

# Issues in Juvenile Abuse, Neglect, and Dependency Cases

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## Today's Topics

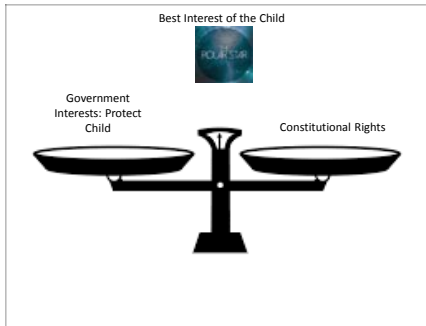
### REUNIFICATION ISSUES

- Reasonable Efforts
- Permanent Plan
- Timing & Procedure

### FINDINGS

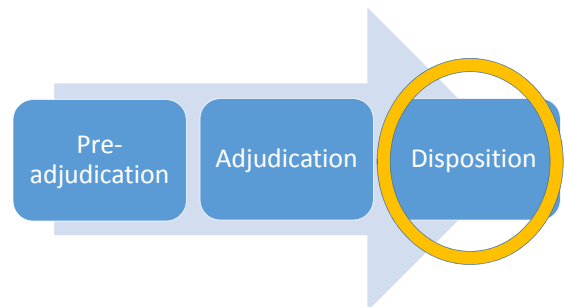
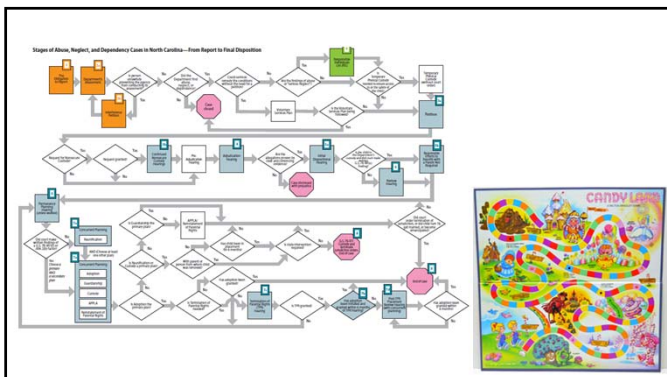
- Parent's Constitutional Rights
  - When
- Standard
  - BIC vs. clear, cogent, convincing

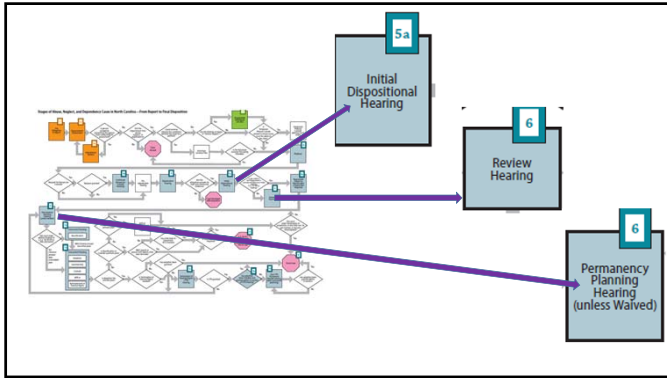
## Complex Cases



“Chapter 7B sets out a sequential process for abuse, neglect, or dependency cases.... the provisions in Chapter 7B establish one continuous juvenile case with several interrelated stages, not a series of discrete proceedings....”

*In re T.R.P.*, 360 N.C. 588 (2006)





### Today's Topics: Part 1

**REUNIFICATION ISSUES**

- Reasonable Efforts
- Permanent Plan
- Timing & Procedure

### RETURN HOME or REUNIFICATION

Placement of the juvenile in the home of either parent or placement of the juvenile in the home of the guardian or custodian from whose home the child was removed by court order.

G.S. 7B-101(18b)

### REASONABLE EFFORTS

Diligent use of preventive or reunification services by DSS when a juvenile's remaining at or returning to home is consistent with achieving a *safe, permanent home* for the juvenile *within a reasonable period of time*.

If juvenile is not to be returned home, diligent and timely use of permanency planning services by DSS to develop and implement a permanent plan for the juvenile.

