



2016 Parent Attorney Conference August 11, 2016 / Chapel Hill, NC

ELECTRONIC MATERIALS*

*This PDF file contains "bookmarks," which serve as a clickable table of contents that allows you to easily skip around and locate documents within the larger file. A bookmark panel should automatically appear on the left-hand side of this screen. If it does not, click the icon—located on the left-hand side of the open PDF document—that looks like a dog-eared page with a ribbon hanging from the top.



2016 Parent Attorney Conference Addressing Issues of Substance Abuse and Addiction

August 11, 2016 / Chapel Hill, NC

*Co-sponsored by the UNC-Chapel Hill School of Government
& Office of Indigent Defense Services*

AGENDA

8:00 to 8:45am	Check-in
8:45 to 9:00	Welcome
9:00 to 10:00	Case Law and Legislative Update [60 min] <i>Sara DePasquale, Assistant Professor of Public Law and Government</i> UNC School of Government, Chapel Hill, NC
10:00 to 10:45	Assessment & Evaluation [45 min] <i>James W. Finch, MD, Co-director</i> Changes By Choice, Durham, NC
10:45 to 11:00	<i>Break</i>
11:00 to 12:00	Drug and Alcohol Testing [60 min] <i>Paul Cary, Director, Toxicology and Drug Monitoring Laboratory</i> University of Missouri, Columbia, MO
12:00 to 12:30	DHHS: Addressing Substance Abuse and Addiction [30 min] <i>Jessica Guice-Albritton, Policy Consultant</i> Division of Social Services, Child Welfare Services NC DHHS, Raleigh, NC
12:30 to 1:15	Lunch (<i>provided in building</i>) *
1:15 to 2:15	Making Sense of Addiction and Its Treatment [60 min] <i>James W. Finch, MD, Co-director</i> Changes By Choice, Durham, NC
2:15 to 2:30	Break (<i>light snack provided</i>)
2:30 to 3:30	Advocacy: Making a Case for the Recovering Client [60 min] <i>Dorothy Hairston Mitchell, Juvenile Law Clinical Supervising Attorney</i> North Carolina Central University, Durham County, NC
3:30 to 4:30	Working with the Chemically Dependent Client (Ethics) [60 min] <i>Karen Jackson, Attorney</i> Greensboro, NC

CLE HOURS: 6.25 (Includes 1 hour of ethics/professional responsibility)

* IDS employees may not claim reimbursement for lunch



ONLINE RESOURCES FOR INDIGENT DEFENDERS

ORGANIZATIONS

NC Office of Indigent Defense Services

<http://www.ncids.org/>

UNC School of Government

<http://www.sog.unc.edu/>

Indigent Defense Education at the UNC School of Government

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education>

TRAINING

Calendar of Live Training Events

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/calendar-live-events>

Online Training

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/online-training-cles>

MANUALS

Orientation Manual for Assistant Public Defenders

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/orientation-manual-assistant-public-defenders-introduction>

Indigent Defense Manual Series (collection of reference manuals addressing law and practice in areas in which indigent defendants and respondents are entitled to representation of counsel at state expense)

<http://defendermanuals.sog.unc.edu/>

UPDATES

On the Civil Side Blog

<http://civil.sog.unc.edu/>

NC Criminal Law Blog

<https://www.sog.unc.edu/resources/microsites/criminal-law-north-carolina/criminal-law-blog>

Criminal Law in North Carolina Listserv (to receive summaries of criminal cases as well as alerts regarding new NC criminal legislation)

<http://www.sog.unc.edu/crimlawlistserv>



TOOLS and RESOURCES

Collateral Consequences Assessment Tool (centralizes collateral consequences imposed under NC law and helps defenders advise clients about the impact of a criminal conviction)

<http://ccat.sog.unc.edu/>

Motions, Forms, and Briefs Bank

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education/motions-forms-and-briefs>

Training and Reference Materials Index (includes manuscripts and materials from past trainings co-sponsored by IDS and SOG)

<http://www.ncids.org/Defender%20Training/Training%20Index.htm>

2016 Legislative Changes Impacting Child Welfare

Author : Sara DePasquale

Categories : [Child Welfare Law](#)

Tagged as : [abandonment](#), [abuse neglect and dependency](#), [child custody](#), [department of social services](#), [Juvenile Code](#), [new legislationunlawful transfer of custody](#)

Date : July 20, 2016

The 2016 Appropriations Act ([S.L. 2016-94](#)) addresses more than the State's budget. Section 12.C makes substantive changes to the General Statutes in Chapter 7B that govern abuse, neglect, or dependency proceedings. The statutory amendments became effective on July 1st. In addition, [H424](#), creates a new criminal statute, "The Unlawful Transfer of Custody of a Minor Child," and amends the definition of a neglected juvenile in G.S. Chapter 7B. H424 was presented to the Governor on June 30th and will become law July 31st (unless the Governor vetoes the bill or signs it beforehand). Here's what you need to know about the statutory changes.

The 2016 Appropriations Act

There are three substantive changes that were made to G.S. Chapter 7B.

1. Caretakers

A child may be abused or neglected because of circumstances created by the child's parent, guardian, custodian, or caretaker. A caretaker is any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a child in a residential setting and includes categories of people, such as foster parents and stepparents. G.S. 7B-101(3). The **definition** of caretaker has been amended to add "a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department." S.L. 2016-94, p. 76. The effect of this amendment is twofold:

1. A county department may substantiate this person as an individual responsible for abusing or seriously neglecting a child. That substantiation may result in the caretaker's name being placed on the Responsible Individuals List. For more information on the RIL, see my previous [post](#).
2. A county department may file a new petition alleging a child is abused or neglected based on the circumstances created by the caretaker. Before a county department files a new petition alleging the child's abuse or neglect, it may want to review the recent NC Supreme Court decision, [In re R.R.N.](#), 368 N.C. 167 (2015). There, the Supreme Court addressed how to interpret the caretaker statute when viewed in context of examining the dual purpose of the Juvenile Code in "promoting the best interests of the child while still safeguarding the parent-child relationship from needless State interference." For more information, see my [previous post](#).

The statute authorizing **intervention** in an abuse, neglect, or dependency proceeding was amended by Section 12C.1(f) of S.L. 2016-94 such that caretakers no longer have standing to intervene. G.S. 7B-401.1(h). An additional amendment was not made to G.S. 7B-401.1(e), so it appears that a foster parent may be allowed to intervene if the foster parent has standing to file a petition to terminate the parental rights of the child's parent. See 7B-1103.

2. Confidentiality

Unless a statutory exception applies, information received by a county department in an abuse, neglect, or dependency case must be "held in strictest confidence." G.S. 7B-302(a1); -2901(b). Section 12C.1(e) of S.L. 2016-94 amends one

of those exceptions. A county department shall disclose confidential information to any private child placing or adoption agency that is licensed by NC DHHS in order to protect a child from abuse or neglect. G.S. 7B-302(a1)(1)

3. Reunification and Concurrent Permanency Planning

In 2015, the General Assembly made significant changes to reunification services and permanency planning. See G.S. 7B-901(c) and -906.2. In determining whether reasonable efforts for reunification were required, G.S. 7B-901(c) mandated that the court order reasonable efforts were not required if the court made written findings of any of the enumerated statutory factors, such as a parent's rights to another child were involuntarily terminated, a parent was required to register as a sex offender, or a parent allowed for the child's chronic or toxic exposure to alcohol or controlled substances that caused the child's impairment or addiction. Section 12C.1.(g) of S.L. 2016-94 amends G.S. 7B-901(c) to give the court discretion to determine there is "compelling evidence" that warrants continued reasonable efforts even when the court makes written findings of one of the statutory factors.

At permanency planning, the court is required to order **concurrent permanent plans** and identify the primary and secondary plan. G.S. 7B-906.2(b). The court must order the department to make efforts to finalize the primary and secondary plans. Section 12C.1.(h) of S.L. 2016-94 adds 7B-906.2(a1), which terminates the requirement that a court order concurrent planning when a permanent plan has been achieved. In practice, this provision will apply when a permanent plan has been achieved but requires that the court retain jurisdiction in the abuse, neglect, or dependency action, such as guardianship [G.S. 7B-600(b); -903(a)(5)] or custody when state intervention is needed [G.S. 7B-903(a)(2), (4)]. See G.S. 7B-201(b).

Unlawful Transfer of Custody of a Minor, G.S. 14-321.2

[H424](#) creates a new criminal statute, G.S. 14-321.2, that will apply to offenses committed on or after December 1, 2016. An unlawful transfer of a minor child's custody will be an **A1 misdemeanor or a G felony** if the minor child suffers a serious physical injury. What does that mean?

To understand this statute, you have to start with the **definitions** found at G.S. 14-321.2(b). An "unlawful transfer of custody" consists of the following elements

- A parent's
- transfer of physical custody
- of a child who is younger than 18
- in willful violation of adoption laws (see G.S. Chapter 48) or in a grossly negligent omission in the child's care
- without a court order or other authorization under the law
- to a person who is not the child's relative or someone with whom the child has a substantial relationship.

Note that for purposes of this crime, "**parent**" is broadly defined to include a biological or adoptive parent as well as a person who is the child's legal guardian or legal custodian. G.S. 14-321.2(b)(2). This broad definition differs from how these terms are used in the abuse, neglect, or dependency; adoption; and criminal statutes. See G.S. 7B-101(3) (caretaker is someone other than a parent, guardian, or custodian); 7B-600(a) (in any case where no parent appears,...the court may appoint a guardian); 7B-101(18b) (return home or reunification is placement with either parent or the guardian or custodian...); 48-1-102(8) (guardian is as an individual other than a parent...); 14-322 (abandonment and failure to support child refers to "a parent, whether natural or adopted").

"**Relative**" is also defined by G.S. 14-321.2(b)(3) as the child's other parent, stepparent, grandparent, great grandparent, adult sibling, aunt, great aunt, uncle, great uncle, first cousin, or parent's first cousin. This definition refers to a "parent" twice. Because "parent" is also defined by the statute, it appears that the expanded definition of parent applies to a determination of whether a person is a relative. For example, the parent's first cousin would include a legal guardian's or legal custodian's first cousin. "**Substantial relationship**" is not defined.

Permissible Transfers, G.S. 14-321.2(b)(4)a. – i.

The definition of unlawful transfer of custody contains **nine exceptions**, meaning the actions are not prohibited. The exceptions fall into three categories.

- **Purposes of Adoption**

Five exceptions apply to procedures that are authorized under North Carolina's adoption laws and address

- a child's placement with a prospective adoptive parent made pursuant to G.S. 48-3-201 or in substantial compliance with North Carolina's or another state's adoption laws,
- a parent or guardian's execution of a consent to or relinquishment for a minor child's adoption [see G.S. 48, Article 3, Part 6 (consent) & Part 7 (relinquishment)], or
- compliance with the Interstate Compact on the Placement of Children (G.S. 7B-3800) or the [Convention](#) addressing intercountry adoptions.

- **Temporary Transfer**

Three exceptions apply to a temporary transfer of a child's physical custody. A parent may transfer custody of the child for a specified period of time to

- a person with a prior substantial relationship with the child because of the child's medical, mental health, educational, or recreational needs or the parent's inability to provide proper care or supervision because of the parent's absence (such as hospitalization, incarceration, employment) or incapacity;
- a behavioral health facility or other health care provider, educational institution, or recreational facility because of the child's medical, mental health, educational, or recreational needs; or
- a voluntary foster care placement with a county department (see G.S. 7B-910; note that a petition alleging abuse, neglect, or dependency must be filed if a child remains in a voluntary placement for more than six months).

- **Transfer to a Relative**

This exception does not appear to require that the transfer be temporary or for a specified period of time.

Prohibited Actions, G.S. 14-321.2(a)

The crime of the unlawful transfer of custody of a minor child consists of any of the following three actions:

1. A parent effects or attempts to effect an unlawful transfer of custody of his or her child;
2. A person accepts or attempts to accept custody of a child made by an unlawful transfer unless that person takes custody of the child and promptly notifies and makes the child available to law enforcement or child protective services in the county where the child resides or is found; or
3. A person advertises, recruits, solicits (or aids, abets, conspires, or seeks another person's assistance for) the unlawful transfer of custody.

Compensation is not required. G.S. 14-321.2(b)(4). If compensation is a part of the transfer, it's possible that a second crime, "the unlawful sale, surrender, or purchase of a minor," is also being committed. G.S. 14-43.14. If this second crime is committed by the child's parent, guardian, or custodian, the child is an abused juvenile for purposes of a child welfare proceeding. *Id.*; 7B- 101(1)d.

