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CHAPTER 3
DISPOSITION, REVIEW, AND PERMANENCY PLANNING

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Note: *For information on remedies for seeking changes in dispositional orders, see Chapter 6 of this manual on remedies including appeals.*

§ 3.1 Summary and Purpose

A. Summary

Disposition is the stage at which the court determines who shall have legal and/or physical custody and control of the child or children. The court may also make specific orders concerning the children or parents and may mention expectations about what changes need to be made within the family. At disposition, all parties submit to the court (via reports, evidence, and argument) their perspective on what the family's needs are, how those needs can be met, and what should happen before the children may be returned home or court involvement may cease. After disposition, a review hearing must take place within ninety days to allow the court to assess what is happening in the case and to determine if any changes should be made concerning disposition. Subsequent review hearings are held at maximum intervals of six months. Parties can also move for additional review hearings when necessary, in which case the court must hold a hearing. Within twelve months of disposition, a special review hearing designated a "permanency planning hearing" is held; its purpose is to develop a plan to achieve a safe, permanent home for the child within a reasonable period of time.

B. Purpose of Disposition

1. Purpose according to G.S. 7B-900

"The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and the juvenile's family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile . . ." **[7B-900]**

2. Commentary on the purpose of disposition

The purpose of disposition is discussed in the following excerpt from *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases.*

> Decisions at disposition should help the agency and parents develop an appropriate plan to address the specific problems which necessitated state intervention in the case. While adjudication should identify the problems justifying court involvement, disposition should make sure that the parties work out a plan to resolve them. The court should ensure that the agency and court do not work at cross purposes.
>
> Disposition should set a framework for review. Effective dispositional proceedings enable review proceedings to evaluate progress in the case. Where the family problems can be clearly described, appropriate services can be identified, and appropriate objectives can be chosen, this will provide a clear focus for subsequent review hearings. [1]

[1]National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, Publication Development Committee, Victims of Child Abuse Project, Spring 1995, p. 54.

C. Attorney Advocate's Role in Disposition and Reviews

The role of the AA during disposition and review is clearly very important because, as the child's advocate, the AA's input should have a significant impact on the dispositional decision. The appointment statute, 7B-601, provides: "In every case where a nonattorney is appointed as guardian ad litem, an attorney shall be appointed in the case in order to *assure protection of the juvenile's legal rights throughout the proceeding*." (emphasis added) It is therefore clear that attorney advocates are to maintain an active role until the case is closed or the attorney's appointment is terminated.

D. Casebuilding for Permanence

Actions taken and information obtained in the dispositional phase may be critical factors in future proceedings such as termination of parental rights. Details that appear in the court file resulting from disposition may be pivotal in building a case for TPR. *See § 2.3, in this manual for more information on casebuilding.*

E. Disposition and Review: Similar in Purpose and Procedure

Dispositional hearings and review hearings are similar in purpose and procedure, with the dispositional hearing designed to determine initial disposition and review hearings designed to review the initial disposition and make any necessary changes and orders. (See *In re Montgomery*, 77 N.C. App. 709 (1985), stating that a hearing upon motion for review is in the nature of a dispositional hearing.) ***This chapter is organized to combine issues related to review and disposition because many of the statutes and cases that relate to one also relate to the other***. It is important to carefully read the statutes pertaining to disposition and review to get a thorough understanding of the relationship between the two types of hearings.

§ 3.2 Timing and Procedure for Disposition and Review Hearings

A. Timing of Initial Disposition

The court shall hold the dispositional hearing immediately following adjudication, or it may set the dispositional hearing for a future date so long as the dispositional hearing is concluded within 30 days of the conclusion of the adjudicatory hearing.[2] **[7B-901]** Reasons that the court may not immediately proceed to disposition is the need for sufficient social, medical, psychiatric, psychological, and educational information. **[see 7B-808]** At other times, the court simply runs out of time and must schedule a later hearing. However, the thirty (30) day statutory timeframe indicates legislative intent that the disposition be resolved soon after the adjudication.

The attorney advocate should be prepared to proceed immediately to disposition when possible. Mindful of the child's sense of time, the AA should advocate for proceeding to disposition as soon as all relevant evidence has been collected and can be presented to the court. The AA should argue against unnecessary requests for postponing disposition when such postponement is not in the best interest of the child.