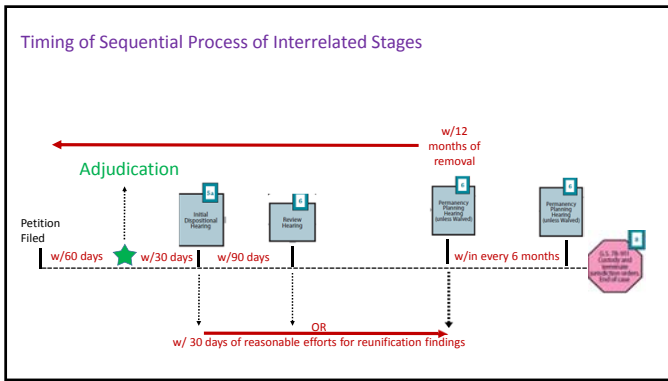
G.S. 7B-101(18)

### Reasonable Efforts for Reunification Not Required

**Old Law**  
Any order child in custody or placement responsibility of DSS and any findings

**New Laws (10/1/15)**  
Prescriptive on which order and which findings

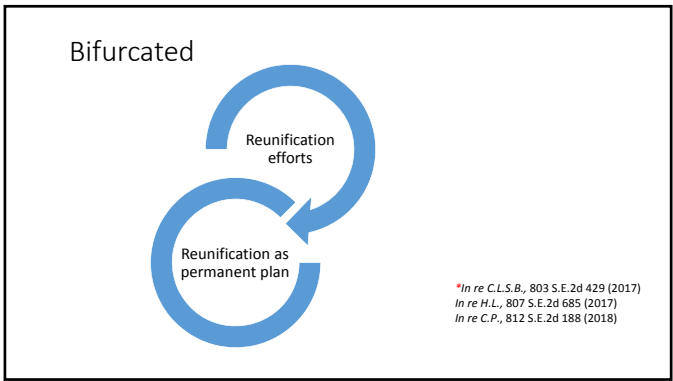
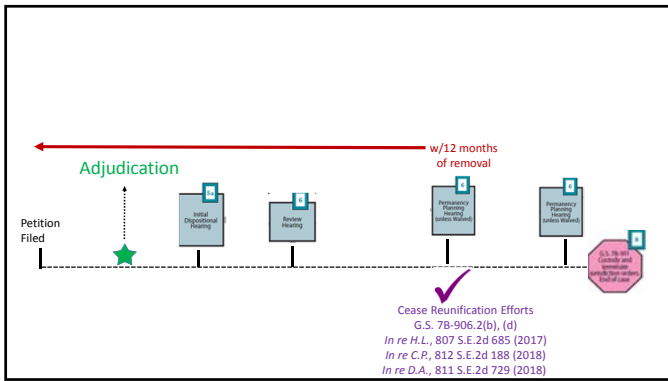
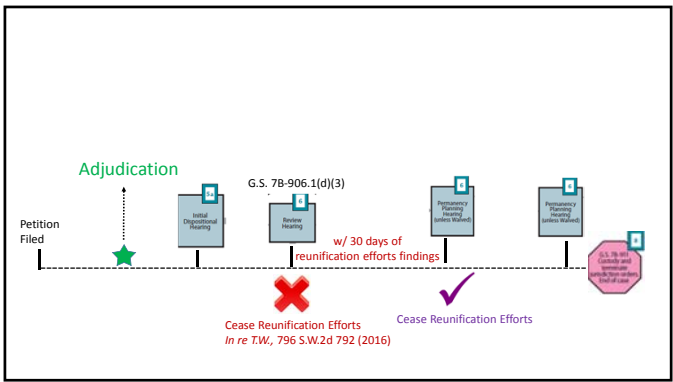
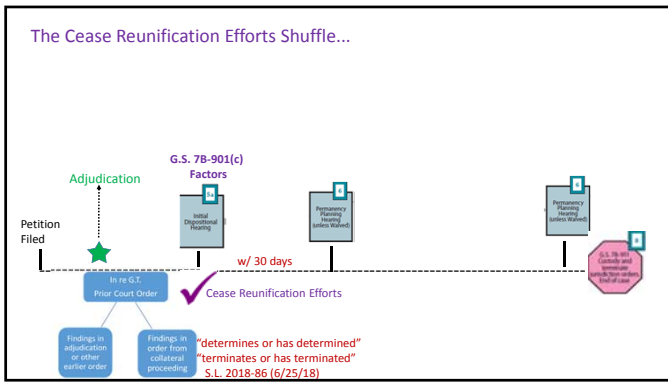
### Statutory Interpretation: Procedure



### Findings re: Reasonable Efforts for Reunification

- G.S. 7B-901(c)..... Long list of aggravating factors if in DSS custody
- G.S. 7B-906.1(d)(3).... Unsuccessful/inconsistent w/ health or safety and need for safe permanent home w/ reasonable period of time
  - Torture
- G.S. 7B-906.2(b).... Unsuccessful/inconsistent w/ health or safety
  - Chronic/toxic exposure to alcohol/controlled substances causing child's impairment or addiction
  - Any other act/practice/conduct that increased the enormity or added to the injurious consequences of the abuse or neglect
  - Prior TPR
  - Sex offender registry
  - Murder/vol manslaughter another child of parent
  - Felony assault w. serious bodily injury/sexual abuse/aid, conspire... murder/vol manslaughter of this child or another child of parent

**All in the Timing**



### Concurrent Permanency Planning: 7B-906.2

"The court shall adopt concurrent permanent plans and shall identify the primary and secondary plan"

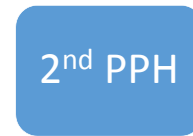


"Concurrent planning shall continue until a PP is achieved"  
"At any PPH, the court shall adopt one or more of the following permanent plans..."

