

Checklists

The following Checklists are intended to assist the attorneys and judges who are participating in the various hearings involved in abuse, neglect, dependency, and related termination of parental rights proceedings. Users are cautioned that these Checklists are not meant to be a comprehensive guide. Users should refer to the statutes directly. Questions about the interpretation of a statute may be answered by referring to the applicable Chapter and section within this Manual.

Checklist 1: Nonsecure Custody Orders

Checklist 2: Pre-Adjudication

Checklist 3: Adjudication

Checklist 4: Dispositional Findings and Options at Initial, Review, and Permanency Planning

Checklist 5: Initial Disposition

Checklist 6: Review

Checklist 7: Permanency Planning

Checklist 8: Termination of Parental Rights Hearing

Checklist 9: Post-TPR Review Hearing

Checklist 1

Nonsecure Custody Orders

“Nonsecure custody” is a North Carolina specific term for a temporary emergency custody order that removes a child from his or her home before the court holds the adjudicatory hearing that determines whether the child is abused, neglected, and/or dependent. Nonsecure custody is not appropriate in every case but is available when certain statutory criteria exist that show a nonsecure custody order is necessary to protect the juvenile. Although the initial order for nonsecure custody may be entered ex parte when the notice provisions of G.S. 7B-502 do not apply, subsequent hearings on the need for continued nonsecure custody (as specified in G.S. 7B-506) are required.

AOC Form Orders:

AOC-J-150, [Order for Nonsecure Custody](#) (Oct. 2017).

AOC-J-151, [Order on Need for Continued Nonsecure Custody](#) (Oct. 2017).

Initial Nonsecure Custody Order and Subject Matter Jurisdiction

- A court action has been commenced by the filing of a verified petition alleging abuse, neglect, or dependency in district court by a county department with standing. The petition was
 - filed with clerk’s office during hours when court was open.
 - accepted by magistrate when the clerk’s office was closed as authorized by G.S. 7B-404. G.S. 7B-101(10); 7B-302(c), (d); 7B-400; 7B-401.1(a); 7B-402; 7B-404; 7B-405.
- The petition is properly signed by the department’s director or authorized representative. G.S. 7B-101(10); 7B-302(c), (d); 7B-403(a).
- The petition is properly verified. G.S. 7B-403(a).
- The petition requests relief. N.C.R.Civ.P. 7(b)(1).
- NC has jurisdiction under the UCCJEA pursuant to G.S. Chapter 50A (review the allegations in the petition or attached affidavit addressing criteria specified by G.S. 50A-209 regarding the child’s status) (G.S. 7B-402(b)).
 - This is an initial child custody determination (G.S. 50A-201).
 - NC entered a child custody order prior to this action and NC has exclusive continuing jurisdiction (G.S. 50A-202).
 - NC has temporary emergency jurisdiction (G.S. 50A-204).
 - Another state has entered a child custody order but NC has jurisdiction to modify that order (G.S. 50A-203).
 - The child, the parents, and any person acting as a parent do not presently reside in the other state, or
 - The other state’s court has relinquished jurisdiction to NC and there is a court order from that other state relinquishing jurisdiction.

Compliance with Federal Laws

- Servicemembers Civil Relief Act: 50 U.S.C. 3931–3932*
Before a judgment for petitioner (DSS) is entered,
 - Each respondent has made an appearance in the case. No SCRA affidavit is required.
 - For each respondent who has not made an appearance, there is an affidavit or allegation in the verified petition that addresses that respondent’s military status.
 - It appears that a respondent is in military service. When that respondent has not made an appearance, appoint an attorney to perform SCRA responsibilities.
 - A respondent is in military service. When the criteria of 50 U.S.C. 3931(d), (f) or 50 U.S.C. 3932 is met, a stay of at least ninety days is required.

- Indian Child Welfare Act: 25 C.F.R. 23.107*
Mandatory inquiry as to child’s status as “Indian child” (defined at 25 U.S.C. 1903(4)) must be made of all participants at the commencement of the proceeding, with responses on the record.
 - The child is an Indian child. ICWA provisions apply.
Note: If child resides or is domiciled on Indian land or is a ward of tribal court, tribal court has exclusive jurisdiction unless an exception applies. Provisions of “emergency proceeding” under ICWA must be followed.
 - A participant has “reason to know” the child is an Indian child. Follow ICWA provisions unless and until court determines on the record that the child does not meet the definition of Indian child. Confirm that DSS or other party used due diligence to identify and work with all the tribes child may be member (or eligible for membership of).
 - The child is not an Indian child and no participant has reason to know the child is an Indian child. Instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. ICWA does not apply.

Required Determinations for all Nonsecure Custody Orders: G.S. 7B-503(a)

- There is a reasonable factual basis to believe that the matters alleged in the petition are true.
- One or more of the conditions in G.S. 7B-503(a) exist (see statute for exact language):
 - abandonment;
 - physically injury or sexual abuse;
 - exposed to substantial risk of physical injury or sexual abuse because of conditions created by parent, guardian, custodian, or caretaker;
 - need for medical treatment to prevent serious physical harm that may result in death, disfigurement, or substantial impairment of bodily functions and parent, guardian, custodian, or caretaker is unwilling or unable to consent to treatment;
 - consent by parent, guardian, custodian, or caretaker; or
 - child is a runaway and consents.
- There is a reasonable basis to believe that there are no other reasonable means available to protect the juvenile.

All three criteria must be satisfied.

Note: For continued nonsecure custody, G.S. 7B-506(b) sets forth that

- DSS has the burden of proving by clear and convincing evidence that the juvenile's continued placement in nonsecure custody is necessary; and
- the court is not bound by usual rules of evidence but must receive testimony and allow parties to introduce evidence and cross-examine witnesses.

Initial Nonsecure Custody and Execution of the Order

- Order authorizes law enforcement officer or other authorized person to take physical custody of the juvenile; leave copy of order with child's parent, guardian, custodian, or caretaker; and make due return of the order (G.S. 7B-502).
Additionally, the court may determine
 - Based on the petition and request for nonsecure custody or petitioner's testimony that less intrusive remedy is not available, the law enforcement officer is authorized to enter private property to take physical custody of the juvenile.
 - There are exigent circumstances authorizing law enforcement officer to make forcible entry at any hour.
- The order may authorize the DSS director to consent to a Child Medical Evaluation (CME) if there are written findings demonstrating the director's compelling interest in having the CME before the first hearing on the need for continued nonsecure custody (G.S. 7B-505.1(b)).

Continued Nonsecure Custody Preliminary Issues

- The parties have been properly served or waived service (G.S. 7B-406; 7B-407; 7B-200(b)).
- Venue is proper, or venue is transferred pursuant to G.S. 7B-400.
- Will one of the hearings on the need for continued nonsecure custody be combined with a pre-adjudication hearing? G.S. 7B-800.1(b), see Checklist 2.

Representation (G.S. 7B-601; 7B-602):

- Parent's provisional counsel is
 - confirmed.
 - dismissed.
- Does an unrepresented parent desire and is he or she eligible for appointed counsel (may be reconsidered at any stage in the proceeding)? If yes, appoint counsel.
- If the parent wants to waive the right to counsel, has the court examined him or her on the record and made findings to show that the waiver is knowing and voluntary?
- Parent is under age 18 and not emancipated. A Rule 17 GAL is appointed.
- There is a substantial question as to parent's competency and need for a Rule 17 GAL. A hearing on that issue is required.
- Abuse and/or neglect is alleged. A GAL and attorney advocate has been appointed for the juvenile.
- Only dependency is alleged. The court exercises its discretion to appoint a G.S. 7B-601 GAL and attorney advocate.

