## **Contents**

Note: Each Chapter includes a detailed table of contents.

#### Introduction to the Manual

## **About the Authors and Acknowledgments**

## Chapter 1: Overview of the North Carolina Child Welfare System 1-1

1.1 Introduction to Child Welfare 1	L-2	are 1	Welfa	Child	to	luction	Introd	1.1	1
-------------------------------------	-----	-------	-------	-------	----	---------	--------	-----	---

- A. Child Welfare Services
- B. Purpose
- C. Overview of a Child Welfare Case in North Carolina
- D. Demographics

#### 1.2 Federal-State-County System 1-11

- A. County-State Structure and Relationship
- B. The County DSS
- C. Federal-State-County Funding
- D. Federal-State Relationship

## 1.3 State and Federal Sources of Authority: Laws, Rules, and Policy 1-19

- A. North Carolina
- B. Influence of Federal Law

## Chapter 2: The Court, Key People, and the Rights of Children and Parents 2-1

#### 2.1 The Juvenile Court and Officials 2-3

- A. The Court
- B. Judicial Officials and Staff

#### 2.2 Key People: Who's Who in the System 2-7

- A. Introduction
- B. The People: Explanation of Roles

#### 2.3 The Child 2-15

- A. Introduction
- B. Definitions of Abused, Neglected, or Dependent Juveniles
- C. Rights of the Child
- D. The Child's Guardian ad Litem

## 2.4 Rights of the Parent 2-35

- A. Protection of Parent-Child Relationship
- B. Notice and Opportunity to Be Heard
- C. DSS Perspective
- D. Representation
- E. Funds for Experts and Other Expenses
- F. Guardian ad Litem for Parent

## Chapter 3: Jurisdiction, Venue, and Overlapping Proceedings 3-1

#### 3.1 Summary and Scope of Jurisdiction Issues 3-3

- A. Introduction
- B. District Court Jurisdiction
- C. Continuing and Ending Jurisdiction in Abuse, Neglect, or Dependency Proceedings
- D. Terminology Related to Continuing and Ending Jurisdiction

## 3.2 Subject Matter Jurisdiction 3-8

- A. Introduction
- B. Key Issues in Determining Subject Matter Jurisdiction
- C. Issues That Do Not Affect Subject Matter Jurisdiction

## 3.3 Uniform Child-Custody Jurisdiction and Enforcement Act and Parental Kidnapping Prevention Act 3-19

- A. Introduction
- B. Applicability of the UCCJEA: G.S. Chapter 50A
- C. Jurisdictional Basis for Making Custody Determination under the UCCJEA
- D. Evidence, Findings, and Conclusions of Law
- E. Communication Requirements
- F. Hearings
- G. Deployed Parents
- H. Enforcement of Custody Orders under the UCCJEA
- I. Parental Kidnapping Prevention Act: 28 U.S.C. 1738A

#### 3.4 Personal Jurisdiction 3-42

- A. Introduction
- B. Service of Process
- C. Consent and Waiver Establishing Personal Jurisdiction
- D. Acquiring Personal Jurisdiction in Abuse, Neglect, Dependency Cases
- E. Out-of-State Parents in Termination of Parental Rights Cases

#### 3.5 Venue 3-49

- A. Introduction
- B. Proper Venue
- C. Transfer of Venue in Abuse, Neglect, or Dependency Cases
- D. Transfer of Venue in Termination of Parental Rights Cases

#### 3.6 Overlapping Proceedings 3-53

- A. Civil Custody Proceedings
- B. Juvenile Delinquency and Undisciplined Proceedings
- C. Criminal Proceedings
- D. Domestic Violence Protection Proceedings

## Chapter 4: Procedural Rules and Orders 4-1

#### 4.1 Introduction 4-3

- A. Applicability of Rules of Civil Procedure in Juvenile Proceedings
- B. Rule Application Analysis

## 4.2 Procedures Regarding the Petition 4-8

A. Contents of Petition

4.3

В.	Signature of Attorney or Party
C.	Amended and Supplemental Pleadings
D.	Responsive Pleadings
Sui	mmons 4-11
A.	Content and Issuance of Summons
В.	Expiration of Summons