### The 2-Step to Eliminate Reunification *In re C.P.*, 812 S.E.2d 188 (2018)

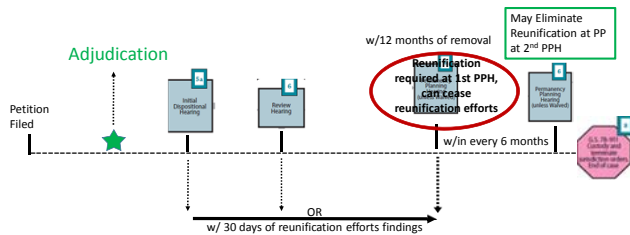


- Reunification required, "shall remain"
- May cease reunification efforts



- Ok to eliminate reunification

### The shuffle with the 2-Step



Issues you may see

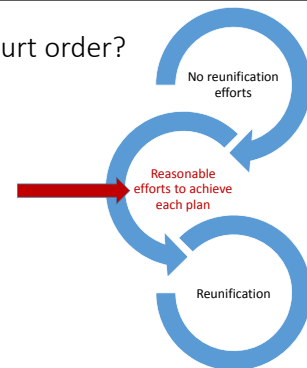


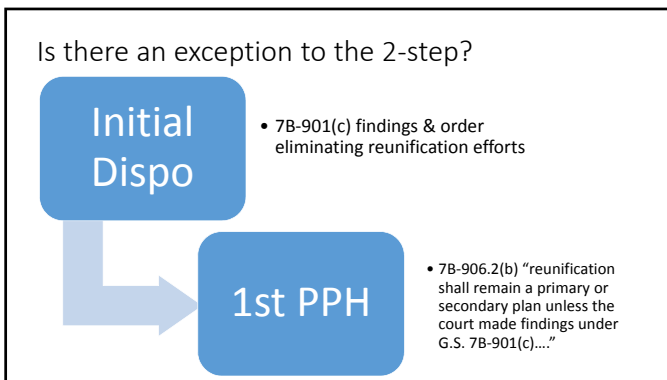
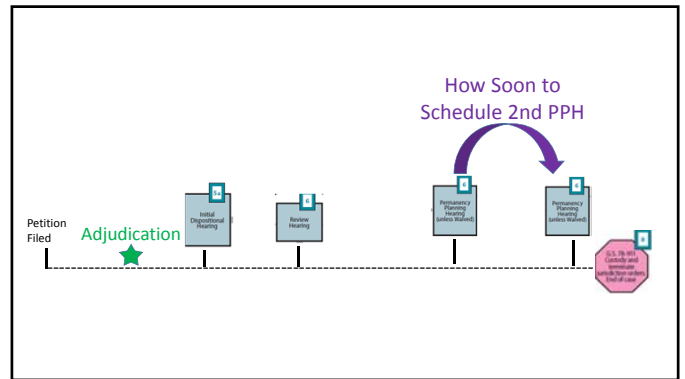
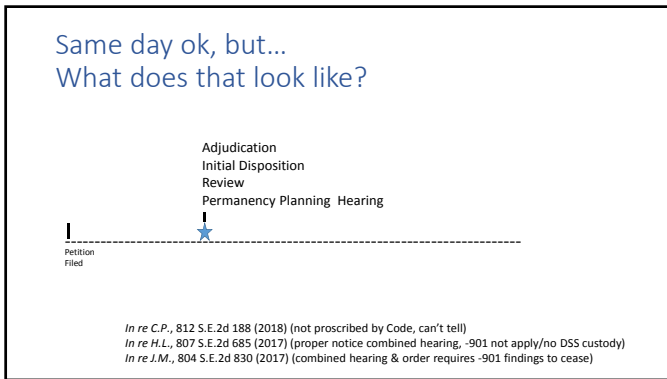
### Efforts to Implement Plans

- The court shall order DSS to make efforts toward finalizing the primary and secondary permanent plans
- The court may specify efforts that are reasonable to timely achieve permanence
- The court shall make findings about efforts made and conclude whether efforts to finalize the permanent plan were reasonable to timely achieve permanence for the juvenile

G.S. 7B-906.2(b), (c)

What does the court order?





