Chapter 7
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7.1 Introduction and Purpose of Dispositional Phase

A. Introduction

In this manual, the term “dispositional phase” refers collectively to initial disposition hearings, review hearings, and permanency planning hearings that take place after a child has been adjudicated abused, neglected, or dependent. [Requirements relating to the procedures for these hearings and resulting orders are discussed in Chapter 8. This chapter is meant to be read in combination with Chapter 8, and cross-references in this chapter to material in Chapter 8 are essential to an understanding of dispositional outcomes.] The dispositional phase involves proceedings that may be informal and in which the rules of evidence are relaxed. Throughout this phase the court determines and reviews the needs of the child and the family and the best way to meet those needs. The court’s guiding principle in the dispositional phase is the child’s best interests.

The Juvenile Code provides for various outcomes in the dispositional phase. Outcomes may relate to:

- services to the child and family;
- placement of the child;
- evaluation and treatment for the child and/or parents (or others);
- orders directed at DSS, parents, or others intended to address the family’s needs and the child’s best interests; and
- development and implementation of a plan for a safe, permanent home for the child within a reasonable period of time.

Outcomes related to placement, evaluation, and treatment of the child are addressed in G.S. 7B-903 and are referred to as “dispositional alternatives.” These dispositional alternatives, which can be combined, are available to the court at any hearing that takes place during the dispositional phase of the case. *See* G.S. 7B-903(a), 7B-906.1(i).

In addressing the child’s placement, the priority is to help the family through providing community-level services while the child remains in the home. However, if the court determines that the child’s safety and welfare require that the child be placed outside his or her home (or remain outside the home if the child is already placed outside the home), the

court will examine placement alternatives and the best strategy for making it possible for the child to return home safely. If the court determines that the child cannot be returned home within a reasonable period of time, the court must decide what other placement will provide the child with a safe, permanent home within a reasonable period of time.

Regardless of the child's placement, the court may order evaluations, treatment, or services for the child or parents (or sometimes guardians or custodians) in order to better understand or address their needs. Dispositional outcomes that require parents or others to participate in evaluations, treatment, or classes, or to take other actions to address the conditions that led to the adjudication or the child's removal from home, are authorized by G.S. 7B-904 and, indirectly, G.S. 7B-200(b), relating to the court's personal jurisdiction over individuals.

The court's authority to enter dispositional orders is not without limits, and the court is not permitted to make dispositional orders that are beyond the scope of the statutes. Initial disposition hearings are addressed in G.S. 7B-901, and review and permanency planning hearings in G.S. 7B-906.1.

[Note: Prior to legislative changes in 2013, review hearings were addressed in G.S. 7B-906 and permanency planning hearings in G.S. 7B-907. Cases decided under prior law will cite these two sections, which were repealed effective October 1, 2013. *See* S.L. 2013-129.]

Resources: Multiple resources addressing dispositional outcomes for children and issues faced by children and families in foster care, including publications and tools related to specific topics such as physical and mental health issues, child development, child safety, visitation, education, race and ethnicity, substance abuse, older youth, permanency, incarcerated parents, fatherhood, and much more can be found on the following websites:

- The Child Welfare Information Gateway, a service of the Children's Bureau, part of the Administration for Children and Families, U.S. Department of Health and Human Services. For topics not listed in the topic index or more specific than the topic index, use the search box to retrieve a list of resources on a topic.
- National Council of Juvenile and Family Court Judges.
- The website for the American Bar Association Center on Children and the Law, and within that website, *ABA Child Law Practice* online, a gateway to additional resources.

B. Purpose of Disposition

The Juvenile Code refers specifically to dispositional purposes in both G.S. 7B-100 and G.S. 7B-900, and other provisions in the Code expand on these purposes. Read collectively, these provisions indicate the following general purposes, which should guide the court in determining dispositional outcomes for any hearing in the dispositional phase.

1. Exercise jurisdiction to address child's needs. A stated purpose of disposition is to "design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction." G.S. 7B-900. The court must examine the specific needs and limitations of the child and craft a plan that takes into account the child's need for safety,

continuity, and permanence. *See* G.S. 7B-100(2), 7B-100(3), 7B-100(5), 7B-900. In doing so, the court should focus on the conditions that resulted in the adjudication of abuse, neglect, or dependency, with safety as the primary objective. As a corollary, the court also must determine at what point it is no longer necessary or appropriate for the court to continue exercising jurisdiction.

2. Careful consideration of individual needs and circumstances. The Juvenile Code insists on a disposition that "reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family." G.S. 7B-100(2). Code procedures require the court to take into account detailed information from multiple sources when making dispositional determinations, and the court has wide latitude to consider relevant evidence for dispositional purposes. G.S. 7B-901.

3. Respect for family autonomy. Dispositional plans and orders must respect family autonomy and avoid unnecessary or inappropriate separation of children from their parents. *See* G.S. 7B-100(3), 7B-100(4). When possible, the initial approach should be for a child to remain at home with appropriate community-level services. G.S. 7B-900.

4. Preference for placement with relative. When a child must be removed from the home, the court must consider whether a relative is willing and able to provide proper care for the child. *See* G.S. 7B-903(a)(2)c. In situations where a child is removed from one parent's home but living in the home of another parent is a possibility, placement with the other parent must be considered before other relatives or other placement options are considered.

5. Fair procedures and protection of rights. Dispositional procedures are meant to assure fairness and equity as well as protect the constitutional rights of juveniles and parents. *See* G.S. 7B-100(1).

7.2 Non-Placement Dispositional Alternatives

A. Dismissal

An adjudication that a child is abused, neglected, or dependent is a determination that the court has jurisdiction to enter dispositional orders. If the court determines at the conclusion of a disposition hearing that there is no purpose to be served by the continued exercise of jurisdiction by the court, the court has the option to dismiss the case. G.S. 7B-903. Dismissal results in termination of the court's jurisdiction, and the legal status of the child and family (with respect to placement and custody) reverts to the status that existed prior to the filing of the petition, unless a valid order in another proceeding provides otherwise. G.S. 7B-201(b). *See supra* § 3.1.C (relating to ending jurisdiction).

Practice Note: Although dismissal at an initial disposition hearing is uncommon, it may be appropriate when circumstances since the filing of the petition have changed to the point that

there is no longer a need for court involvement (e.g., a parent who abused the child is now incarcerated and the other parent is providing proper care).

B. Continuance

The court has the dispositional alternative of continuing the case to "allow the parent, guardian, custodian, caretaker or others to take appropriate action." G.S. 7B-903(a)(1). For example, the court may find that the family is on track for addressing the conditions that led to the adjudication, and may want to give the family more time to progress before entering a dispositional order or dismissing the case. Similarly, the court might hold a disposition hearing in which the evidence shows what the needs are, what the parents have accomplished so far, and what remains to be accomplished, then continue the case to a specific time to evaluate the parents' continued progress and determine an appropriate disposition.

The Juvenile Code also permits the continuance of a hearing in order to receive additional evidence, reports, assessments, or other information needed in the best interests of the child. G.S. 7B-803. Parties may need more time to gather information in order to recommend, request, or develop an appropriate dispositional plan. Unlike the continuance described above, this type of continuance is not a disposition. *See supra* § 4.5 (relating to continuances). It is a delay of the dispositional hearing and is subject to specific time frames within which each type of hearing (disposition, review, and permanency planning) must be conducted. *See infra* § 8.2.A (relating to the timing of disposition, review, and permanency planning hearings).

C. In-Home Supervision and Services

The Juvenile Code sets out a preference for the use of in-home supervision and community-level services when the child can be safe at home. *See* G.S. 7B-900. The court may require that the child be supervised in his or her own home by DSS "or by other personnel as may be available to the court," subject to any conditions the court places on the parent, guardian, custodian, or caretaker. G.S. 7B-903(a)(2)a. Some recent cases have interpreted the introductory language in G.S. 7B-903(a)(2) to be a required finding prior to adopting a dispositional alternative in that subdivision, so the court's order for in-home supervision should be based on a finding that "the juvenile needs more adequate care or supervision." *See In re S.H.* 217 N.C. App. 140 (2011); *In re B.S.*, __ N.C. App. __, 738 S.E.2d 453 (2013) (unpublished); *In re D.M.,* 219 N.C. App. 647 (2012) (unpublished).

Practice Notes: When a child remains in the home but is supervised by DSS, the court may or may not order that DSS have legal custody of the child while the parent retains physical custody. It is only when DSS has legal custody of the child that the court is required to conduct periodic reviews and permanency planning hearings. When the parent has both legal and physical custody of the child, there is no statutorily mandated proceeding in which the court receives an update on the family's progress and has the opportunity to make or change dispositional orders. Nevertheless, reviews can take place on motion of a party, and the court always has the discretion to order that the case be scheduled for review. See G.S. 7B-1000.

Although permitted by the Juvenile Code, it is uncommon for the court to order someone other than DSS to provide in-home supervision. GALs cannot serve in a home supervision role, as this is beyond the scope and authority of a GAL's role as defined by statute. *See* G.S. 7B-601.

In-home supervision may be ordered as an initial disposition, but it also may be used later when the court orders the return home of a child who has been in foster care or other placement.

7.3 Evaluation and Treatment of Child

A. Court's Authority to Order Evaluation and Treatment

Regardless of the child's placement and other dispositional plans, the Juvenile Code authorizes the court to order that the child be examined by a physician, psychiatrist, psychologist, or other qualified expert in order to determine the child's needs. G.S. 7B-903(a)(3). Once the examination is completed, the court must conduct a hearing to determine whether the child needs treatment and, if so, who should arrange and pay for the treatment. G.S. 7B-903(a)(3)a. *See also infra* § 7.4.E.2 (discussing DSS authority for evaluation and treatment, applicable when a child is placed in DSS custody).

B. Hearing to Determine Treatment Needs

1. Combined hearing. After completion of a court-ordered evaluation, the court must have a hearing to determine the child's treatment needs. G.S. 7B-903(a)(3)a. This hearing is typically combined with a disposition or review hearing.

2. County involvement. Since treatment may involve county services and county finances, the county manager (or other person designated by the chair of the board of county commissioners) must be notified of the hearing and given an opportunity to be heard. G.S. 7B-903(a)(3)a.

