Chapter 5
The Pre-Adjudication Stage in Abuse, Neglect, and Dependency Cases[1]

1. Sources for some content in this chapter: JANET MASON, REPORTING CHILD ABUSE AND NEGLECT IN NORTH CAROLINA (UNC School of Government, 3d ed. 2013); KELLA W. HATCHER, N.C. ADMIN. OFFICE OF THE COURTS, NORTH CAROLINA GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL (2007); DIV. OF SOCIAL SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL (FAMILY SUPPORT AND CHILD WELFARE MANUAL) (2014).

5.1 How a Case Enters the System

A. Reporting Suspected Abuse, Neglect, or Dependency

Any person or institution with cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, must report the information to the county department of social services (hereinafter DSS). Knowingly or

wantonly failing to report or preventing someone from reporting when a report is required is a Class 1 misdemeanor. G.S. 7B-301.

Note: The term "county department of social services," as used in this Manual, includes consolidated county human services agencies created pursuant to G.S. 153A-77 that carry out social services functions.

The phrase "cause to suspect" is not defined by statute or case law, and a determination of when a concern rises to that level is necessarily subjective. In *Dobson v. Harris*, 352 N.C. 77, 84 (2000), the supreme court noted that the phrase "gives wide margin to whatever prompts the reporter to notify DSS" and "does not call for scrutiny, analysis, or judgment by a finder of fact." It is reasonable, however, to view "cause to suspect" as more than a vague suspicion. For an individual, the "cause" may be based not only on objective facts and observations, but also on the context in which the concern arises, prior knowledge about a child's situation, and how the child is being affected by the circumstances.

Resource: For a more detailed discussion of the topic of reporting, see JANET MASON, REPORTING CHILD ABUSE AND NEGLECT IN NORTH CAROLINA (UNC School of Government, 3d ed. 2013).

1. Manner of report. Reports to a county department of social services may be made orally, by telephone, or in writing, and must include information the reporter has about the juvenile's name, age, address, and present whereabouts; the name and address of the juvenile's parent, guardian, custodian, or caretaker; the names and ages of other juveniles in the home or facility; the nature of the juvenile's condition or injuries; and any other information the reporter believes would be helpful. The law requires the person making a report to provide his or her name, address, and telephone number, but the fact that a report is made anonymously does not affect DSS's responsibility to do an assessment. G.S. 7B-301. (Note that this statute does not "authorize" anonymous reports, but seeks to protect the child by ensuring that anonymous reports will still receive attention.)

2. First determination: Does the report indicate abuse, neglect, or dependency? When DSS receives a report of suspected abuse, neglect, or dependency, its first task is to determine whether the facts as stated by the reporter, if true, fit within the definition of abuse, neglect, or dependency in G.S. 7B-101. *See supra* § 2.6 (relating to definitions). If they do not, DSS must notify the reporter that the report is not being accepted (*see infra* § 5.1.D, Notice to Person Making the Report), and DSS does not have a duty or even authority to investigate the matter. *See, e.g.*, *In re Stumbo*, 357 N.C. 279 (2003) (holding that a petition for an order to cease interference with a DSS investigation should not have been granted because the facts reported, even if true, did not fit within the definition of abuse, neglect, or dependency).

3. Report may trigger notification to other agencies. When the report relates to sexual abuse in a child care facility, the DSS director must notify the State Bureau of Investigation (hereinafter SBI) within 24 hours or the next workday. Failure to do so is a Class 1 misdemeanor. G.S. 7B-301, 7B-307(b), (c). Any report of abuse or neglect in a child care facility triggers a requirement that the county DSS notify the state Department of Health and

Human Services (hereinafter DHHS). *See* G.S. 7B-307(a), (b). If DSS receives a report that a juvenile was physically harmed in violation of a criminal law by someone who is not the juvenile's parent, guardian, custodian, or caretaker, the director must make a report to local law enforcement and the district attorney within 48 hours. *See* G.S. 7B-307. *See also infra* § 5.1.F, Law Enforcement Involvement.

4. No privilege; narrow attorney exception. Child abuse reporting laws were enacted initially to encourage, then require, reporting by doctors and other professionals who, without the statutory mandate, would be prohibited from reporting by privilege or confidentiality. The Juvenile Code provides that, with one narrow exception, privilege is not a ground for failing to report. *See* G.S. 7B-310. For a discussion of privileges in the context of admissibility of evidence, see *infra* § 11.11.

The statute includes an exception for attorneys, but only with regard to knowledge an attorney gains from a client during representation in an abuse, neglect, or dependency case. It does not include an exception for an attorney who learns about a client's maltreatment of a child during representation in any other action. However, the Constitution may require a broader attorney exception in order to protect the rights of a client who has a constitutional right to the effective assistance of counsel. In addition, this duty to report may conflict with a lawyer's ethical duty to maintain a client's confidences pursuant to Rule 1.6 of the N.C. Revised Rules of Professional Conduct. The North Carolina State Bar Ethics Opinions, RPC 175 (1995) and RPC 120 (1992), address this subject and give the lawyer broad discretion in deciding how to resolve the conflict ethically.

5. Immunity. Anyone who makes a report, cooperates with DSS in an assessment, testifies in a proceeding resulting from the assessment, or otherwise participates in the "program authorized by" the Code is immune from any civil or criminal liability if acting in good faith. G.S. 7B-309. *See also Dobson v. Harris*, 352 N.C. 77 (2000); *Davis v. Durham City Sch.*, 91 N.C. App. 520 (1988) (decided under an earlier version of the Juvenile Code). Someone who makes a report "with malice" does not have that protection from liability. *See Kroh v. Kroh*, 152 N.C. App. 347 (2002).

6. Other reporting laws. The reporting law discussed in this manual is in the Juvenile Code, applies to everyone, focuses on protecting children, and relates to cases that may become the subject of civil proceedings in juvenile court. Reports must be made to county departments of social services. Other laws require reports to law enforcement or punish the making of improper reports in some circumstances involving possible child maltreatment. These laws address:

- the duty to report to law enforcement the disappearance of a child under age sixteen (G.S. 14-318.5; G.S. 14-318.4(a6));
- failure to notify law enforcement of the death of a child, with the intent to conceal the child's death (G.S. 14-401.22);
- making false or misleading reports to law enforcement relating to the investigation of a child's disappearance or a child victim of a Class A, B1, B2, or C felony (G.S. 14-225);

- the duty of a school principal to report certain crimes that occur on school property to law enforcement (G.S. 115C-288(g)); and
- the duty of physicians and hospitals to report to law enforcement certain wounds, injuries, and illnesses, including any child's recurrent illness or serious physical injury that appears to be the result of non-accidental trauma (G.S. 90-21.20).

B. DSS Assessment of Report

When DSS receives a report and determines that the information in the report, if true, fits the legal definition of abuse, neglect, or dependency, DSS must conduct an assessment to ascertain the facts of the case, the extent of any abuse or neglect, and the risk of harm to the juvenile. G.S. 7B-302

1. Multiple response system. The multiple response system (MRS) provides for different response procedures for different types of reports. The "family assessment" response is used for reports meeting the statutory definitions of neglect and dependency. This response is a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile. G.S. 7B-101(11a). The "investigative assessment" response is used for reports containing allegations meeting the statutory definitions of abuse and serious neglect or for reports concerning a child in the custody of a local DSS, family foster home, residential facility, or child care facility. This type of response uses a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent. G.S. 7B-101(11b).

Investigative and family assessments have many procedures in common. Both use a structured decision-making process that requires that more than one person be involved in reaching a decision based on the legal definitions and on documented caretaker behavior that resulted in harm or a risk of harm to the child. An assessment must address and document findings about the frequency and severity of maltreatment, safety issues and risk of future harm, and the need for protection. A family assessment results in a determination of one of the following:

- services needed;
- services recommended (where the child's safety and risk of future harm are not issues);
- services provided and protective services no longer needed; or
- services not recommended.

At the end of an investigative assessment, DSS either substantiates abuse or serious neglect or does not (sometimes referred to as "unsubstantiating"). A determination by DSS that abuse, neglect, or dependency has occurred triggers specific statutory responsibilities. DSS must determine whether protective services should be provided or whether a petition should be filed to initiate a juvenile court proceeding. *See* G.S. 7B-302(a), (c). In the majority of cases in which the assessment indicates abuse, neglect, or dependency, DSS does not file a petition but provides services to protect the child and may enter into a service agreement or protection plan with the family. These agreements are voluntary and are not legally enforceable. Nevertheless, a parent's failure to comply with a service agreement or protection plan may be relevant later if DSS files a petition alleging abuse, neglect, or dependency.

Resources: For more information on DSS process and policies regarding intake, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. VIII §1407 (June 2008).

For policies and details of the family assessment response, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. VIII § 1408(III) (Dec. 2009).

For policies and details of the investigative assessment response, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. VIII § 1408(IV) (Dec. 2009).

2. Timing of assessment. When abuse or abandonment is alleged, DSS must initiate the assessment immediately and at least within 24 hours after receiving the report. When neglect (other than abandonment) or dependency is alleged, the assessment must be initiated within 72 hours. G.S. 7B-302(a).

3. Family privacy. As part of the assessment DSS is required to visit the place where the juvenile resides. G.S. 7B-302(a). However, DSS may not enter a private residence for assessment purposes without at least one of the following:

- a reasonable belief that a juvenile is in imminent danger of death or serious physical injury;
- permission of the parent or person responsible for the juvenile's care;
- accompaniment of a law enforcement officer who has legal authority to enter; or
- a court order.

