CHAPTER 1
THE PRE-ADJUDICATION STAGE

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§ 1.1 Summary

Once a report for abuse, neglect, or dependency is investigated and substantiated, DSS may determine it is necessary to file a petition in juvenile court. When a petition is filed for abuse or neglect, a guardian ad litem (GAL) must be appointed for the child and when the petition is for dependency a GAL may be appointed.[1] When a petition is filed, often a child is removed from the home and a nonsecure custody order is sought. Sometimes, however, a child is left in the home or voluntarily placed with a relative or friend and a petition is filed, but a nonsecure custody order is not sought. In an emergency situation, a child may be removed from the home with neither a court order nor a petition and placed into temporary custody, but a petition and nonsecure custody order must be obtained immediately thereafter. A nonsecure custody hearing must then be conducted and subsequent ones will be held periodically prior to adjudication. A prehearing conference may be required in some districts (and is recommended prior to all hearings), and negotiating for a consent order occurs at this stage. This is the stage at which the GAL volunteer does the bulk of the investigative work to prepare for adjudication and disposition. During the pre-adjudication stage, attorneys involved in the case deal with the legal matters surrounding the petition and summons, jurisdiction and venue, as well as pretrial motions. Everyone involved will deal with issues of confidentiality and discovery in this and all stages of the case.

> **Caveat:** It is important to remember that the attorney advocate represents the best interests of the child as part of a team effort with the GAL volunteer. The two should strive to work as a team to ensure that legal actions taken by the attorney reflect recommendations agreed upon by the attorney and volunteer. To function as an effective team, the volunteer and attorney advocate must have the same information regarding both the case and one another's actions in order to avoid independent, conflicting actions in the case.[2]

§ 1.2 Front-Loading the Process to Improve Efficiency and Cooperation

A. Nonsecure Custody Hearings as Tools for Information and Preparation

In some districts, nonsecure custody hearings are brief, with only minimal evidence presented to the court. The case is so new that parties are uninformed and unprepared, and few issues other than the child's immediate placement are considered. However, it is possible to utilize the nonsecure custody hearing as a tool for parties to learn about the case, to assess needs, begin to address them, and to generally expedite the entire process. Holding nonsecure custody hearings that are well attended by persons who can provide information about the case, setting aside enough time for such hearings, and having a courtroom format that allows for everyone to share information as well as their perspective maximizes everyone's time. Some districts in North Carolina, especially those that are part of the Court Improvement Project, already utilize nonsecure hearings this way. Some districts, usually family court districts, also have "day-one" or "child planning" conferences in which all parties and service providers gather within twenty-four hours after a petition is filed for a conference (not a hearing) to begin putting

[1] For a detailed description of the roles and responsibilities of DSS; appointment, roles and responsibilities of the GAL volunteer and GAL attorney, as well as a description of the juvenile court process in general, please see Chapters 10, 8, and 9, respectively, in this manual. These chapters provide background information for the reader who has had limited exposure to this field of practice, but they also contain valuable information for readers who are experienced in this field.
[2] See § 12.3 in this manual for further discussion on this matter.

a plan into action.[3] These districts report that this type of nonsecure custody hearing and day-one conferencing benefits everyone involved. In fact, such collaborative efforts in day-one conferencing have often eliminated the need for a 7-day nonsecure hearing and actually shorten the time span of the case overall.[4]

The National Council of Juvenile and Family Court Judges, in the book *Resource Guidelines*, addresses the benefits of front-loading the system. In the section on Preliminary Protective Hearings (the equivalent of nonsecure custody hearings), the book states the following:

> When preliminary protective hearings are thorough and timely, some cases can be resolved with no need for subsequent court hearings and reviews. In other cases, a thorough and early preliminary protective hearing can help simplify and shorten early hearings and can move the case more quickly to the later stages of adjudication, disposition, and review. This not only preserves court resources but reduces the cost and harm of unnecessary, prolonged out-of-home placement of children.
>
> A timely and thorough preliminary protective hearing can shorten the time of foster care and speed the judicial process. By ensuring speedy notice of all parties, the hearing avoids delays due to difficulties with service of process. By ensuring early, active representation of parties, the hearing avoids trial delays due to scheduling conflicts and the late appointment of unprepared advocates. By clearing the trial (adjudication) date at a very early time, the hearing avoids later scheduling conflicts that otherwise would delay trial dates. By thoroughly exploring all issues at the preliminary protective hearing, the court can resolve and dismiss some cases on the spot, move quickly on some pretrial issues (such as discovery or court-ordered examination of parties), encourage early settlement of the case, encourage prompt delivery of appropriate services to the family, and monitor agency case-work at a critical stage of the case.[5]

B. Prehearing Conferences: Saving Time, Improving Preparation, and Promoting Consent

In many districts, parties speak to one another prior to adjudication as necessary, but there is no formal prehearing conference. Parties often come to court expecting to negotiate and discuss their position with their own client and with other parties, assuming that some court time will be devoted to recesses that will give them this opportunity. Under these circumstances, parties sometimes do not reach a consent agreement simply because they haven't had enough time to thoroughly discuss the issues. In addition, they are less likely to be prepared to present the best possible case to the court and are more likely to either ask for a continuance or sacrifice on quality in their courtroom presentation. Prehearing conferences attended by all parties have been shown to increase the likelihood of consent, allow the parties to be better prepared for court, promote a more efficient use of court time, and soften the adversarial nature of the proceedings.[6] Devoting more time and effort to nonsecure custody hearings and having day-one conferencing and pre-hearing conferences "front-loads" the system such that far less is required in later stages. Everyone benefits from the improved efficiency and an increased ability

[3] Examples of service providers would include those in mental health, public health, public education, child support and law enforcement.

[4] Source: Kirk, Raymond S. and Griffith, Diane P. Final Reassessment Report, Final Evaluation of the North Carolina Family Courts Sites, 2006, p. 37-38.

[5] The National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, 1995, p. 31.

[6] Source: Martha Sue Hall, Court Improvement Project Director, District 20; Deborah Nealy, Court Improvement Project Director, District 25.

to address the needs of those involved.

Benefits of Prehearing Conferences

- An outcome reached by agreement is often superior to one reached through litigation.
- Parties are better informed about the case.
- Parties are better able to perform in court.
- Conferences are especially useful in courts where many attorneys habitually delay negotiations until shortly before trial.
- Conferences encourage early preparation.
- Unlike contested hearings, settlement conferences create a nonadversarial atmosphere that may foster a cooperative relationship among parents, social services, and attorneys, causing parties to feel more like allies and less like adversaries in solving serious problems.
- Parents may be more likely to work with the agency when they believe they were part of the solution, instead of feeling that the outcome of the case was imposed on them, and may therefore have an increased commitment to the success of the case plan.
- Misunderstandings and misperceptions can be corrected.
- Court workloads are reduced and case management improved because the court is better able to anticipate the content of a court calendar.

Source: Drawn from Resource Guidelines (**See *supra* note 5,** p. 132).

§ 1.3 The Process: Appointment of GAL and the Petition and Summons

A. Receipt of Petition, Appointment Orders, Summons, Custody Order

[See Volume 2, Chapter 8 of this manual for explanation of GAL's role and statutes related to appointment and duties of GAL.]

Once a petition is filed, the GAL volunteer and attorney advocate (or "AA," a term used in this manual to refer to the guardian ad litem attorney) receive their appointment orders along with a copy of the petition, summons, and any nonsecure custody order. The volunteer begins investigation immediately.

1. The appointment of the Guardian ad Litem shall terminate when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the GAL pursuant to a showing of good cause upon motion of any party, including the GAL, or of the court. **[7B-601]**

2. Whenever a nonattorney GAL is appointed, an attorney advocate will also be appointed to protect the child's legal rights throughout the proceeding.[7] **[7B-601]**

[7] Between 1995 and 1999, the attorney's responsibilities were limited to being through disposition and after disposition when necessary to further the best interests of the juvenile.

B. Responsibilities of the AA Commence Once Appointment Order Is Entered

Once the GAL and AA are appointed and the AA receives the file, the AA may take immediate action in the case:

1. Begin conversations with GAL staff and GAL volunteer to obtain any additional information about the case. The AA must talk to the volunteer and staff to gather information about the case. [See "The Attorney Advocate's Role and Relationship with the Volunteer" in § 8.5 of this manual.] The summons, petition, other court documents, and even the GAL court report will not contain all of the information the AA needs to know. To get complete information, the AA needs to begin conversations with the volunteer and staff and continue those conversations throughout the course of the proceedings.

2. Review petition for legal defects and factual inaccuracies. Once some preliminary investigation has occurred and the results are conveyed to the attorney, the petition must also be reviewed for factual and legal accuracy. For example, juvenile petitions must be verified or the court does not obtain subject matter jurisdiction. (**See E.** ***infra***) If the AA believes there could be defects or inaccuracies, the AA should alert the DSS attorney. (Also see subsection D, below, on Answers, Amendments, and Dismissals by DSS.)

[Information regarding preparation for nonsecure custody hearings is contained in this chapter in § 1.7. Information regarding preparation for adjudication hearings is contained in Volume 1, § 2.7.]

C. Requirements of the Petition

1. The petition must contain the following [7B-402]: the name, date of birth, and address of the juvenile; name and last known address of parent, guardian, or custodian; and facts containing allegations that invoke jurisdiction over the juvenile.

a. A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the petition.

b. The petition may contain information on more than one juvenile if they are from the same home and are before the court for the same reason.

c. The petition, or attached affidavit, must contain information required by G.S. 50A-209. Information includes the places and with whom the child has resided in the past five years, and whether there are currently any other judicial proceedings pending.

d. Copies of the petition shall be available for each parent if living separate and apart, for the social worker, for the guardian, for the custodian, for the caretaker, for the guardian ad litem, and for any person determined by the court to be a necessary party.

2. The petition must be drawn and verified [7B-403].

a. The petition must be drawn by the director of DSS, or designee, verified before an official authorized to administer oaths, and filed by the clerk. See *In re Green*, 67 N.C. App. 501 (1984) (stating that the petition must be signed and verified).

b. Ordinarily, a petition will not be void for lack of being signed or verified when there is no

express statutory requirement. *See State v. Higgins*, 266 N.C. 589 (1966); *Alford v. McCormac*, 90 N.C. 151 (1884). However, the Juvenile Code has specifically mandated that the petition's validity depends on compliance with prerequisite subscription and verification. G.S. 7B-403. **Failure to properly verify the juvenile petition fails to invoke subject matter jurisdiction**. See *In the Matter of T.R.P.*, 173 N.C. App. 541 (2005). But **remedial action may be taken to cure this defect**. See *In the Matter of L.B.*,--- N.C. App. ---, 639 S.E.2d 23 (2007) in which the Court of Appeals held that subject matter jurisdiction was invoked where the verified petition was filed and summons issued two days after the entry of the nonsecure custody order.