3. Treatment arrangements. If the court finds that the child needs medical, surgical, psychiatric, psychological, or other treatment, the court must permit the parent or other responsible person to arrange for the treatment. However, if the parent declines or is unable to make the necessary arrangements, the court may order the needed treatment and direct the county to arrange for it. The statute requires DSS to recommend a facility that will provide treatment for the juvenile. G.S. 7B-903(a)(3)a. If the child needs psychological or psychiatric treatment, DSS ordinarily would coordinate with the local management entity (see § 5 below) in planning for the child's treatment.

4. Treatment costs. Whether or not the parent arranges for treatment, the court may order the parent to pay the cost of the child's treatment or care. G.S. 7B-903(a)(3)a, 7B-904(a). If the court finds that the parent is unable to pay the cost, the court must order the county to arrange and pay for the treatment. G.S. 7B-903(a)(3)a.

5. Mental illness or developmental disability.

(a) Mental health services. The Juvenile Code states that if the court believes or evidence is presented that the child is mentally ill or developmentally disabled, the court must refer the child to the area mental health, developmental disabilities, and substance abuse services [now, local management entity or LME] director for appropriate action, and that this director is responsible for arranging an interdisciplinary evaluation of the child and mobilizing resources to meet the child's needs. G.S. 7B-903(a)(3)b. Note: Because the local management entity is not a party to the juvenile action, the court should refrain from ordering the LME to take specific actions.

These Juvenile Code provisions were written before major mental health care reform legislation in North Carolina. Some terms used in the Code either are obsolete or have been redefined. The "area mental health, developmental disabilities, and substance abuse services" (MH/DD/SA) director referenced in the Code is now director of the "local management entity" (LME) or "local management entity/managed care organization" (LME/MCO). Unlike area authorities in the older system, this entity generally is not a direct service provider. Instead, the LME/MCO authorizes the expenditure of public funds to pay for mental health, developmental disabilities, and substance abuse services provided by LME-contracted service providers.

Medicaid and state-funded MH/DD/SA services can be provided only by service providers contracting with the LME/MCO. In order for a child to receive MH/DD/SA services through an LME/MCO provider, the child must first be evaluated and assessed by an authorized provider, who then seeks authorization from the LME/MCO for specific treatment services.

(b) Commitment. The court has no authority to commit a child directly to a state hospital or mental retardation center. If the interdisciplinary evaluation results in a determination that it is best for the child to be institutionalized, admission should be pursuant to the voluntary consent of the child's parent or guardian. However, if the parent or guardian refuses to consent, the court's signature may be substituted for the purpose of consent. G.S. 7B-903(a)(3)b.

If a regional mental hospital refuses admission to a child referred by mental health and the court, or discharges the child prior to the completion of treatment, the hospital must submit to the court a written report stating:

- the reasons for denying admission or for early discharge;
- the child's diagnosis;
- indications of mental illness and need for treatment; and
- the location of any facility known to have an appropriate treatment program for the child.

G.S. 7B-903(a)(3)b.

7.4 Out-of-Home Placement Dispositional Alternatives

Out-of-home placement dispositional alternatives include:

- DSS custody with or without placement authority,
- custody with a relative or other suitable person or agency, or
- appointment of a guardian.

G.S. 7B-903(a)(2) is the Juvenile Code provision addressing the court's placement options at disposition, introducing the options with the statement "[i]n the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may . . ." Although this language has long been in the Code, recent cases have interpreted the language as requiring the court to make a specific finding that the child needs more adequate care or supervision or needs placement before ordering a disposition listed in G.S.7B-903(a)(2). *See In re S.H.* 217 N.C. App. 140 (Nov. 15, 2011); *In re B.S.*, __ N.C. App. __, 738 S.E.2d 453 (2013) (unpublished); *In re D.M.,* 219 N.C. App. 647 (2012) (unpublished).

In making placement decisions the court is required to consider placement with a parent or other relative first.

See also infra § 8.4.B (discussing out-of-home placement in the context of permanency options, including comparisons of the permanent placement options and requirements for modifying or terminating them); § 8.6 (discussing voluntary foster care placement, which is not a dispositional alternative but is a type of out-of-home placement that must be reviewed by the court).

A. Best Interest

1. Primary standard. The court's decisions related to placement center on the determination of what is in the child's best interests. *See supra* § 7.1 (discussing all dispositional purposes, including best interest). North Carolina appellate cases have referred to "best interest" as the "polar star" of the Juvenile Code. *See In re T.H.T.*, 362 N.C. 446 (2008); *In re R.T.W.*, 359 N.C. 539 (2005); *In re Montgomery*, 311 N.C. 101 (1984).

Practice Note: The determination of best interest is a judicial function, not to be confused with the role of the GAL to represent the best interests of the child and make recommendations to the court.

2. Not applicable between non-parent and fit parent. When the court is deciding between placing custody with a non-parent and placing the child with a fit and able parent, the best interest standard is not applicable (or, one might say, the law presumes that placement with a fit parent is in the child's best interest). The fit parent has a paramount right to the care and custody of his or her child. The best interest standard applies when the court is deciding a custody dispute between two parents or when neither parent is a candidate for custody. When the court is deciding between a parent and a non-parent, the best interest standard applies only

where there has been a showing that the parent is unfit, has neglected the child, or has acted inconsistently with the parent's constitutionally protected status as a parent. *See David N. v. Jason N.*, 359 N.C. 303 (2005); *Price v. Howard,* 346 N.C. 68 (1997); *Petersen v. Rodgers*, 337 N.C. 397 (1994); *In re D.M.*, 211 N.C. App. 382 (2011); *In re B.G.*, 197 N.C. App. 570 (2009). A determination that a natural parent has acted inconsistently with his or her constitutionally protected status must be supported by clear and convincing evidence. *See, e.g.*, *David N. v. Jason N.*, 359 N.C. 303, 307 (2005).

DSS is considered a non-parent whose interests are not equal to those of a non-offending parent, making the best interest standard inapplicable when the court is deciding between custody to DSS and custody to a parent who has not been shown to be unfit, to have neglected the child, or to have acted inconsistently with his or her protected parental status. *See In re J.A.G.*, 172 N.C. App. 708 (2005) (reversing disposition order that placed child in DSS custody where findings did not support conclusion that mother neglected the child or that the child was dependent; mother no longer lived with father who had abused the child, and there was no indication that mother was unwilling to comply with order that the father have no contact with child).

Misapplication of the best interest standard must be raised in the trial court in order for the issue to be reviewable on appeal. The parental preference is based on the parent's constitutional rights, and constitutional issues not raised at trial cannot be considered for the first time on appeal. *See in re T.P.*, 217 N.C. App. 181 (2011). The trial court's determination of whether a parent's conduct was inconsistent with his or her parental status will be reviewed by appellate courts according to whether the court's findings of fact support its conclusion. *See Rodriguez v. Rodriguez*, 211 N.C. App. 267 (2011) (holding in a custody case between the child's mother and grandparents that a finding that the children had been adjudicated dependent in an earlier proceeding was not, by itself, sufficient to support a conclusion that the mother had acted in a manner inconsistent with her parental status); *In re D.M.*, 211 N.C. App. 382 (2011) (holding that the trial court erred in awarding permanent custody to a grandparent where the trial court specifically found that neither parent was unfit and made no findings or conclusions as to whether the father had acted inconsistently with his parental status).

3. Child's own community. In determining out-of-home placement, the court must consider whether it is in the child's best interest to stay in the child's own community rather than move elsewhere. G.S. 7B-903(a)(2)c. (Note also that most placements across state lines must be in compliance with the Interstate Compact on the Placement of Children, explained at § 7.8 *infra*.)

Practice Note: This provision related to the court's consideration of community ties is broad and suggests that the court might examine factors such as:

- the child's school and the impact of changing schools;
- ties with or support from siblings, relatives, or friends in the community and the impact that relocating could have on such ties or support;
- the child's current receipt of services from specific individuals or agencies in the

community and the impact of disrupting, changing, or losing relationships with particular service providers;
- the child's involvement with specific activities or groups and the impact of changing or losing that involvement (e.g., music, scouts, church, sports, etc.);
- the location of the parents and the effect of a particular placement on the child's ability to see the parents.

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4. Court's determination of best interest. There is no specific definition of "best interest" in the Juvenile Code or elsewhere. The determination of best interest is in the trial court's discretion, and an appellate court will review a trial court's best interest determination for an abuse of discretion. *See, e.g., In re D.S.A.*, 181 N.C. App. 715 (2007) (holding that trial court's determination that it was not in child's best interest to be placed in paternal grandparents' custody was not an abuse of discretion). In addition, a determination that a particular disposition is in a child's best interest is a conclusion of law that must be supported by findings of fact based on competent evidence in the record. *In re Helms*, 127 N.C. App. 505 (1997). In a custody action the court of appeals said the following, which is equally applicable to best interest determinations in juvenile cases:

> [A] custody order is fatally defective where it fails to make detailed findings of fact from which an appellate court can determine that the order is in the best interest of the child, and custody orders are routinely vacated where the "findings of fact" consist of mere conclusory statements that the party being awarded custody is a fit and proper person to have custody and that it will be in the best interest of the child to award custody to that person. A custody order will also be vacated where the findings of fact are too meager to support the award.

Carpenter v. Carpenter, ___ N.C. App. ___, 737 S.E.2d 783, 787 (2013), *quoting Dixon v. Dixon*, 67 N.C. App. 73, 76-77 (1984) (citations omitted).

What follows are a few of many cases discussing the court's determination of best interest. However, nearly all appellate cases discussing the sufficiency of the evidence to support a dispositional decision either discuss or mention best interest. Many of these are cited in other sections of this chapter and elsewhere.

