

Selected North Carolina General Statutes

RE: Paternity and A/N/D – TPR – Adoption

Abuse, Neglect, Dependency: G.S. Chapter 7B

§ 7B-401.1. Parties.

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- (b) Parents. - The juvenile's parent shall be a party unless one of the following applies:
 - (1) The parent's rights have been terminated.
 - (2) The parent has relinquished the juvenile for adoption, unless the court orders that the parent be made a party.
 - (3) The parent has been convicted under G.S. 14-27.2 or G.S. 14-27.3 for an offense that resulted in the conception of the juvenile.

§ 7B-506. Hearing to determine need for continued nonsecure custody.

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- (h) At each hearing to determine the need for continued custody, the court shall determine the following:
 - (1) Inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent, as well as efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts aimed at determining the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity.
 - (2) Inquire about efforts made to identify and notify relatives as potential resources for placement or support and as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter.

§ 7B-800.1. Pre-adjudication hearing.

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- (a) Prior to the adjudicatory hearing, the court shall consider the following:

- ...
- (2) Identification of the parties to the proceeding.

- (3) Whether paternity has been established or efforts made to establish paternity, including the identity and location of any missing parent.
- (4) Whether relatives, parents, or other persons with legal custody of a sibling of the juvenile have been identified and notified as potential resources for placement or support.

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§ 7B-901. Initial dispositional hearing.

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- (b) At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing paternity. The court shall also inquire about efforts made to identify and notify relatives, parents, or other persons with legal custody of a sibling of the juvenile, as potential resources for placement or support.

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Termination of Parental Rights: G.S. Chapter 7B

§ 7B-1105. Preliminary hearing; unknown parent.

- (a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall, within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in the county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.
- (b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may order the petitioner to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106.
- (c) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing, but the court may cause summons to be issued to any person directing the person to appear and testify.
- (d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:
 - (1) Designate the court in which the petition is pending;
 - (2) Be directed to “the father (mother) (father and mother) of a male (female) juvenile born on or about _____ (date) in _____ (County), (city) _____ (State) _____, respondent”;
 - (3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words “In Re Doe” substituted therefor);
 - (4) State that a petition seeking to terminate the parental rights of the respondent has been filed;

- (5) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
- (6) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

- (e) The court shall issue the order required by subsections (b) and (d) of this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.
- (f) Upon the failure of the parent served by publication pursuant to subsection (d) of this section to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

§ 7B-1111. Grounds for terminating parental rights.

- (a) The court may terminate the parental rights upon a finding of one or more of the following:

...

- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following:
 - a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services; provided, the petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.
 - b. Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.
 - c. Legitimated the juvenile by marriage to the mother of the juvenile.
 - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
 - e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.

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Adoption of Minors: G.S. Chapter 48

§ 48-1-106. Legal effect of decree of adoption.

- (a) A decree of adoption effects a complete substitution of families for all legal purposes after the entry of the decree.
- (b) A decree of adoption establishes the relationship of parent and child between each petitioner and the individual being adopted. From the date of the signing of the decree, the adoptee is entitled to inherit real and personal property by, through, and from the adoptive parents in accordance with the statutes on intestate succession and has the same legal status, including all legal rights and obligations of any kind whatsoever, as a child born the legitimate child of the adoptive parents.
- (c) A decree of adoption severs the relationship of parent and child between the individual adopted and that individual's biological or previous adoptive parents. After the entry of a decree of adoption, the former parents are relieved of all legal duties and obligations due from them to the

adoptee, except that a former parent's duty to make past-due payments for child support is not terminated, and the former parents are divested of all rights with respect to the adoptee.

- (d) Notwithstanding any other provision of this section, neither an adoption by a stepparent nor a readoption pursuant to G.S. 48-6-102 has any effect on the relationship between the child and the parent who is the stepparent's spouse.

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§ 48-2-207. Necessity of consent post-petition.

- (a) If any individual who is described in G.S. 48-3-601 or entitled to notice under G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.
- (b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required if any of the following:
 - (1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S. 48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.
 - (2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.
- (c) If the court determines that the consent of any individual is required, the adoption cannot proceed until such individual's consent is obtained or such individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that such individual's consent is required does not entitle such individual to physical custody of the minor.
- (d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, such individual shall not be entitled to receive notice of, or to participate in, further proceedings in the adoption.

§ 48-2-401. Notice by petitioner.

- (a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall initiate service of notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

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- (c) In the adoption of a minor, the petitioner shall also serve notice of the filing on each of the following:

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- (3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's parent, a man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified crime, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

...

