

District Court Judges' Fall Conference
October 7, 2010
Winston-Salem, NC

JUVENILE LAW UPDATE





Responsible Individuals List

[G.S. 7B-320 to -324]

1. Enacted 2005
2. Statute violates N.C. Constitution (*W.B.M., 2010*)
3. List and related procedures suspended
4. S.L. 2010-90 (S.B. 567) effective July 11, 2010
5. Fresh start – old list defunct



New Definitions



- “Responsible individual” –
 - parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile.

- “Serious neglect” –
 - conduct, behavior, or inaction evincing a disregard of consequences of such magnitude that it constitutes an unequivocal danger to the juvenile’s health, welfare, or safety.

Name goes on list only after

1. person receives proper notice from DSS and does not file petition for judicial review;
2. court determines the person is a “responsible individual”; or
3. the person is criminally convicted as a result of the same matter.



Effect of Placing Name on List

DHHS “may provide information” from the list to

- child caring institutions
- child placing agencies
- group home facilities
- other foster care, child care, or adoption services providers that need to determine people’s fitness to care for children



Two ways for issue to come before court:

1. After notice from DSS, individual files "petition for judicial review"
2. DSS alleges in abuse or neglect petition that a respondent is a "responsible individual"



Petition for judicial review must be

- filed within 15 days after receipt of notice, and
- calendared for hearing
 - within 15 days of filing, or
 - next session of juvenile court.

However, court may consider petition for judicial review, regardless of when filed, in extraordinary circumstances or in the interest of justice.



Regardless of how issue comes to court,

- DSS has the burden of proof, and
- standard of proof is preponderance of the evidence.



At hearing on petition for judicial review

(and presumably on allegations in DSS petition)

1. The court must close the hearing at the request of a party.
2. Rules of Evidence in civil cases apply, however:
court may admit any reliable, relevant evidence if general purposes of rules of evidence and interests of justice will be served.



Differences from Former Law

1. No appeal to DSS director
2. No role for prosecutor
3. Not about expunction, but about whether name goes on list (unless petition filed late)
4. Shorter time (15 days) for person to act; expedited hearing
5. Issue of fault/blame, as well as condition of child, may be alleged in petition and litigated at same time



Amendments to Petitions

S.L. 2010-90 (effective 7/11/10) also amended G.S. 7B-800:

- Court in its discretion may permit a petition to be amended, but then must direct
 - manner of service and
 - time allowed for party to prepare

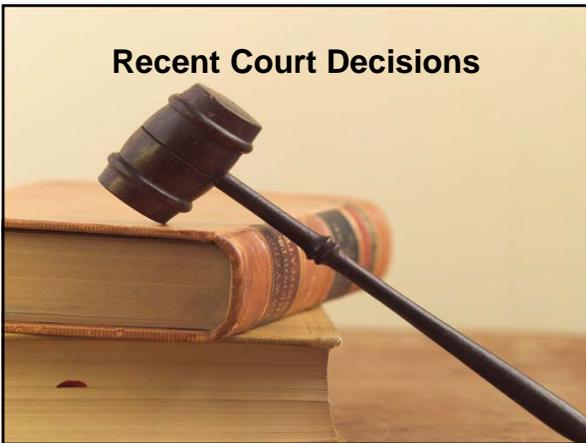


Issue Areas

1. Representation
2. Local DSS practice regarding petitions
3. Choices about combining or separating hearings
4. Clarity for parties



Recent Court Decisions



**Adjudication of Neglect
(H.N.D.)**

- Requires finding of harm or risk of harm to the child,
unless
- Evidence is so substantial and clear that no explicit finding is required.



Permanency Planning Hearing
[P.O.]

- Court has discretion to exclude hearsay.
- Review hearings must continue after award of custody or guardianship, unless properly waived.





and waiver requires findings by clear, cogent, convincing evidence that:

1. child has resided with relative or been in custody of suitable person for one year;
2. placement is stable and in child's best interest;
3. neither child's best interest nor rights of a party require 6-month reviews;
4. parties know they can file motion for review any time; and
5. court has designated relative or other person as permanent caretaker or guardian.

