



UNC
SCHOOL OF GOVERNMENT

North Carolina Judicial College

Abuse, Neglect, Dependency, & Termination of Parental Rights: A Course for District Court Judges

August 7 – 11, 2023

School of Government, Chapel Hill

Room 2402

Monday, August 7 [3.75 CJE hrs]

- 11:00 a.m.** **Check-In Begins**
- 11:30 a.m.** **Lunchtime Welcome and Course Objectives (*Box Lunch Provided*)**
- 12:30 p.m.** **An Overview of Abuse, Neglect, or Dependency Cases** [.5 CJE]
Sara DePasquale, School of Government
(unless indicated otherwise, teaching all sessions)
- 1:00 p.m.** **Break**
- 1:10 p.m.** **Overview (continued)** [1.25 CJE]
- 2:25 p.m.** **Break**
- 2:35 p.m.** **The Structure of the NC Child Welfare System** [1.0 CJE]
Gail Carelli, Assistant General Counsel for Child Welfare & County Operations, NC DHHS
- 3:35 p.m.** **Break**
- 3:45 p.m.** **The Role of the GAL** [1.0 CJE]
Reginald O'Rourke, II, Association Counsel, North Carolina Guardian Ad Litem Program
Matthew Wunsche, GAL Associate Counsel, North Carolina Guardian ad Litem Program
- 4:45 p.m.** **Adjourn**

Tuesday, August 8 [5.5 CJE]

- 8:30 a.m.** **Questions from Yesterday**
- 8:40 a.m.** **UCCJEA** [1.5 CJE]
Cheryl Howell, School of Government
- 10:10 a.m.** **Break**
- 10:20 a.m.** **Respondent Representation** [1.0 CJE]
Wendy Sotolongo, Parent Defendant, NC Indigent Defense Services
- 11:20 a.m.** **Break**

11:30 a.m. **Pre-adjudication Issues** [1.0 CJE]
 12:30 p.m. **Lunch** (SOG Dining Room)
 1:15 p.m. **Addressing Paternity** [1.0 CJE]
 2:15 p.m. **Break**
 2:25 p.m. **Nonsecure Custody** [1.0 CJE]
 3:30 p.m. **Adjourn**

Wednesday, August 9 [5.75 CJE]

8:30 a.m. **Review “Removed”** [0.5 CJE]
 9:00 a.m. **Adjudicating Abuse, Neglect, or Dependency** [1.5 CJE]
 10:30 a.m. **Break**
 10:45 a.m. **Evidence** [1.25 CJE]
 Timothy Heinle, School of Government
 12:00 p.m. **Lunch** (SOG Dining Room)
 12:45 p.m. **Dispositional Stages: Timing and Factors** [1.0 CJE]
 1:45 p.m. **Break**
 1:55 p.m. **Dispositional Alternatives** [1.25 CJE]
 3:10 p.m. **Group Discussion** [0.25 CJE]
 3:30 p.m. **Adjourn**
 6:00 p.m. **Optional Group Dinner**
 Monterrey Mexcian Grill
 1722 Fordham Blvd., Chapel Hill, NC 27514
 ***This dinner is being funded by the North Carolina Judicial College.*

Thursday, August 10 [5.5 CJE]

8:30 a.m. **Check In from Yesterday**
 8:35 a.m. **Dispositional Case Plans** [1.5 CJE]
 10:05 a.m. **Break**
 10:15 a.m. **Visitation** [1.0 CJE]
 J. Corpening, Chief District Court Judge, District 5
 11:15 a.m. **Break**
 11:25 a.m. **Youth Involvement** [1.0 CJE]
 12:25 p.m. **Lunch** (SOG Dining Room)
 1:10 p.m. **Orders and Appeals** [0.75 CJE]

- 1:55 p.m. Responsible Individuals List Exercise (group) [0.25 CJE]**
- 2:15 p.m. Break**
- 2:25 p.m. Procedural Issues in Termination of Parental Rights (TPR) Proceedings [0.75 CJE]**
- 3:10 p.m. Discussion [0.25 CJE]**
- 3:30 p.m. Adjourn**

Friday, August 11 [5.25 CJE]

- 8:30 a.m. Check-In**
- 8:35 a.m. Adjudicating TPR Grounds [1.50 CJE]**
- 10:05 a.m. Break**
- 10:15 a.m. TPR: Relevance of Prior Orders [0.5 CJE]**
Timothy Heinle
- 10:45 a.m. TPR: Disposition and Status of Case [1.0 CJE]**
- 11:45 a.m. Lunch (SOG Dining Room)**
- 12:30 p.m. Achieving a Permanent Plan [1.25 CJE]**
- 1:45 p.m. Break**
- 1:55 p.m. Role of the Judge [1.0 CJE]**
J. Corpening, Chief District Court Judge, District 5
- 2:55 p.m. Final Thoughts & Evaluations**
- 3:00 p.m. Adjourn**

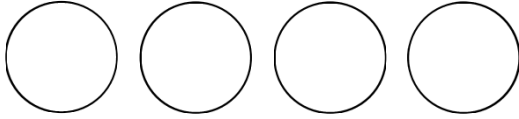
This program will have **25.75** hours of instruction for continuing judicial education credit under Rule II.C of Continuing Judicial Education.

Sponsored by
North Carolina Administrative Office of the Courts
UNC School of Government

Day 1

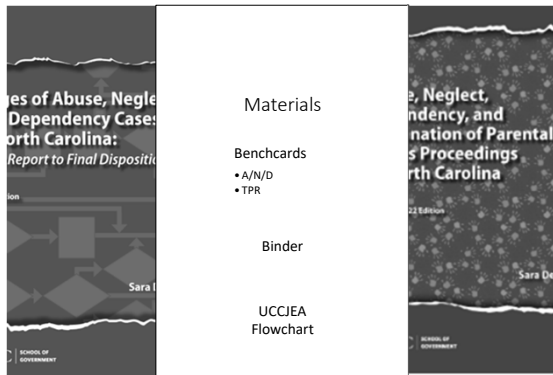
Overview of Abuse, Neglect, Dependency Cases

Abuse, Neglect, Dependency & Termination of Parental Rights
A Course for District Court Judges



By: Sara DePasquale

1



2

Goals

- Introduce the Purpose of the Juvenile Code
- Understand
 - How It All Fits Together
 - Timing Can be Controlled by You
- *Keep KIDS in Mind*



3

Purpose

Provide procedures...
ensure fairness & equity... protect constitutional rights of children and parents

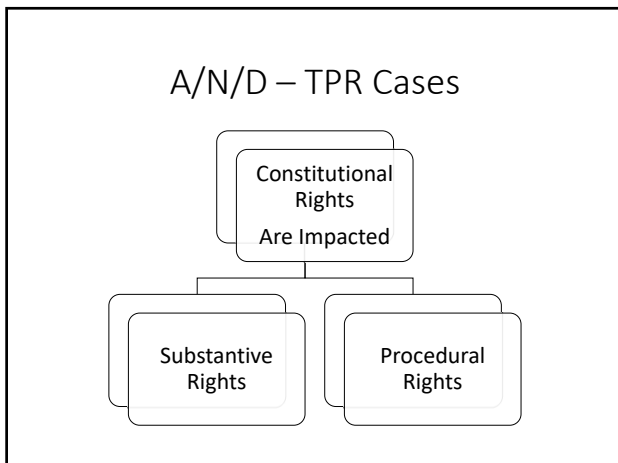
FIRST place to look
G.S. 7B

4

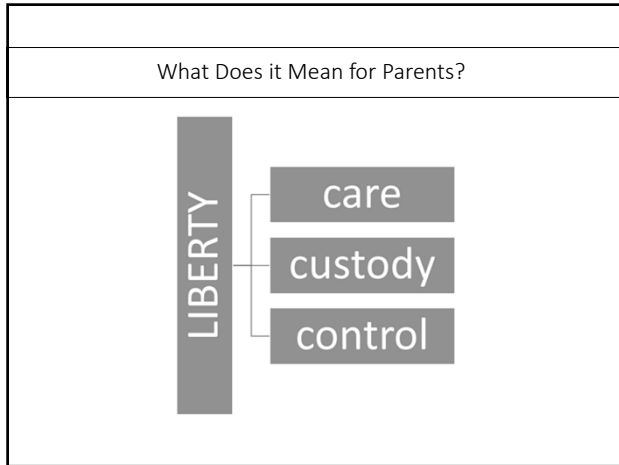
Purpose

- Develop disposition in consideration of facts, child's needs & limitations, and the strength & weaknesses of the family
- Provide services to protect children that respect family autonomy & children's needs for safety, continuity, & permanence
- Provide standards for
 - Removal & prevent unnecessary or inappropriate separation of children from their parents
 - Ensuring BIC are paramount consideration & when not returned home, child is placed in a safe permanent home w/in reasonable period of time

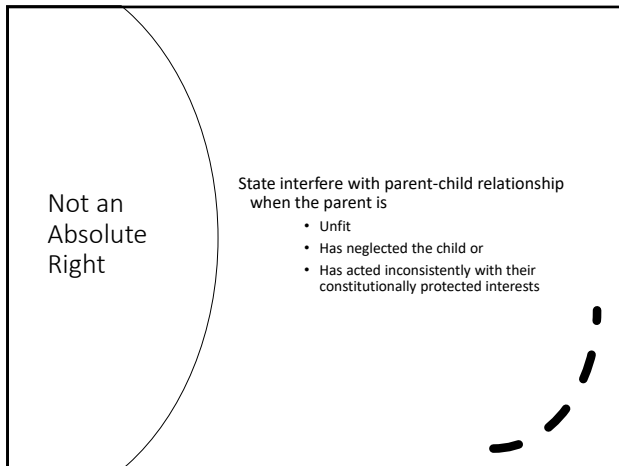
5



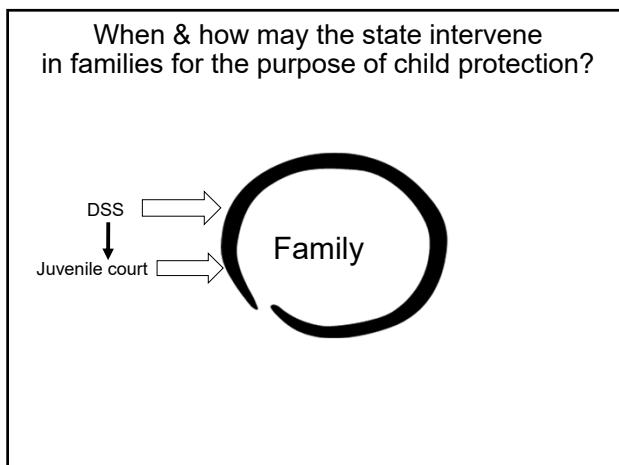
6



7




8



9

Juvenile Code Answers the Question

- **Abused juvenile**
- **Neglected juvenile**
- **Dependent juvenile**



- ***In re Stumbo***

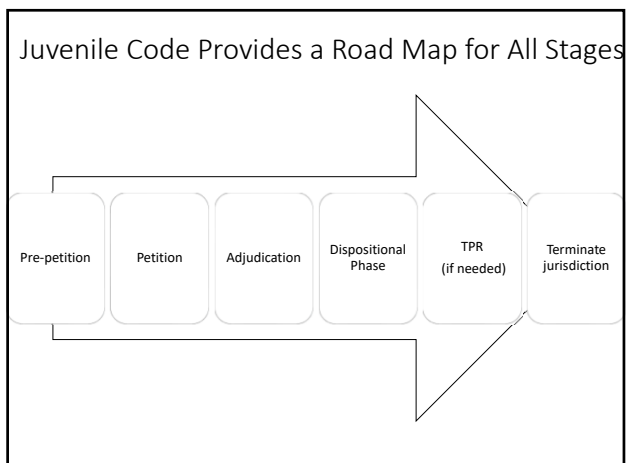
10

Remember the Who!

- **Parent**
- **Guardian**
- **Caretaker (*In re R.R.N.*)**
- **Custodian**

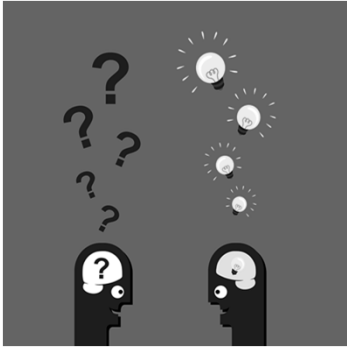
- **Exception!**
 - **Minor Victim of Human Trafficking**

11



12

Time
for Our
Road Trip



13

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

14



Are you a mandated reporter?

15

KIDS

<https://podcast.sog.unc.edu/>







16

KIDS

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



On the Civil Side
A UNC School of Government Blog

[Home](#) | [About](#) | [Contributors](#) | [Categories](#)

Search Results
Keywords: prosecutor review

A/N/D Reporting: Rights, Protections, and Prosecutor Review
This entry was contributed by Sara DePasquale on June 21, 2017 at 6:00 am and is filed under Child Welfare Law.
Like every other state, North Carolina has a mandated reporting law for child abuse and neglect. North Carolina's law requires any person or institution with cause to suspect a child is abused, neglected, or dependent by a parent, guardian, custodian, or caretaker to make a report to the county child welfare department (in most counties, DSS) where the child resides or is found. [GS 26B.301](#). What is in a report? Are there protections for the reporter? What are the rights of the reporter? If DSS decides not to initiate a court action, can the reporter challenge that decision?
[Continue Reading →](#)

Subscribe
Email *


Categories
Adoptions
Appeals
Child Welfare Law
Civil Law
Civil Practice
Civil Procedure-General
Clerks of Superior Court
Probate of Wills

17

KIDS

Search Results
Keywords: mandated report

Mandated Reporting of Child Abuse, Neglect, or Dependency: What's an Attorney To Do?
This entry was contributed by Sara DePasquale on August 7, 2015 at 5:40 am and is filed under Child Welfare Law.
You are appointed to represent a juvenile in a delinquency proceeding. The petition alleges the juvenile assaulted his neighbor. When you meet with your client, he discloses that his neighbor has been beating him for years. This time, his neighbor went after his younger sister, and your client tried to protect her. In another case, you are hired to represent a father in a child custody action. Your client tells you that he just moved out of the home, where his baby and the baby's mother live. He discloses that the mother has a drinking problem and frequently attacks him physically when she is intoxicated, sometimes while she is holding the baby. He also tells you that he has come home from work to find the baby in soiled diapers and crying in the crib while the mother is passed out on the couch.
[Continue Reading →](#)
This entry was tagged with the following terms: abuse neglect and dependency, attorney-client privilege, Juvenile Code, mandatory reporting



A/N/D Reporting: Rights, Protections, and Prosecutor Review
This entry was contributed by Sara DePasquale on June 21, 2017 at 6:00 am and is filed under Child Welfare Law.
Like every other state, North Carolina has a mandated reporting law for child abuse and neglect. North Carolina's law requires any person or institution with cause to suspect a child is abused, neglected, or dependent by a parent, guardian, custodian, or caretaker to make a report to the county child welfare department (in most counties, DSS) where the child resides or is found. [GS 26B.301](#). What is in a report? Are there protections for the reporter? What are the rights of the reporter? If DSS decides not to initiate a court action, can the reporter challenge that decision?
[Continue Reading →](#)

Subscribe
Email *

Categories
Adoptions
Appeals
Child Welfare Law
Civil Law
Civil Practice
Civil Procedure-General
Clerks of Superior Court
Constitutional Issues
Contempt
Costs and Fees
Dispute Resolution
Domestic Violence
Estates
Family Law
Foreclosure
Guardianship
Judicial Authority
Jurisdiction
Juvenile Law
Juvenile Justice
Juvenile Law
Power of Attorney
Small Claims Law
Unrecognized

Contributors
Ann Anderson
Sara DePasquale
Cheryl Howell
David Levenson
Aurora Long
Lizbeth Ford
Brenda Smith

18

KIDS

https://www.sog.unc.edu/cwcc

UNC

SCHOOL OF GOVERNMENT

Search...

About

Public Officials

Topics

Courses

Publications

Blogs

Resources

Giving

Knapp Library

MPA Degree

?

Child Welfare Case Compendium

New Search

Print Results

The most efficient way to conduct a search is to use the pre-existing drop down menus, which start with one of the six main Categories of annotations (see the drop down menu for "All Categories"). Within each Category, additional filters have been created to allow a user to conduct a more focused search. When you select a Category, a new "Stage" drop down menu will appear. When you select a Stage, a "Topic" drop down menu will appear.

A search may also be conducted by typing a keyword in the "Search Term" box below. If your search phrase is composed of more than one word, please use quotation marks. If the drop down menus are not used, the search based on a word or phrase will apply to all the annotations contained in the CWCC.

Search Terms

Search 7B-901

All Categories

Search A/N/D

All Years


19

Keep KIDS in Mind

Benchcard...

20

7




The Structure of the NC Child Welfare System

August 7, 2023

Gail Carelli, Assistant General Counsel for
Child Welfare & County Operations, DHHS

1

State Supervised, County Administered System







<https://www.childwelfare.gov/pubs/factsheets/services/>

2

What does this mean?

- The federal government authorizes national programs and a majority of the funding for these programs
 - US HHS oversees Work First, Child Welfare, Child Care, Child Support, Adult and Family Services, Low Income Energy Assistance, and Medicaid.
 - The USDA oversees Food and Nutrition Services.
- In North Carolina the single oversight agency is NCDHHS
- The 100 local county departments of social services deliver the services and benefits.



3

Framework in North Carolina

- N.C. Gen. Stat. § 143B-153 "created the Social Services Commission of the Department of Health and Human Services..... The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina".
- 10A NCAC Chapters 05, 06, 67, 68, 69, 70*, 71*, 72, 97

4

Framework in North Carolina

- N.C. Gen. Stat. § 108A-1 requires every county shall have a board of social services, consolidated human services board, regional board, or board of county commissioners which shall establish county policies for the programs established **in conformity with the rules and regulations of the Social Services Commission** and **under the supervision of** the Department of Health and Human Services.
- N.C. Gen. Stat. § 108A-14(a)(5) states the county director of the social services shall "act as **agent** of the Social Services Commission and Department of Health and Human Services in relation to work required by the Social Services Commission and Department of Health and Human Services in the county."

5

"Based on the clear statutory scheme, along with the mandatory administrative regulations and the Family Services Manual, the Department of Human Resources had substantial and official control over the provisions of child protective services and designated the county director as the person responsible for carrying out the policies formulated by the Department."

Gammons v. North Carolina Department of Human Resources, 344 N.C. 51, 63, 472 S.E.2d 722, 729 (1996)

**Department of Human Resources is the predecessor agency to NCDHHS

6

Child Welfare Litigation in the last five years (larger settlements)

- \$125,000
- \$400,000
- \$460,000
- \$962,500
- \$250,000
- \$220,000
- \$850,000
- \$1,000,000*

7

7

N.C. Gen. Stat. §108A-74 Currently

- **MOU Requirements**
 - Child welfare, FNS, Work First, Child Support, SA, Guardianship, Energy
- **Corrective Action Process for MOU**
 - 3 consecutive months or 5/12 months
 - Can lead to takeover
- **Emergency Takeover Authority**
 - Still applies only to Child Welfare (CPS, Foster Care, Adoption)

8

8

Monitoring and Corrective Action – Overview

- Many sources of both qualitative and quantitative data are considered in determining a program's performance.
- Corrective action plans may be required when poor practice or lack of adherence to law and policy have resulted in poor outcomes.
- When a corrective action plan is required, NCDSS works with the County to develop the plan, and assists the county in its correction through TA and on-site visits.
- Typically, the entire program is fully examined with all issues being addressed.

9

9

Monitoring and Corrective Action – Child Welfare

- NCDHHS/DSS is conducting monthly reviews and provides oversight more frequently when corrective action has been required. Monthly reviews includes data reviews as well as targeted case record reviews.
- NCDSS looks at child welfare programs by reviewing program components that impact child and family outcomes as well as those mandated by law.
- Constituent concern cases may be reviewed and NCDSS may intervene in situations.

10

10

DHHS Intervention in Counties

- What will initiate a discussion on the need for intervention by NCDHHS
 - Lack of demonstrated improvement in assessing safety, ongoing contacts, delayed permanence, or other practice issues that have been identified by an RCWC during county consults, the review of records or other available reviews (Fatalities, QA Reviews), and prior plans developed with the county.
 - A recent fatality where policy violations are noted in the record
 - A high- profile case where policy violations played a role in a child being left in an unsafe situation. *These situations typically arise from news stories, customer complaints/constituent concerns, or complaints from legislators

11

11

CQI Plan or Corrective Action Plan

- CQI Plans are appropriate when there have been consistent practice and policy issues that did not have a direct impact on the safety or timely permanence of a child
- Corrective Action Plans are appropriate when there have been consistent and sometimes egregious violations of policy and practice that has left children in unsafe situations, at significant risk of future harm, or caused significant delays in timely permanence.

12

12

The County CAP

- NCDSS will work in partnership with the County Director and county point person to decide on the best methods for needed technical assistance.
- NCDSS will be on site at least monthly to review the plan, document progress, and provide any identified technical assistance.
- During the onsite visits, the ITA Specialist and/or the RCWC will conduct targeted reviews based on the needs identified in the corrective action. These reviews will be stored in one master book

13

13

Proposed additions to §108A-74

Empower DHHS "to inquire into and review any county social work practice, or inquire into and review the legal actions of the county or regional department of social services as it pertains to the delivery of child welfare services for a particular child welfare case or all child welfare cases of the department of social services."

- If violations of law or rule are found, the Secretary may direct the director of social services to remedy the violation by taking immediate action in a manner prescribed by the Secretary that is consistent with State law and applicable rules (after notice to Director and applicable county governing bodies).
- Does not preclude takeover if necessary
- If the county does not take the action as directed by the state, the county will be acting outside of the scope of their agency relationship with the state.

14

14

Why Legal?

- Because often enough, serious errors on cases that lead to millions of dollars in litigation payouts or IV-E paybacks occur as a result of poor legal decision-making and/or practice
- Examples:
 - Lack of basic child welfare/7B knowledge
 - Lack of basic knowledge of IV-E and requirements for court orders
 - Lack of understanding of confidentiality laws
 - Workload and/or expectations that impede the attorney's ability to effectively represent the client
 - Understaffing/Unreasonably large caseloads
 - Lack of support (no paralegals or assistants)

15

15

Why Legal?

- Examples of poor legal practice:
 - Orders referencing statutes repealed in 2013
 - Orders ceasing efforts at reunification at a continued nonsecure custody hearing
 - Orders completely ignoring ICWA
 - Orders not drafted in over a year or at all
 - Not actually following the law (CVA's for example)
 - Petitions with poorly alleged facts and lacking in any legal basis for abuse/neglect/dependency
 - This is largely due to social workers drafting petitions
 - Potential change to S625 "review"
 - Counties refusing to share information with DHHS reasoning that CPS info is confidential even to the state

16

16



17

17

IV-E FUNDAMENTALS

Money Matters!

18

18

The Significance of IV-E Eligibility

- ▶ Uncapped funding source applies when all federal eligibility requirements are met
- ▶ Counties usually pay only about 18% of maintenance costs for IV-E eligible children in foster care
- ▶ Reimburses administrative costs, including social worker and attorney salaries
- ▶ Federal government audits the state every three years to ensure compliance

19

19

The IV-E Difference for Counties

Over the Course of a Year

	Placement		
Child's Age	Agency FFH	Private FFH	Residential
Birth to 5	\$1825	\$4699	\$16,444
6-12	\$2233	\$5182	\$17,051
13-18	\$2436	\$5448	\$17,355

The amount county DSS loses when necessary findings are not included in a court order for a child that would otherwise qualify for IV-E reimbursement.

20

20

The Role of Court Orders

- **Timely and meaningful judicial oversight** is basic tenet of IV-E eligibility throughout the life of the case

–REMOVAL

–PERMANENCY PLANNING



21

21

Timeframe for Eligibility	Required Court Findings
At the time of removal	Remaining in the home was contrary to the child's welfare <u>or</u> removal was in the child's best interest
Within 60 days of removal	Agency made reasonable efforts to prevent removal <u>or</u> the agency was precluded from making these efforts (one or the other - <u>not both</u>)
Within 12 months (and every 12 months thereafter)	Agency made reasonable efforts to finalize the permanent plan(s)

22

Requirements for Orders (Judicial Determination)
<ul style="list-style-type: none"> ➤ Valid, enforceable order in NC ➤ Explicit, made on a case-by-case basis ➤ No distinction between findings and conclusions ➤ No "nunc pro tunc" orders, affidavits, or bench notes permitted ➤ Discrepancies will be resolved by review of the transcript

23

From the Final Order:
<ul style="list-style-type: none"> • "We placed the ban on nunc pro tunc orders because we discovered that they were being used months, sometimes years, later to meet reasonable efforts and contrary to the welfare requirements that had not been met at the time the original hearing took place. We are sensitive to the issue of technical errors. However, it is permissible for States to use transcripts of court proceedings to verify that judicial determinations were made in the absence of the necessary orders. We have, therefore, made no changes to the regulation to modify the ban on nunc pro tunc orders." – 65 FR at 4056 (2000)

24

Placement Responsibility (Placement and Care)

1. Court should make a finding in every order that DSS has **placement responsibility** of the juvenile
 - "Placement and care" is sufficient
 - "Custody" not required by IV-E, but usually includes placement responsibility
2. If Court orders a specific placement rather than giving DSS placement authority, Court must find that it gave consideration to the DSS recommendation regarding placement

25

25

Initial Reasonable Efforts Language

- A. Within 60 days of removal, Court must identify:
 - What efforts DSS made to prevent removal AND
 - Whether efforts were reasonable to prevent removal
 - Usually at Review of NSC using form AOC-J-151.
 - B. If DSS was precluded from making efforts to prevent removal, Court may find this reasonable
- If Court finds A and B, case specific information should explain how that is possible.
- Finding both creates inherent conflict and jeopardizes IV-E eligibility, if not explained.

26

26

Contrary to the Welfare/Best Interest language

- ▶ In **removal order**, Court must find that remaining in the home is contrary to the juvenile's welfare **or** that placement is in juvenile's best interest.
- ▶ Current (2019) version of AOC-J-150 contains the finding "contrary to the juvenile's welfare to remain in the home," but the removal order may be one other than a Nonsecure Custody Order.
- ▶ Failure to meet this requirement renders the **entire placement episode** ineligible for IV-E.

27

27

Reasonable Efforts to Achieve Permanence

- ▶ Within 12 months of the date child is considered to have come into care, Court must:
 - identify the permanent plan that has been in place
 - find the agency has made efforts to finalize this plan
 - find the efforts were reasonable to finalize this plan.
- ▶ Failure to meet this requirement prevents reimbursement until the first day of the month this requirement is met.

28

28

Reasonable Efforts Findings

- Make findings on the record if you can
- Ensure your orders document findings regarding reasonable efforts comprehensively – a short list of things a worker has done will likely not be enough
- Don't rely on what the court report says
- Remember that reasonable isn't every possible effort – it's not exhaustive!

29

29

Nonsecure procedures


- Review county afterhours practice
 - Are petitions filed before nonsecure custody is sought?
 - Do you have a delegation order in your county?
 - Are magistrates easily available 24/7?
- Review nonsecure orders and associated paperwork to ensure signatures are correct
- Invalid removal orders lead to a juvenile being ineligible for IV-E for the life of the case

30

30




QUESTIONS?



The Role of the Guardian ad Litem

August 7, 2023
Reginald O'Rourke, GAL Associate Counsel
Matt Wunsche, GAL Appellate Counsel


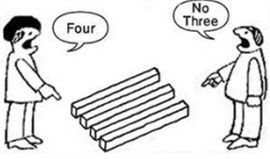


North Carolina
GUARDIAN AD LITEM
A CHILD'S ADVOCATE IN COURT

1

Matt's Perspective



- Assistant Appellate Defender, 2003-08
- Staff Attorney, North Carolina Court of Appeals, 2008-15
- GAL Appellate Counsel, 2015 to present



2

Roadmap

- ✓ Creation of GAL Program
- ✓ GAL's Appointment
- ✓ Appointment for TPR Hearings
- ✓ GAL Program's Duties
- ✓ Dual Representation
- ✓ GAL's Authority
- ✓ Volunteer Qualifications
- ✓ Youth in Court



3

N.C. GAL Program Milestones

- **1960-70's**—Juvenile court judges across the nation and N.C. recognized a need for guardians ad litem to be a voice for abused, neglected children in court
- **1974**—The federal Child Abuse Prevention and Treatment Act (**CAPTA**) enacted. Required states receiving federal funds for child abuse/neglect prevention to provide an **appropriately trained GAL for each child** involved in an abuse or neglect judicial proceeding.
- **1977**—N.C. law enacted to **allow** appointment of GAL attorney for abused and neglected children
- **1979**—N.C. law revised to **require** appointment of GAL attorney
- **Early 1980's**— **Child Watch**, a nonprofit child advocacy organization, sponsored **3 pilot programs** in NC of GAL representation



4

4

Child Watch Pilot Programs

3 Pilot Programs:

- Non-attorney volunteers represented the children alone in court but had attorney with whom they could consult outside of court (Wake County)
- Attorneys were available for consultation with volunteers on all cases. Non-attorney volunteers were appointed as GAL with attorneys co-appointed in all contested cases. (Wayne County)
- Non-attorney volunteer GAL paired with attorney GAL (Alamance County)



5

5

N.C. GAL Program Milestones

- **1983**—Congressman Martin Lancaster convenes a group of the pilot participants to determine the best model and draft legislation to ask General Assembly to establish and fund a statewide GAL Program
 - Paired model of representation of non-attorney volunteer and attorney chosen
- **1983**—General Assembly established the GAL Program within AOC
- **1994**—GAL Program completes statutory mandate to have a GAL Program in all 39 judicial districts



6

6

G.S. 7B-1200

- GAL Program established within AOC
- Each local program shall consist of **GAL volunteers, at least one program attorney, a program coordinator** who is a paid State employee, and any clerical staff AOC deems necessary
- AOC shall adopt **rules and regulations** for program administration
- GAL Program provides services in accordance with **7B-601** to abused, neglected, dependent juveniles
- GAL Program must assure that **all participants are trained**



7

7

2021-22 Statistics

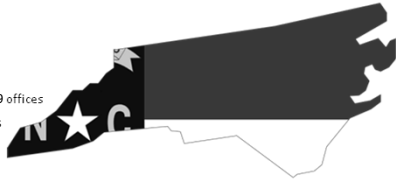
Volunteers:

- 5,030 volunteer advocates

Local Staff:

About 167 local staff working in 69 offices

- 37 District Administrators
- 110 Supervisors
- 20 Specialists



8

8

2021-22 Statistics

State Office Staff:

- 1 Administrator
- 4 Regional Administrators (now 3)
- 3 Administrative Team
- 3 Recruitment and Retention Team
- 4 Training Team



9

9

2021-22 Statistics

Trial Attorneys:

- 72 paid attorney contractors
- 19 staff attorneys
- 27 paid conflict attorneys
- 1 Associate Counsel (Reggie O'Rourke)
- 1 Staff Attorney (Hope Connie Wertz)

Appellate Attorneys:

- 103 appeals assigned to pro bono attorneys
- 1 Appellate Counsel (Matt Wunsche)
- 2 Staff Attorneys (Michelle Lynch, Brittany McKinney)



10

10

2021-22 Statistics

- 65,625 abuse and neglect hearings
- 17,139 abused and neglected children received legal representation
- 218 juvenile appeals (up from 185 in 2021)



11

11

GAL Appointment

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice District Court Division
IN THE MATTER OF:		ORDER TO APPOINT OR RELEASE GUARDIAN AD LITEM AND ATTORNEY ADVOCATE
Name And Address Of (parent(s))		G.S. 78-601, 1108
Name And Address Of (sister) (other designee)		Name And Address Of (father) (other designee)
ORDER OF APPOINTMENT		
Pursuant to the authority contained in G.S. 78-601 or 78-1108, the following Guardian ad Litem and attorney advocate are appointed to represent the (juvenile(s)) named above in this proceeding.		
Name Of Guardian Ad Litem (Program Staff)		Name And Address Of Attorney Advocate
Address		



12

12

Gal Appointment

G.S. 7B-601(a)

"When in a petition a juvenile is alleged to be **abused or neglected**, the court **shall** appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be **dependent**, the court **may** appoint a guardian ad litem to represent the juvenile." (7B-601(a))



13

13

Gal Appointment

G.S. 7B-601(a)

- When a **nonattorney** is appointed as GAL, "an **attorney** shall be appointed in the case in order to **assure protection of the juvenile's legal rights** throughout the proceeding."
- The juvenile is a party
- The guardian ad litem and attorney have standing to represent the juvenile in all a/n/d proceedings



14

14

Gal Appointment

G.S. 7B-601(a)

- The appointment is made pursuant to the program established in 7B-1200 unless the otherwise provided pursuant to 7B-1202 or 7B-1203.
- Appointment terminates when the **permanent plan is achieved and approved** by the court.
- "The **court may reappoint the guardian ad litem** pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court."



15

15

Conflict of interest or impracticality of implementation (G.S. 7B-1202)

- "If a conflict of interest prohibits a local program from providing representation... the court may appoint any member of the district bar to represent the juvenile."
- If AOC "determines that within a particular district court district the implementation of a local program is impractical, or that an alternative plan meets the conditions of G.S. 7B-1203," AOC shall waive the establishment of the program within the district.



16

16

Alternative Plans G.S. 7B-1203

- A district court district may be granted a waiver from implementation of a local program if AOC determines:
 - "An **alternative plan** has been developed to provide adequate guardian ad litem services for **every juvenile** consistent with the duties stated in G.S. 7B-601; and"
 - The "plan will require **no greater proportion of State funds than the district court district's abuse and neglect caseload** represents to the State's abuse and neglect caseload."
- **AOC retains authority** over the implementation of the alternative plan to assure compliance with 7B-601
- If an alternative plan is not in compliance, AOC may administer and implement another program authorized by Article 12.



17

17

In a dependency only case where a GAL volunteer and An attorney advocate have NOT been appointed, may the court accept a consent order on adjudication and disposition?

- A.) Yes
B.) No



18

18

B.) No

Analysis:

G.S. 7B-801(b1) states:

Nothing in this Subchapter precludes the court in an abuse, neglect, or dependency proceeding from entering a consent adjudication order, disposition order, review order, or permanency planning order when each of the following apply:

- (1) **All parties are present or represented by counsel**, who is present and authorized to consent.
- (2) **The juvenile is represented by counsel.**
- (3) **The court makes sufficient findings of fact.**



19

19

Appointment For TPR Hearings

G.S. 7B-1103—Who may file a TPR:

- **Parent**
- A person judicially appointed as **guardian of the person of the juvenile**
- County DSS, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction
- A county DSS, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to **G.S. 48-3-701**
- Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition or motion
- The **GAL** appointed under 7B-601 who has not been relieved of responsibility
- Any **person who filed an adoption petition** pursuant to Chapter 48



20

20

Appointment For TPR Hearings

At the **Pretrial TPR hearing** under 7B-1108.1, the court must consider:

- (1) Retention or release of provisional counsel.
- (2) **Whether a guardian ad litem should be appointed for the juvenile, if not previously appointed.**
- (3) Whether all summons, service of process, and notice requirements have been met.
- (4) Any pretrial motions.
- (5) Any issues raised by any responsive pleading, including any affirmative defenses.
- (6) Any other issue which can be properly addressed as a preliminary matter.



21

21

G.S. 7B-1108

- If an **answer or response denies a material allegation** court must appoint a GAL for the juvenile, unless the TPR was filed by the GAL or a guardian ad litem has already been appointed pursuant to G.S. 7B-601.
- An attorney must assist GAL who is a nonlicensed attorney
- Appointment, duties and payment of GAL are the same as under 7B-601 & 7B-603



22

22

G.S. 7B-1108

- A **GAL who is trained and supervised** by the GAL program shall not be appointed "unless the juvenile is or has been the **subject of a petition** for abuse, neglect, or dependency or with good cause shown **the local guardian ad litem program consents** to the appointment."
- "[T]he court **may, in its discretion, appoint a guardian ad litem** for a juvenile, either **before or after** determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile."



23

23

Appointment For TPR Hearings

Key considerations:


- Was a GAL previously or currently appointed under 7B-601?
- If a GAL has never been appointed, was an answer or response filed that denied a material allegation?

?




24


24

STATE OF NORTH CAROLINA COUNTY OF	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
IN RE:	FILE NUMBER:
ORDER	
The following attorney indicated below is hereby appointed as Guardian ad Litem Appellate Counsel in the above named matter.	
Appointed Appellate Counsel:	
Matthew D. Wunsche Appellate Counsel	
	

25

<p>GAL Program Duties G.S. 7B-601(a)</p> <ul style="list-style-type: none">• "to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs;"• "to facilitate, when appropriate, the settlement of disputed issues;"• "to offer evidence and examine witnesses at adjudication;"• "to explore options with the court at the dispositional hearing;"	
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------

26

<p>GAL Program Duties G.S. 7B-601(a)</p> <ul style="list-style-type: none">• "to conduct follow-up investigations to insure that the orders of the court are being properly executed;"• "to report to the court when the needs of the juvenile are not being met;"• "and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court."	
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------

27

Guardian Ad Litem's Authority G.S. 7B-601(B-C)

- Court may authorize the **GAL to accompany the juvenile to court in any criminal action** where the juvenile may be called to testify in a matter relating to abuse.
- "[GAL] has **authority to obtain any information or reports**, whether or not confidential, that may in the **GAL's opinion be relevant to the case.**"
- No privilege other than the attorney-client privilege may be invoked to prevent the [GAL] and the court from obtaining such information.



28

28

Telephone no. _____

Telephone no. _____

The duties and responsibilities of the Guardian ad Litem program are as follows:

1. To make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs.
2. To facilitate, when appropriate, the settlement of disputed issues.
3. To offer evidence and examine witnesses at adjudication.
4. To explore options with the Court at the dispositional hearing.
5. To conduct follow-up investigations to insure that the orders of the Court are being properly executed.
6. To report to the Court when the needs of the juvenile are not being met.
7. To protect and promote the best interests of the juvenile until formally relieved of responsibility by the Court.

The Guardian ad Litem has the authority to obtain any information or reports, whether or not confidential, that may in the Guardian ad Litem's opinion be relevant to the case. This order includes the release of confidential information subject to the Health Insurance Portability and Accountability Act of 1996. **NO STRAY, NO PRIVILEGE, NO ATTORNEY-CLIENT PRIVILEGE.** The information or reports shall be respected by the Guardian ad Litem and no disclosure of any information or reports shall be made to anyone except by order of the Court or unless otherwise provided by law.

In addition, the Court orders the following:

☒ **ACCOMPANY JUVENILE TO COURT IN CRIMINAL ACTION**
The Guardian ad Litem is authorized to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

Date _____ Name Of Presiding Judge (Type Or Print) _____ Signature Of Presiding Judge _____

RELEASE OF GUARDIAN AD LITEM



29

29

Guardian Ad Litem's Authority G.S. 7B-601(B-C)

- GAL must respect the confidentiality of the information and reports, "and **no disclosure of any information or reports** shall be made to anyone except by order of the court or unless otherwise provided by law."
- Exceptions to info sharing:**
- Local Rules
 - Under 7B-700, exempt from discovery, but GAL must share reports and records with the parties "before submission to the court."
 - 7B-3100 regarding info sharing among certain agencies




30

30

Volunteer Qualifications


- No felony convictions or pending felony charges
- No convictions or pending charges of sex offenses, assaultive behavior, child abuse or neglect, "or acts that would pose risks to children or the Program's credibility."
- Not on a Sex Offender Registry
- Not on the Responsible Individual's List (RIL)
- No substantiated abuse or neglect reports



31

Volunteer Qualifications


- At least 18 years old
- Committed to children and their best interests
- Mature, sensitive, and willing to devote the necessary time
- Respectful to children, families, service providers, and the court



32

Volunteer Screening

- Submits a completed, approved application
- 3 positive references who are not relatives
- Successful screening interview
- Successfully passes the checks listed in the Qualifications slides
- Completes 30-hour standardized volunteer training



33

Training

Volunteers:

- 30 hours of pre-service training
- Asked to complete 12 hours in-service training annually

Staff:

- New hire training
- Annual state convention
- In-service training

Attorney Advocates:

- NC law license
- Annual conference/CLE



34

34

Case Law

In re R.A.H., 171 N.C. App. 427 (2007)

- An attorney advocate was present at the TPR hearing, but no GAL was appointed until after 3 ½ days of testimony in the TPR hearing and no GAL volunteer had been appointed in the underlying case.
- The mother appealed the TPR and argued that there should have been a GAL "investigating and determining the best interests".
- COA overturned the TPR order, presumed prejudice, and distinguished the volunteer's role from the attorney advocate's role
- COA held that the attorney advocate and volunteer cannot "pinch hit" for one another.



35

35

Case Law

In re J.H.K., 365 N.C. 171 (2011)

- The issue was whether the duly appointed GAL volunteer had to be present at the TPR hearing, when the GAL attorney advocate was present and actively participated in the TPR hearing.
- The COA unanimously overturned the trial courts order terminating the father's parental rights.
- The N.C. Supreme Court (S.C.) heard the case on a Petition for Discretionary Review and reversed the COA's holding.
- The S.C. reversed COA's decision.



36

36

Case Law

In re J.H.K., 365 N.C. 171 (2011)

- The S.C. held that the **volunteer's presence was required only if the court or the attorney advocate deemed it necessary** to protect the juvenile's best interests.
- The S.C. held that the **duties of the GAL** are those of the GAL staff, the attorney advocate and volunteer working together as a team.



37

37

Case Law

In re A.N.L., 213 N.C. App. 266 (2011)

- A GAL **staff member may be appointed as the GAL**.
- Child received adequate representation where the attorney advocate was present at both stages of the TPR hearing and the GAL was not.

In re S.T.B., 235 N.C. App. 290 (2014)

- No error where **GAL Program Specialist signed TPR petition** "by and through the Attorney Advocate" and GAL volunteer did not sign the TPR petition.



38

38

GAL Conflicts and Attorney-only Representation

- *In re R.D.* – Supreme Court of North Carolina (12/18/2020) 4-3 decision
 - Private TPR case. Mother relinquished her rights to allow an adoption. Private adoption agency was the petitioner. Court appointed an attorney to be the child's GAL (not through GAL Program).
 - GAL called as a witness to testify about the court report she prepared. Father objected based on Rule 3.7 of RPC (lawyer as witness). TC gave GAL two options: (1) testify and withdraw as GAL attorney; or (2) submit written report. GAL chose to submit report.
 - TPR based on father's failure to legitimate. Father appealed.
 - SC recognized that dual-role representation is allowed by Juvenile Code. GAL report was admissible at disposition, and parties did not have absolute right to cross-examine GAL at "non-adversarial" dispositional phase.
 - Constitutional argument was not preserved for appeal. (?)



39

39

GAL Conflicts and Attorney-only Representation

- ATTORNEY SERVING DUAL ROLE OF GUARDIAN AD LITEM AND ADVOCATE, 22 FEO 1 (Adopted 22 April 2022)
 - This situation arises when a conflict prevents the GAL Program from being appointed to represent a child, and an outside attorney serves the “dual role” of GAL volunteer and attorney advocate.
 - To serve as an attorney and file a court report, an attorney appointed to serve in the dual role should advise the court of the ethical concerns (attorney as witness) associated with that role and obtain a ruling from the court.
 - The judge has the authority, per N.C. Gen. Stat. 84-36, to regulate attorneys. If the judge decides that the attorney should serve in the dual role, then the attorney may serve in the dual role.



40

40

GAL Conflicts and Attorney-only Representation

- N.C. Gen. Stat. 84-36 recognizes a judge's “inherent powers” to “deal with attorneys.”
- GAL Program Policy –
 - Anticipating cases and identifying resources to resolve conflicts, depending on the nature of the conflict.
 - Maintain our ideal model of representation (volunteer/staff/attorney) in as many cases as possible.
 - Give the trial court options and ask the court to make the decision on how to proceed.



41

41

Youth in Court



42

42

Youth in Court G.S. 7B-801

In determining whether to close the hearing or any part of the hearing, the court shall consider the circumstances of the case, including but not limited to the following factors:

- (1) The **nature of the allegations** against the juvenile's parent, guardian, custodian or caretaker;
- (2) The **age and maturity** of the juvenile;
- (3) The **benefit to the juvenile** of confidentiality;
- (4) The benefit to the juvenile of an open hearing; and
- (5) The extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.



