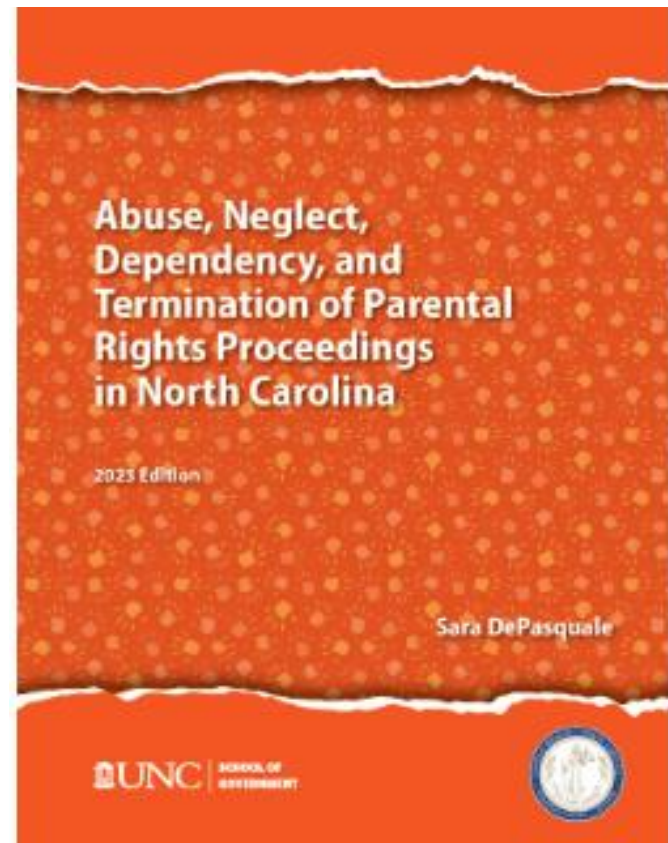
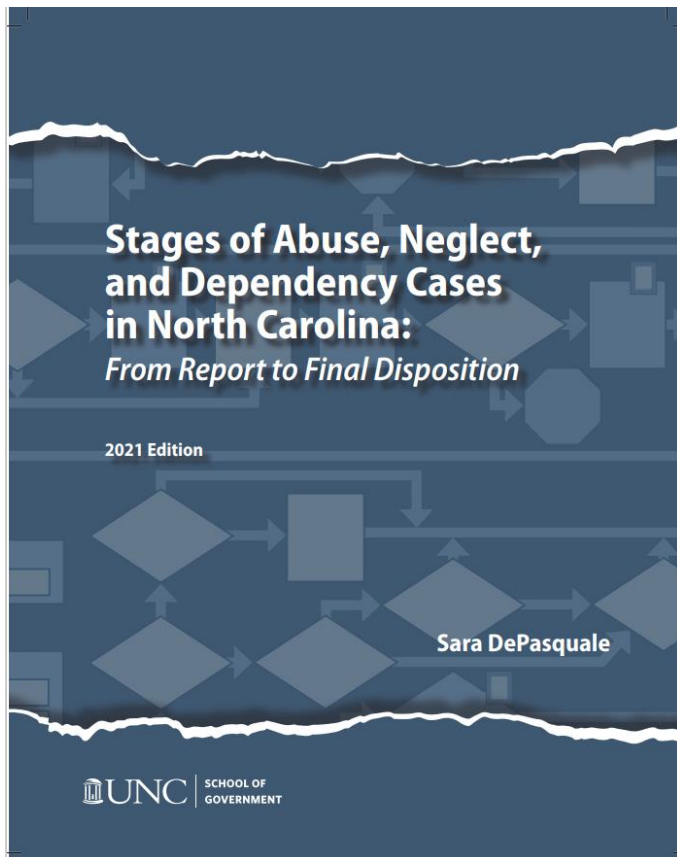


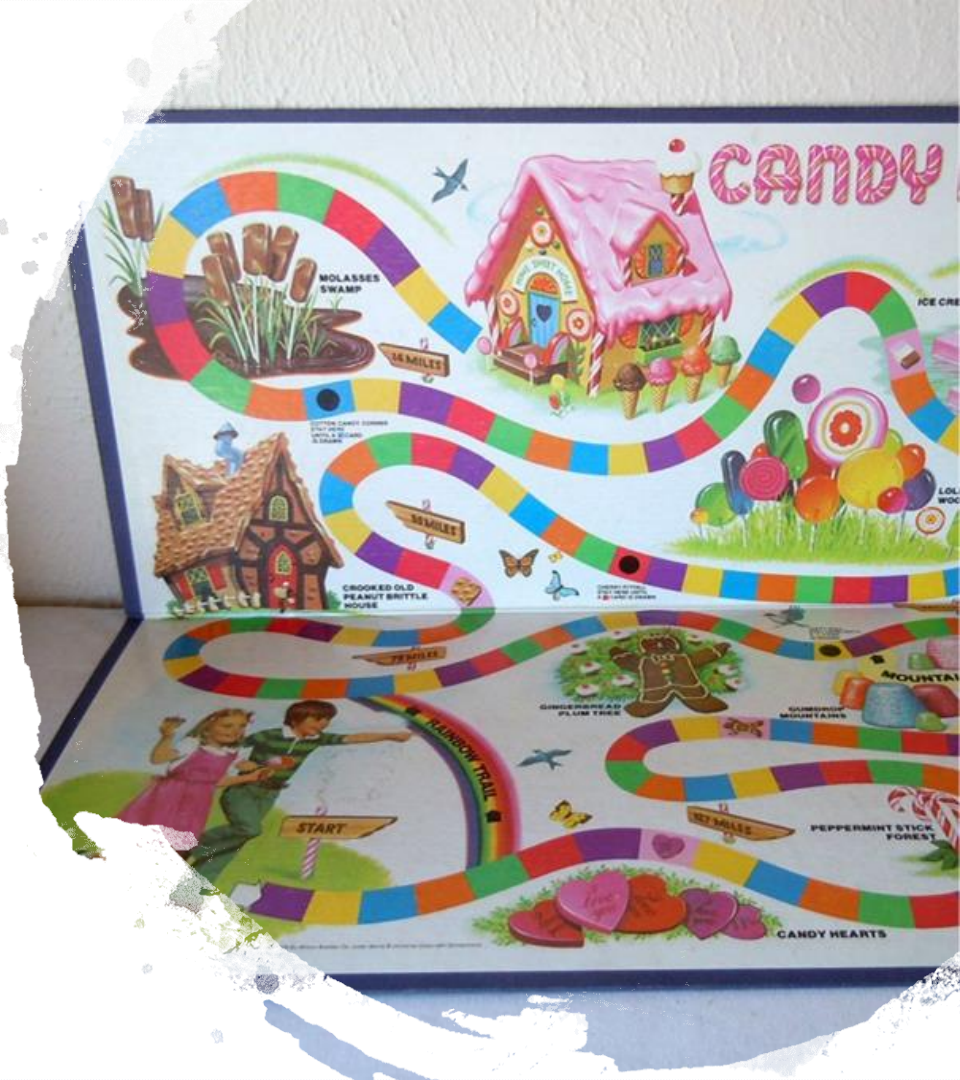
Introduction to Child Welfare Law

By Sara DePasquale, UNC School of Government
sara@sog.unc.edu



This Morning's Goals

- Introduce the Purpose of the Juvenile Code
- Understand
 - The Legal Process
 - How It All Fits Together
- Identify the Danger Zone



Purpose

- ✓ Fairness & equity, protect **constitutional rights** of children and parents
- ✓ Consider facts, **child's** needs & limitations, and the strength & weaknesses of the **family**
- ✓ protect **children**, right to **family autonomy** and the children's need for safety, continuity, & permanence
- ✓ Prevent **unnecessary or inappropriate separation** of children and their parents
- ✓ Ensure **BIC** are paramount consideration by the court; if not returned home, **safe permanent home w/in reasonable period of time**

Constitutional Rights

... nor shall any state deprive any person of life, liberty, or property, without due process of law...



ART. 1, SEC. 19
NC
CONSTITUTION

Who Is the State?

