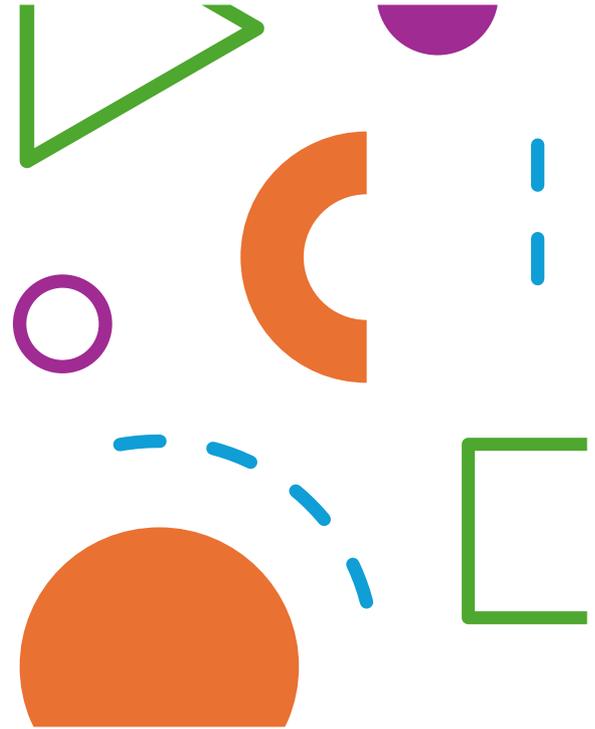


# Recent Developments in Adult Protective Services

Meredith Smith  
UNC School of Government  
DSS Attorney Winter Conference  
February 2026



1

## Three Developments

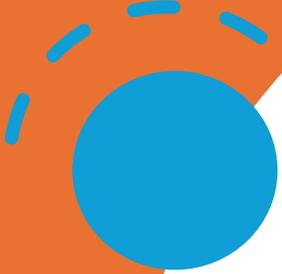
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Policy:  
Reducing Delays  
in Protection

Legislation:  
Session Law  
2025-27

Rule:  
Evidence and  
Enterprise Justice

2



# Issue #1. Policy: Reducing Delays in Protection

3

## Statewide Goal (2025/2026)

North Carolina Department of Health  
and Human Services

Division of Social Services

Adult Services

**Goal:** Ensure timely protection of disabled adults in **substantiated** adult protective services cases.

### NC DHHS Adult Services: Statewide Goal FY25/26

*Timely Mobilization of Protection for Substantiated Adult Protective Services (APS)*

#### STATEWIDE GOAL

One of the Division of Social Services, Adult Services priorities for state fiscal year 2025 to collaborate with county Departments of Social Services (DSS) to ensure the timely protection of disabled adults in substantiated Adult Protective Services (APS) cases.

To achieve this, the Division of Social Services, Adult Services is reviewing cases that demonstrate timely protection by requesting updates from county Departments of Social Services through monthly APS timeliness survey to assess delays in protection. All substantiated evaluations must receive timely protection, with service authorization efforts initiated the same day the case decision is made.

**While some cases require immediate service authorization and protection, in all cases service authorization must be secured, or formally refused when the adult has capacity within 14 days of the case decision, consistent with statutory timelines established in following North Carolina General Statutes:**

- [G.S. 108A-104](#)
- [G.S. 108A-105](#)
- [G.S. 108A-106](#)

**“Service authorization” means obtaining the adult’s consent or a court order authorizing protective or emergency services on behalf of an adult who lacks the capacity to consent.**

4

## Adult Services in North Carolina

	<p><b>Limited federal role</b></p> <ul style="list-style-type: none"> <li>• Some funding (Social Services Block Grant)</li> <li>• Policy direction given via strings attached to funding</li> </ul>
	<p><b>State-supervised system</b></p> <ul style="list-style-type: none"> <li>• Significant direction via statute, regulation, and policy</li> <li>• DHHS Division of Social Services, Adult Services</li> </ul>
	<p><b>County-administered system</b></p> <ul style="list-style-type: none"> <li>• Significant funding</li> <li>• Primary responsibility for administering</li> </ul>

5

## The Measurement

---

In all substantiated APS cases:

1. (*Efforts initiated*) Service authorization efforts should be initiated on **the same day** the case decision is made
2. (*Authorization deadline*) Service authorization must be obtained (or refused, if the adult has capacity) **within 14 days of a case decision.**

**→ 14 days is the outer limit to obtain service authorization**

6

# Why this goal?

---

1

Prevent delay in services while waiting for authorizations that are not timely (i.e. guardianship order)

2

Manage risk (e.g. providing services in the absence of authorization to do so)

3

Create consistency in response across counties

7

## 2024-2025 Fiscal Year

APS Petitions  
Filed in NC:  
337

8

## Variation in Filing G.S Chapter 108A APS Proceedings (FY 24/25)

---

Counties vary widely in APS court filings.

