

Hearings Checklists

Checklist 1: Hearing on the Need for Continued Nonsecure Custody

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Checklist 1. Hearing on the Need for Continued Nonsecure Custody	Applicable Statutes and Forms
Purpose To determine whether a child who has been placed in nonsecure custody should remain in nonsecure custody pending the adjudication hearing.	7B-506 AOC-J-151
Timing <i>First hearing:</i> <ul style="list-style-type: none"> • <i>When initial nonsecure order was entered by a judge</i>—within 7 calendar days of the time the juvenile is taken into nonsecure custody; may be continued up to 10 business days with consent of parents and child’s GAL; may not be waived. • <i>When initial order was entered by person with delegated authority</i>—on day of next regularly scheduled session of court but within 7 calendar days; may not be waived. <i>Second hearing:</i> within 7 business days of the first hearing. <i>Subsequent hearings:</i> at least every 30 calendar days thereafter. <i>Waivers and continuances:</i> after the first hearing, waiver allowed with consent of child’s parent, guardian, or custodian and GAL; court may require consent of additional parties and may schedule a hearing even if parties consent to waiver or continuance.	7B-506 7B-502
Preliminary Inquiries and Determinations (if not already addressed) <i>Proper petition and jurisdiction</i> <ul style="list-style-type: none"> ___ Have the parties been properly served or waived service? ___ Is the petition properly signed and verified? ___ Is the information required by G.S. 50A-209 contained in the petition or an attached affidavit? ___ Does the court have jurisdiction under the UCCJEA on the basis that: <ul style="list-style-type: none"> ___ N.C. is the juvenile’s home state? ___ N.C. has exclusive continuing jurisdiction? ___ N.C. has jurisdiction to modify another state’s order? ___ N.C. has temporary emergency jurisdiction? ___ Is venue proper? If petition is not filed in county of the child’s legal residence, has DSS in that county been given notice as required by G.S. 7B-402? <i>Representation</i> <ul style="list-style-type: none"> ___ If a parent has provisional counsel, should the appointment be confirmed or should counsel be dismissed? ___ If a parent is present and does not have counsel, does the parent want counsel and, if so, is the parent indigent? ___ If a parent is under age 18 and not emancipated, has a Rule 17 GAL for the parent been appointed as required by G.S. 7B-602(b)? ___ Is there a need to conduct a hearing to determine whether a Rule 17 GAL should be appointed for a parent due to incompetence, as authorized by G.S. 7B-602(c)? ___ If abuse and/or neglect is alleged, have a GAL and attorney advocate been appointed for the juvenile? ___ If only dependency is alleged, should a GAL and attorney advocate be appointed for the juvenile? 	7B-400 7B-402 7B-406 7B-407 50A(UCCJEA) AOC-J-141 AOC-J-142 AOC-J-130 7B-601 7B-602 AOC-J-143 AOC-J-207 AOC-CR-226

<p>Required Findings and Considerations if Court Orders Child to Remain in Nonsecure Custody</p> <p>___ Has DSS made reasonable efforts to prevent or eliminate the need for the child's placement? (See Checklist 2: Any Order Placing Child in DSS Custody.)</p> <p>___ What efforts have been made to identify and notify relatives and custodial parents of the child's sibling as potential resources for placement or support?</p> <p>___ Is a relative or custodial parent of the child's sibling willing and able to provide care for the child, and if so, is placement with the relative consistent with or contrary to the child's best interest?</p> <p>___ If the court does not place the juvenile with a relative, is any "nonrelative kin" willing and able to provide care and supervision of the juvenile in a safe home?</p> <p>___ If the juvenile is a member of a state-recognized Indian tribe as set forth in G.S. 143B-407(a), should the court order DSS to notify the juvenile's state-recognized tribe of the need for nonsecure custody for the purpose of locating relative or kinship placement resources?</p> <p>___ If the child is (or is eligible to be) a member of a federally recognized Indian tribe, does the placement comply with the Indian Child Welfare Act (ICWA)?</p> <p>___ Does the placement comply with the Multiethnic Placement Act?</p> <p>___ If the placement is out of state, does it comply with the Interstate Compact on the Placement of Children (Art. 38, G.S. Ch. 7B) if applicable?</p> <p>___ Is it in the child's best interest to remain in the community? Have the child's community ties, e.g., to siblings, relatives, friends, school, church, activities, special services, etc., been considered in making placement determinations?</p>	<p>7B-503 7B-505 7B-506 7B-507</p>
<p>Other Considerations when Child Remains in Nonsecure Custody</p> <p><i>The court also may consider and address the following issues as appropriate:</i></p> <p>___ visitation must be ordered with parent if the child is not placed with parent;</p> <p>___ visitation may be ordered with siblings;</p> <p>___ efforts to ensure that the child is not required to change schools;</p> <p>___ services the child and parents should be receiving prior to adjudication and how, when, and by whom the services should be provided or arranged;</p> <p>___ financial support for the child;</p> <p>___ authorization for caregiver to consent to health care or other treatment.</p>	<p>G.S. 7B-905.1</p>
<p>Requirements for Order Continuing Nonsecure Custody</p> <p>An order for continued nonsecure custody must be in writing and must be entered (signed and filed with the clerk) within 30 days after the hearing.</p> <p><i>The order must include findings</i></p> <ul style="list-style-type: none"> • based on clear and convincing evidence, to support a conclusion that continued nonsecure custody is necessary; • to support a conclusion that criteria in G.S. 7B-503 for nonsecure custody are satisfied; • about the evidence relied on in reaching the decision; • about the purposes of continued nonsecure custody. <p><i>If the order places the juvenile in the nonsecure custody of DSS, the order must include</i></p> <ul style="list-style-type: none"> • a finding that continuation in or return to the child's own home would be contrary to the child's best interest; 	<p>7B-506 7B-507</p> <p>AOC-J-151</p>