## 4.4 Service 4-13

- A. The Impact of Service
- B. Summons
- C. Notice and Motions

#### 4.5 Continuances 4-21

- A. Continuances Disfavored
- B. Abuse, Neglect, Dependency Proceedings
- C. Termination of Parental Rights Proceedings
- D. Considerations

## 4.6 Discovery 4-24

- A. Discovery Generally
- B. The Juvenile Code and Discovery

#### 4.7 Intervention 4-27

- A. Abuse, Neglect, Dependency Proceedings
- B. Termination of Parental Rights Proceedings

#### 4.8 Motions in Juvenile Proceedings 4-30

## 4.9 Judgments and Orders 4-31

- A. Drafting Orders
- B. Findings of Fact and Conclusions of Law
- C. Entry and Service of the Order
- D. Time Requirements for Orders

## Chapter 5: From Report through Pre-Adjudication in Abuse, Neglect, Dependency Cases 5-1

#### 5.1 How a Case Enters the System 5-4

- A. Reporting Suspected Abuse, Neglect, or Dependency
- B. DSS Assessment of Report
- C. DSS Access to Information
- D. Notice to the Reporter
- E. Review by Prosecutor
- F. Law Enforcement Involvement
- G. Interference with DSS Assessment

#### 5.2 Central Registry and Responsible Individuals List 5-15

- A. Central Registry
- B. Responsible Individuals List

#### 5.3 Starting the Abuse, Neglect, Dependency Court Action 5-21

- A. The Petition
- B. The Summons and Process

5.4	Parties, Appointment of Counsel, and Guardians ad Litem  A. Parties to the Proceeding  B. Parents and Other Care Providers  C. The Child  D. Department of Social Services
5.5	<ul> <li>Purpose and Requirements of Temporary and Nonsecure Custody</li> <li>A. Purpose of Temporary and Nonsecure Custody</li> <li>B. Temporary Custody</li> <li>C. Nonsecure Custody</li> </ul>
5.6	<ul> <li>Nonsecure Custody Hearings 5-42</li> <li>A. Summary</li> <li>B. Timing</li> <li>C. Jurisdictional Inquiry</li> <li>D. Nature of Hearing: Evidence and Burden of Proof</li> <li>E. Findings and Other Issues at the Hearing on the Need for Continued Nonsecure Custody</li> <li>F. Limits on Court's Authority at Nonsecure Custody Stage</li> <li>G. Requirements for Court Orders</li> <li>H. Nonsecure Custody Order Is Not Appealable</li> </ul>
5.7	Pre-adjudication Hearings, Conferences, and Mediation  A. Pre-adjudication Hearing  B. Child Planning Conferences  C. Permanency Mediation
	endix 5-1: Table of Differences for Mandated Reporting under
	6.S. 7B-301 and G.S. 14-318.6 5-49
Appe	endix 5-2: Mandated Reporting Flowchart 5-51
hapter	6: Adjudication of Abuse, Neglect, or Dependency 6-1
6.1	Summary and Purpose of Adjudication 6-2
6.2	The Adjudication 6-3  A. Procedure for Adjudication  B. Timing

# Cł

- C. Public Access to Hearing
- D. Record of Proceedings
- E. Petition Controls Scope of Adjudication

## 6.3 Evidence and Proof 6-6

- A. Child's Status, Standard, and Burden of Proof
- B. Evidentiary Standards
- C. Evidence at Adjudication
- D. Evidence to Establish Abuse
- E. Evidence to Establish Neglect
- F. Evidence to Establish Dependency

#### 6.4 Adjudication Order 6-32

- A. General Requirements
- B. Findings of Fact and Conclusions of Law

#### 6.5 Consent Orders 6-33

#### 6.6 Consequences of Adjudication 6-34

- A. Continued Jurisdiction and Authority for Disposition
- B. Impact on Parents and Future Proceedings

