

CROSSOVER YOUTH: DSS PLACEMENT AS A DISPOSITIONAL ALTERNATIVE

A Panel Discussion involving:

**Rob K. Martinek, Assistant County Attorney, Durham County DSS
Hon. Marcia Morey, Chief District Court Judge, Judicial District 14
James Carter, Law Offices of James Carter, Smithfield, NC**

OUTLINE

- Disposition
- Requirements for placing a child in DSS custody
- Effects of placement in DSS custody
- Issues and Problems
- Best Practices Recommendations



DISPOSITION

§ 7B-2500. Purpose.

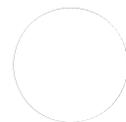
The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction, including the protection of the public. The court should develop a disposition in each case that:

- (1) Promotes public safety;
- (2) Emphasizes accountability and responsibility of **both the parent, guardian, or custodian and the juvenile** for the juvenile's conduct; and
- (3) Provides the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community. (1979, c. 815, s. 1; 1995 (Reg. Sess., 1996), c. 609, s. 1; 1998-202, s. 6.)



REQUIREMENTS FOR PLACING CHILD IN DSS CUSTODY

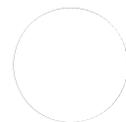
- Statutory Requirements under NCGS 7B-2503 & 2506
 - Proper Notice to DSS Director with an opportunity to be heard
 - Delinquency proceedings under the Juvenile Code are civil in nature, and accordingly, “proceedings in juvenile matters are to be governed by the Rules of Civil Procedure.” *In re Hodge*, 153 N.C. App. 102 (2002)
 - Under N.C. Rules of Civil Procedure 6(d), this notice should be at least 5 days. Though for reasons to be discussed later, more notice would be productive
 - Court must specifically find that the juvenile needs more adequate care or supervision or needs placement
 - Court must specifically find that continuation in the juvenile’s own home would be contrary to best interest of the child.



REQUIREMENTS FOR PLACING CHILD IN DSS CUSTODY CONT

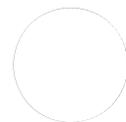
○ Case Law Considerations

- “More adequate care or supervision language” is a precondition to considering the disposition alternatives. *In re B.S.*, 738 S.E.2d 453 (2013).
- Evidence must support specific findings of fact that support a conclusion that the transfer of custody between two parents is in the juvenile’s best interest. *In re Ferrell*, 162 N.C. App. 175 (2004)
- Statute requires the judge to first determine the needs of the juvenile and then to determine the appropriate community resources required to meet those needs in order to strengthen the home situation of the juvenile. “The trial judge is required to select the least restrictive disposition taking into account the seriousness of the offense, degree of culpability, age, prior record, and circumstances of the particular case. The judge must also weigh the state's best interest and select a disposition consistent with public safety... and within the judge's statutorily granted authority” *Matter of Bullabough*, 89 N.C. App. 171 (1988)



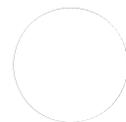
EFFECTS OF PLACING IN DSS CUSTODY

- Required Review Hearings under 906.1
 - First one within 90 days of placement in DSS custody
 - Subsequent reviews are every six months afterwards
 - Within twelve months of date of initial order removing custody, there shall be a permanency planning hearing
 - Determine if possible to return the child immediately or within the next six months, and if not why
 - If return to home is unlikely within the next six months, must consider a plan of adoption or another permanent living arrangement for the child.



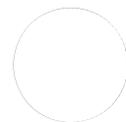
EFFECTS OF PLACING IN DSS CUSTODY

- Child is placed in foster care
 - IV-E Funding Requirements otherwise the County loses federal funding to pay for foster care placement and support services
 - Time of Removal (failure to meet requirement makes child IV-E ineligible)
 - Must find either remaining in the home was contrary to the child's welfare or that removal was in the child's best interest
 - Find that that agency made reasonable efforts to prevent the removal or was precluded from making these efforts (one or the other)
 - Within 12 months and every 12 months after
 - Find that the agency made reasonable efforts to finalize the permanent plan
 - Must identify the permanent plan
 - Valid enforceable order in NC
 - Explicit made on a case by case basis
 - No "nunc pro tunc" orders, affidavits or bench notes permitted
 - If makes a specific placement rather than giving DSS placement authority, must find that it gave bona fide consideration to the DSS recommendation regarding placement