Neglected Juvenile

H424 also amends the definition of a "neglected juvenile" to include a juvenile whose custody has been unlawfully transferred. G.S. 7B-101(15). Although the inclusion of an unlawfully transferred child makes it clear that the child is neglected, the practical effect for mandated reporters or a county department may be negligible. The current definition of neglected juvenile includes a juvenile who has been abandoned. *Id.* Although abandonment is not defined in G.S.

Chapter 7B, it has been defined by the NC Supreme Court as willful conduct by the parent that “evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.” *Pratt v. Bishop*, 257 N.C. 486, 501 (1962). See *In re Estate of Lunsford*, 359 N.C. 382 (2005). Some of the conduct contemplated by the Unlawful Transfer of Custody of a Minor Child statute appears to encompass the willful abandonment of a child by a parent, guardian, or custodian such that a child may be considered neglected. If a report is made to a county department that alleges the child is either abandoned or was unlawfully transferred, the county department must immediately initiate an assessment. G.S. 7B-302(a).

Child Welfare Case Update

For Parent Attorneys 2016 Conference

Cases Decided from July 21, 2015 – July 19, 2016

Contents

Abuse, Neglect, Dependency	5
Verification of Petition: Subject Matter Jurisdiction	5
In re N.T.,.....	5
Caretaker: Relative Entrusted with Care	5
In re R.R.N.	5
Caretaker: Stepparent.....	6
In re M.S.	6
Adjudication: GAL for Respondent Parent.....	6
In re D.L.P. and H.L.P.	6
Adjudication: Hearsay Statements of the Child	6
In re M.A.E., K.M.E., and E.G.H.	6
Adjudication: Findings of Fact	7
In re C.B.....	7
Abuse: Cruel or Grossly Inappropriate Procedures to Modify Behavior.....	8
In re F.C.D.	8
Abuse: Sexual Acts <i>By</i> and Upon a Juvenile.....	8
In re M.A.E., K.M.E., and E.G.H.	8
Abuse: Serious Emotional Damage	8
In re A.M.....	8
Neglect: Child with Significant Mental Illness.....	9
In re C.B.....	9
Neglect: Injurious Environment.....	10
In re F.C.D.	10
Neglect: Harm to Child.....	10
In re K.J.B.....	10
In re J.R.	10

Neglect: Out-of-State Acts.....	11
In re T.N.G.	11
Neglect: Child’s Circumstances.....	11
In re Q.A.	11
Dependency: Proper Care or Supervision.....	11
In re T.N.G.	11
Dependency: Alternative Child Care Placement.....	12
In re C.B.	12
Disposition: Evidence/Reports.....	12
In re J.H.....	12
Disposition: Authority to Order Services.....	12
In re D.L.W.....	12
In re T.N.G.,.....	13
Disposition: Visitation	13
In re J.H.....	13
Disposition: Child Support	13
In re A.M.....	13
Disposition: Guardianship	13
In re J.H.....	13
Disposition: Waive Review Hearing.....	14
In re J.H.....	14
Permanent Plan: Relative Consideration	14
In re E.R.	14
Review Order: Custody to Non-Parent	14
In re A.C.....	14
Appeal: Orders that May Be Appealed	16
In re P.S.	16
Appeal: Standing.....	16
In re C.A.D.....	16
In re M.S.	16
Ineffective Assistance of Counsel (IAC)	17

In re C.B.....	17
Responsible Individual List (RIL)	17
In re F.C.D	17
Termination of Parental Rights	17
District Court Jurisdiction.....	17
In re A.L.....	17
Subject Matter Jurisdiction: G.S. 7B-1101	18
In re M.C.	18
Standing	18
In re J.A.U. and S.A.U	18
Hearing: Two Stages.....	19
In re S.Z.H.....	19
Grounds: Hearsay Evidence.....	19
In re C.R.B	19
Grounds: Findings.....	19
In re A.B.....	19
Neglect	20
In re M.A.W.	20
In re D.L.W.	20
In re M.P.M.....	20
In re C.L.S.....	21
In re E.L.E.....	21
Failure to Make Reasonable Progress to Correct the Conditions.....	21
In re D.L.W.	21
In re S.D.	22
Failure to Pay Reasonable Portion of Cost of Care	23
In re A.L.....	23
In re E.L.E.....	23
Abandonment.....	23
In re S.Z.H.....	23
Disposition: Best Interests	24

In re C.A.D.....	24
Ineffective Assistance of Counsel	24
In re T.D.....	24
Order: Delayed Entry	25
In re S.Z.H.....	25
Order: Oral Rendition vs. Entry of Judgment	25
In re O.D.S.	25
Findings: Remand Instructions	26
In re A.B.....	26
UCCJEA	26
No Home State	26
In re T.N.G.....	26
Modification Jurisdiction (G.S. 50A-203)	27
In re J.H.....	27
Adoption	28
Consent of Unwed Father	28
In re Adoption of C.H.M.....	28
Civil Case Related to Child Welfare.....	28
Custody to Non-Parent, Acting Inconsistently with Parental Rights	29
Weideman v. Shelton v. Wise.....	29
Related Criminal Cases.....	30
Evidence: Child’s Statements	30
State v. McLaughlin.....	30
Felony Child Abuse: Serious Bodily Injury.....	30
State v. Bohannon	30
Misdemeanor Child Abuse: Substantial Risk of Physical Harm	31
State v. Watkins	31
Parental Kidnapping.....	31
State v. Pender	31

Abuse, Neglect, Dependency

Verification of Petition: Subject Matter Jurisdiction

In re N.T., ___ N.C. ___, 782 S.E.2d 502 (2016)

Held: Reversed Court of Appeals Opinion

- Procedural History/Facts:
 - 2012: The county department files a neglect petition that is signed by an authorized representative of the director. In the verification section after “signature of person authorized to administer oaths,” an illegible signature following the letter “C” appears. The section for “title” is left blank. Child is adjudicated neglected and placed in the custody of the county department.
 - 2013: The county department files a motion to terminate parental rights (TPR).
 - 2014: The TPR is granted and respondent mother appeals based on lack of subject matter jurisdiction arguing the neglect petition was not properly verified as required by statute.
 - 2015: The NC Court of Appeals vacates the TPR, and the N.C. Supreme Court grants petition for discretionary review.
- Although subject matter jurisdiction may be raised at any time, there is a presumption that a court has jurisdiction when it acts on a matter. The respondent, who is raising subject matter jurisdiction, has the burden of proving there is no jurisdiction.
- Verification is addressed by G.S. 1A-1, Rule 11(b) and G.S. 1-148. Rule 11 requires an affidavit where the person verifies that the contents of the pleading are to his or her knowledge true or upon information and belief are believed to be true. G.S. 1-148 authorizes a judge, magistrate, clerk of court, notary public, or any officer competent to acknowledge deeds to verify a pleading. A public official acting in his or her official duty is presumed to act in accordance with the law, and the contesting party has the burden of overcoming the presumption.
- Respondent mother did not show that the petition, which appeared to be facially valid, was not verified before a person who was authorized to administer oaths. There was no evidence or allegations to overcome the presumption that the person who signed as “the person authorized to administer oaths” did not act in his or her official capacity

Caretaker: Relative Entrusted with Care

In re R.R.N., ___ N.C. ___ (August 21, 2015)

Held: Affirmed COA (reversed trial court)

- The trial court must apply a totality of the circumstances test to determine if an adult relative is “entrusted with the juvenile’s care” such that the adult is a caretaker as defined by G.S. 7B-101(3). Factors include the duration, frequency, and location of the care provided by the adult relative as well as the decision-making authority that is given to the adult relative. The adult relative must have a significant degree of parental-type responsibility for the child. A temporary arrangement for supervision is not the equivalent of entrusting an adult relative with the care of a juvenile such that the adult relative is a caretaker.
- 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, “ultimately, 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.

- The adult relative who acted as the child’s supervisor for one night on one occasion (a sleepover) while the child’s mother retained the ultimate responsibility for the child’s overall health and welfare is not a caretaker.

Caretaker: Stepparent

In re M.S., ___ N.C. App. ___ (April 19, 2016)

Held: Appeal Dismissed

- The respondent is a stepparent, which is distinguishable from a parent under both the Juvenile Code and adoption statutes. The definition of “caretaker” found at GS. 7B-101(3) explicitly includes a “stepparent” and distinguishes a stepparent from a parent. A stepparent is also distinguished from a legal parent by G.S. 48-1-101(18). Without evidence that a stepparent has either adopted the child and become the child’s parent or has been awarded custody of the child through a court order and become the child’s custodian as defined by G.S. 7B-101(8), a stepparent is a caretaker.

Adjudication: GAL for Respondent Parent

In re D.L.P. and H.L.P., ___ N.C. App. ___ (August 18, 2015)

Held: Vacated and Remanded

- When a court determines a respondent parent is incompetent and requires a Rule 17 GAL, the court may not proceed with a hearing if the appointed substitute GAL is not present.
- In this case, the record does not reflect when the court determined the respondent mother required a substitute GAL. The respondent mother was not present at the adjudication hearing and had not communicated with her attorney. It appears a GAL was appointed to the mother because of her erratic and harmful behavior at the disposition hearing along with evidence of her difficulties that resulted from a traumatic brain injury. Because the timing of the court’s determination of the mother’s need for a GAL is unknown, and the GAL appointed for the respondent mother was not present at the adjudication or disposition hearings, the orders adjudicating the juveniles neglected and dependent and the disposition orders are vacated. Case is remanded for further proceedings.

Adjudication: Hearsay Statements of the Child

In re M.A.E., K.M.E., and E.G.H., ___ N.C. App. ___ (July 21, 2015)

Held: Affirmed

- Rule 803(24) of the NC Rules of Evidence allows for the admission of hearsay that is not specifically identified in Rule 803 if the statement
 - has the equivalent circumstantial guarantees of trustworthiness,
 - is offered as evidence of a material fact, and

- is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts
- and
 - the general purposes of the rules of evidence and the interests of justice will be best served by the statement's admission.
- A party must give notice to the adverse party of his/her intent to use the statement.
- Admission of a hearsay statement pursuant to Rule 803(24) is reviewed for an abuse of discretion. The court did not abuse its discretion when it admitted the 8-year old child's statements to the DSS social worker that were made at school or to a forensic interviewer made the next day at the children's advocacy center (this was videotaped).
- The child's statements were more probative than other evidence that was reasonably available to DSS even though the court did not rule specifically on whether the child was available to testify. The record showed the child's testimony would be detrimental to her welfare.
- When determining if the statement has a circumstantial guarantee of trustworthiness, the court must consider four factors ("the Valentine factors"):
 - Whether the declarant had personal knowledge of the underlying events,
 - Whether the declarant is motivated to speak the truth,
 - Whether the declarant has ever recanted the statement, and
 - Whether the declarant is available at trial for meaningful cross-examination.
- Failure to make findings of all four Valentine factors is not fatal, for an appellate court will look to the entire record to determine if the statement is admissible.
 - The record contains evidence that the child was unavailable at trial due to the detrimental affect testifying would have on her welfare.
 - The record contains evidence that the child was motivated to speak the truth when she made the statements. She was in a comfortable and safe setting, used age-appropriate language, was asked open ended questions, and did not appear afraid or upset.
- When determining the guarantee of trustworthiness of the statement, a court will look at whether the witness is capable of expressing herself about the matter so as to be understood and of understanding the duty to tell the truth. The court did not abuse its discretion when determining the statement had a guarantee of trustworthiness when the court found the child understood the difference between the truth and a lie but would be unlikely to understand the concept of swearing on a bible.
- The court declined to review the admission of the 12-year old child's hearsay statements because the respondents were not prejudiced by the admission of these statements. There was sufficient independent evidence that supported the trial court's findings and conclusions.

Adjudication: Findings of Fact

In re C.B., ___ N.C. App. ___, 783 S.E.2d 206 (2016)

Held: Affirmed

There is a dissent

- Findings of fact that were challenged by the respondent mother were supported by clear and convincing competent evidence in the record. The evidence included testimony from the child welfare social workers and for some of the challenged findings, respondent mother's own testimony.
- Unchallenged findings are binding on appeal. Some of the findings that were challenged by the respondent mother were supported by additional unchallenged findings of fact made by the court.