G.S. 7B-302(h).

See generally Renn v. Garrison, 100 F.3d 344 (4th Cir. 1996) (holding that DSS workers alleged to have violated family privacy rights were entitled to qualified immunity where there was no showing that their actions exceeded the scope of the North Carolina state child protection statutes in effect at the time, which the court noted "plainly take into account" a family's right to privacy).

4. Confidentiality. DSS is required to hold all information it receives, including the identity of the reporter, in strictest confidence. G.S. 7B-302(a1). However, there are a number of exceptions to this requirement, detailed *supra* § 2.7.A.3.

5. Other juveniles. DSS must ascertain whether other juveniles who live in the home or who reside in the same facility are in need of protective services or require removal from the home or facility. G.S. 7B-302(b).

6. Immediate removal, protective services. If an assessment indicates that a juvenile is abused, neglected, or dependent, DSS must decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal is

not necessary, DSS must immediately provide or arrange for protective services. G.S. 7B-302(c). If immediate removal is necessary, DSS must file a petition and, in some circumstances, may assume *temporary custody* of the juvenile. G.S. 7B-302(d). *See infra* § 5.5.B (explaining temporary custody).

7. Parent refusing services. After a substantiation or a finding that a family is in need of services, if DSS does not file a petition, it provides or arranges for protective services based on the risks, needs, and strengths of the family identified during the assessment process. If a parent refuses to accept protective services that DSS has determined are necessary, DSS is required to file a petition to protect the juvenile. G.S. 7B-302(c).

8. Physical abuse may require mental health evaluation. When a child is removed from the home based on physical abuse, DSS must review the alleged perpetrator's background. If the review reveals a history of violent behavior against people, DSS must petition the court to order the alleged perpetrator to submit to a mental health evaluation. G.S. 7B-302(d1).

9. Reports to other agencies. Some circumstances require DSS to make reports to other agencies, explained *infra* § 5.1.F.

C. DSS Access to Information

In making the assessment of the child's status, DSS may consult with any public or private agencies or individuals, including law enforcement officers. G.S. 7B-302(e). *See also supra* § 2.7 (relating to confidentiality and DSS access to information).

1. Access to all relevant information. DSS may make a written demand for information or reports, whether or not confidential, that may be relevant to the assessment or to providing protective services, and that information must be provided (to the extent permitted by federal law, described *supra* § 2.7.B) unless protected by attorney-client privilege. G.S. 7B-302(e). (Note that refusals of DSS's written demands for information may result in interference proceedings pursuant to G.S. 7B-303, described *infra* § 5.1.G.) *See supra* § 2.7 related to confidentiality and access to information, including requirements for agencies to share information with DSS under G.S. 7B-3100, explained in § 2.7.B.6.

2. Criminal investigative information. If a custodian of criminal investigative information believes release of the information will jeopardize the criminal case or the defendant's right to receive a fair trial, the custodian may seek a court order to prevent disclosure. This kind of action must be set for immediate hearing, and any subsequent proceedings in the action must be given priority by trial and appellate courts. G.S. 7B-302(e).

D. Notice to Person Making the Report

1. After receipt of report. Within five days of *receiving the report*, DSS must give written notice to the reporter (unless the reporter has asked not to receive notice) as to whether the report was accepted for assessment and whether it was referred to a law enforcement agency. G.S. 7B-302(f).

2. After completing the assessment. Within five days after *completing the assessment*, DSS must give written notice to the reporter (unless the reporter has asked not to receive notice) as to whether there is a finding of abuse, neglect, or dependency; what, if any, action DSS is taking to protect the juvenile; and whether a petition has been filed. G.S. 7B-302(g).

3. Right to seek review. DSS must inform the reporter of the procedure allowing him or her to request a review by the prosecutor (discussed below) of a DSS decision not to file a petition. G.S. 7B-302(g).

E. Review by Prosecutor

When DSS decides not to file a petition alleging abuse, neglect, or dependency, the person who made the report can seek a review of that decision by the prosecutor. G.S. 7B-302(g), 7B-305, 7B-403(b).

1. Timing. Request for the review must be made within five days of receiving notice of a DSS decision not to file a petition. G.S. 7B-302(g), 7B-305. The prosecutor must review the DSS decision within twenty days after the person making the report is notified. G.S. 7B-306. The prosecutor notifies the reporter and DSS of the time and place for the review. G.S. 7B-305.

2. Substance of review. Once DSS receives notice of the time and place for review from the prosecutor, DSS must immediately transmit a copy of the summary of the assessment to the prosecutor. G.S. 7B-305. The prosecutor's review must include conferences with:

- the person making the report,
- the DSS protective services worker,
- the juvenile (if practicable), and
- other persons known to have pertinent information about the juvenile or the juvenile's family.

G.S. 7B-306.

3. Outcome of review. At the conclusion of the review, the prosecutor may:

- affirm the DSS decision not to file a petition,
- ask an appropriate local law enforcement agency to investigate, or
- direct DSS to file a petition.

G.S. 7B-306.

F. Law Enforcement Involvement

1. DSS to report to law enforcement. If DSS finds evidence of abuse, as defined in G.S. 7B-101, or receives a report of a crime involving physical harm to a child by someone other than a parent, guardian, custodian, or caretaker, DSS must make immediate oral and subsequent

written reports to the DA's office and to appropriate local law enforcement within 48 hours of DSS's receiving the report. G.S. 7B-307(a).

2. Law enforcement to investigate. Within 48 hours of receiving information from DSS, law enforcement must initiate a criminal investigation. If DSS is initiating an assessment, law enforcement's investigation must be coordinated with the protective services assessment. G.S. 7B-307(a).

3. Criminal prosecution. When law enforcement's investigation is complete, the DA must determine whether criminal prosecution is appropriate and, where abuse as defined in G.S. 7B-101 has occurred, may request DSS to appear before a magistrate to seek the issuance of a warrant. G.S. 7B-307(a).

4. Special requirements for sexual abuse in child care facility. DSS is required to notify the SBI at several stages of a case that involves or may involve sexual abuse of a child in a child care facility. This notification is required when

- DSS receives a report of sexual abuse in a child care facility. G.S. 7B-301(a).
- During an assessment of a report that did not involve sexual abuse in a child care facility DSS develops reason to suspect that sexual abuse has occurred in a child care facility. G.S. 7B-301(a).
- DSS finds evidence of sexual abuse in a child care facility. *See* G.S. 7B-307(b).
- DSS completes an assessment involving sexual abuse in a child care facility. G.S. 7B-307(c).

5. Relationship between DSS and law enforcement. Complications can arise when DSS and law enforcement are working on separate cases arising from the same circumstances. DSS and law enforcement may pursue interviewing the same individuals, and sometimes they may conduct interviews jointly. Attention should be given to the circumstances under which *Miranda* warnings are applicable. Even if DSS conducts an interview, if information learned in the interview is used in a subsequent criminal trial, the issue of whether DSS was acting as an "agent" of law enforcement may arise. *See State v. Morrell*, 108 N.C. App. 465 (1993) (holding that a social worker's failure to advise the defendant of her *Miranda* rights caused the defendant's statements in an interview with the social worker to be inadmissible because the social worker became like an agent of the state where the social worker went beyond her role and began working with sheriff's department on the case prior to interviewing the defendant). For a discussion of admissions of a party-opponent, see *infra* § 11.6.B.

G. Interference with DSS Assessment

When someone obstructs or interferes with an assessment, DSS may file an interference petition naming that person as a respondent and asking the court to order that person to cease the obstruction or interference. G.S. 7B-303. The court has exclusive original jurisdiction of proceedings in which a person is alleged to have obstructed or interfered with a DSS assessment. G.S. 7B-200(a)(6).

1. Meaning of interference or obstruction. Interference or obstruction includes any of the following:

- refusing to disclose the whereabouts of the juvenile;
- refusing to allow DSS to have personal access to the juvenile;
- refusing to allow DSS to observe or interview the juvenile in private;
- refusing to allow DSS access to confidential information and records pursuant to a request under G.S. 7B-302;
- refusing to allow DSS to arrange for an examination of the juvenile by a physician or other expert (see *In re Browning*, 124 N.C. App. 190 (1996), in which a father was not successful in claiming religious beliefs as a reason for refusing to permit a mental health evaluation of his children);
- other conduct that makes it impossible for DSS to carry out the duty to assess the juvenile's condition.

G.S. 7B-303(b).

2. Requirements for petition for interference. The petition must:

- contain the name, date of birth, and address of the juvenile;
- state the basis for initiating an assessment;
- include a description of conduct constituting obstruction or interference; and
- be verified.

G.S. 7B-303(a).

If DSS has reason to believe the juvenile needs immediate protection or assistance, the petition would allege that as well. *See* G.S. 7B-303(d). *See infra* § 5.1.G.7 (discussing ex parte interference orders).

3. File with clerk or magistrate. The interference petition is filed with the clerk of court when that office is open. In an emergency, when the clerk's office is closed, a magistrate who has been authorized by the chief district court judge to do so may "draw, verify, and issue" the petition, which must be delivered to the clerk for processing as soon as the clerk's office opens. G.S. 7B-404.

4. Service and notice. Service of the interference petition, summons, and notice of hearing must be made "as provided by the Rules of Civil Procedure," on:

- the person alleged to have obstructed or interfered with an assessment (the respondent);
- the juvenile's parent, guardian, custodian, or caretaker; and
- any other person determined by the court to be a necessary party.

G.S. 7B-303(c). *See supra* § 4.4 (relating to service).