Case examples related to best interest:

- Where a sixteen-year-old child had been in and out of foster care during his life, his mother had made some progress, and the child desired to return to his mother, it was not error for the trial court to conclude that it was nevertheless in the child's best interest to appoint the foster father as the child's guardian. The trial court's findings provided sufficient evidence that the plan for guardianship was in the child's best interest and that the respondent mother could not adequately care for him. *In re L.M.*, __ N.C. App. __, 767 S.E.2d 430 (2014) (published, but originally reported as unpublished).
- There was insufficient evidence to support a conclusion that the change in custody from

father to mother was in the child's best interest where the only relevant findings were that the child was not totally happy in her current residence; she missed her animals, her mother, her grandfather, and her stepfather (two of whom had neglected her); and she said she was glad that her biological father was in her life. The appellate court also found fault with an indication from the transcript that the principal basis for the change in custody was the fact that the father was unmarried, citing *Stanley v. Illinois*, 405 U.S. 645 (1972), which explicitly rejected this line of reasoning. *In re H.S.F.*, 177 N.C. App. 193 (2006).
- Evidence of a strong emotional bond between parent and child is critically important but not determinative on the issue of best interest. *In re Shue*, 63 N.C. App. 76 (1983), *aff'd as modified on other grounds*, 311 N.C. 586 (1984).
- Respondent mother asserted that the trial court erred in failing to consider the progress she had made and in ceasing reunification efforts, but the court of appeals found that while the trial court had considered her progress, there was not enough progress for the court to be assured that the children could be safely returned to her care, and the best interests of the children, not the rights of the parents, were paramount. *In re T.K.,* 171 N.C. App. 35, *aff'd per curiam*, 360 N.C. 163 (2005).
- Findings were insufficient to support the best interest determination as to custody outside of respondent's home, where findings were that respondent made diligent efforts to comply with the DSS case plan; both DSS and the GAL noted the absence of safety concerns in the home and recommended custody with respondent; and the trial court's findings that indicated some reservations about custody with the respondent were inadequate to support the best interest determination. *In re J.B*., 197 N.C. App. 497 (2009).
- Where the trial court had made a finding that return of the child was contrary to the best interests of the child in that conditions leading to removal had not been alleviated, the court of appeals had difficulty determining which "condition" the trial court was referring to. One of the possibilities was the trial court's finding of "sexual deviancy" and that the respondent was bisexual, where the trial court had characterized this lifestyle as "abnormal" and "not conducive to child rearing." The court of appeals rejected such a finding, stating that it is not self-evident that sexual orientation has an adverse effect on the welfare of the child. Even if the court's finding that the parent is bisexual and people who surround her "engage in a similar lifestyle" were supported by evidence, there were no findings linking these circumstances to a negative impact on the child's welfare or on her parents' abilities to care for her. The court of appeals held that these conditions could not be a basis to take custody away from the child's biological parents. *In re M.M*., __ N.C. App. __, 750 S.E.2d 50 (2013) (see also cases cited therein).

B. Relatives Considered First

In examining out-of-home placement options, the court and DSS are required to consider first whether a relative of the child is willing and able to provide proper care and supervision in a safe home. *See infra* § 7.4.C.2.a (related to custody and placement authority of DSS). Where there is a willing and able relative, the child must be placed with that relative *unless* the court finds that placement with the relative is contrary to the best interests of the child. G.S. 7B-903(a)(2)c. *See also In re L.L*., 172 N.C. App. 689 (2005) (declaring that priority for placement with relative applies not only to a disposition hearing, but also to review and

permanency planning hearings), *abrogated in part on other grounds by In re T.H.T.*, 362 N.C. 446 (2008). Because placement with an out-of-state relative requires compliance with the Interstate Compact on the Placement of Children, immediate placement with a relative may not be possible. *Id*. *See* G.S. 7B-903(a)(2)c. *See infra* § 7.8 (discussing the Interstate Compact on the Placement of Children).

- Where the father had not submitted to a paternity test and DSS had not completed a home study of the father's parents, it was not an abuse of discretion for the court to determine that placement with the father's parents was not in the child's best interest, since the child could be subject to removal from that home. *In re D.S.A*., 181 N.C. App. 715 (2007).
- It was error for the court to place a child with foster parents without finding that it was contrary to the child's best interests to place her with willing relatives. *In re L.L.*, 172 N.C. App. 689 (2005), *abrogated in part on other grounds by In re T.H.T.*, 362 N.C. 446 (2008).
- The trial court did not abuse its discretion in determining that placement with grandparents was not in the child's best interest, where the parents and grandparents were unwilling to consider or explain the source of an infant's serious injuries while in the parents' care, the grandparents were unlikely to deny their daughter access to the child, and it had been recommended that the grandfather attend intensive outpatient substance abuse treatment. *In re B.W.*, 190 N.C. App. 328 (2008).

When placement with a relative is considered, the court must also determine whether it is in the child's best interest to stay in the community where the child lives. *See supra* § 7.4.A.3 (discussing community considerations); *see also supra* § 3.5 (discussing change of venue).

Practice Note: When the court considers whether a relative is "willing and able" to care for a child, it is important for the court to make this determination in relation to the child's specific needs (e.g., special needs) and the relative's ability to meet those needs.

C. Meaning and Impact of "Custody" and "Placement"

1. Meaning of custody. The term "custody" is not specifically defined in the Juvenile Code. However, the Code does require the court to assure that a person receiving custody understands its legal significance and to address certain specific issues in "precise terms" in a dispositional order. *See* G.S. 7B-903(c), 7B-905. *See infra* § 8.5 (discussing in greater detail the impact and requirements of language in dispositional orders).

A custodian is the person or agency who has been awarded legal custody of a child by a court. G.S. 7B-101(8). A custodian is a party to the case if he or she: (a) is the custodian of the child when the petition is filed, or (b) is awarded custody of the child in the juvenile proceeding and the court has found that the custody arrangement is the permanent plan for the child. G.S. 7B-401.1. (Until 2013, "custodian" was defined both as a person or agency awarded legal custody by a court *and* as one who assumes the status of a parent without being awarded legal custody. The second prong of the definition that was removed from the statute addressed someone who now is considered a caretaker.)

The word "custody" is used in more than one way in the Juvenile Code in that it may refer to a temporary legal arrangement or a more permanent arrangement. Temporary custody, nonsecure custody, and custody granted at disposition are all different. A custody order entered after adjudication (whether at a disposition, review, or a permanency planning hearing) may be in the nature of a disposition. Only an order entered at a permanency planning hearing can award custody as the permanent plan for the child. *See In re D.C.*, 183 N.C. App. 344 (2007) (decided under prior law) (holding that it was error for the trial court to order a permanent plan of custody when the parent had not received notice that the hearing was a permanency planning hearing). *See also infra* § 8.4 related to permanent placement options. Also, "custody" may refer to a civil custody order entered pursuant to G.S. 7B-911 and Chapter 50. *See infra* § 7.7 (relating to civil custody orders).

Although the term "non-secure custody" is only used in Article 5 of the Juvenile Code, which addresses the pre-adjudication phase of a case, use of this term by the trial court in the dispositional phase was addressed by the court of appeals in *In re J.W. and K.M*, ., __ N.C. App. __, __ S.E.2d __ (May 5, 2015). The court of appeals did not find error where the trial court awarded DSS "non-secure custody" of the juveniles at disposition. In doing so, the court of appeals focused on the definition of "non-secure," stating that it merely distinguishes the type of custody from "secure custody," which involves government-supervised confinement. The court rejected the respondent's argument that "custody" and not "non-secure custody" could be awarded at disposition. Note: This case did not address the distinction between "non-secure custody" granted in the pre-adjudication phase of the case under Article 5 of the Juvenile Code and the use of the term "nonsecure custody" in the dispositional phase.

Practice Note: Assumptions tend to be made concerning the authority and duties that accompany an order giving one "custody," but because "custody" does not have one distinct meaning and is not statutorily defined, it is important for the court to make its intentions clear when ordering custody. To avoid problems surrounding the meaning of custody, the court should anticipate questions that might arise with respect to the custodian's authority or duties and specifically address them in the order.

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2. Relationship between custody and placement. Legal custody, placement, and placement authority are not the same thing and are not automatically tied to one another. Consider the following:

(a) Custody and placement authority. A court's order giving custody to DSS is required to specify that DSS has placement authority. G.S. 7B-507(a)(4). However, the court can direct a specific placement that it finds to be in the juvenile's best interest, after considering DSS's recommendations. G.S. 7B-507(a)(4).

(b) Joint custody is permissible. The court may order joint custody. In the case of *In re B.G.*, 197 N.C. App. 570 (2009), the trial court awarded joint legal custody of a child to her father and her maternal aunt and uncle, giving physical custody to the aunt and uncle. The court of appeals rejected the father's argument that joint legal custody was not an authorized dispositional alternative. (The custody order was reversed, however, because

the trial court's findings of fact were insufficient to support application of the best interest standard.)

(c) The order cannot divide physical custody and physical placement. The court may not order physical custody with one person and physical placement with another person. The phrase "physical custody" is used to refer to the rights and obligations of the person with whom the child resides. *In re H.S.F*., 177 N.C. App. 193 (2006). However, where the children were in a safe placement with a relative and the parties stipulated to an adjudication of neglect, the trial court did not abuse its discretion when it "sanctioned" continued placement with the relative but left custody with the mother. The court of appeals, distinguishing the case from *In re H.S.F., id.*, emphasized that the trial court had not ordered physical placement of the children with the relative, but had approved the mother's decision about where the children should be placed. *In re D.L.*, 215 N.C. App. 594 (2011).

3. Life of a juvenile custody order. Custody pursuant to a juvenile disposition order can be modified by the court, but the custody order is effective only while the court continues to exercise jurisdiction in the juvenile case. G.S. 7B-201(b). Review of the custody order will take place periodically pursuant to G.S. 7B-906.1, unless the requirements for waiving reviews in G.S. 7B-906.1(n) are met or the court terminates its jurisdiction. *See infra* § 8.2.A.4 (discussing waiver of reviews); § 8.4.B (discussing custody as a permanency option, reasons and requirements for changing or ending custody, and comparing it to other permanency options); § 3.1.C (discussing continuing or ending jurisdiction).

Whenever the court places custody with a parent or other appropriate person, the court is required to determine whether jurisdiction in the juvenile proceeding should be terminated and custody of the child awarded to the parent or other appropriate person under Chapter 50 civil custody provisions. G.S. 7B-911. (Note that prior to 2013 the court had the option to convert to civil custody under certain circumstances but was not required to consider it.) Conversion to civil custody pursuant to G.S. 7B-911 may be preferred by the court when the need for intervention through a juvenile court action has ended, but there is a need to have a custody order remain in effect. *See infra* § 7.7 for details.