[2] Session Laws 2005-398 amended this statute to provide the requirement that the disposition be completed within 30 days of the adjudication if the court does not immediately proceed to disposition. Prior to this amendment, there was no specific statutory time limit. Postponing disposition resulted in delay of services and could increase the life of the case.

B. Automatic Review Hearings

1. Timing of reviews: The statute sets out certain requirements for review hearings that must be conducted within specified time periods by the court. In any case in which custody is removed from a parent, guardian, custodian, or caretaker, review hearings must be held

a. within 90 days from the date of the dispositional hearing, and

b. subsequent review hearings must be held within six months thereafter. **[7B-906]**

2. DSS requests clerk to calendar review: The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. **[7B-906(a)]**

3. Notice of reviews: The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, custodian or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review. **[7B-906(a)]**

4. Waiver of reviews [7B-906(b)]: Notwithstanding other provisions of this Article, the court may waive the holding of required review hearings, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every 6 months, **if the court finds by clear, cogent, and convincing evidence that**

a. The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least **one year** [3]; and

b. The placement is **stable** and continuation of the placement is in the juvenile's **best interest**; and

c. **Neither** the juvenile's **best interests** nor the **rights** of any party **require** that review **hearings** be held every 6 months; and

d. All parties are aware that the matter may be brought before the court for review at any time by the **filing of a motion for review** or on the court's own motion; and

e. The court order has **designated** the relative or other suitable person as the juvenile's **permanent caretaker** or **guardian of the person**.

NOTE: The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. **[7B-906(b)]**

Casenote on waiving review hearings. The Court of Appeals found reversible error when the trial court waived review hearings without making findings relating to each statutory factor and held "the trial court must make written findings of fact satisfying each of the enumerated criteria in section 7B-906(b)." *In re L.B.*, --- N.C. App. ---, 2007 N.C. App. LEXIS 1476 (July 3, 2007).

[3] Note that this one year period in which the child has resided with the caretaker does not have to be consecutive months, but may be a cumulative time period, including pre-petition, that equals one year.

C. Reviews on Motion of a Party

1. In addition to those review hearings set by the court, any party in the case may make a motion in the cause for a review hearing. **[7B-1000 and 7B-906(b)(4)]**

2. The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. **[7B-906(b)]**

3. Section 7B-1000 states that the judge may modify or vacate the order in light *of changes in circumstances or the needs of the juvenile. See Also In re Brenner,* 83 N.C. App. 242 (1986).

> **Note**: It can be argued that when review hearings are conducted pursuant to a request of a party, there is a requirement of a finding of changed circumstances (*see, e.g., In re Williamson*, 77 N.C. App. 53 (1985)) for custody to be modified. However, when "changes in circumstances" is read along with the language of "or the needs of the juvenile," in 7B-1000, this appears to lead back to the best interest standard, which is the requirement in regular review hearings set by the court. This may be a simple semantic difference; therefore when the hearing takes place pursuant to a motion by a party, the judge would be prudent to refer, in the order, to whether there has been a "change in circumstances" *and* to the "needs of the juvenile."

D. Informal Hearing

1. Formal rules of evidence do not apply: "The dispositional hearing may be informal, and the judge may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe is in the best interest of the juvenile. The court may consider any evidence, **including hearsay evidence** as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition."[4] **[7B-901]**

> a. **Not error to admit DSS and GAL reports**. The trial court did not err by admitting the evidence of the DSS and guardian ad litem's reports because the formal rules of evidence do not apply to dispositional hearing. In re M.J.G., 168 N.C. App. 638 (2005).

2. Consolidation of adjudication and disposition is permitted. In adjudication of petition alleging neglect, it was not error for the trial court to consolidate the adjudicatory and dispositional hearing for evidentiary purposes since there is no requirement that the two stages be conducted at separate hearings so long as the trial court applies the proper evidentiary standards *i.e.* "clear and convincing evidence"for the adjudicatory stage and the "best interests of the child" at the disposition stage. *In re O.W.*, 164 N.C. App. 699 (2004).

3. Any evidence that is competent and relevant to a showing of best interest of the child must be heard and considered, but the court has the discretion to exclude cumulative testimony. *In re Shue*, 311 N.C. 586 (1984).