Abuse: Cruel or Grossly Inappropriate Procedures to Modify Behavior

In re F.C.D., ___ N.C. App. ___, 780 S.E.2d 214 (2015)

Held: Affirmed

- The findings are supported by competent evidence and support the conclusion that the child was abused.
- A juvenile is abused when his or her parent, guardian, custodian, or caretaker uses or allows to be used upon him or her cruel or grossly inappropriate procedures or devices to modify his or her behavior. G.S. 7B-101(1)(c). This definition focuses on the severity and brutality of the procedures and devices that are used by the parent, guardian, custodian, or caretaker and does not examine the child's behavior that the procedures or devices were meant to correct.
- The following procedures constitute abuse: forcing the child to sleep outside on at least two cold nights in February, binding the child to a tree, ordering the child to pray while the caretaker held a firearm, requiring the child to conduct a self-baptism in a bathtub of water, striking the child with a belt all over his body, and telling the child he was possessed by a demon such that the child began to believe it was true.

Abuse: Sexual Acts By and Upon a Juvenile

In re M.A.E., K.M.E., and E.G.H., ___ N.C. App. ___ (July 21, 2015)

Held: Affirmed

- The definition of abuse at G.S. 7B-101(1)(d) includes a parent who has permitted or encouraged the commission of certain sex crimes by, with, or upon the child. The evidence supported the court's findings that the older sibling repeatedly sexually abused the younger sibling and the respondent parents were aware of the abuse based on the younger sibling's disclosures of her victimization. The evidence also showed the older sibling was adjudicated delinquent after admitting to multiple counts of second degree statutory rape and second degree statutory sexual offences against his younger sisters. The evidence further supports the finding that the respondent parents did not take appropriate remedial measures to prevent the sexual abuse from recurring. Based on the definition of abuse, the older sibling who committed the acts and the younger sibling victim are abused juveniles.

Abuse: Serious Emotional Damage

In re A.M., ___ N.C. App. ___ (June 7, 2016)

Held: Affirmed in part; Remanded in part

- The definition of abuse includes “[a]ny juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker . . . [c]reates or allows to be created serious emotional damage to the juvenile... evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward [herself] or others.” G.S. 7B-101(1)(e). The statute does not require a formal psychiatric diagnosis.
- Findings that the mother’s foul and abusive language created a toxic environment and that 16 year old A.M. felt hopeless about DSS’ involvement and helpless that anyone could help her or help her mother change her mother’s behavior, had anxiety, and that her coping method was to withdraw supported the court’s conclusion that the child was abused. The written findings do not need to quote the language of the statute (e.g., “serious emotional damage”) but must address the statute’s concerns, which these findings do.
- Remand for findings based on evidence in the record of the 6 year old’s serious emotional damage. Evidence includes the testimony of a licensed psychologist that the child’s defiant behavior is related to the mother’s lack of structure or guidance, inconsistent discipline, and inability to be attuned to the child’s emotional needs. The testimony addressed the mother’s demeaning and offensive language that created a toxic environment where the child was subjected to chronic and acute verbal assaults that were part of this child’s normal everyday life.

Neglect: Child with Significant Mental Illness

In re C.B., ___ N.C. App. ___, 783 S.E.2d 206 (2016)

Held: Affirmed

There is a dissent based on a parent’s constitutional right to choose a different course of medical treatment for her child than what is recommended by the medical provider and preferred by DSS

- The court’s ultimate finding that the child was neglected was supported by the multiple court findings of fact that demonstrated the 10-year old child had significant mental health issues resulting in multiple psychiatric hospitalizations in a short period of time; the mother minimized and denied the seriousness of the child’s condition; the mother continuously failed to obtain meaningful mental health treatment for her daughter and exacerbated her daughter’s condition; and the child was at substantial risk of a physical, mental, or emotional impairment as a result.
- Although a parent has a paramount constitutional right to care, custody, and control over her child, that right is not absolute and does not include neglecting her child’s welfare. In this case, the parent was unjustified in her unwillingness or inability to obtain meaningful medical care for her child who was experiencing a serious illness. The failure to obtain medical treatment constitutes neglect.
- The sibling of the child with a severe mental illness is also a neglected juvenile based on the following findings of fact: the respondent mother allowed her daughter to be continually exposed to her sibling’s erratic and violent behavior, and the child was directly and negatively affected by each of the incidents she was exposed to; respondent mother was not concerned about the effect the exposure was having on her daughter; and respondent mother failed to take efforts to mitigate the sibling’s behavior by obtaining meaningful medical services for the sibling. The court noted

the definition of neglect includes the relevance of whether the juvenile lives in a home where another juvenile has been subjected to neglect.

Neglect: Injurious Environment

In re F.C.D., ___ N.C. App. ___, 780 S.E.2d 214 (2015)

Held: Affirmed

- The findings are supported by competent evidence and support the conclusion that the child was neglected.
- G.S. 7B-101(15) includes in the definition of neglect that it is relevant whether the juvenile lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. This definition gives the court some discretion in determining if the child is at risk for a particular kind of harm based on the child's age and living environment.
- An injurious environment may include a home that exposes a child to witnessing another child's abuse and neglect even when the child who is the witness is not physically harmed him/herself. Evidence that the child's witnessing her brother's abuse and neglect would be distressing for her and could cause fear and worry that something like that might happen to her supports the court's adjudication of neglect.

Neglect: Harm to Child

In re K.J.B., ___ N.C. App. ___ (July 19, 2016)

Held: reversed

- For a child to be adjudicated neglected pursuant to G.S. 7B-101(15), the evidence must support findings that the child has suffered emotional, mental, or physical harm or there is a substantial risk of such harm.
- The findings are not supported by competent and clear and convincing evidence. A parent's substance abuse is not per se neglect; there must be evidence showing a nexus between the parent's substance abuse and the harm or substantial risk of harm to the child. Evidence that respondent mother was intoxicated one night when she left her infant in another person's (the babysitter's) care and was not intoxicated the next day when she went to pick up her child do not support an adjudication of neglect.
- In a neglect adjudication, it is relevant whether the child lives in a home where another child has been abused or neglected by an adult who regularly lives in the home. Although the mother's rights to two of her other children were terminated, there was no evidence that the termination of parental rights was based on abuse or neglect. Without such evidence, the court cannot infer that this child is neglected.

In re J.R., ___ N.C. App. ___, 778 S.E.2d 441 (2015)

Held: Reversed

- The findings are not supported by competent evidence and also do not support the conclusion that the child was neglected.
- An adjudication of neglect requires that the failure to provide proper care, supervision, or discipline results in the child experiencing some physical, mental, or emotional impairment or substantial risk of such impairment. Neglect also requires a parent, guardian, custodian, or

caretaker to engage in “either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile.”

- A court should look at the totality of the evidence when determining if the child is neglected. The mother’s lack of stable housing, causing frequent moves, did not impede her ability to care for and supervise her child nor did it expose her child to an environment injurious to his welfare. The child’s contact with his father at a public bus stop and on the public bus was also not neglect even though it was a violation of the safety agreement signed by both the respondent mother and father and a violation of the father’s probation resulting from his conviction of taking indecent liberties with a minor. There was no evidence that this single contact harmed the child or created a risk of harm to the child.

Neglect: Out-of-State Acts

In re T.N.G., ___ N.C. App. ___, 781 S.E.2d 93 (2015)

Held: Affirmed

- Acts that occurred in South Carolina may be considered by the North Carolina trial court when determining whether the child was neglected. It was undisputed the child was left in SC, “was shifted among various adults whose relationship to the child was increasingly attenuated” and was eventually left with her father’s half-brother’s stepmother’s mother-in-law, who was 78 years old.
- Evidence that the 9-year-old child shared a bed with two other children, one of whom was her 7-year-old male cousin, who tried five times to kiss or touch her private parts, supports the conclusion that the child did not receive proper care or supervision from a parent.
- Additional evidence that the child was present when adults were using marijuana and that she was passed around from one adult’s home to another without her parent determining if these adults were fit caretakers supports the conclusion that she was at substantial risk of harm or impairment.

Neglect: Child’s Circumstances

In re Q.A., ___ N.C. App. ___, 781 S.E.2d 862 (2016)

Held: Reversed & Vacated in Part; Remanded

- Neglect is based on the circumstances and conditions surrounding a child, not the fault of a parent. When five siblings are subjected to the same circumstances (lack of plumbing, electricity, food, and a home while in the care of their grandmother), they are all living in an injurious environment and are neglected. The court erred in adjudicating two siblings neglected (mother unavailable and father incarcerated) but dismissed the action as to the other three siblings because placement with their father was an option.
- Disposition is required after an adjudication. Availability of parent is factor to consider at disposition when determining placement and continued jurisdiction in juvenile action.

Dependency: Proper Care or Supervision

In re T.N.G., ___ N.C. App. ___, 781 S.E.2d 93 (2015)

Held: Reversed

- The order did not contain any findings and there is no indication in the record of evidence addressing the respondents' ability to provide care or supervision to the child.

Dependency: Alternative Child Care Placement

In re C.B., ___ N.C. App. ___, 783 S.E.2d 206 (2016)

Held: Affirmed

There is a dissent based on a parent's constitutional right to choose a different course of medical treatment for her child than what is recommended by the medical provider and preferred by DSS

- A child is dependent when her parent (guardian or custodian) (1) is unable to provide for her care or supervision and (2) lacks an appropriate alternative child care arrangement. The findings of fact that show the 10-year old child had significant mental health issues resulting in multiple psychiatric hospitalizations in a short period of time; respondent mother refused to participate in and obstructed the development of an appropriate hospital discharge plan for her daughter; respondent mother failed to obtain any meaningful mental health services for her daughter when her daughter was in her custody; and respondent mother failed to identify any viable placement alternatives outside of the mother's home support the court's determination that the child was dependent.

Disposition: Evidence/Reports

In re J.H., ___ N.C. App. ___, 780 S.E.2d 228 (2015)

- The Rules of Evidence do not apply to a disposition hearing. A report may be submitted to and considered by the court without a formal proffer and admission into evidence as exhibits. When reports are received by the court, a party must object to the court's consideration of the report at the hearing in order to preserve the issue of the court's consideration of the report for an appeal.

Disposition: Authority to Order Services

In re D.L.W., ___ N.C. ___ (June 10, 2016)

Held: Reverse COA

- *Note, this a termination of parental rights case that addressed the court's authority to order certain provisions of a case plan when failure to comply with that provision was one of the factors related to the ground to TPR.*
- Pursuant to G.S. 7B-904(d1)(3), the trial court in an A/N/D action has the authority to order a parent to "take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the children from the parent, guardian, custodian, or caretaker." The children's adjudication and removal in the underlying A/N/D action were based on domestic violence, a lack of consistent and adequate housing, and the parent's inability to meet the children's needs. Based on the court's findings that the parents failed to appropriately budget funds, which resulted in continued instability, it was appropriate for the court order the respondent mother to create a budgeting plan.

In re T.N.G., ___ N.C. App. ___, 781 S.E.2d 93 (2015)

Held: Affirmed

- The court had the authority under G.S. 7B-904 to order the respondent father to maintain stable employment and obtain a domestic violence assessment. The addendum to the petition alleging neglect stated in part that the respondent reported he is unemployed and unable to care for his daughter and DSS has concerns about the respondent parents admitted domestic violence history. The evidence at the hearing established a nexus between the circumstances that led to the child's removal from her father's custody and the court's dispositional order.

Disposition: Visitation

In re J.H., ___ N.C. App. ___, 780 S.E.2d 228 (2015)

Held: Remanded

- An order that awards the mother monthly visitation in North Carolina to be supervised by the maternal grandparents at a location of their choice does not comply with G.S. 7B-905.1. Although the order establishes the frequency and level of supervision for the visits, it fails to establish the length of the visit, which is also required by the statute.

Disposition: Child Support

In re A.M., ___ N.C. App. ___ (June 7, 2016)

Held: Remand in part

- G.S. 7B-904(d) authorizes a court to order a parent to pay a reasonable amount of child support when custody of the child is ordered to someone other than the parent. The court must find the parent is able to pay support, and if so, the court orders an amount of child support determined by G.S. 50-13.4, which requires findings of fact and conclusions of law that address the child's reasonable needs and the parent's ability to pay.
- The court's order that the parents "arrange to provide child support for the benefit of their children" does not comply with G.S. 7B-904(d). Remanded for findings that address the respondent mother's income, ability to work, and ability to pay; the reasonable needs of the children; and the amount of child support.