43

43

Youth in Court G.S. 7B-801

- No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.



44

44

Tips for Interacting with Youth in Court

- Ask attorney advocate to announce the youth's presence in court at **calendar call**
- Review the **key areas of the GAL & SW reports**, e.g. *Issues for the Court's Attention*
- Consider whether the hearing will generate an **appealable order**
- Consider the juvenile's **development stage** and the child's **special needs**
- Be aware of the **youth's wishes and needs** before the conversation
- Consider the **youth's sense of time**
- **Build rapport** and **Be patient**
- **Be upfront** about how private the conversation will be
- Will you need to deliver "**bad news**" to the child?
- Did the attorney advocate and the attorneys have a plan?
- Develop **your own process** for interacting with youth



45

45

Tips for Interacting with Youth in Court

- To reserve the remote testimony equipment, contact the **AOC Help Desk** at **919.890.2407**
- For questions about the remote testimony equipment, contact:



46

46

Thank You

Matt Wunsche
Matthew.D.Wunsche@nccourts.org
(919) 890-1255

Reginald "Reggie" O'Rourke
Reginald.d.o'Rourke@nccourts.org
919.890.1322

47

Day 2

Child Custody Jurisdiction

Cheryl Howell

1

Subject Matter Jurisdiction

- ▶ Cannot be conferred by consent or waiver
 - *Foley*, 156 NC App 409 (2003)
 - *Gerhauser v. Van Bourgondien*, 238 NC App 275 (2015)
- ▶ Trial and appellate courts can review on own motion
 - *In re N.R.M.*, 165 NC App 294 (2004)

2

Subject Matter Jurisdiction

- ▶ Order needs findings to support jurisdiction
 - *Foley; Brewington v. Serrato*, 77 NC App 726 (1985)
 - *In Matter of E.J.*, 225 NC App 333 (2013)(order void due to lack of findings to show basis for emergency jurisdiction).
 - *But cf., In the Matter of N.T.U.*, 234 NC App 722 (2014)(order not void due to lack of findings when circumstances supported emergency jurisdiction);
 - *In re J.C.*, 235 NC App 69 (2014)('better practice' is to make findings but order okay if evidence is in the record)

3

Subject Matter Jurisdiction is Determined at Time of Filing

see In re TNG, 244 NC App 398 (2015)
see In re CMB, 266 NC App 448 (2019)(jurisdiction continues until court terminates juvenile court jurisdiction)

4

Personal Jurisdiction

- ▶ Long-arm statute and “minimum contacts” generally not required for custody
 - *Harris*, 104 NC App 574 (1991)
 - *In re Matter of F.S.T.Y.*, 374 NC 532 (2020)
 - Minimum contacts not necessary for TPR532 (2020)
- In re Matter of F.S.T.Y.*, 374 NC 532 (2020)
In re Matter of F.S.T.Y., 374 NC 532 (2020)

5

Statutes

- ▶ PKPA: Parental Kidnapping Prevention Act
 - 28 U.S.C. sec. 1738A
- ▶ UCCJEA: Uniform Child Custody Jurisdiction and Enforcement Act
 - G.S. 50A effective October 1, 1999
 - Incorporates PKPA requirements
 - Adopted in all states (except Massachusetts)

6

Key Concepts from Statutes

- Priority of Home State Jurisdiction
- Limitation of Modification Jurisdiction
 - *Even if* original order entered in NC

7

So What?

- Orders entered without subject matter jurisdiction are void *ab initio*
- Orders not entered in substantial conformity with jurisdictional requirements of PKPA and UCCJEA are not entitled to recognition in other states

8

“Custody Determination”

- 50A-102(3)
 - Any order or judgment providing for legal or physical custody or visitation of a child
 - Includes permanent, temporary and modification orders

9

"Custody Proceeding"

- ▶ Proceeding *where custody is at issue*
- ▶ Includes:
 - Divorce and separation
 - Neglect, abuse and dependency
 - Guardianship
 - TPR
 - Paternity
 - Domestic Violence Protection (50B cases)

10

Custody Jurisdiction

- ▶ Based primarily upon past and present location of the child and the parties
- ▶ Every pleading, petition and motion in the cause dealing with custody must have information required by GS 50A-209

11

Type of Proceeding Determines Jurisdiction Analysis

12

3Types of Proceedings

- ▶ Initial determination
- ▶ Modification
- ▶ Enforcement

13

Enforcement is Easy

- ▶ A State Always Has Subject Matter Jurisdiction to Enforce
 - Chapter 50A, Part 3 has procedure
 - AOC forms
 - CV-660 through CV-668

14

No Registration Required

- ▶ There is no statute or appellate case indicating registration is required before order can be enforced
- ▶ *And see* Official Comment, GS 50A-305
 - Purpose of registration process is to allow parent to send order to state before sending child to state

15

Child 'Pick-Up' Orders

- ▶ Requires a warrant pursuant to GS 50A-311
 - Goal of statute is to limit use of law enforcement
 - AOC form CV-667
 - *See Chick v. Chick*, 164 NC App 444 (2004)
- ▶ No warrant can be issued without:
 - Verified motion
 - Sworn testimony
 - Findings of fact showing:
 - Child is likely to suffer serious physical harm, or
 - Child is likely to be removed from state

16

Initial Determinations

- ▶ G.S. 50A-201. NC can enter an initial order if:
 - N.C. has "Home State" jurisdiction, or
 - There is no "Home State" and NC has significant connection/substantial evidence jurisdiction, or
 - All states with jurisdiction decide NC is the more convenient forum, or
 - No state has jurisdiction (default)

17

Home State Jurisdiction

- ▶ State where child lived for at least six months immediately before the filing of the action
 - G.S. 50A-102(7)
 - Live means reside, not domicile
 - *In re B.L.H.*, 767 SE2d 905 (2015)
- ▶ Or state that was the home state within six months of filing, and one parent or person acting as a parent continues to reside in the state
 - G.S. 50A-201(a)(1)

18

Significant Connection Jurisdiction

- ▶ The child and the child's parent (or person acting as a parent) have significant connection with the state other than physical presence, *and*
- ▶ Substantial evidence is available in the state concerning the child's care, protection, training and personal relationships
 - *In re T.N.G.*, 244 NC App 398 (2015)
 - *Pheasant v. McKibben*, 100 NC App 379 (1990)
 - *Holland v. Holland*, 56 NC App 96 (1982)

19

Initial Orders

- ▶ If NC is not the home state – need to be very cautious about jurisdiction
- ▶ If NC has jurisdiction, NC court can “give” jurisdiction:
 - To a “more convenient forum” G.S. 50A–207, or
 - To another state if NC court finds “unjustifiable conduct”. G.S. 50A–208

20

“More Convenient Forum”

- ▶ GS 50A–207. Court with jurisdiction may stay proceedings and allow another state the opportunity to act if upon considering statutory factors, court determines other state is the more convenient forum within which to litigate custody
- ▶ DO NOT EVER ‘TRANSFER’ CASE TO ANOTHER STATE

21

Procedure

The determination that NC is an inconvenient forum requires an evidentiary hearing and court must make findings of fact based on evidence

• *In the Matter of C.M.B.*
266 NC App 448 (2019)

Evidence can be in the form of affidavits only

• *Harter v. Eggleston*
847 SE2d 444 (NC App 2020)

The court can make the determination at any point in time during a proceeding

• *Halili v. Ramnisha*
848 SE2d 542 (NC App 2020)

22

Question #1

- Two children were born in Tennessee.
- When children were 6 and 8 years old, mom and children moved to North Carolina. Dad stayed in Tennessee.
- Eight months after they moved to NC, DSS filed a petition alleging the children are neglected.
- Does NC have jurisdiction?

23

Home state priority

- Yes
- NC is the home state and has priority over Tennessee's significant connection/substantial evidence
 - See *Potter v. Potter*, 131 N.C. App. 1 (1998)

24

Question #2

- If mom and children had been in NC only four months at the time DSS filed the petition, can NC exercise jurisdiction?

25

Question #2

- If mom and children had been in NC only four months at the time DSS filed the petition, can NC exercise jurisdiction?

Only if NC can exercise temporary emergency jurisdiction

26

Required
for
emergency
jurisdiction

1. Grounds

2. Appropriate process

27

Emergency Jurisdiction: Grounds

- ▶ NC may exercise TEMPORARY jurisdiction if child is present in NC and:
 - Child has been abandoned, or
 - It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse
 - GS 50A-204

28

Emergency Jurisdiction: Process

- ▶ If state with jurisdiction has acted or is acting:
 - ▶ NC order must be of limited duration
 - ▶ *See In re: E.J.*, 738 SE2d 204 (COA Feb. 2013)
 - ▶ NC court must communicate "immediately" with that court to resolve the emergency
 - ▶ "Court" means the judge and not DSS or attorney
 - See In re: J.W.S.*, 194 NC App 439 (2008); *In re: Malone*, 129 NC App 338 (1998)
- ▶ Failure to contact immediately results in loss of subject matter jurisdiction
 - ▶ *See In re: J.W.S.*, 194 NC App 439 (2008)

29

Emergency Jurisdiction: Process

- If state with jurisdiction has not acted and does not act:
 - NC order may become permanent "if it so provides"; NC obtains home state jurisdiction
 - *See In re M.B.*, 635 NC App 8 (2006); *In re N.B.*, (NC App, July 5, 2023).
 - Statute does not require communication
 - *But see Van Kooten*, 126 NC App 764

30

Question #2

- Two children were born in Tennessee.
- When children were 6 and 8 years old, mom and children moved to North Carolina. Dad stayed in Tennessee.
- Four months after they moved to NC, DSS filed a petition alleging the children are neglected.
- Can NC exercise emergency jurisdiction?

31

Emergency Jurisdiction: Grounds

- NC may exercise TEMPORARY jurisdiction if child is present in NC and:
 - Child has been abandoned, or
 - It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse
 - GS 50A-204

32

Neglect is Insufficient

- Official Comment, GS 50A-204
 - Emergency is defined as “mistreatment or abuse”
 - ‘Neglect’ alone is not a basis for the assumption of jurisdiction
 - “Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that a child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States.”

33

Question #2: Emergency Jurisdiction?

- Child is present in the state
- If facts show child had been abandoned or it is necessary in an emergency to protect the child from abuse
- Tennessee is the home state
- Tennessee is not acting and has not acted
- So temporary order can be entered
 - Include provision for order to "become permanent"?
 - See *In re MB*, 179 NC App 572 (2006) and *In re N.B.*, (COA July 5, 2023)

34

Emergency Jurisdiction

- Nonsecure custody order is a temporary emergency order
- Can court adjudicate with temporary emergency jurisdiction?
 - *Van Kooten*, 126 NC App 764 (1998)(no)
 - *Brode*, 151 NC App 690 (2002)^{HCD1}(no)
 - *In re E.J.*, 255 NC App 333 (2013)(no)
 - *But see In re M.B.*, 179 NC App 572 (2006)(yes)
 - *In re A.G.M.*, 241 NC App 426 (2015)(can do only what is necessary to take care of child)

35

Question #3

- What if both mom and dad had left Tennessee 4 months before the petition was filed in North Carolina? (children had been here with mom for 4 months).
- If allegations involve only neglect, does NC have jurisdiction to act?

36

Initial Determinations

- ▶ G.S. 50A-201. NC can enter an initial order if:
 - N.C. has "Home State" jurisdiction, or
 - There is no "Home State" and NC has significant connection/substantial evidence jurisdiction, or
 - State with jurisdiction decides NC is the more convenient forum, or
 - No state has jurisdiction (default)

37

Significant Connection Jurisdiction

- ▶ The child and the child's parent (or person acting as a parent) have significant connection with the state other than physical presence, *and*
- ▶ Substantial evidence is available in the state concerning the child's care, protection, training and personal relationships
 - *Pheasant v. McKibben*, 100 NC App 379 (1990)
 - *Holland v. Holland*, 56 NC App 96 (1982)
 - *In re T.R.*, 250 NC App 386 (2016)

38

Question #4

- ▶ Petition is filed when NC clearly is the home state of the children and children are placed with maternal grandmother living in Virginia.
- ▶ After the children had lived with grandmother in Virginia for 18 months, mom files motion to dismiss juvenile proceeding in North Carolina on basis that NC no longer is the child's home state.
- ▶ Do you grant the dismissal?

39

◦ No

Subject Matter Jurisdiction is Determined at Time of Filing

In re CMB, 266 NC App 448 (2019)
(juvenile court retains jurisdiction until juvenile court terminates jurisdiction)

40

Question #5

- A child was born in Tennessee.
- When child was 3 months old, mom moved to NC with the child. Dad remained in Tennessee.
- When child was 6 months old, DSS filed a petition in NC alleging the child is abused.
- Can NC exercise jurisdiction?

41

Infants

- 50A-102(7): for a child less than 6 months old, home state is where the child has lived since birth
- Tennessee has home state jurisdiction because dad still there
- Maybe emergency jurisdiction

42

Question #6

- ▶ What if both mom and dad had left Tennessee when child was 3 months old? If child is now 6 months old, can NC exercise jurisdiction?

43

Significant Connection Jurisdiction

- ▶ The child and the child's parent (or person acting as a parent) have significant connection with the state other than physical presence, *and*
- ▶ Substantial evidence is available in the state concerning the child's care, protection, training and personal relationships

44

Question #7

- ▶ Children were born in Tennessee.
- ▶ When children were 6 and 8 years old, mom and dad divorced.
- ▶ The Tennessee court granted custody to mom and visitation to dad.
- ▶ Shortly thereafter, mom moved to NC with the children and dad stayed in Tennessee.
- ▶ One year after the move, DSS filed a petition alleging both children are neglected. Does NC have jurisdiction?

45

Modification Jurisdiction

- ▶ State entering initial order keeps continuing, exclusive jurisdiction until:
 - *That state* determines it no longer has significant connection/substantial evidence jurisdiction **or**
 - The parents and the child do not reside in that state
 - G.S. 50A-202 and 203
 - See *In re D.A.Y.*, 266 NC App 33 (2019)(parent moved out of state but returned; lived in state at time of filing so state retained right to determine CJE; NC could not act).

46

Modification G.S 50A-203

- ▶ NC Court cannot modify order from *another state* unless:
 - No other state has continuing exclusive jurisdiction – or state with continuing jurisdiction decides NC is the more convenient forum – **AND**
 - NC has a basis for jurisdiction under GS 50A-201 (a)(1)(home state) or (a)(2)(significant connection/substantial evidence)

47

Emergency Jurisdiction? Process

- ▶ If state with jurisdiction has acted or is acting:
 - ▶ NC court must communicate “immediately” with that court to resolve the emergency. GS 50A-204(d)
 - ▶ NC order must be of limited duration
 - ▶ See *In re: E.J.*, 738 SE2d 204 (COA Feb. 2013)
 - ▶ “Court” means the judge and not DSS or attorney
 - See *In re: J.W.S.*, 194 NC App 439 (2008);
 - In re: Malone*, 129 NC App 338 (1998)
- ▶ Failure to contact immediately results in loss of subject matter jurisdiction
 - ▶ See *In re: J.W.S.*, 194 NC App 439 (2008)

48

Communication Between Judges GS 50A-110

- Parties may be allowed to participate in discretion of judge
- If parties do not participate, parties must be allowed "to present facts and argument" before jurisdiction decision is made
- "Record" must be made of all communications unless dealing only with court records or scheduling
- *See Jones v. Whimper*, 366 NC 367 (2013)

49

Question #8

- Same facts as #7 above, except instead of a civil custody action, the children had been adjudicated neglected by the juvenile court in Tennessee.
- The juvenile court granted guardianship to maternal grandmother.
- Grandmother, both parents and the children came to North Carolina one year ago.
- North Carolina DSS now has filed a petition, alleging children are neglected.
- Can the NC court exercise jurisdiction?

50

Simultaneous Proceedings

- GS 50A-206
 - If another state is exercising jurisdiction over child when NC action is filed, NC "shall stay" the proceedings and communicate with other state
 - NC can exercise emergency jurisdiction while communicating with other state, if grounds exist
 - State where first action filed determines which state will exercise jurisdiction

51

Question #9

- Children were born in NC.
- When they were 3 and 5 years old, the NC court entered a custody order granting mom primary physical custody of the children and dad visitation rights.
- One year later, mom moves to Tennessee with the children and two months later, dad moves to Tennessee to be close to the children.
- Two years later, mom comes back to North Carolina with the kids.
- After two months, DSS files a petition alleging the kids are neglected.
- Does NC have jurisdiction?

52

Modification G.S. 50A-202(b)

- NC court cannot modify a NC order unless:
 - NC has continuing exclusive jurisdiction (meaning party continues to reside here and there is significant connection/substantial evidence jurisdiction) or
 - NC has initial determination jurisdiction under G.S. 50A-201

53

Cheryl Howell

August 2023

Child Custody Jurisdiction

Discussion Questions and Answers

1. Two children were born in Tennessee. When children were 6 and 8 years old, mom and children moved to North Carolina. Dad stayed in Tennessee. Eight months after they moved to NC, DSS filed a petition alleging the children are neglected. Does NC have jurisdiction?

Answer: Yes. NC is the home state for both children. See definition of home state – GS 50A-102(7); 50A-201(a)(1). Home state has priority over significant connection jurisdiction. See GS 50A-201. Result would be the same under UCCJEA, PKPA and the UCCJA. See *Potter v. Potter*, 131 NC App 1 (1998)(even under UCCJA, home state had priority because of PKPA).

2. If mom and children had been in NC only four months at the time DSS filed the petition, can NC exercise jurisdiction?

Answer: Maybe. Tennessee remains home state until children have been in NC for six months because dad remains in Tennessee, so NC has no basis for jurisdiction under GS 50A-201. However, NC can exercise temporary emergency jurisdiction pursuant to GS 50A-204 if exercise of jurisdiction is “necessary in an emergency to protect the child[ren] because the child[ren], or a sibling or parent of the child[ren], is subjected to or threatened with mistreatment or abuse.” Neglect is not sufficient to allow the exercise of emergency jurisdiction, see Comment to GS 50A-204(citing the PKPA), but a trial court can find an emergency and a threat of mistreatment or abuse in a case initiated by a petition alleging neglect if the facts support such a finding. See *In re: MB*, 179 NC App 572, 635 SE2d 8 (2006)(trial court determined child to be “neglected” but also found grounds to exercise temporary emergency jurisdiction based on threats of mistreatment and abuse made by mother).

The court of appeals has held that the order must contain findings of fact to show basis for emergency jurisdiction. See *In re Matter of EJ*, 225 NC App 333, 738 SE2d 204 (2013)(order void because it did not contain findings of fact sufficient to invoke the jurisdiction of the court); *Foley v. Foley*, 156 NC App 409 (2003)(order vacated and remanded to trial court for findings to support jurisdiction even though neither party contested jurisdiction on appeal); and *Brewington v. Serrato*, 77 NC App 726 (1985)(order from Texas not entitled to enforcement because it contained no

findings of fact to show the court had jurisdiction at the time the order was entered. *But cf. In the Matter of NTU*, 234 NC App 722, 760 SE2d 49 (2014)(court held that facts must exist to support jurisdiction but failure to find facts does not result in a lack of jurisdiction); *In re J.C.*, 235 NC App 69 (2014)(findings are the ‘better practice’ but order is not void if record shows facts sufficient to support jurisdiction).

Generally, the exercise of emergency jurisdiction is temporary. However, if the state with jurisdiction (Tennessee in this case) is not acting now and has not acted in the past, a temporary order by the NC court can become “permanent” if the order so provides and NC acquires home state status before the other state acts. See GS 50A-204; *In re: MB*, 179 NC App 572 (2006) (NC order stated that adjudication and disposition were “temporary” until such time as child resided in NC for six months, if home state did not act before that time); *In the Matter of N.T.U.*, 234 NC App 722, 760 SE2d 49 (2014). See blog post by Sara DePasquale, July 20, 2023

<https://civil.sog.unc.edu/uccjea-transitioning-from-temporary-emergency-jurisdiction-to-home-state-jurisdiction-in-a-n-d-cases/>

While it is clear that a trial court can issue a nonsecure custody order using temporary emergency jurisdiction, case law from the North Carolina Court of Appeals has been inconsistent on the issue of whether the trial court can adjudicate using temporary emergency jurisdiction. See *In the Matter of E.J.*, 225 NC App 333, 738 SE2d 204(2013)(cannot use emergency jurisdiction to adjudicate); *In re A.G.M.*, 773 SE2d 123 (NC App 2015)(emergency jurisdiction is limited to taking custody of the children and doing only what is necessary to take care of them). *But cf. In re M.B.*, 179 NC App 572 (2006)(okay to adjudicate using temporary emergency jurisdiction when state with jurisdiction has not acted as long as order is temporary until NC acquires jurisdiction).

3. What if both mom and dad had left Tennessee 4 months before the petition was filed in North Carolina? (children had been here with mom for 4 months). Does NC have jurisdiction?

Answer: Maybe. Because mom, dad and the kids have left Tennessee, there is no home state in this case. That means you can consider whether there is a basis to exercise jurisdiction under one of the other grounds found in GS 50A-201. Section (a)(2) of that statute provides for “significant connection/substantial evidence” jurisdiction. The court of appeals has stated that you need to find that there is evidence within this state that will address aspects of the child’s “interest, care, protection, training and personal relationships” – evidence in NC “beyond statements of the competing parents about the child’s welfare.” *Holland v. Holland*, 56 NC App 96 (1982)(no significant connection jurisdiction where 11 year-old child had lived in Georgia for 6 years immediately prior to coming to NC); *Pheasants v.*

***McKibben*, 100 NC App 379 (1990)(significant connection jurisdiction upheld where child had lived in NC for all but 10 months out of the last two years and mom had lived here for entire 2 year period); *In re T.N.G.*, 781 SE2d 93 (NC App 2015)(child and parents had significant connection with NC). Since family lived for so long in Tennessee and has resided in NC for only 4 months, it may be difficult to support a conclusion of significant connection jurisdiction.**

If no significant connection jurisdiction, you may consider using emergency jurisdiction, unless the only allegation in the petition is neglect.

4. Petition is filed when NC clearly is the home state of the children and children are placed with maternal grandmother living in Virginia. After the children had lived with grandmother in Virginia for 18 months, mom files motion to dismiss juvenile proceeding in North Carolina on basis that NC no longer is the child's home state. Do you grant the dismissal?

Answer: No. Home state jurisdiction is determined at the time the action is commenced. GS 50A-201; *In re T.N.G.*, 781 SE2d 93 (NC App 2015)(jurisdiction determined based on circumstances at the time the action is commenced); *In re CMB*, 266 NC App 448 (2019)(jurisdiction continues until court terminates juvenile court jurisdiction); *Peoples v. Judicial Standards Commission of NC*, 442 US 929 (1979)(Jurisdiction is not a light bulb that can be turned on and off; cannot be affected by conduct of parties).

However, either at the request of a party or on the court's own motion, you may consider whether Virginia is now the more convenient forum for this proceeding. GS 50A-207. If so, the NC action may be stayed while Virginia considers whether to exercise jurisdiction. There is no authority to 'transfer' the case to another state – it is up to the other state to take it or not when requested – and you cannot dismiss the NC action until the other state accepts jurisdiction. See *In the Matter of M.M.*, 230 NC App 225, 750 SE2d 50 (2013).

5. A child was born in Tennessee. When child was 3 months old, mom moved to NC with the child. Dad remained in Tennessee. When child was 6 months old, DSS filed a petition in NC alleging the child is abused. Can NC exercise jurisdiction?

Answer: Only if NC can exercise temporary emergency jurisdiction. See discussion under question 2 above. Tennessee was the home state before the child left - see GS 50A-102(7)(for a child less than 6 months old, home state is where the child has lived since birth) – and it remains home state for six months after child left because father remains in that state. Because there is a home state, NC does not have jurisdiction unless there are grounds to exercise emergency jurisdiction.

6. What if both mom and dad had left Tennessee when child was 3 months old? If child is now 6 months old, can NC exercise jurisdiction?

Answer: Maybe. See response to #3 above. You may consider significant connection jurisdiction. As this child is so young, there may be no state with significant connection jurisdiction. GS 50A-201(a)(4) allows a court to exercise what has been referred to as ‘default jurisdiction’ or ‘jurisdiction by necessity’ if you can reach the conclusion that no other state has any basis for exercising jurisdiction under section 201 of the UCCJEA. To date, NC has only one case discussing default jurisdiction. *Gerhauser v. VanBourgondien*, 238 NC App 275, 767 SE2d 378 (2014)(can only use default when no other state is home state and no other state has significant connection jurisdiction).

7. Children were born in Tennessee. When children were 6 and 8 years old, mom and dad divorced. The Tennessee court granted custody to mom and visitation to dad. Shortly thereafter, mom moved to NC with the children and dad stayed in Tennessee. One year after the move, DSS filed a petition alleging both children are neglected. Does NC have jurisdiction?

Answer: Only if NC can exercise temporary emergency jurisdiction. Tennessee has continuing exclusive jurisdiction in this case. See GS 50A-202 and 203. A state that has made a custody determination (in this case - the custody order entered following the divorce of the parents) retains the exclusive authority to decide whether it has a basis for exercising jurisdiction as long as one party remains in that state. If both parties have left, or if Tennessee decides it does not have grounds to exercise jurisdiction, then NC can exercise jurisdiction if it has initial determination jurisdiction under GS 50A-201(a)(home state jurisdiction) or (b)(significant connection/substantial evidence jurisdiction).

NC may be able to exercise emergency jurisdiction if facts support it. If NC uses emergency jurisdiction, the order must be temporary and provide a specific termination date (provision allowing temporary order to become “permanent” does not apply in this case because state with jurisdiction has acted). If NC exercises emergency jurisdiction, because the state with jurisdiction has acted in the past, the trial judge must immediately communicate with court in Tennessee to determine how to best resolve the emergency. GS 50A-204(d). *See In re JWS*, 194 NC App 439 (2008)(failure to contact other court immediately results in a loss of subject matter jurisdiction). *See also In re Malone*, 129 NC App 338 (1998) (trial court must make the contact; not sufficient for DSS to make contact).

8. Same facts as #7 above, except instead of a civil custody action, the children had been adjudicated neglected by the juvenile court in Tennessee. The juvenile court granted guardianship to maternal grandmother. Grandmother, both parents and the children came

to North Carolina one year ago. North Carolina DSS now has filed a petition, alleging children are neglected. Can the NC court exercise jurisdiction?

Answer: As everyone has left Tennessee, you do not need to worry about continuing exclusive jurisdiction. However, the juvenile case in Tennessee actually may be an on-going proceeding. While civil custody actions are completed when a custody judgment is entered, a juvenile case is on-going until the juvenile court terminates jurisdiction. In other words, there is no final judgment resolving the case until the court terminates jurisdiction. If Tennessee's law is the same as NC, this is not a modification situation but rather it is a matter to be resolved by application of GS 50A-206 regarding Simultaneous Proceedings. *See Jones v. Whimper*, 366 NC 367, 736 SE2d 170 (2013)(affirming but vacating portions of NC App opinion)(discussing application of simultaneous proceedings provision). The NC court cannot proceed if another state is exercising jurisdiction in accordance with the UCCJEA. The NC court is required to contact the Tennessee court to determine whether the Tennessee court is inclined to rule that NC is the more convenient forum. If Tennessee does not decide NC is the more convenient forum, NC must dismiss the NC petition. GS 50A-206(b).

9. Children were born in NC. When they were 3 and 5 years old, the NC court entered a custody order granting mom primary physical custody of the children and dad visitation rights. One year later, mom moves to Tennessee with the children and two months later, dad moves to Tennessee to be close to the children. Two years later, mom comes back to North Carolina with the kids. After two months, DSS files a petition alleging the kids are neglected. Does NC have jurisdiction?

Answer: Only if you determine it is appropriate to exercise emergency jurisdiction. Many lawyers assume NC can exercise modification jurisdiction if a NC court entered the original custody determination. However, GS 50A- 202(b) provides that if the state making the original custody determination does not have continuing exclusive jurisdiction, it can modify its own order only if there is a basis for exercising initial determination jurisdiction (which NC does not have in this case because Tennessee remains the home state of the children). North Carolina lost continuing exclusive jurisdiction when everyone left the state. See Official Comments to GS 50A-202("Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as a parent leaves the state, the noncustodial parent returns. As subsection (b) provides, once a state has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards set out in Section 201").

OPD

OFFICE OF THE
PARENT DEFENDER

The Right to Counsel in AND/TPR cases

Wendy C. Sotolongo
Parent Defender
Indigent Defense Services
Wendy.C.Sotolongo@nccourts.org
8/8/2023

1

Parent's right to counsel

G.S. 7B-602

(a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition...

What does a provisionally appointed attorney do?

G.S. 7B-1101.1

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition...

2

Provisional counsel released if parent

- Does not appear at the hearing
- Does not qualify
- Retained own counsel
- After examination by court, makes a knowing & voluntary waiver

Court Appointed Attorneys for Respondent Parents-A/N/D
G.S. 7B-602

3

<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; width: fit-content;">Provisional counsel released if parent</div> <div style="display: flex; flex-direction: column; align-items: center;"> <div style="border: 1px solid black; padding: 5px; margin: 5px; width: 80%;">Does not appear at the hearing after service</div> <div style="border: 1px solid black; padding: 5px; margin: 5px; width: 80%;">Does not qualify</div> <div style="border: 1px solid black; padding: 5px; margin: 5px; width: 80%;">Retained own counsel</div> <div style="border: 1px solid black; padding: 5px; margin: 5px; width: 80%;">After examination by court, makes a knowing & voluntary waiver</div> </div>	<h2 style="margin: 0;">Court Appointed Attorneys for Respondent Parents-TPR</h2> <h3 style="margin: 0;">G.S. 7B-1101.1</h3> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>UNC <small>UNIVERSITY OF NORTH CAROLINA</small></p> <p>Home / About / Contacts / Services</p> <p>To Be or Not to Be: How to Know When a Parent Attorney in a TPR is Provisional Counsel and What That Means for Withdrawing</p> <p><small>How to Know When a Parent Attorney in a TPR is Provisional Counsel and What That Means for Withdrawing</small></p> </div> <p><i>In re C.T.T.</i>, ___ N.C. App. ___, 885 S.E.2d 124 (2023)</p> <p><i>In re R.A.F.</i>, 384 N.C. 505 (2023)</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4

<h2 style="margin: 0;">Knowing and Voluntary Waiver</h2>	
<p>BY RESPONDENT</p> <p><i>In re A.Y.</i>, 225 N.C. App. 29 (2013) (allowing mother to proceed pro se at PPH upheld)</p> <p><i>In re J.R.</i>, 250 N.C. App. 195 (2016) (denial of mother's request to proceed pro se in A/N/D case upheld)</p> <p><i>In re J.M.</i>, 273 N.C. App. 280 (2020) (allowing mother to proceed pro se at PPH reversed for lack of findings on whether waiver was knowing and voluntary.)</p>	<p>BY RULE 17 GAL</p> <p><i>In re P.D.R.</i>, 224 N.C. App. 460 (2012) (holding if respondent had a GAL of substitution based on incompetency, "the GAL would act on behalf of respondent mother, making the decision necessary to seek a result favorable to the mother")</p>

5

<h2 style="margin: 0;">Orders ending Provisional Status</h2>	
<p>AOC-J-144 To Confirm or Deny Counsel</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>1. ASSIGNMENT OR DENIAL OF COUNSEL</p> <p>After the petition filed in this matter, I appear to the Court that the appropriate counsel should be appointed to represent the respondent in this matter. I have been told that I have the right to know in person represent me. I have been told of my rights to have a counsel appointed by the Court if I cannot afford to hire one. With full knowledge of these rights, I understand, willingly, and understandingly, affirm as follows:</p> <p><input type="checkbox"/> I do not want a court-appointed lawyer. I will hire my own lawyer at my own cost.</p> <p><input type="checkbox"/> I do not want the appointment of any lawyer. I understand that I have the right to represent myself, and that I will be held to that.</p> <p>FINISHING OF FACT</p> <p>NOTE TO JUDGE: I, the respondent, and I, the GAL, have read the notice to appoint and waive counsel and have fully understood its contents. I, the respondent, am willing and voluntarily, I, the GAL, do not wish to appoint an attorney to represent me. I understand that I have the right to represent myself, and that I will be held to that.</p> </div>	<p>AOC-J-143 To Retain or Waive Counsel</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>2. RETENTION OR WAIVER OF COUNSEL</p> <p>After the petition filed in this matter, I appear to the Court that the appropriate counsel should be appointed to represent the respondent in this matter. I have been told that I have the right to know in person represent me. I have been told of my rights to have a counsel appointed by the Court if I cannot afford to hire one. With full knowledge of these rights, I understand, willingly, and understandingly, affirm as follows:</p> <p><input type="checkbox"/> I do not want a court-appointed lawyer. I will hire my own lawyer at my own cost.</p> <p><input type="checkbox"/> I do not want the appointment of any lawyer. I understand that I have the right to represent myself, and that I will be held to that.</p> <p>FINISHING OF FACT</p> <p>NOTE TO JUDGE: I, the respondent, and I, the GAL, have read the notice to appoint and waive counsel and have fully understood its contents. I, the respondent, am willing and voluntarily, I, the GAL, do not wish to appoint an attorney to represent me. I understand that I have the right to represent myself, and that I will be held to that.</p> </div>

6

<p>IDS Policy:</p> <p>If a judge concludes that due process requires appointment of counsel for a particular indigent non-parent respondent in an abuse, neglect, or dependency proceeding, IDS will pay for the representation pursuant to G.S. 7A-498.3(a)(1).</p>	<p>Court Appointed Attorneys for Non-Parent Respondents</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------

7

Release of Court Appointed Attorney	
Provisional counsel	Confirmed counsel
Release if not at hearing	Must have motion
Is service required? AND v TPR Which hearing? (Adjudication) Court does it sua sponte	Justifiable cause Notice to client of intent to w/draw Permission of court
	Carries over to TPR (not provisional) regardless of whether TPR is filed as a petition or motion <i>In re M.G.</i> , 239 N.C. App. 77 (2015)

8

Unrepresented Respondents at Hearings
<p>Court may look at a parent's eligibility and desire for appointed counsel at any stage in the proceeding. 7B-602.(a) and 7B-1101.1(a).</p> <p>Court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent...counsel shall be appointed to represent them... The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition or motion. 7B-1109(b)</p> <p><i>In re K.M.W.</i>, 376 N.C. 194 (2020)</p>

9

Forfeiture of the Right to Court Appointed Attorney

While there is a point at which a person who has a right to court-appointed counsel can forfeit that right through their conduct, that point is only reached when the respondent's actions are "egregious dilatory or abusive conduct" that "totally undermine[s] the purposes of the right itself by making representation impossible and seeking to prevent the trial from happening at all." *In re K.M.W.*, 376 N.C. 194, 209 (2020) (quoting *State v. Simpkins*, 373 N.C. 530, 541 (2020)).

Options...

10

Right to Court Appointed Attorney after Permanency

G.S. 7A-451(b) creates the entitlement to an attorney through any critical stage of the action or proceeding.

IDS Policy:

- o Preference for termination of jurisdiction or transfer to Chapter 50.
- o Presumption that a motion is not a critical stage and that there is no entitlement to counsel.

However, there may be circumstances when the presiding judge determines that the proceeding is a critical stage and that a particular indigent party is entitled to the services of counsel.

Examples...

11

Appointment of Guardian ad Litem for Respondent

G.S. 7B-601

Minor parent always appoint Rule 17

Incompetent parent?

Role = substitution

12

Is Parent Incompetent?



13

Whether to Hold a Hearing



In re T.L.H., 368 N.C. 101 (2015)

Trigger: Is There a Substantial Question of Incompetency

Ch. 35A not required

Abuse of Discretion

Trial Court Gets Substantial Deference

14

Functionality of Parent

In re T.L.H., 368 N.C. 101 (2015)

Voluntary placement,
reunification as goal
Managing affair (budgeting,
subsidized housing)
Receiving Tx

In re J.R.W., 237 N.C. App. 229 (2014)

Mental Health Dx ≠ per se
evidence incompetent

*Participated in court hearings
Visited with child*

Attended educational programs

Completed parenting program

*Transitioned to living in own
apartment*

15

Hearing

Notice

Court examine respondent

No independent examination required but may be appropriate
CAUTION: MDE

Look to Ch. 35A: definition & procedure
But which procedures unknown

Standard of review = abuse of discretion

In re A.R., 238 N.C. App. 302 (2014)

16

1. Notice of Appeal ⇔ Juvenile Clerk sends an Expedited Appeals Form (via email) to AOC with appeal information. OPD receives a copy of the email.
2. Screening by OPD ⇔ Assign, Withdraw, or Dismiss
3. If screened in, OPD asks the Juvenile Clerk to prepare Appellate Entries for the judge to sign.
 - AOC-J-160, Appellate Entries in Abuse, Neglect, Dependency, or Termination of Parental Rights Proceeding (when respondent appeals).
 - AOC-J-161, Appellate Entries for DSS/GAL in Abuse, Neglect, Dependency, or Termination of Parental Rights Proceeding (when DSS, child's GAL or TPR petitioner appeals).

➤ Determination of Indigency Status for Appeal.

➤ Role of Trial Counsel during Appeal. App. R. 3.1

Appeals

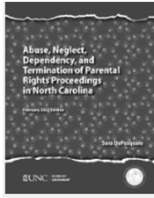
17



Questions?

18

Pre-Adjudication Issues



Chapters 2, 3, 5

1

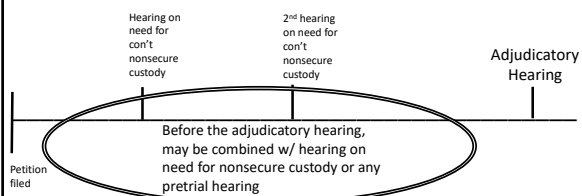
Objectives

- ✓ Identify the Issues that Need to Be Addressed
- ✓ KIDS: Utilize the Resources to Assist You w/ Those Issues



2

Pre-adjudication Hearings G.S. 7B-800.1



3

Procedure Oriented <ul style="list-style-type: none"> • Subject Matter Jurisdiction • Amend Petition • Discovery • Continuance of Adjudicatory Hearing • Notice requirements • Stipulations • Consent Orders 	People Oriented <ul style="list-style-type: none"> • Parties/Personal Jurisdiction • Retention/Release of Provisional Counsel • GAL for Respondent Parent • Paternity • "Relatives" Identification & Notification
Other Issues that Can Properly Be Addressed as a Preliminary Matter *ICWA	

4

Subject Matter Jurisdiction, 7B-402

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

5

Properly Signed, 7B-403 In re T.R.P.

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	
Date	Signature Of Person Authorized To Administer Oaths
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Notary	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge
County Where Notarized	Signature Of Petitioner
SEAL	Telephone No.
	<input type="checkbox"/> Director <input type="checkbox"/> Authorized Representative Of Director
County Department of Social Services	

6

Properly Verified, 7B-403; In re N.T.

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	Name And Address Of Petitioner
Date	Signature Of Person Authorized To Administer Oaths
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Notary	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge
Date My Commission Expires	Signature Of Petitioner
SEAL	Telephone No.
County Where Notarized	<input type="checkbox"/> Director <input type="checkbox"/> Authorized Representative Of Director
County Department of Social Services	

7

AND FILE-STAMPED!



Slow down!

8

KIDS

On the Civil Side
A UNC School of Government Blog


[Home](#) | [About](#) | [Contributors](#) | [Categories](#)

Abuse, Neglect, and Dependency (A/N/D) Petitions: Sign and Verify

This entry was contributed by Sara DePasquale on March 4, 2019 at 9:05 am and is filed under [Civil Justice Law](#).

Who signs an A/N/D petition and whether it is properly verified determines if the court has subject matter


9



UCCJEA
7B-402

KIDS

And...




Child Welfare Case Compendium

New Search Print Results


10

Venue



- Juvenile resides or is present
- Can be waived
- Change of venue pre-adjudication
 - does not change substitute petitioner or who has non-secure custody

11

Do Rules of Civil Procedure apply? 	
<u>Yes</u> , if:	<u>No</u> , if:
Ch. 7B says it does	Ch. 7B provides different procedure
Rule fills procedural gap	Rule confers a new right

12

Amend Petition

DSS filed a petition alleging neglect based on various conditions in the home. While the child is in nonsecure custody, she discloses that "daddy mike" has been inappropriately touching her. DSS seeks to amend its petition to add abuse.

What is the proper procedure?

13

Service and Process

- Summons = AOC-J-142
- Rule 4 of Rules of Civil Procedure
- Service on one parent is sufficient for purposes of subject matter jurisdiction

In re Poole, 357 N.C. 151 (2003), reversing for reasons stated is dissenting opinion in 151 N.C. App. 472 (2002).

14

Personal Jurisdiction

-
- ≠ subject matter jurisdiction but
 - Must have it to order that person to do something
 - How do you get it?

15

Representation	
Child, G.S. 7B-601 <ul style="list-style-type: none"> • Abuse/neglect automatic • Dependency? • Role = BIC 	Parent <ul style="list-style-type: none"> • Attorney • Rule 17 GAL?

16

Continuance G.S. 7B-803	
Petition filed	Adjudicatory Hearing
W/in 60 days	
1. Continue for good cause ... 2. Otherwise <u>extraordinary circumstances</u> when necessary for proper administration of justice or in BIC How long? What is the impact on case? On child? On family?	

17

Discovery	G.S. 7B-700
	In re M.M.

18

Writ for Incarcerated Parents



19

Race,
Color,
National
Origin

Receipt of federal
assistance

Title VI, Civil Rights Act



20


Title VI Civil Rights Act

Language Access



21

Applies to Services


NCDHHS

[Assistance](#)
[Site](#)

[Division > Social Services > Civil Rights](#)

Civil Rights


The Division of Social Services and county Departments of Social Services must take reasonable steps to ensure that people with Limited English Proficiency (LEP) have meaningful access to the programs, services and information agencies provide. One of the provisions of the Voluntary Compliance Agreement signed with US Department of Health and Human Services Office for Civil Rights was that each LEP agency develop a Title VI/LEP compliance plan to address the needs of the ever growing population of individuals whose primary language is not English. Learn more about Title VI and LEP at [LEP 101](#)

Know Your Rights Brochures

- [Arabic](#)
- [Cambodian](#)
- [Chinese](#)
- [Croatian](#)
- [English](#)
- [Hmong](#)
- [Korean](#)
- [Russian](#)
- [Spanish](#)
- [Vietnamese](#)

Title VI Complaint Procedure

22



The screenshot shows the North Carolina Judicial Branch website. The header includes the logo and navigation links: Home, Search, Courts, Help Topics, Services, and Rio. A dark banner below the header contains the text: "ncCourts & LIT in Person, Johnson, Lee, and Wake Counties. Trial information, training, and resources." Below this is a breadcrumb trail: Home > About Us > Disability and Accessibility > Language Access. The main heading is "Language Access" in a large, bold font. Below it is a subheading: "Learn how the judicial branch accommodates people with spoken foreign language needs, how to request an interpreter, and more." There is a "Contents" link with a downward arrow. Below that is a link to a document: "Department of Justice Memorandum of Agreement with the North Carolina Administrative Office of the Courts - October 28, 2012". A "Tagged" section lists "Disability and LANGUAGE ACCESS". At the bottom, a link reads: "Can I get an interpreter for a court case?"

23

Keep KIDS in Mind

Do you have suggestions/tips for
How to work with language interpreters?

24

Disability

Chapter 13.5

- Americans with Disabilities Act
- Section 504

Requesting a Reasonable

ACCOMMODATION

25

ADA - 504

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

26

- Is a reasonable accommodation/modification needed?
- Does it need to be specified in reasonable efforts?

27

Keep KIDS in Mind

Have you had to make accommodations in your courtroom?

Tips to share...

Have you had a reasonable accommodation come up in a A/N/D or TPR case? How so? How did you address it?

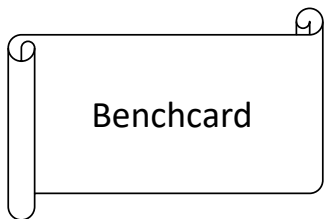
28

Any Other Issues?



