

**A/N/D Actions:  
Court Considerations  
from Beginning to End**

By: Sara DePasquale  
School of Government  
919-966-4289  
Sara@sog.unc.edu

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12 year old...



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**Nonsecure Custody**

- ▶ 1: Nonsecure Custody Order
- ▶ 2: No Nonsecure Custody Order

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### 7B-503(1) - (6)

▶ Which criteria did you find?

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### Medical Consent: 7B-505.1

- ▶ What kind of care is this under the statute?
  
- ▶ What's required from you?
  - ▶ Hearing
  - ▶ Concerned about timing?
  
- ▶ What must you find?
  - Clear and convincing evidence
  - Care, treatment, evaluation is BIC

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### Caution!

4. The Department Of Social Services is authorized to arrange and consent to:  
 a. treatment the medical provider recommends in order to cure, alleviate, or prevent the juvenile from suffering physical harm pursuant to 6(d) set forth on the reverse as a ground for nonsecure custody.  
 b. only the following types of evaluation and/or treatment, after first attempting to obtain consent from the juvenile's parent, guardian, custodian, or caretaker: \_\_\_\_\_  
\_\_\_\_\_

5. Other: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_ I (Signature) PF Initials (Date or month) \_\_\_\_\_ I (Signature) PF Initials

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### Adjudicatory Hearing

- ▶ 1. Dismiss (No Abuse, Neglect, or Dependency)
- ▶ 2. Adjudicate Abused Juvenile
- ▶ 3. Adjudicate Neglect Juvenile
- ▶ 4. Adjudicate Dependent Juvenile
- ▶ 5. Adjudicate combination of A/N/D

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### Abuse: 7B-101(1)

- ▶ a.
  - Inflicts or allows to be inflicted serious physical injury by other than accidental means
- ▶ b.
  - Creates or allows to be created a substantial risk of serious physical injury by other than accidental means
- ▶ c.
- ▶ d.
- ▶ e.
  - Creates or allows to be created serious emotional damage to the juvenile evidenced by severe anxiety, depression, withdrawal, or aggressive behavior toward himself/others
- ▶ f.
- ▶ g.

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### Emotional Abuse

- ▶ Parents' Discord
  - Powers v. Powers
  - In re J.C.
  - In re J.H.-S
- ▶ Interfere with Child's Mental Health treatment
  - In re J.C.
  - In re J.H.-S.
- ▶ Public Humiliation, Hostile/Intimidating Behavior
  - In re J.H.-S.

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**Abuse: 7B-101(1)**

- ▶ a.
- ▶ b.
- ▶ c.
- ▶ d.
- ▶ e. Creates or allows to be created serious emotional damage to the juvenile evidenced by
  - severe anxiety,
  - depression,
  - withdrawal, or
  - aggressive behavior toward himself/others*In re J.H.-S.*
- ▶ f.
- ▶ g.

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**Neglect: 7B-101(15)**

- ▶ No proper care, supervision, or discipline from a parent
- ▶ Abandoned
- ▶ Not provided necessary medical/remedial care
- ▶ Lives in injurious environment to child's welfare
- ▶ Placed for care/adoption in violation of law

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**Neglect: lack of medical care**

- ▶ *In re C.B.* (Feb. 2, 2016)
- ▶ 10 y.o. w/ 5 psych hospitalizations in 4 months (aggressive behavior, running away)
- ▶ Rec for intensive in-home services but Mom not follow through
- ▶ Last hospitalization, PRTF rec and mom refuse to attend discharge planning mtg
- ▶ Mom in denial about mental health issues
  - ▶ fever or seizures; could handle at home
- ▶ Substantial risk of harm

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### Parent's Constitutional Rights

#### MAJORITY

- ▶ Limited/Not Absolute
- ▶ "At some point a parent's unjustified willingness or inability to obtain meaningful medical care for her child who is experiencing serious illness rises to the level of neglect, and that is something the Constitution and the laws of this state will not protect."

#### DISSENT

- ▶ Fundamental right to care, custody, control
- ▶ Parent's rights prevail over non-parent (dr.) or state
- ▶ Disagreement between mom and Dr./DSS re: Tx
- ▶ Presume mom act in BIC; not unfit or neglect
- ▶ Mom
  - Prefer treat at home
  - Arranged for hospitalization

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### Dependent: 7B-101(9)(ii)

#### Prong 1

- ▶ Parent unable to provide for the juvenile's care or supervision
- ▶ Fail to obtain meaningful MH services

#### Prong 2

- ▶ Parent lacks appropriate alternative child care arrangement
- ▶ Failed to obtain viable placement alternative, not join discharge planning
- ▶ Consent to placement in PRTF w/o available bed for 30+ days

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### Dispositional Hearing:

- ▶ Predisposition Report: 7B-808
- ▶ (b): director ... shall prepare the predisposition report containing... a treatment plan the director deems appropriate to meet the juvenile's needs.