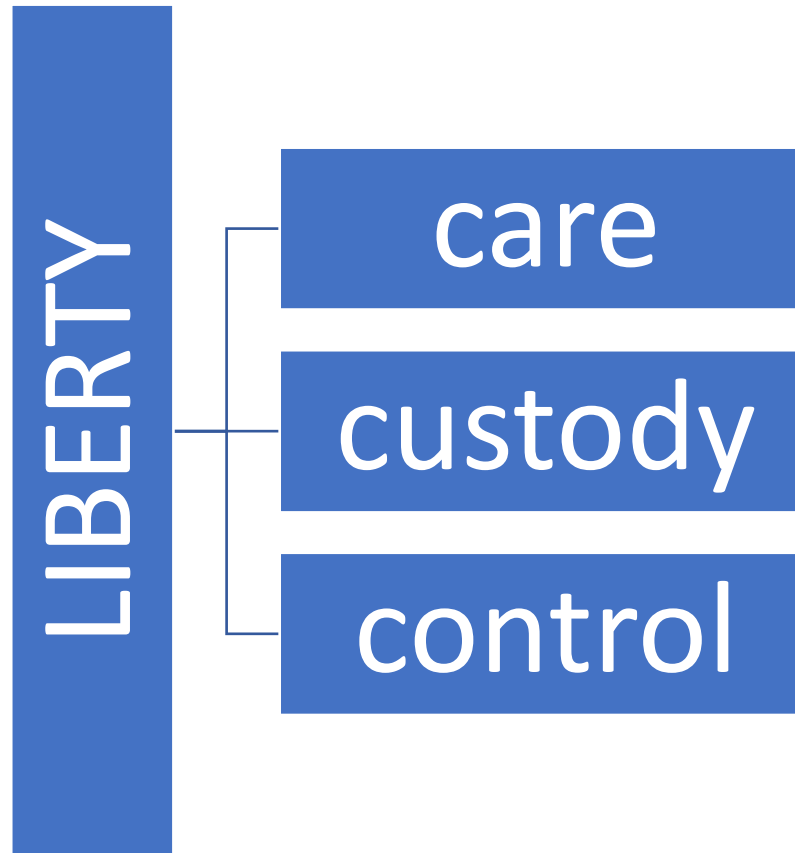


County = Agent of the State

Who is “any person”?



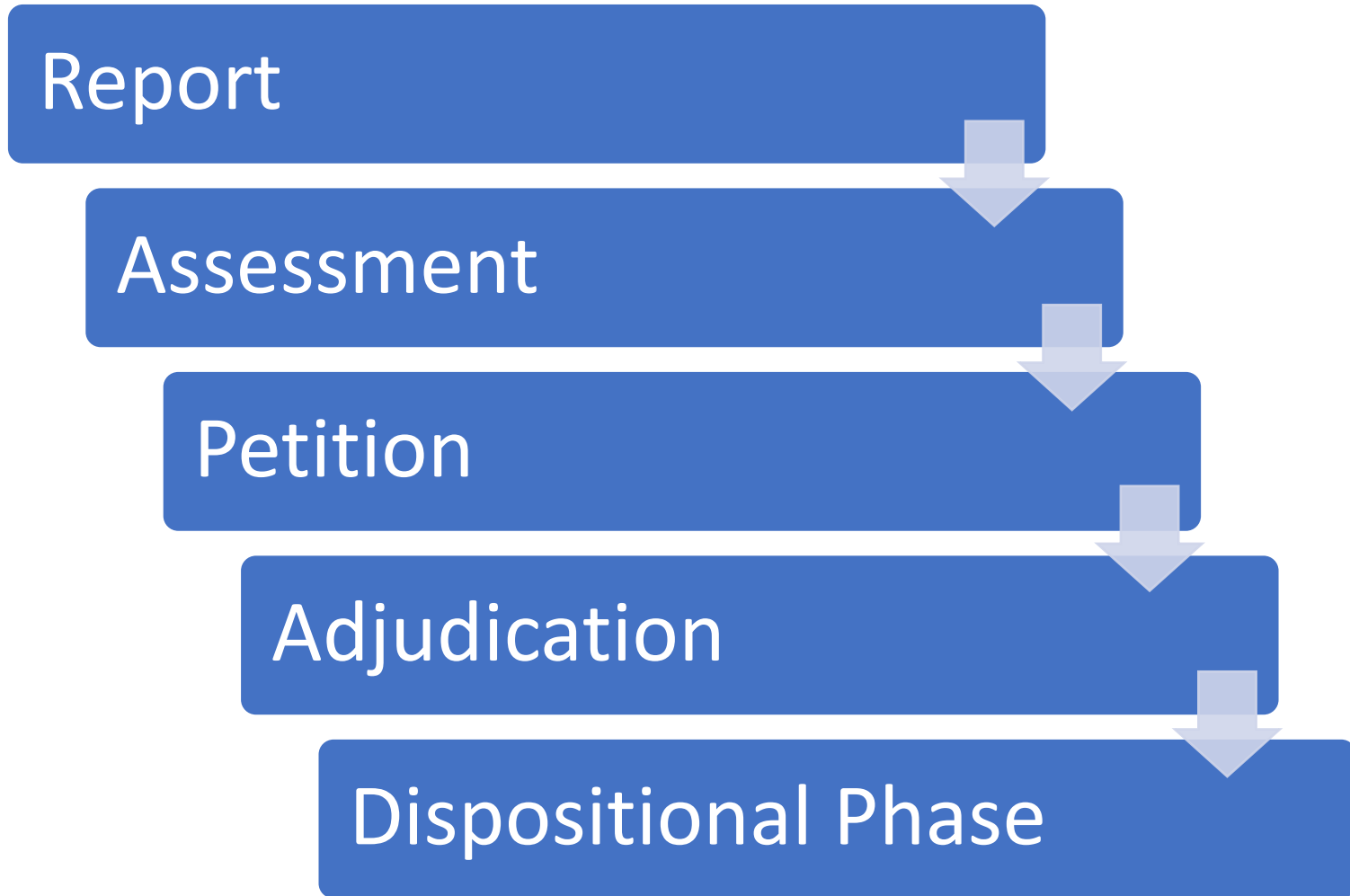
Parents' Rights



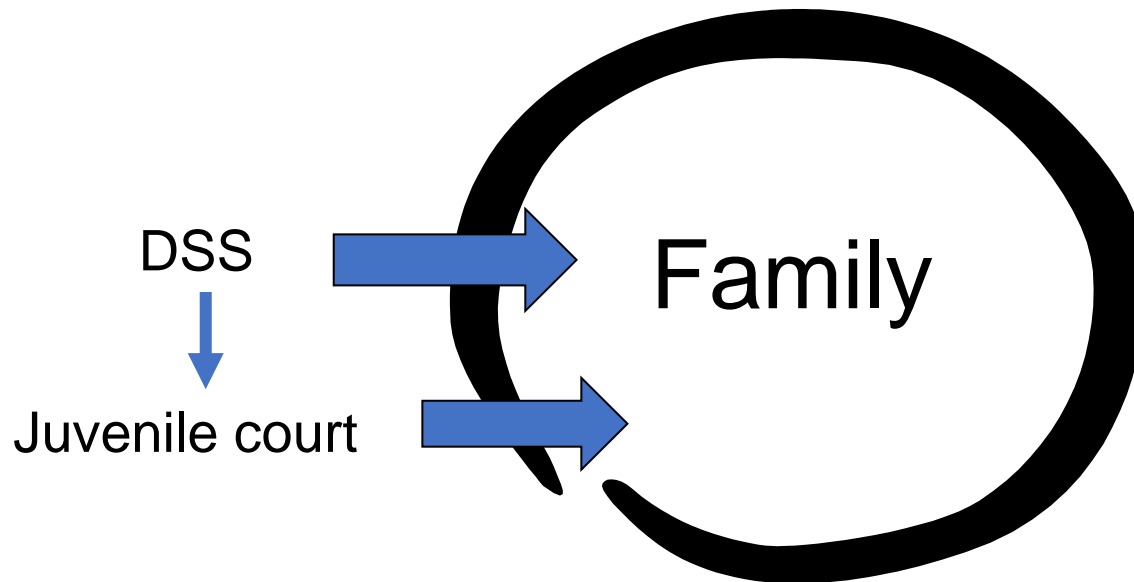
“The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children— is perhaps the **oldest of the fundamental liberty interests recognized** by this Court.”

Troxel v. Granville, 530 U.S. 57, 65-66 (2000)

Applies to all stages



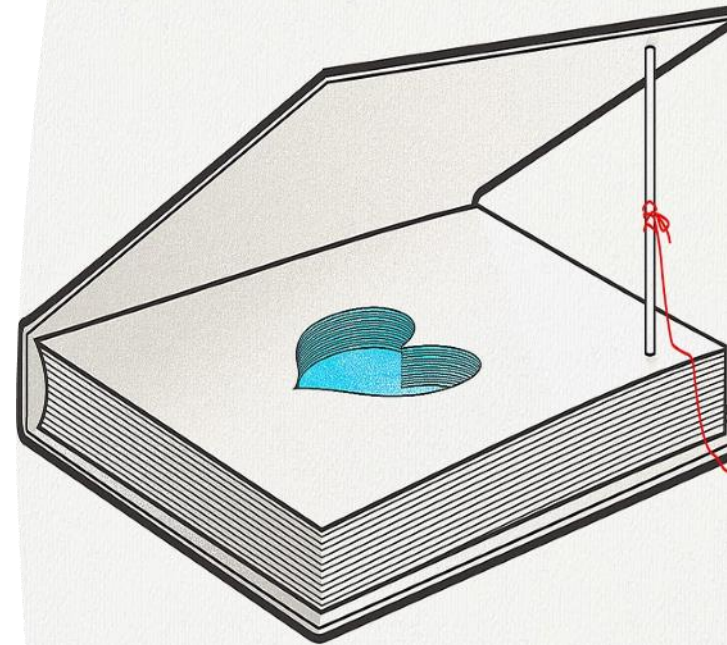
When Can the State Get Involved?