29

Keep KIDS in Mind



30

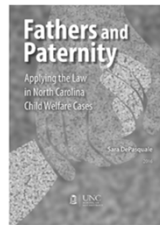
ICWA Inquiry

Biological Parent	Child	Indian Child Status
	Child is Member	KNOW INDIAN CHLID
Parent is a member	Child is eligible for membership	KNOW INDIAN CHILD
Parent is a member	Child is not eligible for membership	NOT AN INDIAN CHILD
Parent has ancestry with federally recognized tribe but is not a member	Unknown if child is eligible for membership	NO REASON TO KNOW
Parent has ancestry with federally recognized tribe	Child is not eligible for membership	NOT AN INDIAN CHLID
Parent has ancestry with federally recognized tribe	Child is eligible (If child becomes a member)	REASON TO KNOW (Know)

Addressing Paternity



Chapter 5.4



1

Roadmap

- A Father's Role in an A/N/D Proceeding
- Determining whether Paternity Is an Issue
- Adjudicating Paternity in the 7B Action
- Why Adjudicating (Non)Paternity Matters

2

Q1: What is a father's role in a child welfare action?

It takes two



G.S. 7B-401.1(b) Parents. "The juvenile's parent shall be a party" (unless exception)

3

What does
Chapter 7B
say about
fathers?

Nothing explicitly
“parent”
“paternity”

UNC School of Government

4


Purpose of the Juvenile Code

- Protect constitutional rights of juveniles & parents
- Respect family autonomy and juvenile's needs for safety, continuity, & permanence
- Prevent unnecessary or inappropriate separation of juveniles from their parents
- Provide standards for removal (when nec) and return of juveniles to their homes
- Reunification/Return Home (G.S. 7B-101(18b))
 - Placement of the juvenile in the home of either parent...

5

Nonsecure Custody	Pre-adjudication Hearing	Initial Disposition
G.S. 7B-503(a) Criteria Court shall 1 st consider placement with a parent...	G.S. 7B-800.1(a)(2) The court shall consider identification of the parties to the proceeding	
G.S. 7B-506(h)(1) At each continued nonsecure custody hearing, court shall inquire into <ul style="list-style-type: none"> • identity & location of any missing parent • whether paternity is an issue The court shall make findings about efforts to locate, serve, & establish paternity (when an issue) The court may specify efforts	G.S. 7B-800.1(a)(3) The court shall consider whether paternity has been established or efforts made to establish paternity, including the identity & location of any missing parent	G.S. 7B-901(b) The court shall inquire into <ul style="list-style-type: none"> • identity & location of any missing parent • whether paternity is an issue The court shall make findings of efforts to locate, serve, & establish paternity (when an issue) The court may specify efforts

6




What do those efforts look like?

Appendix 3A
Checklist: Diligent Search to Identify a Father

Appendix 4A
Worksheet: Determining When Paternity Is an Issue in the Abuse, Neglect, or Dependency Proceeding

Appendix 3B
Checklist: Diligent Search to Locate a Father

7



Q2. Is Paternity an Issue?

Who is the Father?

8

Presumptions & Operation of Law	Affidavit of Parentage (AOP)	Judicial Adjudications of Paternity	Judicial Determinations: Paternity included as Issue
Marital Presumption (mother married any time between conception-birth) *rebuttable by clear & convincing evidence	Hospital affidavits w/in 10 days of birth G.S. 130A-101(f) *1993-2005 (presumption) *Certified copy admissible in action to establish paternity	Paternity action in district court (establish or de-establish) G.S. 49-14	Criminal Nonsupport G.S. 14-323 G.S. 49-2
Reputed father marries mother after child's birth (basis of legitimation under G.S. 49-12)	IV-D child support purposes G.S. 110-132 "constitutes an admission of paternity" "shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation"	Legitimation proceeding before clerk of superior court G.S. 49-10 G.S. 49-12.1 (legitimation includes paternity determination)	Child Custody Orders
Adoption (G.S. 48-1-106(b))		Declaratory judgment G.S. 1-256 et seq.	Child Support Orders
Spouse of woman who gave birth to child through heterologous artificial insemination when request & consent in writing to use of such technique (G.S. 49A-1; G.S. 12-310)			Juvenile Court Orders (A/N/D & TPR)
	URR: School of Governance		Divorce Orders

9

COLLATERAL ESTOPPEL – Does It Apply?



10

What do you think

Mom and Dad are married and have several children. Child at issue is born of the marriage. Dad is listed on the birth certificate, but he is not the biological father of the child. The reported biological father saw the child a few years ago but has no relationship with the child. Dad acknowledges the child as his, and neither parent wants the biological father involved. The child is 13 and believes Dad is his father. The GAL believes it is contrary to the child's best interest to challenge Dad status as dad.

11

Is paternity an issue?


Yes

No

Powered by **Polli Everywhere**

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polli.com/app

12



DSS filed petition and names mom, dad, and mom's live-in boyfriend. Child lives with mom and has regular contact with dad. There is no custody order. A year ago, mom and dad execute an AOP when mom goes to IV-D agency. The AOP was submitted to court with a voluntary support agreement that the court approved. Mom tells DSS she thinks it is possible boyfriend is dad.

UNC School of Government

13

Is paternity an issue?

Yes

No

Powered by **in Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

14

Mom and legal father (mom's husband) are white. Child looks Black. DSS asks for genetic marker testing. Mom and dad deny anyone else is the father. Is paternity an issue?

Yes

No

Powered by **in Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

15

Shortly after becoming pregnant, Mom starts new relationship. When baby is born, mom and new boyfriend both believe he is the father. Mom and new boyfriend execute an AOP, and he is named on birth certificate. Two years later, DSS files a neglect petition naming new boyfriend as respondent father.

UNC School of Government

16

. Is paternity an issue?

Yes

No

Powered by **Poll Everywhere**
 Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll.com/app

17

Q3: How do you adjudicate paternity?



18

It is sufficient for DSS to inform the court of DNA test results.

True

False

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

19

Hearing Required

- Testimony
- AOP (certified copy)
- Birth Certificate
- Marriage Certificate
- DNA Testing
- Child's Appearance

Evidence matters.

UNC School of Government

20

The petition alleging neglect of a 2 year old names as respondents mom, her husband of 6 years from whom she has not seen for 4 years, and putative father. Service is made on mom and putative father.

UNC School of Government

21

The court may hold a hearing to address putative father's paternity.

True

False

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

22

The court cannot make a paternity determination without evidence of genetic marker test results.

True

False

Powered by  Poll Everywhere


Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

23

DNA Testing

G.S. 8-50.1(b1): In the trial of any civil action in which the question of parentage arises, the court shall...

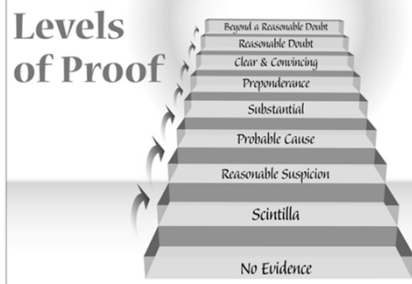
- Admissibility/Foundation
- Rebuttable presumptions, 85% – 97%
- Does Not Apply to Testing not via 8-50.1(b1)



24

Evidence: What's the burden of proof?

- Testimony
- AOP (certified copy)
- Birth Certificate
- Marriage Certificate
- DNA Testing
- Child's Appearance



25

Order

Address Both

- Paternity
- Non-Paternity



UNC School of Government

26

Q4: Why Does Adjudicating (Non) Paternity Matter?

- Parties
- Adjudication
- Disposition
- Reunification
- Timing/Outcome of Court Action
- Adoption
- Termination of Parental Rights

27

Party Status and Rights

Not a parent

- Remain a party?
- Visitation?
- Reunification services?

Caretaker or custodian?

- Appointed Counsel?
- Reunification services?
- Right to appeal?

28

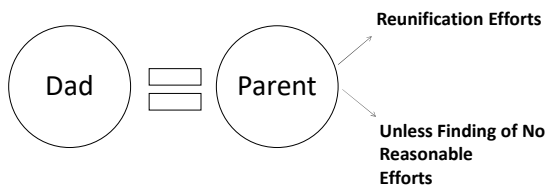
Adjudication: Status of Child

- Dependency, 7B-101(9)
 - In need of assistance because parent, guardian, custodian
 - Unable to provide care or supervision and
 - Lacks an appropriate alternative child care arrangement
- Applies to Both Parents!
 - In re V.B., 239 N.C. App. 340 (2015)

UNC School of Government

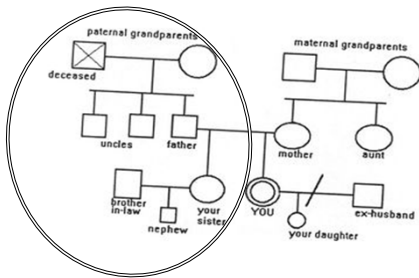
29

Placement and Services



30

Consideration of Relatives



31

Concurrent Permanent Plans: G.S. 7B-906.2

Reunification = Priority

- -906.1(d), each review/PP hearing
 - Services offered to reunite
 - Whether efforts would be unsuccessful/contrary to child's health & safety
 - When /if TPR should be considered
- -906.1(e), each PP hearing
 - If possible to place with parent w/in 6 months
 - If unlikely, consider guardianship/custody with other and what rights and responsibilities remain with parents
 - Consider adoption/need for TPR

UNC School of Government

32

Ongoing Case Action (we'll get to this later)

• Waive Further Reviews	• Terminate Jurisdiction
G.S. 7B- 906.1(k), automatically relieved of obligation if custody w/ parent	G.S. 7B-911 custody order, no time limit

33

Legally Clear for Adoption

- Relinquish, Consent, TPR
- G.S. 7B-906.1(f)(3)
 - No TPR to be filed by DSS if DSS did not provide family with services when reasonable efforts required
 - In re A.E.C., 239 N.C. App. 36 (2015)
 - “LATE APPEARANCE”

UNC School of Government

34

Termination of Parental Rights

Is there now an unknown parent, G.S. 7B-1105

Adjudication of Non-Paternity, TPR Not Appropriate

Grounds, G.S. 7B-1111(a)(5)

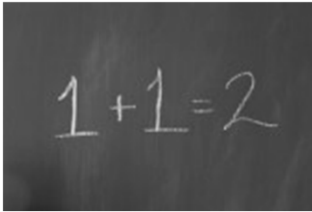
UNC School of Government

35

Adoption: Notice

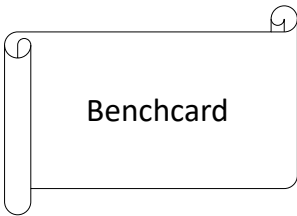
36

Integral Part of Proceeding!



37

Keep KIDS in Mind



38

Appendix 3A

Checklist: Diligent Search to Identify a Father

Purpose: To assist a county department in determining if a man is identified as a child’s father through a legal presumption, evidence of paternity, or judicial adjudication. This form may also assist a county department in determining the identity of a putative father or possible biological father.

Using This Form: This form suggests sources of information a county department may look to when exercising due diligence in identifying the father of a child who is the subject of an abuse, neglect, or dependency proceeding. This form is not intended to be an exhaustive list or a mandatory checklist that a county department must complete.

Suggestions for Use: Document the date an action was taken. Record the father’s name (if provided) next to the source of information. Document the name of the individual and agency providing the information.

Child's Name: _____

Interviews

____ / ____ / ____

Mother: _____
Name(s) of Father Provided: _____

____ / ____ / ____

Child: _____
Name(s) of Father Provided: _____

____ / ____ / ____

Household Member(s), Name: _____
Name(s) of Father Provided: _____

____ / ____ / ____

Relative(s), Name: _____
Name(s) of Father Provided: _____

____ / ____ / ____

Friend(s), Name: _____
Name(s) of Father Provided: _____

Documents

Birth Certificate

☐ Original

☐ Amended

Source of Birth Certificate:

☐ Parent

☐ Vital Records

☐ Register of Deeds

☐ Child’s Educational Record

Name of Father: _____

Other Documents:

☐ Affidavit of Parentage (AOP)

☐ Marriage Certificate

☐ Court Order Adjudicating Paternity

☐ Other _____

Mother's Marital Status (at Time of Child's Conception through Birth)

____ / ____ / ____

Child’s DOB

____ / ____ / ____

Estimated Date of Conception (280 days before DOB)

☐ Never married

☐ Married ____ / ____ / ____

Husband’s Name: _____

☐ Divorced ____ / ____ / ____

Child Support Enforcement Agency

___ / ___ / ____ Child Support Enforcement Agency _____

Agency Representative: _____

Father's Name Provided: _____

Court Records

___ / ___ / ____ VCAP (Civil): Case Name: _____

Court and Docket No.: _____

Date of Order: ___ / ___ / ____

Father Named in Order: _____

___ / ___ / ____ ACIS (Criminal): Case Name: _____

Court and Docket No.: _____

Date of Order: ___ / ___ / ____

Father Named in Order: _____

Appendix 3B

Checklist: Diligent Search to Locate a Father

Purpose: This form suggests efforts a county department may take when exercising due diligence in locating the father of a child who is the subject of an abuse, neglect, or dependency proceeding. This form is not intended to be an exhaustive list or a mandatory checklist where each suggestion must be acted upon. The diligence of a search is determined on a case-by-case basis.

Suggestions for Use: Document the date and type of action taken (e.g., letter sent to XYZ address, voicemail left for X at ###-####), the name of the agency or company contacted, and the name of the person interviewed. Record the information provided regarding the father’s current or formerly known contact information and/or location.

Child’s Name: _____

Father’s Name: _____

Contact Child’s Father: _____

___ / ___ / ___ Mailed Letter to: _____

___ / ___ / ___ Called Phone Number: _____

☐ No answer ☐ Left message ☐ Spoke to: _____

___ / ___ / ___ Sent Email to: _____

Result: _____

Family Interviews

___ / ___ / ___ Mother, Father’s Contact Information Provided: _____

___ / ___ / ___ Child, Father’s Contact Information Provided: _____

___ / ___ / ___ Household Member or Relative (Name): _____

Information Provided: _____

___ / ___ / ___ Household Member or Relative (Name): _____

Information Provided: _____

Other Interviews

___ / ___ / ___ Employer (Current or Former)

Name of Person Contacted: _____

Information Provided: _____

___ / ___ / ___ Co-Worker (Current or Former) Name: _____

Information Provided: _____

___ / ___ / ___

Child Support Services Agency (Agency Name): _____
Name of Person Contacted: _____
Information Provided: _____

___ / ___ / ___

Landlord (Current or Former) (Name): _____
Information Provided: _____

___ / ___ / ___

Provisional Counsel Appointed to Father (Name): _____
Information Provided: _____

___ / ___ / ___

Department of Public Safety, Division of Adult Corrections (Jail, Incarceration, Probation)
Name of Person and Agency/Facility Contacted: _____
Information Provided: _____

___ / ___ / ___

Utility Company (Electric, Gas, Water) (Company Name): _____
Name of Person Contacted: _____
Information Provided: _____

___ / ___ / ___

Other (Name): _____
Information Provided: _____

Records Search

___ / ___ / ___

DMV Search (Driver's License, Vehicle Registration), State: _____
Information Listed: _____

___ / ___ / ___

Property Tax Search (Real Property, Vehicle), State, County: _____
Information Listed: _____

___ / ___ / ___

Board of Election (Voter Registration), State, County: _____
Information Listed: _____

___ / ___ / ___

N.C. Wildlife Commission or Other State's Equalivent (Hunting/Fishing License): _____
Information Listed: _____

___ / ___ / ___

Professional Licensing Board (Name, State): _____
Information Listed: _____

___ / ___ / ___

Telephone Directory (Directory Assistance, Phone Book, Internet White Pages)
Information Listed: _____

___ / ___ / ___

U.S. Post Office
Information Listed: _____

___ / ___ / ___

Internet Search (Include Social Media): _____
Identify Searches Made: _____
Contact Information Discovered: _____

___ / ___ / ___

Internal Agency Database
Program Contacted: Child Welfare, Child Support, Other _____
Information Listed: _____

___ / ___ / ___

Offender Public Information Search
Information Listed: _____

___ / ___ / ___

N.C. Sex Offender and Public Protections Registry Search
Information Listed: _____

___ / ___ / ___

N.C. Statewide Automated Victim Assistance and Notification (NC SAVAN)
Information Listed: _____

___ / ___ / ___

VCAP (Civil): Case Name: _____
Court and Docket No.: _____ Date of Record: ___ / ___ / ___
Information Listed: _____

___ / ___ / ___

ACIS (Criminal): Case Name: _____
Court and Docket No.: _____ Date of Record: ___ / ___ / ___
Information Listed: _____

Appendix 4A

Worksheet: Determining When Paternity Is an Issue in the Abuse, Neglect, or Dependency Proceeding

Purpose: This worksheet is designed to assist the court in its determination of whether paternity is an issue. By using this worksheet, the court will be able to determine if and how a child's father has been named. The court will be able to identify if the father's status is a result of a marital presumption of legitimacy, an admission of the parties, or a court adjudication of paternity. If there was a court adjudication, the court may find it useful to list the parties that were involved in the prior action in the event that the court also must decide whether collateral estoppel applies to the party in the abuse, neglect, or dependency proceeding who is raising paternity or non-paternity as an issue. Although this worksheet is designed with the court determination in mind, the parties may find it useful when deciding whether to raise paternity as an issue in the abuse, neglect, or dependency proceeding.

Child's Name: _____

Birth Certificate

☐ Father ***Is Not*** Named on Original Birth Certificate

☐ Father ***Is*** Named on Original Birth Certificate: _____

Basis for Name on Birth Certificate

☐ Marital Presumption (Rebuttable by Clear, Cogent, and Convincing Evidence)

☐ AOP Executed within 10 Days of Child's Birth:

Mother: Date Signed: ____ / ____ / ____

Father: Date Signed: ____ / ____ / ____

[Note: If Executed before 12/12/2005: Presumption of Paternity Applies.]

Certified Copy May Be Admitted as Evidence of Paternity (Admission by Signatories)

☐ Court Order

Amended Birth Certificate

Date of Amendment: ____ / ____ / ____

Basis of Amendment: _____

Name of Father: _____

Name of Father Removed (if Applicable): _____

[Note: It is possible that a legitimization by marriage or court order declaring the child's legitimacy or adjudicating paternity or non-paternity occurred without an accompanying amendment to the child's birth certificate. The husband and wife may not have filed a

request to amend the child's birth certificate with an accompanying affidavit and a certified copy of the marriage certificate with the State Registrar. The clerk of court may not have notified or sent a certified copy of a court order determining different parentage to the State Registrar.]

Legitimation

☐ Legitimation by Marriage, Proof: _____ Date of Marriage: ____ / ____ / ____

☐ Court Order of Legitimation, Case Name: _____

Court and Docket Number: _____ Date of Order: ____ / ____ / ____

Parties:

Putative Father: _____

Mother: _____

Child: _____

Child's Rule 17 GAL: _____

Husband (if Applicable): _____

☐ Child Is Legitimated ☐ Child Is NOT Legitimated

Judicial Determinations Addressing Paternity

☐ **Court Order of Paternity**, Case Name: _____

Court and Docket Number: _____ Date of Order: ____ / ____ / ____

☐ Order of Paternity Set Aside Date ____ / ____ / ____

Parties:

Putative Father: _____

Mother: _____

Child (if Applicable): _____

Child's Rule 17 GAL (if Applicable): _____

Child Services Agency (if Applicable): _____

Husband (if Applicable): _____

☐ Paternity Adjudicated ☐ Non-Paternity Adjudicated

☐ **Criminal Nonsupport Action**, Case Name: _____

Court and Docket Number: _____

Parties:

Prosecuting Party: _____

Named Defendant: _____

☐ Convicted ☐ Acquitted Date: ____ / ____ / ____

☐ **Declaratory Judgment**, Case Name: _____

Court and Docket Number: _____ Date of Order: ____ / ____ / ____

Parties:

Plaintiff: _____

Defendant: _____

Other: _____

☐ Declared the Father ☐ Declared NOT the Father

☐ **Divorce**, Case Name: _____

Court and Docket Number: _____ Date of Order: ____ / ____ / ____

Parties:

Plaintiff: _____

Defendant: _____

Paternity Decided ☐ Yes ☐ No

☐ Incorporated Separation Agreement Includes Child Support or Custody

☐ Provision for Child Custody or Support in the Divorce Judgment

Finding Husband ☐ Is the Father ☐ Is NOT the Father

Evidence of That Finding: _____

☐ **Child Custody**, Case Name: _____

Court and Docket Number: _____ Date of Order: ____ / ____ / ____

Parties:

Plaintiff: _____

Defendant: _____

Intervenor (if Applicable): _____

GAL for Child (if Applicable): _____

Finding of Fact Determining Paternity ☐ Yes ☐ No

Child Support

☐ Court Order Establishing Child Support, Case Name: _____

Court and Docket Number: _____ Date of Order: ____ / ____ / ____

Parties:

Mother: _____

Father: _____

Child (if Applicable): _____

Child's Guardian (if Applicable): _____

Child Support Services Agency (if Applicable): _____

☐ Child Support Order Terminated after Order of Non-Paternity (G.S. 50-13.13)

Date: ____ / ____ / ____

☐ Affidavit of Parentage (AOP) for Child Support Purposes

[Note: Adjudication of paternity is for child support purposes only; AOP is evidence of paternity in non-child support action.]

Mother: Date Signed: ____ / ____ / ____

Father: Date Signed: ____ / ____ / ____

☐ AOP Rescinded

[Note: Must be rescinded within 60 days of execution or before an entry of an order establishing paternity or child support, whichever occurs first.]

☐ Court Order on Rescission of AOP, Case Name: _____

Court and Docket Number: _____

☐ Granted ☐ Denied Date: ____ / ____ / ____

Parties:

Mother: _____

Father: _____

Child Support Services Agency: _____

☐ AOP Set Aside by Court Order, Case Name: _____

Court and Docket Number: _____

☐ Granted ☐ Denied Date: ____ / ____ / ____

Parties:

Mother: ☐ Moving Party

Father: ☐ Moving Party

Child Support Services Agency: _____

☐ Voluntary Support Agreement (VSA)

Parties:

Mother: Date Signed: ____ / ____ / ____

Father: Date Signed: ____ / ____ / ____

Child Support Services Agency: _____

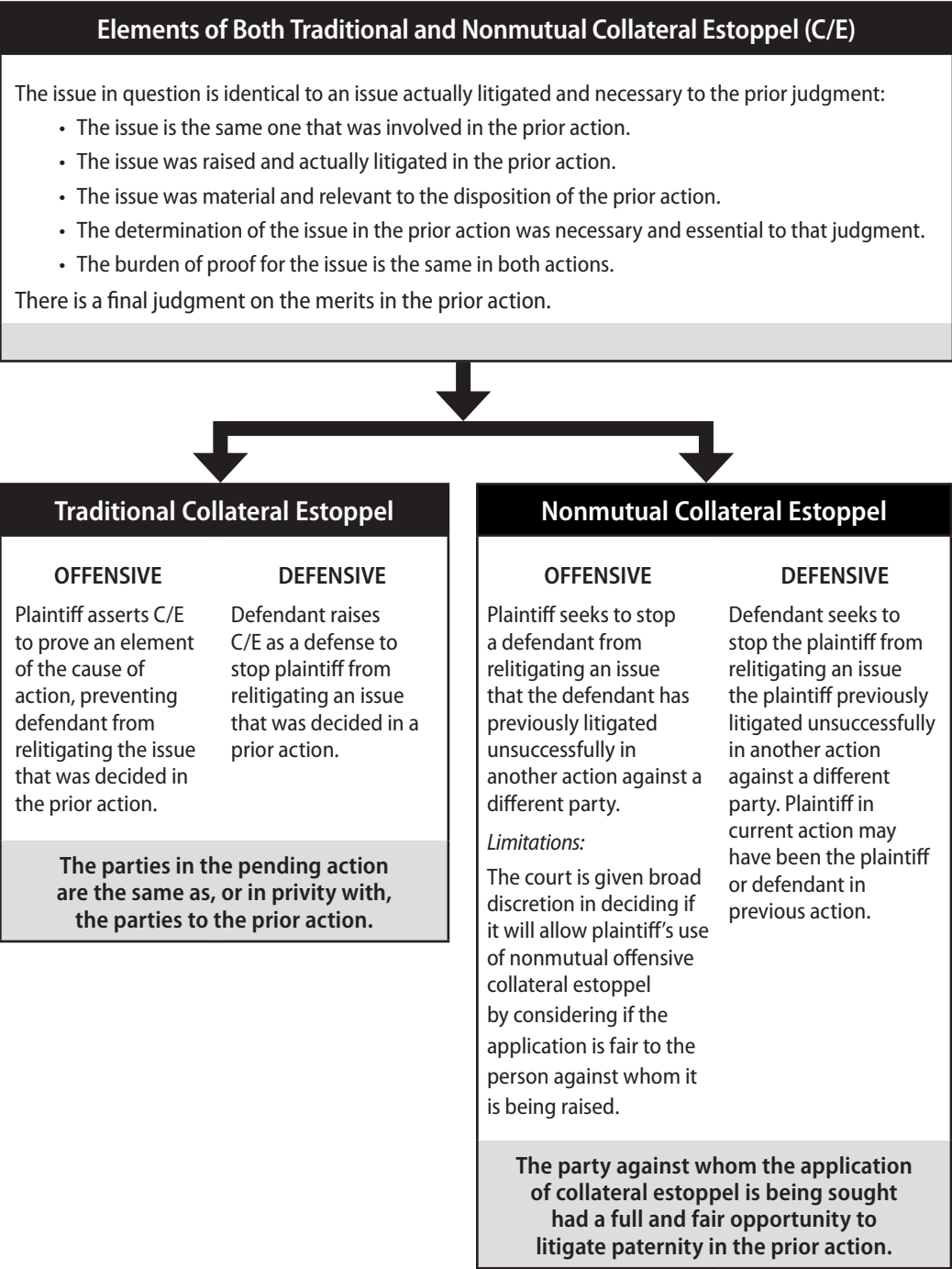
Date Filed ____ / ____ / ____

Court: _____ Date Approved ____ / ____ / ____

Basis of VSA: ☐ AOP ☐ Marital Presumption ☐ Court Order of Paternity

☐ Other: _____

Figure: Applying Collateral Estoppel



Presumptions & Operation of Law	Affidavit of Parentage (AOP)	Judicial Adjudications of Paternity	Judicial Determinations: Paternity included as Issue
Marital Presumption (mother married any time between conception–birth) *rebuttable by clear & convincing evidence	Hospital affidavits w/in 10 days of birth G.S. 130A-101(f) *1993-2005 (presumption) *Certified copy admissible in action to establish paternity	Paternity action in district court (establish or de-establish) G.S. 49-14	Criminal Nonsupport G.S. 14-322 G.S. 49-2
Reputed father marries mother after child's birth (basis of legitimation under G.S. 49-12)	IV-D child support purposes G.S. 110-132 “constitutes an admission of paternity” “shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation”	Legitimation proceeding before clerk of superior court G.S. 49-10 G.S. 49-12.1 (legitimation includes paternity determination)	Child Custody Orders
Adoption (G.S. 48-1-106(b))		Declaratory judgment G.S. 1-256 et seq.	Child Support Orders
Spouse of woman who gave birth to child through heterologous artificial insemination when request & consent in writing to use of such technique (G.S. 49A-1; G.S. 12-3(16))			Juvenile Court Orders (A/N/D & TPR)
	UNC School of Government		Divorce Orders

Nonsecure Custody	Pre-adjudication Hearing	Initial Disposition
<p>G.S. 7B-503(a) Criteria Court shall 1st consider placement with a parent...</p>	<p>G.S. 7B-800.1(a)(2) The court shall consider identification of the parties to the proceeding</p>	
<p>G.S. 7B-506(h)(1) At each continued nonsecure custody hearing, court shall inquire into</p> <ul style="list-style-type: none"> • identity & location of any missing parent • whether paternity is an issue <p>The court shall make findings about efforts to locate, serve, & establish paternity (when an issue)</p> <p>The court may specific efforts</p>	<p>G.S. 7B-800.1(a)(3) The court shall consider whether paternity has been established or efforts made to establish paternity, including the identity & location of any missing parent</p>	<p>G.S. 7B-901(b) The court shall inquire into</p> <ul style="list-style-type: none"> • identity & location of any missing parent • whether paternity is an issue <p>The court shall make findings of efforts to locate, serve, & establish paternity (when an issue)</p> <p>The court may specify efforts</p>

Nonsecure Custody



Chapter 5

1

Two Kinds of Nonsecure Custody Orders

Initial

Continued

STATE OF NORTH CAROLINA		IN THE Superior Court of Justice
County		
IN THE MATTER OF		
Petitioner		ORDER FOR NONSECURE CUSTODY
Respondent		ABUSE/NEGLECT/DEPENDENCY
Date of Hearing		FILED WITH COURT REPORTER
Date of Entry		FILED WITH COURT REPORTER

STATE OF NORTH CAROLINA		IN THE Superior Court of Justice
County		
IN THE MATTER OF		
Petitioner		ORDER ON NEED FOR CONTINUED NONSECURE CUSTODY
Respondent		ABUSE/NEGLECT/DEPENDENCY
Date of Hearing		FILED WITH COURT REPORTER
Date of Entry		FILED WITH COURT REPORTER

2

Leading Up to Court



Need for immediate removal

3

The Statutes G.S. 7B-

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • -502 (Authority, ex parte/notice) • -503 (Criteria) • -504 (Initial order, take physical custody) • -505 (Placement) • -505.1 (Medical consent/CME) • -506 (Con't nonsecure) • -507 (Findings, services) • -508 (Telephone) | <ul style="list-style-type: none"> • -302(c), (d) (Assessment, immediate removal) • -403 (verified petition) • -404 (clerks office closed) • -405 (commencement of an action) • -905.1 (visitation) • -3800 (ICPC) |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

4

Does your judicial district have an administrative order that delegates authority to issue a nonsecure custody order to someone other than a judge?

Yes

No

I don't know

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

5

Impacts



How many people available to respond to an after hours request



How soon the hearing on the need for continued nonsecure custody must happen

6

Have you ever had a DSS attorney or social worker call you to discuss whether you'd issue a nonsecure custody order before they filed the petition in the case?

Yes

No

I don't know

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

7

Starts with

STATE OF NORTH CAROLINA
County: _____
IN THE MATTER OF: _____
JUVENILE PETITION (ABUSE/NEGLECT/DEPENDENCY)
Filed during or after hours

8

Request for nonsecure custody

Statute Does Not Specify

- who may make the request
- written vs. oral request
- time period* for making the request

9

Ex parte but...

- Telephone notice to attorney / office if seeking after hours
- When
 - DSS has written notice respondent represented by attorney in the matter
 - Attorney representing respondent in another juvenile matter in same county involving another child of respondent
 - NOT provisional counsel

10

Servicemembers Civil Relief Act (SCRA)

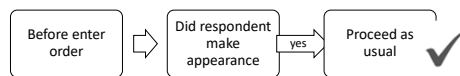
50 App. U.S.C. §§ 3901 et seq



Chapter 13.6

11

Obligation on the court & petitioner

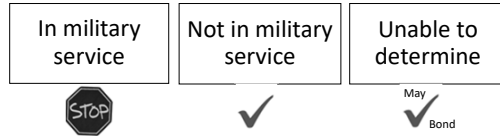


STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice
Name And Address Of Plaintiff		
VERSUS		
Name And Address Of Defendant		
SERVICEMEMBERS CIVIL RELIEF ACT DECLARATION		
G.S. Ch. 127B, Art. 4; 50 U.S.C. 3901 to 4043		

12

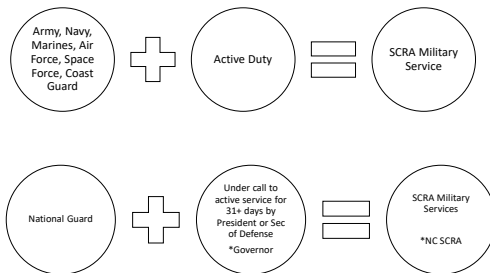
50 U.S.C. 3931: Affidavit/Declaration*

- Under penalty of perjury
- Personal knowledge
- Supporting facts



13

What is military service?



14

In Military Service

50 U.S.C. 3931	50 U.S.C. 3932
<ul style="list-style-type: none"> • Appoint Attorney <ul style="list-style-type: none"> • Locate Servicemember • Determine if stay needed • <u>Min</u> 90-day stay if <ul style="list-style-type: none"> • Defense can't be presented w/o servicemember • Attorney can't find or determine if meritorious defense exists 	<ul style="list-style-type: none"> • Servicemember has actual notice • <u>Min</u> 90-day stay if duty materially affects ability to appear <ul style="list-style-type: none"> • Date of when can appear • Letter from C.O. military leave not authorized

15

Specific criteria in G.S. 7B-503



allegations
in petition
are true

16

Specific criteria in G.S. 7B-503

- Based upon the verified petition, the Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile.
- Where the Court finds that there is a reasonable factual basis to believe that the matters alleged in the petition are true, that there are no other reasonable means available to protect the juvenile, and (check one or more)
- Must have 1**
- ☐ a. the juvenile has been abandoned.
 - ☐ b. the juvenile has suffered physical injury, sexual abuse, or serious emotional damage as defined by G.S. 7B-101(1)j.
 - ☐ c. the juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
 - ☐ d. the juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
 - ☐ e. the parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
 - ☐ f. the juvenile is a runaway and consents to nonsecure custody.

17

Specific criteria in G.S. 7B-503

No other reasonable means to protect juvenile

- first consider release of juvenile to parent, relative, guardian, custodian, or other responsible adult

Why does that matter?

<https://www.youtube.com/watch?v=dn3lWob9u7I> (up to sec. 42)

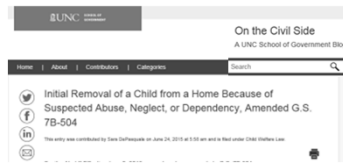
18

Initial nonsecure custody order = removal order

Applies to Law Enforcement or other authorized person

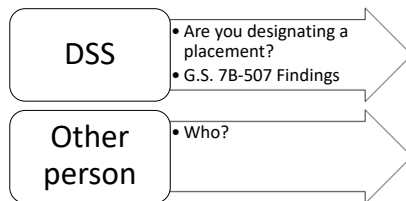
Additional findings re: entry into home

You may want to ask is the child in temporary custody?

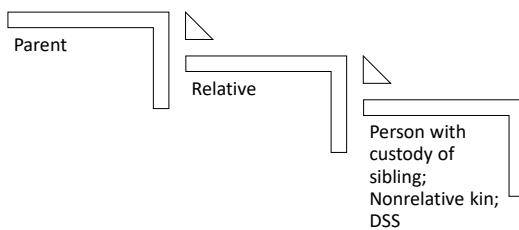


19

Who Gets Custody: Priorities of Placement (G.S. 7B-505)



20



Is child remaining in community of residence BIC?

21

Additional considerations

- Medical consent
 - CME
- Psychotropic and Other Medications/Special Needs; Medical Appts
- Visitation – parent and/or sibling
- ICWA
- Education (ESSA)
- What else?
- How soon to schedule next hearing

22

Initial
(at/after
Petition
filed)


w/in 7 days
sooner if
delegated
order


1st hearing
on need for
con't
nonsecure
custody


CANNOT BE WAIVED
But, may be con't up to
10 business days
Consent of respondent
& GAL if appointed

23

What's happening from parents perspective?





24

Hearing on need for continued nonsecure custody

- Same criteria but procedure is different

25

DSS Burden: Clear & Convincing

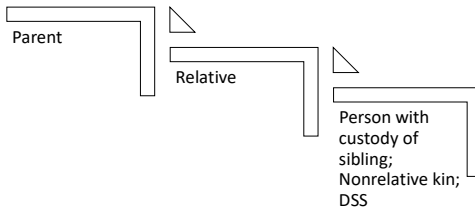
Child's Placement
in Custody is
Necessary



Court looks to G.S.
7B-503 Criteria

26

Any party may schedule hearing on placement



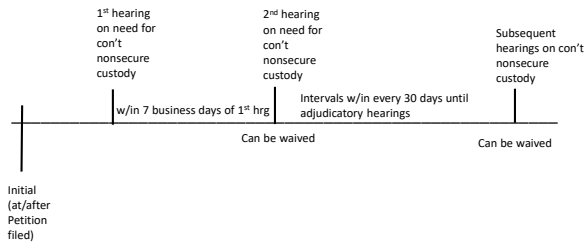
27

Not an adjudication on the merits

Cannot order dismissal to dispose of action



28



29

Other Requirements

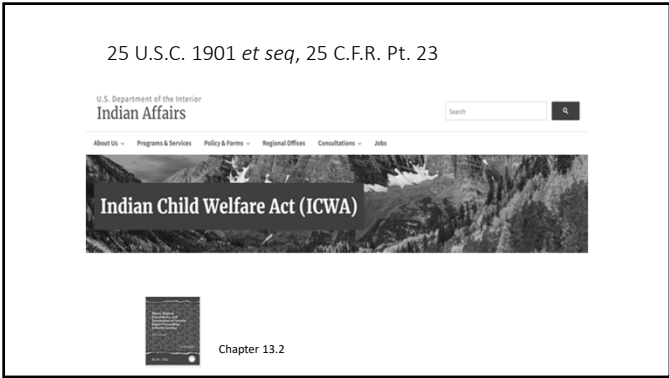
Both

- Order DSS notice relatives & other persons w/ legal custody of sibling(s)
- ICWA
- MH Eval of alleged abuse w/ violent history*
- May order notice to state tribe

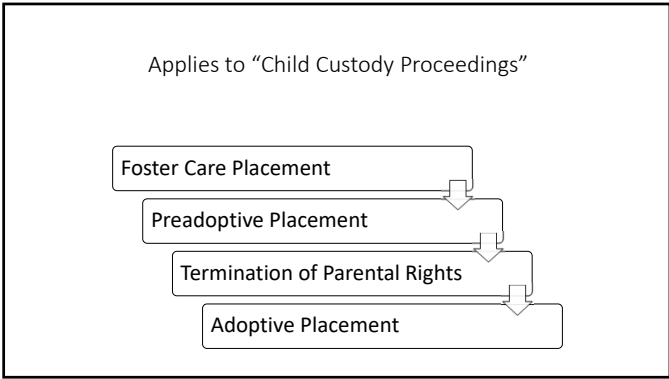
Continued

- Inquiry/findings missing parent & paternity
- Inquiry re: other juveniles in the home
- Non-emergency/non-routine medical
- Visitation

30



31



32

Mandatory Inquiry by Court

- At commencement of a child-custody proceeding
- Of each participant
- Do you know or have reason to the know the child is an Indian child
- Responses on the record
- Instruct parties to inform court if subsequently receives info that provides reason to know

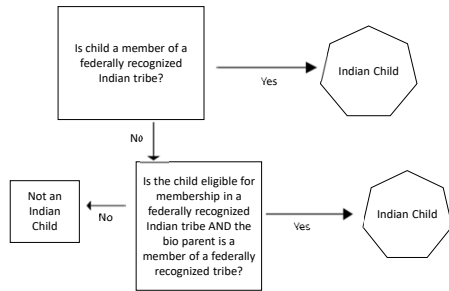
Quick Reference Sheet for State Court Personnel

U.S. Department of the Interior
Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

25 C.F.R. 23.107

33

Indian Child, 25 U.S.C. 1903(4)



34

ICWA Inquiry

Biological Parent	Child	Indian Child Status
	Child is Member	KNOW INDIAN CHILD
Parent is a member	Child is eligible for membership	KNOW INDIAN CHILD
Parent is a member	Child is not eligible for membership	NOT AN INDIAN CHILD
Parent has ancestry with federally recognized tribe but is not a member	Unknown if child is eligible for membership	NO REASON TO KNOW
Parent has ancestry with federally recognized tribe	Child is not eligible for membership	NOT AN INDIAN CHILD
Parent has ancestry with federally recognized tribe	Child is eligible (If child becomes a member)	REASON TO KNOW (Know)

35

Notice

- Registered/Certified Mail, Return Receipt
- Parents
- Indian custodians
- Tribe
- Copy to Regional Director
- Specific Contents
 - Include right to intervene



36

If Indian Child, ICWA applies

- Tribe determines if Indian child
- Court can't substitute judgment or consider
 - Blood Quantum
 - Existing Family Doctrine
 - Child – parent relationship



25 C.F.R. 23.103(c); 23.108(b)

37

Other
Requirements

Placement Preferences

Active Efforts

Qualified Expert Witness re:
serious emotional or physical damage
to child

TPR: Beyond a Reasonable Doubt of
serious emotional or physical damage
to child

38

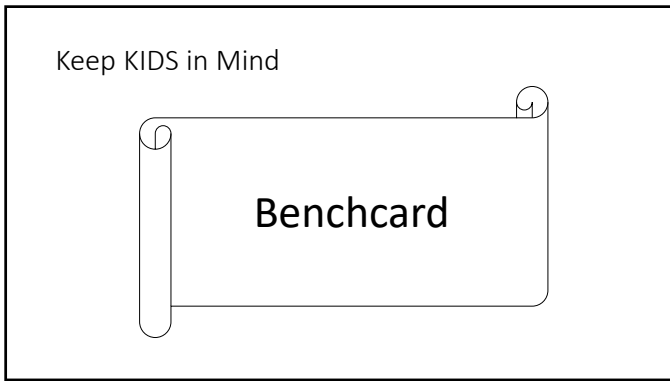
Orders

Must include
findings of fact &
the evidence
relied upon

Entered w/in 30
days

Not appealable

39

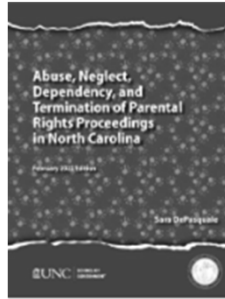


40

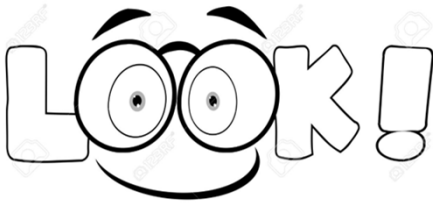
Day 3

Adjudicating Abuse, Neglect, or Dependency

- Chapter 6
- And a little bit of Chapter 2



1



2

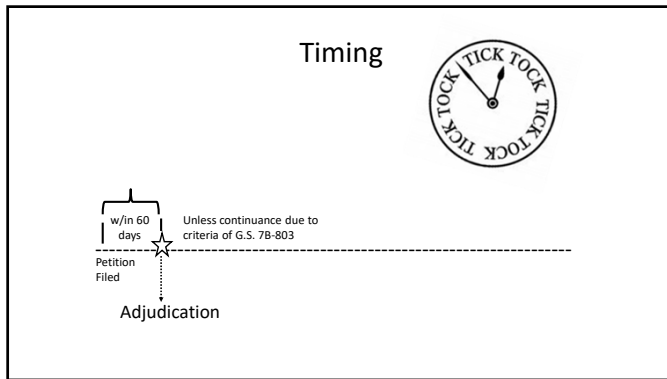
Appellate cases describe 2 Stages

Adjudication



Disposition

3




4

What's Being Decided?

- Abuse
- Neglect
- Dependency
- One, combination

Limited by the definitions in the Juvenile Code



Status of the Child

5

Child's Status

- Does not require determination of fault by a parent, guardian, custodian, or caretaker
- Adjudication is not "as to" a particular respondent
- Adjudication may occur if service on one parent*

6

You Are Not Deciding

Whether a parent has acted inconsistently w/ parental rights, is unfit, or has neglected the child

- It is not required for adjudication
- Adjudication is not a shortcut to disposition

7

STATE OF NORTH CAROLINA

County _____

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Juvenile _____

Juvenile's Date Of Birth _____ Age _____ Race _____ Sex _____

Name Of Petitioner _____

JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)

Condition Alleged ☐ Abused ☐ Neglected ☐ Dependent

DSS Burden by clear and convincing evidence of proving the allegations in the petition

G.S. 7B-805, -807(a)

Note: Cannot amend petition to conform to the evidence

8

Additional Factors

Neglect

- Harm
- Substantial risk of harm
- Where is this in the Juvenile Code?

Dependency

- Both parents

9

Scenario 1, Q 1 Was this the proper outcome?

Yes

No

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

10

Scenario 1, Q 2 Could the court have adjudicated all 5 children dependent?

Yes

No

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

11

Scenario 2 What would you decide re: adjudication? The juvenile is...

Abused **A**

Neglected **B**

Abused and Neglected **C**

None of the Above **D**

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

12

Scenario 3 Would you adjudicate the juvenile neglected?