TPR: Effective Assistance of Counsel
[S.N.W.] [K.J.L.]

- Court may have duty to inquire into attorney's efforts to contact client and adequacy of representation.

Issues on appeal:

1. Did attorney's performance fall below objective standard of reasonableness?
2. Did respondent receive a fair hearing?





TPR: Child's Guardian ad Litem
[J.H.K.]

- TPR reversed where GAL filed 2-page report but did not attend hearings.
- Attorney advocate cannot "fill in."
- Issue can be raised first time on appeal.
- Court will presume prejudice.

Petition for discretionary review filed.

TPR: Neglect by Incarcerated Parent
[A.J.M.P.]

- Private TPR
- Extensive findings, including
 - had income but did not pay support
 - did not write to child or send gifts
 - did not seek modification of order that ceased his visitation rights
- Incarceration alone is never sufficient to establish a ground.



TPR: Neglect by Both Parents
[Y.Y.E.T.]

- Parents were sole care providers
- Conflicting explanations of child's injuries
- Neither accepted responsibility
- Both neglected child by causing or failing to prevent injuries
- Findings sufficient to show child would be at risk if returned home



TPR: Guardian ad Litem for Parent
[S.R.]

- Evidence of substance abuse, mental health, and anger issues not sufficient to trigger duty to appoint GAL
- No indication of incompetence
- Upholding trial court's discretion



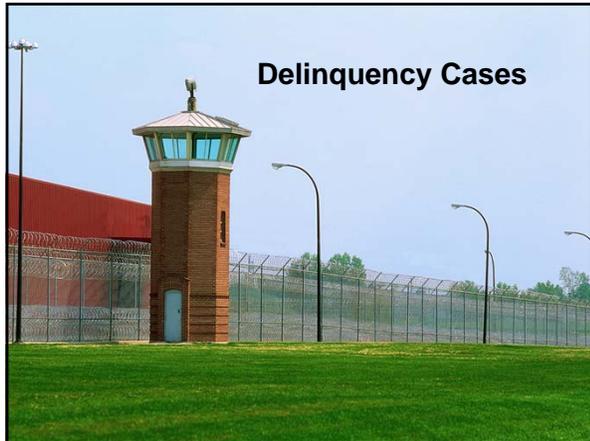
Putative Father's Consent to Adoption
[Adoption of K.A.R.]

- Decided under adoption statute, not TPR
- Affirms trial court determination that respondent's consent required
- Based on acknowledging child and paying support before filing of adoption petition



After notice of appeal was given, trial court did not have jurisdiction to dismiss petition.

TPR	Adoption
Father served with summons or notice (containing specified notices) and petition or motion	Father served with notice of filing of adoption petition and notice that he must file a response within 30 days
Father has statutory right to appointed counsel if indigent	Court may appoint attorney to represent parent who is unknown or whose whereabouts are unknown
If contested, court must appoint GAL for child	Court must appoint GAL for child if parent incompetent and may appoint attorney or GAL if contested
Support and acknowledgement requirements stated differently	



Filing Petition
[J.A.G.]

- Statutory timeframe is not jurisdictional.

In re D.S., 364 N.C. 184 (2010).



**Accepting Juvenile's Admission:
Court Must Address Juvenile**
[J.A.G.]

1. right to remain silent
2. juvenile understands nature of charge
3. right to deny allegations
4. admission waives right to confront witnesses
5. juvenile is satisfied with representation
6. most restrictive disposition possible



In-custody Interrogation
[L.I.]

- Statement intended to elicit response may constitute interrogation.
- Failure to give Miranda warning requires exclusion of physical evidence only if actual coercion is shown.



Recording Problems
[R.N.]

- If recording fails or other problems with transcript, party should seek hearing with trial court to reconstruct record.