The Juvenile Code Answers This

- abused juvenile*
- neglected juvenile*
- dependent juvenile*

- *parent*
- *guardian*
- *custodian*
- *caretaker**

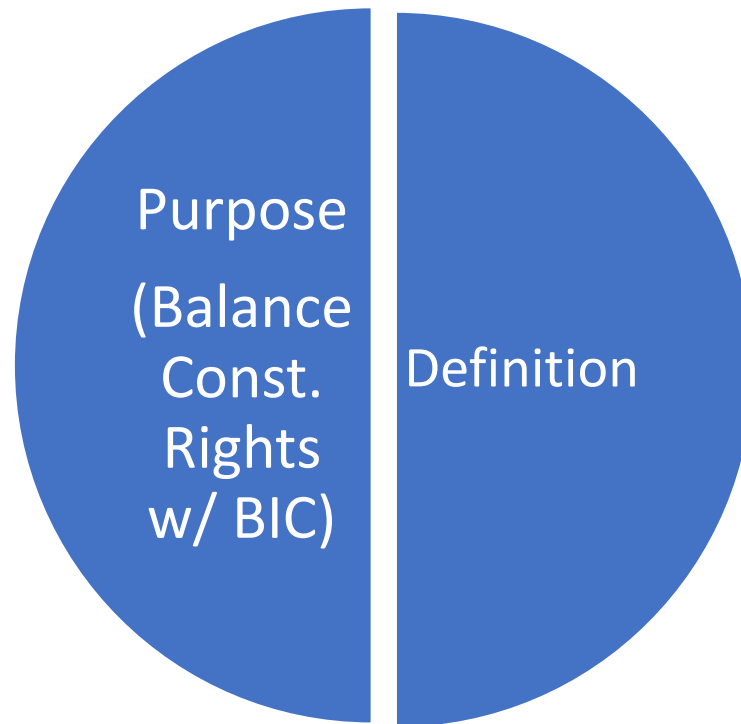


In re Stumbo, 357 N.C. 279 (2003)

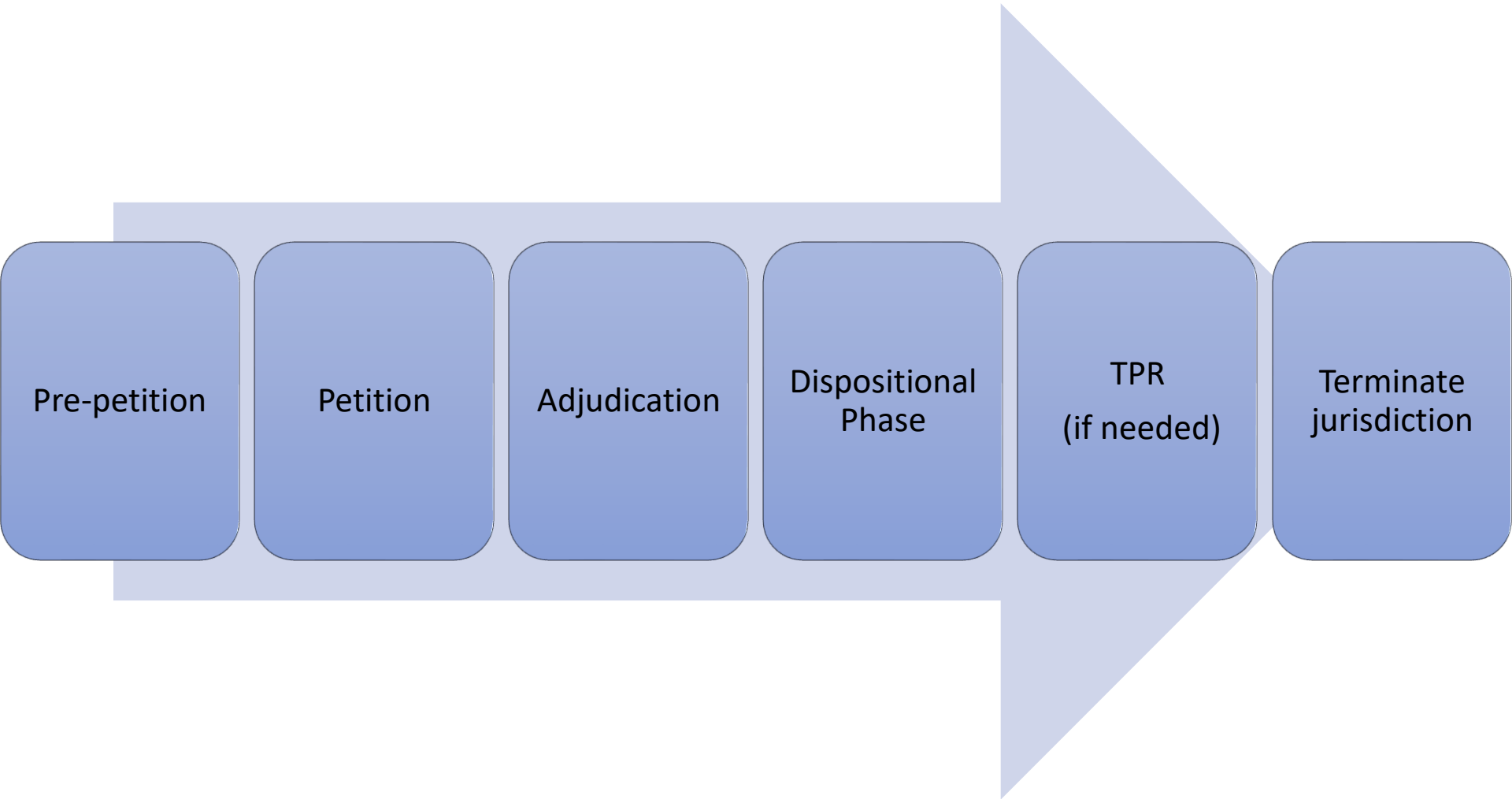


Caretaker: In re R.R.N.

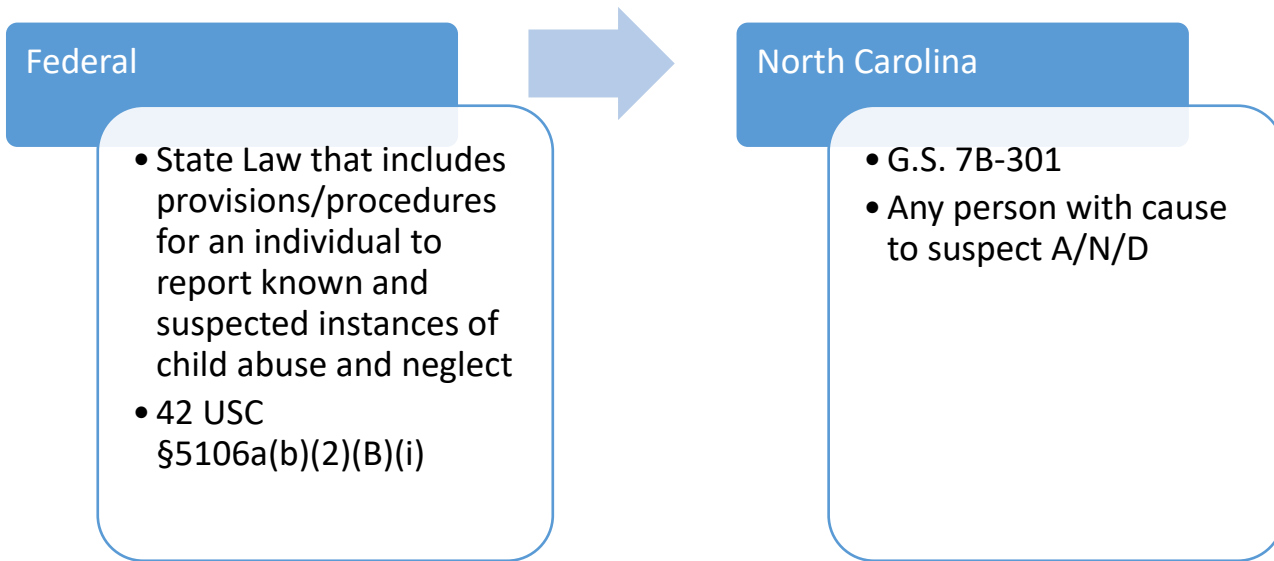
When interpreting the statute, look to the whole



