests.
 - c. Placement of a juvenile outside of the state must comply with the Interstate Compact on the Placement of Children.
3. Authority over Parents and Others at Disposition or Subsequent Hearings (G.S. 7B-904)
- a. The court may order the parent or other responsible parties to pay for treatment ordered under G.S. 7B-903.
 - b. If the court determines that it is in the juvenile’s best interest for the parent to be involved directly in the juvenile’s treatment, the court may order the parent to participate in the juvenile’s treatment and pay the costs of the treatment.
 - c. If the court determines that the juvenile’s best interest requires that the parent undergo treatment, the court may enter an order
 - (1) conditioning legal custody or physical placement of the juvenile with the parent on the parent’s compliance with a plan of treatment approved by the court and may order the parent to pay the cost of the treatment (If the court finds that the parent is unable to pay the cost, the court may charge the cost to the county, but the county manager or other county official must be given notice of and an opportunity to be heard at the hearing), or
 - (2) ordering the parent to undergo treatment. (If the parent cannot pay for the treatment that is ordered, the court may order only that the parent receive treatment that is available through the local mental health agency.)
 In either (1) or (2), the treatment should be directed toward remedying the behaviors

or conditions that led or contributed to the child's adjudication or to the removal of the child from the home.

- d. When legal custody of the juvenile is placed with someone other than the parent, the court may order the parent to pay a reasonable amount for support of the juvenile.
- e. The court may order the parent, guardian, custodian, or caretaker to
 - (1) attend and participate in parental responsibility classes,
 - (2) provide transportation for the juvenile to keep appointments or receive treatment,
 - (3) take appropriate steps to remedy conditions that led or contributed to the juvenile's adjudication or removal from the home.
- f. A parent's failure to participate in or comply with the preceding provisions may result in a proceeding for contempt.

D. Dispositional Order (G.S. 7B-905 and -507)

1. All dispositional orders must:
 - a. be in writing;
 - b. contain findings of fact and conclusions of law;
 - c. state the precise terms of the disposition, including who is responsible for carrying it out and the person or agency in whom custody of the juvenile is vested; and
 - d. be entered (signed by judge and filed with the clerk) within 30 days after the hearing.
2. All orders removing custody from a parent, guardian, custodian, or caretaker:
 - a. must direct that a review hearing be held within 90 days from the date of the dispositional hearing.
 - b. must, if practicable, set the date and time for the review hearing.
 - c. must provide for appropriate visitation in the juvenile's best interests.
 - d. should include any specific authorization needed for someone other than the parent to give consent for medical care or other matters involving the child. (*See G.S. 7B-903(2)c*, for scope of DSS's authority in this regard if custody is awarded to DSS and no other provision is made in the order.)
3. All orders placing a juvenile in the custody of a county DSS:
 - a. are subject to the provisions in III.L. (page 5, above).
 - b. may require the DSS director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

VI. Post-Disposition

A. Modification and Appeals – G.S. 7B-1000 through -1004

1. On motion and after a hearing, the court may modify its orders as it finds to be in the child's best interest.
2. Notice of appeal must be given in writing within thirty days after entry and service of the order.
3. If a case is appealed,
 - a. the juvenile may be returned to the custody of the parent or guardian, with or without conditions, unless the court orders otherwise; and
 - b. the court may continue to exercise jurisdiction and conduct hearings in the case, except regarding termination of parental rights.

B. Review hearings (G.S. 7B-507, -906, -907, -1000) [See also G.S. 7B-908, -909, -910]

1. When custody is removed from a parent, guardian, custodian or caretaker, a first review

must be held within 90 days of the dispositional hearing, and subsequent reviews must be held at least every six months.

2. The court may waive the reviews, or hold them less often, if the court finds:
 - a. the child has resided with a relative or been in the custody of another suitable person for at least one year;
 - b. the placement is stable and in the child's best interest;
 - c. neither the child's best interest nor a party's rights require a hearing every six months;
 - d. all parties know they can file a motion for review at any time; and
 - e. the court has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the child's person.
3. A "permanency planning" review hearing must be held within 12 months from the date the child was first removed from the home, to develop a plan for a safe, permanent home for the juvenile within a reasonable period of time. Every review hearing thereafter is a permanency planning hearing.
4. At the end of a permanency planning hearing, if the court does not return the juvenile home, it must make written findings about as many of the following as are relevant:
 - a. Whether it is possible for the juvenile to be returned home immediately or within six months and, if not, why it is not in the juvenile's best interests to return home.
 - b. If the juvenile's return home within six months is unlikely,
 - (1) whether legal guardianship or custody should be given to a relative or another suitable person and, if so, what rights and responsibilities should remain with the parents;
 - (2) whether adoption should be pursued and, if so, any barriers to the juvenile's adoption; and
 - (3) whether the juvenile should remain in the current placement or be placed in another permanent living arrangement, and why.
 - c. Whether DSS, since the first permanency planning review hearing, has made reasonable efforts to implement the permanency plan for the juvenile.
 - d. The best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time.
5. If the juvenile is not returned home at the end of a permanency planning hearing, the court may appoint a guardian of the person for the juvenile or make any disposition authorized by the Juvenile Code. The court must direct DSS to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanency plan, to complete any steps necessary to finalize the permanent placement, and to document those actions in the juvenile's case plan.
6. Subject to the bulleted exceptions below, after a permanency planning review hearing, DSS must initiate a proceeding to terminate parental rights if
 - a. the juvenile is in the custody of DSS and has been in placement outside the home for 12 of the most recent 22 months; or
 - b. a court of competent jurisdiction has determined that the parent has
 - (1) abandoned the child;
 - (2) committed murder or voluntary manslaughter of another child of the parent; or
 - (3) aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent.

However, even when one of those circumstances exists, DSS is not required to initiate a termination of parental rights proceeding if the court finds that:

- the permanency plan for the juvenile is guardianship or custody with a relative or some other suitable person; or
 - the filing of a petition for termination of parental rights is not in the juvenile's best interests (the court must make specific findings as to why this is so); or
 - DSS has not provided the family with services that DSS deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.
7. An order must be entered (signed by the judge and filed with the clerk) within 30 days after any review hearing.
 8. If a proceeding to terminate parental rights is necessary in order to carry out the permanency plan for a child, DSS must file the petition within 60 calendar days, unless the court makes written findings as to why the petition cannot be filed within 60 days and specifies the time frame within which it must be filed.
 9. The court's authority to review and modify its orders continues until
 - a. the juvenile reaches age 18 or is otherwise emancipated, or
 - b. the court enters an order terminating jurisdiction.(G.S. 7B-201, -1000)

C. Terminating Jurisdiction (G.S. 7B-200, -201, -911)

1. If both a juvenile case and a Chapter 50 custody action are pending, the juvenile case takes precedence and the custody action is stayed automatically, unless the court in the juvenile matter orders differently.
2. The court may terminate jurisdiction in the juvenile case at any time.
3. When the court terminates jurisdiction, all orders entered in the matter cease to be effective and the status of the parties and the child with respect to custody reverts to what it was when the petition was filed unless another law or a valid court order in another action or proceeding provides otherwise.
4. After a hearing and making findings required by G.S. 7B-911, the court may create or modify a custody order pursuant to G.S. Chapter 50 and terminate jurisdiction in the juvenile case.



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