## Chapter 7: Dispositional Phase: Initial, Review, and Permanency Planning 7-1

## 7.1 Introduction and Purpose of Dispositional Phase 7-4

- A. Introduction
- B. Purpose of Disposition
- C. Significant Legislative Changes regarding Permanency Planning

#### 7.2 Dispositional Hearings 7-10

- A. Timing and When Required
- B. Notice and Calendaring
- C. Participants
- D. Open or Closed Hearings
- E. Evidentiary Standard and Burden of Proof

#### 7.3 Best Interests of the Child 7-20

## 7.4 Dispositional Alternatives: Placement and Custody 7-22

- A. Dismiss or Continue the Case
- B. In-Home Supervision and Services
- C. Parent and Out-of-Home Placement Generally
- D. DSS Custody
- E. Custody with a Parent, Relative, Other Suitable Person or Private Agency
- F. Guardianship
- G. Verification of Understanding of Legal Significance and Adequate Resources
- H. Interstate Compact on the Placement of Children

#### **7.5 Visitation 7-48**

- A. Order Must Address Visitation When Out-of-Home Placement
- B. Review of Visitation Plan, Notice to Parties, Mediation

## 7.6 Evaluation and Treatment of Child 7-53

- A. Court's Authority to Order Evaluation and Treatment
- B. Hearing to Determine Treatment Needs and Payment

#### 7.7 Court's Authority over Parents and Others 7-55

- A. Treatment and Counseling
- B. Parenting Classes, Transportation, Remedial Steps, and Other Orders
- C. Cost Responsibilities
- D. Failure to Comply with Court Orders
- E. Court's Authority over DSS
- F. Court's Authority over Child's GAL
- G. Limitations on Court's Dispositional Authority

## 7.8 Dispositional Considerations and Findings 7-61

- A. Initial Dispositional Hearing
- B. Required Criteria for Review and Permanency Planning Hearings
- C. Permanency Planning Additional Requirements
- D. Initiation of Termination of Parental Rights Proceeding under Certain Circumstances
- E. Hearing to Modify or Vacate a Dispositional Order

#### 7.9 Reasonable Efforts 7-72

- A. Introduction
- B. Statutory Definitions: Reasonable Efforts, Return Home, Reunification
- C. Required Findings
- D. Ceasing Reasonable Efforts

## 7.10 Concurrent Permanency Planning and Outcomes 7-79

- A. Concurrent Permanency Planning
- B. Achieving a Permanent Plan

## 7.11 Dispositional Orders 7-91

- A. Timing
- B. General Requirements
- C. Consent Orders
- D. Status of Jurisdiction

## Chapter 8: Voluntary Placements of Juveniles and Foster Care 18–21 8-1

#### 8.1 Introduction 8-1

## 8.2 Voluntary Placement Agreement for a Juvenile 8-2

- A. The Agreement
- B. Judicial Reviews, Timing, and Duration
- C. Purpose and Requirements of Hearing

#### 8.3 Foster Care 18-21 8-4

- A. Introduction
- B. Eligibility and the Agreement
- C. Judicial Reviews, Timing, and Parties
- D. Requirements of the Hearing

#### Chapter 9: Termination of Parental Rights 9-1

#### 9.1 Purpose and Overview of Termination of Parental Rights 9-5

- A. Overview of Termination of Parental Rights
- B. Purpose of the Juvenile Code's Termination of Parental Rights Provisions

#### 9.2 Jurisdiction and Procedure 9-6

- A. Subject Matter Jurisdiction
- B. Personal Jurisdiction
- C. Applicability of the Rules of Civil Procedure

#### 9.3 Initiation of Proceedings and Standing 9-9

- A. Initiation of TPR
- B. Standing to File Petition or Motion

#### 9.4 Counsel and Guardians ad Litem for Parent and Child 9-14

- A. Counsel for Parent
- B. Guardian ad Litem for Parent
- C. Guardian ad Litem for Child