If the court retains jurisdiction over a juvenile, awards custody to a parent, and does not conduct periodic reviews of the placement, any new allegations of abuse, neglect, or dependency must be raised in a new petition and may not be asserted through a motion in the pending case. *See* G.S. 7B-401(b).

4. Permanent placement. The court may order a placement to be the child's permanent plan, but only at a permanency planning hearing. Although language in G.S. 7B-906.1(d)(3) says the court must "consider a permanent plan of care" when ceasing reunification efforts at any review hearing, G.S. 7B-507(c) states that when the court orders reunification efforts to cease at a hearing that is not a permanency planning hearing, a subsequent hearing within 30 days (which would be designated a permanency planning hearing) should be scheduled for the court to consider the child's permanent plan. This conforms with the decision in *In re D.C.*, 183 N.C. App. 344 (2007) (decided under prior law), where it was error for the trial court to

order a permanent plan of custody when the parent had not received notice that the hearing was a permanency planning hearing in which permanent placement would be considered by the court. *See also infra* § 8.4 related to permanent placement options.

D. Visitation

1. Visitation must be addressed for out-of-home placement. Anytime custody is removed from a parent, guardian, or custodian, or placement outside the home is continued, the order must address appropriate visitation that is in the child's best interest and consistent with the child's health and safety. G.S. 7B-905.1(a). Appellate cases have found reversible error for failing to address visitation in a disposition order. *See, e.g., In re S.C.R.*, 217 N.C. App. 166 (2011); *In re C.M.*, 198 N.C. App. 53 (2009); *In re C.P.,* 181 N.C. App. 698 (2007).

Note: Prior to 2013, visitation was addressed in G.S. 7B-905(c). Section 24 of S.L. 2013-129 enacted G.S. 7B-905.1, which includes more extensive and specific provisions relating to visitation.

(a) Specific orders required. Visitation orders must indicate the minimum frequency and length of visits and whether the visits must be supervised. G.S. 7B-905.1(b), (c). Even before this requirement was codified in 2013, decisions in several appellate cases found error when orders related to visitation were not specific enough. *See In re T.H.*, __ N.C. App. __, 753 S.E.2d 207 (2014) (remanding for failure to include minimum outline of time, place, and conditions of visitation); *In re J.P.*, __N.C. App. __, 750 S.E.2d 543 (2013) (reversing and remanding visitation portion of disposition order for failure to contain a minimum outline); *In re M.M.*, __ N.C. App. __, 750 S.E.2d 50 (2013) (remanding in part because the visitation provisions were not specific enough and gave too much discretion to guardians to determine visitation); *In re W.V.,* 204 N.C. App. 290 (2010) (holding that order giving father weekly supervised visits was not specific enough and did not constitute a sufficient "minimum outline" of a visitation plan).

The statutory requirement that visitation orders indicate the "minimum frequency and length of visits" has been interpreted by the court of appeals to mean that the trial court must provide a framework for determining the time and place of visits but that the order itself does not have to include the particular time and place for visits. *In re N.B and L.B.*, __ N.C. App. __, __ S.E.2d __ (April 7, 2015) (here, the court's order was held to be in compliance with this statute where it provided for visits at a minimum of one hour once per month, to be supervised by the family therapist, the date and time of which was to be coordinated with the family therapist). A dispositional order that provides for weekly, supervised visits with the child and states that all prior orders remain in full force and effect, when read together with a prior order providing for weekly two-hour supervised visits with one child and weekly one-hour supervised visits with the other child, properly addressed the frequency and length of visits in compliance with G.S. 7B-905.1. *In re J.W. and K.M.*, __ N.C. App. __, __ S.E.2d __ (May 5, 2015).

(b) Electronic communication. In the case *In re T.R.T*, __ N.C. App. __, 737 S.E.2d 823 (2013), the court of appeals held that communication via Skype is a form of electronic

communication that cannot take the place of face-to-face visitation. In so ruling, the court looked to G.S. 50-13.2(e), which states that electronic communication may not be used as a replacement or substitution for custody or visitation. The court emphasized that electronic communications supplementing visitation between a parent and juvenile must comply with G.S. 50-13.2(e), which provides specific guidelines relating to best interest, availability of equipment, and other factors.

***Practice Note*:** In relying on G.S. 50-13.2(e), the court reasoned that while G.S. 50-13.2(a) explicitly limits its application to custody orders entered under 50-13.2, nothing in subsection (e), dealing with electronic communications, limits its application in that way. Therefore, the court said, G.S. 50-13.2(e) is a generic provision that applies to all custody actions. This reasoning raises a question as to whether other subsections of G.S. 50-13.2 could apply to orders under the Juvenile Code when they deal with matters not addressed by the Juvenile Code.

2. Visitation consistent with health, safety, and best interest. The Code requires that visitation orders be consistent with the health and safety of the child and in the child's best interest. G.S. 7B-905.1(a). While the court must address visitation, it may determine that visitation is not appropriate in some circumstances. *See, e.g*., *In re J.S.,* 182 N.C. App. 79 (2007) (holding that evidence was sufficient to support the trial court's order for no visitation with the father where evidence showed that the father beat the child two to three times a day causing injuries, thus no amount of contact could be said to be in the best interest of the child or consistent with the health and safety of the child); *In re K.C*., 199 N.C. App. 557 (2009) (holding that while the court may have failed to make an express finding that visitation with mother would be inappropriate, the mother was not entitled to relief because any error was due to her own stated wishes not to see the children, her cancellation of visitation, her refusal to work with DSS toward reunification, and her unwillingness to follow through with agreed-upon recommendations).

3. DSS responsibility; court approval. If DSS has custody or placement responsibility for the child, the court may order DSS to arrange, facilitate, and supervise a *court-approved* visitation plan consistent with the best interests of the child. The plan must indicate the minimum frequency and length of visits and whether the visits must be supervised. G.S. 7B-905.1(b). Unless the court orders otherwise, DSS has the discretion to do the following:

- determine who will supervise visits when supervision is required;
- determine the location of visits;
- change the day and time of visits in response to scheduling conflicts, illness of the child or party, or extraordinary circumstances.

Limited and temporary changes must be communicated promptly to the affected party, and ongoing changes must be communicated in writing to the party, stating the reason for the change. G.S. 7B-905.1(b).

If a child is in the custody or placement responsibility of DSS, the director may allow unsupervised visitation with the parent, guardian, custodian, or caretaker only after a hearing

at which the court finds that the child will receive proper care and supervision in a safe home. G.S. 7B-903(a)(2)c.

4. Guardians and custodians. If the child is placed or remains in the custody or guardianship of a relative or other suitable person, any visitation order must specify the minimum frequency and length of the visits and whether the visits must be supervised. The court may authorize additional visitation agreed upon by the respondent and custodian or guardian. G.S. 7B-905.1(c). Determination of visitation rights is a judicial function that cannot be delegated to the child's custodians. *In re M.M.*, __ N.C. App. __, 750 S.E.2d 50 (2013); *In re L.B.*, 181 N.C. App. 174 (2007); *In re T.T.*, 182 N.C. App. 145 (2007); *In re E.C.*, 174 N.C. App. 517 (2005); *see also In re J.D.R.*, __ N.C. App. __, 768 S.E.2d 172 (2015) (although the father did not have complete authority to determine visitation, the degree of delegation given to father by the court to determine visitation by mother went too far, and the order related to visitation rights was therefore remanded).

5. Suspension of visitation. The court's order concerning visitation may specify conditions under which visitation may be suspended. G.S. 7B-905.1(a). When DSS has custody or placement responsibility, DSS may temporarily suspend all or part of the visitation plan if DSS makes a good faith determination that the plan is not consistent with the child's health and safety. G.S. 7B-905.1(b). If DSS suspends the plan, it must expeditiously file a motion for review and will not be subject to a motion to show cause for the suspension. *Id.*

The court of appeals held that a trial court may order a parent to pay for the cost of supervised visitation as part of ordering conditions for visitation that are in the best interests of the child. In ordering the parent to pay the cost of supervised visits, the court is not required to consider the parent's ability to pay. *In re J.C.*, __ N.C. App. __, 760 S.E.2d 778 (2014). The North Carolina Supreme Court reversed, holding that the trial court did not make sufficient findings for meaningful appellate review and remanded the case to the trial court to make findings about a parent's ability to pay. *In re J.C.*, __ N.C. __ (June 11, 2015). The remand suggests that a trial court may impose the costs of supervised visitation on a parent if the court finds the parent has an ability to pay for those costs.

6. Review of visitation plan and mediation. All parties must be informed of the right to file a motion for review of any visitation plan. Prior to or at a hearing to review visitation, the court may order DSS or the GAL to investigate and make written recommendations and provide testimony as to appropriate visitation. After a proper motion, notice, and a hearing to review visitation, the court may establish, modify, or enforce a visitation plan that is in the child's best interest. G.S. 7B-905.1(d).

To resolve visitation issues, the court may order the parents, guardian, or custodian to participate in custody mediation where such programs have been established (pursuant to G.S. 7A-494). When the court refers a case to custody mediation, it must specify the issues for mediation, including but not limited to whether visitation must be supervised and whether overnight visitation may occur. Participants in custody mediation may not consent to a change in custody. A copy of any mediation agreement must be provided to the parties and counsel

and must be approved by the court. G.S. 7B-905.1(d). Mediation of visitation issues is subject to the provisions of G.S. 50-13.1(d) through (f), which address:

- circumstances for dismissal of mediation and having the action heard in court;
- privacy and confidentiality of mediation proceedings as well as inadmissibility in court;
- mediator's authority to interview the child and others; and
- applicability or inapplicability of privilege, immunity, etc.

E. DSS Custody

1. Legal custody and placement authority. The court may order the child to be placed in DSS custody in the county of the child's residence. If the child's residence is in another state, the court may place the child in the custody of DSS in the county where the child is found so that DSS can return the child to his or her home state. G.S. 7B-903(a)(2)c.

