

## Initiation of TPR Proceedings

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### Relationship to Underlying Juvenile Case

#### TPR

- is never automatic
- is not a “permanent plan”
  - 60 days to initiate TPR (G.S. 7B-906.1(m))
- must be considered at reviews and permanency planning (G.S. 7B-906.1)
- can be consolidated
- A/N/D parties, intervention (G.S. 7B-401.1(h))

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### *Similarities with A/N/D*

- Constitutional Rights
- 7B controls
- UCCJEA
- Court appointed attorney
- Two stages
  - Adjudication: clear and convincing
  - Disposition: best interests
- Findings

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## Differences

### A/N/D

- DSS initiates
- GAL for child always in abuse/neglect; discretion in dependency
- Petition only
- Length of jurisdiction
  - Prepetition status

### TPR

- Individuals/county/agency
- GAL if deny material allegation
- Petition or motion
  - Provisional counsel
- Survives jurisdiction termination

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What is the difference between 1 and 2?



1. Initial petition alleging neglect

Is this child a "neglected juvenile"?



2. Petition/Motion alleging neglect as ground for TPR

Did this parent neglect the child?

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# A/N/D

## 7B- 1003(b)(1)

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**“Agency” v. “Private”**

Standing limited by statute (-1103)

- parent
- guardian
- DSS with court ordered custody
- DSS if child surrendered and parent relinquished
- someone child has lived with 2 years
- GAL
- adoption petitioner

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**What?**

**Petition**

- Anyone with Standing
- Summons
  - 7B-1106(a)
- Provisional Counsel
  - Or service on attorney in A/N/D
- Answer
- Rule 4 service

**Motion (see 7B-1106.1)**

- A/N/D case
- Notice prepared by movant
  - No provisional counsel
  - Upon request
  - A/N/D counsel
  - Serve attorney of record (-1102)
- Response
- Rule 5 service

VERIFIED

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**Motion for TPR can be filed**

1. only if case initiated less than 2 years ago
2. only by DSS
3. both 1 and 2
4. neither 1 nor 2

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TPR can be initiated by motion if

1. the court is exercising jurisdiction over the juvenile and the parent in an A/N/D case; and
2. the person filing the motion has standing.\*

[G.S. 7B-1102(a)]

*\*Person with standing can intervene to file motion.*  
[G.S. 7B-1103(b)]

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**Parker: Section 8**

1. Who could file the motion to TPR?  
Who could file a petition to TPR?

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Summons vs. Notice

- A petition always requires a summons.
- A motion always requires a notice.

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A respondent who was not served with summons in the underlying case must be served with a summons if a TPR motion is filed?

1. True
2. False

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A motion must be served pursuant to Rule 4

1. if juvenile case was filed more than 2 years ago
2. if person was served in underlying case by publication that did not include notice of TPR
3. if person was not served with summons in underlying case
4. all of the above
5. none of the above

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### Service of Process

Petition & summons – always Rule 4 service

Motion & notice – Rule 4 service if:

- person was not served with summons originally, or
- person was served by publication that did not include required notice about TPR, or
- action was filed more than two years ago, or
- court orders Rule 4 service.

Otherwise, service may be by Rule 5.

[G.S. 7B-1102(b)]

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## Subject Matter Jurisdiction

### Not Affected

- ◆ defective summons
- ◆ no summons
- ◆ Timelines
- ◆ failure to attach custody order
- ◆ pending custody action
- ◆ error in underlying action (GAL)

### Affected

- Unverified
- Initiated by someone without standing (DSS?)
- Consent/waive jurisdiction
- Counterclaim
- No prayer for relief

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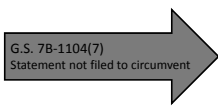
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Ch. 50A

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)

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## Venue: 7B-1101

- Resides
- Found
- In custody of county DSS




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Personal Jurisdiction
<ul style="list-style-type: none"> <li>◆ General appearance = waiver</li> <li>◆ Foreign service</li> <li>◆ Out of State Parent               <ul style="list-style-type: none"> <li>◆ Minimum contacts</li> <li>◆ Submits to court's jurisdiction</li> <li>◆ Served while physically present in NC</li> </ul> </li> </ul>

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Hearing on Unknown Parent (G.S. 7B-1105)
<ul style="list-style-type: none"> <li>• Within 10 days after petition filed (or next term)</li> <li>• Court may order petitioner to conduct diligent search (w/in 30 days)</li> <li>• Court must           <ol style="list-style-type: none"> <li>1. make findings about identity and summonsed, or</li> <li>2. order service on unknown parent and specify counties for publication and wording of notice (w/in 30 days)</li> </ol> </li> </ul>

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Pre-Adjudication Issues
<ul style="list-style-type: none"> <li>➤ discovery (G.S. 7B-700)</li> <li>➤ pretrial hearing (G.S. 7B-1108.1)</li> <li>➤ motions           <ul style="list-style-type: none"> <li>▪ Consolidate (G.S. 7B-1102(c))</li> <li>▪ Continuances (G.S. 7B-1109(d))</li> <li>▪ GAL for child (G.S. 7B-1108)</li> <li>▪ GAL for parent (G.S. 7B-1101.1)</li> <li>▪ Funds for expert (G.S. 7A-454)</li> </ul> </li> </ul>

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## GALs

- Parent
  - 7B-1101.1(b): shall, minor parent
  - 7B-1101.1(c): may, incompetent
  
- CHILD
  - 7B-1108(b), shall if answer denies allegation
    - Unless, -601 GAL
    - Court GAL program: A/N/D or consent
  - (d), court discretion for BIC

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## Sufficiency of Petition or Motion

### Juvenile Code

- Does pleading include facts sufficient to warrant a determination that grounds for termination exist?

### G.S. 1A-1, Rule 8(a)

- Does pleading contain a short, plain statement sufficiently particular to give notice of occurrences intended to be proved showing a ground for TPR?

1. Does it include enough?
2. Does it include too much?

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

1. Sufficient
2. Not sufficient

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**Juvenile Code**

- G.S. 7B-1104: Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

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**Rule 8**

Pleading shall contain

1. a short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and
2. a demand for judgment for the relief to which he deems himself entitled. . . .

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**Tomorrow's Preview**

- Facts: Father has had limited contact with child despite consistently available opportunities to do so, and he has not had any contact with, called or written the child within the six months preceding the petition. He has not provided a reasonable amount for the cost and care of the child. The child has "no meaningful relationship" with respondent-father.
- Ground alleged: respondent's "lack of involvement with or regard for the minor child constitutes neglect under N.C.G.S. 7B-1111(a)(1)."
- Order: TPR, willful abandonment under -1111(a)(7)

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