Continued Nonsecure Custody Inquiries and Findings

At each hearing on the need for continued nonsecure custody, the court must determine the following (G.S. 7B-506):

- Is paternity at issue? If so, what efforts have been made to establish paternity? Order must include findings and may provide for specific efforts to be taken.
- If a parent is missing, what is known about the identity and location of that parent, and what efforts have been undertaken to locate and serve that parent? Order must include findings and may provide for specific efforts to be taken.
- What efforts have been made by DSS to identify and notify the child's relatives for potential resources for placement or support of the juvenile?
- Are there other juveniles remaining in the home? If so, what are DSS's assessment findings relating to those children? What if any actions has DSS taken and/or what services has DSS provided to protect those children?

Additional findings when a child is placed or remains in nonsecure custody with DSS (G.S. 7B-507):

- Whether continuation in or return to the child's own home would be contrary to the child's health and safety.
- Whether reasonable efforts have been made to prevent the need for placement (child's health and safety are the paramount concern) (finding may be that reasonable efforts were precluded by an immediate threat of harm to the child).
- A statement that the child's placement and care are the responsibility of DSS.

Required placement considerations (G.S. 7B-505(b), (d)):

- In making its order, the court must consider whether it is in the child's best interests to remain in his/her community of residence.
 - Under Fostering Connections and the Every Student Succeeds Act (ESSA), is DSS considering the proximity of the placement to the child's school? Is the child remaining in his or her school based on a best interest determination made by DSS in consultation with others?
- Is a relative willing and able to provide care and supervision in a safe home? If so, placement must be ordered to that relative unless the court finds it is contrary to the child's best interests.
- Have reasonable efforts been made to place the siblings together absent DSS documentation that joint placement is contrary to the safety or well-being of any of the siblings (42 U.S.C. 471(a)(31))?
- Does the placement comply with the Interstate Compact on the Placement of Children (ICPC)?
- Does the placement comply with the Multiethnic Placement Act (MEPA-IEP)?
- When ICWA applies, does the placement comply with ICWA placement preferences?

Additional inquiries the court may make to address the following issues as appropriate:

- Has a petition been filed pursuant to G.S. 7B-303(d1) (caregiver with history of violence when abuse of child alleged)? If so, what are the results of any resulting mental health evaluation (G.S. 7B-507(c1))?
- Does the order need to address consent for medical care for the child that is not routine or emergency care, including a CME? If so, provisions of G.S. 7B-505.1 apply.
- Is the child a member of a state-recognized tribe? If so, the court may order DSS to notify the state-recognized tribe of the need for nonsecure custody for the purposes of locating relatives or nonrelative kin for placement (G.S. 7B-505(c)).
- Financial support.

Outcomes

- Return child (the court must first consider the child's release to his or her parent, relative, guardian, custodian, or other responsible adult (G.S. 7B-503(a)).
- Continue nonsecure custody
 - Placement in nonsecure custody with (G.S. 7B-505(a))
 - DSS (the order must specify that placement and care are DSS responsibility and DSS must provide or arrange for the juvenile's placement unless the court orders a specific placement, G.S. 7B-507(a)(4)) or
 - a person designated in the order (after considering DSS recommendations, G.S. 7B-507(a)(4)).
 - Temporary residential placement may be in any of the following (G.S. 7B-505(a)):
 - the home of parent, relative, nonrelative kin, other person with legal custody of the child's sibling, or any home or facility approved by the court and designated in the order (see also G.S. 7B-505(b), (c));
 - a licensed foster home or home otherwise authorized by law to provide such care; or
 - a facility operated by DSS.
 - Order DSS to make diligent efforts to notify relatives and other persons with legal custody of the child's sibling that the child is in nonsecure custody, unless there is a finding that notification would be contrary to the child's best interests (G.S. 7B-505(b)).
 - Order visitation when custody is removed from a parent, guardian, or custodian or continues the child's placement outside of the home pursuant to G.S. 7B-905.1 (G.S. 7B-506.1(g1)).

Note: When siblings who have been removed from their home are not jointly placed, reasonable efforts for visitation or other ongoing interaction between the siblings should be made absent DSS documentation that it would be contrary to the safety or well-being of any sibling (42 U.S.C. 671(a)(31)).
 - May order services or other efforts aimed at returning the child to a safe home (G.S. 7B-507(a)(5)).
- Set next hearing date in compliance with time requirements of G.S. 7B-506(a).

Note: The court may not dismiss the petition or award permanent custody to a parent or other person without an adjudication on the merits.

Checklist 2

Pre-Adjudication

The court is required to consider criteria set forth in G.S. 7B-800.1 before the adjudicatory hearing. The pre-adjudicatory hearing may be combined with a hearing on the need for continued nonsecure custody or any pretrial hearing authorized by local rules. If nonsecure custody was not requested or granted, this is likely to be the first hearing in the action.

Subject Matter Jurisdiction

- A court action has been commenced by the filing of a verified petition alleging abuse, neglect, or dependency in district court by a county department with standing. The petition was
 - filed with clerk's office during hours when court was open.
 - accepted by magistrate when the clerk's office was closed as authorized by G.S. 7B-404.G.S. 7B-101(10); 7B-302(c), (d); 7B-400; 7B-401.1(a); 7B-402; 7B-404; 7B-405.
- The petition is properly signed by the department's director or authorized representative. G.S. 7B-101(10); 7B-302(c), (d); 7B-403(a).
- The petition is properly verified. G.S. 7B-403(a); 7B-800.1(a)(5a).
- The petition requests relief. N.C.R.Civ.P. 7(b)(1).
- NC has jurisdiction under the UCCJEA pursuant to G.S. Chapter 50A (review the allegations in the petition or attached affidavit addressing criteria specified by G.S. 50A-209 regarding the child's status) (G.S. 7B-402(b)).
 - This is an initial child custody determination (G.S. 50A-201).
 - NC entered a child custody order prior to this action and NC has exclusive continuing jurisdiction (G.S. 50A-202).
 - NC has temporary emergency jurisdiction (G.S. 50A-204) (*Note: The court's authority is limited to entering temporary custody orders when it is exercising temporary emergency jurisdiction, impacting the court's authority to proceed to adjudication*).
 - Another state has entered a child custody order but NC has jurisdiction to modify that order (G.S. 50A-203).
 - The child, the child's parents, and any person acting as a parent do not presently reside in the other state or
 - The other state's court has relinquished jurisdiction to NC and there is a court order from that other state relinquishing jurisdiction.

Parties and Personal Jurisdiction

- Identify the parties to the proceeding (G.S. 7B-401.1):
 - DSS (with standing)
 - Child
 - Parent 1

- Parent 2
- Putative father(s)
 - What efforts, if any, have been made to establish paternity, including identifying and locating missing parent?
 - Has paternity been established?
- Guardian
- Custodian
- Caretaker
- The parties have been properly served or waived service (G.S. 7B-406; 7B-407; 7B-200(b)).
- Have notice requirements been met?
- Any motions to intervene or remove a party as authorized by G.S. 7B-401.1(h).