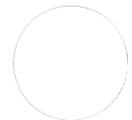
ISSUES AND PROBLEMS

- Parents are unrepresented where a constitutionally protected right could be infringed upon
- Summons fails to give parents notice that their rights could be infringed upon
- Child is not appointed a GAL. Child's attorney makes decisions based on detention and consequences vs. a guardian ad litem who is supposed to advocate for the best interest of the child. They have different points of view and different roles.
- 906.1 Reviews and Permanency Planning Hearings require court reports from social workers, which contain confidential information that cannot be shared with DJJ Counselor or district attorneys office. So where and when do you hold these hearings?
- Termination of delinquency/undisciplined case terminates authority to maintain the child in foster care
- DSS is not the magic pill to get a child mental health services
- A separate analysis may need to be considered as differentiating between undisciplined and delinquency, because in an undisciplined action the parent(s) are consenting to the interference of the court/government by filing the action.



ISSUES AND PROBLEMS

- If fail to make appropriate IV-E findings, the child's care, foster home, and services come out of county funds.
- NCGS 7B-1905 allows placement with DSS for nonsecure custody without explicit requirement of findings of fact; however, this would still violate requirements established by case law.
- DSS is an independent agency that has procedures established by DHHS for investigating and providing services to families in need. Thrusting a child upon them with little or no notice gives them no ability to structure a plan appropriate for the family. DSS's independent choice may be providing services when looking at the needs of the family.
- Placing delinquent or undisciplined youth in DSS custody does not trigger the filing of petition, since DSS may not find that child is abused, neglected or dependent based on the circumstances.
- Placing a violent youth prone to running away with DSS does not mean they will stop running away or be less violent. DSS placement options may not be appropriate because it could put other foster children at risk.



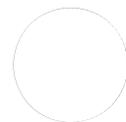
ISSUES AND PROBLEMS

- Parents have a constitutional right to parent established by cases such as *Peterson v. Rodgers* and *In re BG*.
- The Legislature and the Appellate Courts have not established the balancing test for delinquency hearings as they have for civil cases and abuse, neglect, dependency cases.
 - When looking at a third party, including DSS, as a custody placement, the best interest standard only applies when the Court has found by clear, cogent and convincing evidence that the parent is unfit, has neglected the child, or has acted inconsistent with the parent's constitutionally protected status as a parent. *Peterson v. Rodgers*, 337 N.C. 397 (1994), *In re B.G.*, 197 N.C. App. 570 (2009), *In re JAG*, 172 N.C. App 708 (2005).
- Could the balancing test be based on balancing those constitutional rights with the government interests and the safeguards in place?
 - Constitutional sufficiency of administrative procedures prior to the abrogation of parent's constitutional interests in their child would require consideration of three factors (1) the parent's constitutional interest in being a parent, (2) the risk of erroneous deprivation of such interest through the procedures used and probably value, if any, if procedural safeguards, (3) the Government's interest in protecting the public from the actions of the child. *Mathews v. Eldridge*, 424 US 319 (1976).
 - Problem: The current statutes appear to lack the necessary safeguards like those that have been established through the abuse, neglect, and dependency statutes.



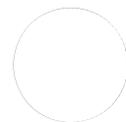
BEST PRACTICES RECOMMENDATIONS

- Establish a procedure with local DSS to allow Judge or DJJDP to call in report to instigate investigation where issues come to light that might need DSS intervention and for DSS to give appropriate consideration to the report
- Look at other dispositional alternatives to accomplish the same goals
- Give DSS sufficient notice of potential placement with DSS to allow DSS to work with families to determine if appropriate out of home placements available with other parent or relatives so that information can be presented at dispositional hearing
- Use form order that has requisite IV-E language
- Ensure that DSS counsel receives notice of all hearings related to juvenile

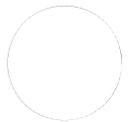


BEST PRACTICES RECOMMENDATIONS

- Establish that Review hearings and Permanency Planning Hearings are held separately from the normal DJJ hearings to ensure that confidentiality is maintained.
- If you place the child in DSS custody, make the parents parties to the case, assign counsel, and give them an opportunity to be heard.
- If child is placed in DSS custody, ask that the child be appointed a GAL



QUESTIONS?



Slide Material Prepared by:

Robin K. Martinek,
Durham County Assistant Attorney

Acknowledgment to:

Angie Stephenson, NC DOJ, for information on
IV-E issues

Cathy Moore, Durham County Deputy Attorney,
for assistance in preparing material