Juvenile Code Provides a Road Map for All Stages



Reporting



Austin

- 18 months old, male
- Left with James, mother's live-in boyfriend, while she worked
- Sustained bruises that spanned from his knees to his chest including a lacerated liver
- James says he was the only person who cared for the child during this time
- Mother, Shannon, did not take Austin to get medical treatment
- During a visit the next day with the grandmother bruising is discovered
- Child is taken for medical treatment and hospitalized

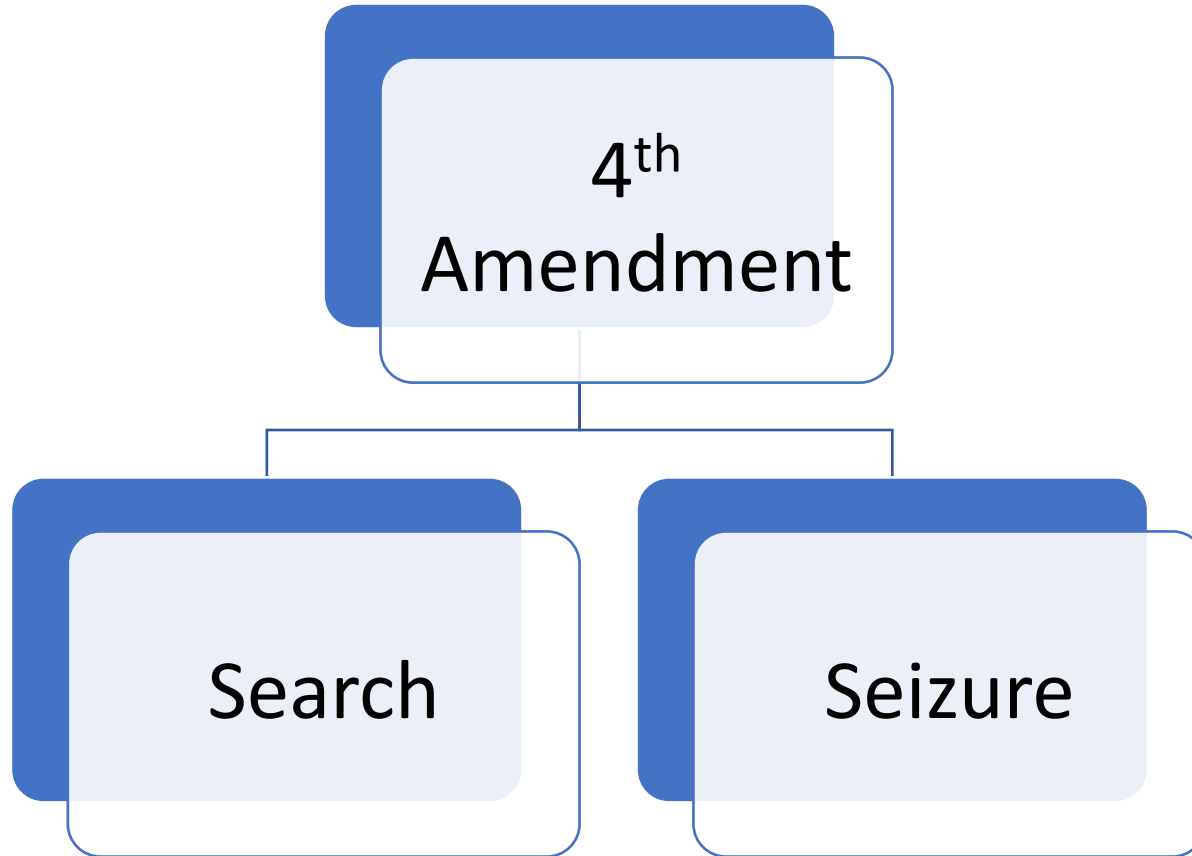
Thomas

- Thomas 7 years old, and the eldest of three siblings
- School personnel reports to DSS concerns because he
 - Missed 10 days of school in the past 2 months
 - Would come to school in dirty clothes
 - Would come to school hungry
 - Would fall asleep during class
 - Could not reach his mother Melissa
- DSS visits the home
 - Dirty
 - Mother reports that 'her life is upside down' since they moved to NC from IA
 - Thomas has been helping mother take care of the younger children, 6m and 3 yrs

Maria

- 16 year old, US born, female
- Mother in Mexico (recently deported)
- Arrested for assault; ready for release
- Caretakers refuse to resume care
- DJJ contacts DSS from the courthouse as there is not a responsible adult to provide care

Assessment



Balance



Privacy Interests

Secure in their persons, houses, papers, & effects against unreasonable

SEARCHES



SEIZURES

- Restrain person's liberty by physical force or show of authority
- ≠ physical restraint or removal
- Does reasonable person believe he/she free to leave?

Can you think of examples?

Search

- Body scan for bruises
- CME
- Drug screen

Seizure

- Interview child
- Transport child



Why Is the Petition Important?

- Court cannot act without/before petition is filed
- Filed petition gives the court “subject matter jurisdiction”

Purpose of Petition

- Starts the court case
- Names the parties
- Notice to all the parties
- Identifies what will be addressed in court (limiting)

STATE OF NORTH CAROLINA				File No.
_____ County				In The General Court Of Justice District Court Division
IN THE MATTER OF				JUVENILE PETITION (ABUSE/NEGLECT/DEPENDENCY)
Name And Address Of Juvenile				
Juvenile's Date Of Birth	Age	Race	Sex	
G.S. 7B-101, -400, -402				
Name Of Petitioner				Condition Alleged <input type="checkbox"/> Abused <input type="checkbox"/> Neglected <input type="checkbox"/> Dependent

Your Signature

Without proper signature, the court does not have subject matter jurisdiction

VERIFICATION		
Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.		
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		<i>Name And Address Of Petitioner</i>
<i>Date</i>	<i>Signature Of Person Authorized To Administer Oaths</i>	<i>Signature Of Petitioner</i>
<input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i> <input type="checkbox"/> <i>District Court Judge</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Magistrate</i>		
<input type="checkbox"/> <i>Notary</i>	<i>Date My Commission Expires</i>	<i>Telephone No.</i>
SEAL	<i>County Where Notarized</i>	<input type="checkbox"/> <i>Director</i> <input type="checkbox"/> <i>Authorized Representative Of Director</i> <i>County Department of Social Services</i>
WITNESS/ES		

Verification Required

Without proper verification, the court does not have subject matter jurisdiction

		VERIFICATION	
Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.			
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		<i>Name And Address Of Petitioner</i>	
<i>Date</i>	<i>Signature Of Person Authorized To Administer Oaths</i>		
<input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i> <input type="checkbox"/> <i>District Court Judge</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Magistrate</i>			<i>Signature Of Petitioner</i>
<input type="checkbox"/> <i>Notary</i>	<i>Date My Commission Expires</i>	<i>Telephone No.</i>	
SEAL	<i>County Where Notarized</i>	<input type="checkbox"/> <i>Director</i> <input type="checkbox"/> <i>Authorized Representative Of Director</i>	<i>County Department of Social Services</i>
WITNESS(ES)			

Procedural Due Process

- Basic Fairness
 - Notice (timely and adequate)
 - Opportunity to be heard
 - Impartial decision-maker
 - Supported by evidence
 - Proper standard of evidence

How Is Due Process Provided?

Service of
Summons &
Hearing Date

Notice of
Allegations
(Petition)

Appointed
Counsel

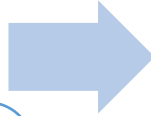
Burden of
Proof on DSS

Clear &
Convincing
Evidence

Child Representation

Federal

- In every case involving victims of abuse or neglect which results in a judicial proceeding, a GAL who has received training..., and who may be an attorney or court appointed special advocate
- 42 USC §5106a(b)(2)(B)(xiii)



North Carolina

- G.S. 7B-601
- Shall in abuse/neglect
- May dependency
- GAL team

Signature on Nonsecure Custody Order (Phone approval)

Person Approving Order
(judge or designated person by
administrative order)




and you are authorized to make forcible entry at any hour if that is required by exigent circumstances of the case.