5. Timing of hearing. The hearing on the interference petition must be held not less than five days after service of the petition and summons on the respondent. G.S. 7B-303(c). If the court has issued an ex parte order (*see* 7., below), then within 10 days of that order a hearing must be held to determine whether there is good cause for the order to continue or whether there should be a different order. G.S. 7B-303(d).

6. Hearing. The burden of proof at the hearing is on DSS. G.S. 7B-303(c). DSS must prove not only the conduct of the respondent and its effect on the assessment, but also that DSS was acting pursuant to a report that was sufficient to trigger DSS's duty and authority to conduct an assessment. Where the information in the report is not sufficient to constitute abuse, neglect, or dependency, filing an interference petition is improper. *See In re Stumbo*, 357 N.C. 279 (2003). If the court finds at the hearing by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with a required assessment, the court may order the respondent to cease the obstruction or interference. G.S. 7B-303(c).

The scope of the hearing does not extend to the issue of whether the child is abused, neglected, or dependent, and the court does not have jurisdiction to change the child's custody. *See In re K.C.G.*, 171 N.C. App. 488 (2005). The Code does not provide for appointed counsel for any party or for the appointment of a guardian ad litem for the child in an interference proceeding.

7. Ex parte interference orders. When DSS believes the juvenile needs immediate help or protection, DSS can allege this in the interference petition and seek an ex parte order. G.S. 7B-303(d).

(a) Standard. The court may enter an ex parte order to cease obstruction or interference if it finds probable cause to believe that:

- the juvenile is at risk of immediate harm, and
- the respondent is obstructing or interfering with DSS's ability to assess the juvenile's condition.

(b) Limitation. This ex parte order is limited to provisions necessary to enable DSS to conduct an assessment to determine whether the juvenile is in need of immediate protection or assistance.

(c) Subsequent hearing. Within 10 days of an ex parte order, a hearing must be held to determine whether there is good cause for the order to continue or whether there should be a different order.

(d) Service on respondent. The respondent must be served with the ex parte order along with a copy of the interference petition, summons, and notice of hearing.

8. Enforceability. An order to cease interference with or obstruction of a DSS assessment is enforceable by civil or criminal contempt as provided in G.S. Chapter 5A. *See* G.S. 7B-303(f). An indigent respondent is entitled to appointed counsel at a civil or criminal contempt

proceeding if the proceeding may result in imprisonment. *See McBride v. McBride*, 334 N.C. 124 (1993).

Tools: AOC Form AOC-J-120, "Petition Obstruction of or Interference with Juvenile Investigation (Abuse/Neglect/Dependency)" (Dec. 2009).

AOC Form AOC-J-121, "Juvenile Summons and Notice of Hearing (Obstruction of or Interference with Juvenile Investigation)" (July 1999).

AOC Form AOC-J-122, "Ex Parte Order to Cease Obstruction of or Interference with Juvenile Investigation" (July 1999).

AOC Form AOC-J-123, "Order to Cease Obstruction of or Interference with Juvenile Investigation" (July 1999).

H. Information Disclosure and Access

Most information related to abuse, neglect, and dependency cases is confidential and has special statutory protections. Although the Juvenile Code contains a provision addressing discovery, G.S. 7B-700, that provision is limited and is discussed *supra* § 4.6. Additional statutes govern the sharing of information among parties and among agencies. Details related to the confidentiality of records and hearings, as well as disclosure of and access to information are explained *supra* § 2.7.

5.2 Central Registry and Responsible Individuals List

A. Central Registry

The Department of Health and Human Services (DHHS) maintains a central registry of reports of abuse, neglect, and dependency and child fatalities that are the result of alleged maltreatment. This registry is maintained for study purposes and to identify cases of repeated maltreatment. The data is furnished to DHHS by the county DSSs, is confidential, and cannot be used in court "unless based upon a final judgment of a court of law." G.S. 7B-311(a). The Administrative Code lists the organizations and persons who are permitted to access central registry data and the limited purposes for which the data may be accessed. *See* 10A N.C.A.C. 70A.0102. Confidentiality of central registry data is strictly enforced because the data is based on reports and DSS assessments, not judgments of a court, and no clear procedure exists for a person to discover or challenge information in the registry.

Resource: For more information about the Central Registry and the policies and administrative rules surrounding it, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. VIII §1426 (May 2012) and the North Carolina Administrative Code provisions related to the Central Registry at 10A N.C.A.C. 70A.0102.

B. Responsible Individuals List

DHHS also maintains a list of individuals determined by county DSSs to be responsible for a child being abused or seriously neglected. Unlike names in the Central Registry, names on the Responsible Individuals List can be provided to certain agencies, institutions, and facilities that need to determine individuals' fitness to care for children. Therefore, an effective procedure for challenging the placement of a name on the list is essential. These procedures have been in place since 2010 and were significantly revised in 2013. *See* S.L. 2010-90 and S.L. 2013-129 (changing the avenues for judicial review and adding a requirement that DSS make diligent efforts to give personal notice to one who is determined to be a responsible individual). The very first procedures for challenging placement of a name on the Responsible Individuals List, enacted by the General Assembly in 2005, were held to be unconstitutional in *In re W.B.M.*, 202 N.C. App. 606 (2010). The list now contains only the names of individuals for whom the procedures in place on or after July 11, 2010, were available.

When a DSS assessment determines that a child has been abused or seriously neglected, whenever possible DSS also identifies the person(s) responsible for the child's condition. G.S. 7B-320. "Serious neglect" is defined as "[c]onduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse." G.S. 101(19a). The meaning of "abuse" is derived from the definition of "abused juvenile" in G.S. 7B-101(1).

Practice Note: Petitions alleging that a child is abused or neglected do not allege "serious neglect." Serious neglect relates only to placement on the Responsible Individuals List.

Upon identifying a person as a "responsible individual," DSS must deliver a written notice to that individual:

- informing the individual of whether DSS determined abuse or serious neglect or both;
- stating that DSS has identified the person as a responsible individual;
- summarizing substantial evidence supporting DSS's determination, without identifying the reporter or collateral contacts;
- informing the individual that unless he or she petitions for judicial review his or her name will be placed on the Responsible Individuals List, and describing DHHS's authority to release information on the list; and
- clearly describing steps the person must take to seek judicial review of DSS's determination.

A copy of a petition for judicial review form must be included with the notice. G.S. 7B-320.

The notice is to be *personally* delivered by DSS to the individual if possible. If personal written notice is not given within 15 days of the DSS determination and DSS has made diligent efforts to locate the individual, the director must send the notice to the individual by

registered or certified mail, return receipt requested, and addressed to the individual at his or her last known address. Unless the director can show that the individual received actual notice, the director may not place the individual on the responsible individuals list until an ex parte hearing is held at which a district court judge determines that the director made diligent efforts to find the individual. A finding that the individual is evading service is relevant to the determination. G.S. 7B-320, 7B-323.

An individual's name may be placed on the Responsible Individuals List only after one of the following:

- The person is properly notified (see specific notice requirements above) and fails to file a timely petition for judicial review; or
- the person files a petition for judicial review and after a hearing the court determines by a preponderance of the evidence that the person is a responsible individual; or
- the person is criminally convicted as a result of the same incident.

G.S. 7B-311(b).

The clerk is required to maintain a separate docket for judicial review proceedings; schedule a hearing within 45 days of the filing of a petition for judicial review or, if there is no juvenile court within that time, for the next session of juvenile court; and send a notice of hearing to the petitioner and the DSS director. G.S. 7B-323(b). If a person who files a petition for judicial review also is named as a respondent in a juvenile court case or a defendant in a criminal case resulting from the same incident, the court may stay the judicial review proceeding. G.S. 7B-324.

At the request of a party, the court is required to close the hearing to everyone except the parties, witnesses, and officers of the court. DSS has the burden of proving by a preponderance of the evidence that the person identified by DSS as a responsible individual abused or seriously neglected the child. The rules of evidence in civil cases apply. However, the court may admit any evidence that is reliable and relevant if doing so will best serve the general purposes of the rules of evidence and the interests of justice. The parties have the right to:

- present sworn evidence, law, or rules;
- represent themselves or obtain representation by an attorney at their own expense; and
- subpoena witnesses, cross-examine witnesses, and make closing arguments.

G.S. 7B-323(b), (c). The court may either uphold or reverse DSS's determination and must make findings of fact and conclusions of law and enter its order within thirty days after the hearing. Appeal of the court's decision is to the court of appeals. G.S. 7B-323.

A person is not entitled to file a petition for judicial review if he or she:

- is convicted criminally as a result of the same incident; or
- after proper notice, fails to file a timely petition for judicial review.

G.S. 7B-324. Despite the second disqualifier, in extraordinary circumstances or if conducting a review would serve the interests of justice, the court in its discretion may conduct a hearing on a petition for judicial review that is not timely filed. If the individual's name has already been placed on the list and the court reverses DSS's determination, the court must order the person's name expunged from the list. G.S. 7B-323(e).

Tools: AOC Form AOC-J-131, "Petition for Judicial Review Responsible Individuals List" (Oct. 2013).

AOC Form AOC-J-132, "Notice of Hearing Judicial Review Responsible Individuals List" (Oct. 2013).

5.3 The Petition, Summons, and Service of Process

The petition is the initial pleading, and filing of the petition is the means by which DSS commences an abuse, neglect, or dependency case and by which the court obtains jurisdiction over the case. The filing of a petition always requires the issuance of a summons. Service of the summons is the process by which the court obtains personal jurisdiction over the parties. G.S. 7B-401, 7B-405, 7B-406.