- reasonable efforts findings—both
 - whether such efforts have been made (unless the court has ordered that they are not required) and
 - whether they should continue;
- a statement that the child's placement and care are the responsibility of DSS.

If the court provides for a specific placement that differs from DSS's recommendation, the order should reflect that the court gave bona fide consideration to DSS's recommendation.

If the order terminates DSS's obligation to make reunification efforts, it must include one of the findings specified in G.S. 7B-507(b). (Most often, the finding is that efforts clearly would be futile or inconsistent with the child's health, safety, and need for a safe, permanent home within a reasonable period of time.)

Whenever possible, the order should address visitation consistent with G.S. 7B-905.1.

Checklist 2. Any Order Placing Child in DSS Custody (G.S. 7B-507 Requirements)

When the court orders a child to be placed in DSS custody or to remain in DSS custody (or gives DSS “placement responsibility”), the hearing and the resulting order must address the following:

- **Best interest.** The order must include a finding that the child’s continuation in or return to his or her own home would be contrary to the child’s best interest.
- **Reasonable efforts—past.** The order must include specific findings to support a conclusion as to whether DSS has made reasonable efforts to prevent or eliminate the need for placement (unless the court has determined that efforts are not required). Where efforts to prevent the need for placement were precluded by an immediate threat of harm to the child, the court may find that placement in the absence of such efforts was reasonable.
- **Reasonable efforts—future.** The order must address whether DSS should continue to make reunification efforts.
 - The court may order that efforts to reunify the family be made concurrently with efforts to plan for another permanent arrangement.
 - The court may order that reunification efforts are not required or must cease, but *only if* the court makes written findings
 - that efforts would be futile or inconsistent with the child’s health, safety, and need for a safe permanent home within a reasonable period of time; or
 - that a court has terminated involuntarily the parent’s rights to another child; or
 - that a court has determined that the parent has subjected the child to “aggravated circumstances,” as defined by G.S. 7B-101; or
 - that a court has determined that the parent committed murder or voluntary manslaughter of another child of the parent; aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; committed a felony assault resulting in serious bodily injury to the child or another child of the parent; committed sexual abuse against the child or another child of the parent; or has been required to register as a sex offender on any government-administered registry.
- **Schedule permanency planning hearing.** If the court ceases reunification efforts, it must direct that a permanency planning hearing be held within 30 days and schedule the hearing if practicable.
- **DSS responsibility.** The order must state that the child’s placement and care are the responsibility of DSS. (If the court directs a specific placement that differs from DSS’s recommendation, DSS must be given an opportunity to be heard and the order should reflect that the court gave bona fide consideration to DSS’s recommendation.)
- **Health and safety.** The child’s health and safety must be the paramount concern in determining reasonable efforts.
- **Other services and efforts.** The court may order services or other efforts aimed at returning the child home or achieving another permanent plan.
- **Required finding.** If custody to DSS is ordered or continued pursuant to G.S. 7B-903(a)(2) at a disposition or review hearing, the order must contain a finding that the child needs more adequate care or supervision or needs placement. *See In re S.H.*, 217 N.C. App. 140 (2011).