Date		Signature Of Judge/Judge's Designee	
Maximum Duration Of Custody		Name Of Judge/Judge's Designee (type or print)	<input type="checkbox"/> Judge <input type="checkbox"/> Judge's Designee

If the person above gives telephonic approval:

Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name And Title Of Person Receiving Telephonic Approval	Signature Of Person Receiving Telephonic Approval
--	--	---

Judicial official who is present when
judge or designated person authorizes
order



Signatures on Order

and you are authorized to make forcible entry at any hour if that is required by exigent circumstances of the case.

Date		Signature Of Judge/Judge's Designee	
Maximum Duration Of Custody		Name Of Judge/Judge's Designee (type or print)	<input type="checkbox"/> Judge <input type="checkbox"/> Judge's Designee
If the person above gives telephonic approval:			
Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name And Title Of Person Receiving Telephonic Approval		Signature Of Person Receiving Telephonic Approval



THIS SHOULD NOT BE YOU/DSS

Purposes of Disposition

Design a plan that reflects

- consideration of facts
- child's needs and limitations
- family's strengths and weaknesses

If possible,

- keep child at home
- use appropriate community resources for care, supervision, treatment
- to strengthen home situation



Protective Services

Other counseling services to parents, guardians, other caretakers to

- help prevent abuse/neglect
- Improve quality of child care
- Be more adequate parents, ...
- Preserve & stabilize family life

Safe Home

A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

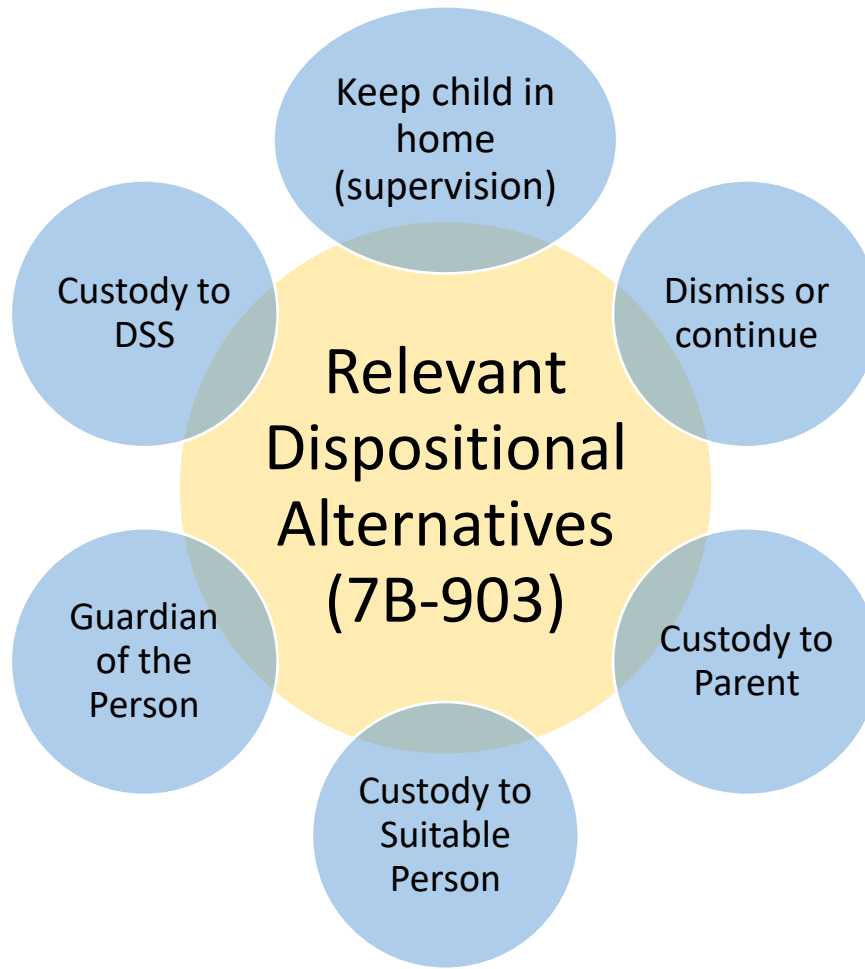
G.S. 7B-101(19)

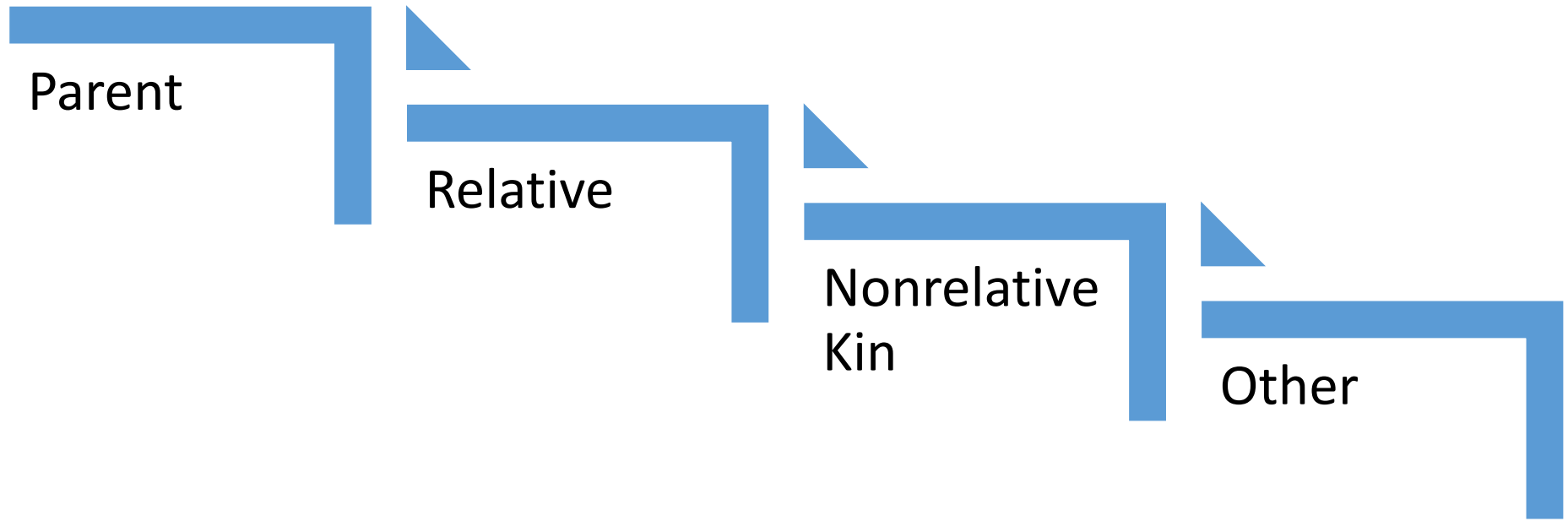
Timelines

Federal

- 42 USC 675(5)(B)
 - Status of each child reviewed periodically by court no less frequently than once every 6 months
- 42 USC 675(5)(C)
 - No later than 12 months after entered foster care, permanency hearing
- 42 USC 671(15)(E)(i)
 - Permanency hearing w/in 30 days of court det. No reasonable efforts

At Any Dispositional Hearing: May Combine





** If Indian child, ICWA preferences apply

Siblings

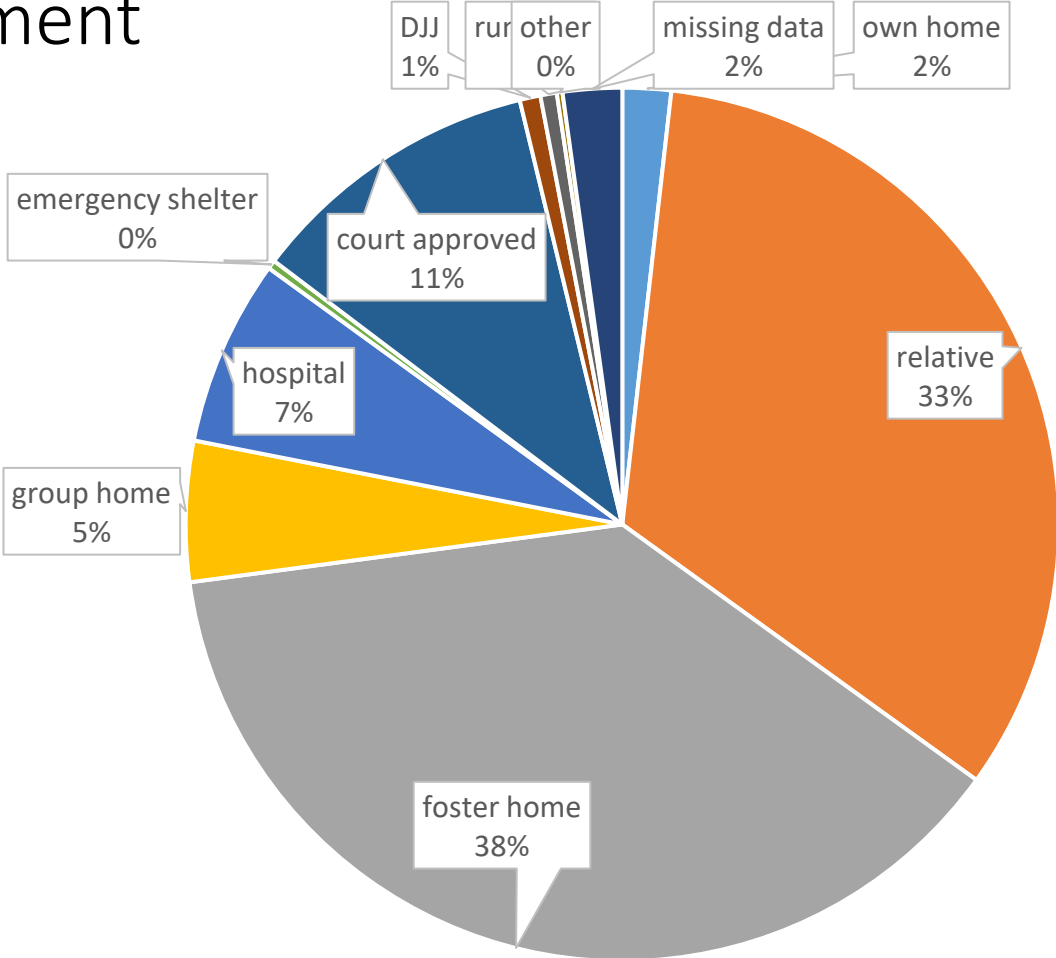
Director shall make reasonable efforts to place together

