

Dual Jurisdiction or Cross-Over Cases in Juvenile Court

1. How Dual Jurisdiction Occurs

- a. Petition is filed alleging that child in DSS custody committed delinquent or undisciplined act
- b. DSS files abuse/neglect/depend. petition when delinquent or undisciplined case is pending
- c. Court places child alleged to be undisciplined or delinquent in nonsecure custody with DSS
- d. In undisciplined or delinquency case, court appoints DSS as juvenile's guardian
- e. Court places juvenile who has been adjudicated undisciplined or delinquent in DSS custody at disposition (or a subsequent review)

2. Relevant Statutes

a. Duty to report abuse, neglect, dependency – G.S. 7B-1700.1

“Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301.”

- “Neglect” includes a parent’s failure to provide proper care or supervision.
- “Abuse” includes a parent’s encouraging, directing, or approving a juvenile’s delinquent acts that involve moral turpitude.
- Duty may arise, at any time, with school personnel, law enforcement, court counselor, judge, or others.

b. Nonsecure custody of child alleged to be undisciplined/delinquent – G.S. 7B-1903 to -1905

Court may place juvenile in nonsecure custody with DSS for temporary residential placement if the juvenile

(1) is a runaway and consents to nonsecure custody, or

(2) meets criteria for secure custody, and court finds nonsecure custody is in juvenile’s best interest.

- Court must first consider whether a relative is willing and able to provide proper care and supervision of the juvenile and, if one is, the court must order placement with the relative unless the court finds that the placement would be contrary to the juvenile’s best interest.
- Any out-of-state placement must comply with the Interstate Compact on the Placement of Children, Article 38 of G.S. Chapter 7B.
- An official executing the order for nonsecure custody with DSS must give DSS a copy of the petition and order.
- An initial hearing on the need for continued nonsecure custody must be held within 7 calendar days and may not be continued or waived.
- A subsequent hearing must be held within 7 business days, and thereafter hearings must be held at least every 30 days. In a delinquency case these hearings may be waived only with consent of the juvenile through his or her attorney.

- For all hearings on the need for continued nonsecure custody,
 - the state has the burden of providing clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice.
 - the order must contain findings of fact, including the evidence relied on and the purposes of continued nonsecure custody.

c. Appointment of guardian for a juvenile alleged or adjudicated to be undisciplined or delinquent – G.S. 7B-2001

The court may appoint a guardian of the person for the juvenile:

- (1) when no parent, guardian, or custodian appears in a hearing with the juvenile, or
- (2) when the court finds it would be in the juvenile's best interests to appoint a guardian.

A guardian has care, custody, and control of the juvenile; may arrange a suitable placement for the juvenile; may represent the juvenile in legal actions; may consent to the juvenile's marriage, enlistment in the armed forces, and enrollment in school; and may consent to necessary remedial, psychological, medical, or surgical treatment for the juvenile.

d. Placement of undisciplined/delinquent juvenile in DSS custody as dispositional option – G.S. 7B-2503, -2506

- Placement in custody of DSS in the county of the juvenile's residence is an option only if the DSS director has received notice and an opportunity to be heard.
- Court must consider whether it is in the juvenile's best interest to remain in his or her community of residence.
- The order must contain a finding that the juvenile's continuation in his or her own home would be contrary to the juvenile's best interest.
- The placement in DSS custody must be reviewed in accordance with G.S. 7B-906 (review hearings in abuse, neglect, and dependency cases).

The court has jurisdiction to adjudicate a child abused, neglected, or dependent, only when a proper petition is filed. *In re Ivey*, 156 N.C. App. 398 (2003) (holding that trial court lacked jurisdiction to order DSS to take nonsecure custody of child when DSS had not filed petition alleging child to be abused, neglected, or dependent); *In re K.C.G.*, 171 N.C. App. 488 (2005) (holding that when DSS filed petition for an order to cease interference with an assessment, but not a petition alleging that the child was abused, neglected, or dependent, court did not have jurisdiction to place child in the temporary sole custody of the father).

3. Possible issues

- a. Availability of funding for child's placement
- b. Role of juvenile's attorney vs. role of a guardian ad litem
- c. Parent's right to counsel in abuse/neglect/dependency case, but not in delinquency case
- d. "Message" to parties about reasons for court involvement
- e. Calendaring; whether to consolidate cases
- f. Need for environment in which these are viewed as "shared" cases
- g. Identification and coordination of resources

Related Resources

Connecting Juvenile Justice and Child Welfare: CWLA National Advisory Committee on Juvenile Justice Position Paper (January 2010). Washington, D.C.: Child Welfare League of America. <http://www.cwla.org/programs/juvenilejustice/LinkNewsletterWinter2010.pdf>

February 2008 ABA Policy and Report on Crossover and Dual Jurisdiction Youth.
<http://www.abanet.org/youthatrisk/crossoveryouthpolicy.html>

Halemba, Gregory J., et al. *Arizona Dual Jurisdiction Study Final Report* (November 30, 2004). Pittsburgh, PA: National Center for Juvenile Justice.
http://www.supreme.state.az.us/dcsd/docs/azdual_juri.pdf

Nash, Michael and Bilchik, Shay. *Child Welfare and Juvenile Justice: Two Sides of the Same Coin, Parts I and II.* Juvenile and Family Justice Today (Fall 2008 and Winter 2009). Reno, NV: National Council of Juvenile and Family Court Judges.
<http://cjjr.georgetown.edu/pdfs/Fall%2008%20NCJFCJ%20Today%20feature.pdf>
http://cjjr.georgetown.edu/pdfs/Winter09_CrossoverPartII.pdf

Permanency Through Collaboration Between Delinquency and Dependency Courts. Child Court Works, Vol. 10, Issue 2 (May 2008). Washington, D.C.: ABA National Child Welfare Resource Center on Legal and Judicial Issues. http://www.abanet.org/child/08_05_Vol10Iss2.pdf

Siegel, G., and Lord, R. (2004). *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases.* Pittsburgh, PA: National Center for Juvenile Justice.
<http://www.ncjservehttp.org/NCJJWebsite/pdf/dualjurisdiction.pdf>

Tuell, John A. (2003). *Promoting a Coordinated and Integrated Child Welfare and Juvenile Justice System: An Action Strategy for Improved Outcomes.* Washington, D.C.: Child Welfare League of America. <http://www.cwla.org/programs/juvenilejustice/jjintercord.pdf>