

BEST INTERESTS OF THE CHILD (BIC)

The best interests of a child is referenced in several statutes, including:

G.S. Chapter 50

- Child custody mediation [50-13.2(b)]
- Child custody orders, including visitation [50-13.2; 50-13.5(i)]
- Grandparent visitation of an adopted child (50-13.2A)
- Parenting coordinator [50-91(b); 50-97(a)(1)]
- Vacating an arbitration award of child custody or child support [50-54(a)(6)]
- Not issuing a show cause order for payment of child support in a non-IV-D case [50-13.9(d)]

G.S. Chapter 7B, Subchapter I - Abuse, Neglect, Dependency

- Review of voluntary foster care placements [7B-910(a)(2)]
- A child's placement in nonsecure custody [7B-505(b), (c), (d); 7B-506(h)(2), (2a); 7B-507(a)(4)]
- Medical decision making by department for child's non-routine/non-emergency care [7B-505.1(c)]
- Guardianship [7B-600]
- Duties of a child's guardian ad litem [7B-601; 7B-1108(b), (c); 7B-1114(b)]
- Procedural Issues
 - Continuation of an abuse, neglect, or dependency adjudicatory hearing (7B-803) or TPR adjudicatory hearing [7B-1109(d)]
 - Post adjudication change of venue [7B-900.1]
 - Disclosure of predisposition report to juvenile (7B-808)
 - Waive review hearings [7B-906.1(n)(2), (3)]
- Disposition orders (initial, review, and permanency planning) [7B-901(a); 7B-903(a), (a1); 7B-904; 7B-906.1(e)(1), (f)(2), (i); 7B-906.2(a); 7B-912(c)(3)]
- Disposition orders when there is an appeal [7B-1003(b), (c); 7B-1004]
- Reasonable and prudent parent for normal childhood activities [7B-903.1; 131D-10.2A(a)]
- Visitation [7B-905.1(a), (d)]
- Review hearing to modify or vacate order [7B-1000(a)]
- Post termination of parental rights review hearings (7B-908)
- Disposition in TPR (7B-1110)
- Placement after TPR [7B-1112(2)]
- Reinstatement of parental rights [7B-1114(g), (h)]
- Judicial review of proposed adoptive placement (7B-1112.1)

G.S. Chapter 7B, Subchapter II – Undisciplined and Delinquent Juveniles

- Procedural Issues
 - Venue [7B-1800(a)]
 - Appointment of guardian (7B-2001)
 - Continuance (7B-2406)
 - DJJ use of confidential records when youth is committed (7B-2513(d))
- Placement in nonsecure (vs secure) custody [7B-1903(a)(2); 7B-1905(a)]
- Disposition [7B-2501(b), (c); 7B-2502; 7B-2503; 7B-2506(1), (2); 7B-2702]
- Review hearing to modify or vacate order [7B-2600(a)]
- Disposition when an appeal (7B-2605; 7B-2606)
- Release of juvenile from residential program after transfer by Governor from DPS DAC (7B-2517)

G.S. Chapter 7B, Subchapter III: Juvenile Records

- Confidentiality of department of social services records [7B-2901(b)]
- Confidentiality of court counselor records [7B-3001(a)]

G.S. Chapter 7B, Subchapter IV: Parental Authority

- Emancipation [7B-3503; 7B-3504; 7B-3505]
- Disposition pending appeal of emancipation (7B-3508)

WHAT IS BIC?

Neither federal law nor North Carolina law sets forth a comprehensive enumerated list of factors that the court must consider. Two statutes enumerate some factors a court must consider but include a catchall as well.

G.S. 50-13.2(a): Custody order, “as will best promote the interest and welfare of the child”

In making the determination, the court shall consider all relevant factors including:

- acts of domestic violence between the parties,
- the safety of the child, and
- the safety of either party from domestic violence by the other party

An order for custody must contain written findings of fact that reflect the consideration of each of these factors and that support the determination of BIC.