D. Answers, Dismissal by DSS, and Amendments

1. Answers to abuse, neglect, and dependency petitions are not provided for by statute and are not generally filed.

2. DSS dismissal of petition

Since DSS is the petitioner, DSS has the power to voluntarily dismiss its own petition. When this happens, the GAL may or may not be in favor of the dismissal. It has been suggested that a counterclaim might be a tool for the AA to use when DSS dismisses a petition that the GAL believes should not be dismissed. However, caselaw has not addressed whether a counterclaim would be appropriate for a Guardian ad Litem in a juvenile case. [8]

3. Amending the petition [7B-800]: The court may permit a petition to be amended when the amendment does not change the nature of the conditions upon which the petition is based.

E. Requirements for the Content and Service of the Summons

1. The summons in general [7B-406]: The summons must be issued to the parent, guardian, custodian, or caretaker immediately following the filing of a petition . The content requirements of the summons are set out in **7B-406** (at the end of this section). The preprinted summons form (AOC-J-142) supplied by the Administrative Office of the Courts complies with the statutory requirements. A copy of the petition shall be attached to the summons. The court obtains jurisdiction over the parent when the summons is served.[9] No summons is required for any person whose actions resulted in a conviction under G.S. 14-27.2 (first-degree rape) or G.S. 14-27.3 (second-degree rape) and the conception of the juvenile.

2. Service of the summons [7B-407]

[8] Counterclaims are governed by Rule 13 of the Rules of Civil Procedure. Counterclaims in general are brought against the "opposing party" but the relationships of the parties in abuse, neglect and dependency proceedings is unclear given the unusual nature of representation. In addition, there is question about the GAL's authority to bring a "counterpetition," because the GAL essentially would be standing in the shoes of DSS. Nonetheless, it has been done but has never been sanctioned by statute or case law and may or may not withstand attack on appeal. For a case that involved a counterclaim by a GAL but did not address the appropriateness of the counterclaim, see *In the Matter of Baby Boy Scearce*, 81 N.C. App. 531 (1986). Also see *In re Botsford*, 75 N.C. App. 72 (1985). Another possible way to deal with a dismissal by DSS that the GAL finds objectionable is through the use of a preliminary injunction under Rule 65 of the Rules of Civil Procedure, which may or may not be successful.

[9] But see § 1.5 below on jurisdiction for exceptions.

a. **Time for service**: Must be served not less than five days prior to the date of the scheduled hearing upon parent, guardian, custodian, or caretaker. The time for service may be waived in the discretion of the court.

b. **Type of service**: Service can be made by mail or publication if the parent (or guardian, custodian, caretaker) cannot be found by diligent effort and the court authorizes it. Service by publication is governed by Rule 4 (j1) of the North Carolina Rules of Civil Procedure.

c. **Contempt for failure to appear**: A parent, guardian, custodian, or caretaker who is personally served and fails to appear without reasonable cause may be held in contempt of court.

3. Service and jurisdiction [10]

a. It is the service of summons, rather than the return of the officer, that confers jurisdiction. *In re Leggett*, 67 N.C. App. 745 (1984); *In re Arends*, 88 N.C. App. 550 (1988).

b. Service on one parent is sufficient for the court to have jurisdiction over the **subject matter** in a proceeding involving dependency and neglect. *In re Arends*, 88 N.C. App. 550 (1988).

c. Where a summons is not issued, the trial court will not acquire jurisdiction (neither personal nor subject matter) over the proceeding. *In re Mitchell*, 126 N.C. App. 432 (1997). In *Mitchell*, the court stated that the parents had not submitted to jurisdiction of the court merely by their appearance at the initial nonsecure hearing because they made a timely oral motion to dismiss the petition based on a lack of summons.

F. Right to Counsel and Parties to the Proceeding

1. Parent's right to counsel [7B-602(a)]:

"In cases where the juvenile petition alleges that a juvenile is abused, neglected or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right." The statute further provides for the appointment of provisional counsel by the clerk. At the first hearing, the court dismisses provisional counsel if the respondent parent: (1) does not appear at the hearing; (2) does not qualify for court-appointed counsel; (3) has retained counsel; or (4) waives the right to counsel. Otherwise, the court reaffirms the appointment of counsel. The court also has the authority to reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceedings.

2. Right to counsel applies only to parents:

Grandparents, foster parents, and other caretakers do not have a right to appointed counsel. The statute (**7B-602**) only specifies "parent" and does not state that anyone else is entitled to appointed counsel.[11]

3. Who is a "party"?

[10] Also see § 1.5 below on jurisdiction.

[11] According to Danielle Carmen, Assistant Director of Indigent Defense Services (IDS), the "unofficial" policy is slightly broader than the plain language of the statute to include legal guardians and legal custodians.

The parents or caretakers named in the petition, DSS, and the juvenile via the GAL (volunteer and attorney) are all parties to the proceeding.[12] Grandparents, foster parents, and others are not parties as there are no statutory provisions giving them party status.

4. Parent's right to Rule 17 GAL in certain circumstances [13]

Parent is a Minor [7B-602(b)]

In addition to the right to appointed counsel, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent under the age of 18 years who is not married or otherwise emancipated. Note that if the minor parent is subject of a juvenile petition, the appointment of a Rule 17 guardian ad litem does not affect entitlement to a guardian ad litem pursuant to G.S. 7B-601.

Parent has Diminished Capacity [7B-602(c)-(e)]

Instead of an automatic appointment based on a pleading of dependency pursuant to G.S. 7B-101 due to substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition, appointment of a Rule 17 guardian ad litem is by motion of any party or the court. Upon motion, the court considers whether there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own best interest.

Behaviors, psychological evaluations, social security disability benefits should be alerts for juvenile court practitioners to consider whether it is appropriate to make a motion for a Rule 17 guardian ad litem.[14]

The statute specifically provides that the parent's counsel shall not be appointed as the Rule 17 guardian ad litem. However, communications between the guardian ad litem and parent's counsel is privileged and confidential to the same extent that communications between counsel and client are privileged.

The is some guidance as to the role of the appointment in that the guardian ad litem may in engage in the following: (1) helping the parent enter consent orders; (2) facilitating service of process on the parent; (3) assuring that necessary pleadings are filed; and (4) assisting the parent and the parent's counsel, if requested, to ensure that procedural due process requirements are met. Note: a guardian ad litem appointed under this subsection in accordance with G.S. 1A-1, Rule 17, does not fulfill the same role as representing best interests pursuant to G.S. 7B-601. The trial court should always keep in mind that appointment of a guardian ad litem divests the parent of their fundamental right to conduct his or her litigation according to their own judgment and inclination. *In re J.A.A.*, 175 N.C. App. 66, 71 (2005).

§ 1.4 Paternity, Missing and Unknown Parents

[12] See 7B-601, which clearly states that the juvenile is a party.
[13] Amendments to this statute were enacted by Session Laws 2005-398 effective October 1, 2005.
[14] The Court of Appeals held that the clear mandate of the statute does not require reversal where the court makes an appointment sometime after the actual commencement of the action unless the appointment is so untimely that it results in prejudice to the incompetent person's case. *In re H.W.*, 163 N.C. App. 438, 448 (2004)(decided under former statute).

[Please see the "Putative Father Checklist" and the "Missing Parent Checklist" at the end of Chapter 4 of this manual.]

A. Serving Missing or Unknown Parents [7B-407]

Service of a summons in a case of abuse, neglect, or dependency can be made by mail or publication if the parent (or guardian, custodian, caretaker) cannot be found through diligent effort and the court authorizes it. Service by publication is made pursuant to G.S. 1A-1, Rule 4(j1) of the Rules of Civil Procedure (see that rule for detailed requirements). Among other things, such service consists of publishing notice once a week for three successive weeks.

Other ways to locate a missing parent include searching the Internet, military records, law enforcement records, or by referring the case to child support enforcement if appropriate.

B. Why Locate an Uninvolved Parent?

If the petition has allegations involving only one parent and the other is not involved, nowhere to be found, or even unknown, it is still necessary to attempt to locate the uninvolved parent. Even though theoretically DSS should attempt to locate the missing parent, a GAL volunteer may be able to get information that assists in locating or naming the missing parent. There are several reasons it is necessary to try to locate an uninvolved parent, including the following:

1. **The uninvolved parent or family may be a decent placement option** should one be necessary.

2. **The parent should probably be paying child support** to child's custodian.

3. **It is wise to establish paternity in the earliest possible stage** of a case, because uncertainty regarding paternity can complicate or even "undo" a case down the road. By statute, the court is required to examine whether paternity is an issue as well as the efforts undertaken to establish paternity, and to make findings regarding to paternity in its order. **[7B-506(h)]**

   a. **A "putative father"** refers to the person alleged to have fathered the child but whose parentage is at issue and is not married to the mother. This term comes up frequently in this field of practice. It the mother was married at the time of the child's birth, it is possible that the child have two fathers: the "legal" father to whom the mother was married and the putative biological father. It is necessary to identify both fathers in this situation.

   b. **If a father has been named but the parents are unmarried**, it is often wise to push to get a blood test ordered to establish paternity if the putative father can be located. This can become very important later should termination of parental rights become the best option. For a case on paternity, see *Brown v. Smith*, 137 N.C. App. 160, 526 S.E.2d 686 (2000).

§ 1.5 Jurisdiction and Venue

A. Jurisdiction [7B-200]

1. For the purposes of GAL representation, North Carolina district court has exclusive, original jurisdiction over any case involving the following:

- A juvenile who is alleged to be *abused, neglected, or dependent*
- Proceedings under the *Interstate Compact on the Placement of Children*
- Proceedings involving judicial *consent for emergency medical treatment* for a juvenile when juvenile's parent, guardian, custodian or adult with custody refuses to consent to the treatment
- *Emancipation* proceedings
- *Termination of Parental Rights* proceedings
- Proceedings to review *foster care placement* pursuant to an agreement between DSS and parents or guardians
- Proceedings in which a person is alleged to have *obstructed or interfered with an investigation of abuse, neglect, or dependency* under **7B-302**
- Proceedings involving consent for an abortion on an unemancipated minor
- Proceedings involving an underage party seeking to marry
- Petitions for expunction of an individuals name from the responsible individuals list under Article 3A of Chapter 7B

2. The court has personal jurisdiction over the parent of a juvenile who has been adjudicated abused, neglected, or dependent if the parent has been properly served pursuant to 7B-406. Jurisdiction over the parent attaches upon service of the summons, and the court can issue an order to show cause for contempt if the parents fail to comply with any order of the court that was made pursuant to 7B-904. **[For cross-statutory reference, see 7B-406(c)]**

a. **Where no summons is issued to the parents**, the court has neither personal nor subject matter jurisdiction over the action. But service of the summons on only one parent is sufficient to confer subject matter jurisdiction. *In re Arends*, 88 N.C. App. 550 (1988).

b. The parents cannot be said to have consented to jurisdiction by appearing at the hearing when the purpose of their appearance was the timely challenge to the sufficiency of process. *In re Mitchell*, 126 N.C. App. 432 (1997).

c. Cases have discussed the requirement of minimum contacts with parent in TPR proceedings but not in adjudication of abuse, neglect, or dependency (*see, e.g.*, *In re Trueman*, 99 N.C. App. 579 (1990); *In re Finnican*, 104 N.C. App. 157 (1991), *disc. rev. denied*, 330 N.C. (1992), *In re Dixon*, 112 N.C. App 248 (1993)).