Practice Note: The court cannot "transfer" custody of the child to an agency in another state unless a valid order giving that agency custody is already in place, so DSS should contact the appropriate child welfare agency in the other state to discuss the assumption of custody by that agency. However, neither DSS nor the court can force a person or agency in another state to initiate a court action in that state. If a custody action already exists in the child's home state, procedures in Chapter 50A, the UCCJEA, should be used. *See supra* § 3.3 (providing detail on the UCCJEA). The court cannot "transfer" an entire juvenile proceeding to another state.

If the adjudication occurred somewhere other than the county of the child's legal residence, or if the disposition involves placement in a different county, involvement of another county DSS and/or a transfer of venue may be appropriate. *See supra* § 3.5 (discussing transfer of venue).

Anytime the court orders placement or continues placement in DSS custody, the court order must:

- specify that the child's placement and care are the responsibility of DSS and that DSS is to provide or arrange for placement (*but* the court may order a specific placement after considering DSS's recommendations, *see supra* § 7.4.C.2.a);
- include a finding that the juvenile's continuation in or return to his or her own home would be contrary to the juvenile's best interest; and
- include reasonable efforts findings pursuant to G.S. 7B-507.

G.S. 7B-507. *See supra* § 2.6.E (relating to reasonable efforts requirements, including findings that must be made in order to cease reunification efforts). The court must also find as a precondition to placing the child in DSS custody that the juvenile needs more adequate care or supervision or needs placement. See G.S. 7B-903(a)(2); *In re S.H*. 217 N.C. App. 140 (Nov. 15, 2011), *followed by In re B.S*., __ N.C. App. __, 738 S.E.2d 453 (2013) (unpublished) and *In re D.M.,* 219 N.C. App. 647 (2012) (unpublished).

See supra § 7.4.A (relating to the court's focus on best interest in determining out-of-home placement).

See supra § 7.4.B (relating to relatives as the first consideration for out-of-home-placement).

See supra § 7.4.C (relating to the meaning and impact of custody and placement).

See infra § 7.8 (relating to placements across state lines that must be in compliance with the ICPC).

See infra § 8.5 (relating to the contents of orders).

Resources: For DSS policies and procedures related to child placement, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. IV § 1201 (Dec. 2009). *See also supra* § 2.2.C.2 (relating to child placement).

DSS has a category of services designed for family reunification. For an explanation, policies, and procedures regarding these services, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. 2 (Time Limited Family Reunification Services) (July 2013).

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2. DSS authority for evaluations and treatment. When DSS has custody of a child, it may arrange for, provide, or consent to routine or emergency medical care or treatment. G.S. 7B-903(a)(2)c. *See also In re Stratton*, 153 N.C. App. 428 (2002) (holding that parents whose children were adjudicated neglected and dependent and placed in foster care did not have the authority to object to DSS's decision to immunize the children).

For psychiatric, psychological, educational, or remedial evaluations or treatment, DSS must make reasonable efforts to obtain consent from a parent or guardian. When the parent refuses consent or is unknown, unavailable, or unable to act on behalf of the child, DSS may arrange for, provide, or consent to the evaluations or treatment. However, DSS must notify the parent or guardian about the care or treatment and give them frequent status updates on the child's circumstances. A parent or guardian may request and receive results and records of any evaluations or treatment. G.S. 7B-903(a)(2)c. The DHHS manual also encourages DSS, as part of visitation best practices, to give the parent an opportunity to attend the child's doctor and dentist appointments. *See* 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. IV § 1201(V)(I)(4) (2010). *See also supra* § 7.3.A (relating to the court's authority to order evaluations and treatment of a child).

3. Court approval for return home and visitation. Once the court orders a child to be placed in DSS custody, DSS may not permit unsupervised visitation or a return home without a hearing at which the court finds that the child will receive proper care and supervision in a safe home. G.S. 7B-903(a)(2)c. *See also In re H.S.F.*, 177 N.C. App. 193 (2006) (holding that it was error for the court to return the child home to the mother without finding that the child would receive proper care and supervision in a safe home); *In re A.S.*, 181 N.C. App. 706 (holding that it was not error for the trial court to limit visitation or refuse to return

the children home where the trial court found that the conditions that led to removal from the home were still present and that return to the home would be contrary to the welfare of the children), *aff'd per curiam*, 361 N.C. 686 (2007).

"Return home" includes placement of the child in the home of either parent or the home of a guardian or custodian from whose home the child was removed by court order. G.S. 7B-101(18b). A "safe home" is defined as "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." G.S. 7B-101(19). *See infra* § 8.5.B.5 (relating to requirements of addressing visitation in dispositional orders).

4. Notice to GAL of change in placement. When DSS has custody or placement responsibility for a child, it must notify the child's GAL of an intention to change the child's placement unless prevented from giving notice by emergency circumstances. Where emergency circumstances exist, DSS must notify the GAL or the attorney advocate within 72 hours of a placement change unless local rules require that notification be made sooner. G.S. 7B-905(d).

F. Custody with Another Person or Agency

1. Alternatives to DSS custody. The court may order that the child be placed in the custody of "a parent, relative, private agency offering placement services, or some other suitable person." G.S. 7B-903(a)(2)b. This gives the court broad authority to place custody with someone other than DSS. (Custody as a permanent placement must be made in the context of a permanency planning hearing, *see supra* § 7.4.C.4.)

See supra § 7.4.A (relating to the court's focus on best interest in determining out-of-home placement).

See supra § 7.4.B (relating to relatives as the first consideration for out-of-home placement).

See supra § 7.4.C (relating to the meaning and impact of custody and placement).

(a) Parent. The provision allowing custody to a parent may apply where a child is removed from the home of one parent and placement with the other parent is appropriate; where the child has been in the custody of someone other than a parent and the court determines that custody should be returned to the parent [*but see supra* § 7.4.E.3 (relating to requirements for returning a child home)]; or where one parent needs the protection of a custody order to prevent interference by the other parent. It is error for the court to fail to consider giving custody to a parent where placement with a parent is a possibility. *See In re Eckard*, 148 N.C. App. 541 (2002) (holding that the trial court erred when it refused to consider whether the biological father of the child, who had entered the case late, was a candidate for custody of the child after it ceased reunification efforts with the mother). *See also supra* § 7.4.A.2 (discussing the inapplicability of the best interest standard where there is a fit and able parent).

(b) Relative. Willing relatives who can provide a safe home are always the preferred out-of-home placement option unless the court finds that the placement is contrary to the child's

best interest. *See supra* § 7.4.B (preference for relatives).

(c) Private agency. While custody with a "private agency offering placement services" is permissible, it would be rare for the court to order this instead of ordering custody with DSS. A DSS with custody may arrange for a child's placement with a private agency.

(d) Other person. The "catch-all" provision permits the court to place custody with "some other suitable person." Thus, friends of the family or others can be given custody of the child if deemed "suitable" by the court.

2. Assurance of understanding and adequate resources. Before placing a child in the custody or guardianship of someone other than the parents, the court must verify that the person receiving custody or guardianship understands the legal significance of the placement (*see supra* § 7.4.C relating to the meaning and impact of custody and placement) and will have adequate resources to care for the child appropriately. G.S. 7B-903(c); G.S. 7B-600(c). This same determination is required by G.S. 7B-906.1(j) when the court awards custody or appoints a guardian at a review or permanency planning hearing.

Although the Code does not require the court to make specific findings in order to make this determination, appellate cases have required evidence in the record that this verification was made. *See In re P.A.*, __ N.C. App. __ (May 5, 2015) (holding that this requirement was not met where there was inadequate evidence in the record as to the guardian's resources, and the guardian's own assertion of having resources was simply her opinion, which was not evidence of her actual resources); *In re J.E.*, 182 N.C. App. 612 (2007) (holding in the context of a permanency planning hearing that the trial court's determination was satisfactory where it had received into evidence and considered a home study conducted by DSS indicating that grandparents had a clear understanding of the enormity of the responsibility of caring for the children, that they were committed to raising the children, and that they were financially capable of providing for the children); *see also, In re N.B. and L.B.*, __N.C. App. __, __ S.E.2d __ (April 7, 2015); *In re L.M.*, __ N.C. App. __, 767 S.E.2d 430 (2014) (published, but originally reported as unpublished).

The court's verification that the person receiving custody or guardianship understands the legal significance and their responsibilities applies to *each person* receiving custody. In the case *In re L.M.*, the trial court properly verified this as to the foster father, but not the foster mother, although both were being awarded guardianship. The order of guardianship for the foster father was therefore affirmed but the order of guardianship for the foster mother was vacated and remanded. *In re L.M.*, __ N.C. App. __ , 767 S.E.2d 430 (2014) (published, but originally reported as unpublished).

Practice Note: The court should consider both income and services available to the child and caregiver. Some caregivers may not be willing to apply for available monetary benefits, such as TANF (Temporary Assistance for Needy Families), because doing so will create a reimbursement obligation for the child's parents and a duty on the part of the caregiver to cooperate with efforts to obtain support from the child's parents. (Note, however, that a caregiver may be excused from the duty to cooperate if he or she can provide evidence to

support a claim that doing so would not be in the child's best interest.) Some services and benefits, such as scheduling of mental health or therapy appointments or help with the school IEP (Individual Education Plan) process, may not continue when DSS is no longer the child's custodian. The caregiver may need to apply for other services, such as transportation or day care, which had been provided without cost when the child was in DSS custody and now may become an expense for the caregiver.

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3. Placement in another county. Where placement with relatives or friends in another county is a possibility, under some circumstances the court may transfer venue of the case to the other county. *See supra* § 3.5 (relating to venue).

4. Caregiver with violent history. Whenever a child is removed from the home due to physical abuse, DSS must conduct a review of the background of the alleged abuser and if the abuser has a history of violent behavior against people, DSS must petition the court to order the alleged abuser to submit to a mental health evaluation. G.S. 7B-302(d1), 7B-503(b). The court must consider the opinion of the mental health professional who performs the evaluation before returning the child to the custody of that person. G.S. 7B-903(b).

G. Appointment of Guardian

1. Circumstances for appointment. In a juvenile case the court may appoint a guardian of the person for the juvenile when:

- no parent appears at a hearing with the child, or
- any time the court finds it would be in the best interests of the child.

G.S. 7B-600(a).