- Only 50 counties filed any petition
- Eight counties filed 60% of all APS petitions
- Two of the largest counties in NC filed no APS petitions

GUILFORD	92	HAYWOOD	3
PITT	30	MCDOWELL	3
NASH	24	ROCKINGHAM	3
PERSON	16	SCOTLAND	3
GRAVEN	11	TYRRELL	3
ROBESON	11	VANCE	3
WILSON	11	CHATHAM	2
DAVIDSON	10	CUMBERLAND	2
HARNETT	9	LINCOLN	2
CHOWAN	7	MARTIN	2
DAVIE	7	NORTHAMPTON	2
EDGECOMBE	7	ALLEGHANY	1
PASQUOTANK	7	AVERY	1
YANCEY	7	BERTIE	1
ALAMANCE	6	BUNCOMBE	1
CALDWELL	6	CAMDEN	1
FRANKLIN	6	COLUMBUS	1
BLADEN	5	CURRITUCK	1
BRUNSWICK	5	FORSYTH	1
CATAWBA	5	GRANVILLE	1
CLEVELAND	5	HYDE	1
WAYNE	5	LEE	1
		MONTGOMERY	1
		ONSLOW	1
		ROWAN	1
		SURRY	1
		TRANSYLVANIA	1
		WARREN	1

9

## The Measurement

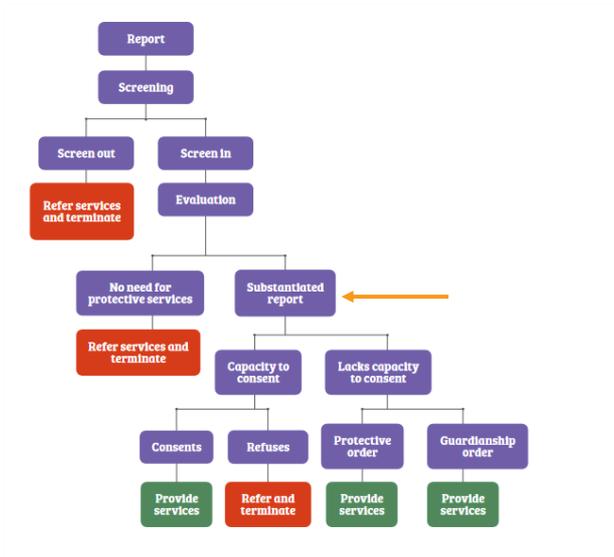
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In all substantiated APS cases:

1. (*Efforts initiated*) Service authorization efforts should be initiated on the same day the **case decision** is made
2. (*Authorization deadline*) Service authorization must be obtained (or refused, if the adult has capacity) within 14 days of a **case decision**.

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## APS Case Decision



### Substantiation of the Report

The adult is determined to be:

1. A disabled adult as defined in G.S. 108A-101(d);
2. Abused, neglected or exploited as defined in G.S. 108A-101(a), (j), or (m); and
3. In need of protective services as defined in G.S. 108A-101(e).

10A NCAC 71A .0209.

11

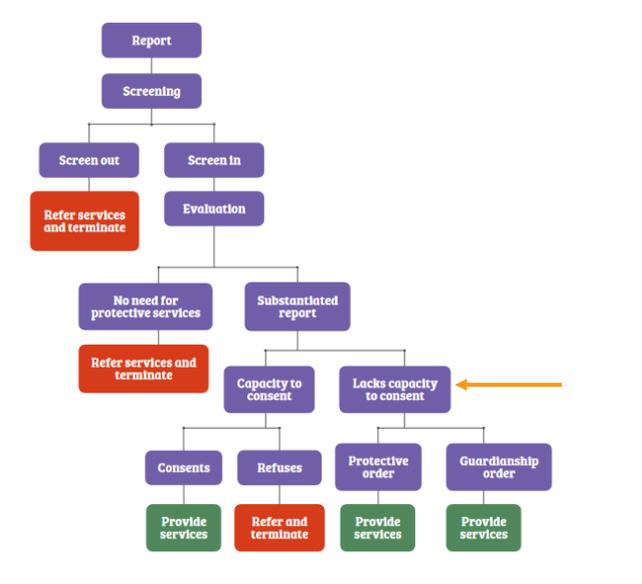
## The Measurement

In all substantiated APS cases:

1. (*Efforts initiated*) **Service authorization** efforts should be initiated on the same day the case decision is made
2. (*Authorization deadline*) **Service authorization** must be obtained (or refused, if the adult has capacity) within 14 days of a case decision.