Checklist 3. Adjudication Hearing	Applicable Statutes and Forms
Purpose To adjudicate the existence or nonexistence of the conditions alleged in a petition for abuse, neglect, or dependency.	7B-802
Timing Must be held within 60 days from the time the petition is filed. A continuance is permissible only <ul style="list-style-type: none"> • for good cause, for as long as is reasonably required to receive additional evidence, reports, or assessments the court has requested, or other information needed in the best interests of the child; or • to allow a reasonable time for the parties to conduct expeditious discovery; or • in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the child. Pending criminal charges arising from the same incident may not be the sole extraordinary circumstance. 	7B-801 7B-803
Preliminary Inquiries and Determinations (if not already addressed) <i>(Note: The requirements in G.S. 7B-800.1 for a Pre-adjudication Hearing must be met; some, but not all, of those requirements relate to the following factors.)</i> Proper petition and jurisdiction ___ Have the parties been properly served or waived service? ___ Is the petition properly signed and verified? ___ Is the information required by G.S. 50A-209 contained in the petition or an attached affidavit? ___ Does the court have jurisdiction under the UCCJEA on the basis that ___ N.C. is the child's home state? ___ N.C. has exclusive continuing jurisdiction? ___ N.C. has jurisdiction to modify another state's order? ___ N.C. has temporary emergency jurisdiction? ___ Is venue proper? If petition is not filed in the county of the child's residence, has DSS in that county been given notice as required by G.S. 7B-402? Representation ___ If a parent has provisional counsel, should the appointment be confirmed or should counsel be dismissed? ___ If the parent is present and does not have counsel, does the parent want counsel? If so, is the parent indigent? ___ If a parent is under age 18 and not emancipated, has a Rule 17 GAL for the parent been appointed as required by G.S. 7B-602(b)? ___ Is there a need to conduct a hearing to determine whether a Rule 17 GAL should be appointed for a parent due to incompetence, as authorized by G.S. 7B-602(c)? ___ If abuse and/or neglect is alleged, have a GAL and attorney advocate been appointed for the child?	7B-800.1 7B-400 7B-402 7B-406 7B-407 50A(UCCJE A) AOC-J-141 AOC-J-142 AOC-J-130 7B-601 7B-602 AOC-J-143 AOC-J-207 AOC-CR-226

<p>___ If only dependency is alleged, should a GAL and attorney advocate be appointed for the child?</p> <p><i>Servicemembers Civil Relief Act</i></p> <p>___ Has each respondent appeared in the case?</p> <p>___ If not, has the affidavit addressing the non-appearing respondent's military status been filed with the court, or is there a provision in the verified petition that addresses each respondent's military status?</p> <p>___ If the affidavit or verified petition shows the respondent is in the military, has the court appointed an attorney for that respondent?</p> <p>___ If respondent is in the military, has a stay been requested?</p>	<p>50 U.S.C. app. § 521 50 U.S.C. app. § 522</p> <p>AOC-G-250</p>
<p>Evidence and Burden of Proof</p> <ul style="list-style-type: none"> • DSS has the burden of proving the allegations in the petition by clear and convincing evidence. • The rules of evidence apply. • No default judgment or judgment on the pleadings is permitted; the court must hold a hearing. • All parties have the right to present evidence and cross-examine witnesses. • Evidence is limited to that which relates to the allegations in the petition; however, evidence of paternity being established after the petition was filed may be introduced. • Predisposition reports may not be submitted to or considered by the court until after adjudication. 	<p>7B-802 7B-804 7B-805</p>
<p>Outcomes</p> <ul style="list-style-type: none"> • The court must adjudicate the existence or nonexistence of the condition(s) alleged in the petition. • If the court does not adjudicate the child to be abused, neglected, or dependent, the court must dismiss the petition and release a child who is in nonsecure custody to his or her parents, custodian, guardian, or caregiver. • If the court adjudicates the child to be abused, neglected, or dependent, the court must immediately proceed to a disposition hearing or set a date for the disposition hearing to be concluded within 30 days. 	<p>7B-802 7B-807 7B-901</p>
<p>Additional Issues for Hearing and Order</p> <p>If the court adjudicates the child to be abused, neglected, or dependent but does not proceed immediately to disposition, the court should address the following:</p> <p>___ Custody and placement of the child pending disposition.</p> <p>___ Visitation and communication between the child and parent or siblings pending disposition.</p> <p>In effect, the court should enter a "temporary disposition" order pending a full hearing on disposition. (See Checklist 4. Disposition Hearing.)</p>	
<p>Requirements for Adjudication Order</p> <p>An adjudication order must</p> <ul style="list-style-type: none"> • be in writing; • contain appropriate findings of fact (supported by evidence in the record); • contain appropriate conclusions of law (supported by the findings of fact); and 	<p>7B-807</p> <p>AOC-J-153</p>

- be entered (reduced to writing, signed, and filed with the clerk) no later than 30 days following completion of the hearing.