Representation: G.S. 7B-601; 7B-602

- Parent's provisional counsel is
 - confirmed.
 - dismissed.
- Does an unrepresented parent desire and is he or she eligible for appointed counsel (may be reconsidered at any stage in the proceeding)? If yes, appoint counsel.
- If parent wants to waive the right to counsel, has the court examined the parent on the record and made findings to show that the waiver is knowing and voluntary?
- Parent is under age 18 and not emancipated. A Rule 17 GAL is appointed.
- There is a substantial question as to parent's competency and need for a Rule 17 GAL. A hearing on that issue is required.
- Abuse and/or neglect is alleged. A GAL and attorney advocate has been appointed for the juvenile.
- Only dependency is alleged. The court exercises its discretion to appoint a G.S. 7B-601 GAL and attorney advocate.

Relatives

- Has DSS identified and notified parents, relatives, or other persons with legal custody of the child's sibling(s) as potential resources for placement or support of the child?

Other Pretrial Issues

- Venue is proper, or venue is transferred pursuant to G.S. 7B-400.
- Are there any motions to continue the adjudication hearing, which must be held within sixty days of petition being filed (G.S. 7B-801(c))? Continuances are limited by G.S. 7B-803.
 - Is there good cause to continue the hearing for as long as reasonably necessary to receive additional evidence, reports, or assessments that the court has requested or other needed information in the best interests of the child?
 - Is there good cause to allow reasonable time for the parties to conduct expeditious discovery?

- Are there extraordinary circumstances that are necessary for the proper administration of justice or in the child’s best interests? (resolution of pending criminal charges arising from the same incident is not a sole extraordinary circumstance to continue the hearing).
- Are there discovery motions pursuant to G.S. 7B-700?
- Is DSS seeking to amend its petition as authorized by G.S. 7B-800?
- Is a writ requested for an incarcerated party?
- Is there a request for alternative means of participating? (G.S. 50A-111 when other state involved).
- Is there a request for the hearing or part of the hearing to be closed (G.S. 7B-801(a))?
- Is there a motion for genetic marker testing regarding paternity (G.S. 8-50.1(b1))?
- Is a language interpreter needed?
- Are accommodations for a disability needed to allow for participation in the court proceeding?
- Any other pretrial issue?

Compliance with Federal Laws

- Servicemembers Civil Relief Act: 50 U.S.C. 3931–3932*
Before a judgment for petitioner (DSS) is entered,
 - Each respondent has made an appearance in the case. No SCRA affidavit is required.
 - For each respondent who has not made an appearance, there is an affidavit or allegation in the verified petition that addresses that respondent’s military status.
 - It appears that a respondent is in military service. When that respondent has not made an appearance, appoint an attorney to perform SCRA responsibilities.
 - A respondent is in military service. When the requirements of 50 U.S.C. 3931(d), (f) or 50 U.S.C. 3932 are met, a stay of at least ninety days is required.
- Indian Child Welfare Act: 25 C.F.R. 23.107*
Mandatory inquiry as to child’s status as “Indian child” (defined at 25 U.S.C. 1903(4)) must be made of all participants at the commencement of the proceeding, with responses on the record.
 - The child is an Indian child. ICWA provisions apply.
Note: If child resides or is domiciled on Indian land or is a ward of tribal court, tribal court has exclusive jurisdiction unless an exception applies. Provisions of “emergency proceeding” under ICWA must be followed.
 - A participant has “reason to know” the child is an Indian child. Follow ICWA provisions unless and until court determines on the record that the child does not meet the definition of Indian child. Confirm that DSS or other party used due diligence to identify and work with all the tribes child may be member (or eligible for membership of).
 - The child is not an Indian child and no participant has reason to know the child is an Indian child. Instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. ICWA does not apply.

Stipulations or Consent Order (see Checklist 3: Adjudication)

Checklist 3

Adjudication

Prior to the adjudicatory hearing, the court should have held a pre-adjudication (or pretrial) hearing that addressed issues impacting the adjudication hearing (see Checklist 2). At the time of the adjudicatory hearing, the child may or may not be placed in nonsecure custody.

Child's Status

An adjudication determines the child's status as abused, neglected, or dependent based on conditions alleged in the petition. It is not a determination of a parent's, guardian's, custodian's, or caregiver's culpability.

AOC Form Order:

AOC- J-153, [Juvenile Adjudication Order \(Abuse/Neglect/Dependency\)](#) (Oct. 2013).

Procedure

- Hearing (G.S. 7B-802; 7B-805)
 - No default judgment or judgment on the pleadings is permitted.
 - DSS must prove the allegations in the petition by clear and convincing evidence (G.S. 7B-807).
 - The rules of evidence apply (G.S. 7B-804).
 - Evidence is limited to that which relates to the allegations in the petition; however, post-petition evidence of paternity being established may be introduced.
 - Stipulations of adjudicatory facts (G.S. 7B-807(a))

Must comply with one:

 - be in writing, signed by each party stipulating to the specific facts, and submitted to the court.
 - be read into the record, followed by an oral statement of agreement from each party agreeing to the stipulated facts.
 - Consent order (G.S. 7B-801(c))

All three are required:

 - All parties are present or represented by counsel who is present and authorized to consent.
 - The child is represented by counsel.
 - The court makes sufficient findings of fact.
-

Findings and Conclusions

The order shall (G.S. 7B-807)

- contain appropriate findings of fact (supported by competent evidence in the record);
- contain appropriate conclusions of law (supported by the findings of fact);

- if adjudicating the child abuse, neglected, or dependent, state that the allegations have been proved by clear and convincing evidence; and
- be entered (reduced to writing, signed, and filed with the clerk) no later than thirty days following completion of the hearing.

Note: If the petition alleged more than one condition (abuse, neglect, dependency), the order should make findings and conclusions about each.

Additional findings impacting reunification efforts:

- If evidence of an aggravating circumstance specified in G.S. 7B-901(c) is admitted, a finding of that aggravating circumstance will be required at adjudication (or in any other hearing prior to the initial dispositional hearing, see checklist 4) for the court to order that the department is not required to provide reunification efforts to a parent in the initial dispositional order.

Outcomes

The court adjudicates the existence or nonexistence of the condition(s) alleged in the petition based on a clear and convincing evidence standard (G.S. 7B-805; 7B-807).

- DSS fails to meet its burden of proof. Petition dismissed with prejudice. If child was placed in nonsecure custody, child must be released to his or her parent, custodian, guardian, or caretaker. (G.S. 7B-807(a)).
- DSS met its burden of proof by clear and convincing evidence. Child is adjudicated as one or more of the conditions alleged in the petition:
 - abused, and/or
 - neglected, and/or
 - dependent.

If the child is adjudicated abused, neglected, and/or dependent, the court proceeds to an initial dispositional hearing to be concluded within thirty days of completion of adjudicatory hearing (G.S. 7B-901). Pending entry of the initial dispositional order, the court should address the following in a temporary order:

- custody, placement, and visitation.