Disposition: Guardianship

In re J.H., ___ N.C. App. ___, 780 S.E.2d 228 (2015)

Held: Remanded

- The court must make independent findings that the prospective guardians have adequate financial resources to provide for the child. Findings that the prospective guardians met the child's well-being needs, had guardianship of the child's sibling, and that the child had no current financial or material needs are insufficient to support a finding that the prospective guardians have adequate financial resources.
- The court must verify the guardians are aware of the legal significance of a guardianship.
- For a permanent plan that considers custody or guardianship to a non-parent, the court must address whether the parent is unfit or has acted inconsistently with his/her parental rights.

Disposition: Waive Review Hearing

In re J.H., ___ N.C. App. ___, 780 S.E.2d 228 (2015)

Held: Remanded

- The court must make findings of each of the five factors set forth in G.S. 7B-906.1(n) to waive further permanency planning hearings. Failure to do so is reversible error. There were no findings for three of the five factors.

Permanent Plan: Relative Consideration

In re E.R., ___ N.C. App. ___ (July 19, 2016)

Held: Reversed in part and remanded in part (*Note*, there are three children born to two different fathers who are the subject of this action; this opinion applies to the one child of the appellant father)

- Prior to ordering guardianship with a non-relative, G.S. 7B-903(a1) requires that the court first consider the children's proposed placement with a relative since the father proposed a placement with his mother, the children's paternal grandmother. G.S. 7B-903(a1) requires that priority be given to an available relative placement at all dispositional hearings (initial, review, and permanency planning) unless the court finds the placement is contrary to the child's best interests. A remand will result when the court does not make specific findings that address how the child's placement with the relative is not in the child's best interests.
- The children are Indian children [25 U.C.S. 1903(4)], and the proceeding is a child custody proceeding governed by the Indian Child Welfare Act (ICWA). The court's compliance with ICWA does not obviate the need to make findings under G.S. 7B-903(a1) when the court orders placement with a non-relative when a relative placement is available.

Review Order: Custody to Non-Parent

In re A.C., ___ N.C. App. ___ (May 17, 2016)

Held: Affirmed

- Facts and Timeline re: Respondent Mother
 - 5/2012 mother agrees to kinship placement of 5-month old child with maternal aunt.
 - 8/2012 petition alleging neglect is filed (without request for nonsecure as child is still living with maternal aunt).
 - 3/2013 child is adjudicated neglected and initial disposition grants legal custody to mother and placement with maternal aunt.
 - 11/2013 first review hearing is held and court renders order of sole legal and physical custody of child to mother (order is entered on 1/24/2014). Because placement is with a parent, further 7B-906.1 hearings are waived, but the court retains jurisdiction rather than enter Ch. 50 custody order pursuant to G.S. 7B-911.
 - 11/2013-12/2014 child remains in care of maternal aunt.
 - 12/2014 mother picks up child from day care using January 2014 court order awarding her custody and refuses to return the child to the maternal aunt.
 - 1/2015 maternal aunt files a motion to intervene as a caretaker (granted), to reopen, and for custody based on a substantial change in circumstances since the January 2014 order.

- 7/2015 court enters a review order granting maternal aunt sole legal and physical custody and schedules a permanency planning hearing for November 2015. Respondent mother appeals.
- Constitutional Rights
 - A parent has a paramount constitutional right to custody and control of his or her child. The government may only take a child away from a parent upon a showing, supported by clear and convincing evidence, that the parent is unfit or has acted inconsistently with his or her constitutionally protected status. This standard applies to both civil custody (Ch. 50) and abuse, neglect, and dependency (Ch. 7B) proceedings.
 - There is no bright line test when determining if a parent has acted inconsistently with his or her parental rights. Instead, a court employs a case by case analysis. The court looks to the parent's conduct and intentions. In this case the mother acted inconsistently with her parental rights when she voluntarily allowed her child to continuously remain in the maternal aunt's custody for 13 months after obtaining legal and physical custody of her daughter. The mother did not voice any agreement or expectation that the situation would be temporary but instead created a situation that "induced the [maternal aunt and child] to flourish as a family unit in a relationship of love and duty with no expectation that it would be terminated." For 13 months, the mother failed to bear any responsibility for her child. She did not make any effort to take custody of her daughter, develop a plan to transition custody to her, provide any legal mechanism for the maternal aunt to authorize medical or educational care for the child, only sporadically visited with the child, failed to regularly call the maternal aunt or child, and failed to provide any financial support despite having an ability to do so and a court order to pay child support. It was reasonable for the court to infer that the mother intended to presume the natural consequences of her actions. Despite her refusal to agree to the maternal aunt's appointment as guardian, the mother's actions showed she had no meaningful intention that custody with the maternal aunt would be temporary. Her objection to the maternal aunt becoming guardian did not evince an intention that the mother would assume her responsibilities as a parent.
 - If the court finds a parent has acted inconsistently with his or her parental rights, it must move to the best interests of the child standard when determining custody. The court does not need to also find the parent is unfit. Because the court found this mother acted inconsistently with her parental rights, the court of appeals declined to address the mother's appeal of the trial court's conclusion that she was unfit.
- Modification of Custody Order
 - The Juvenile Code (G.S. 7B-1000) authorizes a modification of an order based on a change in circumstances OR the needs of the juvenile.
 - In this case, the intervenor sought a modification based on substantial change of circumstances. The burden is on the moving party to prove changes have occurred or come to light since the order sought to be modified was entered. But, a court may consider events that occurred prior to the entry of the order when considering historical facts as part of its determination of whether a change of circumstances has occurred.
 - The evidence and court's findings supported its conclusion that there was a substantial change in circumstances that affected the child's general welfare and best interests since the entry of the review order. The mother abdicated her parental role for 13 months after

the order that granted her custody was entered. Then the mother removed the child from the only home she had known and kept her from having contact with her caregiver and other extended family members until the court ordered the mother to allow for contact through a visitation schedule. The mother's actions adversely affected the child, who experienced behavior changes and a resulting diagnosis of an adjustment disorder. The court may consider evidence of the child's mental health and behavior up to the time of the hearing on the motion, rather than up to the date the petition was filed.

Appeal: Orders that May Be Appealed

In re P.S., ___ N.C. App. ___ (August 4, 2015)

Held: Appeal Dismissed

- Procedural history: After a child was adjudicated neglected, the action was transferred to another judicial district for the initial dispositional hearing. At adjudication, the court entered a *temporary* disposition order that granted custody of the child to DSS and approved the child's current placement with a relative pending the dispositional hearing and order. Respondent mother appealed the adjudication and change of venue.
- G.S. 7B-1001(a) authorizes an appeal of a "final order." An adjudication is not a "final order" until there is a final disposition order after the dispositional hearing. Citing prior cases, G.S. 7B-1001(a)(3) does not authorize an appeal of a temporary disposition order. Appeal of the adjudication must be made after the dispositional hearing is held and a "final" initial dispositional order is entered.
- A change in custody made in a temporary disposition order prior to the initial dispositional hearing is similar to a nonsecure custody order or an interlocutory temporary custody order in a G.S. Chapter 50 civil custody action, neither of which may be appealed. A temporary dispositional order is not "an order that changes legal custody of a juvenile" that may be appealed pursuant to G.S. 7B-1001(a)(4).

Appeal: Standing

In re C.A.D., ___ N.C. App. ___ (May 17, 2016)

Held: Affirmed

- Respondent mother appealed a permanency planning order that changed the permanent plan from reunification with the mother and maternal grandparents to adoption concurrent with custody with approved caretakers. The mother's argument is that the court should have placed the children with their maternal grandparents, who were also respondents in the action. An order may be appealed by an "aggrieved party," which is "one whose rights have been directly and injuriously affected by the action of the court." The mother does not have standing to argue an injury to the maternal grandparents, who did not appeal the court's permanency planning order.

In re M.S., ___ N.C. App. ___ (April 19, 2016)

Held: Appeal Dismissed

- G.S. 7B-1002 limits who has standing to take an appeal of an order entered in an abuse, neglect, or dependency proceeding, and a caretaker does not have standing.

- Because standing is jurisdictional in nature, and the respondent caretaker, who is a stepparent, has not proved he has standing as a parent (via adoption) or a custodian (via a court order of custody) to appeal the adjudication and disposition order, he is not a proper party to appeal. The appeal is dismissed.

Ineffective Assistance of Counsel (IAC)

In re C.B., ___ N.C. App. ___, 783 S.E.2d 206 (2016)

Held: Affirmed

There is a dissent based on an insufficient record to determine the issue

- A successful ineffective assistance of counsel claim requires a parent to show (1) the attorney's performance was deficient, and (2) the deficient performance was so serious that it deprived the parent of a fair hearing. Respondent mother claimed IAC because her attorney did not review her daughter's medical records or subpoena the hospital social worker and psychiatrist. Respondent mother failed to meet her burden to prove IAC as the attorney's conduct did not fall below an objective standard of reasonableness and there was not a reasonable probability that there would have been a different result. DSS presented "overwhelming" evidence to support the adjudications of both children.

Responsible Individual List (RIL)

In re F.C.D., ___ N.C. App. ___, 780 S.E.2d 214 (2015)

Held: Affirmed

- The RIL hearing was heard with the juvenile adjudicatory hearing regarding abuse and neglect. The respondent was not deprived of her right in the RIL hearing to represent herself or retain her own attorney when her court appointed attorney in the juvenile abuse and neglect action represented her on both matters.
- Respondent mother allowed the child's caretaker (an adult who lived in the household) to use cruel or grossly inappropriate devices or procedures to modify her son's behavior. Allowing such use satisfies the definition of abuse at G.S. 7B-101(1)(c). Respondent mother's name was appropriately placed on the RIL.

Termination of Parental Rights

District Court Jurisdiction

In re A.L., ___ N.C. App. ___, 781 S.E.2d 856 (2016)

Held: Affirmed

- Even when a department had custody of a child as a result of a properly executed relinquishment, the district court did not have jurisdiction to issue custody review orders after DSS voluntarily dismissed a petition alleging neglect and dependency. Any custody review orders entered after the petition was dismissed were void.

- The district court acquired jurisdiction when a petition to terminate parental rights was filed by a person or agency with standing. The department had standing to initiate this new action based on the mother's relinquishment of custody of the child to the department (G.S. 7B-1103(a)(4)).

Subject Matter Jurisdiction: G.S. 7B-1101

In re M.C., ___ N.C. App. ___, 781 S.E.2d 70 (2015)

Held: Vacated

- Subject matter jurisdiction for a termination of parental rights (TPR) requires compliance with both G.S. 7B-1101 and the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) found in G.S. Chapter 50A.
- G.S. 7B-1101 requires that the child resides in, is found in, or is in the legal or actual custody of a county department or licensed child-placing agency in the judicial district at the time the TPR petition or motion is filed. If a child does not fall under one of these criteria, the court does not have subject matter jurisdiction under G.S. 7B-1101. In this case, the petitioner had custody of the two children who are the subject of this action. The children have resided with their mother/the petitioner in Washington state since 2007, and the children were not found in North Carolina when the petition was filed. The district court did not have subject matter jurisdiction over the TPR action.
- Although the respondent appealed the orders based on the UCCJEA, the court may sua sponte review the issue of subject matter jurisdiction de novo at any time. The UCCJEA addresses a state's jurisdiction to enter child custody orders; it does not address venue within the state.

Standing

In re J.A.U. and S.A.U., ___ N.C. App. ___ (August 18, 2015)

Held: Vacated

- Maternal grandmother who had custody of child pursuant to a G.S. Chapter 50 custody order is not a "judicially appointed guardian of the person of the juvenile," and therefore, does not have standing to initiate a TPR pursuant to G.S. 7B-1103(a)(2). Despite the 2013 change in the definition of "custodian" under the Juvenile Code, the Code still recognizes a distinction between guardian and custodian. Only a guardian has standing to initiate a TPR.
- The evidence does not support the court's finding that the child lived with the petitioner for most of the child's life and instead supports a finding that the child lived with the petitioner for less than one year before the TPR petition was filed. G.S. 7B-1103(a)(5) requires a child to have continuously resided with the petitioner for two years preceding the filing of the TPR petition. The statutory standard is not based on the relationship between the child and petitioner but is instead based on the time the child resided with the petitioner prior to filing the petition.
- Standing is a threshold issue and without proper standing by a petitioner for TPR, a court does not have subject matter jurisdiction over the action.