3. Relation to other civil custody actions

a. **Stay of proceedings.** When the court obtains subject matter jurisdiction over a juvenile petition alleging abuse, neglect or dependency, any other pending civil custody action is automatically stayed, unless the actions are consolidated or the stay is dissolved. The court may then decide whether to proceed with the juvenile proceeding while the civil action is stayed; or stay the juvenile proceeding to allow the civil custody action to proceed. **[7B-200(c)(1) & (d)]**

b. **Consolidation of proceedings.** The juvenile court may order that any custody action or

claim filed in the same district be consolidated with the juvenile proceedings. If the action or claim is in another district, for good cause and in consultation with the our-of-district court, the civil action may be transferred to the district in which the juvenile proceeding is filed; or venue may be changed in the juvenile proceeding to allow for transfer to the other district. **[7B-200(d)]**

c. **Conflicting orders.** If an order in a civil custody action conflicts with a juvenile order, the juvenile order controls so long as the juvenile court continues to exercise jurisdiction. **[7B-200(c)(2)]**

4. Age of the child and jurisdiction

a. **There is no minimum age** set out in the statute for juveniles alleged to be abused, dependent, or neglected. **[7B-200]**

b**. Once obtained, jurisdiction continues until terminated by the court, until the juvenile reaches age 18, or until the juvenile is otherwise emancipated, whichever occurs first.** [**7B-201(a)].** See *In re Shue*, 311 N.C. 586 (1984); *In re Stedman*, 305 N.C. 92, 98 (1982); See also *In re N.C.L.*, 89 N.C. App. 79, *disc. rev. denied*, 322 N.C. 481 (1988), stating that "once jurisdiction of a court attaches it exists for all time until the cause is fully and completely determined."]

c. **Termination of jurisdiction** provides that the court may not modify or enforce any previously entered court order relating to custody, placement, or guardianship and the legal status of the juvenile and custodial rights of the parties reverts to pre-petition status quo. However, termination of juvenile court jurisdiction does not affect the following: (1) civil custody order entered pursuant to G.S. 7B-911; (2) termination of parental rights order; (3) a pending action to termination parental rights, unless the court orders otherwise; (4) delinquency or undisciplined proceedings; or (5) jurisdiction pursuant to a new juvenile petition that is filed.[15] **[7B-201(b)]**

B. Other States' Involvement

When there is a possibility that another state has been or will be involved in the case, there are three sets of laws that may be applicable and should be examined. *All of the following are set out in further detail in Volume 2, Chapter 11 of this manual, which should be consulted whenever another state is involved.*

1. Interstate Compact on the Placement of Children (ICPC) N.C.G.S. § 7B-3800, et seq.
This federal law, codified in the North Carolina General Statutes, governs interstate placement of children between North Carolina and other jurisdictions. The ICPC applies to interstate placement by a "sending agency" but not to the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state. This means that anytime DSS (or another agency) from another state sends a child here or vice versa, the ICPC will govern the placement. *For more detailed information, please refer to § 11.5 in this manual.*

[15] Session Laws 2005-320 effective October 1, 2005 enacted subsection (b) relating to termination of jurisdiction However, this amendment is in accordance with appellate decisions holding that once a juvenile case is "closed" and the court ceases to exercise jurisdiction, the juvenile court has returned the parents to their pre-petition status. See *In re Dexter*, 147 N.C. App. 110 (2001) and *In re A.P.*, 361 N.C. 344 (2007) (decided under former version of 7B-200).

2. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) N.C.G.S. 50A-101 through 50A-317 *and* Parental Kidnapping Prevention Act (PKPA) 28 U.S.C.A. Sec. 1738A. These are both federal laws, and the UCCJEA is codified in the North Carolina General Statutes. Whenever more than one state will be or has been involved in issues of child custody, it may become necessary to deal with the provisions of the UCCJEA and the PKPA. These laws do apply to child dependency, neglect, and abuse proceedings (*see In the matter of Van Kooten*, 126 N.C. App. 764, 768-69 (1997)). The PKPA was passed after the UCCJA (predecessor to the UCCJEA) and relates more to custody than to kidnapping. Both acts seek to prevent forum shopping by parents, ensure proper jurisdiction, and require states to honor orders of other states. *For more detailed information, please refer to §§ 11.1 – 11.4 in this manual.*

C. Venue [7B-400]

1. Venue refers to the proper court in which the proceeding should be brought

a. **Location:** Child abuse, neglect, or dependency cases are commenced in the district in which the juvenile resides or is present.

Venue is not jurisdictional and is subject to waiver. *In re J.P.*, 2006 N.C. App. LEXIS 715 (Unpublished); *See also Jones v. Brinson*, 238 N.C. 506 (1953).

b. **Transfer:** If the action is commenced in a jurisdiction other than where the juvenile resides, the court may transfer the case—at any time—to where the juvenile resides.

In the case of *In re Phillips,* 99 N.C. App. 159 (1990), the court held that a trial court incorrectly transferred custody of a minor child to Cumberland County, even though the trial court had found that the distance from the child's home county of Bladen to the treatment facility where the child was receiving treatment was prohibitive to the provision of services by Bladen County and the GAL. Neither the distance nor her parents' incarceration affected the minor child's residence.

D. Children Born in Other Countries

Special Issues arise when the children who are the subject of a petition were born outside of the U.S. *For these situations, please consult § 13.7 of this manual for more detailed information.*

§ 1.6 Temporary and Nonsecure Custody

A. Underlying Purpose

Section 7B-100 of the General Statutes states that one of the purposes of the Juvenile Code is "[t]o provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents." Another purpose is "[t]o provide for services for the protection of juveniles by means that respect both the right to family autonomy and juveniles' needs for safety, continuity, and permanence." Although returning the child to his or her home is ideal, it often becomes an unrealistic or unsafe option, which is why 7B-503 and 7B-506 set out criteria under which the court may continue to keep the child in nonsecure custody; and is also why 7B-507 allows the court to

consider ceasing reunification efforts at this early stage under certain circumstances.

B. Temporary Custody

1. Circumstances [7B-500]

If there are "reasonable" grounds to believe that a juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order, the juvenile may be taken into *temporary custody* until a court order for nonsecure custody can be obtained. [Note the distinction between secure and nonsecure custody: secure custody is within a locked facility, while nonsecure custody is not locked–and therefore not "secure." G.S. 7B-503 specifically provides that a juvenile alleged abused, neglected, or dependent *may never be placed in secure custody*.]

The task at the temporary custody or removal stage (temporary custody is different from nonsecure custody generally) is to determine whether the child is exposed to a substantial risk of physical injury because the parent is unable to provide adequate protection. *In re Evans*, 81 N.C. App. 449 (1986).

2. Length of temporary custody [7B-501(b)]

Once the juvenile is taken into temporary custody***, he or she cannot be held there for more than twelve hours or for more than twenty-four hours*** if any of the twelve hours fall on a Saturday, Sunday, or legal holiday, unless a petition or motion for review has been filed and an order for nonsecure custody has been issued.

3. Medical professionals [7B-308]

Medical professionals are entitled to seek authorization by the chief district court judge or the judge's designee to retain physical custody of a suspected abused juvenile when the medical professional examines the juvenile and certifies in writing that he or she must remain for medical treatment or that it is unsafe for the juvenile to return home. The medical professional must then make a report to DSS. This statute is detailed and should be consulted.

C. Nonsecure Custody

Once DSS files a petition, a child often will be placed in nonsecure custody. Sometimes a child will be voluntarily placed outside the home without a nonsecure custody order (called a Voluntary Placement Agreement—see subsection D *infra*). Other times, the child is simply not removed despite the filing of a juvenile petition. If the GAL or AA consider the child's current temporary placement pending adjudication unsatisfactory or unsafe, the AA should make this clear to the court either in the nonsecure hearing or by filing a motion for a hearing to request a change in placement. If DSS has not removed the child and has not filed to obtain a nonsecure custody order and the GAL believes that the child should be removed and has evidence to support the removal, the AA should seek to obtain a nonsecure custody order.

1. Requirements for a nonsecure custody order: After a petition is filed, nonsecure custody orders can be issued in writing by the judge or the judge can delegate (via administrative order filed with the clerk) the authority to issue such orders to other people. **[7B-502]** A judge's authority to enter a nonsecure custody order depends upon the following findings:

a. there is a *reasonable factual basis* to believe matters alleged in the petition are true;

b. there are *no other reasonable means available to protect the juvenile*;

c. that *release* of the juvenile to his or her parent, relative, guardian, custodian, or other responsible adult is first considered; and

d. the *juvenile meets one of the following criteria* [see statute, **7B-503**]:

i. has been **abandoned**; or

ii. has suffered **physical injury or sexual abuse**; or

iii. is exposed to a **substantial risk** of physical injury or sexual abuse because the parent, custodian, guardian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision and protection; or

iv. is in need of **medical treatment** to cure, alleviate, or prevent suffering serious physical harm that may result in death, disfigurement, or substantial impairment of bodily functions and his parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or

v. the **parent, guardian, custodian, or caretaker consents** to the nonsecure custody order; or

vi. the **juvenile is a runaway and consents** to nonsecure custody.

An order for nonsecure custody (and other certain orders) can be made by telephone if other means of communication are impractical. **[7B-508]**

2. Place of nonsecure custody [7B-505]

a. In placing a juvenile in nonsecure custody, the court first must consider whether a relative 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 do this, then the court shall order 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. Unfortunately, the language in the statute stating that the child need not be placed with a willing and able relative *if it is not in the child's best interest* is sometimes ignored. *It is important that the AA argue this best interest language in the statute when it is in fact not in the child's best interest to be placed with a relative.* Whether it is in the child's best interest to remain in the community of residence is also considered.

b. If there is no appropriate relative for placement, nonsecure custody may be placed with DSS or a person designated in the order for temporary residential placement in one of the following:

- a licensed foster home or home authorized to provide foster care; or
- a DSS facility; or

- any other home, or facility, including a relative's home, approved by the court and designated in the order. **[7B-505]**

c. In placing a juvenile in nonsecure custody, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. sec. 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.[16]

d. Placement of a juvenile with a relative *outside of this state* must be in accordance with the Interstate Compact on the Placement of Children.[17] **[7B-505]**

3. Violent Caregivers

Requirement of Background Check. When a child is removed from a home due to physical abuse, DSS must conduct a thorough review of the background of the alleged abuser or abusers. "This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist." **[7B-302(d1)]**[18]

Relation to Criteria for Nonsecure Custody. "Whenever a petition is filed under 7B-302(d1), the court shall rule on the petition prior to returning the child to a home where the alleged abuser or abusers are or have been present. If the court finds that the alleged abuser or abusers have a history of violent behavior against people, the court shall order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court may order the alleged abuser or abusers to pay the cost of any mental health evaluation required under this section." **[7B-503(b)]**

Relation to Hearing to Determine Need for Continued Nonsecure Custody. "In determining whether continued custody is warranted, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual." [**7B-506(c1**), also see **7B-903(b)** relating to violent caregivers and the dispositional phase of the case][19]

D. Placement Outside the Home Without Nonsecure Custody ("Voluntary Placement")

In some cases, DSS may prefer to attempt voluntary placement with a relative or friend outside the home rather than seek a nonsecure custody order, even when a petition is filed. G.S. 7B-910 governs the review of voluntary placements and requires a hearing within 90 days of the placement. Although such an arrangement may work out, only if a petition is filed is a GAL appointed, and it often puts the

[16] See Chapter 11 of this manual for more information on the Indian Child Welfare Act and the Multiethnic Placement Act.
[17] See Chapter 11 of this manual for more information on the Interstate Compact.
[18] All statutory language related to "violent caregivers" (the term used by the legislature to refer to an alleged abuser with a history of violent behavior against people) contained in G.S. 7B-302(d1), 7B-503(b), 7B-506(c1), 7B-903(b), and 7B-1003 were created by 1999 legislation.
[19] For a provision relating to disposition pending appeal when a violent caregiver is the perpetrator, see 7B-1003.

GAL in a worse position due to the following factors:

- Seven-day hearings are not required in such a situation; thus there is no built-in mechanism for court review. (The court therefore lacks the power to provide for preadjudication hearings or preadjudication services, and it is harder to obtain information about the case without the hearings.)
- Such voluntary placements may make it more likely that the children will be taken to see the parent's attorney without GAL knowledge or that the children will be influenced not to disclose information that would aid in adjudication.
- Children with special needs will not have those needs addressed.
- The children will have unauthorized contact with parents or perpetrators without GAL knowledge (e.g., the caretaker may be a grandparent who raised the parent who is the perpetrator).

Other disadvantages of a voluntary placement without the filing of a juvenile petition include the lack of procedural safeguards, no counsel for parents, and minimal, infrequent court involvement. If DSS chooses voluntary placement and files a petition, the GAL should begin an independent investigation to determine the appropriateness of the agreed-upon placement. If the GAL considers a nonsecure custody order more appropriate or the placement contrary to the juvenile's best interest, the GAL can seek to obtain a nonsecure custody order. *For additional information, see § 10.2 (G.1) in this manual, regarding voluntary placement.*

E. Others Talking to the Child

State Bar ethics opinions RPC 249 and RPC 61 make it clear that attorneys are prohibited from talking to a child who is represented by an attorney [advocate] without authorization from that attorney.[20] Many attorneys do not realize that they should not talk to the child about the case without the authorization of the child's attorney (GAL attorney advocate). Parents' attorneys, DSS attorneys, law enforcement officers (when acting as agents of prosecutors), criminal defense attorneys, and prosecutors all have been known to have such unauthorized conversations. In addition, parents and caretakers with physical custody of the child often do not realize that they cannot give consent for the child to talk to an attorney.

Parents can be informed by their own attorney (at the suggestion of the attorney advocate) that the child should not be talking to an attorney without his or her attorney's authorization. The parent could also be so informed in the courtroom, on the record, if the judge allows it.

Attorneys, parents, and law enforcement personnel can be informed by way of a routine letter, sent out at the beginning of a case, simply explaining that the attorney advocate represents the child and must be contacted if they want to talk to the child. (See sample letters in appendix to this manual.) RPC 249 and RPC 61 address these issues directly and can be cited in a letter to attorneys, as can the statutory authority for the attorney advocate's representation of the child.

§ 1.7 The Hearing to Determine Need for Continued Nonsecure Custody

A. Assessment, Consent, and Preparation for Hearing [21]

1. Assess positions: If possible, the AA can attempt to determine the position of DSS and of the parents concerning nonsecure custody. If the parents and GAL agree, a consent order may be obtained

[20] See Chapter 12 for more information on this topic and to reference these ethics opinions

[21] The checklist at the end of this chapter in the manual can be used as a preparation tool for nonsecure custody hearings.

for waiver of the nonsecure custody hearing (except for initial hearing) but the court may require additional consent or schedule the hearing anyway. **[7B-506(f)]** If there is no consent, the AA must assess whether he or she will need to present evidence at the nonsecure custody hearing, which will depend on the positions taken by DSS and the parents, whether appropriate preadjudication services are being provided, whether the placement is appropriate, and what evidence DSS will be presenting. Obviously, the timing may be such that the GAL and AA have not had the opportunity to collect much information prior to a nonsecure hearing. However, every attempt should be made to get information prior to the hearing and to utilize the hearing to gain information and begin taking steps to move the case forward. Please refer to § 1.2 in this chapter on "Frontloading the System," which explains more about how to make good use of nonsecure custody hearings, with or without a lot of information.

The AA should prepare to advocate for appropriate services and placement and to cross-examine witnesses. If necessary, he or she should be prepared to present evidence to the court concerning the need for continued custody or change in placement as well as evidence concerning reasonable efforts.

2. Subpoena witnesses: If the AA believes that it is necessary to supplement the evidence DSS intends to present, the AA should collect any information and subpoena any witnesses who will need to be present at the hearing to support the GAL's position. If the subpoena is unlikely to be served in time for the hearing, or in time for adequate notice, the AA should call the witness and ask him or her to be present and then get a subpoena to be served by phone so that it is official. A document subpoena (subpoena *duces tecum*) must be served in person and cannot be served by law enforcement by telephone. Also, only a public official may serve a summons, but any person eighteen years or older who is not a party may serve a subpoeana. Remember that a copy of each subpoena must be served upon each party to the proceeding. For other specifics, see Rule 45 of the North Carolina Rules of Civil Procedure and form AOC-G-100.

B. Procedural Issues for Nonsecure Custody Hearing [7B-506]

1. Timing

a. The court must conduct a hearing within seven days of the time the juvenile is taken into nonsecure custody. If an designee and not a judge issues the custody order, a hearing must be conducted on the day of the next regularly scheduled district court session. **[7B-506(a)]**

b. Such a hearing may be continued up to ten business days with consent of the parent and GAL, but the court may require additional consent or decided to schedule the hearing anyway despite agreement for a continuance. **[7B-506(a)]**

c. Pending the adjudicatory hearing and after the initial custody hearing, there must be another custody hearing within seven business days and then every thirty calendar days thereafter, unless waived with the consent of the juvenile's parent, guardian, custodian, or caretaker and guardian ad litem. **[7B-506(e) & (f)]**

2. Burden/standard of proof/criteria: The State (DSS) bears the burden to provide clear and convincing evidence that the juvenile's placement in custody is necessary. **[7B-506(b)]** A nonsecure custody order (or an order to continue custody) shall be made only when:

- there is a reasonable factual basis to believe the matters alleged in the petition are true,

- one of the seven criteria in 7B-503 is met, and
- there is no other reasonable means available to protect the juvenile.
  [See 7B-503 and 7B-506]

3. Relaxed evidentiary rules: The court is not bound by the usual rules of evidence at nonsecure custody hearings. **[7B-506(b)]**

4. Court's inability to dismiss petition at nonsecure stage: The court has the authority to continue nonsecure custody or return the child to the parent but not to dismiss the petition. *In re Guarante*, 109 N.C. App. 598 (1993).

5. Court may not grant permanent custody at a nonsecure hearing: The court does not have the authority to grant permanent custody to a non-custodial parent or other person without an adjudicatory hearing on the merits. *In re O.S.*, 175 N.C. App. 745 (2006).

6. Sources of information: The court shall receive testimony and shall allow the Guardian ad Litem or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. **[7B-506(a)]**

C. Requirements for Nonsecure Custody Court Orders [7B-506(d)]

1. A judge's order to continue custody should be **in writing**.

2. The order should have **findings of fact** that include the evidence relied upon in reaching the decision and the **purpose achieved** by continued custody.

3. The order shall be **signed** and **entered** within **30 days** of the completion of the hearing.

4. See "Reasonable Efforts," below.

D. Reasonable Efforts [7B-507] [22]

1. All orders placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, shall contain the following: **[7B-507(a)]**

a. **Best interest:** a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;[23]

[22] Federal Regulations on the Adoption and Safe Families Act (ASFA) took effect on March 27, 2000, and have a number of requirements pertaining to reasonable efforts. These requirements, along with information on ASFA, can be found in Volume 2, Chapter 11 of this manual, which the reader is strongly urged to consult for important ASFA information. Lack of compliance with these regulations seriously jeopardizes federal funding to state programs. Specifically, these regulations state that there must be a finding that continuation of the child in the home is contrary to the welfare of the child and there must be findings that there have been reasonable efforts both to prevent placement and to finalize a permanent placement home. Source for ASFA information: *New Federal Regulations on ASFA: Detailed Court Findings Concerning "Reasonable Efforts" and "Contrary to the Welfare" Findings*, by Mark Hardin, National Child Welfare Resource Center on Legal and Judicial Issues, April, 2000.

[23] The "contrary to the welfare" requirement in the ASFA Regs (see previous footnote) is met if the court finds that the placement is in "the child's best interest." 65 Fed. Reg. 4055. However, the court should not depart from the specific language in such phrases since other phrases may not be considered to have the same meaning as the phrase "contrary to

b. **Findings of reasonable efforts:** findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined that such efforts are not required or shall cease;[24]

i. A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

ii. For a case discussing reasonable efforts, see *In re Helms*, 127 N.C. App. 505 (1997).

c. **Continuation of reasonable efforts:** findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile unless the court has previously determined or determines that such efforts are not required or shall cease;

d. **DSS responsibility for child:** a statement specifying that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

e. **Services:** Possible provision for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

2. **Ceasing reunification:** In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, *the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease* if the court makes written findings of fact that: **[7B-507(b)]**

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101;

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the welfare."

[24] The Federal Regulations on ASFA require that findings that there were reasonable efforts to prevent placement must be made within 60 days following the removal of the child from home. "Contrary to welfare" findings must be made in the first court order authorizing the children's removal from home. The ASFA regulations say there are three types of reasonable efforts: 1) reasonable efforts to prevent placement; 2) reasonable efforts to reunify families following placement; and, 3) reasonable efforts to arrange and finalize a new permanent home after reunification is no longer the goal. 45 C.F.R § 1356.21(b). The only required judicial findings of reasonable efforts, however, are 1) the court must find that there have been reasonable efforts to prevent placement; and 2) there have been reasonable efforts to finalize a permanency plan. 45 C.F.R. § 1356.21(b)(2).