Checklist 4

Dispositional Findings and Options at Initial, Review and Permanency Planning

How to Use This Checklist

There are different types of dispositional hearings: initial, review, and permanency planning. Each hearing requires the court to examine certain specified factors and make certain findings. Some of those factors and findings apply to every initial, review, or permanency planning hearing, and others are specific to the hearing type. The court is also authorized at every dispositional hearing to order a dispositional plan that addresses issues related to placement, custody, services, and conditions that are imposed on the parties. This Checklist addresses those factors, findings, and dispositional options that apply to all the dispositional hearings and is meant to be *used together with the corresponding Checklist* that identifies additional factors, findings, and options that apply to the specific hearing type.

Procedure

- Hearing (G.S. 7B-901; 7B-906.1)
- Consent order (G.S. 7B-801(c))
 - All three are required:
 - All parties are present or represented by counsel who is present and authorized to consent.
 - The child is represented by counsel.
 - The court makes sufficient findings of fact.

Evidentiary Issues

- The standard is the child's best interests, and there is no burden of proof on any party.
- The court considers evidence that is relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition, which may include hearsay testimony and written reports (G.S. 7B-901(a); 7B-906.1(c)).

Required Placement Considerations

G.S. 7B-903(a1), (b):

- When placement is not with a parent, the court must consider whether a relative is willing and able to provide care and supervision in a safe home. If there is such a relative, placement must be ordered to that relative unless the court finds it is contrary to the child's best interests.
- In making its order, the court must consider whether it is in the child's best interests to remain in his/her community of residence.

- Under Fostering Connections and the Every Student Succeeds Act (ESSA), is DSS considering the proximity of the placement to the child's school? Is the child remaining in his or her school based on a best interest determination made by DSS in consultation with others?
- Does the placement comply with the Interstate Compact on the Placement of Children (ICPC)?
- When the court has found the child has been physically abused by an individual, if that individual has a history of violent behavior against people, the court must consider the opinion of the mental health professional who performed an evaluation required by G.S. 7B-302(d1) before returning the custody of the child to that individual.

G.S. 7B-903.1(c):

- Before DSS recommends a return of the child's physical custody to a parent, guardian, custodian, or caretaker from whom the child was removed, DSS must provide the court with documentation of at least two observations of visits between the child and removal parent, guardian, custodian, or caretaker, where each visit was at least one hour and the visits were at least seven days apart.

Other considerations:

- Does the placement comply with the Multiethnic Placement Act (MEPA-IEP)?
- When ICWA applies, does the placement comply with ICWA placement preferences?
- Have reasonable efforts been made to place siblings who were removed from their home together, or is there documentation by DSS that a joint placement would be contrary to the safety or well-being of any of the siblings (42 U.S.C. 671(a)(31))?

Dispositional Alternatives (Placement and Custody): G.S. 7B-903(a); 7B-906.1(i), (j), (l)

The court may combine any of the applicable alternatives when it finds the disposition to be in the child's best interests.

- Dismiss the case (appropriate when no purpose would be served by continuing to exercise jurisdiction; legal status of the child and parents reverts to the status that existed prior to the filing of the petition, G.S. 7B-201(b)).
- Continue the case to allow the parent, guardian, custodian, caretaker, or others to take appropriate action.
- In-home supervision by DSS in the child's county or by another individual available to the court, subject to any conditions placed on the parent, guardian, custodian, or caretaker.
- Custody ordered to
 - parent;
 - Court must consider whether jurisdiction in juvenile proceeding should be terminated and custody ordered pursuant to G.S. Chapter 50 (G.S. 7B-911).
 - relative, other suitable person, or private agency offering placement services;
 - Court has verified the person receiving custody
 - understands the legal significance of the placement (this applies to each person) and
 - will have adequate resources to care appropriately for the child.

- Court must consider whether jurisdiction in juvenile proceeding should be terminated and custody ordered pursuant to G.S. Chapter 50 (G.S. 7B-911).
- DSS in the county of the child's residence (or, if the child's residence is in another state, in the county where the child is found for return to appropriate authorities in the child's home state);
 - Decision making authority when DSS has custody of the child: G.S. 7B-903.1
 - Court may delegate any part of DSS authority to make decisions that are generally made by a child's custodian to the child's parent, foster parent, or other individual.
 - Court may set out alternative parameters for who approves normal childhood activities for child after finding it is not in the child's best interest to allow the child's placement provider (e.g., foster parent) to make such decisions without court or DSS approval.
 - Court must find there will be proper care and supervision in a safe home before DSS may allow unsupervised visits or return physical custody of the child to the parent, guardian, custodian, or caretaker from whom the child was removed.
 - If the order needs to address consent for medical care for the child that is not routine or emergency care, provisions of G.S. 7B-505.1(c) apply.
- Appointment of a guardian pursuant to G.S. 7B-600.
 - Court has verified the person being appointed guardian
 - understands the legal significance of the appointment (this applies to each person) and
 - will have adequate resources to care appropriately for the child.

Required Findings when Child Placed or Continues in Out-of-Home Care

G.S. 7B-903(a2), (a3):

- Continuation in/return to the child's own home would be contrary to the child's health and safety.
- Whether DSS has made reasonable efforts made to prevent the need for placement (child's health and safety are the paramount concern) (finding may be that reasonable efforts were precluded by an immediate threat of harm to the child).

G.S. 7B-905.1

- Appropriate visitation order that is in child's best interests and consistent with his or her health and safety. The visitation order must include
 - minimum duration,
 - minimum frequency, and
 - whether visits must be supervised.
- Visitation plan may specify conditions under which visitation may be suspended.
- If visitation is not ordered, there must be a finding that visitation is not in the child's best interests consistent with his or her health and safety or a parent forfeited his or her right to visitation.
- All parties must be informed of the right to file a motion for review of the visitation plan.

Order Addressing Child's Evaluation and Treatment: G.S. 7B-903(d), (c); 7B-904

The court may order the following:

- Evaluation of the child by a physician, psychiatrist, psychologist, or other qualified expert, to determine the needs of the child.
 - When evaluation ordered and after its completion, the court must conduct a hearing to determine the treatment needs of the child and payment for the treatment.
 - Notice of the hearing must be given to the county manager or person designated by the chair of the board of county commissioners of the child's county of residence.
 - Payment of cost of evaluation or treatment by the parent or other responsible parties or, if the parent is unable to pay, by the county.
- DSS to coordinate with the appropriate representative of the area mental health, developmental disabilities, and substance abuse services (or LME/MCO) to develop a treatment plan for a child the court determines is mentally ill or developmentally disabled.
- Participation in child's treatment by a parent, guardian, custodian, stepparent, adult member of the child's household, or an adult relative caring for the child, if found to be in the child's best interest.

The court may not order the child's commitment directly to an institution (that order is void).

- Although not an order, the court may sign and consent to a child's admission to a hospital or developmental center for persons with intellectual or developmental disabilities if such admission is required and the parent, guardian, or custodian refuses to consent.

Order Directed to Parents or Others: G.S. 7B-904

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 available in the judicial district where the parent 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 the court's removal of the child from the home;
- upon finding it is in the child's best interests, to participate in psychiatric, psychological, or other treatment or counseling directed towards remedying the behaviors or conditions that led or contributed to the child's adjudication or court's removal of the child from that person's custody, and may
 - require compliance with treatment plan approved by the court or
 - condition legal custody or physical placement of the child on compliance with that treatment
 - order the individual to pay the cost of the treatment and if unable to do so, may
 - order the county to pay when the compliance with treatment is a condition for legal custody or physical placement of the child with that parent or other adult.
 - order treatment currently available from a local mental health program.