[4] Session Laws 2003-62 amended the statute to specifically include hearsay. Prior to this amendment, it was necessary to rely on caselaw decisions. *See In re Montgomery*, 77 N.C. App. 709 (1985), stating that the formal rules of evidence do not apply at dispositional or review hearings, and therefore the court could consider written psychological reports regarding the needs of the children. While *Montgomery* found the trial court's decision to admit hearsay evidence was not error, it is unclear whether there would have been the same holding had the judge and parties insisted in application of the formal rules of evidence.

a. **Evidence admitted during adjudication but considered for disposition:** Where the parent contended on appeal that the trial court erred in admitting evidence of post-petition occurrences, the court of appeals found that since the trial court held the adjudication and disposition hearings at the same time, the post-petition occurrences were admissible for the disposition stage. *Powers v. Powers*, 130 N.C. App. 37 (1998). (In *Powers* the evidence had come in during the adjudication hearing, but the court of appeals ruled that since it was a nonjury trial and there was no showing that the judge acted on it for adjudication purposes, it could be presumed that the judge considered the evidence only for dispositional purposes.)

b**. Evidence not admitted during adjudication:** At disposition, the court is not restricted to considering only those acts for which there had been an adjudication. The court may consider evidence that is reliable, accurate, and competently obtained. *In re Bullabough*, 89 N.C. App. 171 (1988); *In re Barkley*, 61 N.C. App. 267 (1983).

c. **Court cannot cut the evidence short:** In the case of *In re O'Neal*, 140 N.C. App. 254 (2000), the court of appeals said it was error for the trial court to cut off an intervening party's attempt to introduce evidence regarding best interest and make an offer of proof where the trial court had excluded the evidence not because it was incompetent, irrelevant, or cumulative, but simply declined to "hear anything else about this thing today."

E. Sources of Information

At the dispositional hearing, the juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. **[7B-901]** At every review hearing, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency that will aid it in its review. **[7B-906(c)]**

F. Record of Proceedings

Dispositional proceedings must be recorded just like adjudicatory proceedings, but reduced to written transcript only when notice of appeal has been given. **[7B-806]** *See § 2.4.E in this manual for more information.*

G. Consent Judgments

If adjudication was by consent, the consent agreement typically will contain specific terms for meeting the needs of the child and the parents, which become part of disposition if the court signs the consent order. All parties, including the GAL, must agree to the terms of the order. The consent order should contain findings of fact to support or provide a basis for the specific dispositional items ordered in the consent decree itself. (*See 7B-902, which governs consent judgments in abuse, neglect, or dependency proceedings; and § 2.4 of this manual for more information on consent*.)

If there is a consent agreement that addresses disposition, the AA should make sure the terms are detailed and thorough, addressing as much as would be addressed if there were no consent order.

H. Burden of Proof

The language of the statutes (7B-901 and 7B-906) does not place any burden of proof upon either the parent or DSS during disposition or review. The essential requirement is that sufficient evidence be presented so that the court can make a determination regarding best interest. *In re Shue*, 311 N.C. 586 (1984).

I. Timing of Orders

Dispositional, Review, an Permanency Planning orders must be in writing, signed, and entered no later than 30 days from the completion of the hearing. **[7B-905(a); 7B-906(d); & 7B-907(c)]** The statute governing review and permanency planning orders specifically provides that if the order is not entered within thirty (30) days following the completion of the hearing, the juvenile clerk shall schedule a subsequent hearing at the first juvenile court session scheduled following this thirty (30) day period to determine and explain the reason for the delay and to obtain any needed clarification regarding the order's contents. The order shall be entered within ten (10) days of this subsequent hearing.[5]

§ 3.3 Investigation and Reports

A. Obtaining, Understanding, and Clarifying the GAL Report

Ideally, the attorney advocate will receive a GAL report far enough in advance of the hearing to determine whether the report raises issues requiring clarification or additional information. Even if the AA feels "up-to-speed" on the case and understands the GAL's position, the report itself may not be a complete reflection of the AA's understanding of the case. The GAL report may contain pieces of information that the AA did not know about or finds problematic, or the report may lack information that the AA considers important. In any event, because the GAL report is handed to the judge, the AA must be prepared to deal with whatever is or is not contained in the report in the best way possible to advocate for the child's best interests. For example, the AA may need to prepare questions to ask the GAL on the stand that will clarify parts of the report, or may need to call certain witnesses to support or supplement the report. It is important for the AA to discuss his or her intentions with the GAL so that they operate as a team and not on separate, parallel tracks.