If the order adjudicates abuse, neglect, or dependency, it must state that the facts were found by clear and convincing evidence.

If the petition alleged more than one condition (abuse, neglect, dependency), the order should make findings and conclusions about each. The order may not adjudicate a condition that was not alleged in the petition.

Consent Order: A consent order is permissible only if all parties are present or represented by counsel who is present and authorized to consent, the child is represented by counsel, and the court makes sufficient findings of fact. The order must comply with all other requirements for adjudication orders.

7B-801

Checklist 4. Disposition Hearing (Initial disposition hearing following adjudication)	Applicable Statutes and Forms
Purpose To design an appropriate plan to meet the needs of the child that takes into account the child's need for safety, continuity, and permanence while respecting family autonomy and avoiding unnecessary separation of children and parents.	7B-100 7B-900
Timing Immediately following adjudication or when the court receives sufficient social, medical, psychiatric, psychological, and educational information but must be concluded within 30 days after the adjudication hearing. Continuance: <ul style="list-style-type: none"> to allow the parent, guardian, custodian, caretaker, or others to take appropriate action; to receive additional evidence, reports, assessments, or other information needed in the best interests of the child; or to address extraordinary circumstances when necessary for the proper administration of justice or in the best interest of the child. 	7B-901 7B-808(a) 7B-803
Evidence and Burden of Proof <ul style="list-style-type: none"> Hearing may be informal, and the rules of evidence are relaxed. Any evidence, including hearsay, is allowed if reliable, relevant, and necessary to determine the child's needs and best interests. Cumulative testimony may be excluded. No burden of proof on any party, but sufficient evidence must be presented to allow the court to make required determinations. All parties may present evidence. DSS must prepare and submit a report, and other parties may submit reports. 	7B-901 7B-808
Available Dispositions The following dispositional options are available to the court: <ul style="list-style-type: none"> _____ Dismissal: 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. _____ In-home supervision and services (<i>requires a finding that the child needs more adequate care or supervision or needs placement</i>): The court may require that the child be supervised by DSS (or other personnel available to the court but not the GAL) while remaining at home, subject to any conditions placed on the parent, guardian, custodian, or caretaker. (If an alleged abuser had a history of violent behavior, 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 child to the custody of the alleged abuser.) 	7B-903

<p>Available Dispositions <i>(continued)</i></p> <p>— Out-of-home placement (<i>requires a finding that the child needs more adequate care or supervision or needs placement</i>):</p> <p><i>Specific placement alternatives:</i></p> <p>— placement in the custody of 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);</p> <p>— placement in the custody of a parent, relative, agency offering placement services, or other suitable person;</p> <p>— appointment of a guardian pursuant to G.S. 7B-600.</p> <p><i>Considerations and findings for all out-of-home placements:</i></p> <ul style="list-style-type: none"> • If a relative is willing and able to provide care, the child must be placed with the relative unless the placement is contrary to child's best interest. • The court must consider whether it is in the child's best interest to remain in his or her community. (Factors may include ties related to siblings, relatives, friends, school, church, activities, special services, etc.) • If the child is (or is eligible to be) a member of a federally recognized Indian tribe, compliance with the Indian Child Welfare Act (ICWA) is required. If the child is a member of a state-recognized tribe, the court may contact the tribe as a means of identifying placement resources. • The placement must comply with the Multiethnic Placement Act (MEPA). • An out-of-state placement must comply with the Interstate Compact on the Placement of Children (Art. 38, G.S. Ch. 7B) when applicable. • The court must verify that any person (other than a parent or DSS) receiving custody or guardianship understands the legal significance of the placement and will have adequate resources to care for the child appropriately. • If placement is in another county, in some cases the court should consider whether a transfer of venue under G.S. 7B-900.1 is appropriate. • The court should consider whether the parent is able and should be ordered to pay a reasonable portion of the cost of the child's care. 	<p>7B-903 7B-904 7B-905 7B-507 7B-600</p>
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<p>Available Dispositions <i>(continued)</i></p> <p>— Evaluation and Treatment for Children and Parents</p> <p><i>The court may order the following:</i></p> <p>— evaluation of the child by a physician, psychiatrist, psychologist, or other qualified expert, to determine the needs of the child;</p> <p>— treatment for the child, after a hearing for which notice has been given to the county manager or person designated by the chair of the board of county commissioners;</p> <p>— 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;</p> <p>— evaluation and treatment for parents (or 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 interests and directed toward remediating or remedying behaviors or conditions that led to or contributed to the child's adjudication or the court's decision to remove custody</p> <p>— custody or placement conditioned on parent's (or other person's) receipt of treatment;</p> <p>— Payment of cost of evaluation or treatment</p> <ul style="list-style-type: none"> • for treatment of child (and participating adult), by the parent or other responsible parties or, if the parent is unable to pay, by the county; • for treatment of the parent or other adult, by that person or, if unable to pay, court may order treatment currently available from local mental health program; • if court has conditioned custody on receipt of treatment, by the adult receiving treatment or, if unable to pay, by the county. 	<p>7B-903 7B-904</p>
<p>Orders Directed to Parents or Others</p> <p>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:</p> <p>— attend and participate in parenting classes if classes are available in the judicial district where he or she lives;</p> <p>— 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);</p> <p>— 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;</p> <p>— order a parent to pay child support, which is a reasonable portion of the cost of the child's care based on the parent's ability to do so.</p>	<p>7B-904</p>
<p>Disposition Order</p> <p>A disposition order:</p> <ul style="list-style-type: none"> • must be entered (reduced to writing, signed, and filed with the clerk) within 30 days of completion of the disposition hearing; • must contain appropriate findings of fact and conclusions of law; • must address the required findings (detailed above in checklist) for the specific dispositional options the court orders; • must 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; 	<p>7B-905 7B-507</p> <p>AOC-J-154</p>