- A parent over whom the court has personal jurisdiction may be ordered to pay a reasonable portion of the cost of the child's care based on the parent's ability to do so when legal custody of the child is vested with someone other than the parent.

Additional Components of Order: G.S. 7B-905; 7B-906.1(h)

The order shall

- contain appropriate findings of fact (supported by competent evidence in the record);
- contain appropriate conclusions of law (supported by the findings of fact);
- be entered (reduced to writing, signed, and filed with the clerk) no later than thirty days following completion of the hearing.
- See Checklist 5 (initial disposition), Checklist 6 (review), or Checklist 7 (permanency planning).

Checklist 5

Initial Disposition

This Checklist includes those factors, findings, and options that are specific to the initial disposition conducted pursuant to G.S. 7B-901(c). *Use together with Checklist 4*, which contains additional required factors, findings, and options that apply to initial, review, and permanency planning hearings.

AOC Form Order:

AOC- J-154, [Juvenile Disposition Order \(Abuse/Neglect/Dependency\)](#) (Oct. 2015).

Required Evidence

- DSS must submit a predisposition report or the court must make a written finding that the report is unnecessary (G.S. 7B-808).

Required Inquiries and Findings: G.S. 7B-901(b)

- Is paternity at issue? If so, what efforts have been made to establish paternity? Order must include findings and may provide for specific efforts to be taken.
- If a parent is missing, what is known about the identity and location of that parent, and what efforts have been undertaken to locate and serve that parent? Order must include findings and may provide for specific efforts to be taken.
- What efforts have been made to identify and notify the child's relatives, parents, or other persons with legal custody of the child's sibling(s) as potential resources for the child's placement or support?

Order and Required Findings for Ceasing Reunification Efforts: G.S. 7B-901(c)

When a child is placed in DSS custody, the court must order (unless exception below applies) that reasonable efforts are not required if it makes written findings that

- A court of competent jurisdiction has determined (interpreted to mean there is a prior order, e.g., an adjudication order or collateral proceeding) that an aggravated circumstance exists because the parent committed or encouraged or allowed any of the following on the child:
 - sexual abuse;
 - chronic physical or emotional abuse;
 - torture;
 - abandonment;
 - chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the child; or
 - any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

- The parent's rights to another child were involuntarily terminated by a court of competent jurisdiction.
- A court of competent jurisdiction has determined (interpreted to mean there is a prior order, e.g., an adjudication order or an order in a collateral proceeding) that the parent
 - committed murder or voluntary manslaughter of another child of his/hers;
 - aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of this child or another of the parent's children;
 - committed felony assault resulting in serious bodily injury to this child or another of the parent's children;
 - committed sexual abuse against this child or another of the parent's children; or
 - has been required to register as a sex offender on any government-administered registry.

Despite making a written finding of one of the above factors,

- the court finds there is compelling evidence warranting continued reunification efforts.

Additional Components of Order: G.S. 7B-905

The order shall

- state the precise terms of the disposition, including the person(s) responsible for carrying out whatever is required in the disposition, as well as the person or agency in whom custody is vested;
- direct that a review hearing be scheduled within ninety days from the initial dispositional hearing, unless reunification efforts have been ceased, in which case a permanency planning hearing must be scheduled within thirty days (G.S. 7B-901(d)).

-
- See Checklist 4 for additional requirements.**

Checklist 6

Review

This Checklist includes those factors, findings, and options that are specific to a review hearing conducted pursuant to G.S. 7B-906.1. *Use together with Checklist 4*, which contains additional required factors, findings, and options that apply to initial, review, and permanency planning hearings.

Required Notice: G.S. 7B-906.1(b)

- The clerk provided fifteen days' notice of the hearing and its purpose to the parents; child (if 12 or older); the child's GAL; if applicable, the guardian or custodian (including agency with custody); and any other person or agency the court specifies.
- The clerk provided fifteen days' notice of the hearing to the person providing care for the child or DSS sent the notice and filed written documentation that notice was sent with the clerk.

Required Factors and Findings: G.S. 7B-906.1(d)

At every review hearing, the court must consider the following criteria and make written findings of those that are relevant:

- Services that have been offered to reunite the child with either parent, regardless of whether the child resided with the parent at the time of removal, or with the guardian or custodian from whom the child was removed.
- Reports on visitation and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.
- Whether efforts to reunite the child with either parent clearly would be unsuccessful or inconsistent with the child's safety and need for a safe, permanent home within a reasonable period of time. The court must consider reunification efforts regardless of whether the child lived with the parent, guardian, or custodian at the time of the removal.
 - If the court determines efforts would be unsuccessful or inconsistent, the court must schedule a permanency planning hearing within thirty days to address concurrent planning under G.S. 7B-906.2. (The court does not have the authority to order reunification efforts cease at a review hearing).
- Reports on placements the child has had, the appropriateness of the child's current placement, and the goals of the child's foster care plan, including the role the current foster parent will play in the planning for the child.
- If the child is 16 or 17 years old, a report on an independent living assessment and, if appropriate, an independent living plan.
- Whether termination of parental rights should be considered and if so, when.
- Any other criteria the court deems necessary.

-
- See Checklist 4 for additional requirements.**

Checklist 7

Permanency Planning

The court is required to make numerous statutory findings at the permanency planning stage. However, the statutory findings are not applied universally to all permanency planning hearings but instead are conditioned on specific circumstances (e.g., the first permanency planning hearing, a permanency planning hearing involving a child who is 14 years old or older, or what is ordered). This Checklist addresses the various circumstances and the different factors, findings, and options that apply to permanency planning hearings. *Use together with Checklist 4*, which contains additional required factors, findings, and options that apply to initial, review, and permanency planning hearings.

Required Notice: G.S. 7B-906.1(b)

- The clerk provided fifteen days' notice of the hearing and its purpose to the parents; child (if 12 or older); the child's GAL; if applicable, the guardian or custodian (including agency with custody); and any other person or agency the court specifies.
- The clerk provided fifteen days' notice of the hearing to the person providing care for the child or DSS sent the notice and filed written documentation that notice was sent with the clerk.

Note: If an objection to a deficient notice is raised (e.g., less than fifteen days' notice provided), the court may not proceed with a permanency planning hearing. If no objection is raised, the party waives the notice.

The First Permanency Planning Hearing: G.S. 7B-906.2(c)

One of the following applies:

- The court must make a finding about whether the department's efforts toward reunification were reasonable.
- The finding is not required because reunification efforts were ceased at initial disposition or at the permanency planning hearing.

Required Findings and Conclusion at the Second and Subsequent Permanency Planning Hearings: G.S. 7B-906.2(c)

The court must make findings of the efforts the department made toward

- the primary permanent plan in effect before the hearing and
- any secondary permanent plans in effect before the hearing.

The court must make a conclusion as to

- whether efforts to finalize the permanent plan were reasonable to achieve timely permanence for the child.