Some GALs and AAs believe it is important to prepare a report that can be shared with the child. Obviously, this is not always possible. However, if some of the relevant information is not appropriate for the child to see, the AA might consider introducing it into evidence via documents or testimony.

B. The Statute: Predisposition Reports [7B-808] [6]

1. Timing: The judge shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information.

[5] Session Laws 2005-398 added this mandate for a subsequent hearing when an order is not timely entered effective October 1, 2005.

[6] Note that this statute, carried over from the old 7A Juvenile Code which combined abuse and neglect with delinquency and undisciplined cases, seems to have been written more with delinquency cases in mind than abuse and neglect. Now that the statute is contained in the section addressing abuse and neglect, its applicability is not well understood. Among other problems, it is unclear whether the "predisposition report" refers only to the DSS report or includes the GAL report or any other reports. Neither DSS nor GAL call their report a "predisposition report" and never have, which adds to the confusion.

2. Considered only after adjudication: No predisposition report shall be submitted to or considered by the judge prior to the completion of the adjudicatory hearing.

3. DSS Report: The DSS report prepared for the court shall contain the results of any mental health evaluation under 7B-503, a placement plan, and a treatment plan appropriate to meet the needs of the juvenile.

4. Opportunity to offer evidence in rebuttal: Opportunity shall be afforded the juvenile and his or her parent, guardian, or custodian at the dispositional hearing.

5. Local Rules: Pursuant to local rules or an administrative order, the chief district court judge may allows the sharing of reports among parties, and an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure would not be in the best interest of the juvenile. However, the local rules or administrative order may not do the following:

- Prohibit a party entitled by law to receive confidential information from receiving that information.
- Allow disclosure of any confidential source protected by statute.

§ 3.4 Dispositional Alternatives and Dispositional Orders

[Note that orders made in review hearings are dispositional orders, so this subsection relates to review and permanency planning hearings as well.]

A. Requirements Regarding Form for the Dispositional Order [7B-905]

1. All orders

a. shall be in writing;
b. shall be signed and entered no later than 30 days from the completion of the hearing
c. shall contain appropriate findings of fact;
d. shall contain appropriate conclusions of law;
e. shall state with particularity, both orally and in the written order, the precise terms of the disposition including the kind, duration and the person responsible for carrying out the disposition and the person or agency in whom custody is vested;
f. comply with the requirements of 7B-507 governing reasonable efforts.

2. Form of order: The judge may make an oral entry of the order and later reduce the order to written form. The judge is not required to announce all findings and conclusions in open court but must state the terms of disposition with particularity. *In re Bullabough*, 89 N.C. App. 171 (1988).

3. Timing. The statute governing review orders specifically provides that if the order is not entered within thirty (30) days following the completion of the hearing, the juvenile clerk shall schedule a subsequent hearing at the first juvenile court session scheduled following this thirty (30) day period to determine and explain the reason for the delay and to obtain any needed clarification regarding the order's contents. The order shall be entered within ten (10) days of this subsequent hearing.[7]

[7] Session Laws 2005-398 added this mandate for a subsequent hearing when an order is not timely entered effective October 1, 2005.

See § 2.9 titled Adjudication Order regarding rules, elements, and timing of applicable to all juvenile orders.

B. Dispositional Alternatives for Placement [7B-903, 7B-906]

Section 7B-903 sets out the dispositional alternatives the court may consider and specifically states that any alternatives may be combined when in the best interest of the child. ***These alternatives are available to the judge in review and permanency planning hearings as well,*** because 7B-906(d) and 7B-907(c) both specifically state that in a review or permanency planning hearing, the judge may make any disposition authorized by 7B-903. For review hearings, the court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. [7B-906(d)]

See subsections C, D, E, and F below, describing the requirements for the various placement alternatives, including requirements when removing a child from home or returning a child home.

The dispositional alternatives are as follows (note that this is not an exact reflection of statutory language):

1. **Dismissal**

2. **Continuance** to allow the juvenile, parent, or others to take appropriate action.