<h2>Checklist 5: Review and Permanency Planning Hearings</h2>	<h3>Applicable Statutes and Forms</h3>
<p>Purpose</p> <p>At review hearings, including permanency planning hearings, the court reviews and evaluates the child's circumstances and makes any needed changes to prior disposition or review orders. A <i>permanency planning hearing</i> is a review hearing that may be held at any time, but an initial permanency planning hearing must be held within one year after the child's removal from the home. Parties must be given notice that the court will be making or reviewing a permanent plan for the child. After the initial permanency planning hearing, all subsequent review hearings are permanency planning hearings.</p> <p><i>Note:</i> Most review hearings are held pursuant to G.S. 7B-906.1. However, reviews also may be held on motion of a party pursuant to G.S. 7B-1000. If guardianship has been made the permanent plan for the child, G.S. 7B-600(b) also will apply. The court should specify at the hearing and in its order the statute(s) under which the review is held.</p>	<p>7B-906.1 7B-1000 7B-600</p>
<p>Timing</p> <p><i>First review hearing:</i> When custody is removed from the parent at disposition, a review hearing must be held within 90 days from the date of the disposition.</p> <p><i>Subsequent review hearings:</i> At least every six months.</p> <p><i>First permanency planning review hearing:</i> Within one year after child's initial removal from the home, even if removal was before disposition, pursuant to nonsecure custody.</p> <p><i>Waiver of review hearings:</i> The court may waive further review hearings, require written reports in lieu of review hearings, or have review hearings less frequently than every six months if:</p> <ul style="list-style-type: none"> • custody of the child is placed with parents, or • the court finds all of the following by clear, cogent, and convincing evidence: <ul style="list-style-type: none"> ___ 1. The child has lived with a relative or been in the custody of another suitable person for at least one year; ___ 2. The placement is stable and continuation of the placement is in the child's best interests; ___ 3. Neither the child's best interests nor any party's rights require that review hearings be held every six months; ___ 4. 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; and ___ 5. The court order has designated the relative or other suitable person as the child's permanent caretaker or guardian of the person. • A review hearing must be held if a party files a motion seeking review. • Placement of the child in the custody or guardianship of someone other than a parent, even if the placement is the permanent plan, does not affect the requirement for review hearings. They must continue unless waived as described above. 	<p>7B-906.1 7B-1000</p> <p>AOC-J-140</p>

<p>The Hearing; Evidence; and Burden of Proof</p> <ul style="list-style-type: none"> • The clerk must give notice to the parents, the child if 12 or older, the guardian, the person providing care for the child (who may be given notice by DSS), the custodian or agency with custody, the guardian ad litem, and anyone else the court specifies. • The hearing may be informal, and the rules of evidence are relaxed. • Any evidence, including hearsay, is allowed if relevant, reliable, and necessary to determine the child's needs and the most appropriate disposition. Cumulative testimony may be excluded. • The court may consider evidence or testimony from any person or agency that will aid the court in its review. • No burden of proof on any party, but sufficient evidence must be presented to allow the court to make required determinations. • All parties must have an opportunity to present evidence. 	<p>7B-906.1</p>
<p>Specific Criteria</p> <p><i>At every hearing.</i> The court is required to consider the following criteria and to make <i>written findings concerning any that are relevant</i>:</p> <ul style="list-style-type: none"> ___ 1. 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. ___ 2. 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. ___ 3. Whether efforts to reunite the child with either parent clearly would be futile 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. If the court determines further efforts would be futile or inconsistent with the child's welfare, the court must consider a permanent plan of care for the child or schedule a permanency planning hearing to do so. ___ 4. 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. ___ 5. If the child is 16 or 17 years of age, a report on an independent living assessment and, if appropriate, an independent living plan. ___ 6. Whether termination of parental rights should be considered and if so when. ___ 7. Any other criteria the court deems necessary. <p><i>In addition, at any permanency planning hearing where the child is not placed with a parent.</i> The court must consider the following criteria and make <i>written findings about those that are relevant</i>:</p> <ul style="list-style-type: none"> ___ 1. 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. ___ 2. 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 the parents should retain. ___ 3. 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. ___ 4. 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. 	<p>7B-906.1 7B-507</p>