Hearing: Two Stages

In re S.Z.H., ___ N.C. App. ___ (May 3, 2016)

Held: Reversed

- A termination of parental rights (TPR) hearing consists of two stages: adjudication of a ground, and disposition based on the best interests of the child. To ensure a parent's constitutional rights to his child are not violated by basing a TPR solely on the child's best interests, the court must conduct two separate inquiries – adjudication first, then disposition -- even when the two stages are held in the same hearing.

Grounds: Hearsay Evidence

In re C.R.B., ___ N.C. App. ___, 781 S.E.2d 846 (2016)

Held: Affirmed

- Over respondent mother's hearsay objection, the DSS social worker testified to events based upon a DSS report that included information about the case prior to this specific social worker's involvement with the family. Findings of fact to support the court's conclusion that the mother willfully left the children in foster care for more than 12 months without showing reasonable progress to correct the conditions that led to the children's removal (G.S. 7B-1111(a)(2)) were based on the social worker's testimony. That testimony relied in part on the DSS report. The testimony was not hearsay as it fell under the business record exception to hearsay codified at G.S. 8C-1, Rule 803(6).
- At hearing, a foundation for the business record exception must be made by a person familiar with the records and system under which the business record is made but is not required to be authenticated by the person who made the actual business record. The social worker testimony satisfied the foundation requirement for the business record exception. Her testimony regarding what was in the record was admissible.

Grounds: Findings

In re A.B., ___ N.C. App. ___, 781 S.E.2d 685 (2016)

Held: Affirmed

- All findings of fact for an adjudicatory hearing must be supported by clear, cogent, and convincing evidence (G.S. 7B-1109). Although the order did not state *all* the findings were made by clear, cogent, and convincing evidence, the trial court used the correct standard when it orally indicated the standard it was applying (clear, cogent, and convincing evidence), had one of the 70 findings state the appropriate standard, and did not have any other contradictory standard contained in the order.
- It was not error for the court to find "the Department of Social services has substantially proven the facts that were alleged in paragraphs a-k of the termination of parental rights petition by clear, cogent, and convincing evidence." Citing In re J.W., ___ N.C. App. ___, 772 S.E. 2d 249 (2015), it is not necessarily reversible error for a trial court's findings of fact to mirror the wording of a party's pleading. Although one finding of fact includes the language of the petition, there were a

total of 70 findings of fact, making it clear that the trial court made an independent determination of the facts and did not merely recite the allegations in the petition.

Neglect

In re M.A.W., ___ N.C. App. ___ (June 21, 2016)

Held: Reversed

- A TPR based on G.S. 7B-1111(a)(1) must address the parent's fitness to care for the child at the time of the termination proceeding. If the child has not been in the parent's custody for a long period of time before the termination hearing, the court may find the ground exists with a history of neglect by the parent and the probability of the repetition of neglect.
- In 2013, after the county department filed a petition alleging the child was neglected based on circumstances created by her mother, the child was adjudicated neglected. At the termination hearing, there was no evidence or findings of prior neglect by the father, who was incarcerated at the time of the child's removal and was found by the trial court to be "the non-offending parent."
- Although the court ultimately ceased reunification efforts with the father in the underlying neglect action, the evidence and findings did not support a conclusion that there was ongoing neglect at the time of the termination hearing.

In re D.L.W., ___ N.C. ___ (June 10, 2016)

Held: Reverse COA

- A TPR based on G.S. 7B-1111(a)(1) "requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." The trial court's findings were sufficient to support the court's conclusion that the ground of neglect existed. In the underlying neglect adjudication order, the court made findings that domestic violence between the parents placed the children at risk, and that one child intervened when the parents were fighting. Respondent mother was ordered to participate in domestic violence counseling. In the TPR order, the court made findings based on evidence in the record that domestic violence between the parents continued after the children's removal and that the mother was unable to articulate an understanding of what she learned in domestic violence counseling. These findings in the TPR order support the court's conclusion that there would be repetition of neglect based on the children living in an environment injurious to their welfare.

In re M.P.M., ___ N.C. ___ (March 18, 2016)

Held: Affirmed

- A parent's rights may be terminated on the grounds of neglect when there is evidence of neglect at the time of the adjudication hearing and of a probability that the neglect will be repeated if the child is returned to the parent's care. A court may look to the historical facts of the case when predicting the probability that neglect will occur in the future.
- Completion of a case plan by a parent does not preclude a court's conclusion that the grounds of neglect exist for termination of that parent's rights. In this case, the respondent father participated

in a psychological evaluation, attended ten therapy sessions, and interacted appropriately during his supervised visits with his daughter. Attendance alone is not sufficient. The court's conclusion that he failed to learn in therapy how to protect his daughter, particularly from her abusive mother, and therefore, was likely to result in a future neglect was supported by findings of fact.

- The findings of fact were supported by competent, clear, cogent, and convincing evidence, including the DSS social worker's testimony. The court found that respondent father failed to acknowledge his participation in the abuse of the children that were in the home, lied about his continued contact with the children's mother, and was unable to protect his daughter from her abusive mother.
- A trial court may consider a respondent's in-court demeanor. The court's findings of fact of a "respondent's in-court demeanor, attitude, and credibility...are left to the trial judge's discretion."

In re C.L.S., ___ N.C.App. ___, 781 S.E.2d 680 (2016)

Held: Affirmed

There is a dissent (pending appeal to NC Supreme Court)

- *Citing* previous published opinions, "incarceration alone ... does not negate a father's neglect of his child." A parent can show an interest in his child's welfare despite being incarcerated.
- There was sufficient evidence provided through the DSS social worker that the father neglected C.L.S. by failing to provide love, support, affection, and personal contact to the child from the time paternity was established up to the termination hearing. Specifically, after the father's paternity was adjudicated, he stated he did not want to pursue reunification. Later, he expressed an interest in reunification but failed to attend appointments with the social worker. After being incarcerated, he failed to sign the case plan, meet the child, or provide financial support for the child.

In re E.L.E., ___ N.C. App. ___, 778 S.E.2d 445 (2015)

Held: Reversed

- A termination of parental rights based on neglect requires a finding about the probability of the repetition of neglect when the child has not been in the parent's custody for a significant period of time before the TPR hearing. Without this finding the court may not terminate a parent's rights on the ground of neglect set forth at G.S. 7B-1111(a)(1).

Failure to Make Reasonable Progress to Correct the Conditions

In re D.L.W., ___ N.C. ___ (June 10, 2016)

Held: Reverse COA

- Pursuant to G.S. 7B-904(d1)(3), the trial court in an A/N/D action has the authority to order a parent to "take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the children from the parent, guardian, custodian, or caretaker." The children's adjudication and removal in the underlying A/N/D action were based on domestic violence, a lack of consistent and adequate housing, and the parent's inability to meet the children's needs. Based on the court's findings that the parents failed to appropriately budget funds, which resulted in continued instability, it was appropriate for the court order the respondent mother to create a budgeting plan.

- Findings in the TPR order that the mother failed to comply with the budgeting case plan requirement, her inability to account for where her money went, her evictions for nonpayment of rent despite having employment, her loss of employment due to being incarcerated because of a domestic violence incident, and her driving without a valid driver's license resulting in charges demonstrate the mother's failure to correct the conditions that led to the children's removal and were not simply the result of being poor.

In re S.D., ___ N.C. App. ___ (September 1, 2015)

Reversed and Remanded

- Pivotal findings of fact are not supported by the evidence, and the findings of fact do not support the conclusion of law that the respondent mother failed to make reasonable progress to correct the conditions that led to the child's removal.
- Respondent mother was ordered to:
 - consistently visit with her child, and the court found the mother consistently and punctually attended the visits;
 - obtain and maintain suitable housing, and the court stated (there were not findings in the order) the housing was suitable (mother had been living in a friend's home for 9 months);
 - submit to a substance abuse evaluation and follow recommendations, and the court found she completed an evaluation, which had no treatment recommendations, and she had one drug screen that was negative;
 - complete a parenting class and demonstrate knowledge of what she learned, and the court found she attended a program; and
 - maintain regular contact with the DSS social worker, and the court found that she did.
- Respondent mother was also ordered to resolve all pending criminal charges. The court found the mother's charges were unresolved and there was no indication as to when a resolution would occur. However, the evidence showed that respondent's criminal charges may have been resolved in a week's time. Although it is not reasonable to wait years for the criminal process to conclude, the potential for an imminent resolution should have been considered.
- Respondent mother was ordered to obtain and maintain legal employment sufficient to meet both her and her child's needs. The court found the mother obtained a part time job, earning \$435/month, and that she applied for SSI. Although the social worker indicated \$435/month was insufficient to meet the needs of a household of two, parental rights may not be terminated on the sole basis of poverty. G.S. 7B-1111(a)(2).
- Mother was ordered to complete a psychological evaluation and follow recommendations. The finding of fact that the evaluation recommended "intensive individual counseling" was not supported by evidence that showed the mother complete "individual counseling services." The court found the mother attended therapy as recommended by her therapist.
- "While 'extremely limited progress is not reasonable,' ...certainly perfection is not required to reach the 'reasonable' standard."

Failure to Pay Reasonable Portion of Cost of Care

In re A.L., ___ N.C. App. ___, 781 S.E.2d 856 (2016)

Held: Affirmed

- By operation of law (G.S. 48-3-703), the department acquired custody of the child upon the mother's executed relinquishment to the department. As a result, the child is placed in the custody of a county department of social services. One ground to terminate parental rights is based on a parent's failure to pay a reasonable portion of the cost of care for a juvenile placed in the custody of a county department when the parent is physically and financially able to do so. G.S. 7B-1111(a)(3).
- The evidence supports the court's findings that the father had an ability to pay a reasonable amount of child support and that he failed to do so. There was a child support order. He signed a memorandum of agreement that he had an ability to pay. There was evidence he was employed as a mechanic and a truck driver. He only made two payments in three years and they were made in connection with contempt proceedings brought against him.

In re E.L.E., ___ N.C. App. ___, 778 S.E.2d 445 (2015)

Held: Reversed

- A mother's termination of parental rights cannot be based on G.S. 7B-1111(a)(3) [for a continuous period of six months before the filing of the TPR petition, a parent has willfully failed to a reasonable portion of the cost of a child's care when the child has been placed in the custody of a county department, licensed child caring institution, or foster home] when the child is in the custody of relatives pursuant to a civil custody order. Although the child was initially placed in the petitioner's home as part of an abuse, neglect, and dependency case, seven months before the TPR petition was filed, the juvenile court terminated its jurisdiction after entering a civil custody order that granted custody to the petitioners. The petitioners, who are the child's great aunt and uncle, are not a foster home as defined by G.S. 131D-10.2. Because they had legal custody of the child, the definition of foster home that requires the child's placement in the home by a child placing agency was not met. Because they are related to the child by blood, the petitioners do not meet the other criteria of a foster home, which is to provide full-time foster care for two or more children who are unrelated to the adult members of the household.

Abandonment

In re S.Z.H., ___ N.C. App. ___ (May 3, 2016)

Held: Reversed

- For a TPR based on willful abandonment that occurs during the statutory required 6 month period preceding the filing of the action, petitioner must "show more than a failure of the parent to live up to his/her obligations as a parent in an appropriate fashion; *the findings must clearly show that the parent's actions are wholly inconsistent with a desire to maintain custody of the child,*" which is "a purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child" (emphasis supplied, citing *In re S.R.G.*, 195 N.C. App. 79, 84-88 (1986)). The findings do not support the conclusion of abandonment.

- When testimony from both the petitioner and respondent show that the respondent called the child during the first half of the relevant 6 month time period for the ground of abandonment found at G.S. 7B-1111(a)(7) and the respondent asked petitioner if he could see the child on her birthday, which was also during the relevant 6 month period, there is no clear, cogent, and convincing evidence to support the court's findings that the respondent failed to maintain communication showing his love, care, and concern for the child.
- Although not raised by the respondent, the court of appeals identified the petition's failure to put the respondent on adequate notice of the grounds of abandonment. The petition did not include the word "abandon" or any variation of the term (e.g., "surrender," "relinquish") or include the statutory citation for the ground.