- Unless document contrary to safety or well-being of any of the siblings

If unable, reasonable efforts to provide frequent sibling visitation and ongoing interaction

- Unless document contrary to safety or well-being of any of the siblings

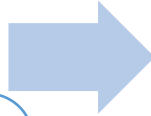
Initial Placement FY 21-22



No Reasonable Efforts

Federal

- Subjected child to aggravated circumstances (as defined in state law, may include abandonment, torture, chronic abuse, sexual abuse)
- TPR to sibling
- Committed murder/vol manslaughter of another child of parent, felony assault (serious bodily injury) of child or another child of parent
- Sexual abuse of child or another child of parent
- Require to register on sex offender registry



North Carolina

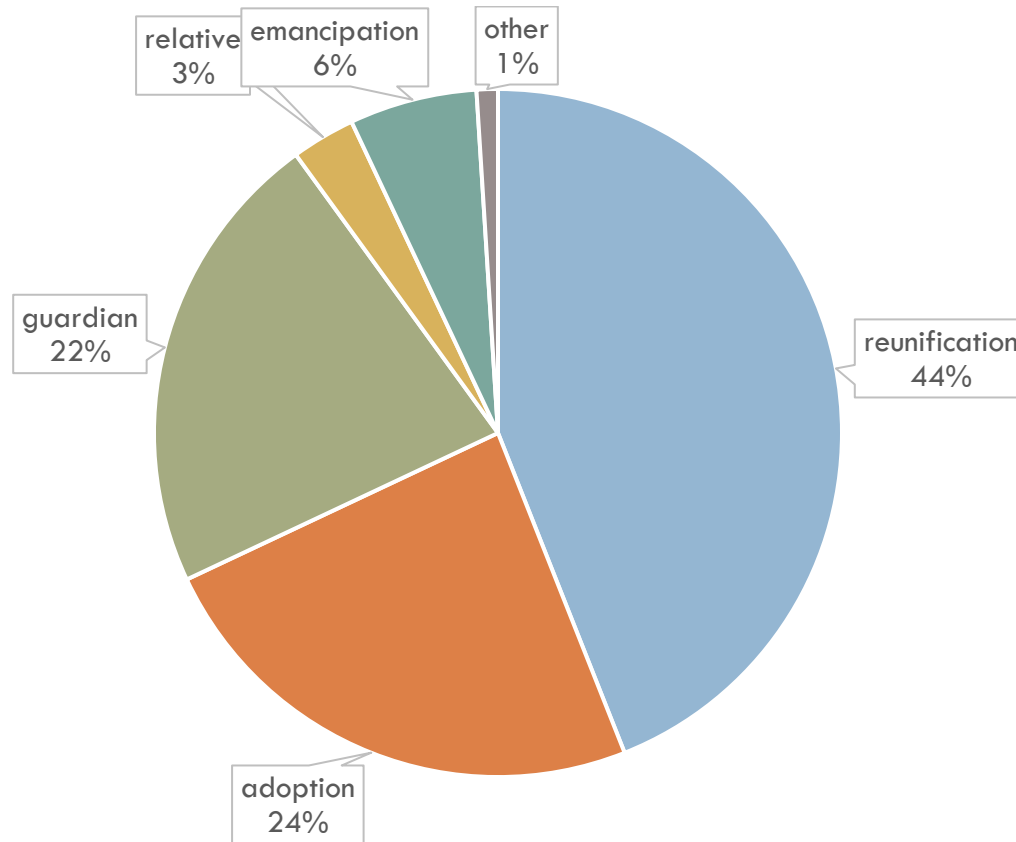
- G.S. 7B-901(c)
- Sexual abuse
- Chronic physical or emotional abuse
- Torture
- Abandonment
- Chronic/toxic exposure to alcohol or controlled substances causing impairment/addiction in juvenile
- Any other act that increased enormity or added to injurious consequences of abuse or neglect



The state may interfere with the parent-child relationship only when the parent is unfit OR has acted inconsistently with their constitutionally protected interest.

Lehr. V. Robertson, 463 U.S. 248 (1983)