Yes

No

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [poll-everywhere.com/app](https://www.poll-everywhere.com/app)

13

2 Procedural Paths for Adjudication

Hearing

Consent

14

A consent order is

- An agreement of the parties
- Their decree
- Entered on the record
- With the sanction of the court



15

Required Procedure

G.S. 7B-801(b1)

- All parties or authorized counsel are present
- Juvenile represented by counsel
- Court makes sufficient findings of fact

16

Practices referred to by the COA

- Draft of a proposed consent order
- Statement by parties/attorneys of proposed consent
- Findings that parties are consenting
- Court informed parties of intent to enter adjudication order based on consent

17

Just because YOU say it's the truth, doesn't make it true. Listen to the exact words you speak and what is the true reality of the situation.

someecards
user card



18

Hearing 7B-802



A judicial process to adjudicate the existence or nonexistence of any of the conditions alleged in the petition



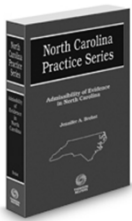
The court shall protect the rights of the child and parents to assure due process



Requires a hearing – even if respondent parent(s) not present (no judgment on the pleadings)

19

Evidence



The
Rules
Apply!



20

Relevant Time Period

- What is DSS required to prove?
- So what is the relevant time period?

21

In re L.N.H.: Plain Language

§ 7B-802. Conduct of hearing.

The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60.)

conditions underlying determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the **status** of the child at the time the petition is filed, not the post-petition actions of a party.

22

COA exceptions to the time period



"Fixed and ongoing circumstance"



Neglect: Long period of separation, treat like TPR

23

On the Civil Side
A UNC School of Government Blog

The State of Post-Petition Evidence in A/N/D Adjudicatory Hearings

This entry was contributed by Sara DePasquale on June 7, 2023 at 8:05 am and is filed under Child Welfare Law.



An adjudicatory hearing in an abuse, neglect, or dependency action is "a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in the petition." G.S. 7B-802. The conditions refer to whether the juvenile is abused, neglected, or dependent. Because of the statutory language of G.S. 7B-802, the general rule created by the appellate courts is that post-petition evidence is not considered at an adjudicatory hearing. However, the court of appeals has stated this rule is "not absolute." *In re J.B.*, 239 N.C. App. 340, 344 (2015). In the last several years, the court of appeals has carved out 3 exceptions to the rule that allow for post-petition evidence: (1) a neglect adjudication when there is a long period of separation between the child and parent before the petition is filed, (2) dependency adjudications, and (3) evidence of fixed and ongoing circumstances, such as paternity and mental illness. In November 2022, the North Carolina Supreme Court in *In re L.N.H.*, 382 N.C. 536 (2022) addressed one of those exceptions, the dependency adjudication exception, and determined the court of appeals exception was error. So, what is the rule regarding post-petition evidence? It's a little murky now.

24

Stipulations

- Judicial admissions
- Binding on the party who agrees to them

25

Stipulate to

Facts

Conclusion of law

“Stipulations as to questions of law are generally held invalid & ineffective & are not binding on trial or appellate courts.” N.Y. N.E.C.

26

Stipulations

G.S. 7B-807(a)

- In writing, signed by each party, submitted to the court
- Read into record with oral statement of agreement from each party stipulating

27

Question 4 This is a sufficient procedure for adjudication.

True

False

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

28

Scenario 5: Is this a

Stipulation

Consent

Neither

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

29

Scenario 6 Is this a proper consent?

Yes

No

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

30

Scenario 7, Q1 Is this a

Stipulation

Consent

Neither

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

31

Scenario 7, Q2 Did the court have enough evidence to adjudicate neglect?

Yes

No

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

32

Scenario 8a, Q 1 May the court proceed with the hearing w/o dad?

Yes

No


Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

33

Scenario 8a, Q 2 Mother consents to an adjudication of dependency. The GAL also consents. Should the court accept the proposed consent order?

Yes

No

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

34

Scenario 8a, Q3 Mother stipulates to dependency through a written document she has signed and DSS submits to the court. Is this a proper stipulation?

Yes

No

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

35


Scenario 8b, Q1 The court may adjudicate the children as ...

Abused

Neglected

Abused

Neither

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

36

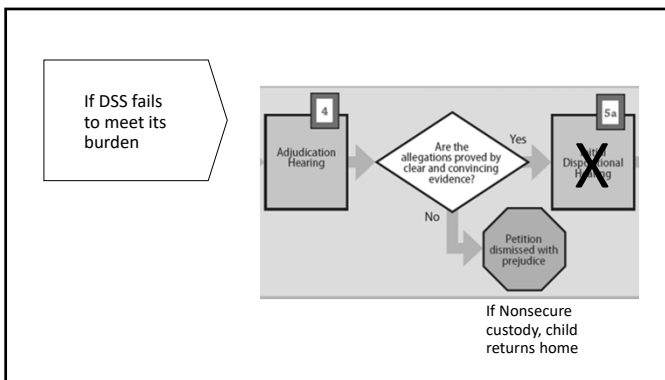
Scenario 8B, Q2 Is the court required to grant the motion?

Yes

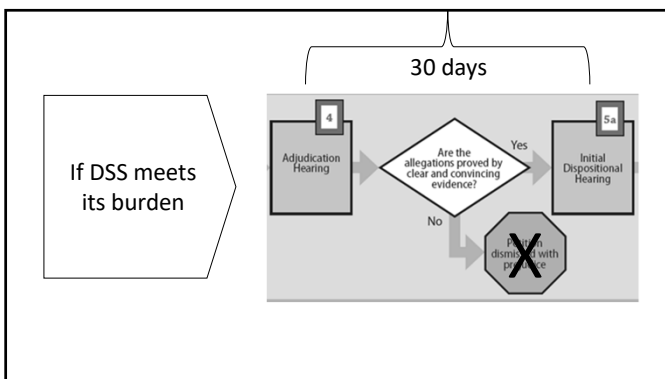
No

Powered by **mi Poll Everywhere**
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll.com/app

37



38



39

Can you move right to Disposition

Yes, But...Best Interest Standard

Practice Tip
If adjudication and disposition hearings are consolidated, court must apply the proper evidentiary standard at each stage and order

40

Keep KIDS in Mind

Benchcard

41

Adjudication Handout

Scenario 1

DSS files a petition regarding five children, alleging neglect based in injurious environment and dependency. They all share the same mother. However, the 2 girls have father A and the 3 boys have father B. The petition alleges and the evidence at hearing supports the following factual allegations. The children began living with grandmother in late October, after mother left them in grandma's care and went to NY. Mother has not been in contact since she left. Father A is incarcerated and has no suggestions for who can care for his daughters. Father B was not located by DSS at the time the petition was filed. When mother left the children with grandma, grandma was living in a hotel. In November, grandma moved with the children to transitional housing, but after 5 weeks, the home had no heat, no working plumbing, and no electricity. There was also no food. One week later, they were evicted. During their time with grandma, the children had poor hygiene, not regularly bathing or brushing their teeth, and had inadequate nutrition. At hearing, Father B testified DSS had his contact information and that he was available and willing and wanting his boys in his care. The court adjudicated the girls neglected. The court determined the boys were not neglected as they would receive proper care and supervision with their father and could have if DSS had contacted father.

Question 1: Was this the proper outcome?

Question 2: Could the court have adjudicated all 5 children dependent?

Scenario 2

A 4-month-old infant was brought to the hospital by her parents for a fever and vomiting. She was admitted and a CT scan revealed a brain bleed, skull fracture, and fractured arm. Non-accidental trauma was suspected, and a full skeletal survey revealed another healing fracture. At the adjudicatory hearing, the medical records are admitted. The dr. testifies that the skull fracture was likely caused by a blow to the skull or being struck against a hard object and could only have been caused by a fall if the baby fell over 3 feet onto a hard surface. He also testifies that the arm fracture was in a different state of healing than the skull fracture and is of the sort of fracture that are most commonly caused by twisting or bending and is not something an infant of this age could cause on their own. The parents testified they

were the sole caregivers for the baby during the 1 - 3 week period that the doctors estimated the injuries occurred. Neither parent had any explanation for the injuries. They denied that the baby had fallen, been dropped or thrown, endured trauma, or was mistreated in any way. Although the baby had been exposed to other people, the parents always supervised her. The petition alleged abuse and neglect referring to the medical findings of non-accidental trauma, that the parents were the baby's sole caregivers during the relevant time period, that the child was in an injurious environment due to lack of proper care, supervision, or discipline. It is not known how the child was injured or the exact dates of when she was injured.

Question: What would you decide re: adjudication?

Scenario 3

DSS files a petition alleging neglect due to lack of proper care and supervision and injurious environment. The factual allegations include the following and evidence was introduced at hearing to support the allegations. Mother and her boyfriend, who is the baby's father, live with mother's cousin. When mother's cousin came home from work one night, she discovered mother and boyfriend passed out naked on the couch. Empty beer bottles were strewn about and the kitchen table was broken. After several minutes, cousin was able to wake up mother, who would not tell cousin where baby was but that she (mother) knew where the baby was. Cousin kicked mother and boyfriend out that night. The next day, babysitter showed up at cousin's house at 6 a.m. with baby looking for mother. Cousin took baby. Mother showed up at 7 a.m. and took baby. Mother had another child who died of unknown causes and a third child to whom her rights were terminated.

Question: Would you adjudicate the juvenile neglected?

Scenario 4

DSS filed a petition alleging abuse and neglect. At the adjudicatory hearing, DSS informed the court that the parents did not consent to any findings of fact and asked the court to accept the verified petition as evidence, no other evidence was introduced. Respondent mother did not object to the court's consideration of the verified petition. The court adjudicated the juvenile abused and neglected based solely on the verified petition.

Question: This is a sufficient procedure for adjudication. TRUE FALSE

Scenario 5:

DSS filed petition alleging neglect and dependency. At the adjudicatory hearing, medical records of the mother and infant at the time of birth were introduced. Mother also provided sworn testimony. The court asked mother if she acknowledged the adjudication of neglect based on (and then reading from the petition) the baby tested positive for morphine at birth and the mother used illegal drugs during her pregnancy. Mother responded "yes ma'am." Respondent father's attorney stated the father was not opposed to the admission by mother.

Question: Is this a stipulation, consent, or neither?

Scenario 6

DSS files a petition alleging neglect based on an injurious environment resulting from domestic violence in the home that the children have been exposed to. The petition sets forth various facts that demonstrate the risk of harm to the children, including their being no food in the house at one point because father would not let mother leave the house to purchase groceries. The children were not fed for two days. The parties present a proposed consent order. Both parents are present with counsel. The child's GAL attorney advocate is present. DSS presents the consent order which includes DSS became involved because of a report of domestic violence in the home. Living in the home are the mother, father, and their two children ages 3 and 5. Based on the report, the children are dependent.

Question: Is this a proper consent?

Scenario 7

DSS files a petition for an 11-year-old boy alleging neglect. The petition alleged there was a previous CPS case that substantiated the child's sexual abuse by mother's now ex-boyfriend. The child was recently sexually abuse by a family friend. Mother has not sought therapy for her child as DSS recommended. She also has no showed for two separate meetings with the D.A. re: prosecution of that case. This school year, the child has been absent from school for 25 days and tardy 37 times.

DSS reads a prepared admission by mother in the record. It states the child is neglected because he did not receive proper care and supervision by mother as she did not ensure child regularly attended school. There have been 25 absences and 37 tardies this school year. The child failed 3 core classes. Mother has not taken child to well care visit with a doctor to address her medical needs. Mother states under oath her agreement with the admission. The father does not oppose the admission by mother. The child's school report card is introduced. There is no other evidence. The court adjudicated neglect.

Question 1: Is this a stipulation, consent, or neither

Question 2: Did the court have enough evidence to adjudicate neglect? Yes No

Scenario 8a

On April 21st, DSS files a petition alleging neglect after mother brings her two children to DSS and states she is unable to care for them emotionally and financially. She is homeless and without any support from family or friends after leaving the children's father, who she reports is abusive to her and the children. He throws things and hits her. On two different occasions, when he has been angry, he has thrown each child against the wall. She reports father drinks alcohol and smokes weed daily. Mother refuses to go to a shelter with the children. The petition names mother and father as respondents. Mother is personally served on April 27th. The summons mailed to father was returned "unclaimed." The clerk sends notice of the June 2nd hearing to mother and father; neither notice is returned. Mother appears for hearing with counsel but father is a no show. The children's GAL/attorney advocate is present.

Question 1: May the court proceed with the hearing without father? YES NO

Question 2: Mother consents to an adjudication of dependency. The GAL also consents. Should the court accept the proposed consent order? YES NO

Question 3: Mother stipulates to dependency through a written document she has signed and DSS submits to the court. Is this a proper stipulation? YES NO

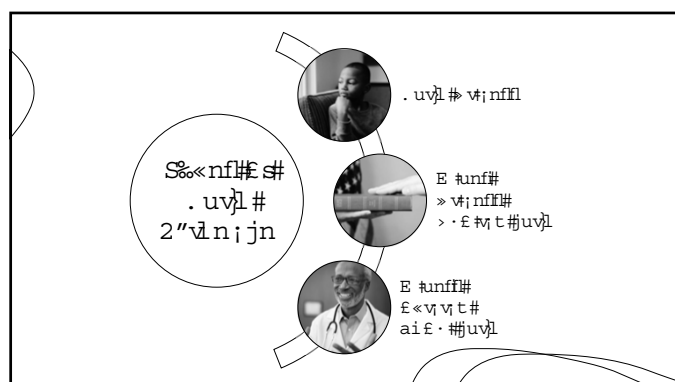
Scenario 8b

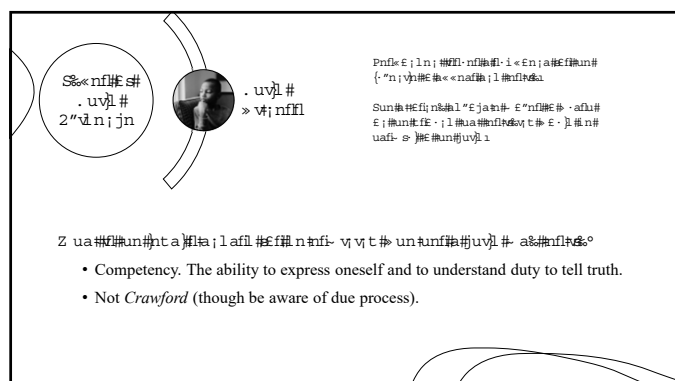
The DSS social worker testifies to the actions DSS took during and after mother came to the office, including the filing of the petition. At the adjudicatory hearing, mother is sworn in and when the facts of the petition as to how the children came into care are read to her, she agrees that she is stipulating to them. On cross examination by the DSS attorney, she also describes the two incidents where the father threw one child against a wall and another child against a door, both times during a fight with her when father was really angry. In both cases, the children cried after being thrown, and one child had a bruise on his back the next day.

Question 1: Based on the evidence, including the stipulations, the court may adjudicate the children as ...

Question 2: The children are adjudicated neglected. Father receives the order in the mail and calls an attorney. The attorney files a Rule 59 motion (w/in the proper time period) arguing for new hearing because father was not served and there was no determination of neglect as to the father. Is the court required to grant the motion?

[illegible]





9 2 % PQ % \ ¹



7

“Hearsay is an out of court statement offered to prove...”



8

Values, Not Just Rules

- % "Évð # ífn }ai h#n"údn; jn
- MnfflE ía }# íÉ» }l tñ }unaffla&# «vÉ í }#jÉ~ «nñí;j%
- B vq v- vñ#fin(· l vja }# vffaj #É í fl
- Pñh" a í jn
- MfÉ~ É ñ#ffE jva }# É }jvñl
- Mfi'vñtn
- 2 í fl· fin#aví; nffl
- Mfinl vj tai vj&#x26; É ðjn

9

Now I get it!

9 naffla%1 % ;# · # # j f · f # l a n ~ n j # # s n f n l # # #
« f f " n # u n # f i : u # s # u n # a # n f a f f n f n l 1



10

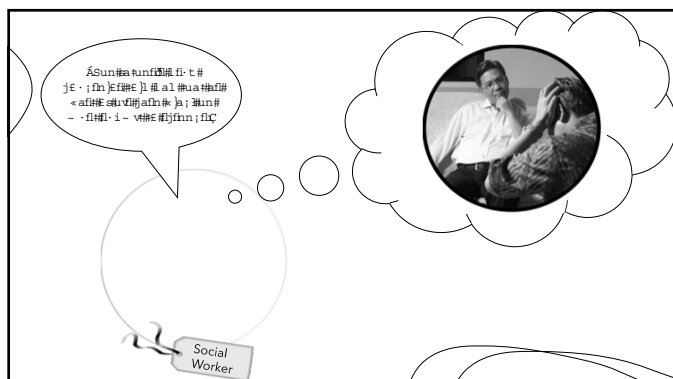
For the Truth

E · E d j f · f i n l a n ~ n j #
â E s n f n l # f # f i " n # u n # f i · t u # s t u a # a f l a v l

Sun#a}.n#s#un#"vini;n#l#n<n;lfi#;#un#
jfnlviw#.#s#un#.#.#.fi#n#jafia;t

Snflw t # n j) a f a ; t # j i n l v i v y e o
v Q . i # j j # f f f f n . a ~ v a t e f ;
v Q a t n ~ n ; f l f a t f s n f l u n a f f l a # h . . j n < t e f ;

11



12

Not for the Truth

E · EE ØjE · f#Hhãñ~ n; #

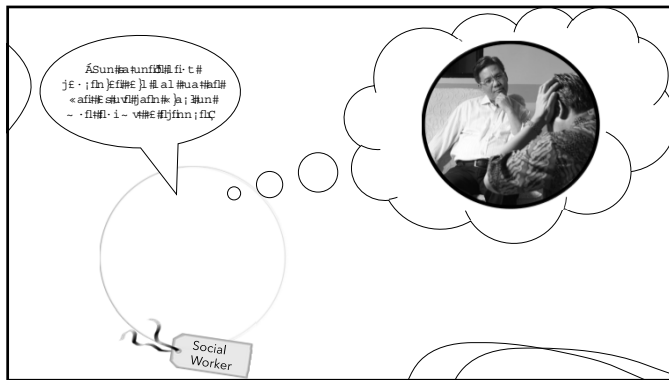
â#E snfl#E#ffhaffE ;f#E tunf#ua; #un#fi· tu

Sun#a}· n#E#un#“vãñ; jn# fl·a}#ñ n«n; lf#

E; #un#fñl vi v#E#E#un#EjE · f#E v; nffh

Snflñl #E#ñnv; t#l· i {ñj #E#EññEñ..a~ v; a#E; #

13



14

Hearsay Exceptions

. aentEñf# ð#
Onj)ñfñ; #E “av#i·v#Eññ”a; t



. aentEñf# ð#
Onj)ñfñ; #E · ð#· n#; a“av#i·j;



15

Hearsay Exceptions

Category 1A: Declarant availability irrelevant

Q t a n ~ n ; # l p v u # u n # s f n ; j n # s f n } a i v % e f # l v j n f i % a

- - · flv n f l a ; l # · i) j # n j f i l f l
- B n l v j a) l v a t ; f l v # f i n a ~ n ; t
- 2... j v n l # t n f a ; j n
- P n f l · a) u n a f l a %

16

Business and Public Records

```
2; #ivfl# aln#M #un#int . }af#j£ . fln#£s# . flv nffl#
```

$$P_n > \cdot \vee n f_{\#M_1} > \cdot \vee k_{\#M_1} \notin \emptyset$$

'4B ntufl#a;l#vj·~ fl#a;jnfl#s#fn«afa#f;l

- % #E#f# naf#v n#E#h"n; t
- M#n«af#l# #E#E~ nE;n# v#u#E# f#v#n#f#l# #E#E#E#t
- ;#n#n#nt. #af#E. f#n#E#E# f#v#n#f#l#
- Pnt. #af#k#aj#v#n#E# a|n#l# ju#n#j#f#l#

17

Business and Public Records

" $\frac{1}{2} \pi$; $\frac{1}{2} \pi$ a $\frac{1}{2} \pi$; $\frac{1}{2} \pi$; $\frac{1}{2} \pi$ n l $\frac{1}{2} \pi$ v u v $\frac{1}{2} \pi$ u n $\frac{1}{2} \pi$ f i l 1

2...00 QQ# snfl#<f# «nfi#& · tun; tvja#nl #n jefil fl#ua##

jɛ; ɛv; #un#lɛn~ n; ɛ; ɛ; ; %##] # n#v#l al # v #u#vɔ

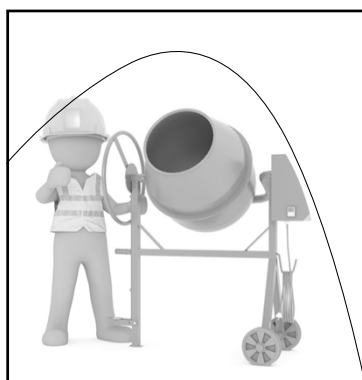
18



Business and Public Records

- [illegible]

19

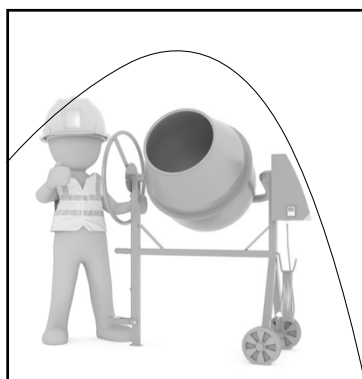


Laying the foundation for business records

- [illegible]

P. h#s2"v#~*E%

20



Laying the foundation for business records

80. a)enl# v; nff#E
 .i f#n#x#f ~ ~ "EC . . E #E
 0 fi t#d jfnn; #; j#h ~ < j#ann# uE#v#
 ; E#n#fif#i #j#fnn; # af# . a)enl##E#
 a . #un; #a#a#n#fi . t#n#f#nfi . #f#
 2 ~ < j#ann# af#h ~ v#f# v#h# . f#nff#
 finjefil #f#a#E; #; l#h#fatn#a; l#
 ~ v#h#fi . t#d jfnn; #f# jnl . f#f#l


21

[illegible]

22

Medical Diagnosis or Treatment Exception

Q ねね~ n; #ね# ~ふねん
'1 finafE ; ai ね#nfivn; #ねC ne vat ; ffnfne;l #neha+ n; ね;l
"1 . ; lnffne fl ne ね nj afia; #ねC ne #ef# nl vja ne vat ; ffnne ffinha+ n; ne



23

24

Young declarant?
Consider the circumstances...


The diagram illustrates a timeline for a young declarant. It features a horizontal sequence of five empty rectangular boxes, likely representing time intervals. Below these boxes are two long arrows pointing in opposite directions (left and right), suggesting a range of time or a sequence of events. To the right of the timeline, there is a circular inset image of a baby wearing glasses and resting their chin on their hands, which is the subject of the text above.

25

[illegible]

26

Keys regarding the intent of young declarants



On j) sfa; #E nE nE E #a "n #E # n # n # n #
 < a n; i #; # # . # # . a) # #
 ; # # # # # " # " # " # < < # " # " " # " " #

B n l v a) # # . E t v a n l # # a n - n ; # # # #
 i ; # . n l v a) # # ; n # # # # @ 1

2. a - # # v n # # . # # # n # . # n ; v j a n l # # # #
 » v ; n # # # u # # a l # # # n ; # # # # # # # # # # # #
 j v j ; ~ # a ; j n # # # # n # # j # # # # v t # # . # n # # # " - #
 C 1 . # < < # " # " " " #

27

Other Hearsay Exceptions under Rule 803

<p>Message in a Bottle</p> <p>2. A statement made by a person who is dead, insane, or otherwise incapable of testifying, if the statement is offered to prove the truth of the matter asserted.</p>	<p>Message in a Bottle</p> <p>2. A statement made by a person who is dead, insane, or otherwise incapable of testifying, if the statement is offered to prove the truth of the matter asserted.</p>
<p>Business Records</p> <p>3. A statement made by a person in the course of a business, if the statement is offered to prove the truth of the matter asserted.</p>	<p>Business Records</p> <p>3. A statement made by a person in the course of a business, if the statement is offered to prove the truth of the matter asserted.</p>
<p>Present Sense Impressions</p> <p>4. A statement made by a person at the time or nearly at the time of an event, if the statement is offered to prove the truth of the matter asserted.</p>	<p>Present Sense Impressions</p> <p>4. A statement made by a person at the time or nearly at the time of an event, if the statement is offered to prove the truth of the matter asserted.</p>
<p>Excited Utterances</p> <p>5. A statement made by a person while under the influence of a startling event, if the statement is offered to prove the truth of the matter asserted.</p>	<p>Excited Utterances</p> <p>5. A statement made by a person while under the influence of a startling event, if the statement is offered to prove the truth of the matter asserted.</p>
<p>Declarations Against Interest</p> <p>6. A statement made by a person that is so contrary to their own interest that a reasonable person would not make it unless it were true.</p>	<p>Declarations Against Interest</p> <p>6. A statement made by a person that is so contrary to their own interest that a reasonable person would not make it unless it were true.</p>
<p>Statements Against a Party's Interest</p> <p>7. A statement made by a person who is a party to a case, if the statement is offered to prove the truth of the matter asserted.</p>	<p>Statements Against a Party's Interest</p> <p>7. A statement made by a person who is a party to a case, if the statement is offered to prove the truth of the matter asserted.</p>

28

Hearsay Exceptions

Category 1B: Declarant availability (still) irrelevant

§ 803(a)(1) - Declarant's availability is irrelevant

29

Admission of "Party-Opponent"

- On the part of a party, a statement made by the party or by a person who is a party's agent, if the statement is offered to prove the truth of the matter asserted.
- On the part of a party, a statement made by a person who is a party's agent, if the statement is offered to prove the truth of the matter asserted.
- On the part of a party, a statement made by a person who is a party's agent, if the statement is offered to prove the truth of the matter asserted.

§ 803(b)(3) - Admission of a Party-Opponent

30

What if...

7a kufi# B E kufi 7a kufi#

? · "n i v n i # ? · "n i v n i #

A i E · f i p E ; E f i p f i a > # B E k u f i # k u n t f e j n f i k u f i e f i n a q u n # E j i # ~ n # k u n # f i n l f i j E j a v n # k u n # j t u # k u n e f i n c

% l - v f i m j n k u n # l (- l v j a p e j # u n a f i g t f i g " E j v t f i k E k u f i " n i v n i #.

31

What if...

7a kufi# B E kufi 7a kufi#

? · "n i v n i # ? · "n i v n i #

A i E · f i p E ; E f i p f i a > # B a k u f i # k u n t f e j n f i k u f i e f i n a q u n # E j i # f i a > # B E k u f i # f i g t f i j E j a v n # c

% l - v f i m j n k u n # l (- l v j a p e j # u n a f i g t f i g " E j v t f i k E k u f i " n i v n i #.

32

Defining a Party-Opponent

- Q i a t n ~ n i # k u f i s k a f n i t ☒
- Q i a t n ~ n i # k u f i s Q Q # ~ « j e k a n e ☒
- Z u a # a i f · # f i a t n ~ n i # k u f i s j u v j l °

33

Hearsay Exceptions

Category 2: Declarant must be unavailable

$$P \cdot \{n \# \sim^0 \# 1 \dots j n \ll \# \mathbb{E} ; f \# \gg n f n \# \# \text{unfn} ; \# \# \# n \} \text{ai } n_1$$

P·n#~ ,#...jn«t£;fih...vfi#nja·fin#un#;sfi·a·t£;#z#~ «fifa;#
a;l#un#nj)afa;#v#;a"ava)ai n#

34

Hearsay Exceptions under Rule 804

T ; a"av)ai }n ~ na;f##un#l nj}afa; ##fl

1 «fi'vntnl sf ~ #nfl#sov t #

$\therefore \text{fns flv t} \in \# \text{flv s} \# \text{nfl v n} \# \text{t} \cdot \text{fin fil nf} \# \text{fl} \in \# \text{E} \#$

```

:::1 jav v1t#;lnf#a#u#f#a"v1t#a#aj#s# n~ f#f#aif·#un#f#a#n~ n;#

```

Y1 : ai h#f#nfl#s#inja·fn#f#s#u#f#ya}f#f# n: a#u}}nfl#f#f#natu#f#f#f#

Y1 aifn;fa;l#fnafe;ai }n# na;f|f# #kfj·fn#un#n}afa; #ua"n#nn;#
·:fl·j}nf|f|s h

35

Hearsay Exceptions under Rule 804

7Efi- nfiBnflv- E; &
P.)n#~, 包 束 %

[illegible]

一、《n;lvt#0na和
 P·)p#~. 应该%

```
Cnvuifff#; :l#p;"n;v#h#s#v#t#;#n#t#; :l#s#n#v#t#h#j :l#s#h#
jaff# un;#cnvuifff#l#l#u#u#<<n;l#p;"n;v#h#v#l#h#d#al#
a;l#v#l#9#n#-f#n#l#-n#p;"n;v#h#v#l#n#s#f#h#-i :a;j#h#ff#n#l#
```

36

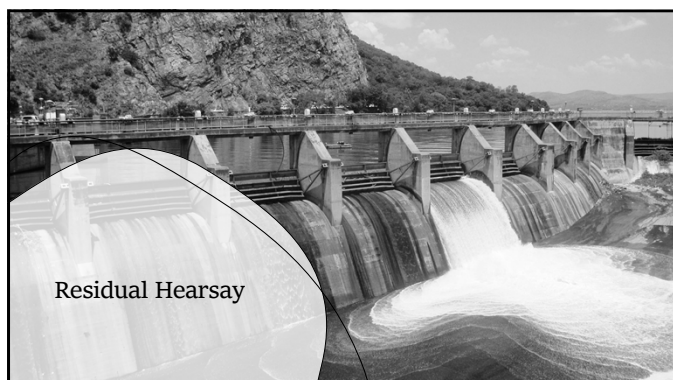
EXTRA! EXTRA!

Residual Hearsay

[illegible]

For more, see A/N/D
Manual, Ch. 11, Sect. 11.6.H

37



38

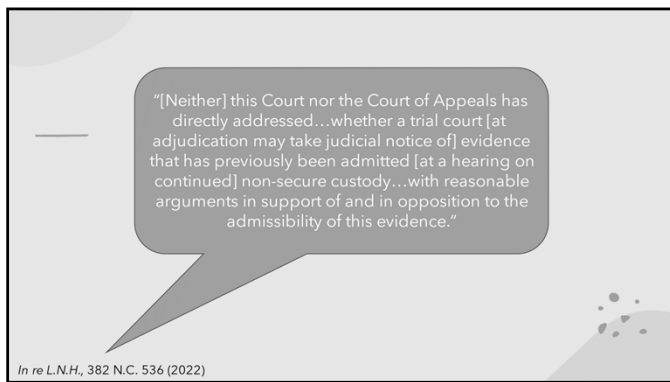
The point on hearsay:
don't panic.

[illegible]

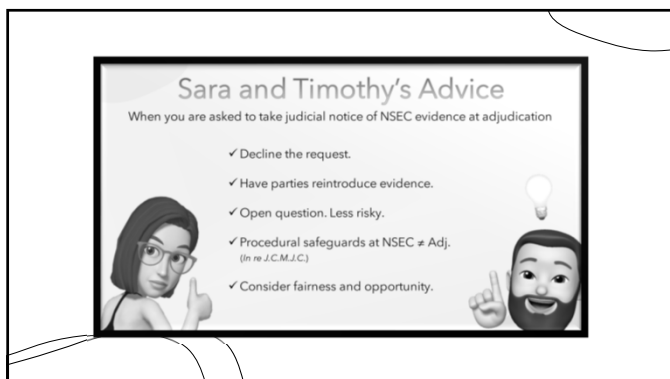
39



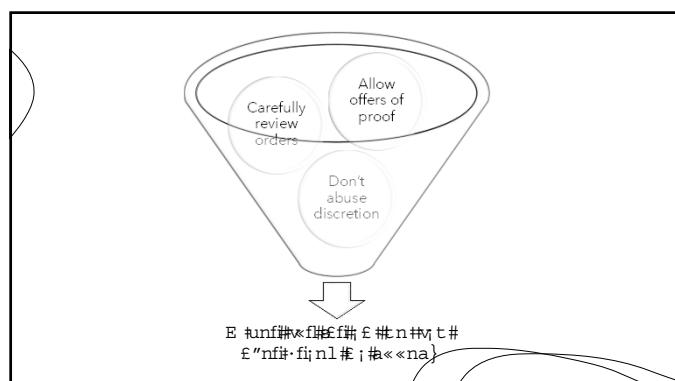
40



41




42



43

You during adjudication



- @ ; E » V j t # u a # u v j l f n ; # a j ; # n ; n f a) # # n f n d a
- A n t t q t # u n # a) - n f n n u v j l # u n # p .) n f n . d n n e . 1
- 2 f f n j t # e ; # u n f n d n n e # a . n e j 1
 - %) e » # e a n f f n e # n f e e a
 - P n > . v f n n » # " d n ; j n n n l - l v a n e j 1
 - .) a n f n ; j y t f n e ; # " d n ; n f n n e . n f n e j f n

44

Sv. £ 10%# nv } n
unv } n3 flet 1: jnl .

45

Today – Dispositional Stage

Starting with...

Purpose of Disposition

Procedural Issues

- Types of Hearings
- Scheduling
- Requirements
- Reasonable efforts
- Concurrent permanency planning

1

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



2

Provides services that

1

protect the child

2

respect family autonomy

3

reflect child's needs for safety, continuity, and permanence

4

prevent unnecessary separation of child and parent

3

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

G.S. 7B-300

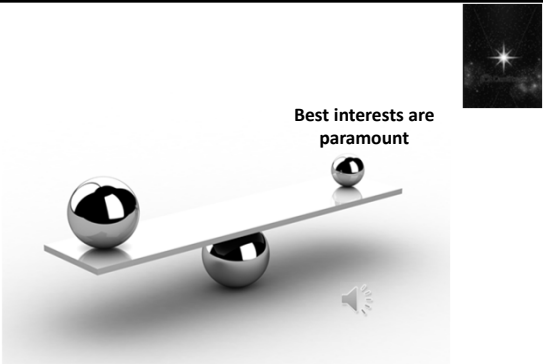
4

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)

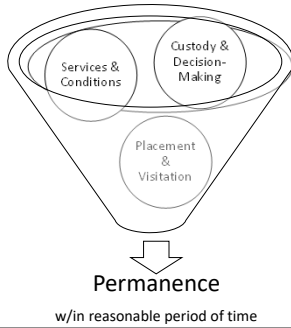
5



Best interests are paramount

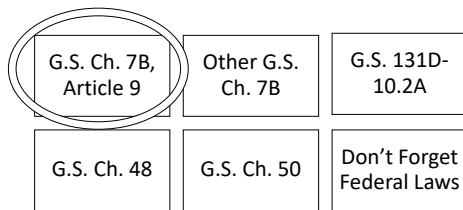
6

Design a Plan



7

Applicable Statutes



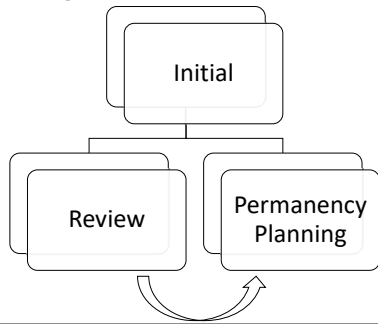
8

KIDS
What are
the best
interest
factors?

- No hard and fast rule
 - Purpose Sections of Statutes
 - Case Law

9

Types of Hearings

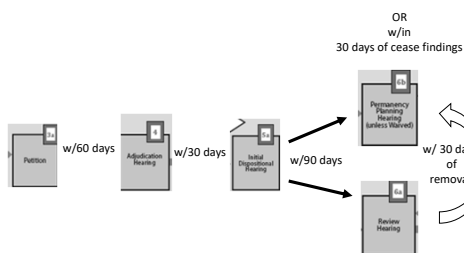


10

TIMING



11



12

Same Day?



13

NOTICE

7B- 906.1(b) requires 15 days notice of hearing and its purpose to parties

If deficient & objected to,
must continue

any

14

Evidence

- No Rules of Evidence
 - Relevant, Reliable, and Necessary
- No "burden" on any one party
- BIC is the standard unless specified otherwise

15

Includes Participation by Non-parties

May consider evidence or testimony from any person who is not a party

- if relevant, reliable, & necessary
- to determine child's needs and most appropriate disposition

Shall provide opportunity to placement provider to address court

16

Evidence

- For Initial Disposition Only
 - Predisposition report (7B-808)
- All Dispositional Hearings
 - May consider reports
 - w/o formal admission unless objected to*

tabbles

EXHIBIT

17

What the N.C. Supreme Court's Ruling in In re S.M. may mean for Court Reports In Abuse, Neglect, and Dependency Cases

This entry was contributed by Timothy Heale on March 10, 2021 at 11:25 am and is filed under Child Welfare Law.

What happens if a court report is distributed to the parties and the court in an abuse, neglect, and dependency case, but the report is never formally offered or admitted into evidence? What if, despite dependency case, but the report is never formally offered or admitted into evidence? Can a party appeal due to never being admitted into evidence, the court relies on the report in its order? Can a party appeal due to the report never having been admitted? Is there anything a party must do to preserve this issue for appeal? This post will explore the answers to these questions in light of a recent N.C. Supreme Court decision in *In re S.M.*, 375 N.C. 673 (2020).

History in Abuse, Neglect, and Dependency Appeals of Dispositional Orders

18

Must be Competent Evidence

- Attorney statements ≠ evidence
- Reports w/o testimony ≠ competent evidence

KIDS: How do you ensure procedures to admit competent evidence?
(e.g. when you have crowded dockets)

19

Different Hearings Different Requirements

Checklists

The following Checklists are intended to assist the attorneys and judges who are participating in the various hearings involved in abuse, neglect, dependency, and related termination of parental rights proceedings. Users are cautioned that these Checklists are not meant to be a comprehensive guide. Users should refer to the statutes directly. Questions about the interpretation of a statute may be answered by referring to the applicable Chapter and section within this Manual.

Checklist 1: Nonsecure Custody Orders

Checklist 2: Pre-Adjudication

Checklist 3: Adjudication

Checklist 4: Dispositional Findings and Options at Initial, Review, and Permanency Planning

Checklist 5: Initial Disposition

Checklist 6: Review

Checklist 7: Permanency Planning

Checklist 8: Termination of Parental Rights Hearing

Checklist 9: Post-TPR Review Hearing

20

At some point, in all of them

Considering reasonable efforts & reunification...



21



Initial Disposition Reunification Efforts Not Required

Order and Required Findings for Ceasing Reunification Efforts: G.S. 7B-901(c)

When a child is placed in DSS custody, the court must order (unless exception below applies) that reasonable efforts are not required if it makes written findings that

- In department custody
- Shall
- If make written findings of one of the following
- unless the court concludes that there is compelling evidence warranting continued reunification

22

G.S. 7B-901(c)

Order and Required Findings for Ceasing Reunification Efforts: G.S. 7B-901(c)

When a child is placed in DSS custody, the court must order (unless exception below applies) that reasonable efforts are not required if it makes written findings that

- ☐ A court of competent jurisdiction determines or has determined that an aggravated circumstance exists because the parent committed, encouraged, or allowed any of the following on the child:
 - ☐ sexual abuse;
 - ☐ chronic physical or emotional abuse;
 - ☐ torture;
 - ☐ abandonment;
 - ☐ chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the child; or
- ☐ any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.
- ☐ The parent's rights to another child were involuntarily terminated by a court of competent jurisdiction.
- ☐ A court of competent jurisdiction determines has determined that the parent
 - ☐ committed murder or voluntary manslaughter of another child of theirs;
 - ☐ aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of this child or another of the parent's children;
 - ☐ committed felony assault resulting in serious bodily injury to this child or another of the parent's children;
 - ☐ committed sexual abuse against this child or another of the parent's children; or
 - ☐ has been required to register as a sex offender on any government-administered registry.

23

Review


At every review hearing, the court must consider the following criteria and make written findings of those that are relevant.

- ☐ Services that have been offered to prevent the removal or reunite the child with either parent, regardless of whether the child resided with the parent at the time of removal, or with the guardian or custodian from whom the child was removed.
- ☐ Reports on the juvenile's continuation in and the appropriateness of the juvenile continuing to remain in the home of their parent, guardian, or custodian.
- ☐ Reports on visitation and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.
- ☐ Whether efforts to reunite the child with either parent clearly would be unsuccessful or inconsistent with the child's health or safety and need for a safe, permanent home within a reasonable period of time. The court must consider reunification efforts regardless of whether the child lived with the parent, guardian, or custodian at the time of the removal.
- ☐ If the court determines efforts would be unsuccessful or inconsistent, the court must schedule a permanency planning hearing within thirty days to address concurrent permanency planning under G.S. 7B-906.2. (The court does not have the authority to order that reunification efforts cease at a review hearing).
- ☐ Reports on placements the child has had, the appropriateness of the child's current placement, and the goals of the child's foster care plan, including the role the current foster parent will play in the planning for the child.
- ☐ If the child is 16 or 17 years old, a report on an independent living assessment and, if appropriate, an independent living plan.

24

Permanency Planning


- What are the findings?



25

In re K.L., 254 N.C. App. 269 (2017)

“The court’s findings do not satisfy the multiple layers of inquiry and conclusions as are required by the Juvenile Code.”

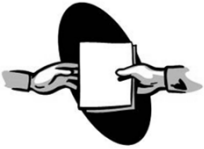


26

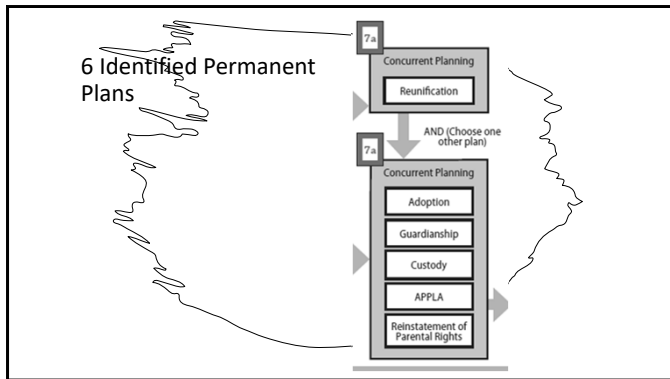
PPHs for 17 year old

- Court shall inquire whether teen has
 - Birth certificate, social security card
 - Health insurance information
 - Driver's license/other ID
 - Education/medical/other records requested by juvenile
 - Info about Foster Care 18-21
- Identify person/agency assist teen in obtaining the documents

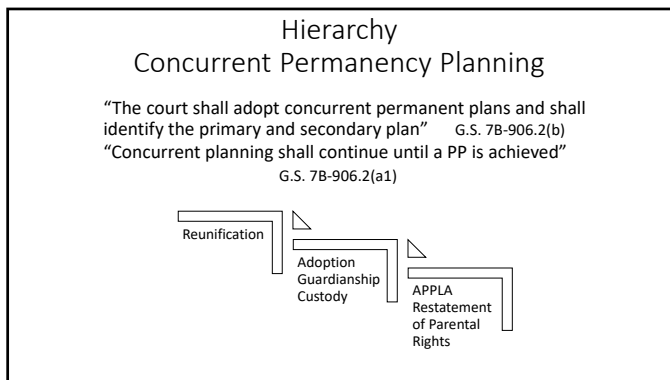
G.S. 7B-912(b)



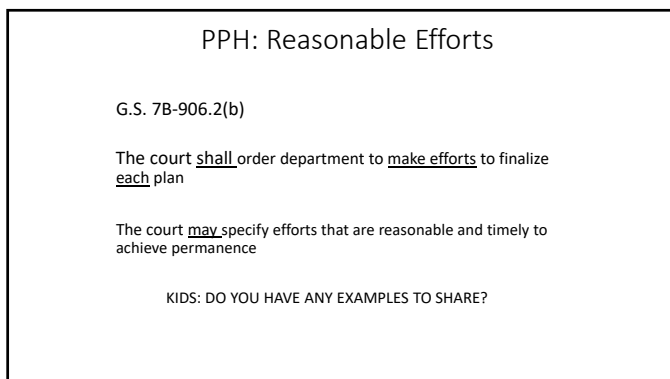
27



28



29



30

Does It Matter?

Primary or Secondary?

31

Might Impact

Need for TPR

- What would be primary plan for TPR prerequisite?
- G.S. 7B-906.1(m)
 - Requirements
- G.S. 7B-906.1(f)
 - What's the trigger there?
 - Exceptions to TPR

APPLA as PP

G.S. 7B-912

(c): Findings of what?