Disposition: Best Interests

In re C.A.D., ___ N.C. App. ___ (May 17, 2016)

Held: Affirmed

- After finding a ground to terminate parental rights (in this case, neglect), the court must determine if termination of parental rights is in the child's best interests and consider factors specified in G.S. 7B-1110(a). Although the court may consider the availability of a relative for placement, it is not required to do so under the designated factors. Whether a relative is available is not determinative of the child's best interests.
- The court considered the six statutory factors and placement with the maternal grandparents and determined the child's best interests were not served by the grandparents, who created an injurious environment for the children resulting in their adjudication as neglected and dependent. There was no abuse of discretion in concluding it was in the children's best interests to terminate the respondent mother's rights to assist in the achievement of the children's permanent plan of adoption.

Ineffective Assistance of Counsel

In re T.D., ___ N.C. App. ___ (July 19, 2016)

Held: Remand

- A termination of parental rights requires that a respondent parent have a fundamentally fair procedure. In North Carolina part of that fundamental fairness is provided by a respondent parent's statutory right court appointed counsel, which includes the parent's right to effective assistance of counsel.
- The record raises serious questions as to whether the respondent received effective assistance of counsel in the termination hearing that lasted nineteen minutes. An attorney's relative silence at a hearing is not per se ineffective assistance of counsel. The trial court must determine (1) whether the attorney's performance was deficient and (2) if so whether the deficiency prejudiced the respondent such that she was deprived of a fair hearing thus entitling her to a new hearing.

Order: Delayed Entry

In re S.Z.H., ___ N.C. App. ___ (May 3, 2016)

Held: Reversed

- A TPR order shall be entered no later than 30 days after the completion of the hearing. If the order is not timely entered, the clerk shall schedule a subsequent hearing at the first session of court scheduled for juvenile matters after the 30 day period expires so that there may be an explanation as to the delay and the ability to obtain needed clarification for the order. The order should be entered within 10 days of this subsequent hearing. G.S. 7B-1109(e), -1110(a). In this case the court violated the time period when the hearing concluded on January 26, 2015 but did not enter the TPR order until July 23, 2015. A party may petition for a writ of mandamus when this time period is not met. “In almost all cases, delay is directly contrary to the best interests of the children, which is the ‘polar star’ of the North Carolina Juvenile Code.”

Order: Oral Rendition vs. Entry of Judgment

In re O.D.S., ___ N.C. App. ___ (June 7, 2016)

Held: Affirmed

- **Facts:** A county department filed a petition to terminate respondent father’s parental rights alleging two grounds: neglect and dependency. At the conclusion of the adjudicatory portion of the hearing, the court made an oral statement that the county department proved neglect existed but the court failed to address the ground of dependency in an apparent omission. At disposition, the court found that the termination of respondent father’s parental rights was in the child’s best interests. In its written order, the court included both alleged grounds (neglect and dependency) existed. Respondent father appealed arguing that the court’s written order had to conform with its oral rendition, which addressed neglect only.
- The trial court was not precluded from basing its termination of parental rights on the ground of dependency when that ground was not addressed in the court’s oral rendition of grounds made in open court. Looking to G.S. 7B-1109 and G.S. 1A-1, Rule 52, a trial court is required to enter a judgment that includes findings of fact, conclusions of law, and a determination of the existence or nonexistence of every ground alleged in a petition or motion to terminate parental rights. Neither statute requires the court to make an oral rendition of its judgment.
- Since Rule 58 of the NC Rules of Civil Procedure was amended in 1994, an entry of a judgment requires that the order be (1) in writing, (2) signed by the judge, and (3) filed with the clerk. The written order, and not the oral rendition, is what controls. *Citing Morris v. Southeastern Orthopedics Sports Med. & Shoulder Ctr.*, 199 N.C. App. 425, 433 (2009), a trial court’s announcement of a judgment in open court is “the mere rendering of judgment, and is subject to change before ‘entry of judgment,’ [and]... the trial court can consider evidence presented following the oral rendering of the judgment in order to better inform its subsequent written judgment.”
- Prior to this 1994 amendment, an order could be entered, and therefore, in effect when the clerk made a notation of the oral rendition made in open court. After that official entry, a written judgment that conformed with the terms of the oral rendition would follow. An entry of a judgment based on an oral rendition has not been permitted in civil actions since the 1994

amendment to Rule 58. Previous opinions that relied on the pre-1994 version of Rule 58 are not controlling when determining what must be included in a written order.

- Previous opinions holding that a notice of appeal of an oral rendition of a judgment does not vest jurisdiction with the appellate court until a written judgment conforming with the oral rendition is entered pursuant to Rule 58 is an issue of appellate jurisdiction and does not limit what a court may include in its written order. For appellate purposes, if the written judgment does not conform with the oral rendition, the appellant must file a written notice of appeal of the written judgment even if an written notice of appeal was filed after the oral judgment was rendered.

Findings: Remand Instructions

In re A.B., ___ N.C. App. ___, 781 S.E.2d 685 (2016)

Held: Affirmed

- When the appellate court remands an order that was appealed to the trial court with specific direction to make its order internally consistent, the remand requires the trial court to make new findings and omit other findings. These changes would contradict findings the trial court had orally rendered for inclusion in the first order.
- When applied in context, the direction on remand for the trial court to “clarify” its findings of fact and conclusions of law required the trial court to make whatever changes necessary to make the order internally consistent. This would result in significant changes from the first order that was internally inconsistent.
- When a remand allows for a trial court to exercise discretion in determining if it will receive additional evidence, the trial court is not obligated to consider new evidence. Even with the passage of time, the determination of whether to hear new evidence is left with the trial court, and in this case, no motion was made for the court to hear new evidence, and respondent failed to show how the court abused its discretion by not hearing new evidence before entering a new order.

UCCJEA

No Home State

In re T.N.G., ___ N.C. App. ___, 781 S.E.2d 93 (2015)

Held: Subject Matter Jurisdiction Existed

- Timeline:
 - From birth in 2005 until November 2013, the child resided in North Carolina.
 - Father brought child to South Carolina in November 2013 and left her there with his half-brother, who then gave the child to his stepmother, who in May 2015 gave the child to her mother-in-law.
 - September 2014, the child’s paternal grandparents were contacted by the last person child was left with, and the paternal grandparents picked up the child and brought her back to live with them in North Carolina.
 - October 2014, the paternal grandparents made a report to the county DSS, who filed a petition alleging neglect and dependency.

- The mother and paternal grandparents lived in North Carolina from child's birth through the date the petition was filed; and with the exception of a ten month period, the child and her father resided in North Carolina.
- At a hearing in October 2014 to address the respondent father's motion to dismiss for lack of subject matter jurisdiction under the UCCJEA, the court found it had temporary emergency jurisdiction under the UCCJEA. Six months after the petition was filed, the child was adjudicated neglected and dependent. Respondent father appeals.
- North Carolina had initial child custody jurisdiction under the UCCJEA, G.S. 7B-201(a)(2). NC was not the home state under G.S. 50A-102(7) when the petition was filed because the child had only been back in NC for a few weeks (versus six months). Although SC had been the child's home state within six months before the petition was filed, no parent or person acting as a parent resided in SC when the petition was filed as required by G.S. 7B-201(a)(1). Neither state was the home state at the time the petition was filed. NC had "significant connection jurisdiction" because:
 - the child, both her parents, and the paternal grandparents who were acting as her parent all have a significant connection to NC and
 - there is substantial evidence of the child's care, protection, training, and personal relationships available in NC.

Modification Jurisdiction (G.S. 50A-203)

In re J.H., ___ N.C. App. ___, 780 S.E.2d 228 (2015)

Held: Vacate and remand

Timeline:

- April 2013, child born in NC and lives in NC
- November 22, 2013, mother and child move to TX, father remains in NC
- January 29, 2014, Texas custody order, sole custody to mother, father not yet established paternity. This order is not in the court of appeals record so it is unclear if the TX court exercised temporary emergency jurisdiction, exclusive continuing jurisdiction, or acted in substantial conformity with the UCCJEA.
- February 20, 2014, mother and child return to NC
- March 7, 2014, DSS files A/N/D petition in NC, nonsecure custody granted to DSS, and child placed with maternal grandparents
- June 19, 2014, adjudication (neglected and dependent) and disposition order
- September 2, 2014, review order
- February 23, 2015 permanent planning order of guardianship to maternal grandparents and the court finds the mother resided in TX since the inception of the case
- Texas issued an initial custody order, requiring NC to have either modification jurisdiction (G.S. 50A-203) or temporary emergency jurisdiction (G.S. 50A-204).
- NC did not have modification jurisdiction because only one of the two jurisdictional requirements was met. The requirement that NC have jurisdiction to make an initial custody determination was met because NC was child's home state six months before the A/N/D action was commenced in March, since the child lived in NC from his birth in April 2013 until November 22, 2013. The second requirement that TX determines that it no longer has exclusive continuing jurisdiction or NC would be a more convenient forum, or neither parent nor the child presently reside in TX was

not met. The court found the mother resided in TX. The NC court never communicated with the TX court for the TX to determine if it had continuing exclusive jurisdiction.

- Under G.S. 50A-204, NC had temporary emergency jurisdiction to enter the nonsecure custody order because the child was present in NC and the order was necessary to protect the child who is subjected to mistreatment or abuse. However, the NC court did not communicate with the TX court or specify in the order the time period for the temporary order. The adjudication, disposition, review, and permanency planning orders are vacated.
- Remanded for the NC trial court to examine the Texas order and determine if TX exercised temporary emergency jurisdiction, exclusive continuing jurisdiction, or jurisdiction in substantial conformity with the UCCJEA when issuing its January 2014 order. Depending on the trial court's determination of how the TX court exercised jurisdiction, the NC court must communicate with the TX court. If NC determines it does not have subject matter jurisdiction, it must dismiss the petition.

Adoption

Consent of Unwed Father

In re Adoption of C.H.M., ___ N.C. App. ___ (July 5, 2016)

Held: Affirm

- G.S. 48-3-601 requires the consent of a putative father to the child's adoption if before the adoption petition is filed he has (1) acknowledged paternity, (2) provided in accordance with his financial means, reasonable and consistent payments for the support of the mother (during or after her pregnancy), child, or both, and (3) regularly or attempted to regularly visit or communicate with the mother (during or after her pregnancy), child, or both. The father's consent was required when he (1) acknowledged paternity, (2) regularly deposited cash (\$3,260) into a lockbox he kept at his home for the exclusive purpose of supporting the child (after the mother had refused to accept offers of financial support from the father), and (3) regularly communicated with the mother via Facebook messages.
- A formal record of payments made for the support of the child is not required. There was competent evidence in the record that the father provided regular support for the child when the district court found the father's testimony credible. The father testified that he began to save money for the child by placing cash in a lockbox, rather than commingle those funds with his bank account from which he paid his monthly expenses. The father also introduced bank statements showing cash withdrawals.
- The application of child support guidelines in determining whether a father's support is reasonable is not required but is instead within the court's discretion.

Civil Case Related to Child Welfare

Custody to Non-Parent, Acting Inconsistently with Parental Rights

Weideman v. Shelton v. Wise, ___ N.C. App. ___ (June 7, 2016)

Held: Affirmed

- **Facts:** Chris is the child at issue in this custody case. Shelton is his mother, and Weideman is his maternal grandmother. Wise was Weideman's domestic partner, who helped raised Shelton. Chris was born in December of 2006, when Shelton was residing with Weideman (her mother) and Wise. Although she initially cared for Chris, she asked for their help because of her depression and other mental health issues that caused her to act erratically. Shelton self-medicated with drugs and alcohol. In August 2007, Weideman and Wise contacted an attorney to draft a legal "guardianship appointment," which was subsequently executed by all 3 parties. However, an addendum was added to reflect Shelton's intent that the guardianship appointment be temporary. Shelton lived in the household off and on until 2009 when Wise banned her from the house. Later in 2009, Wise and Weideman separated, and Chris shared his time between the two residences. Shelton saw Chris when he was with Weideman although Wise attempted to ban her from seeing Chris even when he was with Weideman and informed Shelton that she had no rights to him. In 2011, Shelton was in therapy, on the correct medication regime, found secure housing, and was sober. Although she saw Chris when he was with Weideman and attempted to assert parental control during those visits, she and Weideman agreed that Weideman should have custody, and a consent custody order was entered in 2012. Weideman prohibited Wise from having contact with Chris, and Wise filed a motion to intervene (which was granted), a motion to set aside the custody order (which was denied), and a motion for custody and visitation (which was denied). Wise appealed.
- Wise, the non-parent, failed to establish by clear and convincing evidence that Shelton, the mother, acted inconsistently with her protected parental status to care, custody, and control of her child. The mother never intended to permanently cede her parental rights to a non-parent. Instead, she made a temporary arrangement as evidenced by the addendum to the guardianship appointment that explicitly stated it was temporary and by remaining involved in her son's life. The transcript of the custody hearing also reflected the mother's intention that the custody arrangement be temporary as it would allow her to continue to be an active participant in her son's life and provide her the opportunity to assert her role as his parent to a progressively greater degree. Unlike Wise, Weideman allowed for contact between Shelton and Chris and allowed Shelton to assert parental control, so custody to Weideman allowed Shelton to see her son and prevented Wise from prohibiting Shelton from seeing her son. These actions are inconsistent with the mother's protected parental status.
- Wise, the non-parent, cannot simultaneously intentionally prevent the mother from having a relationship with her son and argue that the mother has failed to shoulder her burden to care for her son.