2021: Reason for Exiting Foster Care in NC



Source: Nat'l KIDS COUNT Data Center

**Have you
ever felt
like
you did
everything
right... and
it still all
went wrong.**



<http://bit.ly/2tnnMOj>

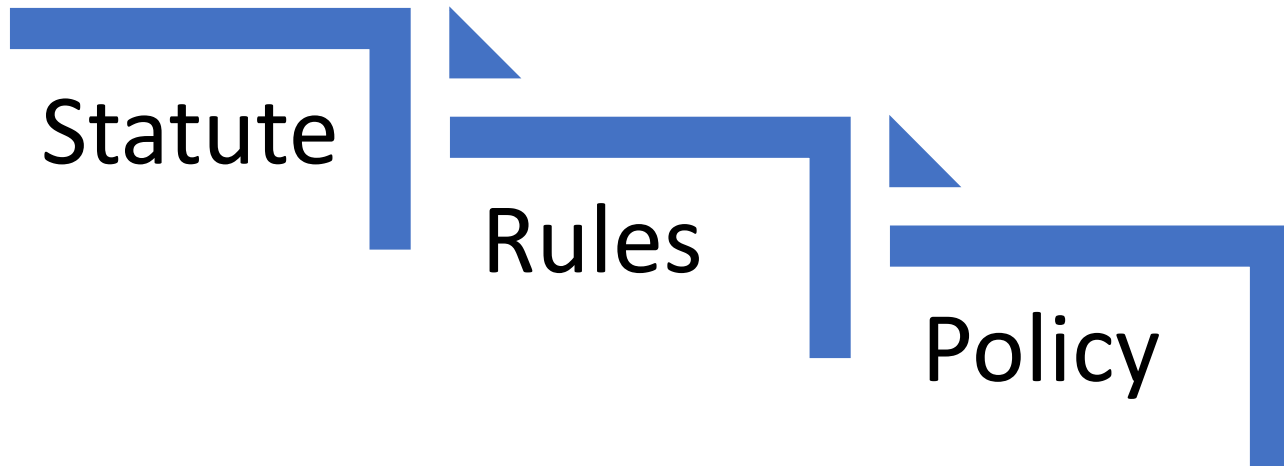
2 Types of Intervention



Court

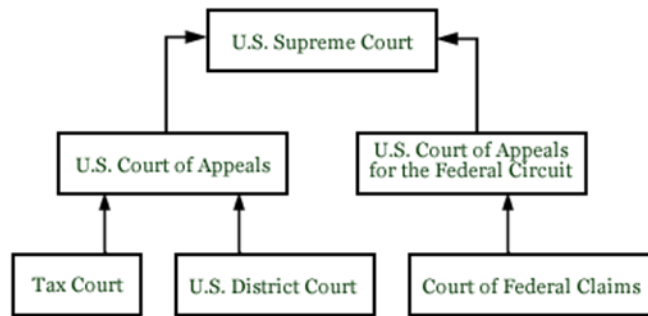
Administrative

Hierarchy: Legal Authority



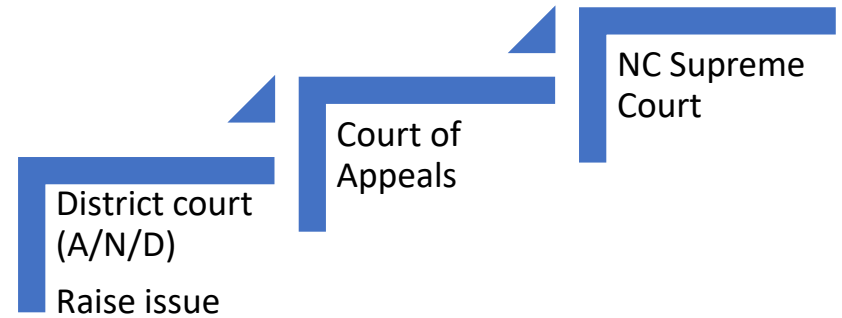
Court Action

FEDERAL



- Interpret Constitution

STATE



Bring an affirmative action

Example of State Constitutional Challenge

```
RIL020FM          RESPONSIBLE INDIVIDUAL LIST          DATE: 09/26/2011
                   RIL INQUIRY                          09:33:53
RIL FORM: 000015
RESPONSIBLE INDIVIDUAL
  LAST NAME      FIRST NAME      MI      DOB      AGE      RACE      SEX      SSN
  PERPETRATOR    SECOND
INVESTIGATIVE ASSESSMENT FINDINGS
  CTY      CYA FORM      INITIAL REPORT      CASE DECISION      RIL IND      NOTICE DEL
  062      N15654          06012011            06302011            10            07012011

JUDICIAL REVIEW (AOC-J-131) HEARING
DATE J131 FILED      JUD REV DATE      DIR DETERM      JR DETERM      JR SIGNED

JUVENILE PETITION (AOC-J-130)
DATE J130 FILED      DATE ADJUDICATION      ADJ FIND      RIL FIND      JP SIGNED

ORIGINAL RIL INDICATOR STATUS DSS-5104
RIL CODE      DATE RIL PLACEMENT      DATE CRIM CONVICTION
  10            07202011

PF3 = PREV SCREEN      PF9 = CONFIRM          PF10 = CANCEL
RIL2003: DISPLAYED. ENTER NEW RIL OR PF3 EXIT

03/13
```

In re W.B.M., 202 N.C. App. 606 (2010)

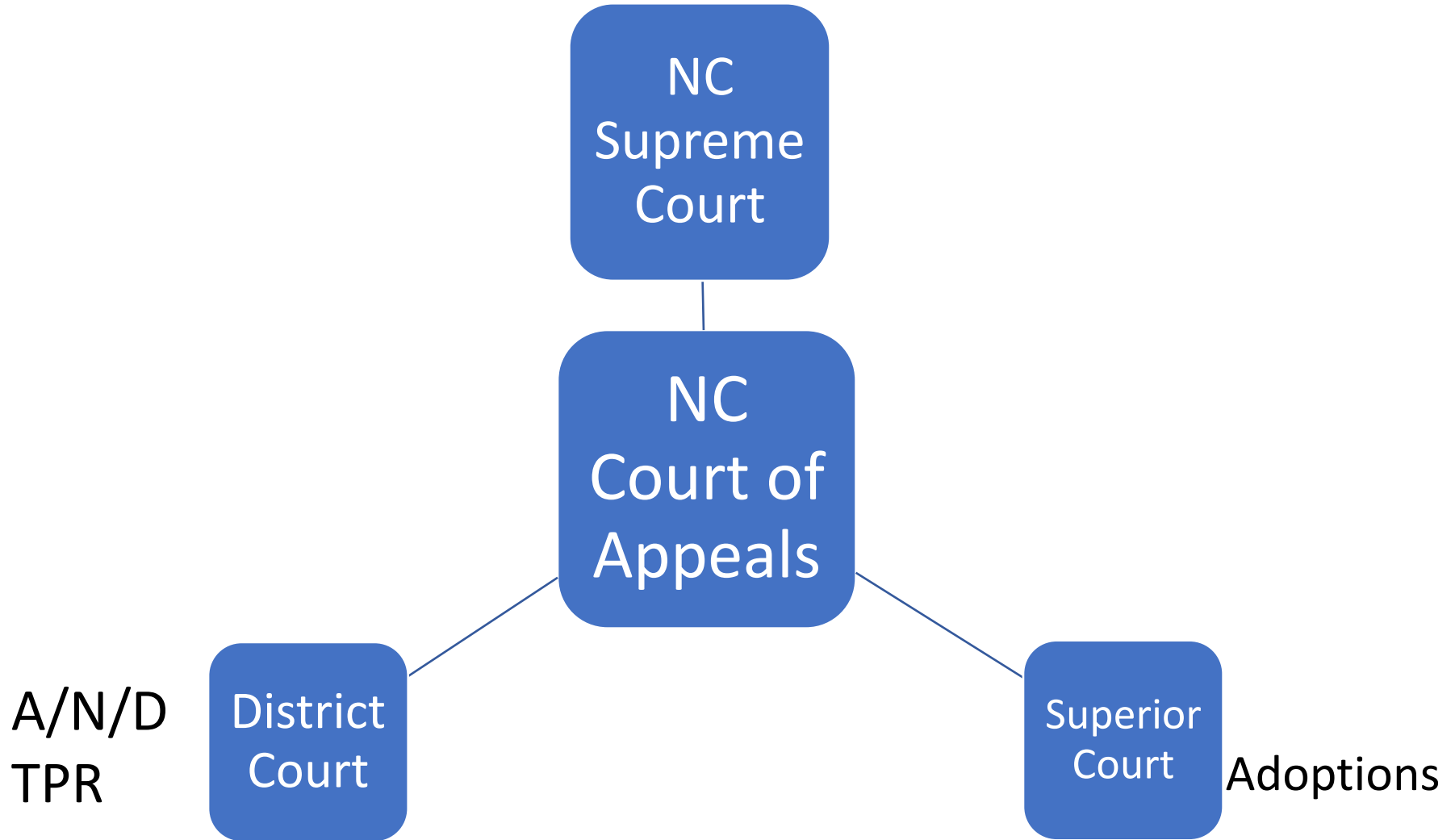
Challenge to Statute

- Director places on RIL and then sends letter
- Recipient seeks expungement
 - Director review
 - D.A. Review
 - Court Review

Result

- Court Holds
 - Deprives liberty interest
 - Due Process denied; need pre-deprivation hearing
- Legislative Response
 - May/may not happen
 - Statute amended

NC Court System

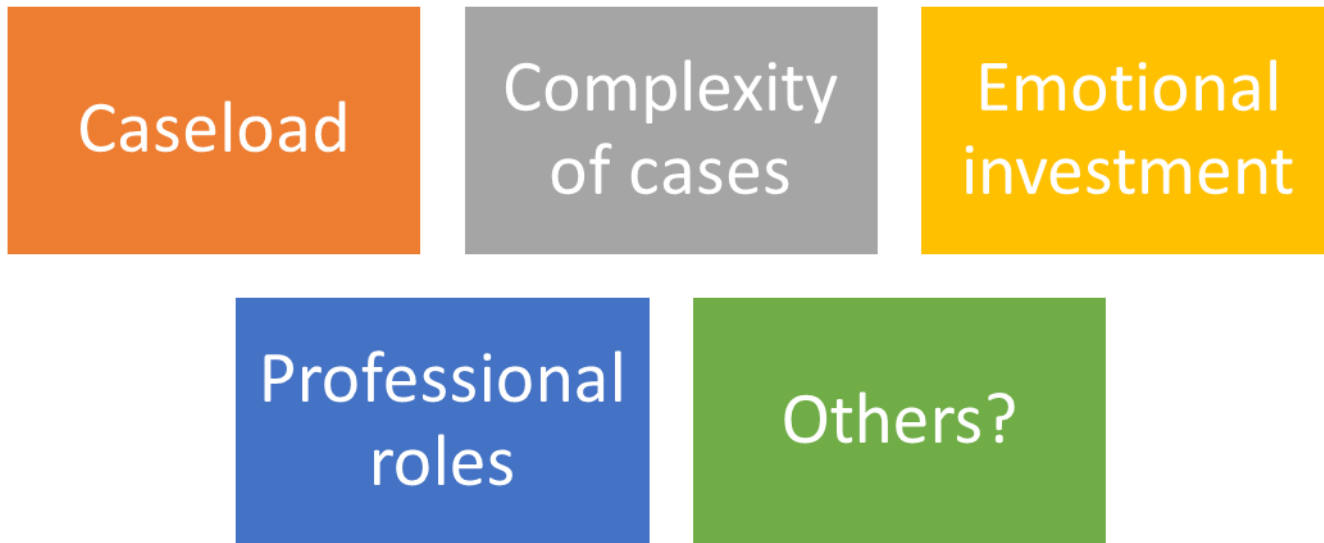


Case Law

- Federal or State Court
- Precedent
 - written opinion
 - directly affects the interests of the parties, but may have larger impact requiring behavior to change or law to change