#### 9.5 Contents of Petition or Motion 9-18

- A. Identifying Information
- B. Addressing the UCCJEA
- C. Facts to Support Grounds for Termination
- D. Verification
- E. Request for Relief

## 9.6 Hearing for Unknown Parent 9-22

- A. Preliminary Hearing to Determine Identity of Unknown Parent
- B. Service on Unknown Parent

#### 9.7 Summons and Notice 9-24

- A. Introduction
- B. Summons for Proceeding Initiated by Petition
- C. Notice for Proceeding Initiated by Motion in the Cause

#### 9.8 Answer or Response 9-29

#### 9.9 Pretrial and Adjudication Hearing Requirements 9-30

- A. Pretrial Hearing
- B. Adjudication Hearing

#### 9.10 Evidence and Proof 9-35

- A. Evidentiary Requirements and Standards
- B. Events between Filing of Petition or Motion and Hearing
- C. Events after a TPR Is Denied or Reversed
- D. Specific Types of Evidentiary Issues

#### 9.11 Adjudication: Grounds for Termination of Parental Rights 9-38

- A. Abuse or Neglect
- B. Willfully Leaving Child in Foster Care for More than Twelve Months without Reasonable Progress
- C. Failure to Pay a Reasonable Portion of the Child's Cost of Care
- D. Failure to Pay Child Support to Other Parent
- E. Father's Actions regarding Child Born Out of Wedlock
- F. Dependency
- G. Abandonment
- H. Murder, Voluntary Manslaughter, and Felony Assault of Child or Parent
- I. TPR to Another Child and Lack of Safe Home
- J. Relinquishment for Adoption
- K. Conception Resulting from Sexually Related Criminal Offense

#### 9.12 Disposition and Best Interest Determination 9-73

- A. Overview
- B. Evidentiary Standard
- C. Considerations for Best Interest Determination

#### 9.13 Highlighted Federal Laws: ICWA and the ADA 9-81

- A. Compliance with ICWA
- B. ADA Not a Defense to TPR

#### 9.14 Orders in Termination of Parental Rights Cases 9-82

- A. Requirements for Order
- B. Entry of Order

#### 9.15 Effect of Order and Placement after Termination of Parental Rights 9-86

- A. Severance of Rights and Obligations
- B. Collateral Legal Consequences
- C. Placement and Post-TPR Review Hearings

# Chapter 10: Post-TPR and Post-Relinquishment Reviews, Adoptions, and Reinstatement of Parental Rights 10-1

## 10.1 Post-Termination of Parental Rights Review Hearings 10-2

- A. Circumstances and Purpose
- B. Timing of Hearing
- C. Notice and Participation
- D. Appointment of GAL
- E. Evidence and Considerations for Hearings
- F. The Order

#### 10.2 Post-Relinquishment Review Hearings 10-6

- A. Circumstances Requiring Review
- B. Relinguishment for Adoption
- C. Timing and Petition or Motion for Review
- D. Parent's Party Status
- E. Procedure for Hearing

## 10.3 Selected Adoption Provisions 10-12

- A. Introduction
- B. Prospective Adoptive Parents
- C. District Court Jurisdiction When Adoption Is Filed
- D. The Adoption

#### 10.4 Reinstatement of Parental Rights 10-18

- A. Introduction
- B. Circumstances for Reinstatement
- C. Hearing Procedures
- D. Criteria and Findings
- E. Interim Hearings and Reasonable Efforts
- F. Orders
- G. Effect of Reinstatement

## Chapter 11: Evidence 11-1

#### 11.1 Applicability of Rules of Evidence 11-5

- A. Adjudication
- B. Disposition and Other Proceedings

#### 11.2 Child Witnesses 11-9

- A. Competency of Child Witnesses
- B. Examination of Child Witnesses

#### 11.3 Out-of-Court Statements to Refresh, Impeach, or Corroborate 11-17

- A. Refreshing Recollection
- B. Impeachment
- C. Corroboration

#### 11.4 Out-of-Court Statements and the Right to Confront Witnesses 11-20

- A. Applicability of Confrontation Clause to Criminal and Delinquency Cases
- B. Inapplicability of Confrontation Clause to Juvenile Cases