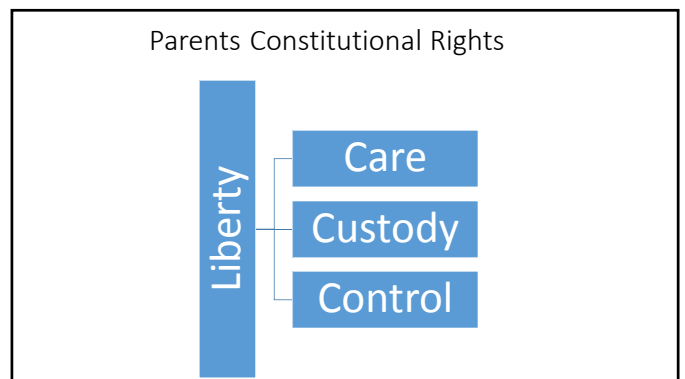
### Appeals

<p><b>Combined with TPR - now</b></p> <ul style="list-style-type: none"> <li>• PPH ordered before March 6, 2018</li> <li>• If reunification efforts properly ceased but reunification is not a plan, what happens             <ul style="list-style-type: none"> <li>• Prejudice?</li> <li>• Cure by making new PPH with reunification?</li> </ul> </li> </ul>	<p><b>Right to Appeal?</b></p> <ul style="list-style-type: none"> <li>• G.S. 7B-1001             <ul style="list-style-type: none"> <li>• Review or 1<sup>st</sup> PPH that doesn't change custody</li> </ul> </li> </ul>
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### Today's Topics: Part 2

**FINDINGS**

- Parent's Constitutional Rights
  - When
- Standard
  - What is it





### Clear & Convincing Evidence

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

- **Stanley v. Illinois**, 405 U.S. 645 (1972)
- **Petersen v. Rogers**, 337 N.C. 397 (1994)
- **Price v. Howard**, 346 N.C. 68 (1997)

## Initial Disposition vs. Permanent Order

Permanent Custody	<i>In re B.S.</i> , 225 N.C. App. 654 (2013) (unpublished)	<i>In re S.J.T.H.</i> , 811 S.E.2d 723 (2018)
<ul style="list-style-type: none"> <li>• <i>In re D.M.</i>, 211 N.C. App. 382 (2011)</li> <li>• <i>In re B.G.</i>, 197 N.C. App. 570 (2009)</li> </ul>	<ul style="list-style-type: none"> <li>• Court awarded temporary custody to DSS</li> <li>• Finding on parent's constitutionally protected status required when making permanent custody decision</li> <li>• Findings re: dad unnecessary and improper at that stage of the proceeding</li> </ul>	<ul style="list-style-type: none"> <li>• Reverse and remand to address dad's rights</li> <li>• Grant custody to dad unless c.c.c. evidence supports another disposition</li> </ul>

Issues you may see



Removal vs. nonremoval parent

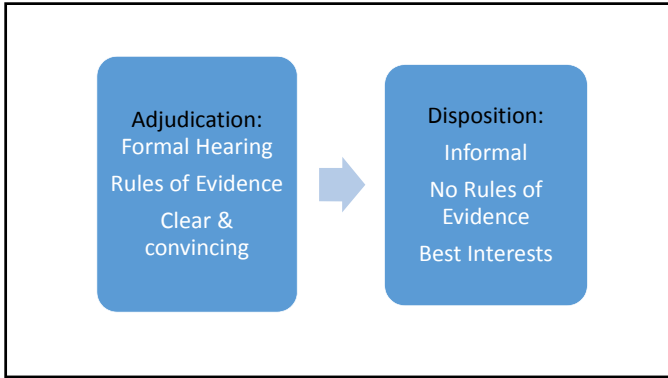
- Is there a difference?
- Adjudication = Child's Status

How often must it be proved

- Does finding continue to each hearing or is new evidence required at each subsequent dispositional hearing where custody not recommended to parent?
- Can parent prove cured conduct?
  - If so, what must they show?
  - Is that by clear & convincing evidence?

Burden of Proof: BIC vs. Clear and Convincing





No Rules of Evidence

Relevant      Reliable      Necessary

No "burden" on any one party

Best interest of the child • Supported by sufficient competent evidence

*In re L.M.T., 367 N.C. 165 (2013)*

Helpful Resources...

The screenshot shows two main resources. On the left is the cover of the book "Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina" by Lisa M. Williams, published in 2012. On the right is a webpage for the "Child Welfare Case Compendium (CWCC)" from UNC, which includes social media icons for Twitter, Facebook, and LinkedIn, and a link to "Access the Compendium". At the bottom of the screenshot, the UNC logo and the slogan "On the Civil Side" are visible.