(d): Procedure required?

32

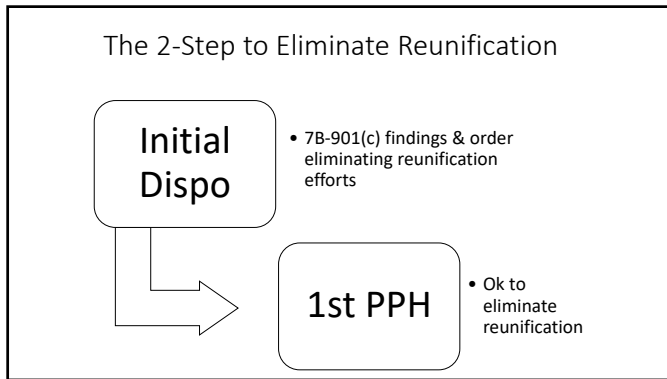
Eliminating Reunification as a PP

- Appealable order
- 2-step process
- Required findings

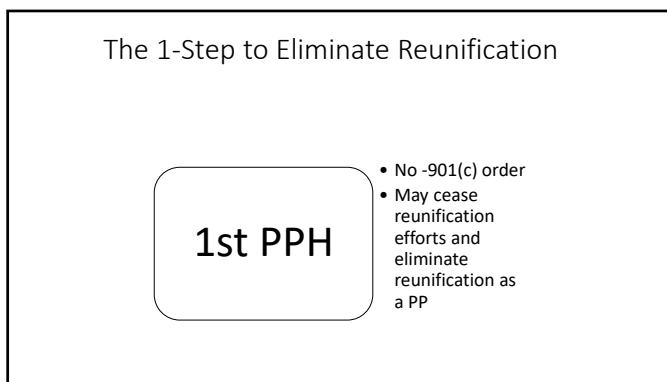
```

graph TD
    A["7a  
Concurrent Planning  
Reunification"] -- "AND (Choose one other plan)" --> B["7a  
Concurrent Planning  
Adoption  
Guardianship  
Custody  
APPLA  
Reinstatement of Parental Rights"]
    
```

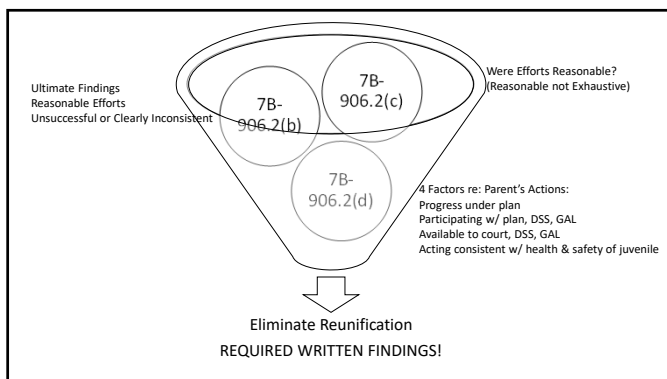
33




34



35



36



Different Hearings Different Requirements

Checklists


The following Checklists are intended to assist the attorneys and judges who are participating in the various hearings involved in abuse, neglect, dependency, and related termination of parental rights proceedings. Users are cautioned that these Checklists are not meant to be a comprehensive guide. Users should refer to the statutes directly. Questions about the interpretation of a statute may be answered by referring to the applicable Chapter and section within this Manual.

- Checklist 1: Nonsecure Custody Orders
- Checklist 2: Pre-Adjudication
- Checklist 3: Adjudication
- Checklist 4: Dispositional Findings and Options at Initial, Review, and Permanency Planning
- Checklist 5: Initial Disposition
- Checklist 6: Review
- Checklist 7: Permanency Planning
- Checklist 8: Termination of Parental Rights Hearing
- Checklist 9: Post-TPR Review Hearing

37

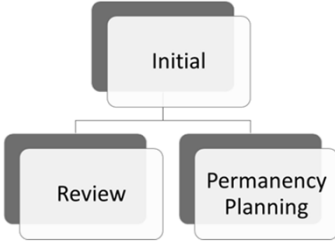
Checklist / Statute Review

- What are the special circumstances addressed by the hearings?
 - e.g., paternity inquiry – which hearings?
- What findings of enumerated factors are required?
 - Each vs. relevant



38

Can you cease reunification efforts at...

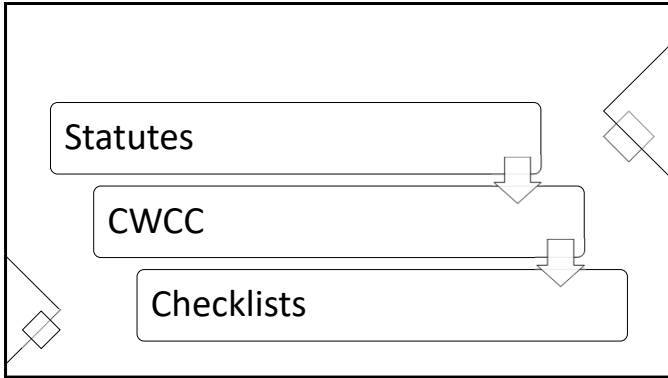


```

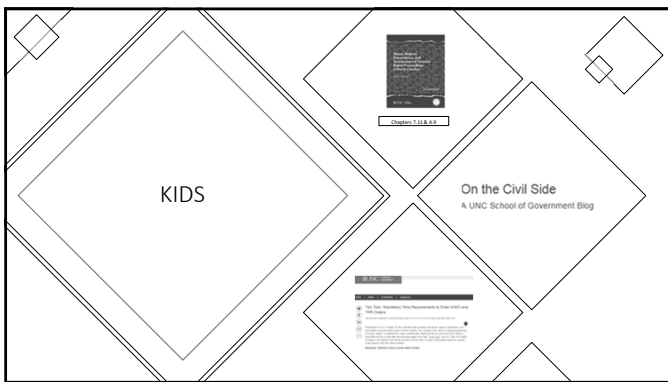
graph TD
    A[Initial] --> B[Review]
    A --> C[Permanency Planning]
    
```

Can you eliminate reunification as a PP at...

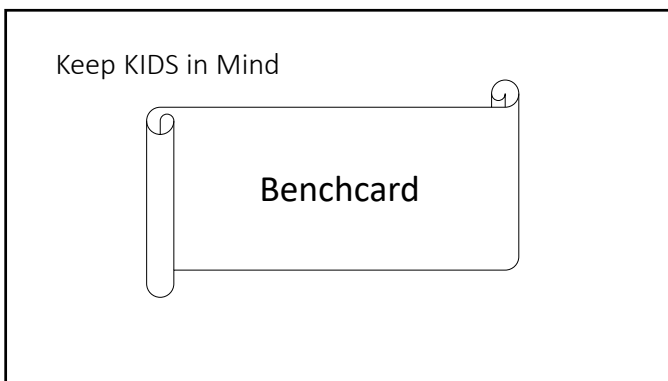
39



40



41



42

Dispositional Alternatives



Chapter 7

1

What are we talking about?

G.S. 7B-903

Placement and Custody Issues

We will discuss

- Priorities in Dispositional Alternatives
- Factors to Consider
- Required Findings
- Constitutional Rights

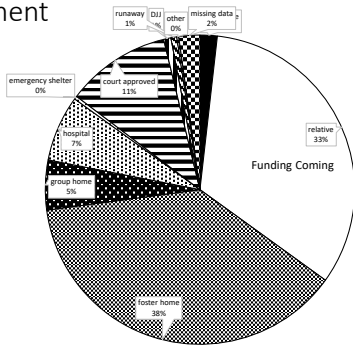
2

At Any Dispositional Hearing: May Combine



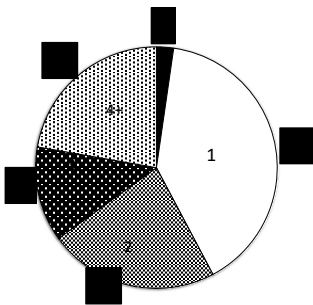
3

Initial Placement
FY 21-22



4

Number of Placements in 1st Year
How Does Your Judicial District Compare?



5

KIDS



6

KIDS:
Questions
for you

How do you minimize changes in placement?

How do you minimize disruption for child?

Are there specific factors you should be considering under the Juvenile Code? Other laws?

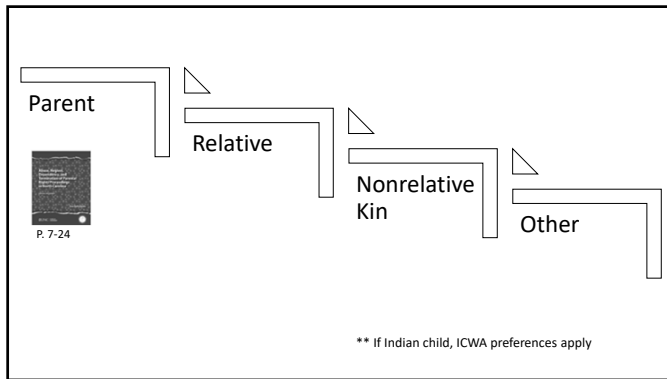
7

ESSA

8

Who Has Priority for Placement?

9



10

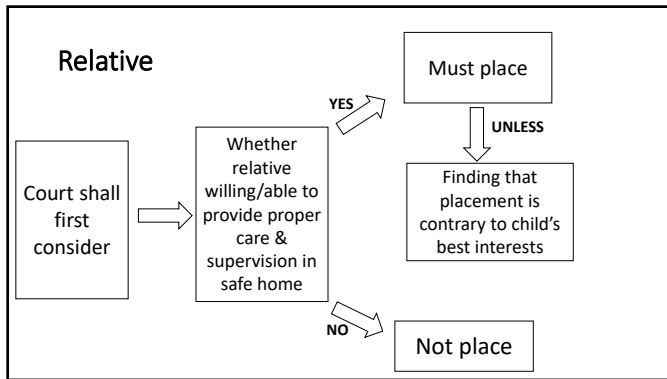
Parent	
Nonremoval <ul style="list-style-type: none"> • What is the basis for not awarding custody? • In re S.J.T.H., 258 N.C. App. 277 (2018) • In re K.C. (May 2, 2023) <ul style="list-style-type: none"> • (writ of supersedeas) 	Removal <ul style="list-style-type: none"> • Return physical custody <ul style="list-style-type: none"> • If in DSS custody, must have hearing w/ finding proper care and supervision in a safe home • Before DSS recommends return of physical custody, DSS observe 2 visits • G.S. 7B-903.1(c)

11

"Safe Home"

- What does it mean?
- G.S. 7B-101(19)
 - A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect

12



13

KIDS: CWCC

In re D.S.,
___ N.C. App. ___, (July 3, 2018)

When placing a child in out-of-home care, the trial court is required to consider placement with a willing and able relative who can provide a safe home and must place with that relative unless there is finding that such placement would be contrary to the child's best interests. Failure to make such findings and conclusions will result in a remand.

[Read More](#)

14

Who is a relative

15

Nonrelative
Kin

- Who is that?
 - G.S. 7B-101(15a)
- Is consideration of nonrelative kin mandatory?

16

What About 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

Federal law
G.S. 7B-903.1(c1)

17

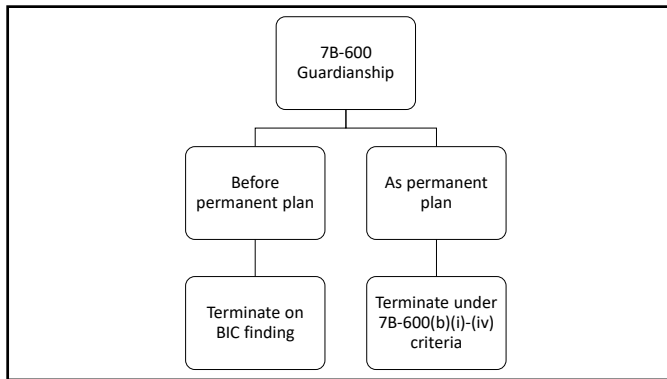
Non-parents: 3 of the Dispositional Options

Custody to relative, suitable person, private agency

Guardianship (7B-600)

DSS custody



18



19

Guardianship or Custody to Non-Parent Findings

- Verification
 - Understands Legal Significance
- Has Adequate Resources

20

How Do You Do That?



21

What if you do not verify both prongs for all possible custodians/guardians?

Case Name & Citation	Case Description
<u>In re J.D.M.</u> , ___ N.C. App. ___, (June 19, 2018)	Evidence was insufficient to support the court's findings verifying the custodians had adequate resources to appropriately care for the children and understood the legal significance of the placement as required by G.S. 7B-906.1(j). Read More
<u>In re B.</u> , ___ N.C. App. ___, 791 S.E.2d 669 (2016)	The court must verify a proposed guardian has adequate resources to care for the child. Without evidence of monthly expenses and income, the evidence was not sufficient to support the court's finding that the proposed guardian had adequate resources to appropriately care for the child. Read More
<u>In re L.M.</u> , 238 N.C. App. 345 (2014)	A parent's progress and/or a child's preference (that he or she be returned to his or her parent) is not conclusive on a court's best interests determination. When ordering guardianship, the court must verify the proposed guardian understands the legal significance of the guardianship and accepts the responsibility. Read More

22

Findings required re: parent's



What statute requires these findings?

23

Before BIC



24

When Are These Findings Required?

Non-Parent	Timing	Waivable?
<ul style="list-style-type: none"> • Custody • Guardianship 	<ul style="list-style-type: none"> • Permanent order (PPH) • BUT, initial, nonremoval parent <ul style="list-style-type: none"> • In re S.J.T.H. • In re K.C. 	YES

25

What is Unfit?



26

Parental Unfitness

Owenby v. Young, 357 N.C. 142 (2003).

"[A] natural parent has forfeited his or her constitutionally protected status [upon a] finding of any one of the [TPR] grounds in N.C.G.S. §7B-1111."

In re Nesbitt, 147 N.C. App. 349 (2001).

"[E]ven if it were shown, ...that a particular couple desirous of adopting a child would best provide for the child's welfare, the child would nonetheless not be removed from the custody of its parents so long as they were providing for the child adequately."

27

Adjudication of abuse, neglect, or dependency

- Is that sufficient to show unfitness or neglect?

28

What is acting inconsistently with parental rights?



Conduct and Intent Viewed Cumulatively

29

Example

In re B.R.W., 381 N.C. 61 (2022)

Affirmed PPO of guardianship to grandmother.

What did it say?

30

KIDS: What are your thoughts re: unwed father

- If he does not know about child's birth?
- If he knows but takes minimal or no action to take responsibility?
- If he believes he is the father and contacts DSS after case has been initiated?

31

ICPC, G.S.7B-3800 AAICPC Regulations



32



33

When Does It Apply?

- Out-of-State Placement
 - Foster Home
 - Preliminary to possible adoption
- Residential Placement
- Institutional Care of Delinquent Children



Chapter 7.4.H

34

Regulation 3: Parent Placement

- Definition of "foster care" includes 45 CFR 1355.20
AND
 - "if 24-hour-a-day care is provided by the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship)"
- Non-removal parent
 - Court has no evidence parent unfit
 - Court not seek evidence of fitness
 - Court immediately relinquish jurisdiction upon placement

35

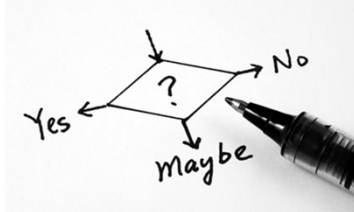
Open Question in NC

- G.S. 7B-3800 Article II(d): Placement
vs.
Regulation No. 3
- What about parent's constitutional rights?
- Can request a courtesy check

36

Guardianship & Custody

Inclusive of decision-making



37

G.S. 7B-906.1(e)(2)

- Consider and if relevant make findings on
 - Legal guardianship/custody and
 - Rights & responsibilities that should remain with the parents
- If none specified in order, rights (except for visitation) are lost
 - *In re M.B.*, 253 N.C. App. 437 (2017)

38

KIDS



Chapter 7

NC DHHS Division of Social Services
Child Welfare Manual
"Permanency Planning"

On the Civil Side
A UNC School of Government Blog

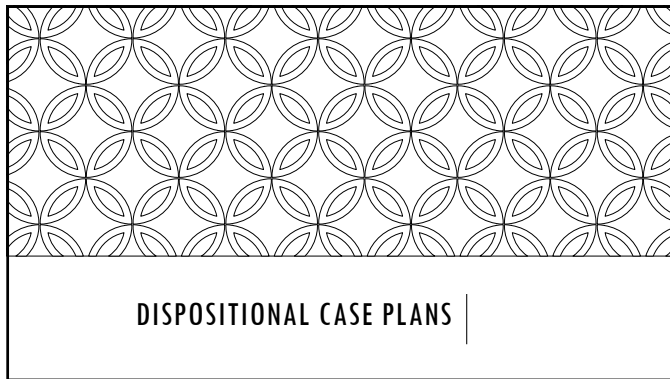


39

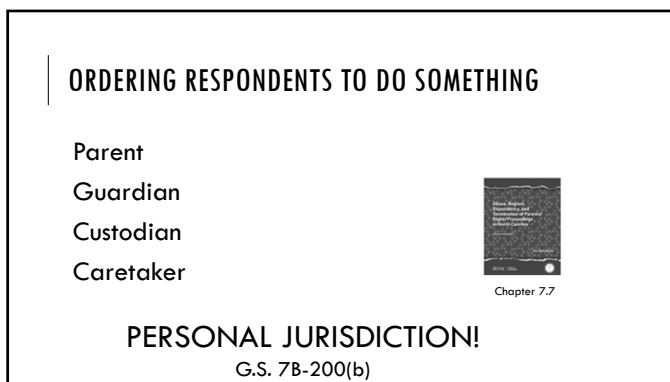
Keep KIDS in Mind

Benchcard

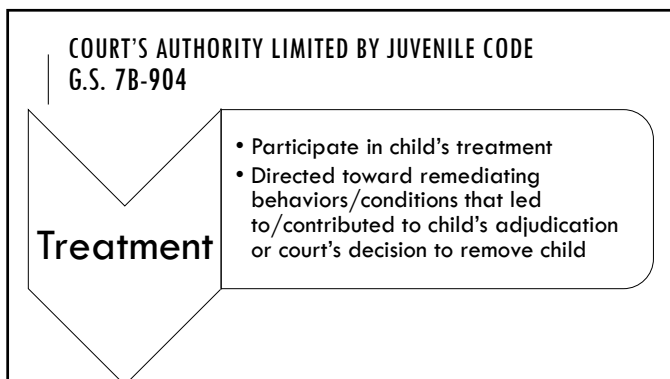
Day 4



1



2



3

COURT'S AUTHORITY LIMITED BY JUVENILE CODE G.S. 7B-904	
Conditions	<ul style="list-style-type: none"> • Compliance with treatment (can condition legal custody/placement on it) • Parenting classes if available in judicial district where resides • Take appropriate steps to remedy conditions that led/contributed to adjudication/removal • If in home, provide transportation for child's appointments for treatment

4

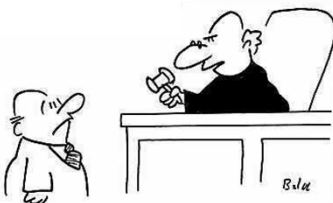
COURT'S AUTHORITY LIMITED BY JUVENILE CODE G.S. 7B-904	
Pay Support	<ul style="list-style-type: none"> • Reasonable sum to cover support of juvenile in legal custody of someone else • Child support • Cost of treatment for child and/or self* (ability to pay)

5

COURT'S AUTHORITY LIMITED BY JUVENILE CODE G.S. 7B-904	
Treatment	<ul style="list-style-type: none"> • Participate in child's treatment • Directed toward remediating behaviors/conditions that led to/contributed to child's adjudication or court's decision to remove child
Conditions	<ul style="list-style-type: none"> • Compliance with treatment (can condition legal custody/placement on it) • Parenting classes if available in judicial district where resides • Take appropriate steps to remedy conditions that led/contributed to adjudication/removal • If in home, provide transportation for child's appointments for treatment
Pay Support	<ul style="list-style-type: none"> • Reasonable sum to cover support of juvenile in legal custody of someone else • Child support • Cost of treatment for child and/or self* (ability to pay)

6

NONCOMPLIANCE, G.S. 7B-904(e); -406(c)



"Mr. Moyes, That will be a ten minute misconduct for contempt of court. Please proceed to the penalty box"

7

MEDICATION ASSISTED TREATMENT (MAT)

G.S. 7B-904(c1)

If ordered to comply with plan of treatment for substance use disorder

Not a violation if complying with MAT

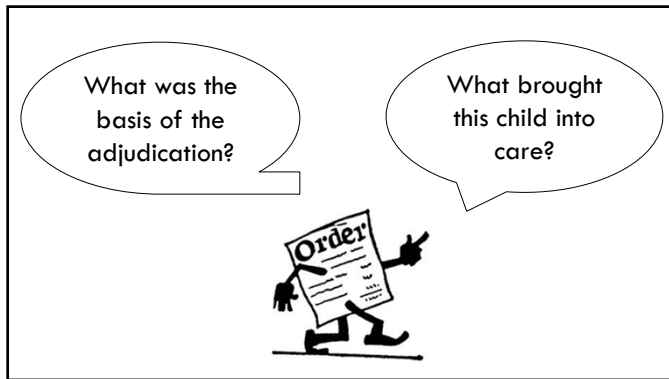
8

NEXUS!!!

Treatment & Conditions: Removal or Adjudication



9




10

***CONDITIONS
THAT LED TO
THE CHILD'S
REMOVAL
NOT LIMITED TO
PETITION OR
ADJUDICATION***

- "Trial judge... has the authority to order a parent to take any step reasonably required to alleviate any condition that directly or indirectly contributed to causing the juvenile's removal from the parental home."
- 7B-904 authorizes court who gains a better understanding of relevant family dynamic to modify and update case plan in subsequent review hearings
- ONGOING EXAMINATION of circumstances

11

BUT



Judge does not have unlimited authority:

"reasonable progress"

12

Case Scenario One:
 Petition is filed for 2 children, alleging one child (an 8 year old) is abused, neglected, and dependent and the other child (a 10 year old) is neglected and dependent. Mom uses physical discipline when necessary. After one incident, DSS is called when the 8 year old has bruises on his legs that were visible the next day when mom struck him 5 times with a belt. Because of the incident, mom has been charged with misdemeanor child abuse. Because of the charge, mom tells the children she is going to jail and they aren't going to see her anymore. One evening, she calls 911 and asks that they come and pick up her children because she cannot care for them but then hangs up. She then calls the children's father, who she believes is a chronic substance abuser, to see if he will take the children. He agrees. Mom drives the children to a dark parking lot where she planned to meet their father to show up. When he arrives, but makes the children stand outside the car while waiting for their father to show up. The children were crying and scared. A week later, mom tries to take the children from their father, which is what prompted the filing of the petition. Nonsecure custody is ordered to DSS and the children are placed (remain) with dad. The children are adjudicated neglected and the 8 year old is also adjudicated abused. DSS is awarded custody and placement remains with dad.

13

CAN YOU ORDER WHATEVER YOU WANT?

What are you seeking to accomplish from your order?

14

CASE PLAN EXAMPLE AND PARENT'S SCHEDULE

Employment

Works at Bojangles 40 hours/week
 Mon 6 a.m. – 2:30 p.m.
 Tue 10 a.m. – 6:30 p.m.
 Wed 12 p.m. – 8:30 p.m.
 Thurs 6 a.m. – 2:30 p.m.
 Fri 10 a.m. – 6:30 p.m.

Individual Therapy:

1 day/week for 2 hours
 Wed. 9 a.m. – 11 a.m.

Substance Abuse Treatment

3 days/week for 1 hour (group)
 Mon & Wed: 4 p.m. – 5 p.m.
 Friday: 8 a.m. – 9 a.m.

Domestic Violence Classes

1 day per week for 1.5 (26 weeks)
 Thursday 6 p.m. – 7:30 p.m.

Parenting Classes

1 day/week for 1.5 hours (16-20 weeks)

15

STAGGERED CASE PLAN

1. MH Assessment
2. SA Assessment
3. Visitation
4. Housing

5. MH Treatment
6. SA Treatment
7. Visitation
8. Housing
9. Parenting Class
10. DV Class

11. MH Treatment
12. SA Treatment
13. Visitation
14. Housing
15. Parenting Class
16. DV Class
17. Obtain/Maintain
Employment (or other income)

16

DEALING WITH SETBACKS

- Missed Treatment Appointments
- Relapse
- Missed Visits
- Problems with Housing
- Missed Parenting Classes
- Problems with employment
- New Relationship
- Other

17



HOW PARENTS VIEW THEMSELVES IN THIS PROCESS

18

HOW DO YOU SEE YOURSELF?

19

DSS REASONABLE EFFORTS

Are you ordering DSS to take certain steps?

20

ICWA: ACTIVE EFFORTS

NOT PASSIVE

* Concrete steps to complete case plan

KIDS


Case Name & Citation	Case Description
In re N.D.M. ___ N.C. App. ___, 886 S.E.2d 640 (2023)	Findings do not support the conclusion that active efforts for reunification were provided to incarcerated father under ICWA.

[Read More](#)

21

ADA: ADEQUACY OF SERVICES

KIDS



Chapter 13.5


Results: 1

Case Name & Citation	Case Description
In re A.P. , 281 N.C. App. 347 (2022)	The opinion addresses the ADA and a permanency planning order awarding custody to father when mother has an intellectual disability. DSS made reasonable efforts, mother waived right to challenge adequacy of services under ADA, visitation order improperly delegated discretion to father, court complied with statutes when waiving further hearings.

Read More

22

EVERY STUDENT SUCCEEDS ACT (ESSA)

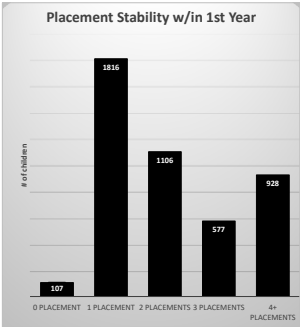


Chapter 13.7

23

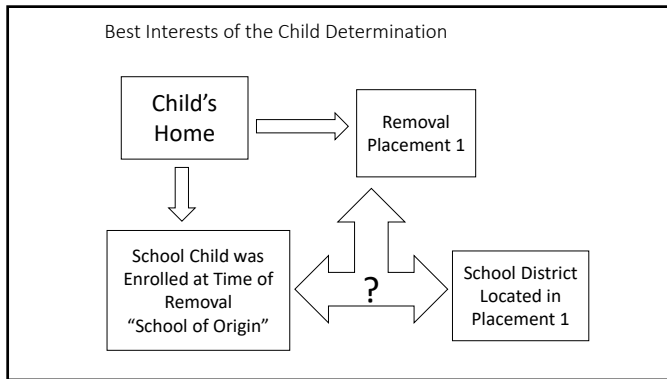
Homework Assignment:
How many moves are your kids experiencing?

Placement Stability w/in 1st Year

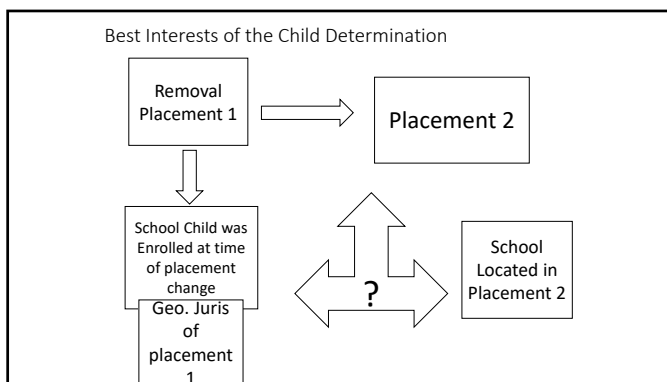


PLACEMENTS	# of children
0 PLACEMENT	107
1 PLACEMENT	1816
2 PLACEMENTS	1106
3 PLACEMENTS	577
4+ PLACEMENTS	928

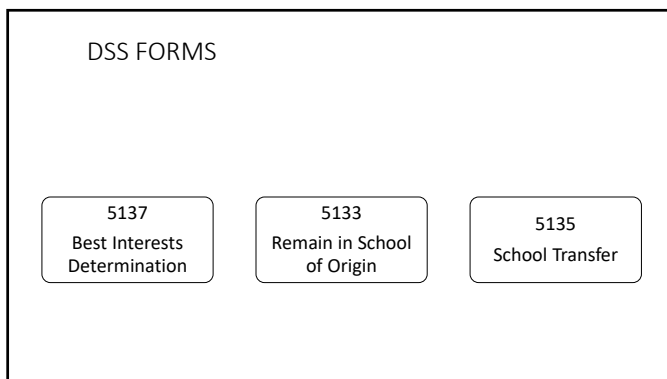
24



25



26



27

Take Away: School age child!

Are you getting this information...

What school attending at removal/change of placement?

Is it the same, if not why is it BIC?

Do you agree?

28

Keep in the KIDS in Mind

Chapter 13.8

How do you identify & address special education Issues?

CHILD EDUCATION STATUS

Copy provided to child's placement provider: _____

Completed by: _____ Date: _____

Check one: ☐ Reunification ☐ Legal Guardianship ☐ Legal Custody ☐ Adoption ☐ Another Planned Permanent Living Arrangement ☐ Reinstatement of Parental Rights

Current School: _____ Grade: _____

School Address: _____

School Contact (name/role/phone number): _____

Child functioning above grade in any subjects (list): _____

Child functioning below grade in any subjects (list): _____

Attendance Issues (absences, tardy days): _____

Any special services (IEP, speech, etc): _____

Surrogate parent needed/identified: _____

29

IEP TEAM:
Parent is a member

Educational Decision-Making

- Referral
- Eligibility
- Consent for Evaluations and Services
- Manifestation Determinations
- Due Process

30

Parent Defined

- A biological, adoptive, or foster parent;
- A guardian generally authorized to act as the child's parent or to make educational decisions for the child
- An individual acting in the place of a biological/adoptive parent with whom the child lives;
- An individual legally responsible for the child's welfare; or
- A surrogate if one is appointed under NCGS 115C-109.2

34 CFR 300.30; N.C.G.S. 115C-106.3(14);

**POLICIES GOVERNING
SERVICES FOR
CHILDREN WITH DISABILITIES**
Revised - July 2014

31

"Parent"

Parent	Surrogate Parent
Without court order addressing who makes educational decisions, bio parent when acting as parent has priority	<ul style="list-style-type: none"> • If No Parent Priority, foster parent, kinship placement, or appointment by school or COURT • Never DSS worker <ul style="list-style-type: none"> • 7B-903.1(a) exception
DO YOU NEED TO ENTER ORDER?	DO YOU NEED TO ENTER ORDER?
34 CFR 300.30(b)(1); GS 115C-109.2(c), (d); NC 1500-2.24(b)(1)	34 CFR 300.519(a)(1); GS 115C-109.2(c), (d); NC 1504-1.20(a)(1)

32

DSS Custody and decision-making

G.S. 7B-903.1

- generally made by a custodian, unless prohibited by federal law
GIVE ME AN EXAMPLE
- may be delegated to parent, foster parent, another individual

33

- Placement provider automatically engage in decision-making re: NORMAL CHILDHOOD ACTIVITIES without court or DSS approval
- Unless court finds not BIC and set out alternative parameters
- Not same as medical decision making (see G.S. 7B-903.1(e))

35

- Careful and sensible parental decisions
Health, safety,
best interests



36

- Activities that are
 - Generally accepted as suitable for child of same age or maturity
 - Appropriate based on cognitive, emotional, physical, and behavioral capacities typical for an age/age group

[illegible]

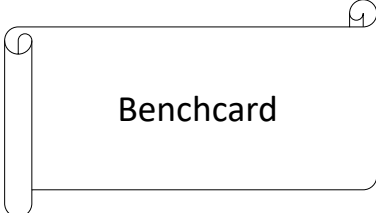
Required Findings at every PPH for 14+ y.o.

G.S. 7B-912(a)

- Inquire and make written findings of each
 - Services provided to assist juvenile to making transition to adulthood
 - Steps DSS is taking to ensure provider follows reasonable & prudent parent standard
 - Whether juvenile has regular opportunities to engage in age/developmentally appropriate activities

37

Keep KIDS in Mind



Benchcard

38

NORTH CAROLINA CHILD EDUCATION STATUS

Case Number: _____ Child/Youth's Name: _____

Copy provided to child/youth's placement provider: _____ on: _____
Name

Completed by: _____ Date: _____

Check one: ☐ Initial Entry into Custody ☐ Annual Review ☐ Placement/School Change
☐ Educational Services (ES) Meeting ☐ Other

Child/Youth's Permanency Plan, check one:

☐ Reunification ☐ Legal Guardianship ☐ Legal Custody ☐ Adoption
☐ Another Planned Permanent Living Arrangement ☐ Reinstatement of Parental Rights

☐ This child is not school age. Complete this section by checking all of the following that apply.

☐ Child is not enrolled in an educational setting.

☐ Child is enrolled in day care at: _____

☐ Child's developmental status was evaluated. Date: _____ Where: _____

Results: _____

Stop here for children who are not school age.

School: _____ School Address: _____ Grade: _____

School Contact (name/role/phone number): _____

Child/Youth functioning above grade in any subjects (list): _____

Child/Youth functioning below grade in any subjects (list): _____

If retained, what grade was repeated: _____

Special services (IEP, 504, list): _____

Attendance issues (absences, tardy days): _____

Child/Youth's Academic/Social Strengths: _____

Behavioral issues: _____

Social, Sports, Activities, Other: _____

Additional school related information: _____

Are services appropriate (or changes needed)?: _____

Mode of School Transportation: _____ Any issues?: _____

Surrogate Parent Needed/Identified: _____

For youth age 14 and above:

What are the youth's post-secondary plans?

What is in place to assist youth in achieving those plans?

NORTH CAROLINA CHILD EDUCATION STATUS

Date of most recent school records:

Supporting documentation (Attach supporting documents.)

- | | |
|------------------------------------------------------------|-------------------------------------------------------------------------------|
| <input type="checkbox"/> Report cards (required) | <input type="checkbox"/> IEP or 504 Plan |
| <input type="checkbox"/> Progress reports | <input type="checkbox"/> E-mails or correspondence from individuals consulted |
| <input type="checkbox"/> Achievement data (test scores) | <input type="checkbox"/> Disciplinary referrals |
| <input type="checkbox"/> Attendance data (required) | <input type="checkbox"/> Health reports/records |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Other _____ |

Best Interest Determination (BID) or Educational Services (ES) meeting required? ☐ Yes ☐ No

If yes, complete the Best Interest Determination Form (DSS-5137) and answer the following questions:

Date/Time of Best Interest Determination (BID) or Educational Services (ES) meeting:

Date student was informed about BID/ES meeting and purpose:

Was the student provided the opportunity to identify a significant person to attend the meeting?

☐ Yes If a person was identified, who did the student invite?:

☐ No If no, explain why:

Date parent(s) were notified of BID/ES meeting:

Foster Child Notification of Placement (Change) Form

For children in the custody of a NC County Child Welfare Agency

Confidential

Child Information

Date of Notification:

Child's Name:

Age:

DOB:

Sex:

County Child Welfare Agency:

County Child Welfare Agency Contact:

Phone:

Fax:

Email:

Foster Care Provider Name:

Phone:

Foster Care Provider Address:

Type of Foster Care Provider: ☐ Family Foster Home ☐ Relative/ Kinship Home ☐ Therapeutic Home ☐ Facility # _____

Foster Care Placement: ☐ Within School of Origin Transportation ☐ Not within School of Origin Transportation ☐ Unknown

Check one: ☐ Initial Foster Care Placement ☐ Foster Care Placement Change ☐ Exiting Foster Care

Date of Non-secure Custody:

Date of Placement/Plan Change (if different):

Medical Provider:

Phone:

Medical Provider Address:

Special safety concerns or special conditions, medications, or allergies (attach additional pages as needed):

This document provides all information required for the county child welfare agency to notify the school principal and/or school superintendent that a child is in the non-secure custody of the county child welfare agency and/or there has been a foster care placement provider change.

County Child Welfare Social Worker signature

Date

Foster Child Notification of Placement (Change) Form

For children in the custody of a NC County Child Welfare Agency

Confidential

Release of Information

I, _____, as legal custodian/guardian of
_____, hereby authorize _____, their
Child's name Schools, medical providers, etc.
agents and employees in possession of this child's _____ records to release such information to
Educational, medical, etc.
the _____ County Child Welfare Agency.

Legal Custodian/Guardian Signature

Date

When a local child welfare agency has legal responsibility (nonsecure custody) for the care of a child, parental consent is not required to access to educational records. The county child welfare agency is entitled to all educational records through the Uninterrupted Scholars Act ([Public Law 112-278](#)). Educational records include, but are not limited to:

- Educational records (report cards, progress reports, attendance records, achievement data)
- IEP or 504 plan
- Disciplinary referrals
- Health reports/records
- Other behavioral records
- Special activities participation (sports, clubs, tutoring services, community events)

The county child welfare agency shall coordinate with the county school representative to ensure that the child in foster care is appropriately enrolled with all educational records provided ([Fostering Connections to Success and Increasing Adoptions Act of 2008 \(P.L. 110-351\)](#); [Social Security Act, Title IV, § 475 \(1\) \(G\) \[42 USC 675\]](#)).

Best Interest Determination Meeting (for Educational Stability)

A Best Interest Determination Meeting (BID) must be held within three days of child's placement if it did not occur prior to child's initial foster care placement or foster care placement change.

The only exception is when the child's foster care placement is a) within the existing transportation system for the current school he or she attends and b) there is no intent to change the child's school assignment. In those cases, the BID Meeting must be held within 30 days of the child's placement.

The Best Interest Determination Meeting has been scheduled at the following time and place:

Date: _____ Time: _____ Location: _____

The purpose of the BID meeting is to ensure each child has the appropriate services to meet his or her educational, social, transportation, and other needs. The county child welfare agency social worker must invite, prepare as needed, and/or represent the child, parents, and court partners (GAL, etc.) for the meeting. The local educational agency point of contact is responsible to invite and/or represent the teachers, coaches, IEP services, transportation services, or any other educational service for the meeting.

Foster Child Notification of Placement (Change) Form

For children in the custody of a NC County Child Welfare Agency

Confidential

Child Information

**THIS PAGE FOR
INTERNAL COUNTY AGENCY USE ONLY**

Date:

Child's Name:

Age:

DOB:

Sex:

Child's
Permanent Plan

☐

Reunification

☐

Adoption

☐

Other _____

Is this notification due to a change
in permanency? ☐ Yes ☐ No

Previous Medical Provider:

Phone:

New Medical Provider:

Phone:

New Medical Provider Address:

Medicaid Number:

Special safety concerns or special conditions, medications, or allergies (attach additional pages as needed):

BEST INTEREST DETERMINATION FORM

Case Number: _____

Child's Name: _____

Copy provided to child's placement provider: _____ on: _____

Completed by: _____

Date: _____

Check 1: ☐ Initial Entry into Custody ☐ Placement Change ☐ Educational Services Meeting**Section I: Best Interest Determination / Educational Needs**

1. How many schools has the child attended? _____
How many schools has the child attended this year? _____
How have the school transfers affected the child emotionally, socially, academically, and physically?

2. How does the student feel about any upcoming moves?

3. What, if any, are the safety considerations related to school placement?

4. Which school is preferred by the student, birth parent and placement provider and why?

	School Preference	Why?
Student		
Birth Parent		
Placement Provider		

5. What school(s) do the student's siblings attend?

6. How is the student performing academically?

7. Does the student have a current IEP or a 504 Plan? If so, for what need?

8. If the student has a current IEP, is specialized transportation identified as a related service?

9. How does the student's behavior impact his or her educational success? Should additional services be considered?

10. Does the student participate in other specialized instruction? (e.g., gifted program, career and technical program)?

BEST INTEREST DETERMINATION FORM

Case Number: _____

Child's Name: _____

11. What are the student's academic/career goals? Does one school have programs and activities that address the unique needs or interests of the student that the other school does not have?
12. Describe the student's ties to his or her current school, including significant relationships and involvement in extracurricular activities? Can these ties or relationships be maintained if a school change is determined to be in the child's best interests?
13. Would (or has) a change in schools affect the student's ability to earn full academic credit, participate in sports or other extra-curricular activities, proceed to the next grade, or graduate on time? If so, how?
14. Would (or did) the timing of the school transfer coincide with a logical juncture, such as after testing, after an event that is significant to the student or at the end of the school semester or year?
15. How would the length of the commute to school impact the student?
16. Would a school change impact on the child's permanency goal? ☐ Yes ☐ No
If yes, explain:

Section II: Best Interest Determination (check one) (Not completed for ES Meetings)

- ☐ The child shall remain in the school in which the child was enrolled
- ☐ Based on the best interest determination, a change in school is needed

If it is NOT in the best interest of the child to stay in the same school in which he or she was previously enrolled, explain why:

Based on child's best interests, what educational services must be available at the selected school?

Name of School Selected:

Enrollment in selected school will be completed by: _____ by (date): _____

BEST INTEREST DETERMINATION FORM

Case Number: _____

Child's Name: _____

Section III: Next Steps/Educational Services Needed (attach additional pages if needed)

	What?	Who is responsible?	By when?
1			
2			
3			
4			

Section IV: Comments

Child/Youth Desires and/or Comments:

Parent's Desire and/or Comments:

Placement Provider Comments:

BEST INTEREST DETERMINATION FORM

Case Number: _____

Child's Name: _____

Section V: Signature Page

The following individuals participated in determining the school placement in the student's best interest.

Participant Role (** indicates essential role)	Printed name	Title and/or Relationship with child	Signature	Agree with determination?
Student **				Yes No
Child welfare social worker or supervisor**				Yes No
Current placement/care provider				Yes No
School representative from student's school at time of placement**				Yes No
IEP team for special education purposes, if applicable				Yes No
Birth parent(s) and/or prior caretakers(s)				Yes No
The student's Guardian ad Litem				Yes No
Other significant person(s) the student wishes to attend**				Yes No
Other _____				Yes No
Other _____				Yes No
Other _____				Yes No

Foster Child Immediate Enrollment Form

For children in the custody of a NC County Child Welfare Agency

Confidential

Student Information

Date Student Presented for Enrollment:			
Receiving School:			
Student Name:			
Age:	DOB:	Sex:	
County Child Welfare Agency:			
County Child Welfare Agency Contact: Email:		Phone:	Fax:
Foster Care Provider Name:		Phone:	
Foster Care Provider Address:			
Date of Nonsecure Custody:		Date of Placement Change (if different):	
School Enrollment Needed Due to:	<input type="checkbox"/> Best Interest Determination Meeting Date of Meeting:	<input type="checkbox"/> Emergency Foster Care Placement (or Placement Change)	<input type="checkbox"/> New Enrollment
Last School Attended:		Current Grade:	
Does student have IEP? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown 504 Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			
Any special safety concerns or special conditions?			

The county child welfare agency shall coordinate with the local educational agency to ensure that the child in foster care is immediately and appropriately enrolled with all educational records provided to the new school ([Fostering Connections to Success and Increasing Adoptions Act of 2008 \(P.L. 110-351\)](#); [Social Security Act, Title IV, § 475 \(1\) \(G\) \[42 USC 675\]](#)). The sending and receiving schools shall expedite the transfer of the student's record.

This document provides information for the county child welfare agency to notify the school principal and/or school superintendent and for the school to immediately enroll the child. ESSA requires enrollment to occur even if not all information is available. Any available information helps ensure a smooth transition for the child.

"Immediate" means as soon as possible, in most cases, this should be no later than the beginning of the next school day after the presentment for enrollment. "Presentment" means the person enrolling the child has appeared at the school and presented all required information and certifications. "Enrollment" means the child is attending classes and participating fully in school activities. If, despite all reasonable efforts, school officials are unable to enroll the child by the beginning of the next school day following presentment for enrollment, the student shall be enrolled no later than the second school day following presentment. If enrollment is delayed until the second school day after presentment, school officials shall document reasons for the delay and attach these reasons to this form.

This form shall be applicable for all foster children in the custody of a NC county child welfare agency and will ensure immediate enrollment for such child at time of initial custody or at the time of a child's placement change or disruption.