G.S. 7B-1110(a): TPR Specific Factors for BIC

The court shall consider the following criteria and make written findings regarding those that are relevant:

- the juvenile’s age
- the likelihood of adoption
- whether TPR will aid in the accomplishment of the permanent plan for the juvenile

- the bond between the juvenile and the parent
- the quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement
- any relevant consideration

STATUTORY GUIDANCE

Although not providing an enumerated list of BIC factors, these statutes offer additional guidance.

G.S. 50-13.01: Purposes

- Encourage focused, good faith, child-centered parenting agreements to reduce needless litigation over custody matters and to promote the best interests of the child
- Encourage parents to take responsibility for their child
- Encourage programs and court practices that reflect the active and ongoing participation of both parents in the child's life, including contact with both parents, when it is in the child's best interests
- Encourage both parents to share equitably in the rights and responsibility of raising their child
- Encourage each parent to establish and maintain a healthy relationship with the other parent when it is in the child's best interests and the court takes into account mental illness, substance abuse, domestic violence, and any other appropriate factor.

G.S. 50-13.2: Custody Order, "as will best promote the interest and welfare of the child"

- Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child
- If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation
- Any order for custody, including visitation, may, as a condition of such custody or visitation, require either or both parents, or any other person seeking custody or visitation, to abstain from consuming alcohol and may require submission to a continuous alcohol monitoring system
- Custody order may provide for visitation by electronic communication after considering whether electronic communication is in the BIC (Note, electronic communication may supplement a parent's visitation with the child and may not be used as a replacement or substitution for custody or visitation).
- In a proceeding for custody of a minor child of a service member, a court may not consider a parent's past deployment or possible future deployment as the only basis in determining the best interest of the child. The court may consider any significant impact on the best interest of the child regarding the parent's past or possible future deployment.

G.S. 7B-100: Purpose of A/N/D Statutes

- Protect constitutional rights of children and parents
- Consider needs and limitations of the juvenile and strengths/weaknesses of the family
- Provide services to protect the juvenile that respect family autonomy and child's needs for safety, continuity, and permanence
- Prevent unnecessary or inappropriate separation from parents
- Provide standards for ensuring that the BIC are of paramount consideration by the court; child needs safety, continuity, and permanence within reasonable period of time

G.S. 7B-900: Purpose of A/N/D Disposition

- Meet needs of juvenile addressing care, supervision and treatment to juvenile and family

G.S. 7B-1100: Purpose of TPR

- Degree of care which promotes healthy and orderly physical and emotional well-being of the juvenile
- Permanent plan of care at earliest possible age
- Protect from unnecessary severance of relationship with parents

G.S. 48-1-100: Purpose of Adoption

The primary purpose of this Chapter is to *advance the welfare of minors* by

- Protecting minors from unnecessary separation from their original parents,
- Facilitating the adoption of minors in need of adoptive placement by persons who can give them love, care, security, and support,
- Protecting minors from placement with adoptive parents unfit to have responsibility for their care and rearing, and
- Assuring the finality of the adoption

G.S. 7B-505: Nonsecure Placement Considerations

- Safe Home (defined at 7B-101(19) as a home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect)
- Proper care and supervision
- Consider remaining in child's community of residence

G.S. 7B-507(a)(2); 7B-903(a3): Reasonable Efforts to Prevent Removal from Home

- Health and safety paramount concern [see also 42 U.S.C. 671(a)(15)(A)]

G.S. 7B-808: Predisposition Report

- Social, medical, psychiatric, psychological, and educational information

Dispositions

- Juvenile's health/mental health and need for treatment [G.S. 7B-903(d), (e); 7B-904(b)]
- Parent/guardian, custodian, stepparent, adult member of house, adult relative entrusted with care receive treatment [7B-904(c)] and/or attend parenting classes [7B-904(d1)(1)]
- Remedy conditions that led to removal, [7B-904(d1)(3)]
- Visitation with parent, guardian, custodian (7B-905.1)
- Adequate resources to care appropriately for the juvenile [7B-906.1(j); 7B-903(a)(4); 7B-600(c)]
- When out of home, relative preference [7B-505(b), (c); 7B-506(h)(2), (2a); 7B-903(a1)]
See also, 42 U.S.C. § 671(a)(19) which requires the state plan to consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child)