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## Service Authorization



Service authorization means obtaining:

- If the adult has capacity to consent, the adult's consent (or refusal)
- If the adult lacks capacity to consent, a court order authorizing protective or emergency services

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## Service Authorization: Consent

- Primarily accomplished without attorney intervention
  - Written or witnessed verbal consent; documented via written consent (DSS-5027)
  - Refusal of services; documented refusal and refer to services
- **Exception for attorney involvement** – G.S. 108A-104(b), Petition to enjoin caretaker interference
  - Disabled adult consents
  - Caretaker refuses to allow the provision of services
  - Director may petition district court for an order to enjoin interference
    - AOC-CV-780 (Petition)
    - AOC-CV-782 (Order)

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**SUMMARY**

<b>Capacity Status</b>	<b>Authority</b>	<b>Timeliness Requirement</b>	<b>Protective Action</b>
Has capacity and consents	<a href="#">G.S. 108A-104(a)</a> <a href="#">10A NCAC 71A .0302</a>	Immediately upon consent	Provide or arrange services; document consent
Has capacity and refuses	<a href="#">G.S. 108A-104(c)</a> <a href="#">10A NCAC 71A .0302</a>	Immediate documentation	Respect refusal; document and close case
Has capacity and caretaker interferes	<a href="#">G.S. 108A-104(b)</a>	File petition without delay	Order to Enjoin Interference (AOC-CV-782)

→ 14 days is the outer limit to obtain service authorization

15

## Service Authorization: Lacks Capacity to Consent + Court Order

If the adult lacks capacity to consent, service authorization is a court order authorizing protective or emergency services.

- **APS Order**
  - Protective services order
  - Emergency services order
  - Ex parte emergency services order
- **Guardianship Order**
  - Interim guardianship
  - Guardianship
  - Removal of the guardian; appointment of new guardian

16

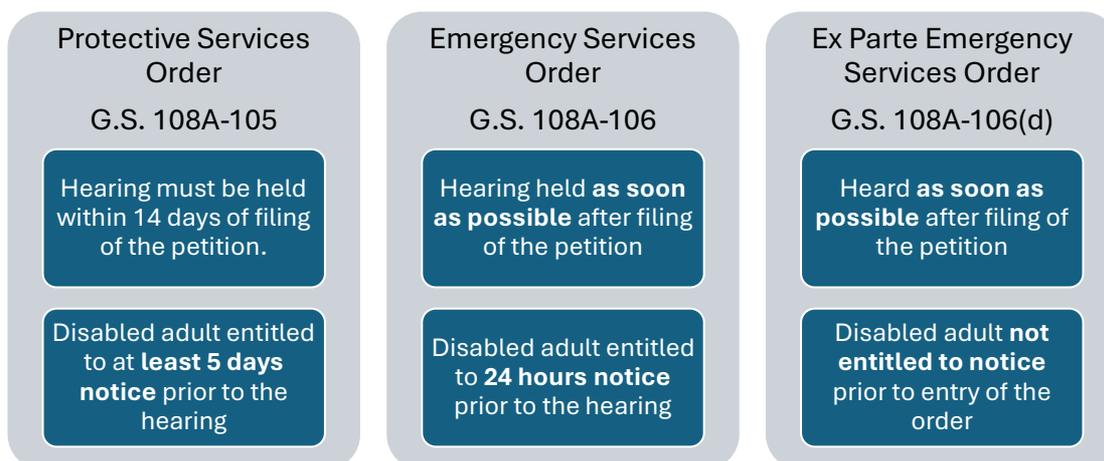
# Measurement: Court Order

Key Points from the Policy Goal with respect to service authorization by court order:

1. Upon substantiation and determination of lack of capacity, service authorization must be obtained without delay and *prior to providing services*.
2. “DSS should be prepared to file the necessary petition **on the same day the case decision is made**, based on information gathered during the evaluation.”
3. In any case where a court order is necessary for service authorization, it should be obtained within 14 days of the case decision.

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## APS Proceeding Timelines



18

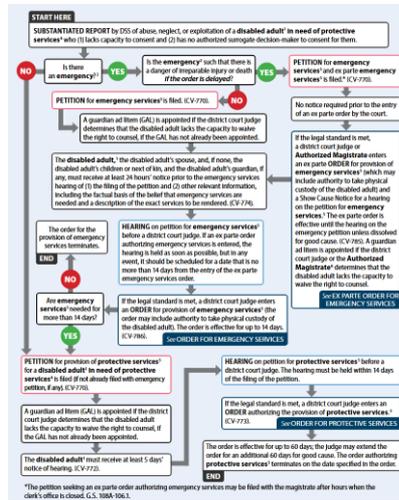
# In Your Materials

**Meredith S. Smith**  
NOVEMBER 2025

## Obtaining a Court Order for the Provision of Protective and Emergency Services for a Disabled Adult

It is the duty of the director of a county department of social services (DSS) in North Carolina to receive and evaluate reports of abuse, neglect, and exploitation of disabled adults and to take appropriate action as required by law. G.S. 108A-140(a)(4). Upon receipt of a report, DSS will conduct an initial review of the report (commonly referred to as "screening the report") to determine whether the person who is the subject of the report is (1) a disabled adult, (2) in need of protective services, and (3) subject to abuse, neglect, or exploitation. See G.S. 108A-103(a). If the report is screened in because it meets these criteria, DSS is required to make a prompt and thorough evaluation to further determine whether the disabled adult is in need of protective services and what services are needed. If DSS substantiates the report and the need for protective services, then DSS will immediately provide or arrange for the provision of protective services, provided that the disabled adult consents. G.S. 108A-106(a). If the adult lacks the capacity to consent to protective services, DSS may seek a court order authorizing the provision of protective services. G.S. 108A-105(a). If the court enters a protective services order, the order may authorize the provision of protective services for up to sixty days. The order may be extended by the court for an additional sixty days for good cause. G.S. 108A-105(c).