Foster Child Immediate Enrollment Form

For children in the custody of a NC County Child Welfare Agency

Confidential

Enrollment Certifications

I am a representative of county child welfare agency with custody of above-named child. This child meets the definition of a child placed in foster care; therefore, I am certifying the child is eligible for *immediate* enrollment. Under ESSA a child cannot be denied enrollment, even if information is unavailable.

To the best of my knowledge, _____ has/has/unknown not (circle one) been expelled from school attendance at a private school or public school division of the State of North Carolina, or in another state, for an offense in violation of school board policies relating to weapons, alcohol or drugs, or for the willful infliction of injury to another person.

To the best of my knowledge, _____ has/has/unknown not (circle one) been found guilty of or adjudicated delinquent for any offense in North Carolina or any substantially similar offense under the laws of any other state, the District of Columbia, or the United States or its territories.

To the best of my knowledge, _____ is in good health and is free from communicable or contagious disease. If documentation of a physical exam, birth certificate, social security number, and/or immunization record is unavailable at time of enrollment, they must be provided to the school within 30 days of enrollment.

County Child Welfare Social Worker Signature

Date

Release of Information

Schools, their agents and employees from the previous school, _____, in possession of this student's educational records are required by ESSA to release such information as necessary for the purposes of immediate, educational enrollment at _____ (school of enrollment).

Educational Services Meeting

When a foster child/student is enrolled in a new school an Educational Services (ES) Meeting should be held within 30 days of the child's enrollment in the new school. The purpose of the meeting is to ensure each child has the appropriate services to meet his or her educational, social, transportation, and other needs. The county child welfare agency social worker must invite, prepare as needed, and/or represent the child, parents, and court partners (GAL, etc.) for the meeting. The local educational agency point of contact is responsible to invite and/or represent the teachers, coaches, IEP services, transportation services, or any other educational service for the meeting.

The Educational Services Meeting has been scheduled:

Date: _____ Time: _____ Location: _____

Contact Information for Questions

Local Educational Agency Contact: _____

County Child Welfare Agency Contact: _____

Case Scenario One:

Petition is filed for 2 children, alleging one child (an 8 year old) is abused, neglected, and dependent and the other child (a 10 year old) is neglected and dependent. Mom uses physical discipline when necessary. After one incident, DSS is called when the 8 year old has bruises on his legs that were visible the next day when mom struck him 5 times with a belt. Because of the incident, mom has been charged with misdemeanor child abuse. Because of the charge, mom tells the children she is going to jail and they aren't going to see her anymore. One evening, she calls 911 and asks that they come and pick up her children because she cannot care for them but then hangs up. She then calls the children's father, who she believes is a chronic substance abuser, to see if he will take the children. He agrees. Mom drives the children to a dark parking lot where she planned to meet their father. Mom stays in the car but makes the children stand outside the car while waiting for their father to show up. When he arrives, she drives away without waiting to see if he gets out of the car. The children were crying and scared. A week later, mom tries to take the children from their father, which is what prompted the filing of the petition. Nonsecure custody is ordered to DSS and the children are placed (remain) with dad. The children are adjudicated neglected and the 8 year old is also adjudicated abused. DSS is awarded custody and placement remains with dad.

Case Plan for Mom:

Case Plan for Dad:

A/N/D course, Wednesday
DISPOSITIONAL CASE PLANS

What if the court also found as facts at the initial dispositional hearing that there was insufficient food & heat, that mom moved the children frequently and had unstable housing and did not timely enroll the children in school during the moves, that there was domestic violence between mom and her mom (maternal grandmother) that the children were exposed to, and that mom was financially dependent on her mother.

Case Plan for Mom:

Case Scenario Two

Petition is filed alleging 3 children, ages 2, 3 and 5 are neglected and dependent juveniles. They are living with their parents in a van somewhere in the woods. The van is heated at night by either being run for a short period of time or by a kerosene heater. However, the van is cool enough that it can store milk without the milk spoiling. The children have poor hygiene, not regularly bathing or brushing their teeth. They also have inadequate nutrition. The parents have a violent relationship that the children have been exposed to. The oldest child has intervened in at least one physical altercation between the parents. Dad is unemployed. Mom has been working in a factory and is a permanent employee there. She works full-time from 6 a.m. – 2:30 p.m and sometimes has overtime. She earns \$11 -\$13/hour in a 40 - 60 hour work week. Neither parent can explain how the money has been spent but they did identify dad buying lottery tickets, mom getting her hair done, paying debts, buying food, and paying the electric bill. Mom does not have a valid driver's license. The parents have not been cooperating with DSS.

The children were ordered in nonsecure custody and placed with their maternal grandmother. They were adjudicated neglected, and the disposition maintains the children's placement with their grandmother.

You are at a review hearing, where the following has occurred. Mom has found appropriate housing, but has been evicted 3 times for nonpayment of rent. She is currently at a shelter. She has been diagnosed with a social phobia. She lost her employment after being incarcerated for careless and reckless driving. Mom told DSS that she and the father are no longer a couple, but the police were called out twice for domestic violence where dad was abusive to mom.

Case Plan for Mom:

Case Plan for Dad:

Case Scenario Three

Petition is filed alleged neglect and dependency, and the child was adjudicated neglected based on the following. DSS was previously involved with the family due to 4 prior reports related to drug use by both parents. There were also past reports about domestic violence. In the most recent incident the police were called to the home when the father refused to let the mother leave with the child and the parents got into a tug of war with the child, who was screaming and crying. Ultimately, the adult sister was able to leave with the child. The parents agreed to a safety plan that included the child staying with her adult sister and both parents submitting to drug screens. Both parents tested positive for meth. The child has been acting out in school and struggling academically. The child was referred for an evaluation to determine if he needs an IEP or any other educational plans, but the parents had not responded to the school's attempts to schedule meetings with them to discuss any plans or resources for the child.

Case Plan for Mom:

Case Plan for Dad:

Weekly schedule

Name:

Time / period	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6:00 am							
7:00 am							
8:00 am							
9:00 am							
10:00 am							
11:00 am							
12:00 pm							
1:00 pm							
2:00 pm							
3:00 pm							
4:00 pm							
5:00 pm							

6:00 pm							
7:00 pm							
8:00 pm							
9:00 pm							
10:00 pm							

Notes

Visits with Kids: KV (or visitation)
Parenting Class: PC
DV Class/Group: DVC
Anger Man.: AM
Therapy: TH
Subst. Abs. TX: SAT (or NA or AA)
Mental Health Appt.: MHA
SW Meeting: SWM
GAL Meeting: GALM
Medical Appt.: MA (or name dr.)
Work: WK
School: SCH

VISITATION MATTERS

J. CORPENING
2023 A/N/D AND TPR COURSE

1

WHY DO WE ORDER VISITATION?



Because we are required to and because it's right.

2

WHY DO WE ORDER VISITATION?

- Required by 7B-905.1 (or the reasons for no visitation)
 - Starting at nonsecure custody
 - Every order thereafter that continues placement away from parent
 - Including grant of custody or guardianship to relative or other
 - In person and must specify minimum frequency and duration
 - Electronic visitation: In re: K.B., A.M.H., M.S.H. filed August 1.
 - Not a substitutes for in-person
 - Can supplement in-person
 - Must make findings sufficient to deny visitation to order electronic only
- Parents' constitutional rights
- Children's right and need to see their parents
- Children right to see their siblings (if not placed together): 7B-505 and 903.1

3

WHY DO WE ORDER VISITATION?

Case 2 to Speech to Judge
 Another few months go by and you find out your dad got a girlfriend named Emily. you don't to meet her but you can't they're to for divorce. Another few months pass and after a court date your Momma a 2 day visit. When you arrive you run into your dad's Arms and try to spend as much time getting to know ur new Mom while hanging with dad and ur twins. Few Months later another 2 day visit where you bring decor to decorate your room & play to let ur 2 dogs. Few months later a 90 min visit where you try to spend every second of the day with ur family.

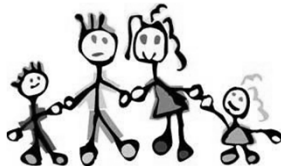
4

WHEN CAN WE STOP IT? (IN RE: TRT)

- Parent has forfeited his/her right to visitation
 - Circumstances?
 - Child victim in abuse case
 - Parent misconduct during visits
 - Parent repeatedly misses visits?
- It is in the child's best interests to deny visitation
 - Caution: don't jeopardize permanence
 - Last resort
 - Impact on child, parents, the case if visits limited or suspended
- Not for positive drug screen alone

5

WHAT ARE SOCIAL WORKERS TAUGHT?



VISITATION MATTERS
FOR PERMANENCE!

6


AN HOUR A WEEK?



WHY?

7

ONCE A WEEK?



WHY?

8

ONLY AT DSS?



WHY?

9

NCJFCJ@ SUMMER CONFERENCE

- GOAL: PERMANENCE
- PERMANENCE AFFECTED BY VISITATION
- DOUBLING 1 HOUR TO 2 HOURS CAN BE SIGNIFICANT
- NHC: 12 MONTH MARK IN TRIAL: 14% INCREASE IN PERMANENCE IN A YEAR

10

BE CREATIVE

- OTHER SUPERVISORS (GET OUT OF THE BUILDING!)
 - RELATIVES
 - NON-FAMILY RESOURCES
 - OTHERS: EVERY FAMILY DIFFERENT
 - TIME AND FREQUENCY EXPANSION
 - 6 HOURS A DAY TOO MUCH?
 - OH, THE LOOKS YOU'LL GET!
- ADVOCATE: THE JUDGE GETS TO SAY!

11

BE CREATIVE

- How about visits at court
 - Families while waiting for cases
 - Parents who are incarcerated who are brought to court (my evolution)
 - What can you do to facilitate?
- How about visits at jail/prison? (my evolution)
 - Lots of work being done around children of incarcerated parents
- Why is this important?

12

BE CREATIVE

- Intensive reunification program in NHC
 - Origin of the work: reunifying drug addicted moms with their NAS babies
 - Historic outcome in similar cases
 - Origin of our project
 - Bonding is the key
 - Key to parent's recovery
 - Key to reunification

13

IRP

- INTENSIVE AND INTENTIONAL
- VISITATION ALMOST EVERY DAY
- CFT E/O WEEK WITH TEAM AND FAMILY
- ATTACHMENT V. BONDING
- MOTIVATES
- RESULTS:
 - ~55% **TRIAL HOME PLACEMENT** IN 5.5 MONTHS
 - COMPARE TO **PERMANENCE** IN 12
 - GOAL?

14

SAFE BABY COURTS (0-3)



15

SAFE BABY COURTS (0-3)

The Safe Babies Court Team™ (SBCT) Approach: Logic Model
Advancing the Health and Well-Being of Infants, Toddlers, and their Families

16

WHY DO WE DO THIS WORK?

- Because permanence for children matters
- Because visitation affects outcomes for children
- Because all of our children are all of our children
- And because we care deeply about our role and our work

17

CLOSING

18



EDUCATIONAL STRATEGIES FOR JUVENILE COURT BENCH CARD

BASED ON THE COURT IMPROVEMENT STRATEGIES AND BEST PRACTICES FOR JUVENILE COURTS

PLACEMENT

- Where is the youth attending school?
- Has there been a school change?
- Was the change due to a change in placement?
- If there has been a school change, why is the youth not attending the same school?
- How many times has the youth experienced a change in schools because of a change in his/her foster care placements?

ATTENDANCE

- Is the youth regularly attending school?
- Have there been any problems with the youth getting to or from school?
- How many days of school has the youth missed this year? What is the reason for these absences?
- How many times has the youth been tardy?
- Does the youth feel safe at school?
- Has the youth been expelled, suspended or excluded from school this year/ever?

PERFORMANCE

- How is the youth doing in school academically, socially, emotionally, etc.?
- What are some identifiable areas in which the youth is excelling at school?
- Who is the youth's education decision maker?
- Does the youth have a current Individualized Education Plan (IEP) or Section 504 Plan? Has it been discussed with the youth? Who has discussed the plan with the youth and what does the youth want?
- Has the youth been observed, evaluated, assessed or identified as needing special services at any point in his/her educational career?
- What is the youth's current grade point average or grades? If below average, what effort is being made to address this issue?
- Is the youth receiving any tutoring or academic support services?
- Is the youth accruing credit toward high school graduation?
- Is the youth performing at, above, or below grade level in reading?



ADDITIONAL CONSIDERATIONS

HEALTH FACTORS

Physical Health

- Does the youth have any physical issue that impairs the youth's ability to learn, interact properly, or attend school regularly (e.g., hearing impairment, visual impairment)? If yes, what is the physical issue?
- How is this physical issue impacting the youth's education?
- How is this need being addressed?

Mental Health

- Does the youth have any mental health issue that impairs the youth's ability to learn, interact appropriately, or attend school regularly? If yes, what is the mental health issue?
- How is this mental health issue impacting the youth's education?
- How is this need being addressed?
- Which psychotropic medications are currently being prescribed?
- Has the youth's need for the medication been clearly explained to him/her?
- How will the medication affect the youth's educational experience?

Emotional Health

- Does the youth have any emotional issue that impairs the youth's ability to learn, interact appropriately, or attend school regularly? If yes, what is the emotional issue?
- How is the emotional issue impacting the youth's education?
- How is this need being addressed?
- Is the youth experiencing any difficulty interacting with the other youth at school (e.g., does s/he have a network of friends? Has s/he experienced difficulty with bullying?)

SERVICE REFERRALS

- Is the youth eligible to receive services or accommodations for a physical, mental or learning disability as required by the American with Disabilities Act, the Individuals with Disabilities Education Act, or Section 504?
- Is the youth eligible to receive assistance under ESSA?
- If the youth is performing below grade level in reading, has the youth been evaluated for a specific learning disability in reading under IDEA?

TRANSITIONING (HIGH SCHOOL)

- Does the youth have an independent living plan?
- Does this plan reflect the youth's goals?
- Does the youth have LINKS services in place, including transfer to 18-21 Foster Care?
- Is the youth provided with information and assistance in applying for financial aid, including federally funded education and training vouchers?
- Does the youth have necessary records?

EXTRA-CURRICULAR ACTIVITIES & TALENTS

- Which extracurricular activities is the youth involved in? Are efforts being made to allow the youth to continue in his/her extracurricular activities (e.g., provision of transportation, additional equipment, etc.)?
- What are the youth's identified talents? What efforts are being made to encourage the youth to pursue these talents?

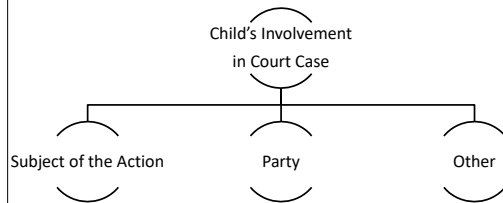
ADDITIONAL QUESTIONS TO ASK PARENTS, YOUTH AND FAMILY MEMBERS

- Ask the youth (if present) or the youth's attorney and parent: What information do you want the court to know about your (the youth's) educational and extracurricular goals, achievements, and challenges?
- Are the youth's appointments and court appearances being scheduled to minimize the impact on his/her education? Are efforts being made to ensure the youth is not penalized for school time or work missed because of the court or child welfare case activities?
- Do you understand what happened here today?
- Do you have any questions for the court?

Child's Involvement

By: Sara DePasquale, UNC School of Government
For: A/N/D TPR Course for District Court Judges
Date: August 2021

1



2

Not Unique to A/N/D

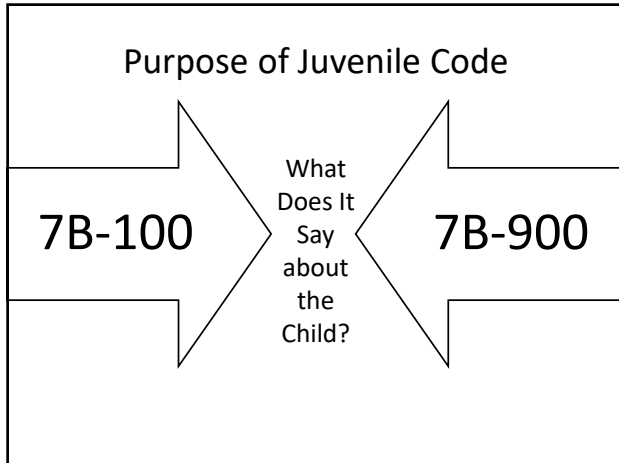
Mandatory Court Involvement

- Delinquency
- Undisciplined
- Emancipation
- Judicial Waiver
- Judicial Review of Psychiatric Admission
- Adoption (12+ unless waive)
- Subpoena (e.g., victim of crime)
- Parentage (genetic testing)

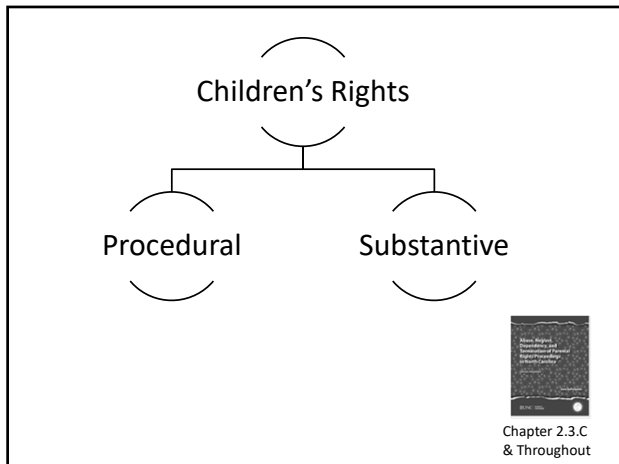
Optional Court Involvement

- Voluntary witness
 - Chapter 50 custody
 - DVPO
 - Other actions
- Attendance only
 - Lack of child care

3



4



5

Statutory Review: Procedural Rights

The Child's Involvement: Selected Review of Statutes, A/N/D course (Aug. 2018)	
PARTY STATUS	
G.S. 7B-401.1(f) G.S. 7B-401.1(j)	The juvenile <i>shall</i> be a party in an abuse, neglect, or dependency action. For G.S. 7B-910.1 hearings (for the Foster Care 18-21 program), the young adult in foster care is a party.
G.S. 7B-601(a)	The juvenile is a party in all actions under this Subchapter. Actions under Subchapter I include the following: <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>

6

Guardian ad litem



Standing in the Shoes of the Child

Is it always sufficient by itself?

7

What does it mean to be a party?

- Receive notice
- Opportunity to be heard
- File pleadings/request relief
- Offer evidence/examine witnesses
- Facilitate settlement
- Appeal

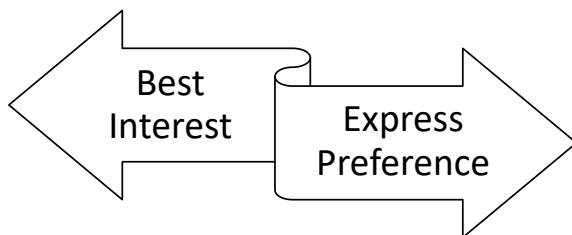
Dependent Child: How do they participate?

8

G.S. 7B-601(a)

Duties listed, including BIC

In re J.C.-B., 276 N.C. App. 180 (2021)



9

KIDS



10

KIDS



11

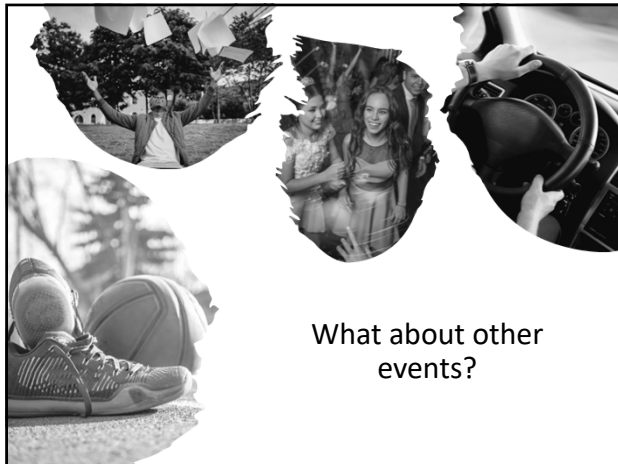
Recognition of Older Youth Preference You determine the weight



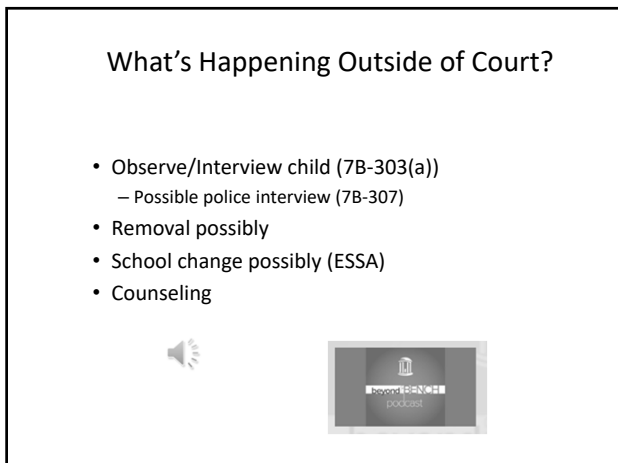
12



13



14



15

Youth Involvement in Case Planning

- NC Policy: member of Child & Family Team
- Mandatory under federal law at age 14
 - Plan developed in consultation with child
 - Teen's option, up to 2 members of case planning team chosen by teen (not foster parent or case worker)
 - 1 of those designated as teen's advisor/advocate re: reasonable and prudent parent standard

16

KIDS




The Child's Voice in Court: The Role of the Guardian ad Litem

17

KIDS




18



UNC SCHOOL OF GOVERNMENT


About Public Offices Topics Courses

Child Welfare Case Compendium



Chapter 11.2 Child Witnesses

When Else May a Child Need to Participate?



19

Keep KIDS in Mind

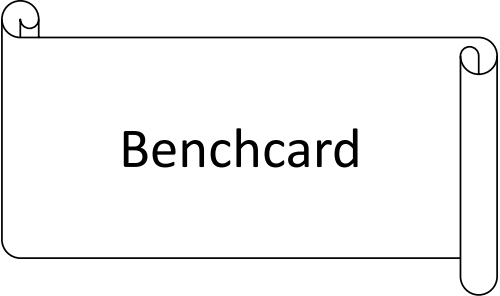
User friendly courtroom tips

Prioritize the day's court calendar



What Else Can You Do?

20



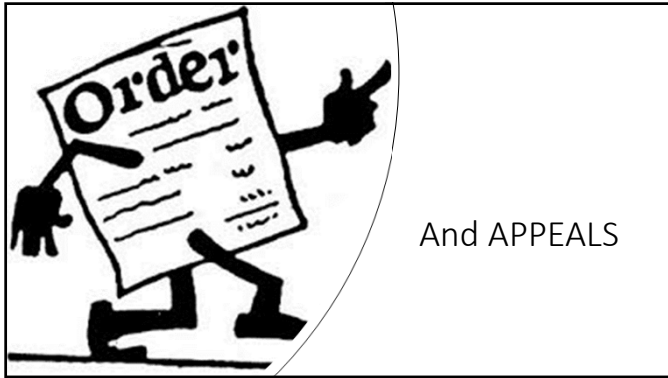
Benchmark

21

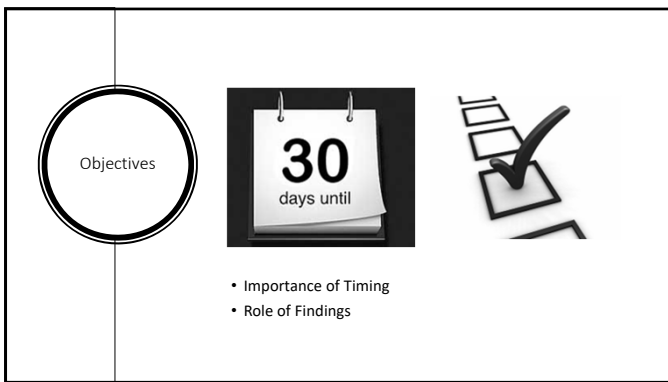
PARTY STATUS	
G.S. 7B-401.1(f) G.S. 7B-401.1(i)	The juvenile <i>shall</i> be a party in an abuse, neglect, or dependency action. For G.S. 7B-910.1 hearings (for the Foster Care 18-21 program), the young adult in foster care is a party.
G.S. 7B-601(a)	The juvenile is a party in all actions under this Subchapter. Actions under Subchapter I include the following: _____ _____ _____
G.S. 48-3-601(1) GS 48-3-603(b)(2) G.S. 48-1-101(11)	The consent of the adoptee who is 12 or older must be obtained unless the court hearing the adoption determines it is not in the child's best interest to require the child's consent. A party to an adoption includes the adoptee whose consent is required but has not been obtained.
REPRESENTATION	
G.S. 7B-601(a)	A guardian ad litem (GAL) is appointed for all children alleged to be _____ and <i>may</i> be appointed for children alleged to be _____. The GAL appointment shall terminate when _____. The court may reappoint the GAL upon _____. G.S. 7B-910.1(c) The young adult in the Foster Care 18-21 program IS / IS NOT represented by a GAL.
SUMMONS & PETITION	
G.S. 7B-406(a) G.S. 7B-407	Does a summons get issued to and served on the juvenile? YES NO
G.S. 7B-402(c)	Does the juvenile get a copy of the A/N/D petition? YES NO
G.S. 7B-408	Who gets a copy of the A/N/D petition for the juvenile? _____

	<p>Who gets a copy of notices for the juvenile? _____</p> <p>Is any child not addressed by G.S. 7B-408? _____</p>
NONSECURE CUSTODY	
G.S. 7B-503(a)	When, if ever, can the juvenile consent to nonsecure custody? _____.
G.S. 7B-506(b)	At a hearing on the need for continued nonsecure custody, does the juvenile have the right to introduce evidence, be heard on his/her own behalf, & examine witnesses? YES NO
ACCESS TO INFORMATION	
G.S. 7B-302(a1)(2) G.S. 7B-700 G.S. 7B-2901(b)(2)	The juvenile is entitled to examine/receive information from the department of social services. YES NO
G.S. 7B-2901(a)(1)	The juvenile is entitled to examine the court record without a court order authorizing the examination. YES NO
G.S. 7B-808	There may be a local rule or administrative order in the judicial district that addresses the sharing of predisposition reports. Related to disclosure to the juvenile, the law allows for the disclosure to be _____.
STIPS & CONSENTS	
G.S. 7B-800.1(c) G.S. 7B-807 G.S. 7B-801(b1)	<p>A juvenile may stipulate to facts. YES NO</p> <p>A consent requires the juvenile _____.</p>
NOTICE of HEARINGS	
G.S. 7B-906.1(b)	A juvenile who is _____ must receive 15 days' notice of a review or permanency planning hearing. This notice is in addition to the notice sent to the juvenile's GAL.
G.S. 7B-908(b)(1)	The same is true for a notice regarding a post-termination of parental rights hearing. YES NO

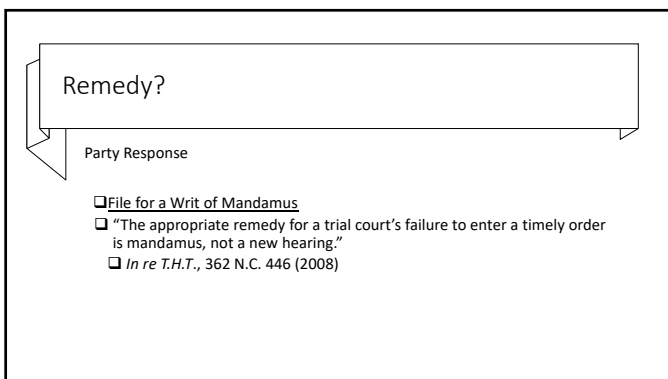
HEARINGS	
G.S. 7B-801(a), (b)	The court has discretion to close all or part of a hearing. If the juvenile requests that the hearing remain open, what happens? _____.
G.S. 7B-901(a)	At the initial dispositional hearing, the juvenile has the right to _____.
G.S. 7B-906.1(c)	At review or permanency planning hearings, the court must consider information from the parents, guardian and/or person or agency with custody, any person providing care to the juvenile, the child's GAL, _____, and any other person or agency that will aid in the court's review.
G.S. 7B-908(b)(1)	The juvenile attends the post-TPR review hearings. YES NO
G.S. 7B-912(d)	Before APPLA can be ordered as a primary permanent plan, the court must _____.
MOTIONS	
G.S. 7B-700	The juvenile may file for discovery and may request a protective order YES NO
G.S. 7B-905.1	A juvenile may file a motion for review of a visitation plan ordered pursuant to G.S. 7B-905.1. YES NO
G.S. 7B-906.1(n)	After further permanency planning review hearings have been waived, a juvenile may file a motion for a permanency planning hearing review. YES NO
ORDERS & APPEAL	
G.S. 7B-1002	The juvenile has a right to appeal an order permitted under G.S. 7B-1001. If there has been no G.S. 7B-601 GAL appointed the court must _____.
G.S. 7B-1110(d)	A copy of the TPR order must be served on a juvenile who is _____.



1



2



3

Rendition

- The child is neglected based on the following findings of fact, which are based on clear and convincing evidence ...



4

Entered: Rule 58

- 1. In Writing
- 2. Signed by Judge
- 3. Filed by Clerk



5

What's the Problem with Rendition?

- An oral order does not become enforceable until it is reduced to writing, signed by the judge, and filed with the clerk of court.
- Carland v. Branch, 164 N.C. App. 403 (2004)
- Quoted in In re L.L., 172 N.C. App. 689 (2005)

6

Solution?

KIDS

- Temporary order until final order is drafted, so parties can leave with decree in hand
- Note: Rarely contains findings to survive appellate review or funding requirements

STATE OF NORTH CAROLINA		JUVENILE ORDER	
County		In The General Court of Justice Juvenile Court Division	
IN THE MATTER OF:		JUVENILE ORDER	
JUVENILE COURT ORDER		JUVENILE ORDER	
The following parties have appeared at the hearing:		JUVENILE ORDER	
NAME	RELATIONSHIP/TITLE	NAME	RELATIONSHIP/TITLE

7

Notes about Rendition

- Trial court has the discretion to reopen the case and admit additional testimony
 - *Miller v. Greenwood*, 218 N.C. 146, 10 S.E.2d 708 (1940)
 - *In re B.S.O.*, 225 N.C. App. 541 (2013)

8

Timing of Entry of Juvenile Orders

* Not Entered within 30 days

Court Response:

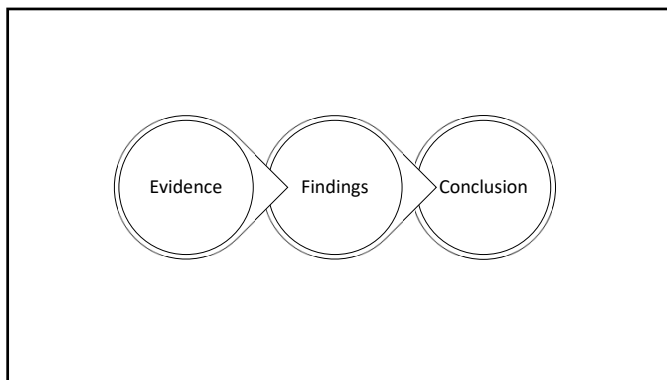
- ☐ Clerk shall schedule a subsequent hearing...
- ☐ To determine & explain reason for delay and obtain needed clarification
- ☐ Shall be entered within 10 days of subsequent hearing

9

Effects of Delay in Entry of Order

- Cannot appeal
- Contrary to BIC, *In re S.Z.H.*, 247 N.C. App. 254 (2018)
- Delays the permanency planning process
- Impact: compliance with case plan and reasonable progress on TPR ground

10



11

Findings of Fact

- Judicial duty to make FOF ≠ delegated.

Best guide to what is required for the order are the statutes governing the type of juvenile hearing

12

G.S. 7B Statutory Compliance

- Pay attention to the language of the statutes
 - Does it say
 - Considered
 - Written
 - Each of the factors or “relevant” factors?



13

Findings, Remember the Applicable Standard of Proof

- Clear & Convincing Evidence
- ❖ Adjudication
 - ❖ TPR grounds
 - ❖ Continued nonsecure custody necessary
 - ❖ Waiving further review hearings
 - ❖ Nonparent Custody/Guardian
 - ❖ Parent unfit or acted inconsistently with parental rights

14

The Order must Use the Statutory Language

Always

A Best Practice

Never Required

Powered by Poll Everywhere
 Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll.com/app


15

[illegible][illegible][illegible]

Report

- Report or Document by Itself
 - "The GAL report is incorporated..."

"after reviewing the GAL report, the court finds there was the mother arrived at the supervised visitation center drunk."




19

Testimony

- Recitation of testimony
 - "Doctor testified that Bobby had two broken bones."

"Bobby had two broken bones."




20

Description

- Description of Evidence
 - "DSS introduced a case plan setting out steps respondents agreed to take."

"On [date] respondents and DSS agreed on a case plan that provided for"



21

Other Issues with Findings

- Should not be equivocal
NOT: "It appears that Mrs. Parker suffers from depression."
YES: "Mrs. Parker suffers from depression."

22

Other Issues with Findings

- Lack of specificity
 – "Father has a serious drinking problem."

"Father lost his license on [date] for driving under the influence. He regularly gets drunk on weekends and when he is drunk he is easily angered and sometimes violent toward his wife and children. The children try to avoid him. On week nights he regularly drinks at least a 6-pack of beer. . ."



23

The finding of Fact is In

The parties stipulate to no reasonable efforts

The parties stipulate the child is abused

The parties stipulate the child was born positive for opiates

All of the above

None of the above

Powered by **Polli Everywhere**

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

24

Conclusions of Law

- **Conclusion of Law:** Judicial determination requiring the exercise of judgment (i.e. judicial discretion) or the application of legal principles
- FOF must support the COL
 - FOF may fail to support a COL if inconsistent with it
 - FOF may fail to support a COL if not specific enough

25

Conclusions of Law

- **Common COL:**
 - Statutory definitions (A/N/D)
 - TPR grounds
 - Reasonable efforts
 - Best interest determinations
- Appellate courts do *not* reverse or remand orders that mislabel FOF and COL
 - But, conclusions of law will not be inferred if not stated in the order

26

Decree

1. must be based on competent evidence in the record
2. must include sufficient findings and conclusions
3. Consistent with FOF and COL
4. Specific statutory requirements
 - Specific Burden of Proof
 - Ex. visitation plan if child not in parent custody

27

Dispositional Orders

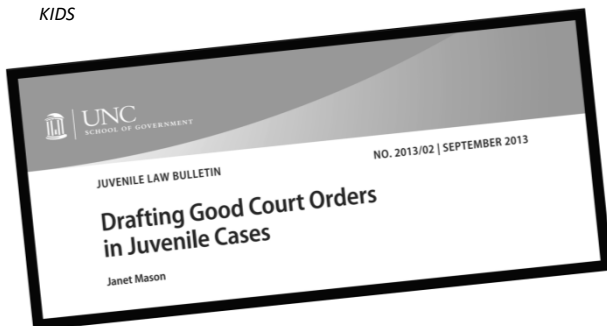
5. Clear & precise language for parties to understand
6. Must include precise terms of the disposition:
 - ☐ kind,
 - ☐ duration,
 - ☐ person responsible for carrying it out, and
 - ☐ person or agency with custody

28

7. if the child is removed from the home
 - a. address visitation
 - b. do not delegate visitation decisions
 - c. address possible relative placements
 - d. address authority to consent to treatment
 - e. schedule a review or permanency planning hearing

29

KIDS





30

Now, it can be appealed



31

Appeal



WHAT ORDERS CAN BE APPEALED?

WHO CAN APPEAL?

32

Standard of Review

Question of Law:

1. de novo review

Adjudication:

1. Are findings supported by clear, cogent, and convincing evidence?

2. Do the findings support the conclusions?

Disposition:

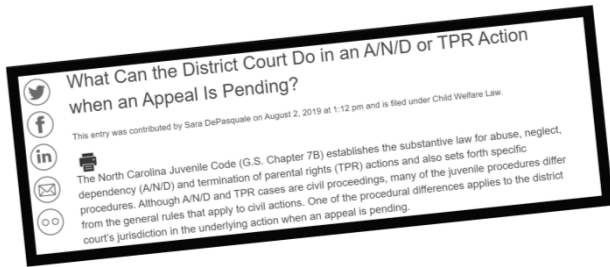
1. Did the court abuse its discretion?

2. Did the court act within its authority?

3. Did the court make sufficient findings based on competent evidence about relevant factors?

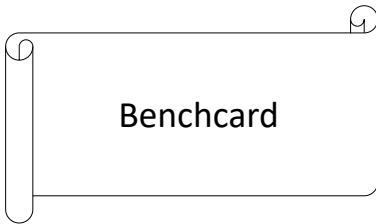
33

KIDS



34

Keep KIDS in Mind



35

Responsible Individuals List (RIL)

1. Other than the definition statute, which defines “responsible individual” at G.S. 7B-101(18a), “serious neglect” at G.S. 7B-101(19a), and “abused juvenile” at G.S. 7B-101(1), what 3 statutes apply to the RIL?

2. The petition for judicial review is filed by _____.
See AOC-J-131 (petition for judicial review).

3. The time period to file the judicial review is _____.

However, there is an exception at G.S. 7B-323(e), which is _____

_____.

4. The burden of proof is _____ and is on

_____. The Rules of

Evidence apply, but the court has discretion to _____

_____.

5. Can the court consolidate the hearing with an underlying abuse or neglect action? YES NO

Is there any case that addresses this? _____

6. The issues for the court are _____

_____.

7. If the court determines DSS met its burden, the order must direct DSS to place the individual's name on the responsible individuals list (G.S. 7B-323(d)). What case says there is no discretion

for the court regarding that order? _____.

Note, if DSS does not meet its burden, the court reverses the DSS directors' determination and orders DSS not to place the individual on the RIL.

8. Pursuant to G.S. 7B-324(b), the court has discretion to grant a stay of the RIL proceeding. Is the court required to grant a motion to stay if there is a pending criminal proceeding arising from the same incident for which the RIL decision is based? YES NO

What case addresses this? _____

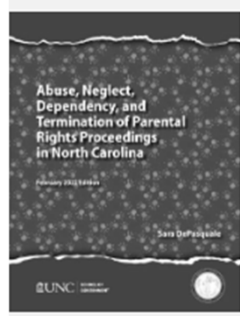
9. If the juvenile turns 18 before the RIL hearing is held, does the court have jurisdiction to hear the case? YES NO

10. DSS may seek an ex parte order when _____

11. The following resources are available to me for information on the RIL judicial review process.

Procedural Issues in TPR Proceedings

- Chapter 9
- & Throughout



1

FOCUS ON UNDERSTANDING

Similarities & differences w/ procedures in an A/N/D case

Relationship to the A/N/D Case

Procedural requirements under the Juvenile Code

2

Purposes

- Provide judicial procedures
 - when parents demonstrated they will not provide the degree of care that promotes the healthy physical & emotional well-being of child
- Recognize need for any child to have permanent plan of care at earliest possible age & need to protect all juveniles from unnecessary severance of parental relationship
- Action in child's best interests should be taken when interests of child and parents or others conflict
- Not circumvent the UCCJEA

3

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

4

Similarities with
A/N/D

7B controls

UCCJEA applies

Child is the subject of the suit (party)

Court appointed attorney for respondent

GAL appointment issues
(parent & child)

5

Other Similarity: Sequential Process

Adjudication:
clear &
convincing



Disposition:
best interests



Post-TPR
reviews
hearings

6

Applicable federal laws, which ones apply?



7

Differences

A/N/D	TPR
<ul style="list-style-type: none"> • Only DSS initiates • GAL for child always in abuse/neglect • Petition only • Length of jurisdiction <ul style="list-style-type: none"> • Pre-petition status 	<ul style="list-style-type: none"> • Individuals/county/agency • GAL if deny material allegation or if appointed in A/N/D • Petition or motion • Survives jurisdiction termination

8


Relationship to underlying A/N/D case

TPR

- is not a "permanent plan" (BUT affects permanent plan)
- 60 days to initiate TPR ("appeal timing")
- must be considered at reviews & permanency planning hearings
- can be consolidated w/ or initiated by motion in the A/N/D action
- parent attorney remains
- child's GAL remains
- may seek to intervene for purpose of TPR



9




May not exercise jurisdiction in TPR while appeal of A/N/D order pending

G.S. 7B-1003(b)(1)

10

TPR specific procedures



11

Standing

Limited by statute
(G.S. 7B-1103)

Parent	Guardian
DSS or agency w/ court ordered custody	DSS or agency to which child surrendered for adoption (relinquish)
A person the child has continuously lived w/ in the immediately preceding 18 months	Child's 7B-601 GAL
Adoption petitioner	

12

The initiating pleading & procedures

Verified Petition

- Anyone with Standing
- Summons
 - 7B-1106(a)
- Provisional Counsel
 - or service on attorney in A/N/D
- Answer

Verified Motion

- A/N/D case
- Notice prepared by movant
- No provisional counsel
 - Upon request
 - A/N/D counsel
 - Serve attorney of record (-1102)
- Response

13

Service of process

Verified Petition

- Summons
- Rule 4 service
- Exceptions to Rule 4
 - Unknown parent
 - Known respondent served by publication

Verified Motion

- Motion & Notice
 - Rule 5 service unless Rule 4 if
 - person was not served with summons originally,
 - person was served by publication that did not include required notice about TPR,
 - action was filed 2+ years ago, or
 - court orders Rule 4 service.
- G.S. 7B-1102(b)

14

Service by Publication

- Jurisdictional
 - In re S.E.T., 375 N.C. 665 (2020)

- What does the statute say about procedure?

15

- DSS filed an abuse petition & obtained nonsecure custody of the child. DSS has decided to pursue the adjudication and TPR simultaneously. It filed a motion to TPR in the A/N/D case. The parent attorney files a motion to dismiss the TPR for lack of standing.

16

How will you decide the motion?

Grant
itDeny
itPowered by **Pollev** EverywhereStart the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

17


After child was adjudicated neglected, he was ordered in DSS custody. DSS placed the child in his grandmother's home on March 30, 2020. Eventually, at a PPH, the court awarded grandma custody and entered a Ch. 50 custody order under G.S. 7B-911 and terminated jurisdiction in the neglect action. Grandma files a TPR petition on June 6, 2021.

18

Does she have standing?