A. The Petition

1. Proper petitioner. Only DSS can file a petition alleging abuse, neglect, or dependency. *See* G.S. 7B-401.1(a), 7B-403(a).

2. Venue. A petition for abuse, neglect, or dependency may be filed in the district where the child resides or is present. G.S. 7B-400. It is not unusual for more than one county department of social services to have some degree of involvement in a child protective services case as families move, children are placed with relatives in other counties, or conflicts of interest require DSSs to call on neighboring counties to handle cases. Improper venue can be waived, and even if venue is proper, the court can grant a motion for change of venue for good cause. *See supra* § 3.5 (discussing venue in detail).

Tool: AOC Form AOC-J-130, "Juvenile Petition (Abuse/Neglect/Dependency)" (Apr. 2015).

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3. File with clerk or magistrate. DSS must file the petition with the clerk when that office is open. When the clerk's office is closed, DSS may file the petition with a magistrate when a petition is required in order to obtain a nonsecure custody order. G.S. 7B-404.

Note: The wording of G.S. 7B-404 is somewhat confusing. It states that a magistrate "may be authorized by the chief district court judge to draw, verify, and issue petitions." It does not require any specific form of authorization, and since DSS must be able to file petitions in an emergency, it seems reasonable to assume that on-duty magistrates are implicitly authorized to accept petitions for filing unless a chief district court judge has ordered otherwise. (The

language in the comparable provision for delinquency cases, G.S. 7B-1804, says that "a magistrate may draw and verify the petition and accept it for filing, which acceptance shall constitute filing.")

Issuance by the magistrate constitutes filing, and the petition must be delivered to the clerk's office for processing as soon as that office is open. G.S. 7B-405, 7B-404. Because the magistrate is not authorized to issue the summons, the clerk should issue the summons upon receipt of the petition. Some districts may have local rules or an administrative order issued by the chief district court judge addressing the appropriate procedure for after-hours filing.

4. Substance of petition. The petition must contain:

- the name, date of birth, and address of the juvenile (*but see In re A.R.G.*, 361 N.C. 392 (2007) (holding that failure to list the juvenile's address did not deprive the trial court of subject matter jurisdiction));
- the name and last known address of each party as determined by G.S. 7B-401.1; and
- facts sufficient to invoke jurisdiction over the juvenile.

G.S. 7B-402(a).

The petition should name and contain information about both parents, even if one of them has no involvement in the circumstances leading to the filing of the petition or is unknown or missing.

The petition or an attached affidavit must also contain information required by the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) under G.S. 50A-209, concerning the places and person(s) with whom the child has resided in the past five years and any other court actions concerning custody of the child. (The AOC form for the affidavit is AOC-CV-609, "Affidavit as to Status of Minor Child" (July 2011)). However, if a party alleges in an affidavit or pleading that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of identifying information, the information must be sealed and may be disclosed to the other party or to the public only pursuant to a court order after a hearing in which the court considers the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice. G.S. 50A-209.

See supra § 3.2.C.2 (discussing problems with petitions that do not impact subject matter jurisdiction).

See supra § 4.2.D (discussing amendments and supplemental and responsive pleadings).

5. More than one child. A petition may contain information on more than one child when the children are from the same home and are before the court for the same reason. G.S. 7B-402(a). The petition must contain a separate file number for each child and the clerk must maintain a file for each child regardless of whether more than one child is named in a petition. *See* AOC Rules of Recordkeeping in appendix 4. Separate petitions are preferable for children who live

together but have different fathers or mothers and where the facts asserted to support the allegations of abuse, neglect, or dependency differ substantially from one child to another.

6. Verification essential. The petition must be signed and verified or the petition will be fatally defective and the court will not have subject matter jurisdiction. G.S. 7B-403(a); *In re T.R.P.*, 360 N.C. 588 (2006). *See supra* § 4.2.B (discussing in detail verification of the petition, including who may sign and verify).

7. DSS dismissal of petition. The Juvenile Code does not address voluntary dismissal of a petition by DSS, but the court of appeals has held that the voluntary dismissal of a juvenile petition by DSS is permissible. *In re E.H.*, __ N.C. App. __, 742 S.E.2d 844 (2013). The court found that the application of G.S. 1A-1, Rule 41(a)(1)(i) to abuse, neglect, and dependency cases advances the purposes of the Juvenile Code and does not conflict with its provisions. The court reasoned that the legislature has entrusted DSS with the duty to determine whether allegations of abuse, neglect, or dependency are credible and what action to take (subject only to limited review by the prosecutor), and that requiring the GAL or parents to consent to a dismissal would impermissibly shift this responsibility away from DSS. The court also discussed the need for judicial efficiency and conservation of limited social services resources.

8. Amendment of the petition. The court in its discretion may allow amendment of the petition. If the court allows an amendment, the court must also direct how the amended petition must be served and how much time a party has to prepare after the amendment. G.S. 7B-800.

See supra § 4.2.D (discussing amendments and supplemental pleadings).

B. The Summons and Process

See also supra §§ 4.3 (discussing civil procedure related to summons); 4.4 (discussing civil procedure related to service).

1. Timing. Immediately after filing of the petition, the clerk issues the summons. G.S. 7B-406(a).

2. Substance of summons. The summons is a printed AOC form that contains the detailed types of notice required by G.S. 7B-406(b) and (c), including:

(a) Nature of proceedings. The summons must include notice of the nature of the proceeding. G.S. 7B-406(b)(1).

(b) Counsel. The clerk's appointment of provisional counsel for each respondent parent must be indicated on the summons or an attached notice. G.S. 7B-602(a). In addition, the summons must include notice of the right to counsel and information about how a parent may seek the appointment of counsel prior to a hearing if provisional counsel is not identified. G.S. 7B-406(b)(2).

(c) Court determinations. The summons must include notice that if the court determines at the hearing that the allegations of abuse, neglect, or dependency in the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the state. G.S. 7B-406(b)(3).

(d) Potential outcomes. The summons must include notice that the dispositional order or a subsequent order:

- may remove the juvenile from the custody of the parent, guardian, or custodian;
- may require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment;
- may require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of the parent;
- may order the parent to pay for treatment that is ordered for the juvenile or the parent;
- may terminate the parent's parental rights after proper notice, a hearing, and a finding that grounds for termination exist.

G.S. 7B-406(b)(4).

(e) Jurisdiction. The summons must advise the parent that once served, the court has jurisdiction over the parent and that failure to comply with orders of the court may result in a finding of contempt. G.S. 7B-406(c).

3. Who receives summons. The summons is issued to each party named in the petition, except the juvenile. G.S. 7B-406(a). With respect to parents who are missing or unknown, see *infra* § 5.4.B.5 & 6.

4. Petition and notice to GAL. Immediately after a petition is filed, the clerk must provide a copy of the petition and any notices of hearings to the local GAL office. G.S. 7B-408.

5. Service of petition and summons. Service of the summons and petition is according to Rule 4(j) of the Rules of Civil Procedure not less than 5 days prior to the date of the scheduled hearing, but the time for service may be waived in the discretion of the court. G.S. 7B-407. *See supra* § 4.4 (discussing details related to service).

Tools: AOC Form AOC-J-141, "Notice of Hearing in Juvenile Proceeding (Abuse/Neglect/Dependency)" (Oct. 2013).

AOC Form AOC-J-142, "Juvenile Summons and Notice of Hearing (Abuse/Neglect/Dependency)" (Oct. 2013).

AOC Form AOC-J-155, "Motion and Order to Show Cause (Parent, Guardian, Custodian or Caretaker in Abuse/Neglect/Dependency Case)" (Nov. 2000).

5.4 Parties, Appointment of Counsel, and Guardians ad Litem

A. Parties to the Proceeding

Abuse, neglect, and dependency proceedings tend to involve many people, and it is important to sort out who the actual "parties" are and what rights those parties have in the proceedings. Relatives, foster parents, other caregivers, service providers, and law enforcement all can become involved in a case, but the Juvenile Code specifies that the parties in an abuse, neglect, or dependency proceeding are limited to: DSS; the juvenile's parents (with limited exceptions); guardian, custodian, and caretaker (in certain circumstances); and the juvenile. G.S. 7B-401.1.

For a discussion of non-parties, see *infra* § 5.4.E.

B. Parents and other Care Providers

1. Parent is a party. The juvenile's parent is a party to the case unless:

- the parent's right have been terminated;
- the parent has relinquished the child for adoption, unless the court orders that the parent be made a party;
- the parent has been convicted of first degree or second degree rape or rape of a child and that criminal act resulted in the conception of the child.

G.S. 7B-401.1; G.S. 14-27.2, 14-27.2A, 14-27.3.

2. Guardians, custodians, and caretakers. Guardians, custodians, and caretakers are parties in certain circumstances:

- A court-appointed guardian of the person or general guardian of the child when the petition is filed is a party, and a person appointed as a guardian pursuant to G.S. 7B-600 automatically becomes a party if the court has found guardianship to be the permanent plan for the child.
- The custodian of a child at the time a petition is filed is a party, and a person who is awarded custody during the juvenile proceeding automatically becomes a party if the custody arrangement is the permanent plan.
- A caretaker, as defined in G.S. 7B-101(3), is a party only if the petition includes allegations relating to the caretaker, the caretaker has assumed the status and obligations of a parent, or the court orders that the caretaker be made a party.

G.S. 7B-401.1.

A guardian, custodian, or caretaker who is a party to the case may be removed as a party if the court finds that the person does not have legal rights that may be affected by the action and that the person's continuation as a party is not necessary to meet the juvenile's needs. G.S. 7B-401.1.