<p><i>In addition, at any permanency planning hearing where the child is not placed with a parent (continued)</i></p> <p>___ 5. Whether the county department of social services, since the initial permanency planning hearing, has made reasonable efforts to implement the permanent plan.</p> <p>___ 6. Any other criteria the court deems necessary.</p> <p><i>If any of the following circumstances exist, the court must determine whether there is an exception to the requirement that DSS initiate a proceeding to terminate parental rights. See G.S. 7B-906.1(f).</i></p> <p>___ Is the child now in the custody or placement responsibility of DSS, and has the child been in placement outside the home for 12 of the most recent 22 months?</p> <p>___ Has a court of competent jurisdiction determined that the parent has</p> <ul style="list-style-type: none"> • abandoned the child, or • committed murder or voluntary manslaughter of another child of the parent, or • aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent? <p><i>If the answer to either question above is yes, DSS is required to initiate a proceeding to terminate parental rights unless the court finds one of the following:</i></p> <ul style="list-style-type: none"> • The permanent plan for the child is guardianship or custody with a relative or some other suitable person. • Filing of a petition for termination of parental rights is not in the child's best interests, based on specific findings of fact and stated reasons. • DSS has not provided the child's family with services DSS deems necessary when reasonable efforts are still required to enable the child's return to a safe home. 	
<p>Available Dispositions</p> <p>See Checklist 4: Disposition Hearing. <i>The dispositional options available to the court, along with required considerations and findings for those options, are the same as those available at disposition.</i></p>	<p>7B-903 7B-906.1 7B-803</p>
<p>Order</p> <p>* If the child is placed or continued in the placement of DSS, see Checklist 2: Any Order Placing Child in DSS Custody.</p> <p>* The order must comply with requirements for any disposition order. See Checklist 4: Disposition Hearing.</p> <p>* If the court orders a permanent plan of guardianship or custody to someone other than a parent, the order must include a finding that the parents are unfit or have acted inconsistently with their constitutionally protected parental status. (This finding may not be necessary if the parent consents to the child's custody with a third party.)</p> <p><i>A review hearing or permanency planning review hearing order</i></p> <ul style="list-style-type: none"> • must include findings about any of the criteria listed above that are relevant; • must include specific findings as to the best plan of care to achieve a safe, permanent home for the child within a reasonable time; • must include appropriate conclusions of law; 	<p>7B-903 7B-904 7B-905 7B-906.1 7B-507 7B-902</p>