If there is reasonable cause to believe that (a) the disabled adult in need of protective services lacks capacity to consent to services, (b) an emergency exists, and (c) there is no other person authorized by law or order to give consent who is available and willing to arrange for emergency services, then DSS may pursue an order for emergency services either in conjunction with or in lieu of an order for protective services. G.S. 108A-106(a). If the court enters an emergency services order, the order may authorize the provision of emergency services for up to and including fourteen days. G.S. 108A-106(b). The order for emergency services may be obtained ex parte (meaning without notice to the disabled adult) if (1) the grounds described in (a) through (c) above exist, (2) there is a likelihood that the disabled adult may suffer irreparable injury or death if the emergency order is delayed, and (3) reasonable attempts have been made to locate interested parties and secure from them emergency services or their consent to DSS's provision of such services. G.S. 108A-106(d). This flow chart is intended to assist county DSS directors, social workers, and attorneys as well as court officials and others working in the area of adult protective services (APS) in understanding the procedures applicable to adult protective services court proceedings, including proceedings to obtain an order for protective services, an order for emergency services, and an ex parte order for emergency services.



SUMMARY			
Capacity Status	Authority	Timeliness Requirement	Protective Action
Has capacity and consents	<a href="#">G.S. 108A-104(a)</a> <a href="#">10A NCAC 71A .0302</a>	Immediately upon consent	Provide or arrange services; document consent
Has capacity and refuses	<a href="#">G.S. 108A-104(c)</a> <a href="#">10A NCAC 71A .0302</a>	Immediate documentation	Respect refusal; document and close case
Has capacity and caretaker interferes	<a href="#">G.S. 108A-104(b)</a>	File petition without delay	Order to Enjoin Interference (AOC-CV-782)
Lacks capacity (nonemergency)	<a href="#">G.S. 108A-105</a> <a href="#">10A NCAC 71A .0903</a>	File petition without delay, hearing within 14 days of petition	Order Authorizing Protective Services (AOC-CV-770)
Lacks capacity (emergency)	<a href="#">G.S. 108A-106</a> <a href="#">10A NCAC 71A .0904</a>	Immediate filing; court may issue immediate order ex parte	Emergency Order (AOC-CV-770) up to 14 days; may subsequently obtain an Order Authorizing Protective Services

# Guardianship Considerations

Timing

Less restrictive alternatives

21

Guardianship:  
Timing More  
Challenging

**Guardianship:** hearing not less than 10, no more than 30 days from personal service (by sheriff) on the respondent

**Interim guardianship:** as soon as possible after service on the respondent (if IG by separate motion, incompetency petition must first be served on the respondent)

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# Guardianship is a Last Resort

For adults, guardianship should always be a last resort and should **only be imposed** after less restrictive alternatives have been **considered** and found to be **insufficient** to meet the adult's needs.

Session Law 2023-124,  
enacting G.S. 35A-1201(a)(7).

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## Guardianship: Less Restrictive Alternatives



### Petitioner

Must include statement in petition identifying what alternatives considered and why they are insufficient



### GAL

Representation of the respondent in a way that advocates for less restrictive alternatives and allows for adjudication only when alternatives found to be insufficient



### Court

Legal definition of incompetency requires consideration of alternatives

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(Some)  
Types of  
Less  
Restrictive  
Alternatives