Required Findings at Every Permanency Planning Hearing

G.S. 7B-906.1(d)

The court *must consider the following criteria and make written findings of those that are relevant:*

- Services that have been offered to reunite the child with either parent, regardless of whether the child resided with the parent at the time of removal, or with the guardian or custodian from whom the child was removed.
- Reports on visitation and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.
- Whether efforts to reunite the child with either parent clearly would be unsuccessful or inconsistent with the child's safety and need for a safe, permanent home within a reasonable period of time. The court must consider reunification efforts regardless of whether the child lived with the parent, guardian, or custodian at the time of the removal.
- Reports on placements the child has had, the appropriateness of the child's current placement, and the goals of the child's foster care plan, including the role the current foster parent will play in the planning for the child.
- If the child is 16 or 17 years old, a report on an independent living assessment and, if appropriate, an independent living plan.
- Whether termination of parental rights should be considered and if so when.
- Any other criteria the court deems necessary.

G.S. 7B-906.2(d)

The court shall make written findings as to *each* of the following, which demonstrates lack of success: whether the parent

- is making adequate progress under the plan within a reasonable period of time;
- is actively participating in or cooperating with the plan, the department, and the child's GAL;
- remains available to the court, department, and child's GAL;
- is acting in a manner that is inconsistent with the child's health or safety.

G.S. 7B-906.1(g)

At the conclusion of each permanency planning hearing, the judge

- shall make specific findings of the best permanent plans to achieve a safe, permanent home for the child within a reasonable period of time;
- shall inform the parent, guardian, or custodian that failure or refusal to cooperate with the plan may result in an order at a subsequent permanency planning hearing that reunification efforts may cease.

Any Permanency Planning Hearing Where Child Not Placed with Parent: G.S. 7B-906.1(e)

The court must consider the following criteria and make written findings about *those that are relevant:*

- Whether it is possible for the child to be placed with a parent within the next six months and, if not, why such placement is not in the child's best interests.

- Where placement with a parent is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established and, if so, rights and responsibilities that should remain with the parents.
- Where the child's placement with a parent is unlikely within six months, whether adoption should be pursued and, if so, any barriers to the child's adoption.
- Where the child's placement with a parent is unlikely within six months, whether the child should remain in the current placement, or be placed in another permanent living arrangement and why.
- Whether the department, since the initial permanency planning hearing, has made reasonable efforts to implement the permanent plan.
- Any other criteria the court deems necessary.

Juvenile Is 14 or Older and in DSS Custody: G.S. 7B-912(a)

At every permanency planning hearing, the court must inquire about and make written findings of *each* of the following:

- The services provided to assist the teen in making a transition to adulthood.
- The steps the department is taking to ensure that the foster family or other licensed placement provider follows the reasonable and prudent parent standard.
- Whether the teen has regular opportunities to engage in age- or –developmentally appropriate activities.

At or before the last permanency planning hearing that is at least ninety days before the juvenile turns 18, the court must

- inquire as to whether the juvenile has a copy of his or her birth certificate, social security card, health insurance information, driver's license or other identification card, and any educational or medical records the juvenile requests and
- determine the person or entity that should assist the juvenile in obtaining these documents before he or she turns 18.

Special Circumstances and Findings Delaying or Relieving DSS Initiation of TPR: G.S. 7B-906.1(f), (m)

When the court finds a TPR is necessary to perfect the primary permanent plan, the department shall file a TPR petition (or motion) within sixty days from the entry of the order unless

- the court makes written findings regarding why the petition (or motion) cannot be filed in sixty days and specifies a time frame in which the TPR petition (or motion) must be filed.

The requirement that the department file a TPR petition (or motion) applies when either

- the department has custody or placement responsibility of child who has been placed outside the home for twelve of the most recent twenty-two months or
- a court of competent jurisdiction has determined a parent has abandoned the child; committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of this child or another child of the parent.

The department is not required to initiate a TPR if the court finds *any* of the following:

- the primary permanent plan is guardianship or custody with a relative or other suitable person;
- the court makes specific findings as to why filing the TPR petition is not in the child's best interests; or
- the department has not provided the child's family with services it deem necessary when reasonable efforts are still required to enable the child's return to a safe home.

Required Findings to Waive Further Hearings: G.S. 7B-906.1(k), (n)

The court may waive further permanency planning review hearings, require written reports to the court by the person or agency with custody of the child in lieu of permanency planning review hearings, or order the hearings be held less often than every six months if the court finds *each* of the following by *clear, cogent, and convincing evidence*:

- The child has resided in the placement for at least one year.
- The placement is stable and continuation of the placement is in the child's best interests.
- Neither the child's best interests nor any party's rights require that review hearings be held every six months.
- All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion.
- The court order has designated the relative or other suitable person as the child's permanent custodian or guardian of the person.

Note: When custody is placed with a parent, the court is relieved of the duty to hold periodic review hearings. The findings of G.S. 7B-906.1(n) are not required.

Order for Permanent Plans: G.S. 7B-906.2(a)–(b)

The court must adopt at least two concurrent permanent plans

- it finds are in the child's best interest
- and must identify

- the primary permanent plan and
- the secondary permanent plan

or

- concurrent planning is not required because a permanent plan has been achieved.

The court

- must order the department to make efforts toward finalizing the primary and secondary permanent plans and
- may specify efforts that are reasonable to timely achieve permanence for the child.

There are six permanent plans, some of which require specific findings.

- Reunification** must be a primary or secondary plan unless the court makes written *findings of one of the following*:
 - The court made findings at initial disposition under G.S. 7B-901(c) that reunification efforts are not required.
 - Reunification efforts clearly would be unsuccessful.
 - Reunification efforts would be inconsistent with the child's health or safety.
 - Adoption**
 - Guardianship**
 - The court finds by clear and convincing evidence that the parent has waived his or her constitutional parental rights by being unfit, neglecting the child's welfare, or acting inconsistently with his or her constitutionally protected status.
 - The court must verify that the person receiving guardianship
 - understands the legal significance of the appointment (applies to each person) and
 - will have adequate resources to appropriately care for the child.
 - Custody** to a relative or other suitable person
 - The court finds by clear and convincing evidence that the parent has waived his or her constitutional parental rights by being unfit, neglecting the child's welfare, or acting inconsistently with his or her constitutionally protected status.
 - The court must verify that the person receiving custody
 - understands the legal significance of the placement (applies to each person) and
 - will have adequate resources to appropriately care for the child.
 - Under G.S. 7B-911, the court must determine whether jurisdiction in the juvenile action should be terminated and custody ordered pursuant to G.S. Chapter 50. If the answer is yes, the court must follow the requirements of G.S. 7B-911 and make findings that
 - are required under G.S. Chapter 50,
 - there is not a need for continued state intervention on behalf of the juvenile through a juvenile court proceeding, and
 - at least six months have passed since the court determined the child's placement with the person to whom the court is awarding custody is the permanent plan for the child.
 - This finding is not required when custody is being awarded to
 - a parent or
 - a person with whom the child was living when the petition was filed.
 - Another Planned Permanent Living Arrangement (APPLA)** under G.S. 7B-912(c), (d)
 - The court must find *each* of the following:
 - The juvenile is 16 or 17 years old.
 - The department has made diligent efforts to place the teen permanently with a parent or relative or in a guardianship or an adoptive placement.
 - There are compelling reasons that it is not in the teen's best interests to be placed permanently with a parent or relative or in a guardianship or adoptive placement.
 - APPLA is the best permanent plan for the teen.
 - After questioning the teen, addresses the teen's desired permanency outcome.
 - Reinstatement of Parental Rights** pursuant to G.S. 7B-1114.
-
- See Checklist 4 for additional requirements.**

Checklist 8

Termination of Parental Rights Hearing

This Checklist addresses preliminary matters, the adjudication of grounds, and the disposition for termination of parental rights proceedings related to an abuse, neglect, or dependency action.