Definitions of caretaker, guardian, and custodian are addressed *supra* § 2.1.B.11.

The rights of the parent, including the right to counsel, are addressed *supra* § 2.5.

The court's authority over a parent at disposition is addressed *infra* § 7.5.

3. Appointment of parent's counsel. When a petition is filed, the clerk must appoint provisional counsel for each parent named in the petition and indicate the appointment on the summons or attached notice. At the first hearing, the court must affirm the appointment of counsel unless the respondent parent: (1) does not appear at the hearing; (2) does not qualify for court-appointed counsel; (3) has retained counsel; or (4) waives the right to counsel. If the court finds at the first hearing that any of those conditions exist, the court must dismiss the provisional counsel. The court can consider a parent's eligibility and desire for appointed counsel at any point in the proceedings. The appointment of provisional counsel must be pursuant to rules adopted by the Office of Indigent Defense Services. G.S. 7B-602(a).

See supra § 2.5.D (providing further detail related to appointment of counsel, waiver of counsel, withdrawal of counsel, pro se representation, and ineffective assistance of counsel).

Tool: AOC Form AOC-J-143, "Waiver of Parent's Right to Counsel" (Oct. 2013).

The Juvenile Code specifies only that a parent has a right to appointed counsel if indigent and, unlike some other states' codes, is silent with respect to representation of a guardian, custodian, or caretaker. (*See, e.g.*, Ky. Rev. Stat. Ann. § 620.100(1)(c), which authorizes the court "in the interest of justice, [to] appoint separate counsel for a nonparent who exercises custodial control or supervision of the child, if the person is unable to afford counsel . . . ") Policy of the North Carolina Office of Indigent Defense Services states that IDS will pay for representation of an indigent nonparent, pursuant to G.S. 7A-498.3(a)(1), if a judge concludes that due process requires appointment of counsel for the non-parent respondent in an abuse, neglect, or dependency proceeding. *See* N.C. Office of Indigent Defense Services, *Appointment of Counsel for Non-Parent Respondents in Abuse, Neglect, and Dependency Proceedings* (July 2, 2008).

4. Appointment of guardian ad litem for parent. The Juvenile Code, in G.S. 7B-602, either requires or authorizes the court to appoint a guardian ad litem for the parent pursuant to Rule 17 of the Rules of Civil Procedure in two circumstances: 1) where the parent is an unemancipated minor, a GAL must be appointed; and 2) where the parent is incompetent, a GAL may be appointed. GAL representation for parents is discussed *supra* §2.5.F.

5. Significance of uninvolved, missing, or unknown parents. Even when allegations of a child's abuse, neglect, or dependency relate primarily or solely to one parent, both parents should be named as respondents in the petition and provisional counsel should be appointed for each known parent. Juvenile petitions are not filed "against" parents, and a parent who is not involved, whose whereabouts are unknown, or even whose identity is unknown has rights that may be affected by the proceeding. That parent or his or her relatives may be important resources for the child. All petitions should include information about both parents' identity,

location, and involvement or lack of involvement with the child. At a hearing to determine the need for continued nonsecure custody, the court is required to address the issue of missing or unidentified parents. *See infra* § 5.6.E (providing detail on inquiries the court must make at hearings to determine need for continued nonsecure custody).

6. Serving a missing parent. Service of the summons and petition may be made by publication when a party named in the petition cannot be found by diligent effort. G.S. 7B-407; N.C. R. CIV. P. 4(j1). *See supra* § 4.4.B.2 (providing more detail on service by publication).

7. Paternity and putative fathers. The term *putative father* refers to the person alleged to have fathered the child but whose parentage has not been legally established. Even if the mother was married at the time of the child's conception or birth, it is possible that the child has both a "legal" father—the man to whom the mother was married—and a putative biological father.

A birth certificate may create a presumption of paternity but is not definitive. If a mother is married at the time of either conception or birth, or between conception and birth, the name of her husband must be entered on the birth certificate as the father of the child, unless paternity has been otherwise established by a court or by an affidavit. G.S. 130A-101(e). If a mother is unmarried at all times from the date of conception through birth, a father's name can be entered on a birth certificate only if the parents complete an affidavit acknowledging paternity pursuant to G.S. 130A-101(f) or the certificate is amended pursuant to G.S. 130A-118(b) based on a judicial determination of parentage. In a termination of parental rights case in which the respondent father was not married to the child's mother but his name appeared on the child's birth certificate, failure to establish paternity was alleged as a ground for termination. The court of appeals affirmed the trial court's order concluding that the ground had not been established, holding that the father's name on the child's birth certificate created a rebuttable presumption that his paternity had been established by affidavit or court order. *In re J.K.C.*, 218 N.C. App. 22 (2012). The court reasoned that the unmarried father could not have been listed as the father on the child's birth certificate unless his name was placed on the certificate in accordance with either G.S. 130A-101(f) or G.S. 130A-118(b).

At the beginning of a case in which the child is in nonsecure custody, at each hearing on the need for continued nonsecure custody the court must "[i]nquire as to the identity and location of any missing parent and [as to] whether paternity is at issue." The court must make findings about and may order efforts aimed at locating and serving a missing parent or establishing paternity. G.S. 7B-506(h)(1). While the Juvenile Code requires the court to address the issue of paternity, it does not provide procedures for doing that, other than its reference to certain procedures in G.S. 7B-1111(a)(5) addressing the ground for terminating parental rights based on failure to establish paternity. Statutory provisions relating to paternity that may be relevant in juvenile proceedings include:

(a) Blood or genetic marker test. In any civil action in which the question of paternity arises, on motion of a party the court must order the mother, the child, and the "alleged father-defendant" to submit to one or more blood or genetic marker tests. The court may order

the party seeking the test to pay for it. *See* G.S. 8-50.1(b1) (setting out procedures and standards for admissibility of test results).

(b) Presumed father or mother is competent witness. "Whenever an issue of paternity of a child born or conceived during a marriage arises in any civil or criminal proceeding, the presumed father or the mother of such child is competent to give evidence as to any relevant matter regarding paternity of the child, including nonaccess to the present or former spouse, regardless of any privilege which may otherwise apply." G.S. 8-57.2.

(c) DHHS registry. One of the grounds for terminating parental rights refers to a putative father establishing paternity by "affidavit which has been filed in a central registry maintained by the Department of Health and Human Services." G.S. 7B-1111(a)(5)(a). *See infra* § 9.11.E (explaining the TPR ground). (This "central registry" is not related to the central registry that collects information about child abuse, neglect, and dependency, described *supra* § 5.2.A.)

***Practice Note*:** To file an affidavit of paternity or inquire as to whether one has been filed, contact:

North Carolina Division of Social Services
Adoption Review Team
820 S. Boylan Ave.
2411 Mail Service Center
Raleigh, NC 27699-2411
Telephone: 919-527-6370

(d) IV-D parent locator service. DHHS is required to "attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents [and] to assist any governmental agency or department in locating an absent parent . . . ." G.S. 110-139(a). This registry may be a source of information in abuse, neglect, and dependency cases. In addition, DSS or the court may initiate a request for parent locator services.

The state's Child Support Enforcement Program (CSE) can obtain information about parents from the Federal Parent Locator Service and through the State Parent Locate Service. If the child support program has not already undertaken efforts to locate an absent parent in an effort to obtain child support from that parent, a county DSS can request location services when the child is receiving protective services or foster care services under Title IV-B or Title IV-E of the Social Security Act. The locate services can be used to obtain information about the location of a parent or putative father in relation to DSS's efforts to keep a child within a family unit, to terminate parental rights, or to facilitate the child's adoption. Information about DHHS policies relating to parent locator services are available in the "Locate" section of the NC DHHS Child Support Services Manual. Specific provisions for DSS to request "locate only" services can be found in the "Locate Overview" section of the Child Support Services Manual.

See also G.S. 110-139.1 (providing for DHHS access to federal parent locator services in cases of parental kidnapping, child custody, paternity determination, and child support when requests are made by judges, clerks of superior court, district attorneys, or U.S. attorneys).

(e) Civil action to establish paternity. Chapter 49 of the General Statutes provides for a civil action to establish paternity any time before a child's eighteenth birthday. G.S. 49-14.

(f) Establishing paternity for purposes of child support. G.S. 110-132 provides that affidavits of parentage executed by the putative father and the mother of a child constitute an admission of paternity that, subject to a limited right to rescind, has the same legal effect as a judgment of paternity "for the purpose of establishing a child support obligation." The legal effect of the affidavits for purposes other than child support is not altogether clear, although under G.S. 7B-1111(a)(5) the procedure precludes a finding that the father has not established paternity for purposes of establishing a ground for termination of parental rights. *See also Rosero v. Blake*, 357 N.C. 193 (2003) (declining in a custody action to give establishment of paternity pursuant to G.S. 110-132 less weight than an order under G.S. 49-14 in a civil action to establish paternity).

(g) Special proceeding to legitimate child. The putative father of a child born out of wedlock may file a petition to legitimate the child in a special proceeding before the clerk of superior court. If the child also has a "legal father," he is a necessary party to the proceeding. *See* G.S. 14-10 through 14-13.

Resource: DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, CHILD SUPPORT SERVICES MANUAL (see "Voluntary Methods of Establishing Paternity" in the "Paternity" section of this manual).

C. The Child

1. Child is a party. The Juvenile Code specifically states that the child who is the subject of an abuse, neglect, or dependency proceeding is a party to the case. G.S. 7B-401.1(f), 7B-601(a). However, the child cannot always be treated the same as any other party, as explained in §§ 2.3 and 2.4 *supra* and other relevant sections in this manual.