Adult Protective Services  
Orders

Powers of Attorney

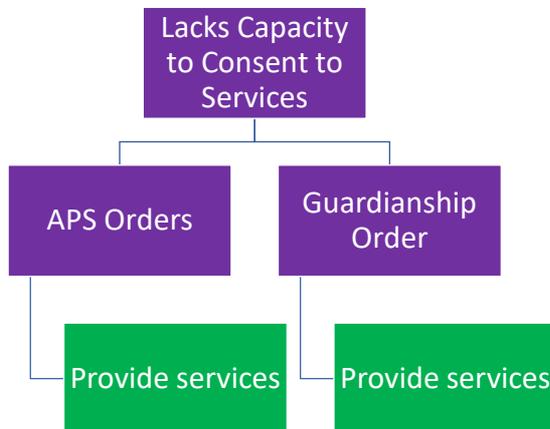
Supported Decision Making

Informal Supports

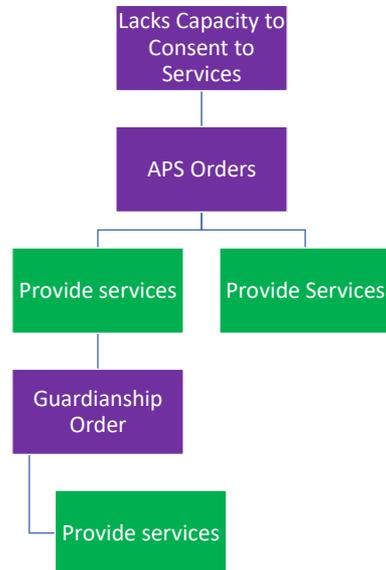
25

**Consideration of Less Restrictive Alternatives: What is Required?**

**From This:**



**To This?**



26

# Statewide Goal: Reporting Mechanism

- Counties reporting monthly via APS timeliness survey
- Division of Social Services, Adult Services through the continuous quality improvement specialists (CQIS) review cases that do not demonstrate timely protection
- Opportunity in the survey to explain why there was a delay

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## Practice Considerations for DSS Attorneys

- Examine your process (internal) – attorney/client workflows
  - Don't batch cases
  - Give legal a head's up
- Examine your process (external) – attorney/court practices
  - Clerk aware of administrative/filing requirements
  - Judges (and magistrates) aware of their practices/role



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**Issue #1.  
Policy: Reducing Delays in  
Protection**

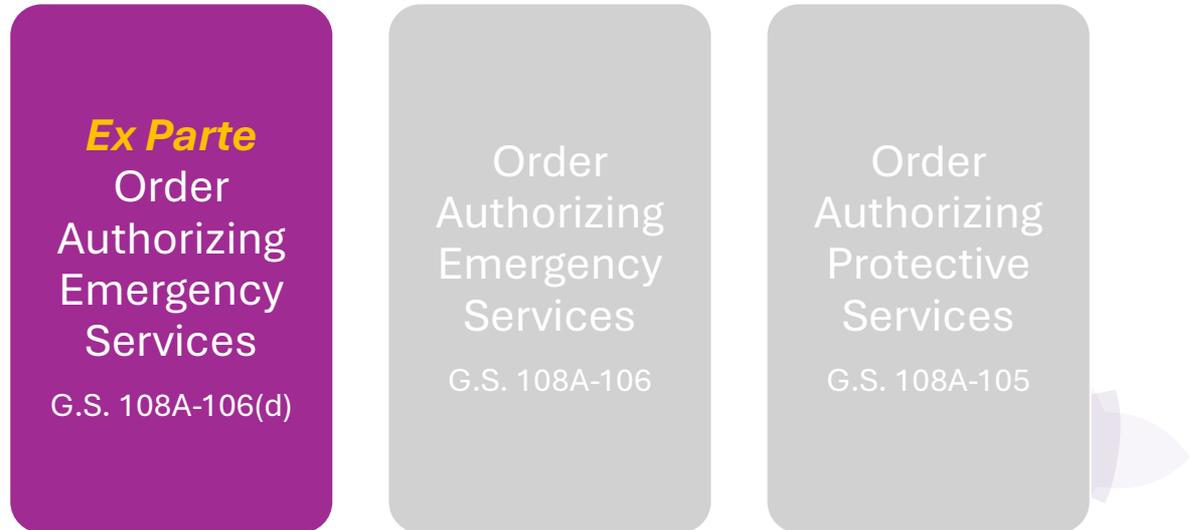
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**Issue #2.  
Legislation:  
Session Law 2025-27**

30

## G.S. Chapter 108A, Article 6: Types of APS Orders



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### S.L. 2025-27: Three Changes to APS Law

#1: DSS may file an emergency APS petition after hours that seeks ex parte relief

#2: "Authorized Magistrates" may hear ex parte petitions for emergency services and enter ex parte orders

#3: District court judges and Authorized Magistrates to may authorize ex parte emergency services orders telephonically

**Effective November 1, 2025**

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## #1: New G.S. 108A-106.1 – Filing When Clerk’s Office is Closed

---

- (a) **When the office of the clerk is closed, a magistrate shall accept for filing a petition for an order authorizing the provision of emergency services** to a disabled adult and shall note the date of the filing.
- (b) The authority of the magistrate under this section is limited to **emergency situations in which a petition is filed under G.S. 108A-106 seeking an order ex parte** for the provision of emergency services to a disabled adult. Any magistrate who accepts a petition for filing under this section shall deliver the petition to the clerk's office for processing as soon as that office is open for business.

