G.S. 7B-401.1(f)

G.S. 7B-601(a)

These statutes explicitly state that in an abuse, neglect, or dependency proceeding, the child is a party even though the child is a minor. Federal and/or State law require the child be represented by a guardian ad litem in abuse and neglect cases; in a termination of parental rights case where a GAL has been appointed in an earlier abuse or neglect action, and in some cases in a dependency action. A guardian ad litem represents the child’s best interests, which is different from the child’s express preference.

**Question**: Is the court required to appoint a Rule 17 GAL for a child when dependency only is alleged and the court does not appoint a 7B-601 GAL for the child?

**CHILD IN COURT**

Because the child is a party, a child has a right to appear in court. This is especially important if the GAL’s determination of best interests is contrary to a child’s stated preference. A child’s appearance in court, depending upon his or her or the nature of the allegations may be controversial or unwanted. Something to remember and consider is the child has experienced what will be heard in court either directly or indirectly by virtue of his or her removal from his or her home.

There are several statutes that address a child’s right to be notified of court action, appear in court, and/or to be heard. In the context of A/N/D actions they are as follows:

1. The child is a party, 7B-401.1(f),- 601(a)
2. No hearing or part of hearing shall be closed if the juvenile requests it remain open,7B-801(b)
3. The clerk shall give 15 days’ notice of a 7B-906.1 hearing to the child if 12 or older [this is in addition to the child’s GAL), 7B-906.1(b)(ii), (vi)]
4. The court may approve APPLA as the permanent plan after questioning the juvenile and making written findings addressing the juvenile’s desired permanency outcome, 7B-912(d)
5. At each post-TPR review hearing the court may consider information from … the child…, 7B-908(a)
6. If the child is 12 y.o., (s)he must receive notice of Post TPR review 7B-908(b)(1) and the child is one of the limited parties who may attend the hearing
7. If the child is 12 y.o. (s)he must be served with copy of TPR order, 7B-1110(d)
8. A child has standing to appeal 7B-1002(1) and (2)

There are other laws outside of A/N/D that either allow for or require a child to appear in court. Many of these laws do not have a designated age for when this is appropriate.

A child as young as six may be charged with and summonsed to appear in **delinquency court.** The child must appear. This is throughout the juvenile code, however, specific statutes include: G.S. 7B-1805, 1806, and -1808.

In addition, any juvenile who is alleged to commit a crime when he or she is 16 or 17 years old is charged as an adult and is not heard in juvenile court. See G.S. 7B-1604. Children as young as 13 (if they were 13 at the time the alleged crime was committed) may be transferred to the adult criminal court. See G.S. 7B-2200.

Outside of the delinquency and undisciplined actions, other statutes allow for and/or require a child’s participation in the court proceeding. They include:

**Adoption**: G.S. 48-3-601(1)

“a petition to adopt a minor may be granted only if consent to the adoption has been executed by:… The minor to be adopted if 12 or more years of age” [Note, consent may be waived if the court finds it is not in the child’s best interests to consent, G.S. 48-3-603(b)(2)]

**Emancipation:** G.S. 7B-3500

A 16 or 17 year old may petition the court for emancipation

**Procedure for waiver of parental consent:** G.S. 90-21.8

“The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem.”

**Paternity:** G.S. 49-14, -16

“The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday….” “ Proceedings under this Article may be brought by …the child.”

**Admission of Minor to Facility for Mentally Ill and Substance Abusers, Judicial review of voluntary admission:** 122C-224 .

“When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held by the district court …Before the admission, the facility shall provide the minor and his legally responsible person with written information describing the procedures for court review of the admission and informing them about the discharge procedures…. The minor shall have the right to be present at the hearing unless the judge rules favorably on the motion of the attorney to waive the minor's appearance.  However, the minor shall retain the right to appear before the judge to provide his own testimony and to respond to the judge's questions unless the judge makes a separate finding that the minor does not wish to appear upon motion of the attorney.”