2. Appointment of guardian ad litem under G.S. 7B-601. In cases alleging abuse or neglect, the court *must* appoint a guardian ad litem to represent the child. If the guardian ad litem is not an attorney, the court also must appoint an attorney advocate. In cases alleging only dependency, the court *may* appoint a guardian ad litem (and an attorney advocate) to represent the child. G.S. 7B-601. Neither the Juvenile Code nor case law provides criteria for when GALs are appropriate in dependency cases; however, it is reasonable to consider factors such as the age of the child and the complexity of the case. A clear understanding of the rights of the child, the appointment and role of the GAL, the Guardian ad Litem Program, and best interest representation, is essential to understanding the child's status; see *supra* §§ 2.3, 2.4 for this information.

Tool: AOC Form AOC-J-207, "Order to Appoint or Release Guardian ad Litem and Attorney Advocate" (June 2014).

D. Department of Social Services

The director of the county Department of Social Services is the only permitted petitioner in an abuse, neglect, and dependency case and therefore is always a party to the proceedings. "Director" is defined in G.S. 7B-101(10) as the county social services director or the director's authorized representative. DSS remains a party until the court terminates its jurisdiction in the case, although one DSS director may be substituted for another if venue is changed and custody is moved from one DSS to another. See G.S. 7B-401.1(a), G.S. 7B-900.1(c). The role, responsibilities, and policies of DSS in abuse, neglect, and dependency cases are addressed in § 2.2 *supra*.

E. Non-Parties

Abuse, neglect, and dependency cases can involve many people, but as described in A. through D., above, the only parties are the parent(s) (and/or guardian, custodian, or sometimes caretaker), the child, and DSS. The person providing care for the child, even if not a party, is sometimes entitled to notice and a right to be heard. *See, e.g.*, G.S. 7B-906.1(b) (review and permanency planning hearings). Others, such as relatives, may attend hearings and provide information for or be heard by the court, but neither receiving notice nor participating in the hearing makes the person a party. G.S. 7B-901. Persons who are not parties, except when they are witnesses, are most likely to participate in non-adjudicatory hearings, such as hearings on the need for continued nonsecure custody and dispositional hearings, which are informal and at which the usual rules of evidence are relaxed. The court generally may direct orders only to the parties. Only parties other than caretakers can appeal the court's orders. *See* G.S. 7B-1001.)

See also supra § 4.7 (discussing intervention).

5.5 Purpose and Requirements of Temporary and Nonsecure Custody

A. Purpose of Temporary and Nonsecure Custody

DSS may determine that in order to protect the child, removal of the child from the home is necessary. This can happen at any stage of the case, including prior to the filing of a petition.

One of the purposes of the Juvenile Code is "[t]o provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents." Another purpose is "[t]o provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence." G.S. 7B-100. The language of the statutes addressing temporary custody and nonsecure custody reflects the purpose of protecting the child while

putting requirements and time limitations in place to prevent unnecessary or inappropriate placements.

Resource: For studies, journal articles, and statistics related to initial placements in out-of-home care, see "Initial Placements in Out-of-Home Care" on the Child Welfare Information Gateway, U.S. Department of Health and Human Services website.

B. Temporary Custody

Temporary custody is extraordinary state intervention. It allows the state (through the county DSS or law enforcement) to take a child into custody with no notice, no hearing, no representation, and no court order. Therefore, the statutory grounds for temporary custody are very narrow. Temporary custody is used only briefly to protect a child while a petition or motion is filed and a court order for nonsecure custody is sought.

1. Circumstances for temporary custody. A child may be taken into custody without a court order by law enforcement or DSS, but only if there are reasonable grounds to believe:

- that the child is abused, neglected, or dependent; and
- that the child would be injured or could not be taken into custody if it were first necessary to obtain a court order.

When DSS takes a child into temporary custody, the department may arrange for the placement, care, supervision, and transportation of the child. G.S. 7B-500. When law enforcement takes a child into temporary custody, it should contact DSS immediately.

2. Length of temporary custody. Once the juvenile is taken into temporary custody, he or she cannot be held for more than twelve hours—or for more than twenty-four hours if any of the twelve hours fall on a Saturday, Sunday, or legal holiday—unless a petition or motion for review has been filed *and* an order for nonsecure custody has been issued. G.S. 7B-501.

3. Newborn abandonment. Certain individuals (health care providers, law enforcement officers, DSS workers, emergency medical workers) *must* take into temporary custody an infant under 7 days old if the infant is voluntarily delivered to that individual by the infant's parent who does not express an intent to return for the infant. *Any* adult *may* take such an infant into temporary custody without a court order in the same circumstances. Those who take custody of the infant must do what is necessary to protect the infant and immediately notify DSS or law enforcement. The person can ask the parent questions about identity or medical history, but the parent is not required to give any information and must be informed of this. A person who takes custody of an infant in this circumstance is immune from civil or criminal liability if the person acts in good faith. G.S. 7B-500. This is part of North Carolina's "safe surrender" law, which also gives the parent immunity from criminal prosecution for abandonment of an infant in this way if the baby is unharmed. While the parent may have immunity from criminal prosecution, safe surrender does nothing to change the juvenile court process and the parent's involvement in that process. G.S. 7B-500(b), (c), (d), (e).

Resource: For more detail on newborn abandonment, see Janet Mason, *Legal Abandonment of Newborns: North Carolina's Safe Surrender Law*, 75 POPULAR GOV'T 29 (UNC School of Government, 2009).

4. Medical professionals. Medical professionals can seek authorization from the court to retain physical custody of a juvenile suspected of being abused when the medical professional examines the juvenile and certifies in writing that the juvenile must remain for medical treatment or that it is unsafe for the juvenile to return home. The medical professional must then make a report to DSS. G.S. 7B-308. This statute is lengthy, with detailed requirements concerning procedures that are in addition to regular provisions concerning reporting and temporary custody.

Practice Note: This provision is rarely used by medical professionals, who are more likely to call DSS or law enforcement than to seek authority to assume temporary custody.

5. Duties of person with temporary custody. When a law enforcement officer or social services worker takes a child into temporary custody under G.S. 7B-500, that person must do the following:

- notify the child's parent, guardian, custodian, or caretaker that the child has been taken into temporary custody and advise that person of his or her right to be present with the child until a determination is made as to the need for nonsecure custody (failure to comply with this requirement is not grounds for releasing the child);
- release the child to the parent, guardian, custodian, or caretaker if the officer or social worker decides continued custody is unnecessary;
- communicate with appropriate DSS personnel who can determine whether a petition should be filed and, if appropriate, can seek an order for nonsecure custody.

G.S. 7B-501.

C. Nonsecure Custody

1. Summary. When DSS believes it is not safe for the child to remain in the home pending a court hearing on an abuse, neglect, or dependency petition, DSS must obtain a nonsecure custody order to take the child into custody or, if the child has been taken into temporary custody, to keep the child in custody more than 12 (or 24) hours. Note that DSS may seek an order for nonsecure custody even when the child could not be taken into temporary custody, because the grounds for nonsecure custody are substantially broader than those for temporary custody.

An order for nonsecure custody is directed to a law enforcement officer or "other authorized person," who is required to give a copy of the order to the child's parent, guardian, custodian, or caretaker. The order includes notice of a hearing, which must be held within seven calendar days, to determine whether continued nonsecure custody is warranted. The hearing may be

continued for up to 10 business days with the consent of the parties, but it cannot be waived altogether.

Distinctions among secure custody, nonsecure custody, custody, and placement: "Secure" custody is within a locked facility and is available only in cases of delinquent or undisciplined juveniles. "Nonsecure" custody is not locked—and therefore not "secure"—and usually refers to pre-adjudication placement of a juvenile in the custody of DSS or a relative. At disposition or post-disposition, the court may enter orders for custody, either as a disposition or as a permanent plan for the juvenile. A court order may distinguish between custody and placement, as when the court orders that DSS have custody and that the child be placed with a relative.

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2. Authority to issue a nonsecure custody order. Any district court judge can issue a nonsecure custody order. In addition, the chief district court judge may delegate the authority to issue nonsecure custody orders to others by filing with the clerk an administrative order designating those persons to whom authority is delegated. G.S. 7B-502. The statute does not limit the chief judge's options with respect to whom he or she may designate. The inherent conflict of interest strongly suggests that it should not be an official or employee of the county DSS. It should, however, be someone who understands the context and the extraordinary nature of nonsecure custody orders. Chief judges generally delegate this authority sparingly, and some do not delegate it at all. Entry of a nonsecure custody order by someone with delegated authority accelerates the timing of the first hearing on the need for continued nonsecure custody. *See infra* § 5.6.B (relating to timing).

Tool: AOC Form AOC-J-150, "Order for Nonsecure Custody (Abuse/Neglect/Dependency)" (June 2015).

Practice Notes: Nothing in the statute prevents the child's GAL from seeking a nonsecure custody order. Although unusual, this might occur if DSS files a petition but does not seek nonsecure custody and the GAL believes nonsecure custody is necessary.

Nonsecure custody orders usually are requested and granted ex parte, soon after the petition is filed and before the parents have been served or are appointed counsel. If nonsecure custody is sought later in a case, when a parent is represented by counsel, the DSS or GAL seeking nonsecure custody should notify the parent's counsel whenever possible.