## 11.5 Out-of-Court Statements and the Hearsay Rule 11-22

- A. Governing Rules
- B. Rationale for Hearsay Rule
- C. Components of Hearsay Definition

## 11.6 Hearsay Exceptions 11-25

- A. Types of Hearsay Exceptions and Their Rationales
- B. Rule 801(d): Admissions of a Party-Opponent
- C. Rule 803(2): Excited Utterances
- D. Rule 803(3): State of Mind
- E. Rule 803(4): Medical Diagnosis or Treatment
- F. Rule 803(6): Business Records
- G. Rule 803(8): Official Records and Reports
- H. Rules 803(24) and 804(b)(5): Residual Hearsay

#### 11.7 Prior Orders and Proceedings and Judicial Notice 11-50

- A. Generally
- B. Definition of Judicial Notice
- C. Orders and Other Court Records
- D. Findings and Conclusions by Court
- E. Documentary Evidence, Court Reports, and Other Exhibits
- F. Testimony

#### 11.8 Character and Prior Conduct 11-64

- A. Generally
- B. Theories of Admissibility of Character Evidence
- C. Is Character Directly at Issue in Juvenile Cases?
- D. Rule 404(b) and "Bad Act" Evidence
- E. Rape Shield Law

#### 11.9 Lay Opinion 11-70

- A. Lay and Expert Testimony Distinguished
- B. Examples of Permissible and Impermissible Lay Opinion

#### 11.10 Expert Testimony 11-74

- A. Revised Evidence Rule 702(a)
- B. Three Basic Requirements
- C. Other Requirements for Expert Opinion
- D. Expert Testimony about Children

#### E. Expert Testimony about Parents

#### 11.11 Evidentiary Privileges 11-88

- A. In Abuse, Neglect, and Dependency Proceedings
- B. In Termination of Parental Rights Proceedings

#### 11.12 Right against Self-Incrimination 11-91

- A. Right Not to Answer Incriminating Questions
- B. No Right Not to Take Stand
- C. Drawing Adverse Inference from Refusal to Answer

#### 11.13 Evidence Procedures 11-93

- A. Production of Witnesses and Documents
- B. Pretrial Motions in Limine, Objections, and Other Notices
- C. Pre-Adjudication Conference
- D. Objections at Trial

## Chapter 12: Appeals 12-1

## 12.1 Scope of Chapter 12-4

#### 12.2 Parties and Representation 12-4

- A. Who Can Appeal
- B. Appellate Representation in Juvenile Proceedings
- C. Role of Trial Counsel
- D. Role of Appellant

## 12.3 Identifying Issues for Appeal 12-10

- A. Preserving Issues for Appeal
- B. Scope of Appellate Review
- C. Appellate Rule 2: Prevent Manifest Injustice
- D. Invited Error
- E. No Swapping Horses

## 12.4 Which Orders Can Be Appealed 12-16

- A. Appealable Orders
- B. When an Appeal Is Moot

## 12.5 Notice of Appeal 12-23

- A. Timing, Manner, and Content of Notice
- B. Service and Proof of Service
- C. Appellate Entry Forms

#### 12.6 Protection of the Child's Identity in Juvenile Cases – Appellate Rule 42 12-30

## 12.7 Expedited Appeals Process under Appellate Rule 3.1 12-31

- A. Transcript
- B. Record on Appeal
- C. Briefs

## 12.8 Issues on Appeal and Standards of Review 12-34

- A. Introduction
- B. Sufficiency of Evidence and Findings
- C. Abuse of Discretion

- D. Subject Matter Jurisdiction
- E. Failure to Follow Statutory Mandates and Procedures
- F. Statutory Interpretation

#### 12.9 Motions to Dismiss and Failure to Comply with Appellate Rules 12-39

#### 12.10 Extraordinary Writs, Discretionary Review, and Appeal of Right 12-40

- A. Writ of Certiorari
- B. Petition for Discretionary Review
- C. Appeal of Right
- D. Writ of Mandamus or Prohibition
- E. Writ of Supersedeas