- (f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service or, if service is by publication, 40 days after first publication of the notice, in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing.

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§ 48-2-402. Manner of service.

- (a) Service of the notice required under G.S. 48-2-401 must be made as provided by G.S. 1A-1, Rule 4, for service of process.
- (b) In the event that the identity of a biological or possible biological parent cannot be ascertained and notice is required, the parent or possible parent shall be served by publication pursuant to G.S. 1A-1, Rule 4 (j1). The time for response shall be the time provided in the rule. The words “In re Doe” may be substituted for the title of the action in the notice as long as the notice contains the correct docket number. The notice shall be directed to “the unknown father [or mother] of” the adoptee, and the adoptee shall be described by sex, date of birth, and place of birth. The notice shall contain any information known to the petitioner that would allow an unknown parent or possible parent to identify himself or herself as the individual being addressed, such as the approximate date and place of conception, any name by which the other biological parent was known to the unknown parent or possible parent, and any fact about the unknown parent or possible parent known to or believed by the other biological parent. The notice shall also state that any parental rights the unknown parent or possible parent may have will be terminated upon entry of the order of adoption.
- (c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under subsection (b) of this section, and the court shall stay any adoption proceeding already filed, except that nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of any known or possible parent who has been served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil Procedure.

§ 48-2-404. Notice of proceedings by court to alleged father.

If, at any time in the proceeding, it appears to the court that there is an alleged father of a minor adoptee as described in G.S. 48-2-401(c)(3) who has not been given notice, the court shall require notice of the proceeding to be given to him pursuant to G.S. 48-2-402.

§ 48-2-603. Hearing on, or disposition of, petition to adopt a minor.

- (a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and upon finding the following:

...

- (3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this Article.
- (4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has expired.

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§ 48-3-601. Persons whose consent to adoption is required.

Unless consent is not required under G.S. 48-3-603, a petition to adopt a minor may be granted only if consent to the adoption has been executed by:

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(2) In a direct placement, by:

- a. The mother of the minor;
- b. Any man who may or may not be the biological father of the minor but who:
 1. Is or was married to the mother of the minor if the minor was born during the marriage or within 280 days after the marriage is terminated or the parties have separated pursuant to a written separation agreement or an order of separation entered under Chapters 50 or 50B of the General Statutes or a similar order of separation entered by a court in another jurisdiction;
 2. Attempted to marry the mother of the minor before the minor's birth, by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the minor is born during the attempted marriage, or within 280 days after the attempted marriage is terminated by annulment, declaration of invalidity, divorce, or, in the absence of a judicial proceeding, by the cessation of cohabitation;
 3. Before the filing of the petition, has legitimated the minor under the law of any state;
 4. Before the earlier of the filing of the petition or the date of a hearing under G.S. 48-2-206, has acknowledged his paternity of the minor and
 - I. Is obligated to support the minor under written agreement or by court order;
 - II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or
 - III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or
 5. Before the filing of the petition, has received the minor into his home and openly held out the minor as his biological child; or
 6. Is the adoptive father of the minor . . .

...

(3) In an agency placement by:

...

- b. Each individual described in subdivision (2) of this section who has not relinquished the minor pursuant to Part 7 of Article 3 of this Chapter.

§ 48-3-603. Persons whose consent is not required.

- (a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or any of the following:

- (1) An individual whose parental rights and duties have been terminated under Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another state.
- (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted.
- (3) Repealed by Session Laws 1997-215, s. 11(a).
- (4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article.
- (5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor.
- (6) A deceased parent or the personal representative of a deceased parent's estate.
- (7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice or, if service is by publication, 40 days from the first publication of the notice.
- (8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court.
- (9) (See editor's note) An individual whose actions resulted in a conviction under G.S. 14-27.21, G.S. 14-27.22, G.S. 14-27.23, or G.S. 14-27.24 and the conception of the minor to be adopted.

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Genetic Marker Testing, G.S. 8-50.1

§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.

- (a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:
 - (1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged-parent is not the natural parent; whereupon, the court shall enter the special verdict of not guilty; and
 - (2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any

fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

(b) Repealed by Session Laws 1993, c. 333, s. 2.

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. Any party objecting to or contesting the procedures or results of the blood or genetic marker tests shall file with the court written objections setting forth the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence. The person contesting the results of the blood or genetic marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. The results of the blood or genetic marker tests shall have the following effect:

- (1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence;
- (2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;
- (3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;
- (4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence.