

Chapter 13

Juvenile Court Procedures

The procedures described in this chapter are those set out in the North Carolina Juvenile Code (the Code).¹ Other laws and different procedures apply to proceedings for adoption, voluntary admissions and involuntary commitments of minors to mental health treatment facilities, and custody disputes between parents.²

Abuse, Neglect, or Dependency Petition

Sometimes, when an assessment results in a finding of abuse, neglect, or dependency, protective services cannot protect the child adequately unless the child is removed from the home. And sometimes, the parent (or guardian, custodian, or caretaker) refuses to accept services that are needed to ensure the child's safety. In these situations, the social services director must sign and file a petition alleging the relevant facts; alleging that the child is abused, neglected, or dependent; and asking the court to intervene on the child's behalf. The filing of a petition begins a juvenile proceeding in the district court. Only a county director of social services (or the director's representative) can file an abuse, neglect, or dependency petition.³

Juvenile proceedings are civil actions (that is, they are not criminal prosecutions). They focus on the condition and needs of the child, not the guilt or innocence of the parent or anyone else. County departments of social services file petitions in only a small percentage of the cases in which they

determine that a child is abused, neglected, or dependent. Usually this is because

- the department’s assessment indicates that it is safe for the child to remain in the home,
- the family accepts services voluntarily,
- the family and the department agree on a “protection plan” that provides for the family to take steps to protect the child or to voluntarily place the child with a relative, or
- the person who abused or neglected the child is out of the home and the child is no longer at risk.

Prehearing Custody

The Juvenile Code term for a prehearing custody order is “nonsecure custody.” The Code uses this somewhat confusing term in order to distinguish foster care and similar placements from the detention (“secure custody”) of children who are alleged to be delinquent. When the social services department determines after an assessment that a child is abused, neglected, or dependent and files a petition in juvenile court, it often asks for a prehearing custody order authorizing the department to place the child immediately in foster care (or another appropriate setting) without waiting for a full hearing on the petition.⁴

When the custody order is sought, a social services worker or law enforcement officer may already have taken the child into custody without a court order. They are allowed to do this if the child might be harmed or disappear if they attempted to file a petition and get the court order before taking custody of the child. To keep the child longer than twelve hours (or twenty-four hours if a weekend or holiday is involved), the social services department must file a petition and get a custody order within that time. (See “Immediate Removal of Child” in Chapter 11.)

Before granting a request for a prehearing custody order, a judge must consider releasing the child to a parent or another responsible adult. If that is not possible, then to grant the order the judge must find that there is a “reasonable factual basis” for believing that

1. the facts alleged in the petition are true,
2. removing the child from the home is the only reasonable way to protect the child, and
3. one of the following is true:
 - the child has been abandoned;
 - the child has suffered (or is exposed to a substantial risk of) physical injury or sexual abuse;
 - the child needs medical treatment for a serious condition, and the parent, guardian, or custodian is either unwilling or unable to provide or consent to the treatment;
 - a parent, guardian, or custodian consents to the child's removal from the home; or
 - the child is a runaway and consents to nonsecure custody.⁵

If the judge makes these findings and authorizes the child's removal from the home, the judge may direct a law enforcement officer to assume custody of the child and take the child to the social services office or another specified place, such as the home of a relative.⁶ If the judge cannot make these findings, the child must be left in the home (or returned to the home if already taken into custody) until the case is heard in juvenile court.

Removing the child from the home before there has been a full hearing on the petition deprives the parents of custody before they have had a chance to present their side of the case. For that reason, until the full hearing the court must hold periodic hearings to determine whether grounds for keeping the child out of the home pending the hearing continue to exist.⁷ Strict time limits apply to these hearings:

- If a judge entered the order for the child's placement, the first hearing must be held within seven calendar days after the child is removed from the home. If the order was entered by someone other than a judge, the hearing must be held on the earliest day possible within those seven days. This hearing may not be waived, but it may be continued for up to ten business days if the parties agree.⁸
- If the child is not returned home at the first hearing, the court must hold a second hearing within seven business days after the first hearing.⁹ This and subsequent hearings may be waived if the parties agree.¹⁰

- For as long as the child is kept out of the home without a full hearing on the petition, the court must continue to hold these hearings at least every thirty calendar days, unless they are waived.¹¹

At each of these hearings, the burden is on the department of social services to show by clear and convincing evidence that keeping the child out of the parent's custody pending a hearing on the petition is necessary.¹²

Court Representation

Child's Guardian ad Litem

Whenever a social services department files a petition alleging that a child is abused or neglected the court must appoint a special representative—a guardian ad litem—to represent the child's interests in the proceeding.¹³ A guardian ad litem usually will be a volunteer working under the supervision of the judicial district's guardian ad litem program.¹⁴ If the person appointed is not an attorney, the court also must appoint an attorney advocate to represent the child's legal interests.¹⁵ When a petition alleges only that a child is dependent, the judge is not required to appoint a guardian ad litem and attorney advocate for the child, but it may do so.¹⁶

The guardian ad litem program's overall mission is to protect and promote the child's best interests. Its specific duties include

- investigating to determine the facts, the child's needs, and resources available in the family and community;
- facilitating the settlement of disputed issues;
- offering evidence and examining witnesses in court;
- exploring dispositional options; and
- conducting follow-up investigations and reporting to the court if the child's needs are not being met.¹⁷

The Juvenile Code authorizes guardians ad litem to obtain any information or reports, including those that are confidential, that the guardian ad litem considers relevant to the case. A guardian ad litem who is exercising this authority should present the court order that appointed him or her as the child's guardian ad litem. The guardian ad litem must protect the confidentiality of any information he or she receives.¹⁸

A medical or mental health provider, a school, or any other agency or professional from whom a guardian ad litem seeks information should provide the information promptly, unless

1. the person seeking the information has not presented the court order appointing him or her or otherwise established that he or she is the child's guardian ad litem, or
2. federal law or regulations prohibit disclosure of the information.¹⁹

Representation for Parents

In an abuse, neglect, or dependency case a child's parent, if indigent, is entitled to court-appointed counsel unless the parent waives that right.²⁰ In addition, the court may appoint a guardian ad litem for a parent who is incompetent.²¹

Stages in Juvenile Cases

Juvenile cases have two primary stages—adjudication and disposition. The purpose of the adjudicatory, or fact-finding, hearing is for the court to determine from the evidence whether the child is an abused, neglected, or dependent juvenile. Only after adjudicating the child to be abused, neglected, or dependent may the court continue to enter orders affecting the child's placement and care and direct orders to the child's parents.

Adjudication

At the adjudicatory hearing, the judge hears testimony, considers other evidence (such as medical records), and determines whether

1. the facts alleged in the petition are true; and
2. the facts establish that the child is an abused, neglected, or dependent juvenile within the meaning of the Juvenile Code definitions.²²

This hearing must be held within sixty days after the petition is filed unless the court orders that it be held later.²³ The hearing is fairly formal, and the rules of evidence apply.²⁴ The burden is on the department of social services to prove the relevant facts by clear and convincing evidence.²⁵

The judge is not required to exclude the public from the hearing but may do so after considering a list of factors set out in the Juvenile Code.²⁶

The hearing must be open, however, if the child (through the guardian ad litem or attorney advocate) asks that it be open.²⁷ Anyone who has relevant information, including the person who made the report, may be subpoenaed to testify at the hearing.²⁸

If the court does not find by clear and convincing evidence that the child is abused, neglected, or dependent, the case must be dismissed.²⁹ The “clear and convincing” evidence standard is stricter than the one that applies in most civil cases but less stringent than the standard that applies in criminal or delinquency cases. (Most civil cases are decided by the greater weight, or preponderance, of the evidence. Criminal or delinquency cases require proof beyond a reasonable doubt.)

Disposition

A dispositional hearing occurs only if the judge finds at the adjudication hearing that the child is abused, neglected, or dependent. This hearing should begin immediately following the adjudication and must be completed within thirty days after the adjudication hearing.³⁰ The hearing may be informal, and the judge may consider written reports and evidence that would not be admissible at the adjudicatory stage.³¹

The first step at this hearing is to identify the child’s needs. To that end, the judge may order that the child be examined by a physician, psychiatrist, or other expert.³² The judge may need to receive written reports or hear testimony about the child’s educational, medical, psychological, or social needs. With input from all of the parties, the judge then designs an appropriate plan to meet the child’s needs. In order to do this, the judge needs to receive information about the parents’ ability to meet the child’s needs, the parents’ own needs, and available resources.³³

The finding that a child is abused, neglected, or dependent does not automatically result in the child’s removal, or continued removal, from the parents’ custody. The law favors leaving the child at home when the child can be safe there.³⁴ The judge may postpone further hearings in order to allow the parents or others to take appropriate action or even dismiss the case if no further action is required.³⁵ If the child needs better care or supervision, the judge may order the department of social services to supervise the child in the child’s own home, subject to conditions the judge specifies.³⁶ Or the judge may order that the child be placed in the custody of a parent, some other suitable person, a private agency, or the county department of social

services.³⁷ If the disposition order provides for the child to be placed or to remain in the custody of the department of social services, the judge must make findings as to whether the department of social services has made reasonable efforts to prevent or eliminate the need for the child's placement.³⁸ (See "Keeping the Family Together" in Chapter 11.)

Review Hearings

The child (through the guardian ad litem or attorney advocate) or any other party may file a motion at any time asking the court to review a case. A motion for review results in a hearing at which the judge may modify a dispositional order based on a change of circumstances and the child's best interests.³⁹ If the dispositional order removes a child from the parent's custody, however, the court must hold review hearings according to the schedule described below.

The first review hearing must be held within ninety days after the dispositional hearing;⁴⁰ often it will be held earlier than that. If the child remains out of the home at the end of that review, a second review hearing must be held within six months after the first one. Thereafter, reviews must be held at least every six months for as long as the child remains out of the home.⁴¹ Within a year after the child was first removed from the home, the court must hold a review hearing that is designated a "permanency planning hearing" to focus directly on whether the child will be able to return home and, if not, what the alternative permanent plan for the child should be.⁴²

The county director of social services is responsible for asking the clerk of superior court to schedule these review hearings. The clerk is responsible for giving fifteen days' notice of a review hearing and its purpose to the child's parent, guardian, or custodian; the child, if he or she is twelve or older; the person providing care for the child; any agency that has custody of the child; the guardian ad litem; and anyone else the court specifies.⁴³

Authority over Parents

After making proper findings at a dispositional hearing or any review hearing, the court may order that a parent who is able to do so pay a reasonable amount of support for a child who is not in the parent's custody⁴⁴ and to pay for any treatment the court orders.⁴⁵ At those same hearings the court

may order a parent or a guardian, custodian, or caretaker who was served with a summons

1. to participate in medical, psychiatric, psychological, or other treatment the child needs;⁴⁶
2. to receive psychiatric, psychological, or other treatment or counseling aimed at correcting behaviors or conditions that contributed to the child's being adjudicated or to the court's decision to remove the child from the home;⁴⁷
3. to attend and participate in parental responsibility classes if those are available in the district where the parent, guardian, custodian, or caretaker lives;⁴⁸
4. to provide, if able to do so, transportation for the child to keep appointments for medical, psychiatric, psychological, or other treatment the court orders;⁴⁹
5. to take other reasonable steps to remedy the conditions that led or contributed to the child's adjudication or removal from the home.⁵⁰

A parent or other person who has been served with a summons in the case and willfully fails to comply with the court's orders may be held in contempt.⁵¹

Notes

1. Chapter 7B of the North Carolina General Statutes (hereinafter G.S.). The North Carolina General Statutes can be viewed online at www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl. Juvenile court procedures are described in much greater detail in Kella W. Hatcher, Janet Mason, and John Rubin, *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* (Chapel Hill, N.C.: UNC School of Government, 2011) (hereinafter *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings*). This book can be accessed, in PDF form, free of charge, at <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.4228/f>.