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3. Requirements and criteria for nonsecure custody order. G.S. 7B-503. A nonsecure custody order may be issued only if the following requirements and criteria are met:

(a) Petition. A petition alleging abuse, neglect, or dependency must have been filed in order for the court to have jurisdiction to enter a nonsecure custody order. *See In re Ivey*, 156 N.C. App. 398 (2003) (holding that the trial court erred in ordering DSS to assume nonsecure custody of an infant when a petition had been filed naming only the infant's siblings); *see also In re T.R.P.*, 360 N.C. 588, 593 (2006) (stating that "[a] trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action

is initiated with the filing of a properly verified petition."); *In re L.B.*, 181 N.C. App. 174 (2007) (holding that the trial court did not have jurisdiction when the order for nonsecure custody was filed, but gained jurisdiction when the petition was filed two days later).

(b) Release of child without court order. If the child is in temporary custody (without a court order), the court first must consider whether the child can be released to a parent, relative, guardian, custodian, or other responsible adult. Caveat: When a child is removed due to physical abuse and there is a resulting petition for the parent to submit to a mental health evaluation pursuant to G.S. 7B-302(d1), the court must rule on this petition before returning the child home. *See infra* § 5.5.C.6 for more detail.

(c) Need for protection. For a nonsecure custody order to be issued, there must be a reasonable factual basis to believe that matters alleged in the petition are true, that there are no other reasonable means available to protect the juvenile, and that:

- the juvenile has been abandoned; or
- the juvenile has suffered physical injury or sexual abuse; or
- the juvenile is exposed to substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or
- the juvenile needs medical treatment to cure, alleviate, or prevent suffering serious physical harm that may result in death, disfigurement, or substantial impairment of bodily functions, and the parent, guardian, custodian, or caretaker is unable or unwilling to provide or consent to the treatment; or
- the parent, guardian, custodian, or caretaker consents to a nonsecure custody order; or
- the juvenile is a runaway and consents to nonsecure custody.

G.S. 7B-503(a).

4. In person or by telephone. The nonsecure custody order must be in writing and direct an authorized person to assume custody of the child. G.S. 7B-504. However, a judge (or a person to whom the chief district court judge has delegated authority) may authorize nonsecure custody by telephone when other means of communication are impractical. Even if authorized by telephone, the order must be in writing and must include:

- the name and title of the judge (or person to whom authority has been delegated) who authorizes nonsecure custody by telephone,
- the signature and title of the official (usually a magistrate) signing the written order pursuant to the telephonic authorization, and
- the hour and date of the telephonic authorization.

G.S. 7B-508.

The role of the magistrate or other official completing the written order does not involve the exercise of discretion. He or she simply records accurately who gave the telephonic

authorization for nonsecure custody and when that occurred, then signs the order and indicates his or her title. (In some districts the same magistrate or official might be authorized by administrative order to actually make the decision about nonsecure custody when it is not possible to contact a judge—a very different role.) Each district or county should have clear procedures for ensuring that the order is filed with the clerk as soon as the clerk's office opens.

An officer receiving a nonsecure custody order may execute it according to its terms without inquiring into its validity, and will not incur criminal or civil liability for its service. G.S. 7B-504.

5. Place of nonsecure custody. An order for nonsecure custody may direct that the child be placed with DSS or an individual designated in the order for temporary residential placement in:

- a licensed foster home or home authorized to provide foster care; or
- a DSS facility; or
- any other home or facility approved by the court and designated in the order.

G.S. 7B-505(a).

A child alleged to be abused, neglected, or dependent may never be placed in secure custody, which is a locked facility. G.S. 7B-503.

(a) Preference for placement with relatives. The court first must consider whether a relative is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to do this, then the court must order placement of the juvenile with the relative *unless* the court finds that placement with the relative would be contrary to the juvenile's best interests. G.S. 7B-505(b). *See In re L.L.*, 172 N.C. App. 689 (2005) (analyzing an identical requirement for disposition and determining that the trial court's failure to make a finding that it was contrary to the child's best interest to place her with willing relatives before placing her with foster parents was error), *abrogated in part on other grounds by In re T.H.T.*, 362 N.C. 446 (2007). Placement with a relative who lives in another state must comply with the Interstate Compact on the Placement of Children (Article 38 of the Juvenile Code). For more information on the Interstate Compact, see *infra* § 7.8.

(b) Nonrelative kin. If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin is willing and able to provide proper care and supervision of the juvenile in a safe home, and order such placement if it finds that it is in the juvenile's best interests. "Nonrelative kin" is an individual having a substantial relationship with the juvenile. If the juvenile is a member of a State-recognized Indian tribe, nonrelative kin includes any member of a state or federally recognized tribe, regardless of whether a substantial relationship exists. G.S. 7B-505(c).

(c) Consideration of child's community. In determining placement, the court must consider whether it is in the child's best interest to remain in his or her community. G.S. 7B-505(d).

(d) ICWA, MEPA, and Native American children. In placing a juvenile in nonsecure custody, the court must consider the application of the Indian Child Welfare Act ICWA) and the Multiethnic Placement Act (MEPA). G.S. 7B-505(d). *See infra* §§ 13.6 and 13.7 (discussing ICWA and MEPA). If the juvenile is a member of a state recognized tribe, the court may order DSS to notify the tribe of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin. G.S. 7B-505(c).

(e) ICPC. Placement of a juvenile with a person, including relatives, *outside of this state* must be in accordance with the Interstate Compact on the Placement of Children (ICPC). G.S. 7B-505(d). *See infra* § 7.8 (discussing the ICPC).

Practice Note: When a nonsecure custody order is issued ex parte, usually in an emergency, the court is unlikely to have enough information to fully consider potential relatives and kin, unless DSS has some history with the family and is making specific recommendations. These issues will receive greater attention at hearings on the need for continued nonsecure custody and at pre-trial conferences or hearings.

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6. Violent caregivers. In cases involving allegations of physical abuse, special rules apply to returning a child to the home in which the alleged abuser lives. When a child is removed from a home due to physical abuse, DSS must thoroughly review the alleged abuser's background. This review must include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser has a history of violent behavior against people, DSS must petition the court to order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. If DSS files a petition for a mental health evaluation and requests a nonsecure custody order, the court must rule on the petition for an evaluation before returning the child to a home where the alleged abuser is or has been present. *See* G.S. 7B-302(d1), 7B-503(b).

5.6 Nonsecure Custody Hearings

A. Summary

The initial nonsecure custody order is the mechanism for quickly authorizing placement of the child for up to seven calendar days. Keeping the child in nonsecure custody longer requires a hearing and after that, if the child remains in nonsecure custody pending adjudication, opportunities for further hearings. The first hearing cannot be waived, although it can be continued for up to ten business days with the parties' consent. In hearings to determine the need for continued nonsecure custody (referred to here as "nonsecure custody hearings"), the court must determine whether the criteria for placing a child in nonsecure custody exist *and* must address a variety of additional issues if the child is kept in custody. In some districts the first nonsecure custody hearing is preceded by an informal meeting or

conference of the parties without the judge. Nonsecure custody hearings may be combined with required pre-adjudication hearings. *See supra* § 5.7 explaining pre-adjudication hearings and conferences.

B. Timing

1. Initial nonsecure custody hearing when nonsecure custody order entered by judge. The court must conduct a hearing within seven calendar days of the time the juvenile is taken into nonsecure custody. As a result, this hearing is often referred to as the "7-day hearing." This initial hearing may be continued for up to ten business days with the consent of the parents and the child's GAL, but the court may require the consent of DSS or other parties or deny a request for a continuance. G.S. 7B-506(a).

2. Initial nonsecure custody hearing when nonsecure custody order entered by delegate. If the original nonsecure custody order was issued by someone designated by the chief district court judge in an administrative order, the hearing must be conducted on the day of the next regularly scheduled session of court, but within seven days in any event. G.S. 7B-506(a).

3. Second and subsequent hearings. After the initial nonsecure custody hearing and pending the adjudicatory hearing, there must be a second nonsecure custody hearing within seven business days of the first hearing and hearings at least every thirty calendar days thereafter, unless waived with the consent of the juvenile's parent, guardian, or custodian and the child's guardian ad litem. G.S. 7B-506(e), (f).

4. Hearings by party request. In addition to the required hearings described above, any party may schedule a hearing on the issue of placement. G.S. 7B-506(g). This request can be made even after a party initially waived subsequent nonsecure custody hearings.

Tools: AOC Form AOC-J-141, "Notice of Hearing in Juvenile Proceeding (Abuse/Neglect/Dependency)" (Oct. 2013).

AOC Form AOC-J-142, "Juvenile Summons and Notice of Hearing (Abuse/Neglect/Dependency)" (Oct. 2013).

C. Jurisdictional Inquiry

Early in the nonsecure custody hearing, the court should consider information in the "status of child" affidavit filed with or included in the petition pursuant to G.S. 50A-209 and other information related to where the child is living or has lived; whether a custody order relating to the child has ever been entered in another court; and whether any other action involving the custody of the child is pending in any court. The hearing should proceed only after the court concludes that it has jurisdiction under the UCCJEA. See *supra* Chapter 3 related to jurisdiction and § 3.3 in particular related to UCCJEA requirements. The court also should consider whether proper service of process has occurred or been waived and, if not, whether appropriate efforts are being made to accomplish service of process. (Note that G.S. 7B-800.1, addressing pre-adjudication hearings, which may be combined with nonsecure custody

hearings, requires the court to make inquiries related to service, a verified petition, jurisdiction, and other factors prior to the adjudicatory hearing. *See infra* §5.7.A (pre-adjudication hearings).)