Yes

No

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

19


Motion for TPR can be filed

Only if A/N/D case initiated less than 2 years ago

Only by DSS

Both 1 and 2

Neither 1 nor 2

Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

20

A motion must be served pursuant to Rule 4


If an A/N/D case was filed more than 2 years ago

if person was served in underlying case by publication that did not include notice of TPR

If person was not served with summons in underlying case


All of the above

None of the above


Powered by  Poll Everywhere

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll Everywhere.com/app

21



G.S. 7B-1104(7)
Statement not filed to circumvent




G.S. 7B-1101: Before exercising jurisdiction, court must find

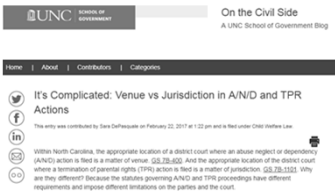
1. Initial jurisdiction (G.S. 50A-201),
2. Jurisdiction to modify (-203), or
3. Temporary emergency juris. (-204)*

22

Venue and Subject Matter Jurisdiction



- Resides
- Found
- In custody of county DSS



23

Out of State Parent

- ◆ Jurisdiction under initial or modification jurisdiction under the UCCJEA
- ◆ Process served pursuant to G.S. 7B-1106
- ◆ Submits to court's jurisdiction
- ◆ Served while physically present in NC
- ◆ No Minimum Contacts Required

24

Hearing on unknown parent

- W/in 10 days after petition filed (or next term)
 - In re A.N.S. (2015)
- Notice petitioner
- Court may summons others to appear & testify (including other parent)
- Court may order petitioner to conduct diligent search (w/in 30 days)



25

Outcomes of hearing: Order w/in 30 days

Identity Determined

- Make findings about name and identify
- Must be summonsed to appear under G.S. 7B-1106

Continues Unknown

- Order service on unknown parent and specify counties for publication & wording of notice
- No summons required

26

Pretrial Hearing Required, G.S. 7B-1108.1

- May combine w/ adjudicatory hearing (if so, separate order not required)
- Written notice in accordance w/ G.S. 7B-1106 & -1106.1
- Must consider
 - Retain/release provisional counsel
 - Should GAL be appointed for child
 - Are all summons, services of process, notice requirements met
 - Any pretrial motions
 - Issues raised in responsive pleading (if any)/affirmative defenses
 - Any other issue properly addressed as preliminary matter

27

Other pre-adjudication issues	Discovery (G.S. 7B-700?)
	Consolidate (G.S. 7B-1102(c))
	GAL for parent (minor or incompetent) (G.S. 7B-1101.1)
	Funds for expert (G.S. 7A-454)
	Dismiss
	Paternity

28


**Notice Pleading
(de novo review)**

Facts must put party on notice of acts, omissions, conditions at issue

≠ Recitation of alleged ground

Petition

Motion




No Difference: G.S. 7B-1104(6) to allege sufficient facts

29

**Respondent willfully abandoned the child
for a period of more than six months
immediately before the filing of the petition
(or motion).**

Sufficient

Insufficient

Powered by  Poll Everywhere
 Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll.com/app

30

Continuances, G.S. 7B-1109(d)

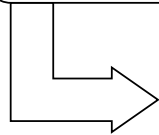
- If good cause to receive additional evidence, discovery, or other information that is in BIC, may continue for up to 90 days
- More than that requires finding of extraordinary circumstances*

31

Continuances at time of hearing – Right to Counsel G.S. 7B-1109(d)

Mandatory Inquiry

- is parent present
- w/ an attorney
- if no attorney, ask if desire counsel but indigent



If desire counsel

- appoint attorney
- continue for reasonable period of time to allow attorney to prepare defense

32

Hearing 7B-1109

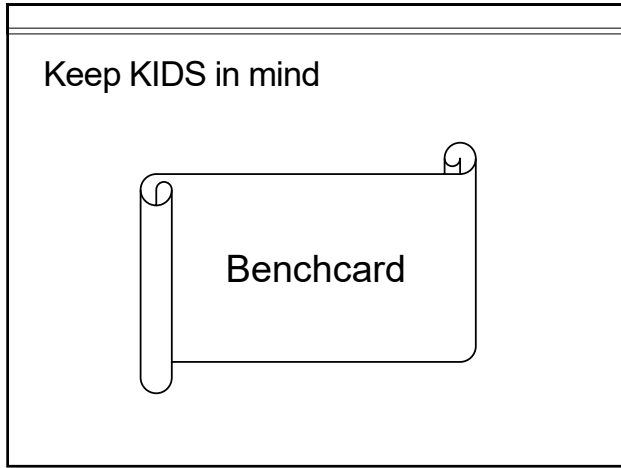
90
DAYS



of filing petition/motion

Must take evidence, find facts
= have a hearing (no default/summary judgment)

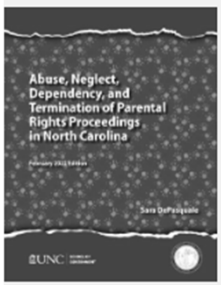
33



34

Day 5

Adjudicating
TPR Grounds



Chapter 9

1

Similarity to A/N/D: 2 Stages

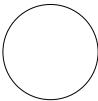
Adjudication

➔

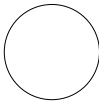
Disposition

2

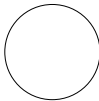
More Similarities



RULES OF EVIDENCE
APPLY



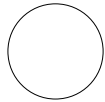
CLEAR & CONVINCING
EVIDENCE



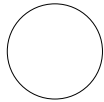
BURDEN IS ON
PETITIONER/MOVANT

3

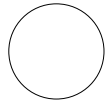
More Similarities



SIMILAR GROUNDS



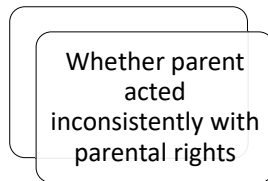
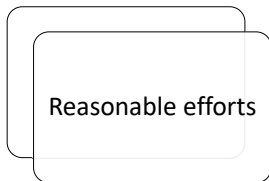
GROUND MUST BE ALLEGED
TO ADJUDICATE



MUST HAVE
HEARING/TESTIMONY
(NO SUMMARY JUDGMENT)

4

Difference: Not Deciding



5

Difference: What's Being Determined

District Court Division

JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)

G.S. 7B-101 - 400 - 401

Condition Alleged
☐ Abused
☐ Neglected
☐ Dependent

District Court Division

**NOTICE OF MOTION SEEKING
TERMINATION OF PARENTAL RIGHTS**

G.S. 7B-1106.1, 7B-1102(b)

Name And Address Of Respondent 2

Petition/Motion alleging one or more grounds for TPR

Child's Status:
Is this child an "abused, neglected, and/or dependent juvenile"?

Parent's Culpability:
Did this parent commit this ground (e.g., did this parent neglect their child)?

6

The Grounds

§ 7B-1111.

§ 7B-1111. Grounds for terminating parental rights.
 (a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a

(11) The parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.

7

*Can only adjudicate ground alleged

Notice Pleading

Statutory citation not required
 Language of statute important
 as ground
 as factual allegations

8

Relevant
 Time Period
 Court
 Considers

Differs depending on the ground

Some grounds are limited to before the petition/ others include the circumstances AT TIME of adjudication hearing

Must look at the statute

9

Abandonment



10

2 Different Grounds

G.S. 7B-1111(a)(1)

- Neglect

G.S. 7B-1111(a)(7)

- willfully abandoned child for at least 6 consecutive months immediately before TPR filed; or
- w/in first 7 days of child's life, voluntarily abandoned child in a "safe surrender," and at least 60 consecutive days have passed before TPR filed*

11



"evinces a settled purpose and a willful intent to forego all parental duties and obligations and to relinquish all parental claims to the child."

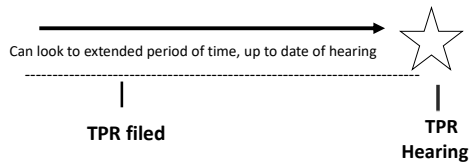
Willfulness = Question of Fact

Requires Intention → Purpose & Deliberation

Can look to financial support & emotional contributions

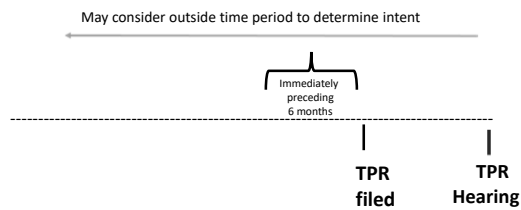
12

What is the determinative time period if alleged under G.S. 7B-1111(a)(1)



13

What is the determinative time period if alleged under G.S. 7B-1111(a)(7)

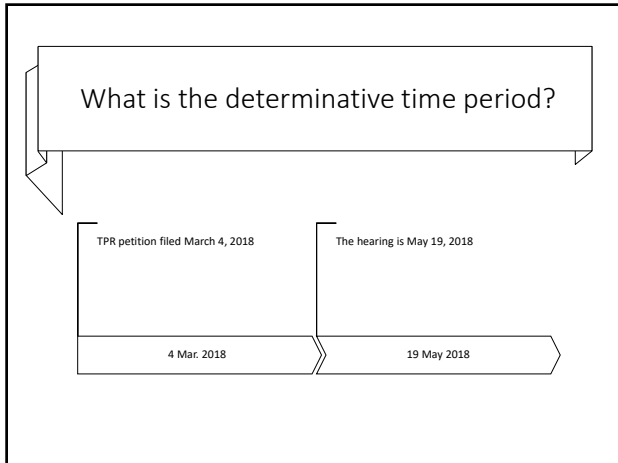


14

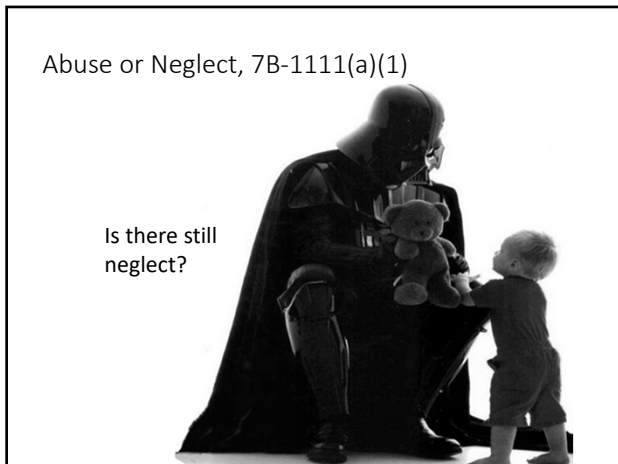
Single act

- "it is not necessary that a parent absent himself continuously from the child for the specified six months, nor even that he cease to feel any concern for its interest."
- Affirmed when
 - One \$500 child support payment made
 - One phone call made
 - A visit

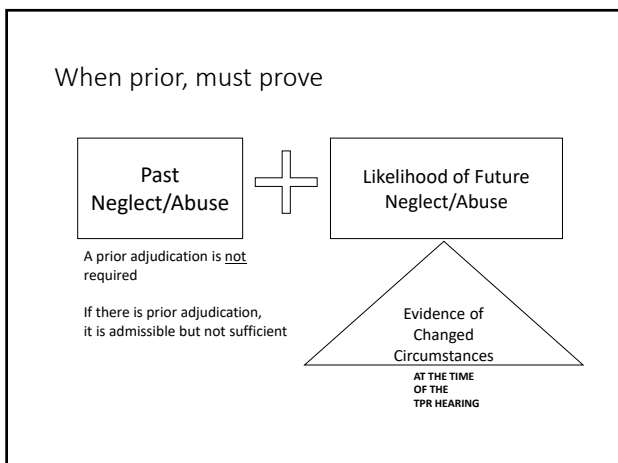
15



16



17



18

Does progress or
completion
of case plan
prevent court from finding
likelihood of future neglect?

19

Case scenario: 4 month old

- Respondents' argument is flawed as we have held above that the trial court properly found Respondents were jointly and individually responsible for their child's injury. Furthermore, Respondents' argument is contrary to public policy and would establish a dangerous precedent should we be persuaded by their contention. Such a holding would encourage individuals to deny responsibility for and knowledge of harm inflicted upon a child and would thwart the ability of the courts to serve the best interest of the child.
- The parents have protected each other throughout the course of these proceedings by refusing to identify the perpetrator. Respondents' conduct further indicates that Respondents continue to put their own self-interests first, and are not prepared to act in the best interest of their child.

In re Y.Y.E.T., 205 N.C. App. 120, 128–29 (2010)

20

G.S. 7B-1111(a)(2)

- The parent has willfully left the child in foster care or other placement
- more than 12 months
- without reasonable progress under the circumstances
- in correcting conditions that led to removal

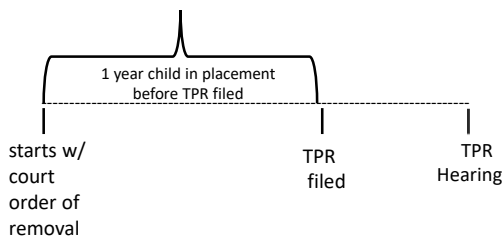
21

Willful

- Parental fault for why child came into care is not required
- Parent has the ability to show reasonable progress but was unwilling to make the effort
 - Consider limitations:
 - what can a minor parent do (e.g., obtain housing and employment)
 - what can an incarcerated parent can do (what is available for services, ability to contact others)
 - Mental Illness
- Some effort does not preclude finding of willfulness
 - e.g. stopping services at some point

22

12-month time period child is in foster care



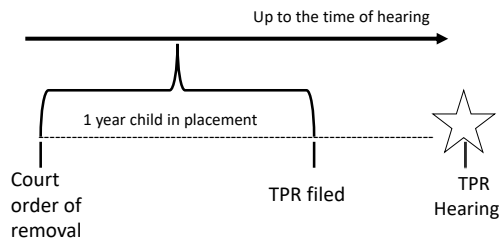
23

What is reasonable progress?

None Limited Some A lot Perfection

24

What is the time period for reasonable progress



25

Timing Review

- Jan. 10, 2017 report received of abuse and neglect
- Jan. 11, 2017 parents enter in a TPSA with DSS and child is placed in grandma's house
- Feb. 8, 2017 DSS files petition and obtains a nonsecure custody order
- April 21, 2017, child is adjudicated abused and neglected
- Feb. 1, 2018, DSS files TPR motion
- April 12, 2018, TPR hearing is scheduled
- Have the time periods been satisfied?

26

Poverty may not be basis for termination
G.S. 7B-1111(a)(2)

The trial court however, expressed concern that Ms. Nesbitt had paid the last two months rent with money from her income tax returns but failed to provide a plan for paying future rent. While we acknowledge this as a legitimate concern, we also recognize that making ends meet from month to month is not unusual for many families particularly those who live in poverty. However, we do not find this a legitimate basis upon which to terminate parental rights.

27

Poverty

- Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias.

- *Santosky v. Kramer*, referring to *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977)



28

Budget Exercise



29

NonSupport

Willful failure to pay

- | | |
|------------------------------------------|----------------------------------------|
| Ability to
pay
finding
required | ▪ reasonable portion of cost of care |
| | ▪ for child in <u>placement</u> |
| | ▪ for <u>6 months</u> before TPR filed |
| | ▪ 7B-1111(a)(3) |



Joint Federal Guidance

30

The parent is incapable of providing proper care and supervision, and



Incapacity may be due to any "cause or condition that renders the parent unable or unavailable to parent" the child.

G.S. 7B-1111(a)(6)

31

Special Circumstances



32

Unwed Fathers, G.S. 7B-1111(a)(5)

Before the filing of the TPR, failed to do any of these

- File an affidavit of paternity with DHHS
 - certified reply admitted
- Legitimate the child
 - G.S. 49-10, -12.1 or filed petition
 - Married mother
- Provide financial support/care to juvenile and mother
- "Established paternity" through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding
 - Name on amended birth certificate creates rebuttable presumption



33

Question

"Putative father" ground cannot be adjudicated if father's inaction was caused by the child's mother hiding the child's existence from the father.

- ☐ True
- ☐ False



34

7B-1111(a)(9)

Prior TPR to
another
child

Lacks Ability
or Willingness
to Establish
Safe Home

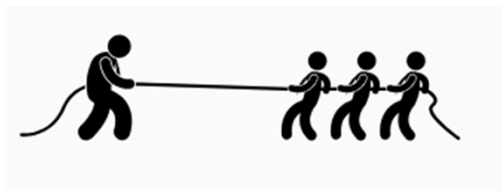
35

of grounds

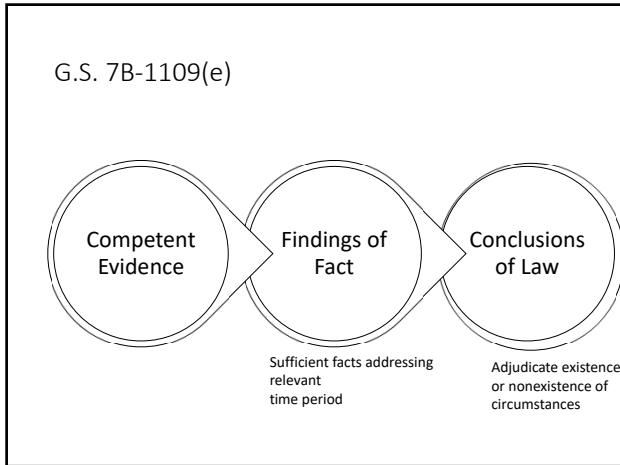
Must Have 1

but

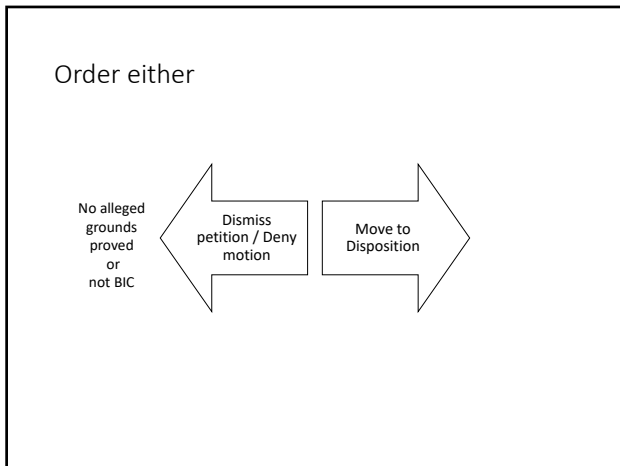
Address Them All



36



37

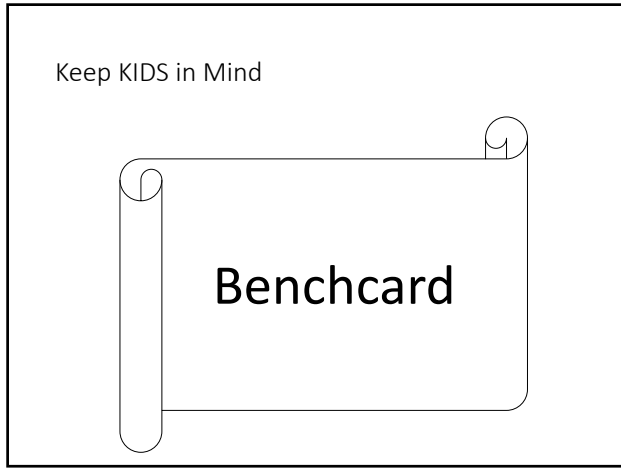


38

Adjudicatory Order

- No appeal from adjudication order only
- Finding of ground is not automatic TPR (stage 2)

39



40

Adjudicating Grounds to TPR

Abandonment Scenario (*In re C.J.H.*, 240 N.C. App. 489 (2015))

TPR petition is filed by mother on March 4, 2018 and alleges abandonment under G.S. 7B-1111(a)(7). The hearing is May 19, 2018.

The petition includes facts that state the following. For the last 6 years, since mother and father broke up, father has not lived up to his parenting responsibilities. In 2014, mother obtained a child support order because father hadn't paid anything. Father was taken back to court every year for nonpayment of child support. In February 2018, his taxes were intercepted to pay child support arrearages. Father rarely visited the child since the break-up and never calls. He did not visit at all in 2016. Father did ask for a visit in August of 2017 after mother sent him a letter asking him to consent to her husband adopting the child. In December 2017, father sent a Christmas card and gift and asked for a visit.

Father is served with the petition on March 15th. On March 20th, father sent a child support payment to mother. On April 2, 2018, father called and asked to speak with child. On April 20th, father sent another child support payment.

Question 1:

What is the determinative time period to determine abandonment.

Question 2:

Assuming all the facts are proved by clear and convincing evidence, is this abandonment?

Question 3:

What if abandonment alleged under 7B-1111(a)(1) (neglect), what is the determinative time period?

Scenario for Abuse/Neglect: prior and likelihood of future abuse/neglect

A 4 month old has been adjudicated abused and neglected based on multiple fractures caused by non-accidental injury. The adjudicatory order found both parents were jointly responsible as they were the sole caregivers. At a PPH, the court finds reasonable efforts would clearly be unsuccessful and contrary to the child's health and safety and orders a primary permanent plan of adoption. DSS files the TPR.

The court hears the TPR and makes the following findings.

The parents, as the only caretakers for the child, are responsible for the child's injuries. The Court cannot determine if a parent does not know what happened, knows what happened and will not tell on the other parent, or is the parent who inflicted the injuries. The Court currently cannot separate the parents as to culpability and has no way to address the issues as long as each parent maintains his/her current position that he or she did not injure the child and does not know how the child was injured.

On the dates of this termination of parental rights hearing, the perpetrator of the juvenile's abuse still has not been identified. Respondent-mother and respondent-father were sole caretakers for the juvenile; however, neither respondent-mother nor respondent-father has accepted responsibility for the child's injuries.

The Court hoped that the parenting capacity evaluations would identify who caused the injuries and why. The Court's hope was based on a level of culpability being established which would allow determination of whether reunification could occur with a non-offending parent or issues could be rectified with an offending parent so that the child could be returned to her home.

The Court has exhausted the available resources except for the possibility of a forensic interrogation, which could possibly lead to criminal charges against one, or both, of the parents.

Each parent has abused and neglected the juvenile within the meaning of N.C. Gen.Stat. 7B-101. The juvenile is less than 18 years of age and the parent inflicted or allowed to be inflicted upon the juvenile a serious physical injury by other than accidental means; created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means. The juvenile did not receive proper care, supervision, or discipline from the parent and/or lived in an environment injurious to her welfare. Repetition of abuse or neglect is probable.

The juvenile would be at risk if placed back in the home with the respondent-mother and/or the respondent-father because the perpetrator of the juvenile's injuries has never been identified.

Parents appealed arguing the court cannot TPR without specifically finding that either Respondent was the perpetrator of the child's injury.

What do you think?



Judicial Notice at TPR

TIMOTHY HEINLE

UNC SCHOOL OF GOVERNMENT

Grandma's Famous Judicial Notice Recipe



- 2 parts traditional judicial notice
- 1 part collateral estoppel
- 1 part res judicata
- Equal parts confusion among bench and bar

At a TPR hearing...



"On behalf of
DSS, I ask Your
Honor to take
judicial notice of
all prior
proceedings."

Objection!



***Traditionally, what
is a proper subject of
judicial notice?***

A fact “not subject to reasonable dispute.”

N.C. Evid. R. 201(b)

Ex: 105-mile distance between parents’
residence in Rowan County and foster
placement in Ashe County.

In re A.D., 285 N.C. App. 88 (2022)

What is the effect of judicial notice?

"In a civil action or proceeding, the court shall...**accept as conclusive** any fact judicially noticed."

N.C. R. Evid. 201(g)

Judicial Notice Framework

Conclusive

Rebuttable

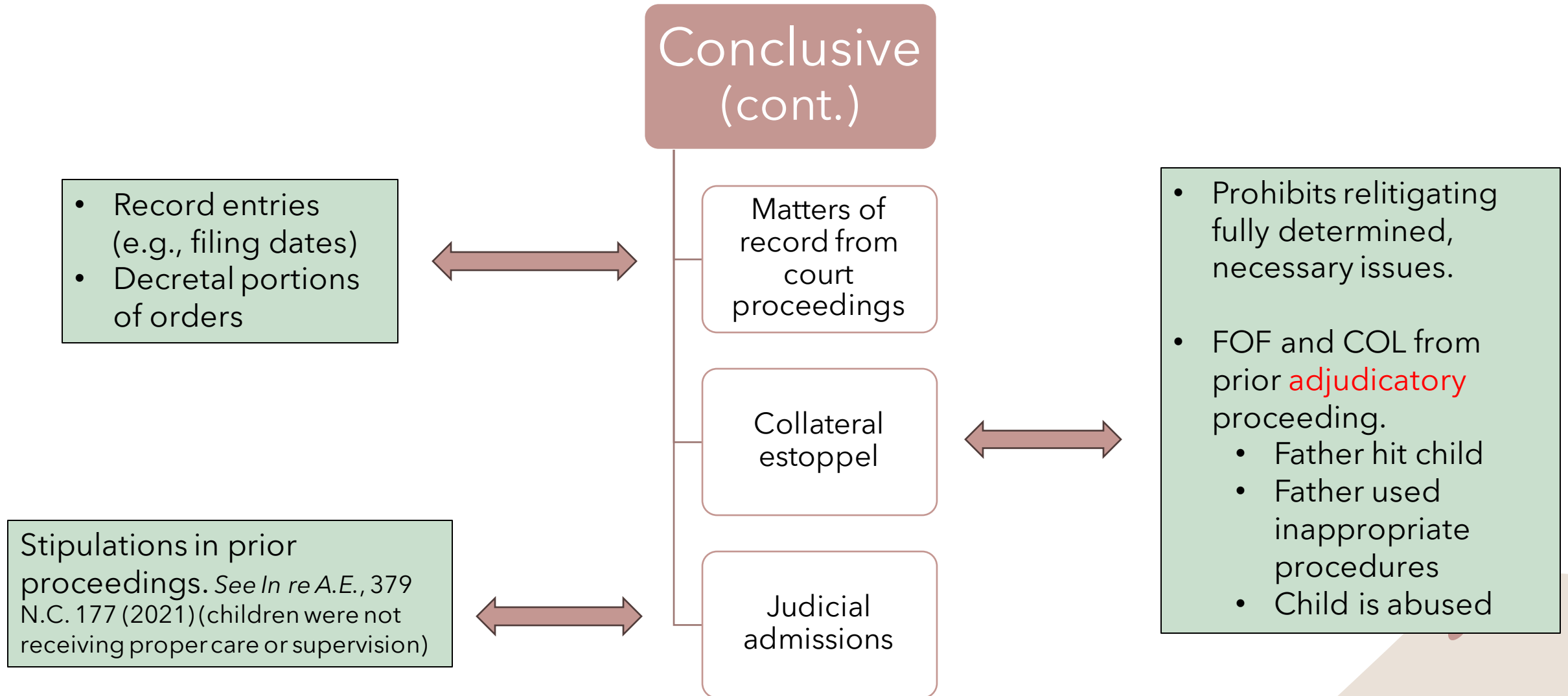
Evidentiary

Judicial Notice Framework



**In re L.G.A., 277 N.C. App. 46 (2021)*

Judicial Notice Framework



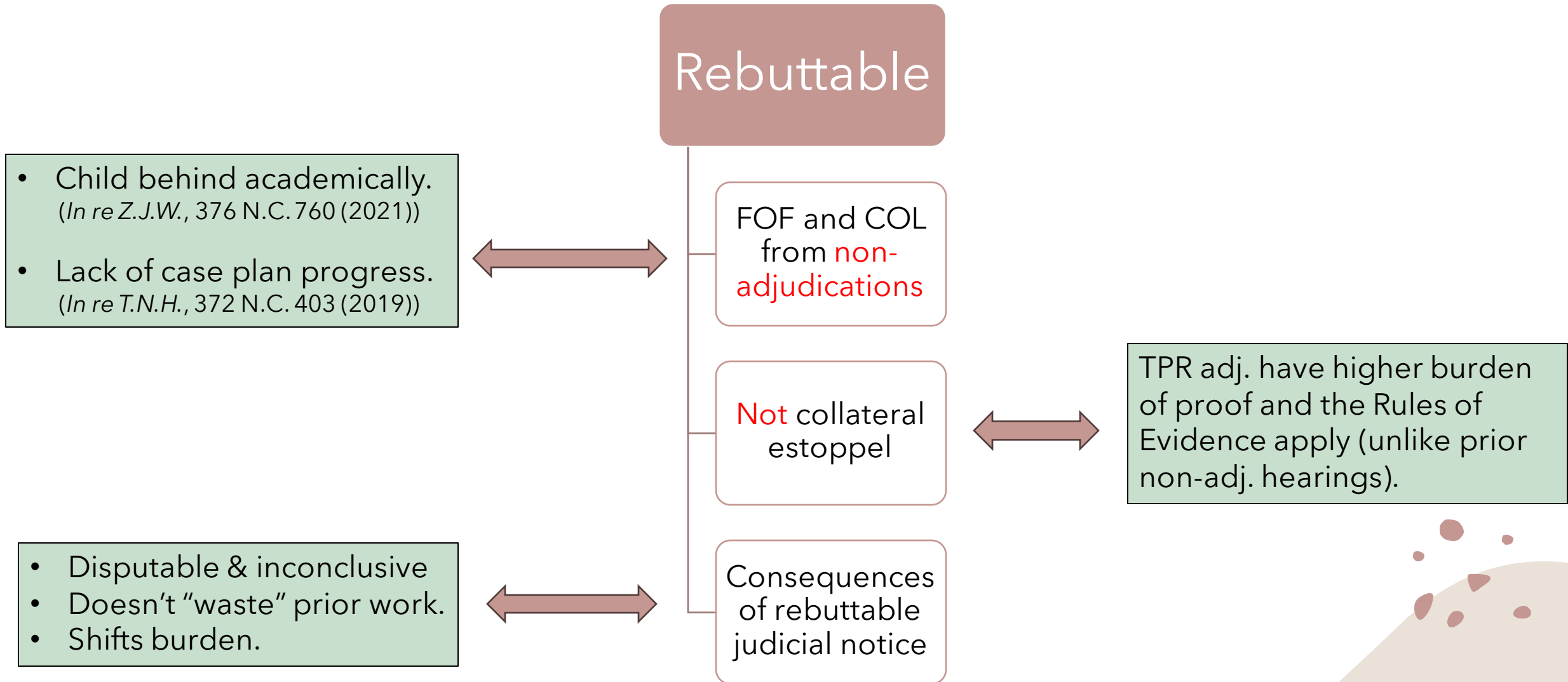
Judicial Notice Framework

Conclusive

Rebuttable

Evidentiary

Judicial Notice Framework



Judicial Notice Framework

How does one rebut judicially noticed facts?

Rebuttable

Ex: DSS testimony at TPR rebutted finding in Permanency Planning order that father received a substance abuse assessment.

In re B.J.H., 378 N.C. 524 (2021)



Offer contrary evidence

Show prior FOF based on inadmissible evidence




Presumption: courts rely on competent evidence.

Parties may show that presumption is incorrect.

Mitigates concerns about taking judicial notice of non-adj. findings.



Seek to limit weight of prior finding



"To allow the trial court to find adjudicatory facts simply by taking judicial notice of its prior findings in the nonsecure custody order risks **insulating adjudicatory findings** from appellate review and **undermines the procedural safeguards** for adjudications."

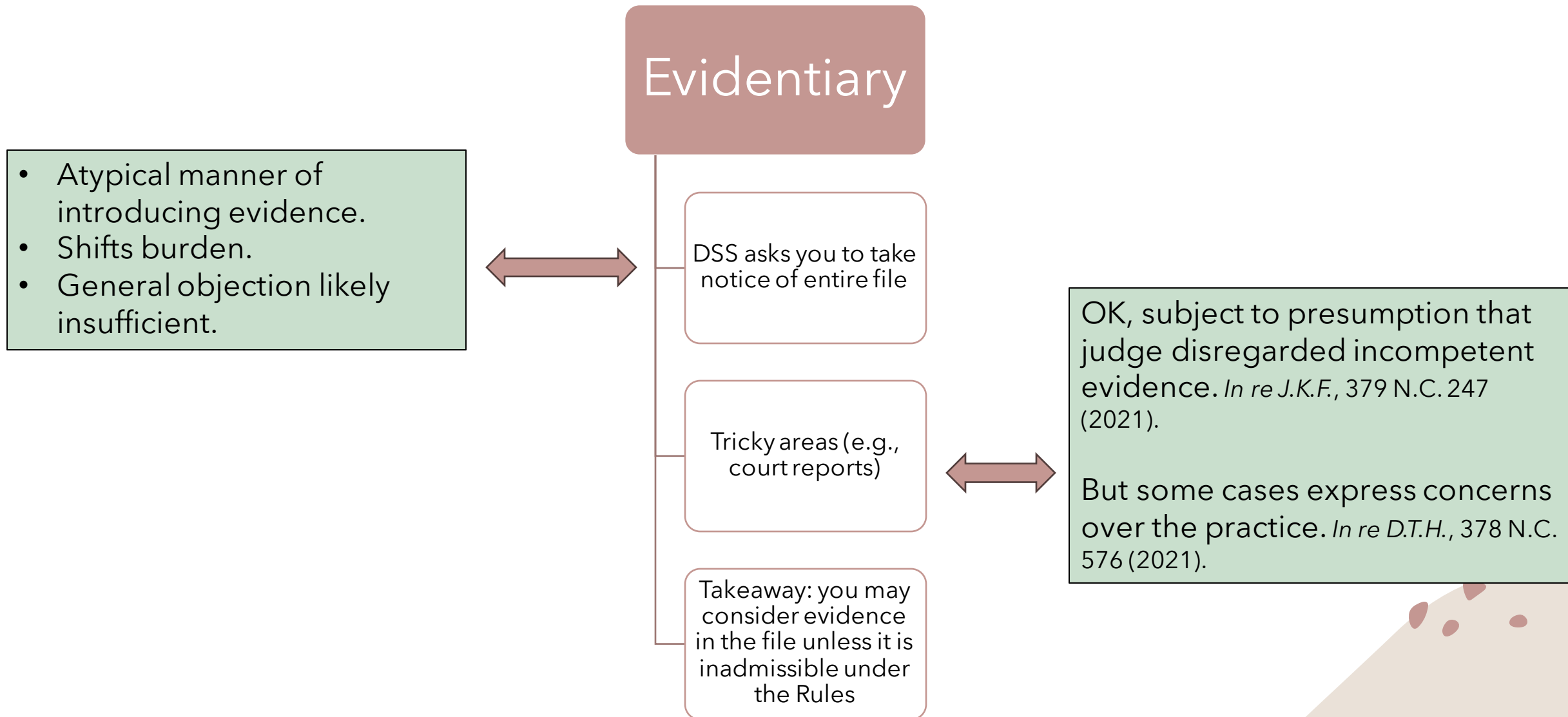
Judicial Notice Framework

Conclusive

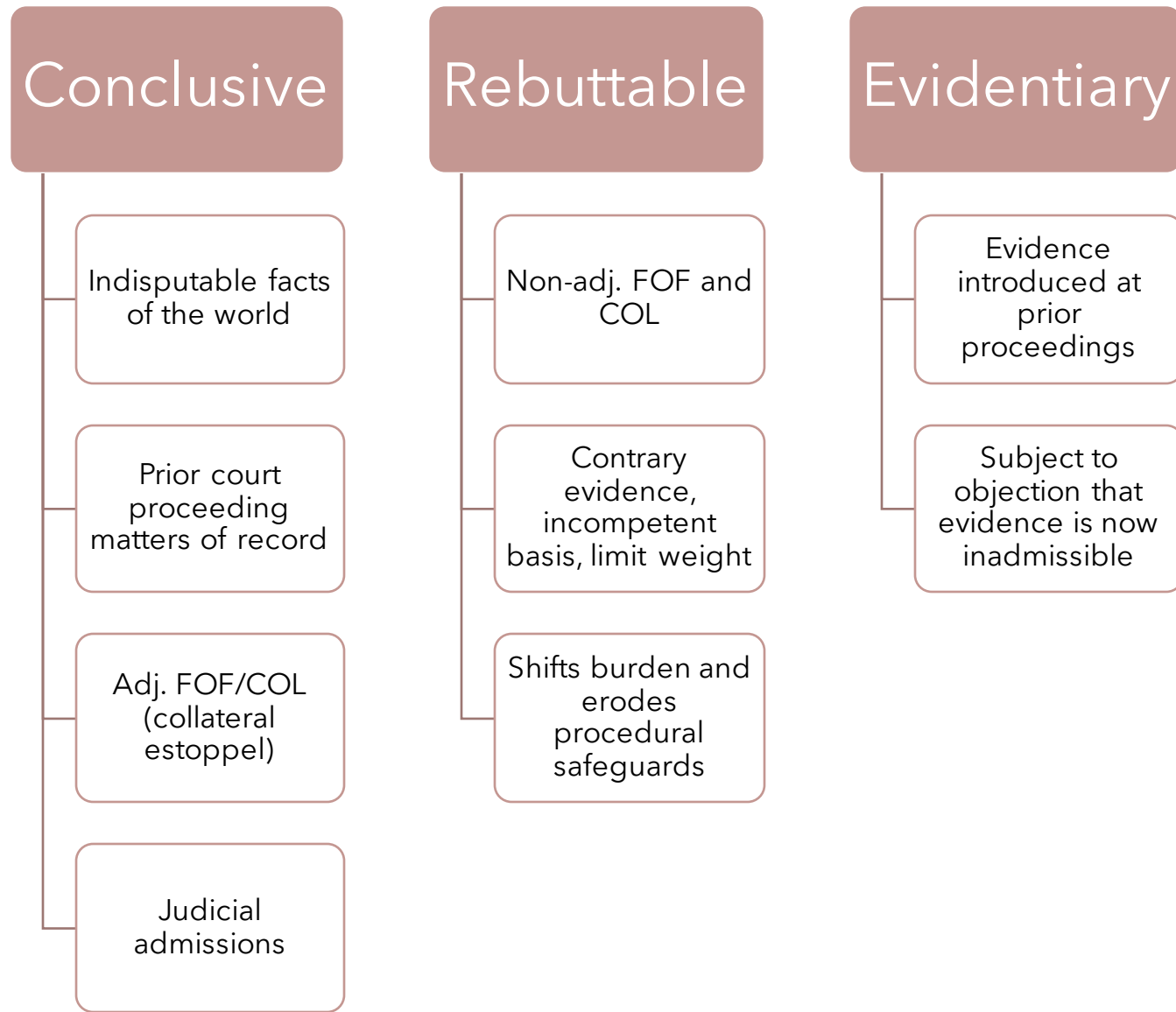
Rebuttable

Evidentiary

Judicial Notice Framework



Judicial Notice Framework



Key Points



Unique to A/N/D and TPR cases

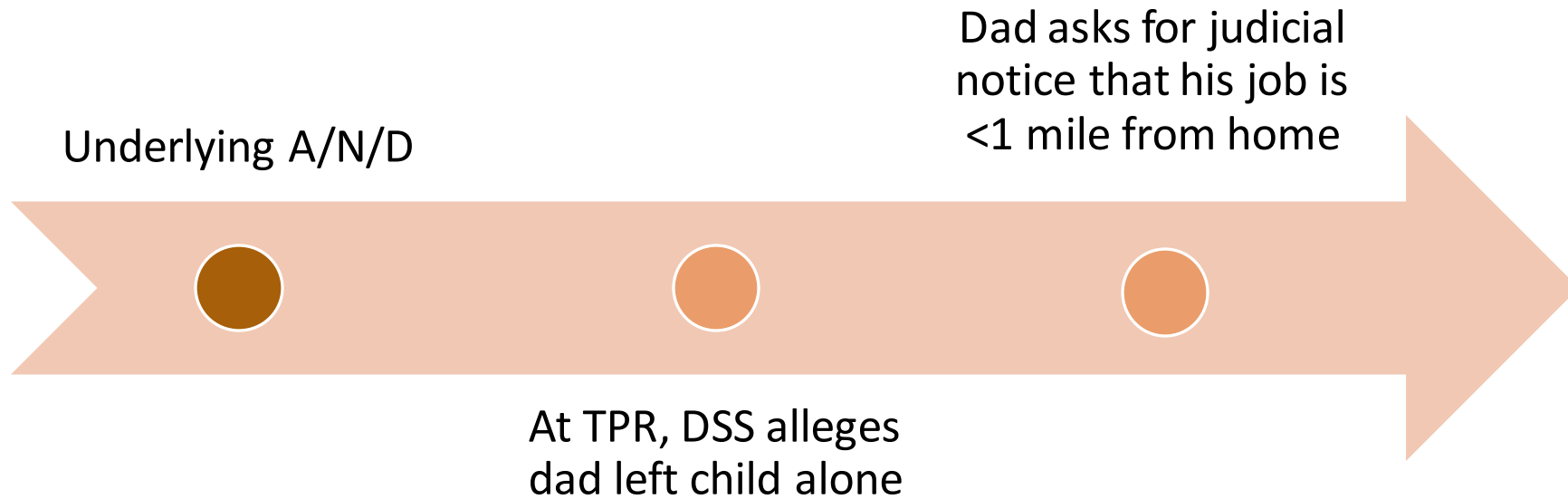


Three categories of judicial notice:
(1) conclusive, (2) rebuttable, and (3) evidentiary.



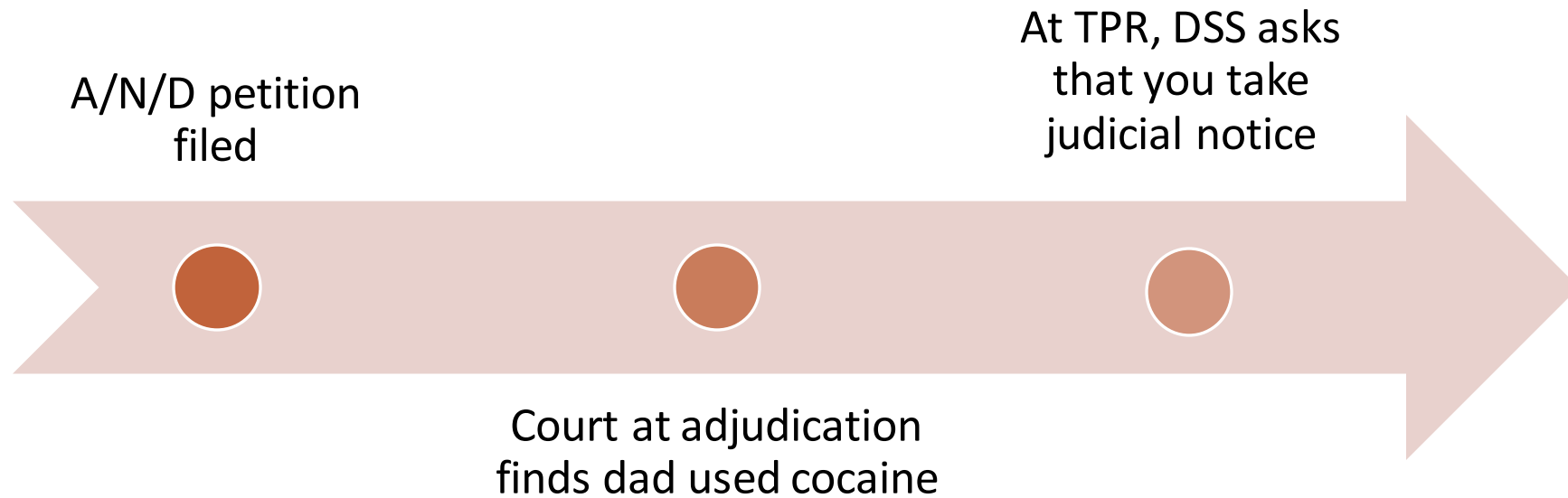
Ch. 11 of the A/N/D and TPR manual

Judicial Notice at TPR



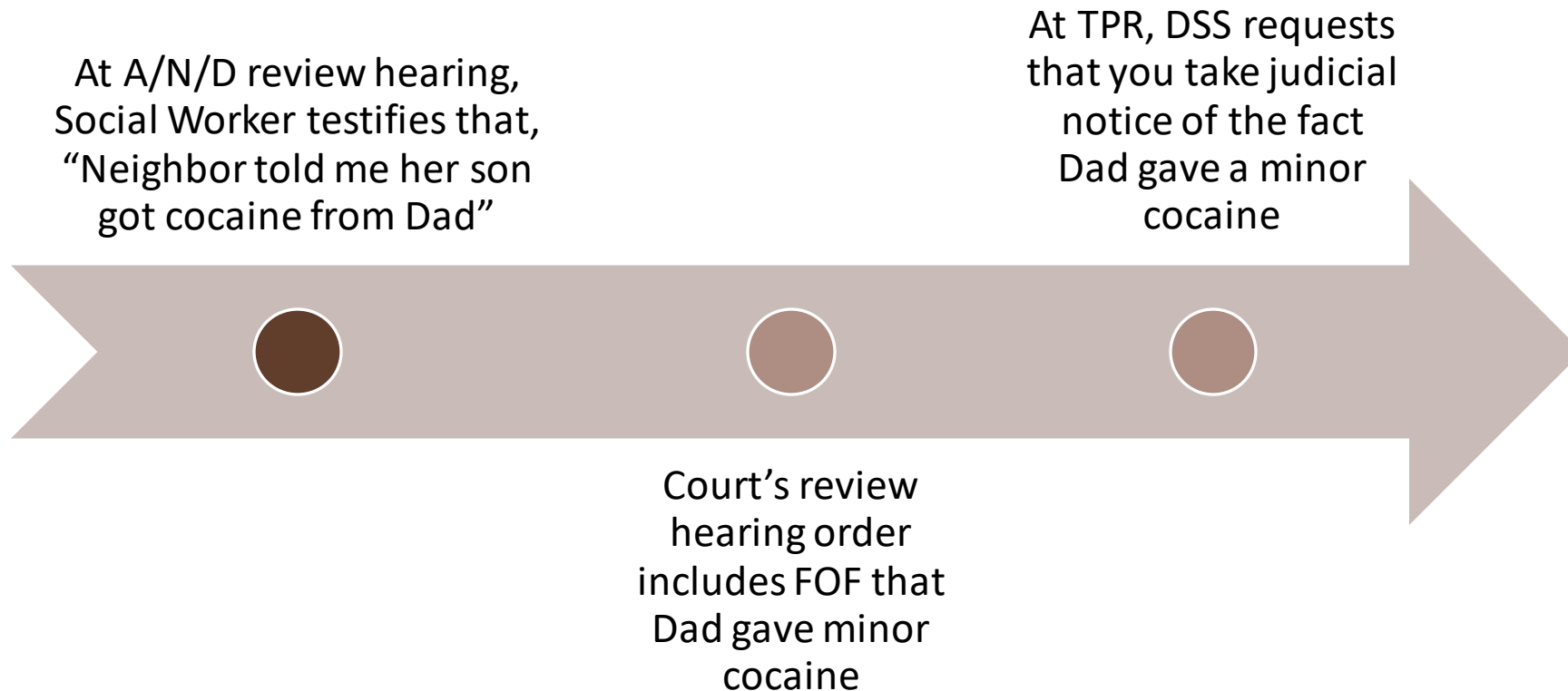
1. What type of judicial notice is this?