Note, however, that the best interest standard is not applicable unless the parents are unfit, have neglected the child, or have acted inconsistently with their constitutionally protected status as parents. *See supra* § 7.4.A.2.

A court-appointed guardian of the child is a party to the case if: (a) he or she was the guardian of the child when the petition was filed, or (b) the court appoints the guardian in the juvenile proceeding and orders that the guardianship is the permanenent plan for the child. G.S. 7B-401.1(c).

Guardianship may be ordered as a temporary measure, as a disposition, or as a permanent plan. (However, guardianship as a permanent plan may be ordered only in the context of a permanency planning hearing, *see supra* § 7.4.C.4.)

See supra § 7.4.F.2 (relating to the requirement that the court verify that the person being appointed guardian of the child understands the legal significance of the appointment and will have adequate resources to care appropriately for the child).

See supra § 7.4.A (relating to the court's focus on best interest in determining out-of-home placement).

See supra § 7.4.B (relating to relatives as the first consideration for out-of-home placement).

2. Role of guardian. A guardian appointed under G.S. 7B-600 in a juvenile case is completely different from the child's GAL appointed pursuant to G.S. 7B-601. A guardian appointed for the child pursuant to G.S. 7B-600:

- operates under the supervision of the court, with or without bond;
- has the care, custody, and control of the child or may arrange a suitable placement for the child;
- files reports only when required by the court;
- may represent the child in any legal action;
- may consent to certain actions on the part of the child in place of the parent, including (i) marriage; (ii) enlisting in the military; (iii) enrollment in school; and (iv) necessary remedial, psychological, medical, or surgical treatment.

G.S. 7B-600.

3. Duration of guardian authority. The authority of the guardian continues until the guardianship is terminated by court order, the court terminates its jurisdiction in the juvenile case, or the child is emancipated or reaches the age of 18, whichever occurs first. When guardianship is for a temporary period or is ordered as a disposition (but not as the permanent plan), the court may end the guardianship based on a determination that it is no longer in the child's best interests. G.S. 7B-600. *See also In re J.D.C.*, 174 N.C. App. 157 (2005). However, when guardianship is awarded as the permanent plan for the child pursuant to G.S. 7B-906.1 and the guardian is a party to the case (permanent guardianship automatically makes the guardian a party), it can be terminated only under certain circumstances. *See infra* § 8.4.B.2 (discussing details related to terminating guardianship when the court has ordered it as a permanent plan).

4. Meaning of the term "guardian." In addition to its meaning under the Juvenile Code, the term "guardian" can be used in relation to a person appointed by the clerk of superior court, pursuant to G.S. Chapter 35A, as guardian of the person, guardian of the estate, or general guardian of (i) a minor who has no natural guardian, i.e., no parent; or (ii) a minor who is within six months of reaching age eighteen, is expected to require a guardian as an adult, and has been adjudicated incompetent. The term "guardian" is not to be confused with "guardian ad litem." The term "guardian," by itself, does not refer to a guardian ad litem appointed pursuant to G.S. 7B-601, G.S. 7B-602, or Rule 17 of the Rules of Civil Procedure. Appointment of a guardian pursuant to G.S. 7B-600 does not substitute for the appointment of a guardian ad litem.

7.5 Court's Authority over Parents and Others

The court has jurisdiction over the parent, guardian, custodian, or caretaker of a juvenile who has been adjudicated abused, neglected, or dependent, if that person has been served, has waived service, or has automatically become a party pursuant to G.S. 7B-401 by being awarded custody or guardianship as a permanent plan. G.S. 7B-200(b). See *supra* § 3.4 (related to personal jurisdiction). The court is specifically authorized to direct certain orders to parents and guardians, and sometimes to a "custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care." G.S. 7B-904.

A. Treatment and Counseling

1. Participation in child's treatment. If the court finds that it is in the child's best interest, the court may order a parent, guardian, custodian, stepparent, adult member of the child's household, or an adult relative caring for the child to participate in medical, psychiatric, psychological, or other treatment of the juvenile. G.S. 7B-904(b).

2. Evaluations and treatment of parents and others. The court may order a parent, guardian, custodian, stepparent, adult member of the child's household, or an adult relative caring for the child to undergo treatment or counseling if that person's receiving treatment is in the child's best interests. G.S. 7B-904(c). *See In re A.R.* __ N.C. App. __, 742 S.E.2d 629 (2013) (holding that it was within the trial court's authority to order the parents to comply with mental health assessments and recommendations, substance abuse evaluations, and random drug screens); *In re A.S.*, 181 N.C. App. 706 (holding that the trial court did not abuse its discretion in ordering the father to undergo a psychological evaluation, have a substance abuse assessment, and enroll in parenting classes, where DSS and the GAL recommended evaluations and classes and the trial court found them to be in the best interest of the children), *aff'd per curiam*, 361 N.C. 686 (2007).

(a) Type of treatment. The court may order psychiatric, psychological, or other treatment or counseling that is directed toward remediating or remedying behaviors or conditions that led or contributed to the child's adjudication or to the court's decision to remove the child from that person's custody. G.S. 7B-904(c).

(b) Custody may be conditioned on treatment. The court may order that the parent or other person comply with a plan of treatment approved by the court in order to maintain or regain custody of the child. G.S. 7B-904(c).

B. Parenting Classes, Transportation, Remedial Steps, and Other Orders

The court may order a parent, guardian, custodian, or caretaker who has been served with a summons (or has otherwise submitted to the court's jurisdiction) to:

- attend and participate in parenting classes, if classes are available in the judicial district where he or she lives;
- provide transportation for the child to keep appointments for any treatment ordered by the

court (if the child is in the home and to the extent the person is able to provide transportation);
- take appropriate steps to remedy conditions in the home that led or contributed to the adjudication or to removal of the child from the home.

G.S. 7B-904(d1). *See In re A.R.,* __ N.C. App. __, 742 S.E.2d 629 (2013) (holding that it was within the parameters of G.S. 7B-904 for the trial court to require the parents to provide copies of deeds, leases, and employment income, as well as inform social services of changed circumstances); *In re D.L.W*., __ N.C. App. __, __ S.E.2d __ (May 19, 2015) (there was no evidence that mother's "social phobia" or her lack of a budget contributed to the conditions that led to the children's removal or adjudication, so the court's expectation to get treatment for the social phobia and create a budget in order to show progress was therefore error); *In re H.H*., __ N.C. App. __, 767 S.E.2d 347 (2014) (holding that it was error for the court to order the mother to maintain stable housing and employment where there was nothing to suggest that her lack of employment or unstable housing contributed to the removal of the children or formed the basis of their adjudications); *In re W.V.,* 204 N.C. App. 290 (2010) (holding that the trial court did not have authority to order a parent to obtain and maintain stable employment, when the parent's employment status was not relevant to the adjudication that the child was neglected).

C. Cost Responsibilities

1. Child support and visitation. If the child is in the legal custody of someone other than a parent, the court may order the parent to pay a reasonable sum to cover (in whole or in part) the support of the child if the court finds that the parent is able to do so. The amount of child support is determined according to G.S. 50-13.4(c) and the Child Support Guidelines. If the child is in the custody of DSS and the court finds that the parent is unable to pay the cost of the child's care, the cost must be paid by the county DSS (unless the child is receiving care in a state or federal institution). G.S. 7B-904(d). The court does not have the authority to order a parent to contact a child support enforcement agency to arrange to pay child support. *In re A.S*., 181 N.C. App. 706, *aff'd per curiam*, 361 N.C. 686 (2007). However, when a child is placed in foster care, DSS has an obligation to seek support from the child's parents. If support is not addressed in the juvenile court order, DSS can pursue support through the IV-D child support enforcement program.

While the visitation statute, G.S. 7B-905.1, does not specifically address the cost of visitation, the court of appeals has affirmed a trial court's order requiring a parent to pay visitation costs, reasoning that it was within the trial court's authority to do so. *In re J.C.,* __ N.C. App. __, 760 S.E.2d 778 (2014). The court of appeals also rejected the respondent parent's argument that it was error for her to be ordered to pay visitation costs without a finding that she had an ability to pay. The North Carolina Supreme Court reversed the court of appeals and remanded the case to the trial court to make findings about a parent's ability to pay. Without those findings, the supreme court held it there could not be a meaningful appellate review. *In re J.C.*, ___ N.C. ___, (June 11, 2015). The remand suggests that the court may order a parent to pay for the cost of supervised visitation if the court finds the parent has an ability to pay.

Practice Note: Child support orders usually are not entered in juvenile court, and child support generally is best dealt with through the IV-D Child Support Enforcement office. The court may order DSS to pursue the establishment, modification, or enforcement of a support obligation through the IV-D office. In any event, a parent may volunteer to go to the child support enforcement office. The parent is under an obligation to pay child support whether or not he or she has a formal support obligation through agreement or court order.

2. Treatment of child or participating adult. Regardless of whether the parent arranges for treatment for the child, the court may order the parent "or other responsible parties" to pay for the cost of treatment or care ordered by the court, including treatment in which the parent or others are ordered to participate. G.S. 7B-903(a)(3)a, 7B-904(a), (b). If the court finds that the parent is unable to pay the cost of the child's treatment, the court must order the county to pay for treatment. G.S. 7B-903(a)(3)a. *See supra* § 7.3 (evaluation and treatment of child).

3. Treatment of parent or others. If the court orders treatment for the parent (or others), the court may order that person to pay the cost of his or her own treatment. If the court finds that the parent or other person is unable to pay, the court may:

- order the person to receive treatment currently available from the area mental health program (local management entity); or
- if the court has conditioned custody on compliance with treatment, charge the cost of treatment to the county where the child lives.

G.S. 7B-904(c).

D. Failure to Comply with Court Orders

On motion of a party or on the court's own motion, the court may issue an order for a parent, guardian, custodian, or caretaker who has been served with a summons to show cause why he or she should not be found in contempt (civil or criminal) for willfully failing to comply with a court order. G.S. 7B-904(e). *See* AOC Form AOC-J-155, "Motion and Order to Show Cause (Parent, Guardian, Custodian or Caretaker in Abuse/Neglect/Dependency Case)" (Nov. 2000). Contempt proceedings are governed by Chapter 5A of the General Statutes.