3. Placing the child in the **custody of a parent, relative, or other suitable person**

> [But note the law relating to **violent caregivers,** which states, "When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, 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-903(b).** *See also* "Violent Caregivers" in § 1.6.C.3, in this manual.]

4. **Placing the child in his own home and requiring that the child be supervised by DSS** or other personnel available to the court, subject to conditions specified by the judge concerning the parent or child. [See § 3.4.F, below, on requirements for returning the child home.]

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5. Placing the child in the **custody of a private agency** offering placement services.

6. Placing the child in the **custody of the Department of Social Services** in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of DSS in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. [Unless otherwise ordered by the judge, DSS, via the director, has the authority to arrange for, provide or consent to needed routine or emergency medical or surgical care or treatment. After unsuccessfully attempting to obtain consent from parents, DSS can also arrange for, provide or consent to psychiatric, psychological, educational or other remedial evaluations or treatment . . .] See § 3.4.E.3, below, regarding the requirement of reasonable efforts when a child is placed in DSS custody.

Practical Note: In North Carolina it is common for judges or parties to use the language "physical custody" and "legal custody," but the exact meaning of these terms is unclear. At times, for example, the court orders that legal custody be given to DSS but that the parents have physical custody of the children. What the court probably intends in such a situation is for the children to go home but for DSS to remain involved in the case. *It is important to get clarification from the court regarding the meaning of such terms*. It is also important to determine how much authority the judge intends to accompany each term, especially relating to placement. In any event, once a child is placed in his or her own home, whether or not DSS is still involved and/or has legal custody, the procedures for temporary custody or nonsecure custody will have to be followed in order to remove the child.

The task of determining resources to meet the child's needs falls on the GAL volunteer and staff, not the attorney advocate***. As a member of the GAL team of representation, however, the attorney advocate must be knowledgeable about the various resources.*** In some situations, the attorney advocate might be able to suggest an unexplored alternative. But more importantly, the AA needs to be knowledgeable about such alternatives so that he or she knows how to deal with these resources in the courtroom and have an intelligent dialogue about them. For information on local service-oriented or placement resources, contact the GAL District Administrator. For information on state and national resources of any kind, contact the GAL state office.

C. Notice to GAL of Intent to Change Placement [7B-905(d)]

1. Statutory Requirement. When DSS has custody or placement responsibility of a juvenile intends to change the juvenile's placement, DSS *shall* give the GAL for the juvenile notice of its intention unless precluded by emergency circumstances. In the event of emergency circumstances, DSS shall notify the GAL or AA within 72 hours of the placement change, unless local rules require notification within a shorter time period.[8]

2. What constitutes "notice" to GAL? The statute does not define the way in which DSS must notify GAL. In other words, it does not specify written or verbal notice. It is advisable first to ensure that DSS (attorney, director, social workers) are aware of this statutory provision and that the local GAL Program and DSS agency agree upon a method of notice. For instance, notice may be sufficient if the social worker calls the GAL Program office and leaves a voicemail. Other districts may prefer a faxed written notice. Regardless of the agreed-upon method, continued communication between GAL and DSS is pivotal.

3. Legal strategies:

a. Specific provisions in the order

If DSS has failed to comply with this statutory provision or the GAL wants to ensure that the child is not removed without a court order, a request that such a provision be part of the court order should be made to the judge. Although federal IV-E foster care funding requires that DSS be given "placement authority," so long as the court order indicates that the judge gave valid consideration regarding the agency's position, IV-E funding will not be jeopardized. The court may order a specific placement in the child's best interest and require that DSS file a motion to allow all parties to be heard before the child is moved to different placement.

[8] This amendment was enacted by Session Laws 2005-398 effective October 1, 2005.

b. Temporary restraining order

Upon receiving notice of the intent to change placement, if the GAL has evidence that the move would be contrary to the child's best interest, a temporary restaining order may be sought to preserve the status quo pending a full hearing. *For details, see § 6.6.of of this manual.*