Judicial Notice at TPR



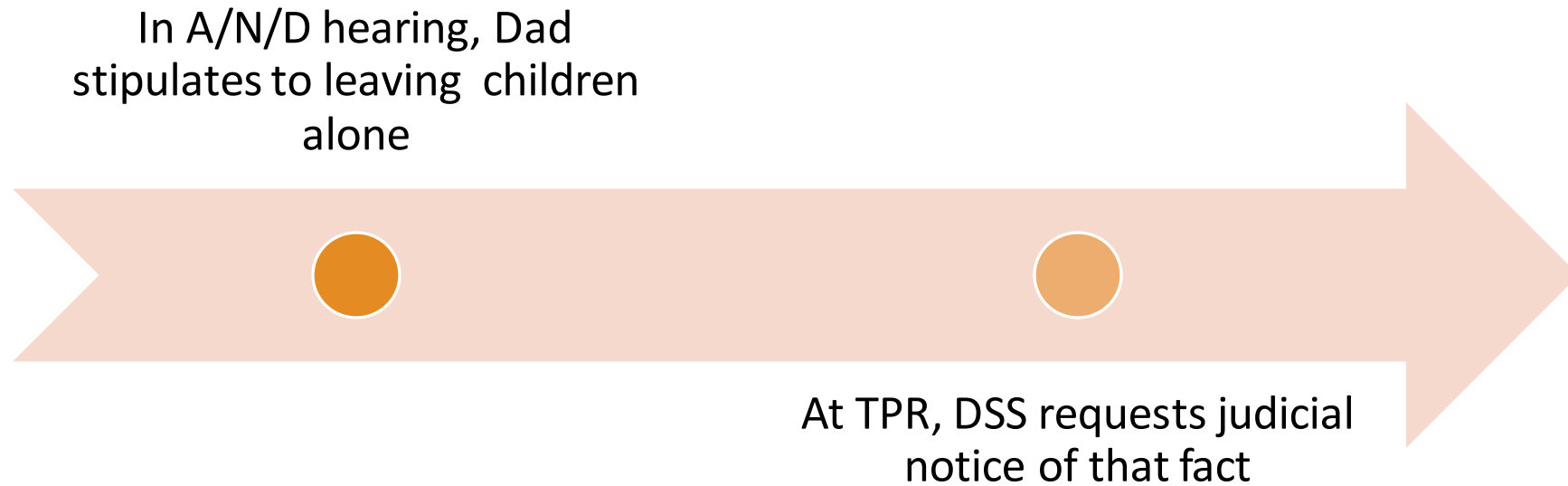
1. What type of judicial notice is this?

Judicial Notice at TPR



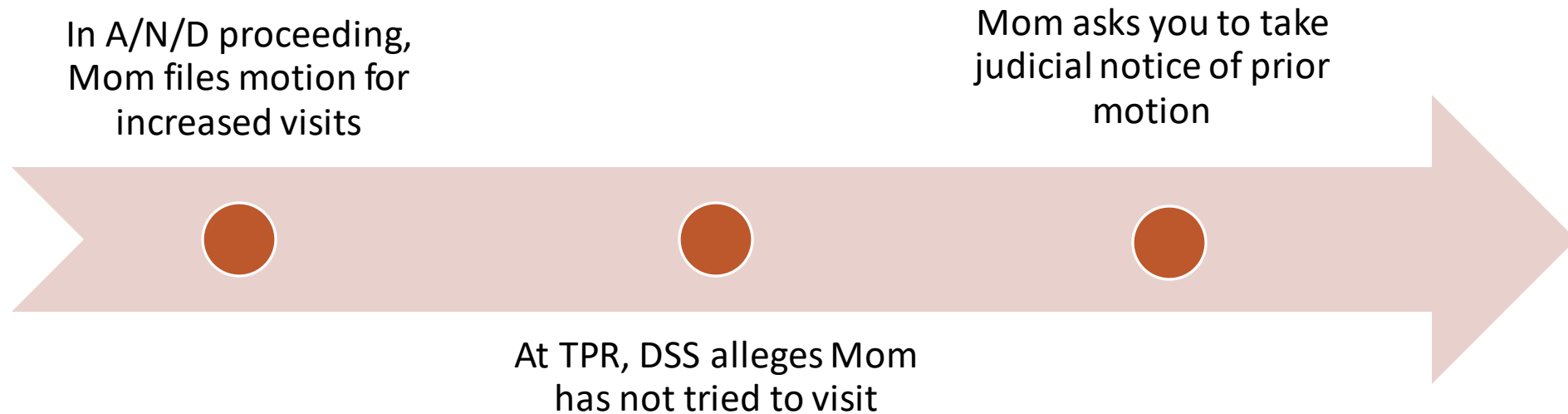
1. What type of judicial notice is this?
2. Can you take judicial notice of prior non-adj. findings, generally?
3. What will Dad argue here?

Judicial Notice at TPR



1. What type of judicial notice is this?

Judicial Notice at TPR

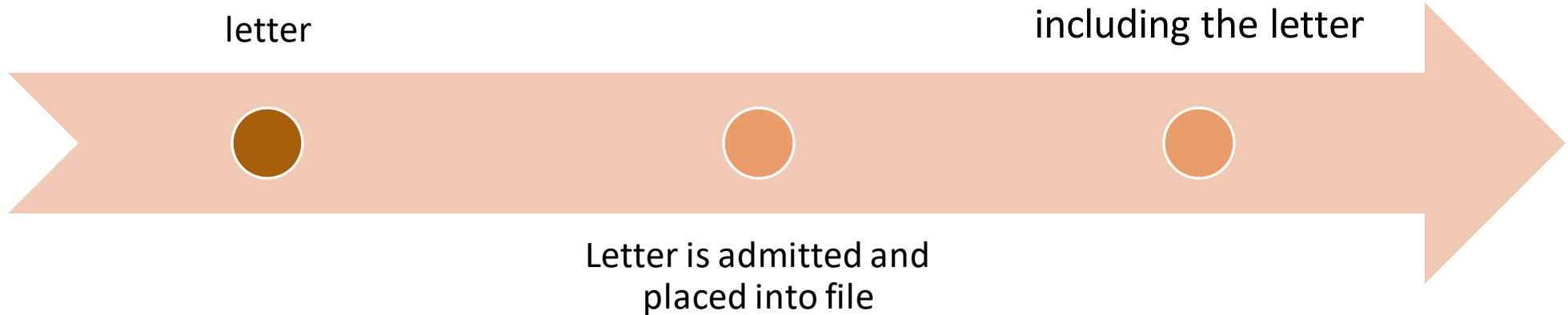


1. What type of judicial notice is this?
2. Can DSS offer supplemental and contextual evidence?

Judicial Notice at TPR

At A/N/D review hearing, DSS offers teacher's handwritten letter

At TPR, DSS asks you to take judicial notice of entire A/N/D file, including the letter



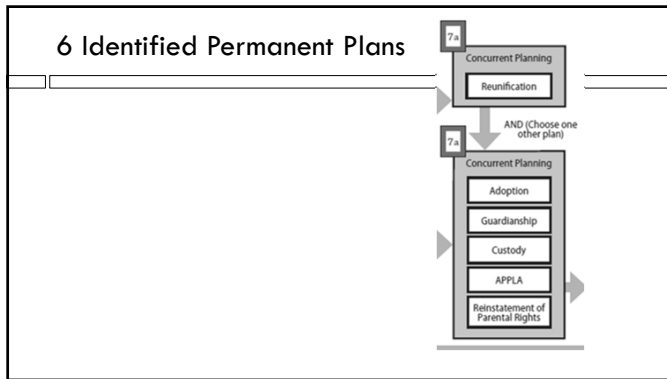
1. What type of judicial notice is this, as it relates to the letter?
2. Can you take judicial notice? Why or why not?
3. What if no party objects?

Questions?

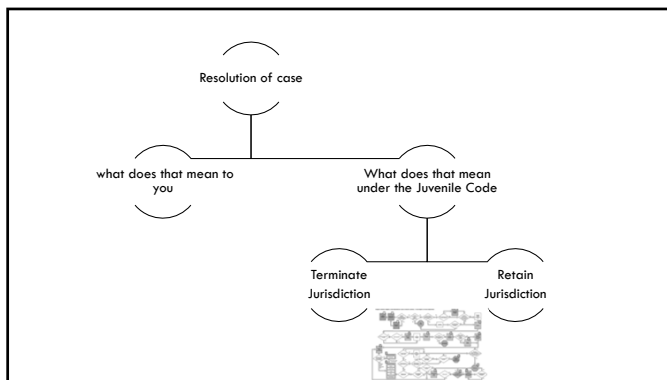
Timothy Heinle

Heinle@sog.unc.edu

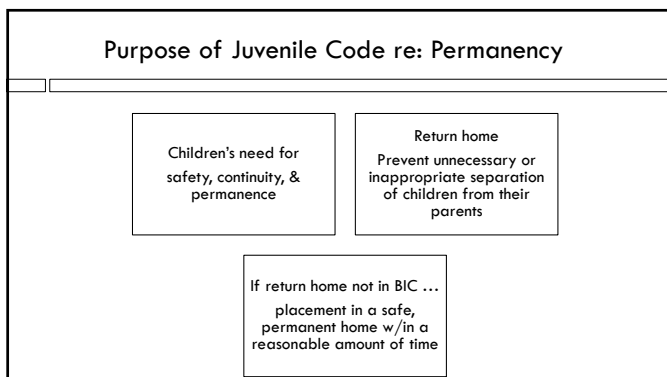
UNC School of Government



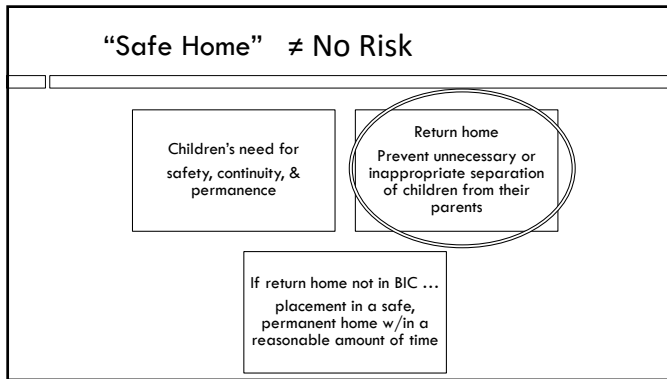
4



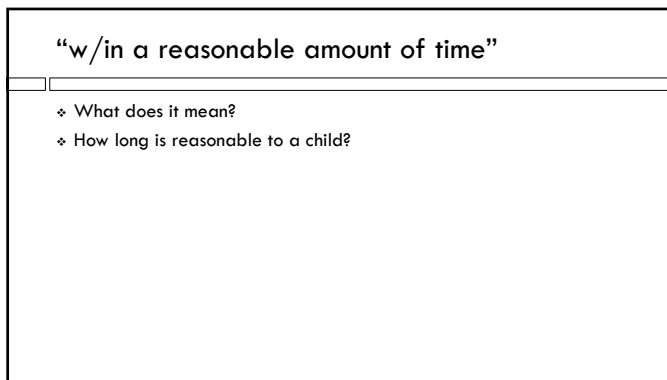
5



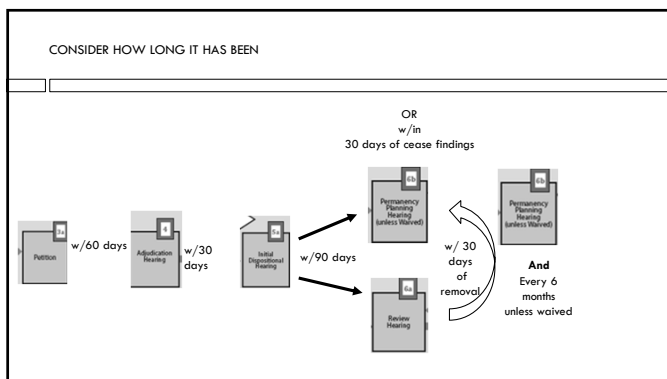
6



7



8



9

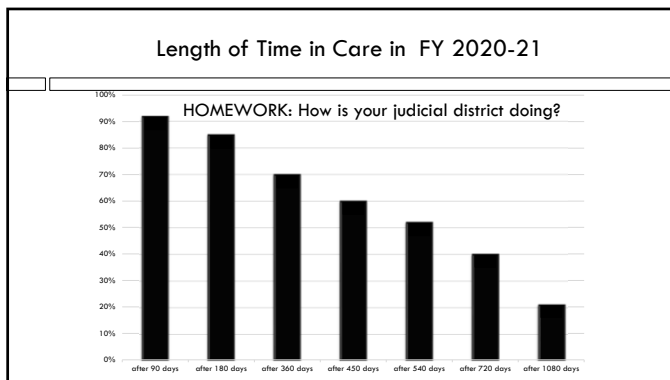
To Get There: Concurrent Permanency Planning

❖ “The court shall adopt concurrent permanent plans and shall identify the primary and secondary plan”

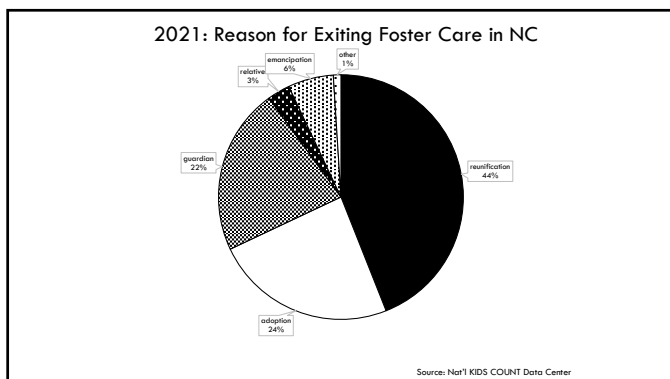
```

graph LR
    A[Reunification] --> B[Adoption  
Guardianship  
Custody]
    B --> C[APPLA  
Restatement  
of Parental  
Rights]
        
```

10



11



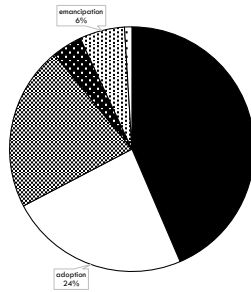
12

Achieving Permanency

- ❖ How you get there differs
- ❖ Status of court case differs
 - ❖ Automatic consequences
 - ❖ Discretionary decisions by judge

13

Automatic Termination of Jurisdiction when PP Achieved



Source: Nat'l KIDS COUNT Data Center

14

Adoption: G.S. Chapter 48

Chapter
10.3

SPECIAL PROCEEDING

- ❖ New action before the clerk
 - ❖ Transferred to district court if
 - ❖ ? Fact
 - ❖ Equitable defense
 - ❖ Equitable relief

A/N/D PROCEEDING

- ❖ Continues to have jurisdiction while adoption pending
- ❖ Identified adoption as PP
- ❖ May have ordered DSS to file TPR
- ❖ May have TPR motion filed and heard
- ❖ May have had a 78-1112.1 hearing re: selection of prospective adoptive parents

15

Transitioning to Adoption



16

Adoption Petition

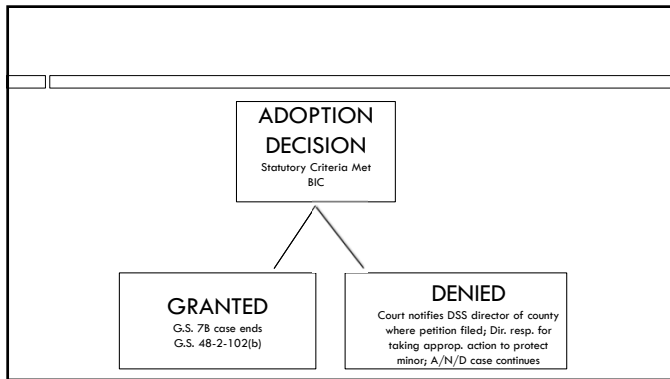
- ❖ Standing: G.S. 48-2-301
 - ❖ Prospective Adoptive Parent with Placement
 - ❖ Unless placement waived by court (hearing adoption) w/cause

17

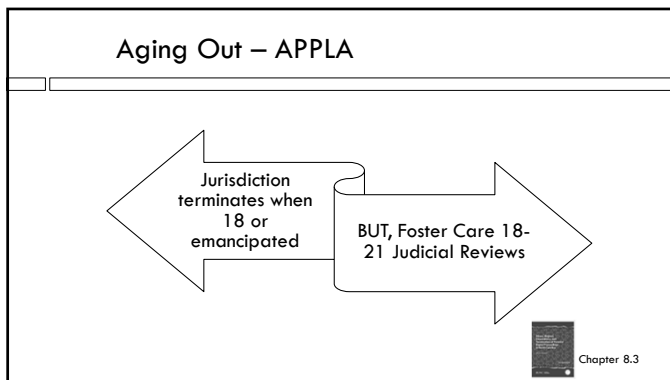
Timing



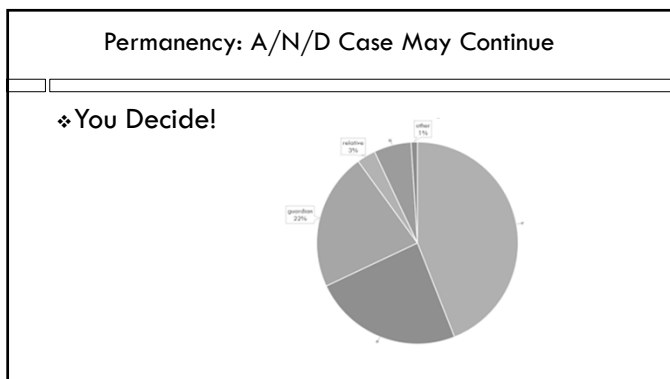
18



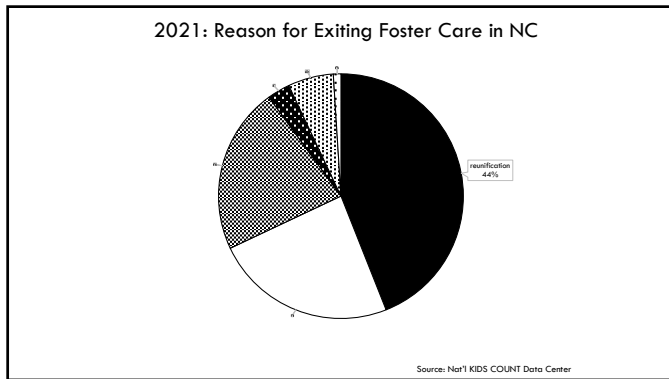
19



20



21



22

G.S. 7B-101(18b): Reunification

❖ How?

- ❖ G.S. 7B-903
- ❖ G.S. 7B-911

Reunification 44%

Adoption 31%

Other 25%

Death 1%

Transfer 1%

Source: Nat'l KIDS COUNT Data Center

23

Permanency with a Non-Parent

Guardianship	Custody
❖ G.S. 7B-903(a)(5)	❖ G.S. 7B-903(a)(4)
❖ G.S. 7B-600	❖ G.S. 7B-911

Remember findings about

- Verification
- Parent's Constitutional Rights
- Relative: contrary to BIC

24

Questions for you

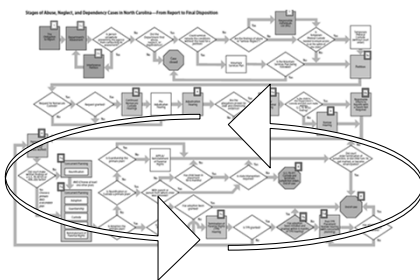
- What are you hoping to accomplish?
- Which disposition will do that?

Custody with a Parent or Other Suitable Person – Guardianship of the Person
District Court Judges' Conference, Summer 2019
By Tara Saffers, VSO School of Management

	Custody	Guardianship
Applicable Disposition Statute	U.S. 78-903A(4), 78-911	U.S. 78-903A(3), 78-400
Definition	<ul style="list-style-type: none"> "Custody" is not defined by the Juvenile Code (U.S. Ch. 78) May apply to parent or non-parent 	<ul style="list-style-type: none"> Only applies to non-parents The Juvenile Code does not define "guardian of the person" The rights of a guardian are specified in U.S. 78-

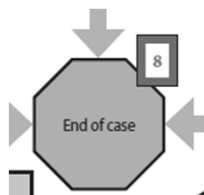
25

What does that mean for custody or guardianship under 7B-903?



26

Is it possible to terminate jurisdiction with that disposition?



27

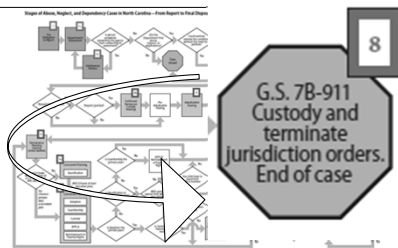
G.S. 7B-911: Terminating Jurisdiction

When does it apply?

"Upon placing custody with a parent or other appropriate person, the court shall determine whether or not jurisdiction is the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to G.S. 50-13.1..."

28

Custody: A way out



29

G.S 7B-911 Requirements

Terminates Jurisdiction of 7B action

- ❖ Findings no need for state intervention
- ❖ At least 6 months passed since court determined placement with person awarding custody is the PP
- ❖ Exceptions include...

Awards Custody in Chapter 50

- ❖ Converts to Ch. 50
- ❖ Requires
 - ❖ Initiation of new case or modification of existing case
 - ❖ G.S. Ch. 50 findings & conclusions

30

32

32

33

Terminating Jurisdiction w/o G.S. 7B-911

- ❖ Orders in the case are null
 - ❖ Cannot be modified or enforced
- ❖ Child's and parties' status are
 - ❖ Pre-petition or
 - ❖ as determined by law, a valid court order in another proceeding, 7B-911, or TPR

34

Status of Court Case

TERMINATE JURISDICTION

- ❖ You control when and how a case ends
- ❖ G.S. 7B-201: terminate by court order

RETAIN JURISDICTION

- ❖ Hold regular PPH
- ❖ Waive regular PPH
- ❖ G.S. 7B-906.1(k), (n)

NEVER say a case is "closed" or "inactive"

35

Retain Jurisdiction: G.S. 7B-906.1(n)

Waive reviews

- Reside in placement 1 year or with consent of parties 6 months
- Placement is stable and continuing is BIC
- Neither BIC nor rights of parties require 6 month reviews
- All parties aware there can be a review at any time upon motion of any party or the court
- Ordered relative/other suitable person as permanent guardian or custodian

36

G.S. 7B-906.1(a1) N.C. App. ____ 53 (2015)	It is reversible error if the court does not make findings of each of the enumerated factors in G.S. 7B-906.1(a) when waiving permanency planning hearings. Child had not resided in the placement for one year before the hearing waiving further reviews. Read More
G.S. 7B-906.1(b) N.C. App. ____ 803 S.E.2d 429 (2017) (originally unpublished but subsequently published)	The court erred in waiving further review hearings. It did not make all five findings required by G.S. 7B-906.1(b). When reunification is a secondary plan, the respondent continues to have the right to reasonable efforts and for the court to evaluate those efforts. Read More
G.S. 7B-906.1(c) N.C. App. ____ 791 S.E.2d 669 (2016)	The court must make findings of each 7B-906.1(b) factor to waive further permanency planning hearings. Read More
G.S. 7B-906.1(d) N.C. App. ____ 802 S.E.2d 589 (2017)	It is reversible error to waive further review hearings when the court does not make findings of each of the G.S. 7B-906.1(b) factors. Read More
G.S. 7B-906.1(e) N.C. App. ____ 796 S.E.2d 702 (2016)	It is reversible error for the court to waive permanency planning hearings when it has not made written findings of fact by clear and convincing evidence of each of the enumerated factors in G.S. 7B-906.1(b). Read More

37

You Decide

TERMINATE JURISDICTION

✦ What are the pro/cons

RETAIN JURISDICTION

✦ What are the pros/cons

38

What about concurrent planning?

G.S. 7B-906.1(a1)

“Concurrent planning shall continue until a permanent plan has been achieved”

Decision impacts the family, the child, and DSS

39

Impact of keeping a concurrent plan

- ❖ DSS cannot be relieved from making reasonable efforts if concurrent plan remains
- ❖ Do you want DSS to continue working with the family and providing reasonable efforts/ Are services still needed?
- ❖ Is this "final" or do you want to encourage the opportunity for modification ?
- ❖ Is it a close call – what is the message you want to send?

40

Keep KIDS in Mind

Benchcard

41

**Comparing A/N/D Dispositions
Custody with a Non-Parent – Guardianship of the Person
2023**

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
Applicable Disposition Statutes	G.S. 7B-903(a)(4); 7B-911	G.S. 7B-903(a)(5); 7B-600
Definitions	<ul style="list-style-type: none"> • “Custody” is not defined by the Juvenile Code (G.S. Ch. 7B) <ul style="list-style-type: none"> ○ May apply to parent or non-parent • “Custodian” is “the person or agency that has been awarded legal custody of a juvenile by a court.” G.S. 7B-101(8) 	<ul style="list-style-type: none"> • Only applies to non-parents • The Juvenile Code does not define “guardian of the person” • The rights of a guardian are specified in G.S. 7B-600 (note the court may limit what rights the guardian has) • 42 U.S.C. § 675(7): “legal guardianship” means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term ‘legal guardian’ means the caretaker in such a relationship.”
Party Status	Custodian: 7B-401.1(d) <ul style="list-style-type: none"> ○ The custodian at time the petition is filed shall be a party ○ Automatically becomes a party if custody is ordered as the child’s permanent plan [see also 7B-200(b)(iii)] 	Guardian: 7B-401.1(c) <ul style="list-style-type: none"> • Court-appointed general guardian or guardian of the person at time the petition is filed shall be a party • Automatically becomes a party if guardianship is ordered as the child’s permanent plan [see also 7B-200(b)(iii); -600(b)]
Intervention	Standing to Intervene: 7B-401.1(h)	

Custody with a Non-Parent vs Guardianship of the Person

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
Removal of Party	Removal as a party: 7B-401.1(g) If the court finds the person does not have legal rights that may be affected by the action and his/her continuation as a party is not necessary to meet the child's needs	
Dispositional Stage	Dispositional option available at any initial, review, and permanency planning hearing 7B-903(a)(4), (5); -906.1(i)	
Verification Required	Verification by court that the person understands the legal significance of the placement/appointment and has adequate resources to care for the child is required 7B-906.1(j); <i>see also</i> 7B-903(a)(4) custody; -600(c) guardianship	
Financial Support	Court may order parent to pay a reasonable some of the child's cost of care if court finds the parent is able to do so 7B-904(d)	
		May be eligible for Guardianship Assistance Payments (GAP) if criteria met. See 10A NCAC 70P.0101-.0104
Visitation	Visitation must be addressed in order: 7B-905.1(c) If court retains jurisdiction, motion to modify visitation made pursuant to 7B-905.1(d)	
Participation in Dispositional Hearings as Non-Party	<ul style="list-style-type: none"> • Notice of permanency planning hearings provided to custodian and guardian [7B-906.1(b)(iii), (v)] • At initial disposition and permanency planning hearings, even if not a party, the court may consider information from the custodian or guardian that it finds to be relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition [7B-901(a); -906.1(c)] 	
Permanent Plans G.S. 7B-906.2	<ul style="list-style-type: none"> • Return Home/Reunification: Placement in the home of either parent or in the home of the guardian or custodian from whose home the child was removed by court order [7B-101(18b)] • Reasonable Efforts: diligent use of preventive or reunification services by a DSS when the juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home within a reasonable period of 	

Custody with a Non-Parent vs Guardianship of the Person

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
	time; if court determines juvenile not to be returned home, then the diligent and timely use of permanency planning services by DSS to develop and implement a permanent plan [7B-101(18)]	
	Custody to relative or other suitable person: 7B-906.2(a)(4)	Guardianship pursuant to G.S. 7B-600 [7B-906.2(a)(3)]
No Need for TPR	TPR not required when primary permanent plan is guardianship, or custody: <i>see</i> 7B-906.1(f)(1)	
Retention of Jurisdiction in 7B Action	<ul style="list-style-type: none"> G.S. 7B-911 allows the court to terminate jurisdiction in the 7B action and transfer to and enter a Chapter 50 custody order that survives the termination of juvenile court jurisdiction [7B-200(b)(1)] The court may order custody as a permanent plan and retain jurisdiction without conducting regular periodic permanency planning hearings if the criteria of G.S. 7B-906.1(n) are met. <p><i>Note</i>, DSS remains a party until court terminates its jurisdiction, G.S. 7B-401.1(a)</p>	<ul style="list-style-type: none"> The court must retain jurisdiction in the 7B action. Otherwise, the legal status of parties reverts to pre-petition status and court lacks authority to modify or enforce guardianship order [7B-200(b)] Court may not hold regular periodic permanency planning hearings if all the criteria of G.S. 7B-906.1(n) are met. <p><i>Note</i>, DSS remains a party until court terminates its jurisdiction, G.S. 7B-401.1(a)</p>
Transfer to Chapter 50	<p>G.S. 7B-911 If no Ch. 50 action exists, the 7B-911 order initiates the Ch. 50 action. The court designates parties and caption.</p> <p>If existing Ch. 50 action exists, 7B-911 custody order is filed in existing Ch. 50 action, resolves any pending claims, and modifies the existing Ch. 50 order. New party joined/caption made if applicable.</p>	

Custody with a Non-Parent vs Guardianship of the Person

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
	<p>7B-911(c)(2) Required Findings Failure to do so is reversible error, <i>In re J.D.R.</i>, 768 N.C. App. 172 (2015):</p> <ul style="list-style-type: none"> • No need for continued state intervention AND • If custody is not with a parent or person who the child was living with when the A/N/D petition was filed, at least 6 months have passed since the court determined the child's placement with the person getting custody is the permanent plan <p>Additional Ch. 50 Findings Required [7B-911(c)(1)]</p> <p>Joint Custody permitted [50-13.2(b)]</p> <p>2 separate orders are not required; "The trial court may enter one order for placement in both the juvenile file and the civil file as long as the order is sufficient to support termination of juvenile court jurisdiction and modification of custody" <i>In re A.S.</i>, 182 N.C. App. 139, 142 (2007)</p>	
Rights and Responsibilities	<p>G.S. 7B does not define or specify authority/duties of custodian</p> <p>Legal Custody: "the right and responsibility to make decisions with important and long-term implications for a child's best interests and welfare" <i>Hall v. Hall</i>, 188 N.C. App. 527 (2008)</p>	<p>Statutory Authority, 7B-600(a)</p> <ul style="list-style-type: none"> • Operate under court supervision with or without bond and may be required to file reports • Care, custody and control of child • May arrange suitable placement for child and represent child in court proceedings • May consent, in place of parent, to juvenile's marriage, military enlistment, school enrollment, medical care

Custody with a Non-Parent vs Guardianship of the Person

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
	<p>Physical Custody: “physical care and supervision of a child” [G.S. 50A-102(14)]</p> <p>Although not designated in G.S. 7B, other statutes authorize a parent or custodian to take certain actions</p> <ul style="list-style-type: none"> • G.S. 51-2(a1) authorizes consent to marriage of 16–17 year old juvenile by <ul style="list-style-type: none"> • A parent with full or joint legal custody or • a person having legal custody of the underage child • School Enrollment: G.S. 115C-366 <ul style="list-style-type: none"> ○ Attend where child is domiciled or exception applies (which includes child living with adult who is domiciled in school district as result of being abandoned, abused, or neglected by the parent or legal guardian). Domicile is not defined under G.S. 115C <i>but see, Graham v. Mock</i>, 143 N.C. App. 315, 318 (2001) a domicile is someone’s permanent, established home, which is distinguishable from a temporary, although actual, place of residence. • Medical Care: G.S. 90-21.1 <ul style="list-style-type: none"> ○ Physician may treat child with consent of parent or “any person acting as guardian, or any person standing in loco parentis to said child.” [See G.S. 90-21.4 Immunity of physician, references “Parent, legal guardian, person standing in loco parentis, or a legal 	<ul style="list-style-type: none"> ○ <i>Note</i>, some of this authority is designated in other statutes as well <ul style="list-style-type: none"> ▪ marriage is authorized by G.S. 51-2(a1)(2) ▪ school enrollment authorized by G.S. 115-366 ▪ consent to medical care is authorized by G.S. 90-21.1 [see also G.S. 90-21.4] ▪ military enlistment of a 17 year old with the written consent of a guardian who is entitled to child’s custody and control [10 U.S.C. §505] <p>What does not appear to be included?</p> <ul style="list-style-type: none"> • Financial matters: Guardian of the Estate may be needed via Ch. 35A • Consent to adoption (G.S. 48-1-101(8) limits definition of guardian to Ch. 35A guardian) • Appointment of a standby guardian under G.S. 35A-1373; <i>See</i> 35A-1371 (clerk has no jurisdiction when district court has assumed jurisdiction over the child under a Ch. 50 or A/N/D proceeding)

Custody with a Non-Parent vs Guardianship of the Person

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
	<p>custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment.”]</p>	
Modification or Enforcement of Order	<ul style="list-style-type: none"> • If 7B-911 applied (jurisdiction in 7B action terminated and action transferred Ch. 50), a motion to modify or enforce must be filed in the Ch. 50 action [7B-911(b)] <ul style="list-style-type: none"> ○ To modify, a substantial change in circumstances must be shown, G.S. 50-13.7 ○ Mandatory mediation unless waived for good cause, which includes allegation of the child’s abuse or neglect... [G.S. 50-13.1(b), (c)] ○ Parents not entitled to court appointed counsel ○ Child’s 7B-600 GAL is not reappointed ○ DSS is not a party • If court retained jurisdiction and ordered custody to parent or custodian under 7B-903(a)(4), any party may file a motion under -906.1 or -1000 <ul style="list-style-type: none"> ○ If motion is filed under G.S. 7B-906.1, best interests is the standard ○ If motion is filed under 7B-1000, the court may modify or vacate based on either <ul style="list-style-type: none"> • Substantial change in circumstances OR • The needs of the juvenile <p><i>See In re K.L., 802 S.E.2d 588 (2017)</i></p> 	<ul style="list-style-type: none"> • Any party may file a motion under -906.1 or -1000 <ul style="list-style-type: none"> ○ If motion is filed under G.S. 7B-906.1, best interests is the standard ○ If motion is filed under 7B-1000, the court may modify or vacate based on either <ul style="list-style-type: none"> • Substantial change in circumstances OR • The needs of the juvenile <p><i>See In re K.L., 802 S.E.2d 588 (2017)</i></p>

Custody with a Non-Parent vs Guardianship of the Person


By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
	<ul style="list-style-type: none"> ○ Parents may obtain court appointed counsel [-602(a)] ○ Child's GAL may be reappointed [-601] ○ DSS continues to be a party [-401.1(a)] ○ Mediation is discretionary, G.S. 7B-202 	<ul style="list-style-type: none"> ○ Parents may obtain court appointed counsel [-602(a)] ○ Child's GAL may be reappointed [-601] ○ DSS continues to be a party [-401.1(a)] ○ Mediation is discretionary, G.S. 7B-202 ● When a 7B-906.1 or -1000 motion is filed, the court <ul style="list-style-type: none"> ○ may order DSS to investigate and file report and testify; ○ ensures a GAL for child has been appointed and notified of pending motion [7B-600(b)]; ○ may appoint an attorney for indigent parent [-602(a)] ● To terminate a "permanent" guardian, court must find: 7B-600(b) <ul style="list-style-type: none"> ○ Relationship between guardian and child is no longer in BIC ○ Guardian is unfit ○ Guardian has neglected duties ○ Guardian is unwilling or unable to continue <p><i>Note:</i> This criteria does not apply to guardianship appointment that is not the permanent plan (i.e., at initial disposition or a review). <i>See In re J.D.C.</i>, 174 N.C. App. 157 (2005)</p> <ul style="list-style-type: none"> ● Automatically ends when juvenile is 18, emancipated, or adopted [7B-600(a); see 48-2-102(b)]
Standing to file TPR	G.S. 7B-1103(a)(5)	G.S. 7B-1103(a)(2) <ul style="list-style-type: none"> ○ Guardian of the person

Custody with a Non-Parent vs Guardianship of the Person

By: Sara DePasquale, UNC School of Government

Custody		Guardianship
	<ul style="list-style-type: none">○ Only if custodian is the person with whom the child has resided for a continuous period of 18 months or more next preceding the filing of the petition or motion (the status of custodian is irrelevant)	
Foster 18-21 Program		Very limited circumstances: If guardianship arrangement occurs when juvenile is 16 or 17 and is receiving Guardianship Assistance (GAP), may be eligible for Foster Care 18-21 if meet the other eligibility criteria. 10A NCAC 70P.0104




THE JUDGE'S ROLE IN A/N/D COURT
UNC SCHOOL OF GOVERNMENT
AUGUST 11, 2023

1

What Can I Say To Myself?


<u>Instead of...</u>	<u>Try thinking...</u>
• I'm not good at this.	• What am I missing?
• I'm awesome at this.	• I'm on the right track.
• I give up.	• I'll use some of the strategies we've learned.
• This is too hard.	• This may take some time and effort.
• I can't make this any better.	• I can always improve, so I'll keep trying.
• I just can't do math.	• I'm going to train my brain in Math.
• I made a mistake.	• Mistakes help me to learn better.
• She's so smart. I will never be that smart.	• I'm going to figure out how she does it so I can try it!
• It's good enough.	• Is it really my best work?
• Plan A didn't work.	• Good thing the alpha bet has one more letter!



2

THE CORPENING EFFECT

(FINDING YOUR WHY)



3

IT'S ABOUT YOU
(IT'S ALSO NOT ABOUT YOU)

4

THE GOLDEN CIRCLE OF A/N/D COURT

5

WHY
HOW
WHAT



6

THE WHAT
EMMETT FOLLOWS INSTRUCTIONS
(AND SO DO WE)



7

OUR "INSTRUCTIONS"

- Statutes/Case law
- Procedures (timing too)
- Rules
- Policies
- Candyland
- Let's review
- Everyone gets it, right?



8



THE HOW
THE MASTER BUILDER
DISPOSITIONAL ALTERNATIVES



9

DISPOSITION → DISCRETION (STILL SOME RULES)

- Best interests
- Placement
- Visitation
- Services
- Life plans/case plans
- Different than "instructions"
- What happened with the Master Builder? (cookie cutter)




10

THE WHY

PURPOSE DRIVEN

(THIS IS ABOUT YOU)



THE CENTER OF THE GOLDEN CIRCLE



11

THE WHY

Apple



12

THE WHY



13

THE WHY



14

THE WHY





15

HOW ABOUT YOU?

LEADER

Shaped by your Why!


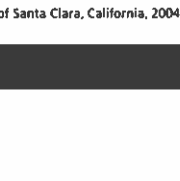


16

LEADERSHIP IS KEY

When parenting fails, when informal community responses are inadequate, our juvenile and family courts provide the state's official intervention in the most serious cases involving children and families. We are the legal equivalent to an emergency room in the medical profession. We intervene in crises and figure out the best response on a case-by-case, individualized basis. In addition, we have to get off the bench and work in the community. We have to ask these agencies and the community to work together to support our efforts so that the orders we make on the bench can be fulfilled. We have to be the champions of collaboration.

Judge Steve Teske, quoting Judge Leonard Edwards of Santa Clara, California, 2004 Rehnquist Award for Judicial Excellence, NCSC





17

We're changing lives.

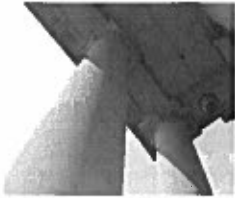
We're shaping lives.

We're saving lives.



18

OVER DRAMATIC?

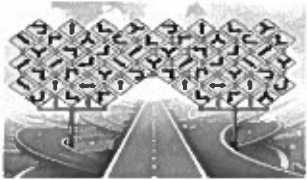


- Could be called "last chance court!" (maybe 1st chance)
- Last chance to meet unmet needs
- Last chance to diagnose and treat mental health issues
- Last chance to address behavioral issues
- Last chance to address family issues
- Why last chance?



19

JUVENILE COURT IS THE CROSSROADS



And we're the traffic cop! (or Neo!)



20

SO, HOW DO WE DO THIS AS A LEADER?



- My evolution: I learned to read!
- Be committed (lead with your Why!)
- Listen, listen, listen
- Become trauma informed
- Understand brain science of trauma and brain development
- Pay attention to detail: ask the context questions



21

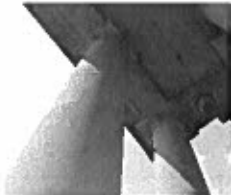
SO, HOW DO WE DO THIS?

- Change the way you talk. These are real people. Trauma has occurred.
- Active listening/motivational interviewing.
 - Tone, volume, words used
 - Talk to or with, not down to
 - Engage
 - Show you care
 - Talk about the future
 - Motivate!



22

SO, HOW DO WE DO THIS?



- Use your power
 - Order evaluations
 - Understand your resources
 - Use your resources
 - Hold professionals accountable
 - This will be frustrating, especially with mental health



23

SO, HOW DO WE DO THIS?



- Pay attention to education
 - Attendance
 - Grades
 - IEP/504
 - Suspensions/expulsions
 - Behavior at school
 - Bench card



24

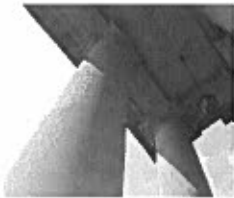
SO, HOW DO WE DO THIS?

- ◊ Pay attention to mental health
 - Assessments/evaluations
 - Treatment
 - Family involvement
- ◊ Be Creative
 - Visitation and other areas



25

SO, HOW DO WE DO THIS?



- ◊ Understand substance misuse (take the course asap!)
 - Resources are scarce
 - Involve the family
 - Be the leader



26

SO, HOW DO WE DO THIS?



- Every family is different
- Different than yours: careful with your personal experiences
- Avoid POAS (new to DSM 5)
- Engage and empower parents
- Be optimistic: hope dealer!



27

SO, HOW DO WE DO THIS?

- Pay attention to Katie!
- Give children their voice.
- Child participation is critical.
- They've lived the hell: shielding them from hearing about it is meaningless.
- Value your time with them!



28

BACK TO LEADERSHIP

ALWAYS LEAD WITH YOUR WHY!



29

LET'S CHECK IN: WHAT'S YOUR WHY?

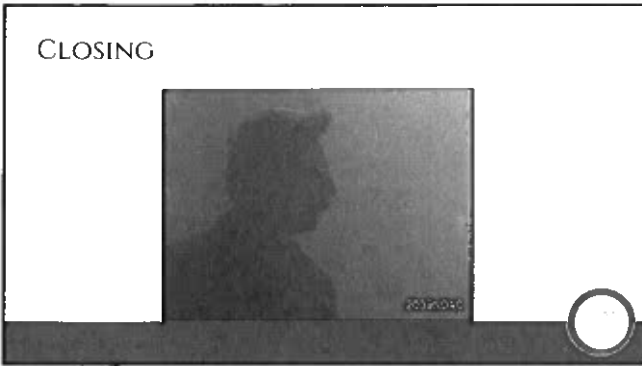
Lead with what you wrote Monday

Where are you today?

Let's share



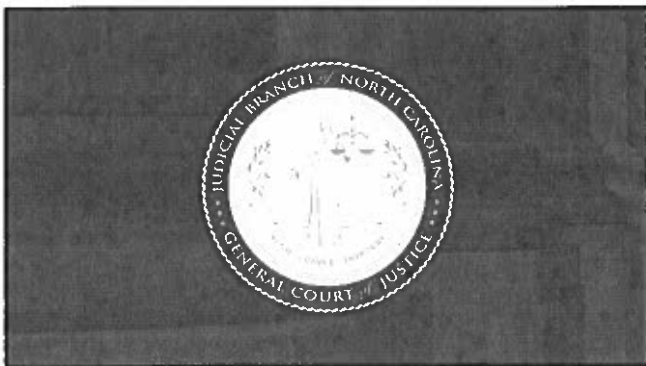
30



31



32



33