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent**.**

3. **Permanency Planning Hearing when reunification is ordered to cease:** At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within thirty (30) calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing. **[7B-507(c)]**

4. **Child's health and safety is paramount concern:** In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. **[7B-507(d)]**

5. **Concurrent planning is appropriate:** Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement. **[7B-507(d)]** See *In re J.J.L.*, 170 N.C. App. 368 (2005), holding that a concurrent plan of reunification and adoption was appropriate.

E. Issues the Court Shall and Should Consider in Nonsecure Custody Hearings [25]

1. The primary purpose of a nonsecure custody hearing is for the court to determine whether the child should be returned home or placed elsewhere pending adjudication. The court must also examine reasonable efforts by DSS to prevent removal of the child.

2. In any hearing to determine the need for continued custody, the court *must* also inquire about and address the following issues: **[7B-506(h)]**

a. the identity and location of any missing parent;

b. whether there is a relative who is willing and able to provide proper care and placement temporarily in a safe home. If so, the court shall order temporary placement with the relative unless the court finds that such placement would be contrary to the best interests of the juvenile. (The court must consider and apply the Indian Child Welfare Act, the Multiethnic Placement Act, and the Interstate Compact, all explained in Chapter 11 of this manual.);

c. whether there are other juveniles remaining in the home and their status;

d. whether paternity is at issue, and efforts undertaken to establish paternity.

3. **The court should also consider the following** issues in the best interest of the child:

[25] See, generally, The National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, 1995, p. 37.

a. terms of **visitation** for parents and siblings;

b. where the child will attend **school** if child's temporary placement is in a different district;

c. **services** that the parent and child should be receiving prior to adjudication, and clarification as to how, when, and by whom such services should be initiated – note that the court does not have authority over parents if there is no nonsecure custody order. Visitation with the child might be made conditional upon the parent doing certain things (e.g., a mental health evaluation or beginning substance abuse treatment where there is strong evidence that the problem is caused by mental illness or substance abuse);

d. financial support for the child;

e. the potential need to impose conditions to protect a child from being exposed to an allegedly abusive person. (For example, when a child is placed with the mother in a case in which an abusive boyfriend or father is no longer in the home or the mother has moved, a request could be made that the judge make return of the child to the mother conditional on getting a restraining order against the abusive person in order to protect the child.) Note that the court has no jurisdiction to issue orders to a person not named as a party or not served in the matter. The court can, however, address this issue with DSS and the parent so that they can look into taking action.

[**Note regarding 50B Orders**: It is also important to be aware of existing or potential domestic violence proceedings under Chapter 50B of the North Carolina General Statutes.]

f. Is the proposed placement the **least disruptive and most family-like** setting that meets the needs of the child?

§ 1.8 Working Toward Consent and the Prehearing Conference

Getting enough court time for juvenile cases is a problem throughout the state. In addition, court officials admit that sometimes court time is utilized neither wisely nor efficiently, with too many continuances, recesses for negotiation, or just plain "dead time." Perhaps the single best solution to the problem of inefficient use of court time is to work toward consent and insist on prehearing conferences.

A. Consent Orders [7B-902]

Consent is beneficial in minimizing the adversarial nature of the proceedings, in promoting cooperation to achieve the best results for everyone, and in reducing court time spent on a trial.

1. Consent under the statute: The Juvenile Code makes it clear that the judge can enter a "consent order or judgment on a petition for abuse, neglect or dependency when all parties are present, the juvenile is represented by counsel, and all other parties are either represented by counsel or have waived counsel and sufficient findings of fact are made by the court."

2. Working toward consent with good communication: If all parties have an opportunity to clearly and thoroughly communicate their perspectives on the case, their goals, their problems, and their ideas, they are much more likely to reach a consent agreement. Taking the time to communicate in order to have an adequate understanding of one another may save time and effort in the long run by avoiding

lengthy court hearings. Such conversations also may increase the chances of parental success by allowing the parent to have a say in the solution.

Please see § 2.4 for case law and more detailed information on consent agreements.

B. Prehearing Conferences*

1. Format for conference: In some districts, prehearing conferences are formally scheduled and attended by the judge; some districts utilize Rule 16 in the Rules of Civil Procedure, which provides for pretrial conferences. In other districts, prehearing conferences are informal, scheduled by the parties, and the judge does not attend. At the beginning of this chapter in § 1.2, the benefits of prehearing conferences are discussed under the heading "front-loading the system." The list of purposes and goals below relates less to the benefits and more to the practical substance of prehearing conferences.

2. The purpose and goals of a prehearing conference [26]

- To share appropriate information about the case that will aid the parties in their investigative efforts.
- To share perspectives on the case that will allow the parties to identify the issues on which they agree and those on which they cannot agree.
- To make stipulations as to those facts and/or issues that parties can agree on and establish the content of a potential consent order.
- To share witness lists, exhibit lists, and exhibits to expedite the discovery process and help parties prepare for the evidence they will need to present in court.
- If there is a missing parent or if paternity is in issue, to establish the steps that are to be taken to identify the parent, locate the parent, or establish paternity.
- Identify and discuss the services needed by the child and parents.
- Identify pretrial motions that may be made by any party.

**Please see the prehearing conference checklist at the end of this chapter.*

§ 1.9 Confidentiality and Discovery

A. Discovery

1. Utilizing regular discovery tools

Parties in abuse, neglect, and dependency matters may utilize the discovery tools available in any civil case except when otherwise stated by the Juvenile Code. Rules 26 through 37 of the North Carolina Rules of Civil Procedure address discovery. But traditional civil discovery often moves far too slowly for child protection cases. **G.S. 7B-803** allows a judge to grant continuances for a reasonable time to allow for "expeditious discovery."

There may be times when obtaining information via discovery motions is preferable to other methods. Social Security and medical records, for example, may be requested in discovery

[26] Originated from draft of proposed revisions to the Juvenile Code by the Court Improvement Project Juvenile Code Revision Committee.

from the parent. If a simple request for records or a discovery motion does not work, attorney advocates may subpoena the records or issue a subpoena duces tecum so that the custodian of the records must bring them.

Under 7B-700(a), "[u]pon written motion of a party under a finding of good cause, the court may at any time order that discovery be denied, restricted, or deferred." Under 7B-700(b), the court may permit the party seeking relief under subsection (a) to submit supporting affidavits or statements for in-camera inspection.

2. Medical records protected by federal substance abuse records regulations

See Chapter 11 of this manual on federal laws for detailed information on 42 CFR Part 2, and the appendix to this manual for sample forms relating to this issue.

a. 42 CFR generally: All medical records that identify or diagnose a person as a substance abuser, a term that includes alcoholics, or which contain substance abuse treatment records are protected by federal regulations in Section 42, Part 2, of the Code of Federal Regulations (42 CFR 2). Section 42 Part 2 prohibits the release of such records without an executed consent to release records form that conforms to the federal regulations or through court proceedings under the federal regulations. These regulations supersede the state statutory investigatory powers of DSS and the GAL and standard discovery procedures. State courts do not have authority to override these regulations through court orders except as specifically provided by 42 CFR Part 2.

b. Procedure for seeking substance abuse records via hearing: To seek a court order for the release of substance abuse records when consent cannot be obtained, the following procedures outline one possible approach:

- An attorney makes a motion to have a hearing on release of substance abuse records.
- The attorney provides the motion and notice of the hearing to all parties and to the mental health agencies that may possess the records being sought.
- The attorney must be aware that there is an issue regarding preservation of the anonymity of the person whose records are sought (one could argue that the confidentiality of juvenile records in general would preserve the anonymity). The motion can refer to the patient as "John Doe." The way an attorney chooses to treat the issue of anonymity will depend on local practice and the potential for exposure of such records. This issue should be addressed and dealt with on the record.
- At the hearing (closed to the public), the attorney will argue the relevance of such records in the hearing where the records would be introduced in evidence (such as adjudication or disposition), and ask for an order to produce such records. Such an order would compel production on a certain date when the judge would review the records.
- The mental health agency or professional should receive the order, showing that they are authorized and compelled to release the information, along with a subpoena for the records for purposes of the hearing on the motion. Note that a subpoena must be issued to each director of medical records from whom substance abuse records are sought. The subpoena must accompany the order to produce records for review. A mental health agency or professional may choose to mail such records to allow the judge to review them on the date in the order (often on a

juvenile court date) set for a hearing on the motion.

- The judge examines the records based on the requirements in 42 CFR part 2 and may make a ruling as to who is authorized to see such records but not as to admissibility in the actual hearing in which a party will attempt to admit the records.
- The mental health professionals involved in creating the substance abuse records should be subpoenaed for hearing at which documents may be introduced, and a subpoena should also issue for the records themselves.
- At the hearing, the attorney seeking to introduce the records will follow regular procedure to admit such records into evidence, but other parties may still object to introduction. (Unless something has occurred in the hearing to change relevance of the records, the prior determination of relevance is likely to stand.)

3. Education records and "FERPA" [20 U.S.C. Sec. 1232g]

FERPA is the Family Educational Rights and Privacy Act, a federal law that protects the privacy interests of parents and students with regard to education records. [27] It applies to public elementary and secondary schools and virtually every postsecondary institution in the country. FERPA protects educational records unless a parent of a child under eighteen or a student eighteen or older consents to release. The law lists a number of exceptions, however, under which educators do not need prior consent to release. FERPA does not govern educators' decisions to share information concerning students based on their personal knowledge or observation, provided the information does not rely on the contents of an education record.

More detailed information on FERPA can be found in Chapter 11 on Federal Laws.

B. Confidentiality

1. Disclosure of information concerning the child generally prohibited

Juvenile information is protected well beyond the scope of the attorney-client relationship and is vital to the protection of the child. Sections 7B-2901 to 7B-2902 emphasize the strict confidentiality of juvenile records. In addition, **s**ection 7B-601 allows the GAL access to confidential information but states that "[t]he confidentiality of the information or reports shall be respected by the Guardian ad Litem and no disclosure of any information or reports shall be made to anyone except by order of the judge or unless otherwise provided by law."

2. Disclosure in child fatality or near-fatality cases

It is important to note that the rules of disclosure are different when there is a child fatality or near fatality. Such disclosure is governed by **7B-2902,** set out in the statute at the end of this chapter.