D. Dispositional Orders Concerning Child's Needs [9]

1. Specific orders: The court may make specific orders concerning services to be provided to the child, and regardless of where the child is placed, the statute (7B-903) states that the court

a. *may order* that the child be examined by a physician, psychiatrist, psychologist, or other qualified expert to determine the needs of the juvenile. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of treatment and who should pay the cost of the treatment. **[7B-903(3)(a)]** (See 7B-903 for details regarding notice of the hearing to the county manager or designee.) If the judge finds that the juvenile is in need of treatment, he shall allow the parent or other responsible persons to arrange for care. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment and order the parent to pay the cost unless the parent is unable, in which case the cost may be charged to the county. **[7B-903(3)(a)]**

b. *shall order* that the juvenile be referred to the area mental health, developmental disabilities, and substance abuse director for appropriate action if the judge believes, or if there is evidence presented to the effect that, the child is mentally ill or developmentally disabled. **[7B-903(3)(b)]**

i. The child may not, however, be directly committed to a state hospital or mental retardation center.

ii. The area mental health director shall be responsible for arranging an interdisciplinary evaluation of the child and for mobilizing resources to meet his needs.

iii. If institutionalization is determined to be necessary, it will be done so by consent of the parent, but the signature of the judge may be substituted for parental consent.

iv. If an area regional mental hospital refuses admission to a juvenile referred by a judge or discharges such a juvenile prior to completion of treatment, the hospital must submit to the judge a report stating the reasons, as well as diagnosis, treatment recommendations, and recommended alternative facility. **[7B-903(3)(b)]**

2. Limited to currently existing services: With respect to dispositional orders, the court is limited to using currently existing programs or those for which the funding and mechanism for implementation are in place. (Court cannot make an order that essentially calls for the creation of a new program.) *See, e.g.*, *In re Jackson*, 84 N.C. App. 167 (1987); *In re Wharton*, 305 N.C. 565 (1982).

[9] For a discussion on the court's authority over the parent, including orders pertaining to the parent, see § 3.6 in this chapter, titled "Court's Authority over Parents."

E. Voluntary Foster Care Placements

Voluntary foster care placements are voluntary agreements made between the juvenile's parents and DSS. These agreements are made with no petition filed, so the GAL is not involved. There are times, however, when the voluntary placement does not work out or a petition ends up being filed in the case, at which point the GAL may be appointed. The statute, under 7B-910, sets up requirements for reviewing such voluntary placements, including an initial review hearing in 90 days and placement of no longer than 6 months without a petition.[10] *See statute at the end of this chapter and § 10.2.G.1 of this manual.*

F. When the Child Is Removed from Parent's Custody

1. Cannot be returned home without a hearing: If a juvenile is removed, DSS may not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home. **[7B-903(a)(2)(c)]** This means that without a hearing, DSS cannot send the child back to the parent and call it a visit, unless the judge has approved the length of the visit and whether it may be unsupervised.

2. Looking to relatives first: In placing a juvenile in out-of-home care, the court first must 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 so finds, then the court shall order placement with the relative *unless the court finds that the placement is contrary to the best interests of the juvenile*. The statute also requires the court to consider whether it is in the juvenile's best interest to remain in his or her community of residence. Placement with a relative outside the state must be in accordance with the Interstate Compact on the Placement of Children. **[7B-903(a)(2)(c)]**

> **A word about relatives:** Unfortunately, this statute is commonly misunderstood and misused when the language "unless the court finds that the placement is contrary to the best interests of the juvenile" is ignored. For example, when a child has formed a strong bond over time with foster parents who want to adopt her and suddenly a relative comes is brought forward, it may not be in the best interest of the child to disrupt such a placement just to put the child with someone related by blood. This statute therefore stresses the importance of trying to place with relatives but makes it clear that this is not to be done when it is contrary to the child's best interests.

3. Verification of custodian or guardian [7B-906(g) & 7B-707(f)]

a. If the court determines that a juvenile shall be placed in the custody of an individual other than the parents or appoints a guardian of the person pursuant to 7B-600, the court shall verify the person receiving custody or being appointed as guardian of the juvenile *understands the legal significance* of the placement or appointment and will have *adequate resources* to care appropriately for the juvenile.

[10] Legislation in 2001 made changes that take effect for actions pending or filed on or after January 1, 2002, replacing 180 days with 90 days, and replacing 12 months with 6 months.

b. Best practice involves ensuring that the potential custodian or guardian is present in court to address the judge on these issues. If there are concerns such as return of the child to the parents or lack of financial resources, it is appropriate to call the potential custodian or guardian to the stand to testify under oath.