## 12.11 Trial Court's Role during and after Appeal 12-43

- A. Trial Court's Role pending Appeal
- B. Trial Court's Role after Appeal

## Chapter 13: Relevant Federal Laws 13-1

## 13.1 Scope of Chapter 13-3

#### 13.2 Indian Child Welfare Act 13-3

- A. Introduction and Purpose
- B. Applicability
- C. Inquiry at Commencement of Every Proceeding as to "Indian Child" Status
- D. Jurisdiction
- E. Emergency Proceedings
- F. Notice to the Tribe, Parent, Indian Custodian, and Bureau of Indian Affairs
- G. Timing of Court Proceedings
- H. "Active Efforts" Required
- I. Finding of Serious Emotional or Physical Damage
- J. Placement Preferences
- K. Consent to Foster Placement, TPR, and Adoption including Relinquishment
- L. Impact of ICWA Violation

## 13.3 Multiethnic Placement Act 13-28

## 13.4 Title VI of the Civil Right Act 13-30

- A. Introduction
- B. Applicability
- C. Prohibited Discrimination
- D. Requirements
- E. Violations

## 13.5 The Americans with Disabilities Act 13-37

- A. Introduction
- B. Applicability
- C. Prohibited Discrimination
- D. Requirements
- E. Compliance

#### 13.6 Servicemembers Civil Relief Act 13-47

- A. Introduction
- B. Applicability
- C. SCRA Requirements

## 13.7 Every Student Succeeds Act 13-53

- A. Introduction
- B. Companion to the Fostering Connections Act
- C. School Selection
- D. Transportation
- E. Designated Points of Contact

## 13.8 The Individuals with Disabilities in Education Act 13-59

- A. Introduction
- B. Part B of IDEA: Children Ages 3-21
- C. Part C of IDEA: Children under 3 Years of Age
- D. Parent: Definition, Role, and Appointment of Surrogate Parent

#### 13.9 Special Immigrant Juvenile Status and Selected Immigration Resources 13-80

- A. Introduction and Selected Resources
- B. Special Immigrant Juvenile Status and Obtaining Lawful Permanent Residency

## Chapter 14: Confidentiality and Information Sharing 14-1

#### 14.1 Juvenile Records 14-3

- A. Department of Social Services Information
- B. Court Records and Proceedings
- C. DSS Access to Information
- D. The Child's GAL Access to and Disclosure of Information
- E. Designated Agency Information Sharing
- F. Subpoenas

#### 14.2 Health Records and HIPAA 14-18

- A. Covered Health Care Providers
- B. Protected Health Information
- C. Duty to Comply with HIPAA
- D. Impact on Abuse, Neglect, Dependency Laws

#### 14.3 Mental Health Records and G.S. 122C 14-22

- A. Covered Providers
- B. Confidential Information
- C. The Duty of Confidentiality
- D. Impact on Abuse, Neglect, Dependency Laws

#### 14.4 Substance Abuse Records and 42 C.F.R. Part 2 14-25

- A. Covered Programs
- B. Confidential Information
- C. Duty Imposed by Federal Substance Abuse Records Law
- D. Impact on Abuse, Neglect, Dependency Laws

#### 14.5 Education Records and FERPA 14-31

- A. Introduction
- B. Consent Required for Disclosure
- C. Exceptions to Consent Requirement
- D. Documentation of Disclosure, Redisclosure, and Use of Information
- E. Complaints and Enforcement

#### **Appendixes**

**Appendix 1: Resources and Organizations** 

Appendix 2: The Chief District Court Judge and Juvenile Court

Appendix 3: JWise: The Automated Information System for North Carolina Juvenile Courts

Appendix 4: Rules of Recordkeeping, Chapter XII

Appendix 5: Case Management for Abuse, Neglect, Dependency, and Termination of Parental

**Rights Cases in North Carolina Juvenile Courts** 

#### **Checklists**

**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**