Considerations for DSS

- Who Is Representing Agency on Appeal?
- Challenges for the Attorneys

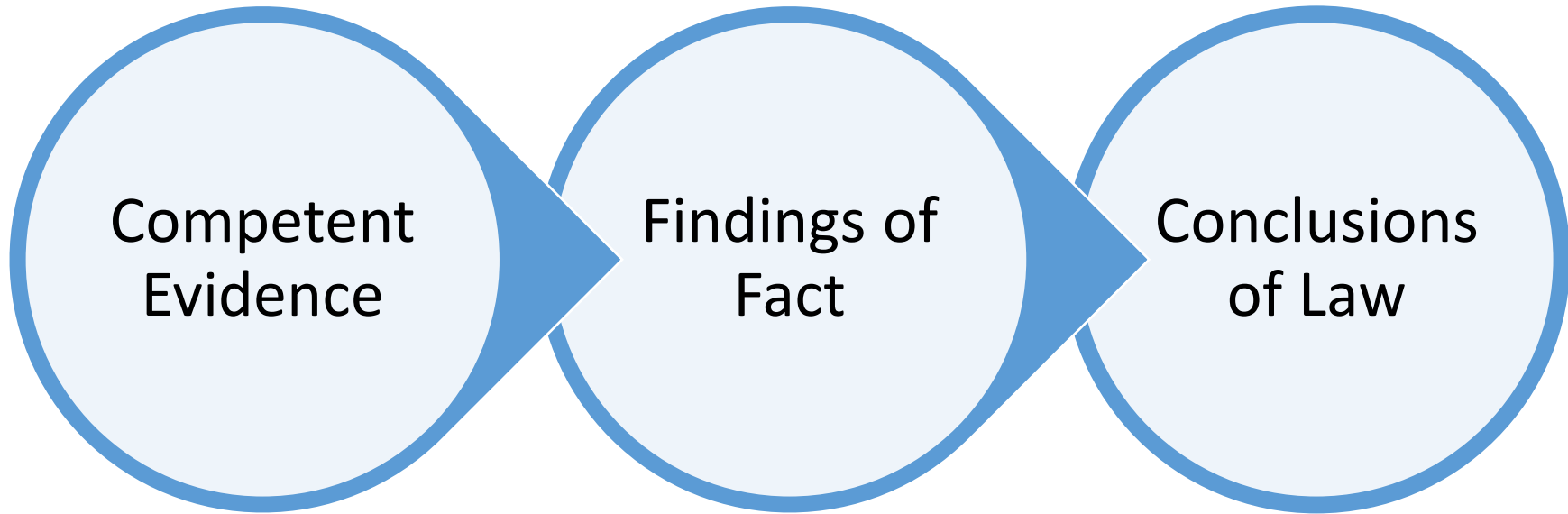


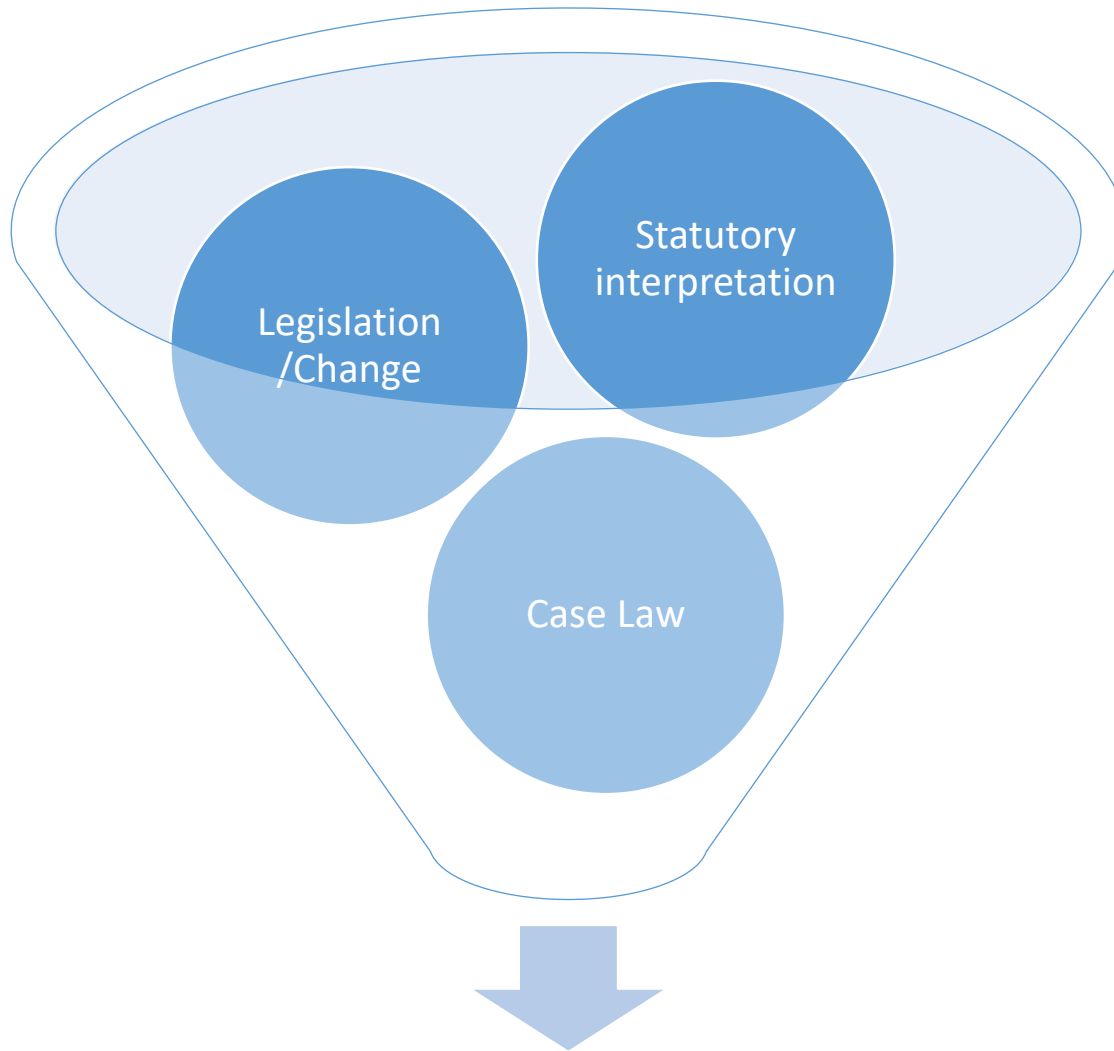
Jurisdiction

Proper
Pleading

Interstate
(UCCJEA)

Insufficient Orders





Stay current on law

Administrative

DHHS

G.S. 108A-74

Title VI Civil Rights Act

- Race
- Color
- National Origin
 - Language Access



Applies to Services



Civil Rights

Nondiscrimination Statements and Multilingual Language Notices

Nondiscrimination Statements	NC DHHS Multilingual Language Notice
English	English
የማዳላት ተግባርን ለለመፋጸም የወጣ መግለጫ - Amharic	ባለብዙ ቋንቋ መስጠት - Amharic
تصريح عدم التمييز - Arabic	متعدد اللغات إشعار وشعار - Arabic
非歧视声明 - Chinese Simplified	多语言通知和标语 - Chinese Simplified
非歧视聲明 - Chinese Traditional	多語言通知 - Chinese Traditional
Deklarasyon Kont Diskriminasyon - Creole	
Izjava o nediskriminaciji - Croatian	višejezična obavijest - Croatian
مذائق (بیانیہ) عدم تبعیض - Farsi	Farsi
Déclaration de non-discrimination de l'USDA - French	avis multilingue et slogan - French

MEPA-IEP Multiethnic Placement Act/Interethnic Adoption

1. Cannot deny/delay child's placement
 - BIC of specific needs of individual child
2. Cannot deny prospective foster/adoptive parent
1. Diligent efforts to recruit foster/adoptive parents



Disability

- ADA

Requesting a Reasonable
ACCOMMODATION



ADA - 504

- Applies to
 - Parents
 - Children
 - Foster Parents
 - Pre-adoptive Parents



U.S. Office of Civil Rights

- Complaint Process

Be Aware: Federal and State Laws



https://upload.wikimedia.org/wikipedia/commons/4/4b/Map_of_USA_NC.svg

Now,

- Understand
 - Purpose of the Juvenile Code
 - The Legal Process
 - How It All Fits Together
- Identify the Danger Zone