G.S. 7B-903.1; 131D-10.2A: Normal Childhood Activities and the Reasonable and Prudent Parent Standard [see also 42 UCS 675(10)(A), (11)(A)]

- Careful and sensible parental decisions reasonably intended to maintain health, safety, and best interests while encouraging emotional and developmental growth of the child
- Participation in extracurricular, enrichment, cultural, and social activities, including sleepovers
 - For children 14 and older, services to assist in transition to adulthood [G.S. 7B-912(a)(1)]

Siblings: Foster Care Bill of Rights, G.S. 131D-10.1(a)

- First priority regarding placement in a home with siblings. The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings. (Note, 42 U.S.C. 671(a)(31) requires the state plan to make reasonable efforts to place siblings together or if not possible to allow for frequent visitation and ongoing interaction between siblings)

Input of Older Youth

- **42 U.S.C. 675(5)(C)(iv):** When a child is 14 or older, the permanent plan “shall be developed in consultation with the child”
- **G.S. 48-3-601(1):** the child's consent to his/her adoption when the child is 12 or older is required (but see G.S. 48-3-603(b)(2) the court may waive this consent if it finds it is not in BIC)

Educational Stability:

- **Every Student Succeeds Act (ESSA) (by Dec. 10, 2016)**
 - Child in foster care remains in school of origin unless it is not BIC (decision made by child welfare agency)
 - If not BIC to remain in school of origin, immediate enrollment in new school
 - BIC ... all related factors including:
 - Appropriateness of current educational setting

- Proximity of school the child is enrolled in at the time of the child's placement
- Nonregulatory Guidance from US DHHS and US DOE (June 23, 2016)
 - Child's preference
 - Parents or educational decision maker's preference
 - Placement of siblings
 - Child's attachment to school (including meaningful relationships there)
 - History of school transfers and how they impacted child
 - Influence of school climate on child, including safety
 - Length of commute and impact on child based on child's development stage
 - Availability of special education or related services or language services
 - Availability and quality of services in school to meet child's educational and socioemotional needs
 - NOT A FACTOR: Transportation costs
- **42 USC 675(1)(G): Fostering Connections**
 - A state plan must ensure the educational stability of the child while in foster care, by considering the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement to allow for the child to remain in the school in which the child is enrolled at the time of each placement
 - If remaining in such school is not in the best interests of the child, arrange for immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

7B-1500(2)b.: Purpose of Undisciplined/Delinquency

- Provide appropriate rehabilitative services to the juveniles and their families

7B-2500: Purpose of Disposition in Undisciplined/Delinquency

- Design appropriate plan to meet the juvenile's needs and protect public
- Emphasizes accountability of both juvenile and parent/guardian/custodian in juvenile's conduct
- Provides appropriate consequences, treatment, training, and rehabilitation to juvenile

7B-1706: Diversion Plans

- Conditions juvenile and parent, guardian, or custodian follow
- Treatment, counseling, services

7B-2413: Predisposition report

- Risk and needs assessment including social, medical, psychiatric, psychological, and educational history

Dispositions

- Juvenile's health/mental health and need for treatment [7B-2502; 7B-2506(3), (14); 7B-2515(a),(b); 7B-2702]
- Substance use by juvenile [7B-2502(a); 7B-2506(3)]
- School attendance [7B-2503(3); 7B-2504(2), (3); 7B-2506(2), (14)]
- Peer influences [7B-2504(4); 7B-2506(11)]
- Availability of community resources (7B-2508)
- Parental responsibility classes (7B-2701)
- Evaluation and/or treatment of parent (7B-2702)