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| <ul style="list-style-type: none">• must be entered (signed and filed with the clerk) within 30 days after the review hearing;• if another review hearing is required within the next 6 months, must set the date for that hearing if practicable;• if the court orders that reunification efforts cease, the court must direct that a permanency planning hearing be held within 30 days and should set the date for the hearing if practicable;• if custody is restored to a parent, the order should specify whether the court retains or terminates jurisdiction. | |
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Checklist 6. Hearing on Termination of Parental Rights (TPR)	Applicable Statutes and Forms
Purpose To determine whether any of the statutory grounds for termination of parental rights (TPR) as alleged in the petition exist and, if so, whether termination of parental rights is in the child's best interest.	7B-1109 7B-1110
Timing Must be held within 90 days after the TPR petition or motion is filed, unless the court orders that it be held at a later time. <ul style="list-style-type: none"> • Continuance up to 90 days from the date of the initial petition may be permitted for good cause, to receive additional evidence, or to allow parties to conduct expeditious discovery. • Continuance beyond 90 days permitted only in extraordinary circumstances, when necessary for the proper administration of justice, and court must enter a written order stating grounds for the continuance. • Continuance permitted for reasonable extension of time where counsel for parent is first appointed and needs time to prepare. 	7B-1109
Evidence and Burden of Proof <ul style="list-style-type: none"> • During the adjudication phase, the court must determine the existence or nonexistence of any alleged ground(s) for TPR. The standard of proof is clear, cogent, and convincing evidence, and the burden of proof is on the petitioner or movant. The rules of evidence apply. • At the disposition phase the court may hear additional evidence to make a discretionary determination as to whether TPR is in the child's best interest. There is no burden of proof on any party at disposition. • The court may not rely solely on documentary evidence, and default proceedings are not permitted. The court must take evidence, including some live testimony. 	7B-1109 7B-1110
Preliminary Inquiries and Determinations <i>Pretrial hearings, motions or agreements</i> ___ Has the pretrial hearing required by G.S. 7B-1108.1 been conducted, or is the pretrial hearing being combined with the adjudication hearing? ___ Do any prehearing motions need to be decided? ___ If the name or identity of a parent is unknown, has there been a hearing pursuant to G.S. 7B-1105 to determine the parent's name or identity? <i>Proper petition and jurisdiction</i> ___ Have the parties been properly served or waived service? ___ Did the respondent file an answer or response to the petition or motion? ___ Did the petitioner/movant have standing to initiate the action? ___ Is the petition/motion verified? ___ Is the information required by G.S. 50A-209 contained in the petition/motion or an attached affidavit? ___ Does the court have jurisdiction under the UCCJEA on the basis that: ___ N.C. is the child's home state? ___ N.C. has exclusive continuing jurisdiction? ___ N.C. has jurisdiction to modify another state's order?	7B-1108.1 7B-1105 7B-1103 7B-1104 7B-1106 7B-1106.1 7B-1108 7B-1101 50A-209 AOC-J-208 AOC-J-210

<p><i>Representation and participation</i></p> <p>___ If respondent is present, is he or she represented by counsel? If not, does the respondent want counsel? Is respondent indigent?</p> <p>___ If provisional counsel was appointed, has the appointment been confirmed or should provisional counsel be dismissed pursuant to G.S. 7B-1101.1(a)?</p> <p>___ 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?</p> <p>___ If respondent is under age 18 and not emancipated, has a Rule 17 GAL been appointed as required by G.S. 7B-1101.1(b)?</p> <p>___ Is there a need for a hearing to determine whether a Rule 17 GAL should be appointed for a respondent based on incompetence, as authorized by G.S. 7B-1101.1(c)?</p> <p>___ If an answer or response was filed denying material allegations in the petition or motion, have a GAL and attorney advocate been appointed for the child?</p> <p>___ If no answer or response denying material allegations has been filed, should a GAL and attorney advocate be appointed for the child?</p> <p><i>Servicemembers Civil Relief Act</i></p> <p>___ Has the respondent appeared in the case?</p> <p>___ If not, has the affidavit addressing the non-appearing respondent's military status been filed with the court, or is there a provision in the verified petition/motion that addresses the respondent's military status?</p> <p>___ If the affidavit or verified petition/motion shows the respondent is in the military, has the court appointed an attorney for that respondent?</p> <p>___ If respondent is in the military, has a stay been requested?</p>	<p>50 U.S.C. app. § 521</p> <p>50 U.S.C. app. § 522</p> <p>AOC-G-250</p>
<p>Adjudication</p> <p>For an adjudication of a ground for termination of parental rights, the petitioner or movant must present clear, cogent, and convincing evidence that supports findings of fact sufficient to support a conclusion of law that the alleged ground exists.</p>	<p>7B-1109</p> <p>7B-1111</p>
<p>Dispositional Determination of Best Interest</p> <p>___ If one or more grounds for termination are adjudicated, is it in the child's best interest to terminate parental rights? The court is required to consider the following factors and <u>make findings of fact</u> about those that are relevant:</p> <p>___ the child's age;</p> <p>___ likelihood of the child's being adopted;</p> <p>___ whether termination will help achieve the permanent plan for the child;</p> <p>___ the bond between the child and the parent;</p> <p>___ quality of the relationship between the child and the proposed adoptive parent, guardian, or custodian; and</p> <p>___ any other relevant factor.</p>	<p>7B-1110</p>
<p>Order</p> <p>___ <i>Dismissal.</i> If the court concludes that grounds have not been proved by clear, cogent, and convincing evidence OR that it is not in the child's best interest to terminate parental rights, the court must dismiss the petition or deny the motion but must first make findings of fact and conclusions of law.</p>	<p>7B-1109</p> <p>7B-1110</p> <p>7B-1111</p> <p>7B-1112</p>

— **Address grounds.** 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.

— **Standard of proof.** Any order that adjudicates a ground must state that the findings are based on clear, cogent, and convincing evidence.