3. Juvenile Court records and hearings

[27] Resource for FERPA information: Shay Bilchik, Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs, Program Report released by the U.S. Department of Justice and the U.S. Department of Education, June 1997, portions of which can be found in Volume 2, Chapter 11 of this manual.

a. **The clerk's record**: The clerk of superior court, and typically an assistant or deputy clerk designated as clerk of juvenile court, is responsible for maintaining all records pertaining to juvenile cases. This constitutes the "juvenile record," which is confidential and may be examined only by order of the court.[28] However, the following persons may examine the juvenile's record maintained by the clerk and obtain copies of written parts of the record without an order of the court:

- The person named in the petition as the juvenile;
- The guardian ad litem;
- The county department of social services; and
- The juvenile's parent, guardian, or custodian, or the attorney for the juvenile or the juvenile's parent, guardian, or custodian. **[7B-2901]**

b. **Juvenile court proceedings are recorded** but are reduced to writing only when notice of appeal has been filed. **[7B-2901]**

c. **In the case of a child victim**, the court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim. **[7B-2901(c)]** *(Also see subsection E. 2., below, on agency sharing of information.)*

d. **Determining whether juvenile proceedings are open or closed [7B-801]**

i. The court determines whether the hearings are open or closed and considers the circumstances of the case including, but not limited to, the following factors:

- the nature of the allegations against the juvenile's parent, guardian, custodian, or caretaker;
- the age and maturity of the juvenile;
- the benefit to the juvenile of confidentiality;
- the benefit to the juvenile of an open hearing; and
- the extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(1) and G.S. 7B-2901 will be compromised by an open hearing.

ii. No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

C. DSS Records and Access to Information

[28] Between July 1, 1999 and January 1, 2002, this statute did not have provisions relating to who was permitted to examine the clerk's record. These provisions were contained in the predecessor to 7B-2901(a), 7A-675, and it seemed they may have been inadvertently left out when abuse, neglect, and dependency provisions were separated from delinquency provisions. Legislative changes in 2001 put such provisions back. ***However, the GAL's appointment order and 7B-601(c) allow the GAL to obtain information whether or not confidential, and this provision should be sufficient authority for inspection of the clerk's records by the GAL in any event.***

1. **DSS record:** DSS is to maintain a record of the cases of juveniles under protective custody by the department or under placement by the court. The record "shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them." DSS records also are confidential. **[7B-2901(b)]**

2. **Confidentiality in the investigative process: Sections 7B-302 and 7B-303** both speak to confidentiality issues related to the investigative process by DSS (see the statutes at the end of Volume 2, Chapter 10 of this manual). DSS is entitled to any information or reports, whether or not confidential, that may be relevant to the investigation of or the provision for protective services. Exceptions include information protected by the attorney-client privilege and criminal investigative information that may jeopardize investigation or the rights of the State or defendant (in which case a protective order must be sought).

> **Exception: Federal substance abuse records and educational records:** See exceptions described above in § 1.9.A. for medical records protected by federal substance abuse records regulations (42 CFR Part 2) and for educational records protected by FERPA.

D. Access to Information by the GAL

1. GAL's entitlement to confidential information: A GAL has the authority, by way of court order typically contained in the GAL's appointment order, to have access to any information or reports that he or she believes relevant to the case, even if such information is confidential. **[7B-601].** Both the GAL and Attorney Advocate need one or more certified true copies of the appointment order. Some record custodians require a certified true copy for their records before allowing access or copies; others accept a copy of a certified true copy or simply look at the appointment form to verify appointment before allowing access to records. Some record custodians may also require a subpoena to be issued for the records, in which case the AA can simply issue the subpoena.[29]

> **Casenote**: The GAL is entitled to confidential information concerning the adoptive process. *See In the Matter of N.C.L.*, 89 N.C.App. 79 (1988*), In re Wilkinson v. Riffel*, 72 N.C.App. 220 (1985).

2. **Privileges not available:** The physician-patient privilege and the husband-wife privilege are not available to persons from whom the information is sought. **[7B-601]**

[29] Most of the time, individuals and organizations do not require subpoenas in order to turn over confidential information since the statute and appointment order make it clear that they are likely to loose any battle to fight release of the information. The language in the statute and appointment order stating that the GAL is entitled to obtain confidential information does not provide the same function as a subpoena. A subpoena is the appropriate legal mechanism for requesting information and some records custodians require this formal document prior to releasing information even if they do not intend to contest or quash the subpoena. While the statute and appointment order make it clear that the GAL is entitled to obtain the confidential information, the appointment order does not contain a formal request or order directed specifically to a particular individual or agency to turn over specific records. The records holder cannot be compelled to turn something over without the opportunity to be heard (due process) and the subpoena provides that mechanism if they choose to fight it.

3. **Exception—Federal substance abuse records and educational records:** See exceptions described above in § 1.9.A. for medical records protected by federal substance abuse records regulations and for educational records protected by FERPA.

E. Access to Information from the GAL

1. **The GAL must keep all information regarding the case confidential,** and no disclosure may be made except by court order or unless provided by law in Chapter 7B. **[7B-601]**

casenote: In the case of *In re Guynn*, 113 N.C.App. 114 (1993), a father claimed he was prejudiced by the GAL's refusal to give him information that the GAL considered confidential. The court disagreed, saying he was not prejudiced by the GAL's refusal to provide a list of services offered to him, because he obtained that information from DSS.

2. Exception: agencies authorized to share information

Under section **7B-3100,** the Office of Juvenile Justice, after consultation with the Conference of Chief District Court Judges, shall adopt rules codified in the North Carolina Administrative Code designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of 7B-3100. [30] Such agencies shall share with one another, upon request, information in their possession that is *relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent,* undisciplined, or delinquent and shall continue to do so until the juvenile is no longer subject to the jurisdiction of juvenile court. Any information shared pursuant to 7B-3100 *must remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile.* The Family Educational and Privacy Rights Act still applies to such information. Disclosure of information concerning any such juvenile that would reveal the identity of that juvenile is prohibited – except the publication of pictures of runaways with parental permission.

Agencies that may be designated include:

- local mental health facilities
- local health departments
- local departments of social services
- local law enforcement agencies
- local school administrative units
- district attorney's office (but statute says DA is not required to release any information)
- Office of Juvenile Justice
- GAL Office

3. If a GAL were to receive a request to share information pursuant to 7B-3100, the request should be handled as follows: [31]

a. The GAL must determine whether it is in the **child's best interest** to share such information. If so,

[30] See 28 N.C.A.C. 1A.0301 and 28 N.C.A.C. 1A.0302 (2007) under "Statutes" at the end of this chapter.

[31] *Note:* this discussion of the proper way to handle such a request is based on what appears to be logical and lawful. There is no caselaw as of the printing of this manual to support this interpretation.

i. The attorney advocate must refer to the statute, 7B-3100, find out whether there are any local administrative orders in effect related to agency sharing. If there is authority for certain agencies to share information, the AA should make sure that the type of information sought and the person seeking it fall within the parameters of the statutory provisions of 7B-3100 and whatever rules are in effect.

ii. Although all information relevant to the abuse, neglect, or dependency case must be shared (if there is authority for agency sharing), attorney work-product, GAL work-product (thoughts, impressions, and notes regarding process as opposed to facts and findings), are not likely to be considered relevant and therefore need not be shared.

b. If the GAL believes it is in the best interest of the child that certain information *not* be shared, the GAL should express this to the person seeking the information and should to file a motion to obtain a protective order (under 7B-700 or civil discovery statutes) to justify not sharing it.

c. If the GAL believes it is in the best interest of the child to share information that goes beyond the authority of 7B-3100, or the person seeking it is not a designated agency, or there is any question as to whether there is authority for agency sharing, the GAL should be cooperative and lend assistance to the party seeking such information in getting a court order, which would allow the GAL to release such information.

4. When the GAL receives a subpoena

a. When information is subpoenaed: If information is requested from the GAL by way of subpoena, and he or she believes it is not in the best interest of the child to release such information or that it would be a breach of confidentiality to release it, the attorney advocate must make a motion to quash the subpoena. The motion to quash should cite to Rule 45(c)(3) & (5) of the North Carolina Rules of Civil Procedure and specify reasons for objecting to the subpoena. If it is in the best interest of the child to comply with the subpoena and there are no problems with confidentiality, the GAL should comply. It is necessary for the attorney advocate to be aware of any subpoenas or requests for information and to assist the GAL in determining an appropriate response.

b. When the GAL is subpoenaed to testify: If a GAL volunteer is subpoenaed by anyone to testify about GAL involvement in a case, the volunteer should be reminded of the obligation of confidentiality. Although a volunteer is obligated to respond to a subpoena, a motion to quash may also be utilized. If the motion is denied and the volunteer is called to the stand to testify, he or she must remind the court of the statutory duty of confidentiality and therefore, is not at liberty to discuss any information about a specific case without a court order. After the volunteer voices the obligation of confidentiality, a judge may order the GAL to testify, in which case the GAL must do so because such testimony is permissible pursuant to court order. A GAL can testify as to general matters relating to work as a GAL volunteer but may not testify about a specific case without a court order. Please consult the GAL Volunteer Training Manual to obtain more detailed guidance for volunteers testifying in court.

5. Search warrants for GAL files: Law enforcement officers at times may attempt to access GAL information for a criminal case by obtaining a search warrant for GAL files. Asserting confidentiality, work-product, or the availability of such information elsewhere may or may not protect the records from

a search warrant. However, due to the agency-sharing statute and the fact that a GAL is often in the position of wanting to cooperate with local law enforcement to further the best interests of the child, local law enforcement should not need a search warrant to get what they need from the GAL.

6. Subpoena for child to testify: Upon receipt of a subpoena for the child to testify, the first determination of the AA and GAL is whether it is in the child's best interest to testify and, specifically, whether testifying would harm the child. This determination is based on a number of factors including any professional evaluations of the child. [*More detail on whether the child should testify and child witnesses generally can be found in §§ 2.7.H. and 7.2 of this manual*] The AA and GAL may determine that making a motion to quash the subpoena is necessary for the protection of the child, or may determine that the child may be able to testify but only in a non-traditional courtroom setting. If a motion to quash the subpoena or a motion to have the child testify in a nontraditional setting is made, such motions should be made with accompanying affidavits and/or a request for a hearing on the motion so that there is an opportunity for the court to hear from witnesses the reasons that the child should not testify or should testify in a different setting. If the AA and GAL believe that the child can testify in a traditional setting, they should prepare the child for the courtroom situation.

See § 7.2.E. in this manual for more information on non-traditional courtroom settings.