Subject Matter Jurisdiction

- The TPR action is initiated by a person with standing as authorized by G.S. 7B-1103.
- The petition or motion is properly verified (G.S. 7B-1104).
- The petition or motion requests relief. N.C.R.Civ.P. 7(b)(1).
- The petition or motion is filed in the judicial district where the juvenile resides in, is found in, or is in the county where a department (or licensed child-placing agency) with legal or actual custody of the juvenile is located at the time the petition or motion is filed (G.S. 7B-1101).
- NC has jurisdiction under the UCCJEA pursuant to G.S. Chapter 50A (review the allegations in the petition or attached affidavit addressing criteria specified by G.S. 50A-209 regarding the child's status) (G.S. 7B-1101):
 - This is an initial child custody determination (G.S. 50A-201).
 - NC entered a child custody order prior to this action and NC has exclusive continuing jurisdiction (G.S. 50A-202).
 - Another state has entered a child custody order but NC has jurisdiction to modify that order (G.S. 50A-203).
 - The child, the child's parents, and any person acting as a parent do not presently reside in the other state or
 - The other state's court has relinquished jurisdiction to NC and there is a court order from that other state relinquishing jurisdiction.
- For a nonresident parent, process was served pursuant to G.S. 7B-1106 (G.S. 7B-1101).

Preliminary Issues

- The pretrial hearing required by G.S. 7B-1108 has been conducted or is combined with the adjudicatory hearing.
- Do any pretrial motions need to be decided?
- Is paternity an issue and a motion for genetic marker testing made (G.S. 8-50.1(b1))?
- Has the court found reasonable cause exists to order, pursuant to G.S. 7B-1109(c), that
 - the child be examined by a psychiatrist, physician, public or private agency, or any other expert to ascertain the child's psychological or physical condition or needs or
 - the parent be examined by a psychiatrist, physician, public or private agency, or any other expert to ascertain the parent's ability to care for the child?
- For the unknown parent, the court held a hearing pursuant to G.S. 7B-1105 to determine the parent's name or identity.

- The parties have been properly served or waived service (G.S. 7B-1106; 7B-1106.1; 7B-1102).
 - Before service by publication on a known parent was made, the court made findings that the respondent could not otherwise be served despite diligent efforts made by the petitioner, and the court approved the form of the notice (G.S. 7B-1106(a)).
- An answer or response was filed denying material allegations in the petition or motion. A GAL and attorney advocate have been appointed for the child as required by G.S. 7B-1108(b).
- No answer or response denying material allegations has been filed, but the court exercised its discretion to appoint a GAL and attorney advocate as permitted by G.S. 7B-1108(c).

Parent Representation: G.S. 7B-1101.1; 7B-1109(b)

- Court must inquire as to whether respondent is present and represented by counsel. If not represented, court must inquire as to whether respondent wants counsel and is indigent.
- If provisional counsel was appointed, has the appointment been confirmed or should provisional counsel be dismissed pursuant to G.S. 7B-1101.1(a)?
- If respondent wants to waive the right to counsel, has the court examined the respondent on the record and made findings to show that the waiver is knowing and voluntary?
- The parent is under age 18 and is not emancipated. A Rule 17 GAL is appointed.
- There is a substantial question as to parent's competency and need for a Rule 17 GAL. A hearing on that issue is required.

Timing of Hearing

- Are there any motions to continue the hearing, which must be held within ninety days of the petition being filed (G.S. 7B-1109(a))? Continuances are limited (G.S. 7B-1109(b), (d)).
 - Is there good cause to continue hearing for up to ninety days from the date of the initial petition to receive additional evidence, reports, or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other needed information in the best interests of the child?
 - Continuance beyond ninety days may be granted when a written order states the grounds for the continuance based on extraordinary circumstances that are necessary for the proper administration of justice or in the child's best interests (see G.S. 7B-803, resolution of pending criminal charges arising from the same incident is not a sole extraordinary circumstance to continue the hearing).
 - If the court appoints an attorney to a parent who was unrepresented at the hearing, the court must grant the parent an extension of time as is reasonable to permit appointed counsel to prepare a defense.

Compliance with Federal Laws

Servicemembers Civil Relief Act: 50 U.S.C. 3931–3932

Before a judgment for petitioner (DSS) is entered,

- Each respondent has made an appearance in the case. No SCRA affidavit is required.
- For each respondent who has not made an appearance, there is an affidavit or allegation in the verified petition that addresses that respondent's military status.

- It appears that a respondent is in military service. When that respondent has not made an appearance, appoint an attorney to perform SCRA responsibilities.
- A respondent is in military service. When the requirements of 50 U.S.C. 3931(d), (f) or 50 U.S.C. 3932 are met, a stay of at least ninety days is required.
- Indian Child Welfare Act: 25 C.F.R. 23.107*
Mandatory inquiry as to child's status as "Indian child" (defined at 25 U.S.C. 1903(4)) must be made of all participants at the commencement of the proceeding, with responses on the record.
 - The child is an Indian child. ICWA provisions apply.
Note: If child resides or is domiciled on Indian land or is a ward of tribal court, tribal court has exclusive jurisdiction unless an exception applies. Provisions of "emergency proceeding" under ICWA must be followed.
 - A participant has "reason to know" the child is an Indian child. Follow ICWA provisions unless and until court determines on the record that the child does not meet the definition of Indian child. Confirm that DSS or other party used due diligence to identify and work with all the tribes child may be member (or eligible for membership of).
 - The child is not an Indian child and no participant has reason to know the child is an Indian child. Instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. ICWA does not apply.

Adjudication: G.S. 7B-1109; 7B-1111

- The petitioner or movant proved by clear, cogent, and convincing evidence at least one of the alleged grounds.

Note: The evidence must support findings of fact sufficient to support a conclusion of law that the alleged ground exists. The rules of evidence apply to adjudication hearings. There must be a hearing; no default judgment or judgment on the pleadings is permitted (G.S. 7B-1107).

Dispositional Determination of Best Interest: G.S. 7B-1110

When one or more grounds for termination are adjudicated, the court must determine whether it is in the child's best interest to terminate parental rights by considering the following factors and making written findings of fact about those that are *relevant*:

- the child's age;
- likelihood of the child's adoption;
- whether termination will aid in the accomplishment of the child's permanent plan;
- the bond between the child and the parent;
- the quality of the relationship between the child and the proposed adoptive parent, guardian, custodian, or other permanent placement;
- any other relevant consideration.

Note: At disposition, the court may consider any evidence, including hearsay, that it finds to be relevant, reliable, and necessary to determine the child's best interests.

Order: G.S. 7B-1109(e); 7B-1110

- The court must find facts and adjudicate (i.e., make a conclusion of law regarding) the existence or nonexistence of each ground alleged in the petition or motion.
- The order must be entered (signed by the judge and filed with the clerk) within thirty days following completion of the hearing.