— **Address best interest.** If one or more grounds are adjudicated, the court must determine whether TPR is in the child's best interests. The order must include findings of fact about relevant dispositional factors listed above.

— **Entry.** The order must be entered (signed by the judge and filed with the clerk) within 30 days following completion of the hearing.

Findings Relating to Particular Grounds

Following are reminders of *some* of the necessary findings of fact relating to three of the most frequently alleged grounds.

Neglect (or abuse)

Requires findings of

1. current neglect (or abuse) or
2. 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

- Requires 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.
- Findings must address a parent's failure to make reasonable progress in relation to the conditions that led to the child's removal from the home.
- Findings must show that the child's placement outside the home for at least a year has been pursuant to a court order.

Nonsupport

If the child is in the custody of DSS or another child placing agency, findings must include:

- nonpayment of a reasonable portion of the cost of the child's care for at least six months before the filing of the petition or motion and
- facts about employment, earnings, assets, etc., to support a conclusion that the parent was physically and financially able to pay and that the parent's failure to pay was willful.

In a private termination of parental rights action, findings must include:

- that one parent has custody of the child pursuant to a court order or a custody agreement between the parents;
- that the court order or agreement requires the respondent to pay for the care, support, and education of the child;
- that for at least one year before the filing of the petition or motion respondent failed to pay support as required by the court order or agreement; and
- that the nonpayment was willful and without justification.

Checklist 7. Post-TPR Review Hearing	Applicable Statutes and Forms
<p>Purpose</p> <p>To ensure that every reasonable effort is being made to provide a permanent placement for the child consistent with the child's best interests.</p>	7B-908
<p>Timing</p> <p><i>This hearing is required when:</i></p> <ul style="list-style-type: none"> parental rights have been terminated pursuant to a petition brought by one of the following: (i) a guardian of the person of the child, (ii) DSS or other licensed agency, or (iii) a person with whom the child has lived continuously for at least two years immediately preceding the filing of the action; <i>and</i> the child is in the custody of DSS or another licensed child-placing agency. <p><i>The first post-TPR review hearing must be conducted within six months of the date of the hearing at which parental rights were terminated.</i></p> <p><i>Subsequent post-TPR review hearings must be conducted at least every six months after the first hearing until the child is adopted.</i></p> <p><i>Cancellation of a post-TPR review hearing is permissible only if the juvenile is the subject of a final decree of adoption prior to the date of the review hearing.</i></p>	7B-908(b), (e)
<p>Preliminary Considerations</p> <p>___ Was notice of the hearing sent to the following persons?</p> <ul style="list-style-type: none"> the child, if the child is 12 years of age or older; a legal custodian of the child; the person who is providing care for the child; the child's guardian ad litem, if there is one; a parent whose rights have been terminated <i>but only if</i> the parent has appealed the order terminating the parent's rights and a court has stayed the order pending the appeal; and any other person or agency the court specified. <p>___ Was a GAL appointed previously to represent the child in the TPR proceeding? (If so, determine whether the GAL will continue to represent the child.)</p> <p>___ If a GAL was not appointed previously or has been relieved, should a GAL be appointed to represent the child? If so, should the hearing be continued to give the GAL time to prepare?</p>	7B-908(b)(1), (2)
<p>Evidence</p> <ul style="list-style-type: none"> The court may consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the needs of the child and the most appropriate disposition. The court may consider information from DSS or a licensed child placing agency, 	7B-908(a)

from any other participants, and from any other person or agency the court determines is likely to aid in the review.	
<p>Considerations</p> <p><i>The court is required to consider the following:</i></p> <p>___ Is the DSS or agency plan for permanent placement adequate and in the child's best interests?</p> <p>___ What efforts have been made to implement that plan, and have efforts been adequate?</p> <p>___ Has the child been listed for adoption with the N.C. Adoption Resource Exchange, the N.C. Photo Adoption Listing Service (PALS), or any other specialized adoption agency?</p> <p>___ What previous efforts have been made by DSS or the agency to find a permanent home for the child?</p> <p><i>The court should also consider:</i></p> <p>___ Is there any other information that should be obtained or taken into account to determine whether reasonable efforts are being made to provide a permanent placement for the child or whether another plan or additional steps are necessary to provide a permanent placement for the child?</p>	7B-908(c)
<p>Order</p> <p><i>The court must make findings of fact and conclusions of law, and the order must either:</i></p> <ul style="list-style-type: none"> • affirm the DSS's (or other agency's) plans, or • require specific additional steps that are necessary in order to accomplish a permanent placement that is in the child's best interest. 	7B-908(d)