CHECKLISTS AND WORKSHEETS

§ 1.10 Nonsecure Custody Hearing Checklist*

Preparing for the nonsecure custody hearing:

_____ Receipt of petition
_____ Receipt of summons
_____ Receipt of custody order
_____ Talked to GAL volunteer
_____ Talked to GAL staff
_____ Reviewed petition for legal defects, factual inaccuracies
_____ Reviewed petition for jurisdiction/venue problems
_____ Motion to amend petition? (yes/ no)

Is the child's current placement acceptable? (yes/no) _____

Motion to change placement or for nonsecure custody? Explain:
_____
_____

Position of DSS concerning nonsecure custody:
_____
_____
_____

Position of parent(s) concerning nonsecure custody:
_____
_____
_____

Do all parties consent to nonsecure custody placement? _____

Evidence (witness names, exhibits) expected to be presented by DSS at nonsecure custody hearing:

_____
_____
_____
_____
_____

Additional evidence GAL needs to present at nonsecure custody hearing (witnesses, exhibits):

_____
_____
_____

At the Nonsecure Custody Hearing

Persons who should be present:

Role	**Name**
Judge	_____
Parents (not term.)	_____
Relatives w/legal standing	_____
Other custodial adults	_____
DSS caseworker	_____
GAL volunteer	_____
GAL attorney advocate	_____
Court reporter	_____
Security personnel	_____
	_____

Persons whose presence may be needed:

Role	**Name**
Children	_____
Extended family members	_____
Adoptive parents	_____
Law enf. Officers	_____
Service providers	_____
Juv. ct. counselor	_____
Prob/parole officer	_____
Other witnesses	_____
	_____

**Note: Portions of this checklist may not be applicable to the initial nonsecure hearing when information is limited*

Issues to Address in the Nonsecure Custody Hearing

Placement of the child pending adjudication:

_____

Has DSS made reasonable efforts to avoid placement outside the home?

_____
_____

Are there relatives or other adults that could be considered for placement?

_____
_____

Is this placement the least disruptive and most family-like alternative?

_____
_____
_____

Under this placement, will the child have to change schools and, if so, can this be avoided?

_____
_____

Under this placement, will the child be taken away from any regular activities or appointments and, if so, can this be avoided?

_____
_____

Services to be provided to parent(s) before adjudication:

_____
_____
_____

Services to be provided to child/ren before adjudication:

_____
_____

What are the terms and conditions of visitation between parent and child?

_____
_____
_____

What are the terms and conditions of visitation between siblings or others?

_____
_____

Will the parent be paying any child support?

_____

Missing parent and paternity issues:

_____
_____
_____

Other Matters

Were any motions filed?

_____

Actions to be taken by GAL/AA:

_____
_____
_____
_____

Have parties been served? _____

Were there admissions to the court concerning the allegations contained in the petition?

_____
_____

Date and time of next hearing:

_____

Other notes:

_____

§ 1.11 Pre-Hearing Conference Checklist and Worksheet

THE PRE-ADJUDICATION STAGE

Case name _____ Date _____

Persons present:

_____ _____ _____

_____ _____ _____

New investigative information learned (include source): _____

_____

_____

_____

_____

_____

_____

New investigative information GAL shared: _____

_____

_____

_____

_____

_____

Issues agreed on and stipulated to (identify which parties agree):

_____

_____

_____

_____

_____

_____

_____

Issues parties do not agree on: _____

_____

_____

_____

_____

_____

_____

_____

Witnesses and exhibits intended for presentation by each party in court:

GAL	DSS	Parent's Attorney(s)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Substance of potential consent order:

_____
_____
_____
_____
_____
_____

Steps to be taken to identify and locate a missing parent or to establish paternity:

_____
_____
_____

Pretrial motions to be made by any party (including GAL):

_____
_____
_____

Services already being provided for child and parents: _____
_____
_____

Services needed for child and parents: _____
_____
_____

Other information: _____
_____
_____
_____
_____
_____
_____
_____

STATUTES

VENUE, PETITIONS, SUMMONS, AND JURISDICTION

§ 7B-400. Venue; pleading

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this section may be made at any time.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999.

§ 7B-401. Pleading and process

The pleading in an abuse, neglect, or dependency action is the petition. The process in an abuse, neglect, or dependency action is the summons.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999.

§ 7B-402. Petition

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian, and allegations of facts sufficient to invoke jurisdiction over the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the petition. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

(c) Sufficient copies of the petition shall be prepared so that copies will be available for each parent if living separate and apart, the guardian, custodian, or caretaker, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2004-128, § 11, eff. Dec. 1, 2004; S.L. 2005-320, § 3, eff. Oct. 1, 2005.

§ 7B-405. Commencement of action

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the issuance of a juvenile petition by a magistrate when the clerk's office is closed, which issuance shall constitute filing.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999.

§ 7B-406. Issuance of summons

(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. No summons is required for any person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile. A copy of the petition shall be attached to each summons. Service of the summons shall be completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent.

(c) The summons shall advise the parent that upon service, jurisdiction over that person is obtained and that failure to comply with any order of the court pursuant to G.S. 7B-904 may cause the court to issue a show cause order for contempt.

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any person authorized to serve process.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2000-183, § 1, eff. Oct. 1, 2000; S.L. 2001-208, § 1, eff. Jan. 1, 2002; S.L. 2004-128, § 12, eff. Dec. 1, 2004.

§ 7B-407. Service of summons

The summons shall be served under G.S. 1A-1, Rule 4(j) upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If the parent, guardian, custodian, or caretaker entitled to receive a summons cannot be found by a diligent effort, the court may authorize service of the summons and petition by publication under G.S. 1A-1, Rule 4(j1). The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct.

If the parent, guardian, custodian, or caretaker is served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, the parent, guardian, custodian, or caretaker may be proceeded against as for contempt of court.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2003-304, § 1, eff. July 4, 2003.

§ 7B-408. Copy of petition and notices to guardian ad litem

Immediately after a petition has been filed alleging that a juvenile is abused or neglected, the clerk shall provide a copy of the petition and any notices of hearings to the local guardian ad litem office.

Added by S.L. 2003-140, § 11, eff. June 4, 2003.

§ 7B-200. Jurisdiction

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

(1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter.

(2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when

the juvenile's parent, guardian, custodian, or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be rendered.

(3) Proceedings to determine whether a juvenile should be emancipated.

(4) Proceedings to terminate parental rights.

(5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services.

(6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7B-302.

(7) Proceedings involving consent for an abortion on an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General Statutes.

(8) Proceedings by an underage party seeking judicial authorization to marry under Article 1 of Chapter 51 of the General Statutes.

(9) Petitions for expunction of an individual's name from the responsible individuals list under Article 3A of this Chapter.

(b) The court shall have jurisdiction over the parent or guardian of a juvenile who has been adjudicated abused, neglected, or dependent, as provided by G.S. 7B-904, provided the parent or guardian has been properly served with summons pursuant to G.S. 7B-406.

(c) When the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

(1) Any other civil action in this State in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated pursuant to subsection (d) of this section or the court in the juvenile proceeding enters an order dissolving the stay.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to exercise jurisdiction in the juvenile proceeding.

(d) Notwithstanding G.S. 50-13.5(f), the court in a juvenile proceeding may order that any civil action or claim for custody filed in the district be consolidated with the juvenile proceeding. If a civil action or claim for custody of the juvenile is filed in another district, the court in the juvenile proceeding, for good cause and after consulting with the court in the other district, may: (i) order that the civil action or claim for custody be transferred to the county in which the juvenile proceeding is filed; or (ii) order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the county in which the civil action or claim is filed. The court in the juvenile proceeding may also proceed in the juvenile proceeding while the civil action or claim remains stayed or dissolve the stay of the civil action or claim and stay the juvenile proceeding pending a resolution of the civil action or claim.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2001-62, § 13, eff. Oct. 1, 2001; S.L. 2005-320, § 1, eff. Oct. 1, 2005; S.L. 2005-399, § 4, eff. Oct. 1, 2005.

§ 7B-201. Retention and termination of jurisdiction

(a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.

(b) When the court's jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise. Termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding, however, shall not affect any of the following:

(1) A civil custody order entered pursuant to G.S. 7B-911.

(2) An order terminating parental rights.

(3) A pending action to terminate parental rights, unless the court orders otherwise.

(4) Any proceeding in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.

(5) The court's jurisdiction in relation to any new abuse, neglect, or dependency petition that is filed.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2005-320, § 2, eff. Oct. 1, 2005.

§ 7B-602. Parent's right to counsel; guardian ad litem

(a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition and indicate the appointment on the juvenile summons or attached notice. At the first hearing, the court shall dismiss the provisional counsel if the respondent parent:

(1) Does not appear at the hearing;

(2) Does not qualify for court-appointed counsel;

(3) Has retained counsel; or

(4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent.

The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(b) In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent who is under the age of 18 years and who is not married or otherwise emancipated. The appointment of a guardian ad litem under this subsection shall not affect the minor parent's entitlement to a guardian ad litem pursuant to G.S. 7B-601 in the event that the minor parent is the subject of a separate juvenile petition.

(1), (2) Deleted by S.L. 2005-398, s 2, eff. Oct. 1, 2005.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17, if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Guardians ad litem appointed under this section may engage in all of the following practices:

(1) Helping the parent to enter consent orders, if appropriate.

(2) Facilitating service of process on the parent.

(3) Assuring that necessary pleadings are filed.

(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2000-144, § 16, eff. July 1, 2001; S.L. 2001-208, § 2, eff. Jan. 1, 2002; S.L. 2005-398, § 2, eff. Oct. 1, 2005.

TEMPORARY AND NONSECURE CUSTODY

§ 7B-308. Authority of medical professionals in abuse cases

(a) Any physician or administrator of a hospital, clinic, or other medical facility to which a suspected abused juvenile is brought for medical diagnosis or treatment shall have the right, when authorized by the chief district court judge of the district or the judge's designee, to retain physical custody of the juvenile in the facility when the physician who examines the juvenile certifies in writing that the juvenile who is suspected of being abused should remain for medical treatment or that, according to the juvenile's medical evaluation, it is unsafe for the juvenile to return to the juvenile's parent, guardian, custodian, or caretaker. This written certification must be signed by the certifying physician and must include the time and date that

the judicial authority to retain custody is given. Copies of the written certification must be appended to the juvenile's medical and judicial records and another copy must be given to the juvenile's parent, guardian, custodian, or caretaker. The right to retain custody in the facility shall exist for up to 12 hours from the time and date contained in the written certification.

(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or that person's designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an assessment of the case.

(1) If the assessment reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress or to prevent the juvenile from suffering serious physical injury, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian, or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct the assessment and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator, or that person's designee may ask the prosecutor to review this decision according to the provisions of G.S. 7B-305 and G.S. 7B-306.

(c) If, upon hearing, the court determines that the juvenile is found in a county other than the county of legal residence, in accord with G.S. 153A-257, the juvenile may be transferred, in accord with G.S. 7B-903(2), to the custody of the department of social services in the county of residence.

(d) If the court, upon inquiry, determines that the medical treatment rendered was necessary and appropriate, the cost of that treatment may be charged to the parents, guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county of residence in accordance with G.S. 7B-903 and G.S. 7B-904.

(e) Except as otherwise provided, a petition begun under this section shall proceed in like manner with petitions begun under G.S. 7B-302.