Related Criminal Cases

Evidence: Child's Statements

State v. McLaughlin, ___ N.C. App. ___ (March 15, 2016)

Held: No error

- The admission in evidence over objection of a copy and transcript of the Children's Advocacy Center DVD, which recorded the nurse's interview portion of the child's medical evaluation that included the 15 year old's disclosure of ongoing sexual abuse did not violate the Confrontation Clause, which applies to criminal proceedings. The purpose of the Confrontation Clause is to ensure the reliability (trustworthiness) of evidence, especially "in cases of child sexual abuse, where children are often incompetent or ... unavailable to testify." In this case, the child sexual abuse victim had committed suicide and was therefore unavailable to testify at trial. The court looks to the totality of the circumstances regarding the statement including (1) whether it is nontestimonial in nature, (2) whether it meets an exception based on it being as reliable as cross-examined court testimony because of the circumstances under which it is made, such as medical diagnosis or treatment, (3) who the statement was made to, (4) the primary purpose for which the statement was made, (5) the primary purpose for which it was offered at trial, and (6) public policy concerns. Here, the statement is non-testimonial as it was made for the primary purpose of medical diagnosis and treatment to safeguard the child's mental and physical health. The mandatory reporting law regarding suspected child abuse does not convert the statement to testimonial; the primary purpose is not to create an out-of-court substitute for trial testimony.
- Statements the child made to his mother were admissible as excited utterances. Although there was a 10 day lapse between the last incident of sexual abuse (which occurred in Florida) and the disclosure to his mother (which was made in North Carolina), the statements were made immediately upon the child's return home. There was sufficient evidence to establish that the teen was under the stress of the event (he was frantic and shaking and saying she needed to call the police). Although the excited utterance delay typically involves young children where spontaneity and stress, not time, are the crucial factors, although 15 years old, this child was still a minor, and his minority should be considered.

Felony Child Abuse: Serious Bodily Injury

State v. Bohannon, ___ N.C. App. ___ (June 7, 2016)

Held: No Error

- To prove felonious child abuse inflicting serious bodily injury, the State must prove (1) the defendant is the child's parent, (2) the child was younger than 16, and (3) the defendant intentionally and without justification or excuse inflicted serious bodily injury. In this case, the disputed issue was whether the Defendant inflicted serious bodily injury (as opposed to a lesser offense that involves serious physical injury) on his 3 month old child who suffered from subarachnoid hemorrhages.
- Serious bodily injury is defined at G.S. 14-318.4(d)(1) as "[b]odily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." In

determining if there is a substantial risk of death, “the age and particular vulnerability of a minor victim must factor into this analysis.”

- In viewing the evidence most favorable to the State, defendant’s motion to dismiss was not improperly denied as there was sufficient evidence to submit to the jury the question of whether the child suffered serious bodily injury. Three expert witnesses who treated the child testified about the impact of bleeding on an infant’s developing brain, and how it could be life-threatening and would require monitoring for dangerous side effects that could arise as the brain continues to develop.

Misdemeanor Child Abuse: Substantial Risk of Physical Harm

State v. Watkins, ___ N.C. App. ___ (May 3, 2016)

Held: No Error

- Misdemeanor child abuse involves a child younger than 16 years old and a parent who through non-accidental means inflicts, allows to be inflicted, or creates a substantial risk of physical injury to his or her child (G.S. 14-318.2(a)).
- The court did not err when denying defendant’s motion to dismiss as the state introduced substantial evidence that Defendant created a “substantial risk of physical injury” to her 18-month child through an officer’s testimony that Defendant left her child in her car for over 6 minutes, was unable to observe her car during the 6+ minutes, and had turned the car off and had a window partially rolled down when it was 18 degrees outside with snow and sleet accumulating.
- Defendant’s reliance on findings of fact that supported conclusions of neglect in juvenile proceedings (7B actions) illustrate some circumstances that can create a substantial risk of harm to a child but are not determinative on the jury, who decided whether in this case the Defendant created substantial risk of physical injury to her child.

Parental Kidnapping

State v. Pender, ___ N.C. App. ___ (September 1, 2015)

Vacated (convictions of 2nd degree kidnapping of defendant’s sons)

(no error as to remaining convictions: violating DVPO, possession of firearm by a felon; first degree burglary, assault by pointing a gun, second degree kidnapping)

- Facts: Defendant confined twelve people, several of whom were younger than 16 years old, in a bedroom for 30 – 45 minutes and held them at gunpoint. Two of the minors were defendant’s children.
- G.S. 14-39(a) includes in the definition of kidnapping the unlawful confinement of any person under 16 years of age without the consent of a parent or legal custodian of the child. There is no kidnapping when a parent or legal custodian consents to the unlawful confinement of his own minor child, even if the child does not consent. Only one parent is required to consent. A legislative change would be needed to charge a parent with kidnapping of his own minor child.
- A victim’s age is not an essential element of the crime of kidnapping, but is a factor that relates to the state’s burden of proof in showing consent was not provided by the parent

or guardian of a child younger than 16. An indictment that alleges a child younger than 16 (versus the child's parent or legal custodian) did not consent is adequate.

Patient Stress Questionnaire*

Name: _____

Date: _____ Birthdate: _____

Over the **last two weeks**, how often have you been bothered by any of the following problems?

(please circle your answer & **check the boxes that apply to you**)

	Not at all	Several days	More than half the days	Nearly Every day	
1. Little interest or pleasure in doing things	0	1	2	3	
2. Feeling down, depressed, or hopeless	0	1	2	3	
3. <input type="checkbox"/> Trouble falling or staying asleep, or <input type="checkbox"/> sleeping too much	0	1	2	3	
4. Feeling tired or having little energy	0	1	2	3	
5. <input type="checkbox"/> Poor appetite or <input type="checkbox"/> overeating	0	1	2	3	
6. Feeling bad about yourself or that you are a failure or have let yourself or your family down	0	1	2	3	
7. Trouble concentrating on things, such as reading the newspaper or watching television	0	1	2	3	
8. <input type="checkbox"/> Moving or speaking so slowly that other people could have noticed, or <input type="checkbox"/> the opposite - being so fidgety or restless that you've been moving around a lot more than usual	0	1	2	3	
9. <input type="checkbox"/> Thoughts that you would be better off dead, or <input type="checkbox"/> hurting yourself in some way	0	1	2	3	Total
(10)	add columns:				

1. Feeling nervous, anxious or on edge	0	1	2	3	
2. Not being able to stop or control worrying	0	1	2	3	
3. Worrying too much about different things	0	1	2	3	
4. Trouble relaxing	0	1	2	3	
5. Being so restless that it is hard to sit still	0	1	2	3	
6. Becoming easily annoyed or irritable	0	1	2	3	
7. Feeling afraid as if something awful might happen	0	1	2	3	Total
(8)	add columns:				

*adapted from PhQ 9, GAD7, PC-PTSD and AUDIT 1/24/11

Provider: _____

Please also complete back side →

Are you currently in any physical pain?	No	Yes
---	----	-----

In your life, have you ever had any experience that was so frightening, horrible, or upsetting that, **in the past month**, you:

1. Have had nightmares about it or thought about it when you did not want to?	No	Yes
2. Tried hard not to think about it or went out of your way to avoid situations that reminded you of it?	No	Yes
3. Were constantly on guard, watchful, or easily startled?	No	Yes
4. Felt numb or detached from others, activities, or your surroundings?	No	Yes

(3)

Drinking alcohol can affect your health. This is especially important if you take certain medications. We want to help you stay healthy and lower your risk for the problems that can be caused by drinking.

These questions are about your drinking habits. We've listed the serving size of one drink below.

Please circle your answer

	0	1	2	3	4
How often do you have one drink containing alcohol?	Never	Monthly or less	2-4 times a month	2-3 times a week	4+ times per week
How many drinks containing alcohol do you have on a typical day when you are drinking?	1 or 2	3 or 4	5 or 6	7 to 9	10 or more
How often do you have four or more drinks on one occasion?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily
How often during the last year have you.....					
...found that you were not able to stop drinking once you had started?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily
...failed to do what was normally expected from you because of drinking?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily
...needed a first drink in the morning to get yourself going after heavy drinking?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily
...had a feeling of guilt or remorse after drinking?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily
...been unable to remember what happened the night before because you had been drinking?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily
	0		2		4
Have you or someone else been injured as a result of your drinking?	No	Yes, but not in the last year			Yes, during the last year
Has a relative, friend, doctor or other health worker been concerned about your drinking or suggested you cut down?	No	Yes, but not in the last year			Yes, during the last year

(8)

Standard serving of one drink:

- 12 ounces of beer or wine cooler
- 1.5 ounces of 80 proof liquor
- 5 ounces of wine
- 4 ounces of brandy, liqueur or aperitif



Total:

The Alcohol Use Disorders Identification Test (AUDIT), developed in 1982 by the World Health Organization, is a simple way to screen and identify people at risk of alcohol problems.

1. How often do you have a drink containing alcohol?

- (0) Never (Skip to Questions 9-10)
- (1) Monthly or less
- (2) 2 to 4 times a month
- (3) 2 to 3 times a week
- (4) 4 or more times a week

2. How many drinks containing alcohol do you have on a typical day when you are drinking?

- (0) 1 or 2
- (1) 3 or 4
- (2) 5 or 6
- (3) 7, 8, or 9
- (4) 10 or more

3. How often do you have six or more drinks on one occasion?

- (0) Never
- (1) Less than monthly
- (2) Monthly
- (3) Weekly
- (4) Daily or almost daily

4. How often during the last year have you found that you were not able to stop drinking once you had started?

- (0) Never
- (1) Less than monthly
- (2) Monthly
- (3) Weekly
- (4) Daily or almost daily

5. How often during the last year have you failed to do what was normally expected from you because of drinking?

- (0) Never
- (1) Less than monthly
- (2) Monthly
- (3) Weekly
- (4) Daily or almost daily

6. How often during the last year have you been unable to remember what happened the night before because you had been drinking?

- (0) Never
- (1) Less than monthly
- (2) Monthly
- (3) Weekly
- (4) Daily or almost daily

7. How often during the last year have you needed an alcoholic drink first thing in the morning to get yourself going after a night of heavy drinking?

- (0) Never
- (1) Less than monthly
- (2) Monthly
- (3) Weekly
- (4) Daily or almost daily

8. How often during the last year have you had a feeling of guilt or remorse after drinking?

- (0) Never
- (1) Less than monthly
- (2) Monthly
- (3) Weekly
- (4) Daily or almost daily

9. Have you or someone else been injured as a result of your drinking?

- (0) No
- (2) Yes, but not in the last year
- (4) Yes, during the last year

10. Has a relative, friend, doctor, or another health professional expressed concern about your drinking or suggested you cut down?

- (0) No
- (2) Yes, but not in the last year
- (4) Yes, during the last year

Add up the points associated with answers. A total score of 8 or more indicates harmful drinking behavior.

NAME: _____

DATE: _____

DRUG USE QUESTIONNAIRE (DAST – 20)

The following questions concern information about your potential involvement with drugs not including alcoholic beverages during the past 12 months.

Carefully read each statement and decide if your answer is “Yes” or “No”. Then, circle the appropriate response beside the question. In the statements “drug abuse” refers to (1) the use of prescribed or over the counter drugs in excess of the directions and (2) any non-medical use of drugs. The various classes of drugs may include: cannabis (e.g. marijuana, hash), solvents, tranquillizers (e.g. Valium), barbiturates, cocaine, stimulants (e.g. speed), hallucinogens (e.g. LSD) or narcotics (e.g. heroin). Remember that the questions **do not** include alcoholic beverages.

Please answer every question. If you have difficulty with a statement, then choose the response that is mostly right.