2. See G.S. Chapter 48 (adoptions); G.S. Chapter 122C, Article 5 (voluntary admissions and involuntary commitments of minors to mental health treatment facilities); and G.S. 50-13.1 through -13.8 (custody disputes between parents).

3. As described in Chapter 12, when the reporter seeks review of the director's decision not to file a petition, a prosecutor, after conducting the review, is authorized to direct the director to file a petition.

4. Ordinarily this type of order will be entered by a district court judge. The chief district court judge, however, may file an administrative order delegating authority to enter these orders to persons other than district court judges. G.S. 7B-502.

5. G.S. 7B-503(a).
6. G.S. 7B-504 and -505.
7. G.S. 7B-506.
8. G.S. 7B-506(a).
9. G.S. 7B-506(e).
10. G.S. 7B-506(f).
11. G.S. 7B-506(e).
12. G.S. 7B-506(b).
13. G.S. 7B-601.
14. District-level guardian ad litem programs are part of the statewide Guardian ad Litem Program, which is administered by the state Administrative Office of the Courts. *See* Article 12 of G.S. Chapter 7B.
15. G.S. 7B-601(a).
16. *Id.*
17. *Id.*
18. *Id.*
19. *See* Section 5.8C in Hatcher, Rubin, and Mason, *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings*, cited in full in note 1.
20. G.S. 7B-602(a), (a1).
21. G.S. 7B-602(c), (d). A guardian ad litem, who may not also serve as the parent's attorney, is appointed pursuant to G.S. 1A-1, Rule 17.
22. G.S. 7B-802 and -807.
23. G.S. 7B-801(c).
24. G.S. 7B-804.
25. G.S. 7B-805.
26. G.S. 7B-801(a).
27. G.S. 7B-801(b).
28. *See* John Rubin and Aimee Wall, "Responding to Subpoenas for Health Department Records," *Health Law Bulletin* No. 82 (Sept. 2005), <http://sogpubs.unc.edu/electronicversions/pdfs/hlb82.pdf>; John Rubin, "Subpoenas and School Records: A School Employee's Guide." *School Law Bulletin* 30 (Spring 1999): 1–11, <http://ncinfo.iog.unc.edu/pubs/electronicversions/slb/sp990111.pdf>; and John Rubin and Mark Botts, "Responding to Subpoenas: A Guide for Mental Health Facilities," *Popular Government* 64 (Summer 1999): 27–38, <http://ncinfo.iog.unc.edu/pubs/electronicversions/pg/botts.pdf>.
29. G.S. 7B-807(a).
30. G.S. 7B-901.
31. *Id.*
32. G.S. 7B-903(a)(3).
33. G.S. 7B-901.
34. *See* G.S. 7B-900.
35. G.S. 7B-903(a)(1).
36. G.S. 7B-903(a)(2)a.
37. G.S. 7B-903(a)(2)b., c.
38. G.S. 7B-507(a).
39. G.S. 7B-1000(a).

40. G.S. 7B-906.1(a).

41. *Id.*

42. *Id.*

43. G.S. 7B-906.1(b).

44. G.S. 7B-904(d).

45. G.S. 7B-903(a)(3)a. and -904(a), (b), (c).

46. G.S. 7B-904(b).

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

48. G.S. 7B-904(d1)(1).

49. G.S. 7B-904(d1)(2).

50. G.S. 7B-904(d1)(3).

51. G.S. 7B-904(e).