Outcomes:

- Dismiss the petition/Deny the motion.
At least one of the following must apply:
 - None of the alleged grounds have been proved by clear, cogent, and convincing evidence.
 - Make appropriate findings of fact and conclusions of law.
 - At least one alleged ground was proved but it is not in the child's best interest to terminate parental rights.
 - Must include the facts and conclusions on which the dismissal/denial is based.
- Grant the petition or motion.
 - The order that adjudicates a ground must state that the findings are based on clear, cogent, and convincing evidence.
 - The order must include findings of fact about the factors that were relevant to the determination of the child's best interests.
 - If the juvenile was not in the custody of DSS or a child-placing agency at the time the TPR petition or motion was filed, the order may place the juvenile in the custody of the petitioner/movant, some other suitable person, DSS, or a child-placing agency as may appear to be in the child's best interests (G.S. 7B-1112(2)).

Findings Relating to Particular Grounds

Following are reminders of *some* of the necessary findings of fact relating to five of the most frequently alleged grounds involving a TPR with an underlying abuse, neglect, or dependency proceeding.

Neglect or Abuse: G.S. 7B-1111(a)(1)

For this ground, neglect and abuse are defined by G.S. 7B-101(15) and (1) respectively. This ground requires findings of

- current neglect or abuse or
- if the child has been separated from the parent for a long period of time,
 - past neglect or abuse and
 - a likelihood of repetition of neglect or abuse if the child were returned home.

Willfully leaving the child in foster care or other placement for more than a year without making reasonable progress under the circumstances to correct conditions that led to the child's removal: G.S. 7B-1111(a)(2)

This ground has two prongs:

- the child has willfully been left in foster care or placement outside the home for over twelve months before the filing of the TPR petition or motion and

- at the time of the TPR hearing, the parent has not made reasonable progress under the circumstances to correct the conditions that led to the child's removal.

Poverty cannot be the basis for the TPR.

There must be findings

- sufficient to support a conclusion of willfulness, which requires findings about what the parent did in relation to what the parent was capable of doing;
- that address a parent's failure to make reasonable progress in relation to the conditions that led to the child's removal from the home; and
- that show that the child's placement outside the home for at least a year has been pursuant to a court order.

Willfully failed to pay a reasonable portion of the child's cost of care although physically and financially able to do so: G.S. 7B-1111(a)(3)

If the child has been placed in the custody of DSS, a licensed child-placing agency, child-caring institution, or a foster home, there must be findings that show

- the nonpayment of a reasonable portion of the cost of the child's care for at least six months before the filing of the TPR petition or motion;
- the parent's ability to pay some amount greater than what he or she paid during the relevant six month time period; and
- the parent's failure to pay was willful.

Dependency with a reasonable probability it will continue for the foreseeable future: G.S. 7B-1111(a)(6)

For this ground, dependency is defined by G.S. 7B-101(9). This ground requires findings that

- the parent does not have an ability to provide care or supervision to the child (based on any cause or condition, e.g., mental illness, substance abuse, incarceration);
- the parent lacks an available alternative child care arrangement for the child; and
- the parent's incapability is likely to continue for the foreseeable future (but is not required to be permanent, throughout the child's minority, or for a known precise duration).

Abandonment

A TPR based on abandonment can be based on two different grounds:

- G.S. 7B-1111(a)(1), neglect, as the definition of neglect in G.S. 7B-101(15) includes a juvenile who has been abandoned;
- G.S. 7B-1111(a)(7), a parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the TPR petition or motion.

Under G.S. 7B-1111(a)(7), findings must address

- a parent's willful intent to forego all parental duties and relinquish all parental claims (e.g., no financial support for, contact with, or inquiries about the child)
- during the relevant six month time period.

Checklist 9

Post-TPR Review Hearing

The post-TPR review hearing is governed by G.S. 7B-908. Its purpose is to ensure that every reasonable effort is being made to provide for permanent placement plans for a child who has been placed in the custody of a department (DSS) or licensed child-placing agency (agency), which are consistent with the child's best interest.

When Required

The post-TPR review hearing must be held when the child is in DSS (or agency) custody and within six months from the date of the termination hearing when

- parental rights have been terminated by an action brought by DSS or an agency with custody of the child, the child's GAL, the child's guardian of the person, or the person with whom the child has lived continuously for at least two years immediately preceding the filing of the TPR action, or
- one parent's parental rights have been terminated and the other parent's rights have been relinquished under G.S. Chapter 48.

Post-TPR hearings are held every six months until the child is adopted.

Note: When there has not been a relinquishment of the child by a parent, the statute does not clarify whether this hearing applies when one or both parent's rights have been terminated. Additionally, although the findings of G.S. 7B-906.1 do not apply to post-TPR review hearings, there is no provision, other than the criteria waiving permanency planning review hearings, that authorizes the court to stop conducting permanency planning hearings when post-TPR review hearings are being conducted. See G.S. 7B-906.1. Finally, the statute governing post-TPR review hearings does not authorize the court to waive holding these hearings. If a concurrent permanent plan other than adoption is achieved (e.g., the secondary plan), under G.S. 7B-908, post TPR review hearings continue to be conducted every six months.

Required Notice

The clerk must give notice no more than thirty days and no less than fifteen days prior to each post-TPR review hearing to

- the child if 12 or older;
- the child's GAL, if any;
- the child's legal custodian;
- the person providing care for the child (DSS may send the notice and file written documentation with the clerk that it has done so); and
- any other person or agency the court specifies.

Appointment of GAL for Child

If the child was unrepresented by a GAL at the TPR hearing, the court may

- appoint a GAL at the first post-TPR review hearing and
- continue the case for as much time as is necessary for the GAL to become familiar with the facts of the case.

The Hearing

- Unless the court directs otherwise, the child (if 12 or older), child's GAL, legal custodian, and person providing care for the child may attend the hearings.
- A parent whose rights have been terminated is not a party to the proceeding unless there is a pending appeal of the TPR order and the order is stayed pending the appeal.
- The court may consider any evidence, including hearsay evidence, that it finds to be relevant, reliable, and necessary to determine the child's needs and most appropriate disposition.

Required Inquiries and Findings

The court must consider the following factors and making written findings of those that are *relevant*:

- the adequacy of the permanency plans developed by DSS (or the agency) for permanent placement relevant to the child's best interests and DSS's (or the agency's) efforts to implement the plans;
- whether the child has been listed for adoptive placement with N.C. Kids Adoption and Foster Care Network or any other child-specific recruitment program or whether the court finds, based on the child's best interests, that there is an exemption to the listing;
- the efforts previously made by DSS or the agency to find a permanent placement for the child;
- whether the current placement is in the child's best interests.

Order

The court must

- make findings of fact (supported by competent evidence),
- adopt concurrent permanent plans in accordance with G.S. 7B-906.2(a)(2)–(6), and
- identify
 - a primary plan and
 - a secondary plan.

The court may

- specify efforts that are necessary to accomplish the permanent placement that is in the child's best interests,
- order a placement it finds to be in the child's best interests, if the child is not placed with prospective adoptive parents as selected in G.S. 7B-1112.1 and the court has considered DSS's recommendations.