D. Nature of Hearing: Evidence and Burden of Proof

DSS bears the burden to provide clear and convincing evidence that the juvenile's continued placement in nonsecure custody is necessary. The court is not bound by the usual rules of evidence. However, the court must receive testimony and allow the guardian ad litem or juvenile, and the juvenile's parent, guardian, custodian, or caretaker to introduce evidence, to be heard, and to examine witnesses. G.S. 7B-506. Evidence should be limited to that which relates to the need for continued custody prior to adjudication. This hearing should not be a full hearing on the allegations in the petition unless all parties have consented to proceed with an adjudicatory hearing.

For a full discussion of evidence issues in juvenile proceedings, see *infra* Chapter 11.

The hearing is open unless the court orders it closed pursuant to G.S. 7B-801 (*see supra* § 2.7.A.5).

E. Findings and Issues for Consideration

At the hearing on the need for continued nonsecure custody, the court must inquire about and make findings as to all of the following:

- whether there is a reasonable factual basis to believe the matters alleged in the petition are true (the court cannot keep the child in custody unless it finds a reasonable factual basis);
- whether at least one of the conditions warranting nonsecure custody, listed in G.S. 7B-503(a), exists (*see supra* § 5.5.C.3) (the court cannot keep the child in custody unless it finds at least one of the conditions exists);
- whether there are reasonable means other than nonsecure custody available to protect the child (the court cannot keep the child in custody unless it finds there are no other reasonable means of protection);
- the identity and location of any missing parent and efforts that have been made to identify, locate, and serve that parent (the court may order specific efforts to determine the identity and location of a missing parent);
- whether paternity is at issue and, if it is, efforts that have been made to establish paternity (the court may order specific efforts to establish paternity);
- whether there are relatives who are willing and able to care for the juvenile and, if there are, whether placement with the relatives would be in the child's best interest (placement must be with willing and able relatives unless that is found to be contrary to the child's best interest);
- if there are no suitable relatives, whether there are nonrelative kin willing and able to provide proper care and supervision in a safe home;
- whether there are other juveniles in the home and, if there are, DSS's assessment findings and any actions taken or services provided by DSS to protect those children. (The court

does not have jurisdiction over a child who is not named in a petition. *See In re Ivey*, 156 N.C. App. 398 (2003).);
- the results of any mental health evaluation done pursuant to G.S. 7B-503(b) when a respondent alleged to have abused the child has a history of violent behavior, which the court must consider before returning the child home;
- if the juvenile is a member of a State-recognized tribe, whether DSS should be ordered to notify the tribe in order to locate relatives or nonrelative kin for placement.

See G.S. 7B-506, 7B-503, 7B-507.

When an order continues the placement of a juvenile in DSS custody, the court also must adhere to G.S. 7B-507, which requires the court to:

- determine whether DSS made reasonable efforts to prevent or eliminate the need for the juvenile's placement and whether DSS is required to make those efforts prospectively (a decision that DSS is not required to continue making these efforts requires very particular findings, as discussed *supra* § 2.6.E.6);
- make a finding that the child's continuation in or return to his or her own home would be contrary to the child's best interest; and
- specify that the juvenile's placement and care are the responsibility of DSS and that DSS is to provide or arrange for foster care or another placement of the juvenile.

G.S. 7B-507(a). After considering the recommendations of DSS, the court may order a specific placement that the court finds to be in the juvenile's best interest. G.S. 7B-507(a)(4). See *supra* § 2.6.E for details related to reasonable efforts and other findings required by G.S. 7B-507.

G.S. 7B-905.1 requires the court to address visitation that is in the child's best interests when it removes custody from a parent, guardian, or custodian or continues custody of the child outside the home. See *infra* § 7.4.D for details on visitation and the specific requirements of G.S. 7B-905.1.

If continuing a child's placement in nonsecure custody, the court must comply with the Indian Child Welfare Act (ICWA), the Multiethnic Placement Act (MEPA), and, if placement is with someone outside the state, the Interstate Compact on the Placement of Children (ICPC). G.S. 7B-506(h)(2). *See infra* §§ 13.6 and 13.7 (discussing ICWA and MEPA) and § 7.8 (discussing the ICPC).

Note: If the hearing on the need for nonsecure custody is combined with a pre-adjudication hearing pursuant to G.S. 7B-800.1, there are additional factors the court is required to consider, which are detailed *infra* in § 5.7.A.

F. Limits on Court's Authority at Nonsecure Custody Stage

After making proper findings, the court may order that the child remain in nonsecure custody or return the child to the parent, but may not dismiss the petition for reasons other than a

conclusion that the court lacks subject matter jurisdiction. *In re Guarante*, 109 N.C. App. 598 (1993). The court at this stage may not award permanent custody to a parent or any other person—that authority exists only after an adjudication that the child is abused, neglected, or dependent. *In re O.S.*, 175 N.C. App. 745 (2006). The court's authority to direct orders to parents under G.S. 7B-904 also exists only after an adjudication.

G. Other Issues

If the court continues the child's placement in nonsecure custody, the court should address the following as appropriate:

- school (including, where possible, efforts to ensure that the child is not required to change schools);
- services (including what services the child and parents should be receiving prior to adjudication and how, when, and by whom the services should be provided or arranged);
- financial support for the child; and
- other proceedings, such as pending domestic violence or criminal actions.

H. Requirements for Court Orders

An order for continued nonsecure custody must:

- be in writing;
- include findings of fact, including the evidence relied on in reaching the decision and the purpose of continued custody; and
- be entered—signed and filed with the clerk—within 30 days after the hearing.

G.S. 7B-506.

The required findings in the order are explained *supra* at § 5.6.E. *See also supra* § 4.9 (relating to court orders). See nonsecure custody hearing checklist *infra* at the end of this manual.

Tool: AOC Form AOC-J-151, "Order on Need for Continued Nonsecure Custody (Abuse/Neglect/Dependency)" (Jan. 2015).

I. Nonsecure Custody Order Is Not Appealable

Nonsecure custody orders are specifically excluded from the list of appealable orders in G.S. 7B-1001. G.S. 7B-1001(a)(4). *See also In re A.T.*, 191 N.C. App. 372 (2008).

5.7 Pre-adjudication Hearings, Conferences, and Mediation

A. Pre-adjudication Hearing

Before the adjudicatory hearing the court must address specific matters in a pre-adjudication hearing, but this hearing may be combined with a hearing on the need for continued nonsecure custody or any pretrial hearing conducted according to local rules. Under G.S. 7B-800.1, the court must consider the following:

- retention or release of provisional counsel;
- identification of the parties to the proceeding;
- whether paternity has been established or efforts made to establish paternity, including the identity and location of a missing parent;
- whether relatives have been identified and notified as potential resources for placement or support;
- whether all summons, service of process, and notice requirements have been met;
- whether the petition has been properly verified and invokes jurisdiction (S.L. 2014-16 added this requirement effective October 1, 2014);
- any pretrial motions, including motions for appointment of a GAL for a parent, for discovery, to amend the petition, or for a continuance;
- any other issue that can properly be addressed as a preliminary matter.

At the hearing, the parties may enter stipulations in accordance with G.S. 7B-807 or enter a consent order in accordance with G.S. 7B-801. G.S. 7B-800.1.

B. Child Planning Conferences

Some districts have developed procedures for bringing together everyone involved in a case as early as possible after a child is taken into nonsecure custody to share information and identify and resolve issues, often referred to as a "child planning conference." (In some districts it may be called a "day-one conference" or something else.) Child planning conferences are not provided for by statute and do not involve the judge. They focus more on communication among the parties than on the resolution of legal issues. Child planning conferences generally seek to:

- facilitate the exchange of information, saving the parties time and effort and ensuring that everyone has the same information;
- expedite the delivery of services by identifying needs and appropriate community resources and contacts;
- aid in the early identification and involvement of relatives when appropriate;
- promote a problem-solving rather than adversarial approach to the resolution of issues;
- minimize court delays by coordinating schedules and addressing potential problems that might cause delay; and
- move the case more quickly toward the next stage, minimizing the time the child spends out of the home or speeding the process toward another permanent placement.

In some districts, local court rules establish procedures for these conferences. For example, see Rule 11 of the Local Rules for Juvenile Court, 15A Judicial District (Alamance County Local Juvenile Court Rules). Local rules for other districts are available on the "Local Rules and Forms" page of the North Carolina Administrative Office of the Courts website.

The Court Programs Division of the AOC has created guidelines for child planning conferences: CHILD PLANNING CONFERENCES BEST PRACTICES AND PROCEDURES FOR JUVENILE ABUSE, NEGLECT AND DEPENDENCY CASES IN NORTH CAROLINA (North Carolina AOC, 2009).

C. Permanency Mediation

The permanency mediation program (described *supra* § 1.3.B.11) is active in a few judicial districts and, according to G.S. 7B-202, will be established across the state in stages. The purpose of the program is to provide mediation services to resolve issues in cases in which a juvenile is alleged to be abused, neglected, or dependent or in which a petition or motion to terminate parental rights has been filed. Cases identified as appropriate for permanency mediation are typically ordered to mediation by the judge at the first court hearing after a child is removed from the home. In other cases, the guardian ad litem, a parent's attorney, or DSS may request permanency mediation.

D. Discovery

Court hearings related to discovery motions may take place prior to adjudication. Discovery is addressed in G.S. 7B-700 and is explained in detail *supra*, § 4.6. However, information sharing among parties also takes place pursuant to other Juvenile Code statutes (explained *supra* § 2.7) and through permissible voluntary information sharing.