Adult Version

These questions refer to the past 12 months.

**Circle Your
Response**

- | | | |
|--|-----|----|
| 1. Have you used drugs other than those required for medical reasons? | Yes | No |
| 2. Have you abused prescription drugs? | Yes | No |
| 3. Do you abuse more than one drug at a time? | Yes | No |
| 4. Can you get through the week without using drugs? | Yes | No |
| 5. Are you always able to stop using drugs when you want to? | Yes | No |
| 6. Have you had "blackouts" or "flashbacks" as a result of drug use? | Yes | No |
| 7. Do you every feel bad or guilty about your drug use? | Yes | No |
| 8. Does your spouse (or parents) ever complain about your involvement with drugs? | Yes | No |
| 9. Has drug abuse created problems between you and your spouse or your parents? | Yes | No |
| 10. Have you lost friends because of your use of drugs? | Yes | No |
| 11. Have you neglected your family because of your use of drugs? | Yes | No |
| 12. Have you been in trouble at work (or school) because of drug abuse? | Yes | No |
| 13. Have you lost your job because of drug abuse? | Yes | No |
| 14. Have you gotten into fights when under the influence of drugs? | Yes | No |
| 15. Have you engaged in illegal activities in order to obtain drugs? | Yes | No |
| 16. Have you been arrested for possession of illegal drugs? | Yes | No |
| 17. Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs? | Yes | No |
| 18. Have you had medical problems as a result of your drug use (e.g. memory loss, hepatitis, convulsions, bleeding, etc.)? | Yes | No |
| 19. Have you gone to anyone for help for drug problem? | Yes | No |
| 20. Have you been involved in a treatment program specifically related to drug use? | Yes | No |

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Adolescent Version

These questions refer to the past 12 months.

**Circle Your
Response**

- | | | |
|--|-----|----|
| 1. Have you used drugs other than those required for medical reasons? | Yes | No |
| 2. Have you abused prescription drugs? | Yes | No |
| 3. Do you abuse more than one drug at a time? | Yes | No |
| 4. Can you get through the week without using drugs? | Yes | No |
| 5. Are you always able to stop using drugs when you want to? | Yes | No |
| 6. Have you had "blackouts" or "flashbacks" as a result of drug use? | Yes | No |
| 7. Do you every feel bad or guilty about your drug use? | Yes | No |
| 8. Do your parents ever complain about your involvement with drugs? | Yes | No |
| 9. Has drug abuse created problems between you and your parents? | Yes | No |
| 10. Have you lost friends because of your use of drugs? | Yes | No |
| 11. Have you neglected your family because of your use of drugs? | Yes | No |
| 12. Have you been in trouble at school because of drug abuse? | Yes | No |
| 13. Have you missed school assignments because of drug abuse? | Yes | No |
| 14. Have you gotten into fights when under the influence of drugs? | Yes | No |
| 15. Have you engaged in illegal activities in order to obtain drugs? | Yes | No |
| 16. Have you been arrested for possession of illegal drugs? | Yes | No |
| 17. Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs? | Yes | No |
| 18. Have you had medical problems as a result of your drug use (e.g. memory loss, hepatitis, convulsions, bleeding, etc.)? | Yes | No |
| 19. Have you gone to anyone for help for drug problem? | Yes | No |
| 20. Have you been involved in a treatment program specifically related to drug use? | Yes | No |

NAME: _____

DATE: _____

DRUG USE QUESTIONNAIRE (DAST – 10)

The following questions concern information about your possible involvement with drugs not including alcoholic beverages during the past 12 months. Carefully read each statement and decide if your answer is “Yes” or “No”. Then, circle the appropriate response beside the question.

In the statements “drug abuse” refers to (1) the use of prescribed or over the counter drugs may include: cannabis (e.g. marijuana, hash), solvents, tranquillizers (e.g. Valium), barbiturates, cocaine, stimulants (e.g. speed), hallucinogens (e.g. LSD) or narcotics (e.g. heroin). Remember that the questions **do not** include alcoholic beverages.

Please answer every question. If you have difficulty with a statement, then choose the response that is mostly right.

These questions refer to the past 12 months.

Circle Your Response

- | | | |
|--|-----|----|
| 1. Have you used drugs other than those required for medical reasons? | Yes | No |
| 2. Do you abuse more than one drug at a time? | Yes | No |
| 3. Are you always able to stop using drugs when you want to? | Yes | No |
| 4. Have you had “blackouts” or “flashbacks” as a result of drug use? | Yes | No |
| 5. Do you ever feel bad or guilty about your drug use? | Yes | No |
| 6. Does your spouse (or parents) ever complain about your involvement with drugs? | Yes | No |
| 7. Have you neglected your family because of your use of drugs? | Yes | No |
| 8. Have you engaged in illegal activities in order to obtain drugs? | Yes | No |
| 9. Have you ever experienced withdrawal symptoms (felt sick) when you stopped taking drugs? | Yes | No |
| 10. Have you had medical problems as a result of your drug use (e.g. memory loss, hepatitis, convulsions, bleeding, etc.)? | Yes | No |

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GUIDE FOR USING THE
DRUG ABUSE SCREENING TEST (DAST)

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York University, Toronto

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Why assess Drug Use?

Systematic assessment of drug use and abuse is necessary for ensuring good clinical care. Measures, which are both reliable and valid, provide information to the practitioner, which can be used for identifying problems (early if possible) and for evaluating the effectiveness of treatment. As well, this information is useful for matching patient needs with tailored intervention.

The Drug Abuse Screening Test (DAST) was designed to provide a brief, self-report instrument for population screening, clinical case finding and treatment evaluation research. The DAST yields a *quantitative* index of the degree of consequences related to drug abuse. This instrument takes approximately 5 minutes to administer and may be given in either a self-report or interview format. The DAST may be used in a variety of settings to provide a quick index of drug abuse problems.

DAST-20 and DAST-10 Version

The original DAST contained 28 items that were modeled after the widely used Michigan Alcoholism Screening Test (Selzer, American Journal of Psychiatry, 1971, 127, 1653-1658). Two shortened versions of the DAST were devised using 20-items and 10-items that were good discriminators. The 20-item DAST correlated almost perfectly ($r = .99$) with the original 28-item DAST is measuring the same construct as the longer scale. Moreover, the internal consistency reliability (alpha) was extremely high (.95 for the total sample, and .86 for a subsample that excluded clients with only alcohol problems). Good discrimination is evident among clients classified by their reason for seeking treatment. Most clients with alcohol related problems scored 5 or below, whereas the majority of clients with drug problems scored 6 or above on the 20-item DAST. The DAST-10 correlated very high ($r = .98$) with the DAST-20 and has excellent internal consistency reliability for such a brief scale (.92 total sample and .74 drug abuse).

Measurement properties of the DAST were initially evaluated using a clinical sample of 256 drug/alcohol abuse clients (Skinner ...Addictive Behaviors, 1982). The internal consistency reliability estimate was substantial at .92. and a factor analysis of item intercorrelations suggested an unidimensional scale. With respect to response style biases, the DAST was only moderately correlated with social desirability and denial. Concurrent validity was examined by correlating the DAST with background variables, frequency of drug use, and psychopathology. A greater range of problems associated with drug abuse (DAST) was related to the more frequent use of cannabis, barbiturates and opiates other than heroin. With respect to psychopathology, the largest correlations were with the sociopathic scales of Impulse Expression and Social Deviation. High scorers on the DAST tended to engage in reckless actions and express attitudes that are markedly different from common social codes.

Furthermore, the DAST was positively related to interpersonal problems, suspiciousness, depressive symptoms and a preoccupation with bodily dysfunction. Thus, drug abuse tended to be manifests in, or covary with, other psychopathological characteristics. Finally, the DAST total score clearly differentiated among clients with (1) drug problems only versus (2) mixed drug/alcohol problems versus (3) alcohol problems only.

Advantages

1. The DAST is brief and inexpensive to administer.
2. It provides a quantitative index of the extent of problems related to drug abuse. Thus, one may move beyond the identification of a drug problem and obtain a reliable estimate of the degree of problem severity.
3. DAST scores could be used to corroborate information gained by other assessment sources (e.g. clinical interview or laboratory tests).
4. The routine administration of the DAST would provide a convenient device of recording the extent of problems associated with drug abuse. It would ensure that relevant questions regarding consequences of drug abuse are asked of all clients.
5. The DAST could provide a reference standard for monitoring changes in client population over time, as well as for comparing clients at different assessment centres.

Limitations

1. Since the content of the DAST items is obvious, clients may fake results.
2. Since any given assessment approach provides an incomplete picture of the client's status, there is a danger that DAST scores may be given too much emphasis. Because the DAST yields a numerical score, this score may be misinterpreted.

Administration and Scoring

The DAST may be administered in either an interview or self-report format. The self-report version is generally preferred since it allows the efficient assessment of large groups. In many circumstances one would expect the interview and self-report formats to give identical results. However, the assessment approaches may differ (1) when a client is particularly defensive or high on social anxiety which may produce under-reporting of problems in a face-to-face interview format, or (2) when a client has difficulty reading and understanding the content of items in the self-report version. The DAST should *not* be administered to clients who are presently under the influence of drugs, or who are undergoing a drug withdrawal reaction. Under these conditions the

reliability and validity of the DAST would be suspect. Thus, one should ensure that clients are drug free (detoxified before the DAST is administered).

The following introduction should be used for either interview or self-report formats: "The following questions concern information about your potential involvement with drugs *not including alcohol beverages*."

"In the statements, 'drug abuse' refers to (1) the use of prescribed or over the counter drugs in excess of the directions and (2) any non medical use of drugs. The various classes of drugs may include: cannabis, (e.g. marijuana, hash), solvents or glue, tranquilizers (e.g. valium), barbiturates, cocaine, stimulants, hallucinogens (e.g. LSD), or narcotics (e.g. heroin). Remember that the questions *do not* include alcoholic beverages."

The DAST total score is computed by summing all items that are endorsed in the direction of increased drug problems. Two items: #4 (Can you get through the week without using drugs) and #5 (Are you always able to stop using drugs when you want to), are keyed for a "No" response. The other 18 items are keyed for a "Yes" response. For example, if a client circled "Yes" for item #1 he/she would receive a score of 1, whereas if the client circled "No" for item #1 he/she would receive a score of 0. With items #4 and 5, a score of 1 would be given for a "No" response and a score of 0 for a "Yes" response. When each item has been scored in this fashion, the DAST *total score* is simply the sum of the 20 item scores. This total score can range from 0 to 20.

Interpretation

The DAST total score orders individual along a continuum with respect to their *degree* of problems or consequences related to drug abuse. A score of zero indicates that no evidence of drug related problems were reported. As the DAST score increases there is a corresponding rise in the level of drug problems reported. The maximum score of 20 would indicate substantial problems. Thus, as the DAST total score increases one may interpret that a given individual has accrued an increasingly diverse range of drug-related consequences. Then, one may examine the DAST item responses to identify specific problem areas, such as the family or work. The following tentative guidelines are suggested for interpreting the DAST total score.

DAST Interpretation Guide

	DAST-10	DAST-20	Action	ASAM
None	0	0	Monitor	
Low	1-2	1-5	Brief Counseling	Level I
Intermediate (likely meets DSM criteria)	3-5	6-10	Outpatient (intensive)	Level I or II
Substantial	6-8	11-15	Intensive	Level II or III
Severe	9-10	16-20	Intensive	Level III or IV

ASAM: American Society of Addiction Medicine Placement Criteria

A low score does not necessarily mean that the client is free of drug related problems. One must consider the length of time the client has been using drugs, the client's age, level of consumption and other data collected in the assessment in order to interpret the DAST score. Since most of the alcohol abuse clients scored 5 or below, whereas most of the mixed drug/alcohol clients and drug abuse group scored 6 or above, a DAST score of *6 or greater* is suggested for case finding purposes. Further research is planned to evaluate the diagnostic validity of alternative cutoff points on the DAST.

Availability

Copies of the 20-item and 10-item DAST may be obtained from the author (Harvey Skinner) or by contacting Marketing Services at the Centre for Addiction and Mental Health, 33 Russell Street, Toronto, Ontario, Canada M5S 2S1 Telephone: 1-800-463-6273 or visit the following websites: Harvey Skinner at: www.HealthBehaviorChange.org CAMH: www.camh.net

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Drug Abuse Screening Test (DAST-20)

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ID#P14663 published May 23, 2006 6:07 PM