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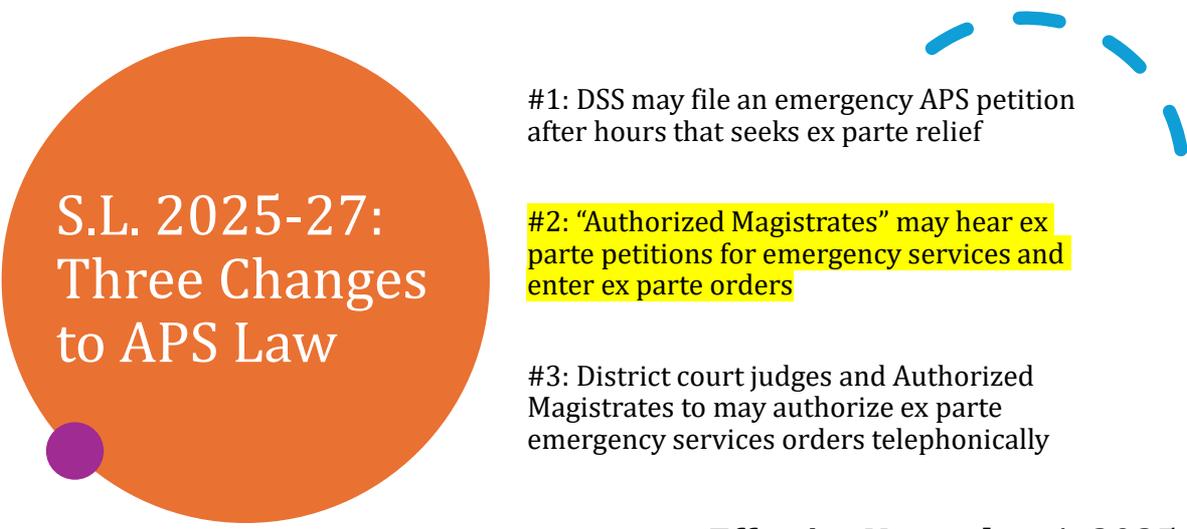
### After-Hours Filings

#### Key issues to consider:

- 1. If file petition online using file and serve**, notify magistrate that it was filed and so they can pull the petition from the queue to be heard after hours.
- 2. Does the county have a process in place to contact a district court judge to hear** the ex parte motion and enter the order after hours or when the district court is not in session (if a magistrate is not authorized to hear the proceeding)?
- 3. Appointment of a GAL attorney** in the ex parte order – is there clarity around who to appoint; what list, if any, to use?

5. The Court appoints (name) \_\_\_\_\_, Attorney at Law as guardian ad litem for the respondent in this action.

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## S.L. 2025-27: Three Changes to APS Law

#1: DSS may file an emergency APS petition after hours that seeks ex parte relief

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#3: District court judges and Authorized Magistrates to may authorize ex parte emergency services orders telephonically

**Effective November 1, 2025**

35

## #2: New G.S. 108A-106.2 – Ex Parte Emergency Orders by Authorized Magistrates

---

- (a) The **chief district court judge may authorize one or more magistrates** to hear **ex parte motions** for the provision of emergency services to disabled adults and **issue a show-cause notice in the order** as required by G.S. 108A-106(d). A magistrate may proceed with hearing a motion ex parte and issuing a show-cause notice under this subsection only if, prior to the hearing, the magistrate determines that at the time the party is seeking emergency services ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion.

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## #2: New G.S. 108A-106.2 – Ex Parte Emergency Orders by Authorized Magistrates

---

- (a) The chief district court judge may authorize one or more magistrates to hear ex parte motions for the provision of emergency services to disabled adults and issue a show-cause notice in the order as required by G.S. 108A-106(d). **A magistrate may proceed** with hearing a motion ex parte and issuing a show-cause notice under this subsection **only if, prior to the hearing, the magistrate determines that at the time the party is seeking emergency services ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion.**

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## “Authorized Magistrate” to Enter Ex Parte Orders

---

1. Chief district court judge authorized the magistrate to hear the petition and enter the ex parte order,
2. District court is not in session, and
3. A district court judge is not and will not be available to hear the motion.

G.S. 108A-106.2(a).

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## DSS Attorney Considerations

### **Inquire: Did the chief district court judge in your district authorize magistrates?**

- Written authorization – administrative order?
- Did the authorization identify which magistrates are authorized?
- Did the authorization define conditions for when a judge “is not and will not be available to hear the ex parte motion”?

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## S.L. 2025-27: Three Changes to APS Law

#1: DSS may file an emergency APS petition after hours that seeks ex parte relief

#2: “Authorized Magistrates” may hear ex parte petitions for emergency services and enter ex parte orders

#3: District court judges and Authorized Magistrates to may authorize ex parte emergency services orders telephonically

**Effective November 1, 2025**

40

## New G.S. 108A-106.2(c) - Telephonic authorizations

All authorizations for ex parte orders for emergency services may be made by telephone when other means of communication are impractical.



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## New G.S. 108A-106.2(c) - Telephonic authorizations

**Copy of the Petition.** A copy of the petition for an order authorizing the provision of emergency services shall be provided to the **district court judge or the authorized magistrate** by any appropriate method, including hand delivery, facsimile, or electronic means.

**Ex Parte Order.** Any order entered pursuant to telephonic communication must bear:

- the name and the title of the DSS director,
- the name and the title of the district court judge or Authorized Magistrate issuing the ex parte order,
- the hour and date of the telephonic authorization, and
- the signature and the title of the clerk or magistrate receiving the authorization and entering the order and who accepted the petition for filing.