Practice Note: The statute seems to say that an order to show cause may be issued only to one who is served with a summons. It is unclear whether an order to show cause may issue when there is personal jurisdiction without service (e.g., when a parent waives service).

E. Court's Authority over DSS

The court's authority over DSS is clear in some circumstances and less clear in others. When a child is placed outside the home, the court "may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court." G.S. 7B-905.1(b). At any stage, the court may determine whether DSS should continue to make reasonable efforts to prevent or eliminate the need for the child's placement. G.S. 7B-507(a). *See supra* § 2.6.E (relating to

reasonable efforts). The court's authority to "provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile," in G.S. 7B-507(a), may imply the authority to order DSS or others to do specific things. However, the Juvenile Code is not entirely clear about the court's authority to order DSS to take actions beyond those specifically required or authorized by the Code.

F. Court's Authority over GAL

The Juvenile Code does not specifically address the court's authority over the child's GAL. However, the court presumably has the authority to order a GAL to fulfill his or her statutory responsibilities, but not to do things beyond the scope of those responsibilities, such as provide transportation or supervise visits. *See supra* § 2.3 (relating to the GAL role and responsibilities).

7.6 Limitations on Court's Dispositional Authority

The court's authority in juvenile dispositions is limited to statutory options and existing programs or programs for which the funding and machinery for implementation are in place. In the absence of a statute providing otherwise, the court generally has no authority over agencies or individuals who are not parties to the case. Absent a general appearance, due process requires that a person (or organization) be given "reasonable notice and opportunity to be heard" before any proceeding that results in entry of an order against that person or a deprivation of that person's rights. *See Helbein v. Southern Metals Co.*, 119 N.C. App. 431 (1995).

- The court could not require DSS to implement the creation of a special type of foster home. *In re Wharton*, 305 N.C. 565 (1982).
- Where there was no alternative education program for an expelled/suspended student, the court could not send the student back to public school absent a voluntary reconsideration of or restructuring of the suspension by the school board to allow for a return to school. *In re Jackson*, 84 N.C. App. 167 (1987).
- In a delinquency case, the court had no authority to order the state to develop and implement specific treatment programs and facilities. *In re Swindell*, 326 N.C. 473 (1990).
- There was no statutory authorization for the court to grant legal and physical custody of a child to the Willie M. Services Section of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. *In re Autry*, 115 N.C. App. 263 (1994), *aff'd per curiam*, 340 N.C. 95 (1995).
- Although the Code allows the court to order a parent to "pay a reasonable sum that will cover in whole or in part the support of the juvenile," the statute does not give the trial court authority to order a parent to contact a child support enforcement agency. *In re A.S.*, 181 N.C. App. 706, *aff'd per curiam*, 361 N.C. 686 (2007); *In re Cogdill*, 137 N.C. App. 504 (2000) (decided under former law).
- The court may not commit a child directly to a mental institution. G.S. 7B-903(a)(3)(b). *See also In re Mikels*, 31 N.C. App. 470 (1976).

7.7 Conversion to Civil Custody Order

A. Purpose of Conversion

If the need for intervention through a juvenile court action has ended, but there is a need to have a custody order remain in effect, G.S. 7B-911 allows the court, at a dispositional or subsequent hearing, to create or modify a civil custody order under Chapter 50 of the General Statutes and terminate jurisdiction in the juvenile proceeding. G.S. 7B-911. Note that this procedure is available only if there has been an adjudication of abuse, neglect, or dependency, and it is not a dispositional alternative listed in G.S. 7B-903 (although this is a potential dispositional outcome where certain requirements are met).

The conversion of a juvenile court custody order to a Chapter 50 custody order should occur only when (1) there is a need for a custody order to remain in effect and be enforceable and modifiable, and (2) continued state intervention through a juvenile court proceeding is no longer necessary or appropriate. Terminating jurisdiction in the juvenile case, by itself, nullifies any custody order entered in the case and results in the reversion of the legal status of the child and parties to whatever it was prior to the filing of a petition (unless another valid order has been entered). A civil custody order will remain in effect and be subject to modification and enforcement until the child reaches age 18 or is otherwise emancipated. *See also infra* § 8.4.B (discussing custody as a permanency option and comparing it to other permanency options).

If a civil custody order is created when one or both parents are deployed in the military, special requirements apply under Article 3 of G.S. 50A, the Uniform Deployed Parents Custody and Visitation Act.

B. Requirements and Jurisdiction

The juvenile court may enter or modify a civil custody order and terminate jurisdiction in the juvenile case only if the court finds that:

- there is not a need for continued state intervention through a juvenile court proceeding, *and*
- placement with the person being awarded custody has been the permanent plan for the child for at least six months (unless that person is a parent or the person with whom the child was living when the petition was filed).

G.S. 7B-911(c)(2). *See In re J.M.D.*, 210 N.C. App. 420 (2011); *Sherrick v. Sherrick,* 209 N.C. App. 166 (2011); *see also In re J.D.R.*, __ N.C. App. __, 768 S.E.2d 172 (2015) (order terminating jurisdiction was reversed and remanded because the trial court failed to make findings required by G.S. 7B-911(c)(2)(a)).

C. Creating or Modifying a Civil Custody Order

In the order, the court must make proper findings and conclusions that support the creation or

modification of a Chapter 50 custody order. G.S. 7B-911(c)(1). *See also* G.S. 50-13.2; 50-13.5; 50-13.7; *In re J.B.*, 197 N.C. App. 497 (2009) (holding that the necessary findings were lacking). The order should be filed in both the civil and the juvenile case files.

1. Initiating a civil action. If there is no existing civil custody action, the court must instruct the clerk to treat the order as initiating a civil custody action. The order must satisfy all the requirements for a civil custody order and should not simply refer to or incorporate a juvenile court order or anything else in the juvenile file. The court must designate the parties to the action and indicate whether filing fees are waived. Any motion to enforce or modify the order must be pursuant to the requirements of Chapter 50. G.S. 7B-911(b).

2. Modifying a civil action. If the custody order is entered in an existing civil action and the person who is being awarded custody is not a party to that action, the court must order that the person be joined as a party and that the caption be modified accordingly. The modification order must satisfy all requirements for modifying a civil custody order. G.S. 7B-911(b).

Note: A thorough description of all of the required contents or characteristics of a valid civil custody order or an order modifying a civil custody order is beyond the scope of this manual. See generally G.S. 50-13.1, 50-13.2, 50-13.7, and cases decided thereunder.

7.8 Interstate Compact on the Placement of Children[1]

Resource: Website for the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC), an affiliate of the American Public Human Services Association.

A. Introduction to the ICPC

Special laws govern the placement of children in foster care, adoptive homes, and institutions across state lines, including most placements with parents or other relatives. Article 38 of the Juvenile Code, G.S. 7B-3800 et seq., contains the Interstate Compact on the Placement of Children (ICPC), which has been adopted in all states to govern interstate placements. (Note that a new compact, the Interstate Compact *for* the Placement of Children, has been adopted by at least ten states, but it does not become effective until at least 35 states have adopted it. *See* "New ICPC" on the website for the Association of Administrators of the Interstate Compact on the Placement of Children. The Compact consists of ten articles, which are

1. This section provides only an overview of the ICPC and is not intended to be a comprehensive guide. Source for some section content: "ICPC FAQ" page on the website for the Association of Administrators of the Interstate Compact on the Placement of Children; SECRETARIAT TO THE ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, AN AFFILIATE OF THE AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION, GUIDE TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (2002); 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. XI (Interstate/Intercountry Services to Children) (Feb. 2013); Jane Thompson, N.C. Assistant Attorney General, Interstate Compact on Placement of Children (summary written April 2010).

referenced throughout the discussion below. The juvenile court has exclusive original jurisdiction over ICPC proceedings. G.S. 7B-200(a)(1).

1. Purpose. The purpose of the ICPC is to ensure appropriate foster care and adoption placements of children across state lines. The Compact provides a framework for exchanging information, evaluating potential placements and the child's circumstances, and ensuring that the child receives adequate care and protection while the sending state retains jurisdiction over the child.

2. State and agency structure. Some version of the ICPC has been adopted by all states, and each state has a Compact Administrator. A national association of compact administrators (see link listed above in resource box) promulgates regulations that are key to interpreting and applying the Compact. North Carolina's compact administrator and staff are located in the Division of Social Services within the N.C. Department of Health and Human Services. (See link below in resource box for N.C. contact information.) The compact administrator and staff handle all in-coming and out-going referrals for interstate placements. They oversee the investigation of proposed placements here to determine whether the placement is consistent with or contrary to the child's best interests.

3. Source of requirements and procedures. Requirements and procedures related to the ICPC are determined by the ten ICPC articles themselves as well as the regulations promulgated by the association of state compact administrators. Some regulations have undergone recent amendments that clarify certain issues. However, in some instances the amended regulations conflict with earlier North Carolina appellate court decisions interpreting the Compact. The state DSS manual includes policies and procedures that provide a framework for compliance with the ICPC.

Resources and Tools: For forms and regulations related to the ICPC, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. XI § 1605.

FOR DSS policies, procedures, and explanations related to interstate placement, see 1 DIV. OF SOC. SERVICES, N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL ch. XI.

North Carolina's Compact Administrator contact information can be found on the "North Carolina Consultants/Specialists" page on the ICPC website.

B. Applicability of the ICPC.

1. When the ICPC does apply. The ICPC applies to the interstate placement of a child:

- by DSS or a child-placing agency in a foster home or a pre-adoptive placement;
- by any individual or entity (including the court and parents) if the placement is for the purpose of adoption or preadoption (but see (b) below related to some placements by parents, guardians, and certain relatives);

- by any individual or entity (including DSS, the court, and parents) into a child caring institution, but not a medical facility, psychiatric institution, or boarding school (see (b) below).

If a child is removed from only one parent, placement with the other parent in another state is subject to the ICPC unless the court does not have evidence that the out of state parent is unfit, does not seek evidence of fitness, and relinquishes jurisdiction over the child immediately upon placement with the parent. *See* ICPC Regulation 3.