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**Disposition Order**

- ▶ Placement
- ▶ Visitation... Minimum outline (7B-905.1)
- ▶ Medical Decisions
  - 7B-903.1(e) ⇒ 7B-505.1
- ▶ Child's Evaluation (7B-903(d))

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**Child's Treatment**

- ▶ 7B-903(d) Hearing to determine
  - Is Juvenile in Need of Treatment?
  - Yes... Court shall permit parent or other responsible person to arrange for treatment or if parent can't, court may order needed care and county to arrange for it
  
  - Who Pays?
    - Court may order
      - Parent (7B-904, -406(b)(4)d.)
      - If unable, the county ... Notice to county manager

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**Treatment Plan: 7B-903(e)**

- ▶ If child is MI/DD, court *may*
  - Order DSS to coordinate with appropriate service authority (MCO) to develop appropriate Tx plan
  - Cannot order commitment
  - Institutionalization
    - Consent of parent, guardian, custodian
    - Consent of court may be substituted
  - Refused admission or discharged
    - Written report to court
      - Reasons for denial/discharge
      - Dx, indications of MI or DD and need for Tx
      - Location of any facility known to have Tx program for the child

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## Facility

- ▶ 7B-903(d): DSS recommend facility
- ▶ Placement ≠ Treatment
- ▶ *In re* M.B.: readmission hearing to PRTF
  - BUT

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## Child in DSS Custody: Consent to Placement in PRTF

- DSS custody at 8 y.o. (neglect/sexual abuse)
- 11.y.o. admitted Nov 2012, 6 hearings, Fall 2013
- Inappropriate sexual behavior, aggression, PTSD
- Goal: transfer to therapeutic foster home
- Recommendation: Level 3 PRTF
- PRTF SW concern about DSS SW
  - Inconsistent communication with child
  - 1x/week - failed to make the calls; little to no notice when not going to make meetings or take child off-site
  - Sharing her disbelief of his allegations of what occurred in foster home and that foster family didn't want him back

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## Order

- ▶ 9/13 Order: 30 day readmission during discharge planning stage for a Level III
- ▶ 10/13 hearing:
  - Level III (clinician) vs. Level IV (Dr. evaluation)
  - DSS SW and Attorney participated in hearing
  - Discharge worker testify:
    - Found available Level III with outside clinician for sexualized behaviors
    - No response from DSS SW as "guardian" to consent form, which is needed to contact facilities
  - DSS SW Testify:
    - looking for Level IV (found one in SC)
    - No Care Review conducted yet

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## Order

- ▶ 30 more days
- ▶ Care Review to be conducted
- ▶ Look for Level III first
- ▶ Juvenile Appealed
  - Automatic stay of custody claim not apply to judicial review
  - Affirmed readmission
    - No sufficient less restrictive measures
    - Legislative intent: Read as "available resources"
      - Remain at Level IV, nonexistent Level III, unstructured placement

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## Words to DSS

- ▶ "This Court does not take lightly the violation or deprivations of any juvenile's constitutionally protected liberty interest.
- ▶ We therefore strongly admonish DSS and [social worker] for their lackluster performance here, and
- ▶ We also specifically caution DSS not to interpret our holding ... as an excuse for future failures to take timely action in securing post-discharge placements."

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## Parent Participation

- ▶ 7B-904(b)
  - Personal jurisdiction (7B-200(c), -406(b)(4)b.)
  - Child's best interests
- ▶ 7B-904(d1)(2)
  - Provide transportation if able to do so and child is placed in parent's home
- ▶ 7B-904(e)
  - Contempt (7B-406(c))

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## Educational Decisions

- ▶ IDEA
  - Referral
  - IEP Teams
  - Manifestation Determinations
  - Due Process
  
- ▶ Parent participation or Surrogate Parent

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## “Parent”

### Parent

Without court order addressing who makes educational decisions, bio parent when acting as parent has priority

DO YOU NEED TO ENTER ORDER?

### Surrogate Parent

- ▶ If No Parent Priority, Foster parent, kinship placement, or appointment by school or COURT
- ▶ Never DSS worker

▶ DO YOU NEED TO ENTER ORDER?

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## Information Sharing

- ▶ DSS to others
  - 7B-302(e)
    - May consult with
    - Make written demand
  - 10A NCAC 70A.0113
    - May share information and a summary of documentation from case record
  - Manual
    - Public and private MH providers
    - Multidisciplinary teams

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