(f) The procedures in this section are in addition to, and not in derogation of, the abuse and neglect reporting provisions of G.S. 7B-301 and the temporary custody provisions of G.S. 7B-500. Nothing in this section shall preclude a physician or administrator and a director of social services from following the procedures of G.S. 7B-301 and G.S. 7B-500 whenever these procedures are more appropriate to the juvenile's circumstances.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2005-55, § 8, eff. Oct. 1, 2005.

§ 7B-500. Taking a juvenile into temporary custody; civil and criminal immunity

(a) Temporary custody means the taking of physical custody and providing personal care and supervision

until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) The following individuals shall, without a court order, take into temporary custody an infant under seven days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, who is on duty or at a hospital or at a local or district health department or at a nonprofit community health center.

(2) A law enforcement officer who is on duty or at a police station or sheriff's department.

(3) A social services worker who is on duty or at a local department of social services.

(4) A certified emergency medical service worker who is on duty or at a fire or emergency medical services station.

(c) An individual who takes an infant into temporary custody under subsection (b) of this section shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a local law enforcement agency. Any individual who takes an infant into temporary custody under subsection (b) of this section may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide the information. The individual shall notify the parent that the parent is not required to provide the information.

(d) Any adult may, without a court order, take into temporary custody an infant under seven days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. Any individual who takes an infant into temporary custody under this section shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a local law enforcement agency. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide the information. The individual shall notify the parent that the parent is not required to provide the information.

(e) An individual described in subsection (b) or (d) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (c) or (d) of this section as long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2001-291, § 2, eff. July 19, 2001.

§ 7B-501. Duties of person taking juvenile into temporary custody

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-500 shall proceed as follows:

(1) Notify the juvenile's parent, guardian, custodian, or caretaker that the juvenile has been taken into temporary custody and advise the parent, guardian, custodian, or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.

(2) Release the juvenile to the juvenile's parent, guardian, custodian, or caretaker if the person having the juvenile in temporary custody decides that continued custody is unnecessary.

(3) The person having temporary custody shall communicate with the director of the department of social services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7B-502 for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:

(1) A petition or motion for review has been filed by the director of the department of social services, and

(2) An order for nonsecure custody has been entered by the court.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999.

§ 7B-502. Authority to issue custody orders; delegation

In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary.

Any district court judge shall have the authority to issue nonsecure custody orders pursuant to G.S. 7B-503. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order which shall be filed in the office of the clerk of superior court. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order pursuant to G.S. 7B-503.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999.

§ 7B-503. Criteria for nonsecure custody

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the

juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

(1) The juvenile has been abandoned; or

(2) The juvenile has suffered physical injury or sexual abuse; or

(3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or

(4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or

(5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or

(6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

(b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the petition prior to returning the child to a home where the alleged abuser or abusers are or have been present. If the court finds that the alleged abuser or abusers have a history of violent behavior against people, the court shall order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court may order the alleged abuser or abusers to pay the cost of any mental health evaluation required under this section.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 318, § 4, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999.

§ 7B-504. Order for nonsecure custody

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, custodian, or caretaker by the official executing the order.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms. The officer is not required to inquire into the regularity or continued validity of the order and shall not incur criminal or civil liability for its due service.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999.

§ 7B-505. Place of nonsecure custody

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the

department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or

(2) A facility operated by the department of social services; or

(3) Any other home or facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider 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 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 also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. 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, Article 38 of this Chapter.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, § 20, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2002-164, § 4.7, eff. Oct. 23, 2002.

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

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody

is warranted.

(c1) In determining whether continued custody is warranted, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact and signed and entered within 30 days of the completion of the hearing. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays when the courthouse is closed for transactions, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

(g) Reserved.

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent and as to 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 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; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the assessment conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, § 21, eff. July 1, 1999; S.L.

1999-318, § 5, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2001-208, §§ 16, 24, eff. Jan. 1, 2002; S.L. 2003-337, § 9, eff. Oct. 1, 2003; S.L. 2005-55, § 11, eff. Oct. 1, 2005.

§ 7B-507. Reasonable efforts

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7B-101;

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary

manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing. At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian, or custodian or that parent, guardian, or custodian's counsel may give notice to preserve the parent, guardian, or custodian's right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5). Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that person sought to offer in opposition to cessation of reunification that the court refused to admit as evidence or to consider.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement.

Added by S.L. 1998-229, § 4.1, eff. Jan. 1, 1999. Amended and recodified by S.L. 1998-229, § 21.1, eff. July 1, 1999. Amended by S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2001-487, § 2, eff. Dec. 16, 2001; S.L. 2005-398, § 1, eff. Oct. 1, 2005.

§ 7B-508. Telephonic communication authorized

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, § 4, eff. Jan. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999.

CONFIDENTIALITY AND DISCOVERY

§ 7B-2901. Confidentiality of records

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office alleging abuse, neglect, or dependency. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the court.

The following persons may examine the juvenile's record maintained pursuant to this subsection and obtain copies of written parts of the record without an order of the court:

(1) The person named in the petition as the juvenile;

(2) The guardian ad litem;

(3) The county department of social services; and

(4) The juvenile's parent, guardian, or custodian, or the attorney for the juvenile or the juvenile's parent, guardian, or custodian.

(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them.

(c) In the case of a child victim, the court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim.

(d) The court's entire record of a proceeding involving consent for an abortion on an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General Statutes is not a matter of public record, shall be maintained separately from any juvenile record, shall be withheld from public inspection, and may be examined only by order of the court, by the unemancipated minor, or by the unemancipated minor's attorney or guardian ad litem.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 2001- 208, § 10, eff. Jan. 1, 2002.

§ 7B-2902. Disclosure in child fatality or near fatality cases

(a) The following definitions apply in this section:

(1) Child fatality. --The death of a child from suspected abuse, neglect, or maltreatment.

(2) Findings and information. --A written summary, as allowed by subsections (c) through (f) of this

section, of actions taken or services rendered by a public agency following receipt of information that a child might be in need of protection. The written summary shall include any of the following information the agency is able to provide:

a. The dates, outcomes, and results of any actions taken or services rendered.

b. The results of any review by the State Child Fatality Prevention Team, a local child fatality prevention team, a local community child protection team, the Child Fatality Task Force, or any public agency.

c. Confirmation of the receipt of all reports, accepted or not accepted by the county department of social services, for investigation of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of basis for the department's decision.

(3) Near fatality. --A case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(4) Public agency. --Any agency of State government or its subdivisions as defined in G.S. 132-1(a).

(b) Notwithstanding any other provision of law and subject to the provisions of subsections (c) through (f) of this section, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) A person is criminally charged with having caused the child fatality or near fatality; or

(2) The district attorney has certified that a person would be charged with having caused the child fatality or near fatality but for that person's prior death.

(c) Nothing herein shall be deemed to authorize access to the confidential records in the custody of a public agency, or the disclosure to the public of the substance or content of any psychiatric, psychological, or therapeutic evaluations or like materials or information pertaining to the child or the child's family unless directly related to the cause of the child fatality or near fatality, or the disclosure of information that would reveal the identities of persons who provided information related to the suspected abuse, neglect, or maltreatment of the child.

(d) Within five working days from the receipt of a request for findings and information related to a child fatality or near fatality, a public agency shall consult with the appropriate district attorney and provide the findings and information unless the agency has a reasonable belief that release of the information:

(1) Is not authorized by subsections (a) and (b) of this section;

(2) Is likely to cause mental or physical harm or danger to a minor child residing in the deceased or injured child's household;

(3) Is likely to jeopardize the State's ability to prosecute the defendant;

(4) Is likely to jeopardize the defendant's right to a fair trial;

(5) Is likely to undermine an ongoing or future criminal investigation; or

(6) Is not authorized by federal law and regulations.

(e) Any person whose request is denied may apply to the appropriate superior court for an order compelling disclosure of the findings and information of the public agency. The application shall set forth, with reasonable particularity, factors supporting the application. The superior court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the court has reviewed the specific findings and information, in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances in subsection (d) of this section exist.

(f) Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies and confidential information in the possession of the State Child Fatality Prevention Team, the local teams, and the Child Fatality Task Force, shall be governed by G.S. 132-1.4 and G.S. 7B-1413 respectively. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

(g) Any public agency or its employees acting in good faith in disclosing or declining to disclose information pursuant to this section shall be immune from any criminal or civil liability that might otherwise be incurred or imposed for such action.

(h) Nothing herein shall be deemed to narrow or limit the definition of "public records" as set forth in G.S. 132-1(a).

Added by S.L. 1998-202, § 6, eff. July 1, 1999.

§ 7B-801. Hearing

(a) At any hearing authorized or required under this Subchapter, the court in its discretion shall determine whether the hearing or any part of the hearing shall be closed to the public. In determining whether to close the hearing or any part of the hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

(1) The nature of the allegations against the juvenile's parent, guardian, custodian or caretaker;

(2) The age and maturity of the juvenile;

(3) The benefit to the juvenile of confidentiality;

(4) The benefit to the juvenile of an open hearing; and

(5) The extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.

(b) No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

(c) The adjudicatory hearing shall be held in the district at such time and place as the chief district court

judge shall designate, but no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, § 22, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999.

§ 7B-3100. Disclosure of information about juveniles

(a) The Department, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of this section. Agencies so designated shall share with one another, upon request and to the extent permitted by federal law and regulations, information that is in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, or if a petition is filed when the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to share information" include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

(b) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 2000- 137, § 3, eff. July 20, 2000; S.L. 2006-205, § 2, eff. Aug. 8, 2006.

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28 N.C.A.C. 1A.0301 (2007)

.0301 DESIGNATED AGENCIES AUTHORIZED TO SHARE INFORMATION

The following agencies shall share with one another upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined or delinquent:

(a) The Department of Juvenile Justice & Delinquency Prevention;

(b) The Office of Guardian Ad Litem Services of the Administrative Office of the Courts;

(c) County Departments of Social Services;

(d) Area mental health developmental disability and substance abuse authorities;

(e) Local law enforcement agencies;

(f) District attorneys' offices as authorized by *G.S. 7B-3100*;

(g) County mental health facilities, developmental disabilities and substance abuse programs;

(h) Local school administrative units;

(i) Local health departments; and

(j) A local agency designated by an administrative order issued by the chief district court judge of the district court district in which the agency is located, as an agency authorized to share information pursuant to these Rules and the standards set forth in *G.S. 7B-3100*.

Authority *G.S. 7B-3100*.

28 N.C.A.C. 1A.0302 (2007)

.0302 INFORMATION SHARING AMONG AGENCIES

(a) Any agency that receives information disclosed pursuant to *G.S. 7B-3100* and shares such information with another authorized agency, shall document the name of the agency to which the information was provided and the date the information was provided.

(b) When the disclosure of requested information is prohibited or restricted by federal law or regulations, a designated agency shall share the information only in conformity with the applicable federal law and regulations. At the request of the initiating designated agency, the designated agency refusing the request shall inform that agency of the specific law or regulation that is the basis for the refusal.

Authority *G.S. 7B-3100*.