Regulation 3 makes it clear that the ICPC applies to placements with relatives. *See In re V.A.*, 221 N.C. App. 637 (2012) (citing Regulation 3 in reversing the trial court's dispositional order placing a child who was in DSS custody with a great-grandmother in another state without complying with the ICPC requirement for a favorable home study). Prior to amendments to ICPC Regulation 3, North Carolina appellate cases held that the ICPC did not apply to placements out of state with parents or certain relatives. *See In re J.E.*, 182 N.C. App. 612 (2007); *In re Rholetter*, 162 N.C. App. 653 (2004).

Where birth parents allowed their infant to go with an out-of-state couple (non-relatives) pursuant to a private adoption agreement, but then changed their minds about adoption, ICPC provisions applied. It was proper for the birth parents to be considered a "sending agency" within the meaning of the ICPC, so that the birth parents retained jurisdiction over the child, including the power to effect the child's return to the birth parents' state, until his adoption. *Stancil v. Brock*, 108 N.C. App. 745 (1993). See also ICPC Regulations 3 and 4 related to definition of sending agency.

2. When the ICPC does NOT apply. The ICPC does not apply to the sending or bringing of a child into a receiving state by any of the following relatives or a nonagency guardian who leaves the child with any of these relatives or a nonagency guardian in the receiving state: [Article VIII]

- parent,
- stepparent,
- grandparent,
- adult sibling, or
- adult uncle or aunt.

Note that exclusion from application of the ICPC occurs only when both the person making the placement and the placement recipient belong to the above classes of individuals.

The ICPC also does not apply to:

- juveniles who are adjudicated delinquent and on probation or conditional release;
- any child placed in a facility for the sole purpose of education;
- any child placed in a medical facility for the sole purpose of medical care;
- any child placed pursuant to any other interstate compact (e.g., Interstate Compact on Juveniles, Interstate Compact on Mental Health);

- child placements handled in court cases of paternity, divorce, custody, and probate; or
- requests for protective services investigations and follow-up services.

3. The ICPC and placement with a nonremoval parent or with a relative. In 2004 the North Carolina Court of Appeals held that the provisions of the ICPC did not apply at a permanency planning hearing when the court awarded custody to an out-of-state mother. *In re Rholetter*, 162 N.C. App. 653 (2004). In that case the children had been removed from the custody of the father and stepmother in North Carolina, based on adjudications of abuse and neglect, and placed in DSS custody. The court eventually gave custody to the mother who lived in South Carolina, even though two home studies by South Carolina declined to approve the placement. The court of appeals held that the award of full custody to a non-removal parent was not a "placement" under the ICPC. The court found that the language of the ICPC was "clear and unambiguous" and that, because the trial court had not placed the children "in foster care or as a preliminary [placement] to adoption," the ICPC did not apply. *Rholetter*, 162 N.C. App at 664.

However, in 2011 and 2012, the AAICPC substantially rewrote some of the ICPC regulations, including Regulation 3, which covers definitions, placement categories, applicability, and exemptions. Under Regulation 3, placement categories that require compliance with the ICPC include placements with parents and relatives when the other parent or relative is not making the placement. The definition of foster care was also amended to include 24-hour-a-day care provided by the child's parent by reason of a court-ordered placement (and not by virtue of the parent-child relationship). However, the amended regulations exempt the ICPC from a placement with a parent if all of the following are true:

1. the parent is not the parent from whom the child was removed;
2. the court has no evidence that the parent is unfit;
3. the court does not seek any evidence from the receiving state regarding the parent's fitness; and
4. the court relinquishes jurisdiction over the child immediately upon placement with the parent.

The language of the AAICPC regulations that include parents in the definition of foster care has been decided by some state courts to exceed the ICPC statute and therefore have no effect. Applying the same reasoning as the North Carolina Court of Appeals in *Rholetter*, the Connecticut Supreme Court concluded that the ICPC's language, "placement in foster care or as a preliminary to a possible adoption," does not include placement with a noncustodial parent. The court went on to say that "it is reasonable to conclude that the drafters determined that the statute should not be applied to out-of-state parents in light of the constitutionally based presumptions that parents generally are fit and that their decisions are in the child's best interests." *In re Emoni W.*, 48 A.3d 1, 7 (Ct. 2012). The court went on to state in a footnote that even if the ICPC regulations have the force of law, they are invalid to the extent they impermissibly expand the scope of the compact itself. Similarly, but without reference to the regulations, a California Court of Appeals held that "[c]ompliance with the

ICPC is not required for placement with an out-of-state parent." *In re Patrick S. III*, 160 Cal. Rptr. 3d 832 (Cal. Ct. App. 2013).

In contrast, the Arizona Court of Appeals reached the opposite conclusion in *Arizona Dept. of Economic Sec. v. Standard,* 323 P.3d 760 (Ariz. Ct. App.) (2014), finding that the court was a "sending agency" and, therefore, the ICPC regulations applied to placements with relatives and parents if none of the enumerated exceptions applied.

To date, North Carolina's appellate courts have not had to address this issue. However, *In re Rholetter* was decided on the language of the statute and did not discuss the AAICPC regulations in effect at the time. If the regulation applies, the holding in Rholetter would be contrary to the language of the regulation.

Note: The regulations allow a state to request a **"courtesy check"** of a non-removal parent's home by the receiving state, without invoking the full ICPC home study process. Whether to conduct a courtesy check is in the discretion of the receiving state. When placement with a non-removal parent is made without ICPC compliance or with only a courtesy check, the receiving state has no responsibility for supervising or monitoring the placement.

4. The ICPC and visitation. The ICPC applies only to interstate placements of children, not visits. Regulation 9 of the ICPC defines a visit according to the purpose, duration, and intention behind a child's stay. The purpose of a visit is to provide the child with a social or cultural experience of a short duration, such as a camp stay or visit with a friend or relative. A stay for such a purpose that is less than 30 days is presumed to be a visit. A stay of more than 30 days is presumed to be a placement. If, however, for a school-aged child, a stay is more than 30 days but less than the duration of a school vacation period (e.g., 45 days during a summer break), it can be considered a visit and does not require ICPC approval. A stay that does not have a terminal date will be considered a proposed placement and should not occur without ICPC approval. ICPC Regulation 9.

If, however, the sending state has requested a home study or supervision and sends the child to stay with the proposed caregiver in the receiving state, there is a rebuttable presumption that it is a placement and not a visit.

Note that if a court in North Carolina does not follow the ICPC requirements, another state can decline to monitor the placement or provide services.

C. Summary requirements of the ICPC and Regulations.

1. Notice and best interest. When the ICPC applies, prior to sending or bringing a child from one state to another, the sending agency (which includes the court) must furnish the receiving state with written notice of its intention to send, bring, or place the child. Article III(b) (see the article for the content of the notice). The receiving state may then request any supporting or additional information it deems necessary. Article III(c). The sending agency may not send or bring the child into the receiving state until the receiving state notifies the sending agency in writing that the proposed placement does not appear to be contrary to the interests of the child.

Article III(d). Specific forms are available for these purposes. (*See supra* § 7.8.3, Resources and Tools, for the forms.)

2. Social history, case plan, and review. The sending agency (e.g., a DSS caseworker) must prepare a packet containing items such as the child's social, medical, and educational history; the current status of any court case involving the child; and information about the person being considered for placement in the receiving state. The packet will first be sent to the central ICPC office in the sending state where it will be examined and, if approved, sent to the receiving state. Once it arrives in the receiving state's central ICPC office, the packet will be examined, and if everything is in order it will be sent to the DSS office in the community where the prospective placement is located. *See* "ICPC FAQ" on the Association of Administrators of the Interstate Compact on the Placement of Children website. *See also* ICPC Regulation 1 for specific requirements.

3. Reports, recommendations, approval or denial. The local agency receiving the packet will evaluate the prospective home for placement, and a completed home study report will be sent to the central ICPC office in the receiving state. The central ICPC office reviews the report and determines whether ICPC requirements have been met, and either approves or denies the recommendation of the report. If the placement is approved, once all plans and agreements have been completed the child is moved to the receiving state. The placement may not be approved if the local agency recommends against the placement or the Compact Administrator determines that a lawful placement cannot be completed, unless the problems can be remedied. Whether the placement is approved or denied, there are requirements related to copies of specific documents and reports that must be sent to the sending or receiving state's central office. *See* "ICPC FAQ"; *see also* ICPC Regulation 1.

4. Jurisdiction and responsibility for child under the ICPC. The sending agency retains jurisdiction over the child to determine all matters relating to the custody, supervision, care, treatment, and disposition of the child until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the receiving state. This jurisdiction includes the power to return the child to the sending state or transfer the child to another location. The sending agency also continues to have financial responsibility for the support and maintenance of the child during the period of placement. However, a public agency may enter into an agreement with an agency in a receiving state to provide services as an agent for the sending agency. Article V. Financial responsibility and agreements between agencies are also addressed in G.S. 7B-3801, 7B-3802, and 7B-3803.

5. Priority placement procedures. An issue with the ICPC is the length of time it can take for states to process cases and approve interstate placements. ICPC Regulation 7 was adopted to allow for expedited ICPC procedures when a judge finds a child meets the criteria for priority ICPC status. DSS has forms and sample orders relating to Regulation 7 (see resources and tools listed previously). Criteria for priority status are:

- the child sought to be placed is four years of age or younger, including older siblings sought to be placed in the same proposed placement; or
- the child currently is placed in an emergency placement; or

- the child is unexpectedly dependent due to sudden or recent incarceration, incapacitation, or death of a parent or guardian; or
- the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource.

Regulation 7 outlines the manner in which the process is expedited, and includes specific time frames for completing different steps.

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) and the amended Regulation 1 require states to complete and report foster and adoptive home studies requested by other states within 60 days and encourage decisions within 30 days if at all possible. The 60 days begin to run when a properly completed home study request is received by the state ICPC office. The 60-day time frame does not apply to any education or training of prospective foster or adoptive parents, and does not include criminal record checks needed for licensing or approving a placement.

6. Illegal placements. Article IV of the Interstate Compact addresses placements made in violation of the Compact. Violations are punishable according to the laws of each state involved. In addition, violations constitute grounds for the suspension or revocation of any license, permit, or other authorization under which the sending agency operates.