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# In Your Materials

UNC SCHOOL OF GOVERNMENT

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## Legislative Changes to Ex Parte Proceedings for the Provision of Emergency Services to Disabled Adults

This entry was contributed by Meredith Smith on September 30, 2025 at 12:20 pm and is filed under Adult Protective Services.

On November 1, 2025, legislative changes to North Carolina adult protective services (APS) law take effect pursuant to [Session Law 2025-27, Part V](#). There are three primary changes reflected in two new statutes, G.S. 108A-106.1 and -106.2.

1. Magistrates are authorized to accept for filing petitions for the provision of emergency services to disabled adults when the clerk's office is closed and the petitioner requests the court enter an ex parte emergency services order. S. 108A-106.1.
2. Certain "Authorized Magistrates" (defined below) may hear petitions for the provision of emergency services to disabled adults and enter ex parte emergency services orders. G.S. 108A-106.2(a), (b).
3. District court judges and Authorized Magistrates may authorize ex parte emergency services

Adult Protective Services Proceedings under G.S. Chapter 108A, Article 6 and 6A  
N.C. Administrative Office of the Courts  
Statewide Judicial Forms

Title	Number	Rev.
<b>Protective Services Order Forms</b>		
Petition For Order Authorizing Protective Services/Emergency Services/Ex Parte Emergency Services And Appointment Of Guardian Ad Litem	<a href="#">AOC-CV-770</a>	11/25
Certificate Of Service (Adult Protective Services)	<a href="#">AOC-CV-771</a>	6/21
Notice Of Hearing In Adult Protective Services Proceedings	<a href="#">AOC-CV-772</a>	11/25
Notice Of Hearing In Emergency Protective Services Proceedings	<a href="#">AOC-CV-774</a>	11/25
Order Authorizing Protective Services	<a href="#">AOC-CV-773</a>	11/25
Order On Request For Ex Parte Order Authorizing Emergency Services	<a href="#">AOC-CV-785*</a>	11/25
Order On Petition For Emergency Services	<a href="#">AOC-CV-786*</a>	11/25
<b>Freeze and Inspect Financial Records Forms</b>		
Petition For Order To Inspect Financial Records And To Freeze Assets	<a href="#">AOC-CV-776</a>	7/24
Order To Authorize Inspection Of Financial Records And To Freeze Assets	<a href="#">AOC-CV-777</a>	2/12
Notice Of Order To Authorize Inspection Of Financial Records And To Freeze Assets	<a href="#">AOC-CV-778</a>	2/12
Certification To Financial Institution As Required By G.S. 53B-5	<a href="#">AOC-CV-779</a>	2/12
<b>Subpoena Financial Records Forms</b>		
Petition And Order For Issuance Of Subpoena Directing Release Of Financial Records	<a href="#">AOC-CV-630</a>	7/24
<b>Caretaker Interference Forms</b>		
Petition To Enjoin Interference With Protective Services	<a href="#">AOC-CV-780</a>	7/24
Notice Of Hearing To Enjoin Interference With Protective Services (Consenting Disabled Adult)	<a href="#">AOC-CV-781</a>	2/12
Order To Enjoin Interference With Protective Services (Consenting Disabled Adult)	<a href="#">AOC-CV-782</a>	2/12

\* Replaced AOC-CV-775.

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## eCourts Live Across all 100 Counties - October 13, 2026



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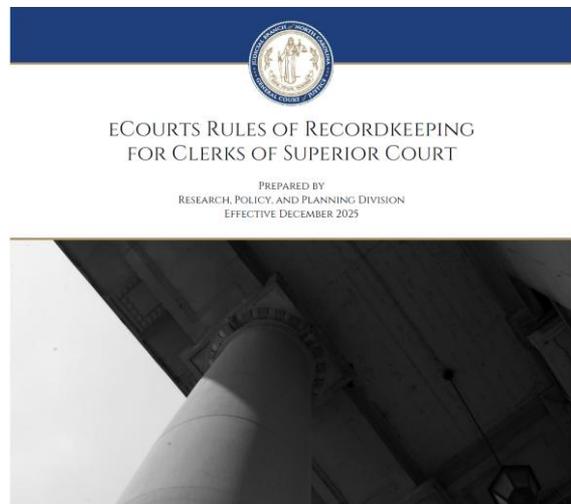
## Terminology

- eCourts – several software applications that work together
- Integrated Case Management System (ICMS) - Enterprise Justice (formerly Odyssey) – electronic filing and case management system
- Other Applications
  - File and Serve –public electronic filing system
  - Portal – public access to filed court records

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## Rules of Recordkeeping

- The eCourts Rules of Recordkeeping (eRRK) govern recordkeeping in the integrated case management system (ICMS).
- When a county implements ICMS, the eRRK replaces the Rules of Recordkeeping (RRK) for that county and governs all recordkeeping activities from that point forward.
- As of October 13, 2026, eRRK have fully replaced the RRK.



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## eRRK, Juvenile

### Rule 12.2: Access to Cases

Pursuant to G.S. 7B-2901(a), abuse, neglect, and dependency cases are confidential and **not open to public inspection**. The record includes the summons, petition, any custody order, court order, written motion, electronic or mechanical recording of the hearing, and other papers filed in the proceeding.

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## eRRK, Adult Protective Services

### Rule 3.1(14)

Petitions for protective services filed under G.S. 108A-105 shall be filed as district court civil actions with filing fees to be paid.

- **NOTE:** Petitions to obtain orders issuing subpoenas directing the release of financial information on older or disabled adults are filed as SPCs (see Rule 8.1).

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## eRRK, Rule 1.7: Evidence

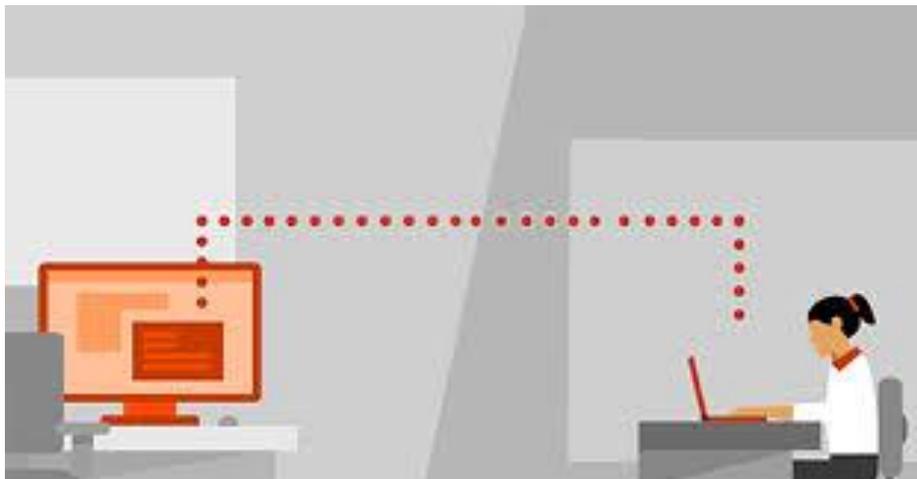
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Evidence should be maintained according to Rule 14 of the General Rules of Practice for the Superior and District Courts and **shall not be scanned into the ICMS.**



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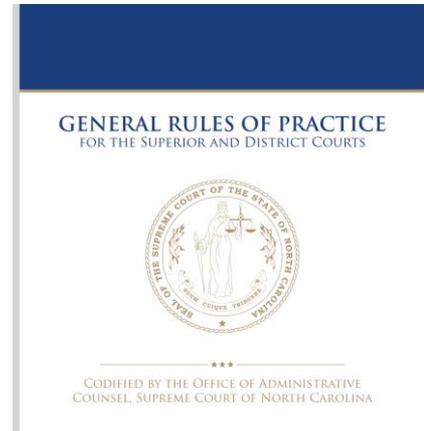
## Electronic Filings available via Portal



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# Rule 14 of the General Rules of Practice

- Clerk is the custodian of evidence
- Evidence must be removed by the offering party
  - Within 30 days after final judgment, if no appeal
  - Within 60 days after certification of final judgment from the appellate division
- If offering party fails to remove, clerk must notify the offering party; if party fails to remove after 30 days from mailing of the notice, then the clerk may dispose of it.



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## Availability: Electronic Filings vs. Evidence

Case Events	Index #
02/13/2026 Affidavit of Default, Note, Alliance, Deed of Trust, Assignment of Deed of Trust Created: 02/13/2026 3:46 PM	Index # 10
02/13/2026 Substitution of Trustee - Filed Created: 02/13/2026 3:46 PM	Index # 11
02/13/2026 Other/Miscellaneous NCHA Certificate & 45 Day Letter Created: 02/13/2026 3:46 PM	Index # 12
02/13/2026 Other/Miscellaneous 30 Day Letter Created: 02/13/2026 3:46 PM	Index # 13
02/13/2026 Affidavit of Service Created: 02/13/2026 3:46 PM	Index # 14
02/13/2026 Servicemember Civil Relief Act Filed By: Attorney INGLE, GRADY L.; Substitute Trustee INGLE LAW FIRM PA Against: Respondent LIGGINS, CASSIDY MARIE; Respondent SMITH, DEANNE D.; Respondent SMITH, JADA LENE Created: 02/13/2026 3:46 PM	Index # 15
02/13/2026 Notice Of Sale/Resale Proposed	Index # 16

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# Issue #3. Rule: Evidence and Enterprise Justice

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# Questions?

Meredith Smith  
UNC School of Government  
[meredith.smith@sog.unc.edu](mailto:meredith.smith@sog.unc.edu)

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