4. Examination and determination of Reasonable Efforts [7B-507]

a. All orders placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services shall contain findings on the following: **[7B-507(a)]**[11]

i. **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;[12]

ii. **whether reasonable efforts have been made:** 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;[13]

[*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.]**[507(a)]**

iii. **whether reasonable efforts should continue:** 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;

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[11] 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. Information on these requirements and on ASFA, can be found in Volume 2, Chapter 11 of this manual, which the reader is strongly urged to consult for important 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. These findings are required to be detailed. 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.

[12] The "contrary to the welfare" requirement in the ASFA Regulations (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 the welfare."

[13] 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). 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.

iv. **statement that DSS is responsible for child:** 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

v. **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.

b. 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)]**

i. 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;

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

iii. A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

iv. 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. 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 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)]**

d. 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)]**

e. In determining reasonable efforts to be made, **the juvenile's health and safety are of paramount concern. [7B-507(d)]**

Note that if all relevant issues are not addressed by DSS, the parent, or the court, the GAL attorney advocate should bring them to the attention of the court for resolution if they might affect the best interest of the child. The court's orders should address all of the relevant issues discussed in this chapter under § 3.5.A and contain all the elements necessary pursuant to Rule 52(a) of the North Carolina Rules of Civil Procedure discussed in § 2.9.

5. Orders placing a child in DSS custody: In addition to the requirements of reasonable efforts set out above, the order needs to specify that the child's placement and care are the responsibility of the county DSS, including to provide or arrange for the foster care or other placement of the child. The GAL may request that the order state that no changes in placement shall be made without the GAL's consent or opportunity for hearing. [See § 3.4.C *supra* regarding notice to GAL of placement changes]

6. Visitation: "Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home *shall provide for appropriate visitation* as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court. If the director subsequently makes a good faith determination that the visitation plan may not be in the best interest of the juvenile or consistent with the juvenile's health and safety, the director may temporarily suspend all or part of the visitation plan. The director shall not be subjected to any motion to show cause for this suspension but shall expeditiously file a motion for review." **[7B-905(c)]**

a. DSS must submit a visitation plan to the court. Disposition order that left visitation in the discretion of DSS was remanded as the statute requires that DSS submit a visitation plan, whatever that may be, to the court for approval. *In re D.S.A.*, --- N.C. App. ---, 641 S.E.2d 18 (2007).

b. Custody award to parent must provide for visitation to the noncustodial parent. The trial court maintains the responsibility to ensure that an appropriate visitation plan is established in a dispositional order, and cannot leave visitation in the discretion of the custodian or guardian, even if that person is a biological parent. *In re C.P.*, --- N.C. App. ---, 641 S.E.2d 13 (2007).

c. Notice of review hearing implies that visitation will be addressed. Because 7B-906(c) requires the trial court to consider and make findings of fact regarding visitation, there is no requirement that the parties be specifically noticed that issues relating to visitation will be considered. *In re Padgett*, 156 N.C. App. 644 (2003).

7. Review hearing within 90 days: "A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by 7B-906 be held within 90 days from the date of the dispositional hearing and, if practicable, shall set the date and time for the review hearing." **[7B-905(b)]**

G. Returning the Child to the Custody of the Parents

1. Commentary: The following excerpt discusses the issue of allowing the child to remain in the home and is taken from the book Resource Guidelines.[14]

> If the child is to remain at home, the judge usually needs to impose specific conditions on both the parents and the agency. In considering conditions to be imposed on the agency, the judge should determine what agency supervision will be needed for the child's protection and what services will be provided.
>
> There are several issues of parental responsibility when a child is allowed to remain at home. The court usually needs to impose specific behavioral

[14] National Council of Juvenile and Family Court Judges, Resource Guidelines, page 59.

directives upon the parents and to clarify their obligations to cooperate with the child welfare agency. In many cases, the judge must also establish or modify the child support obligations and visitation rights of the non-custodial parent. In some cases, the judge may need to issue a no-contact order for the child's protection.

But see § 3.6 in this chapter on Court's Authority Over Parents for limitations on what the court can order.

2. Such placement must be found by the court to be suitable and in the best interest of the child. [7B-906(d)]

See In re Isenhour, 101 N.C. App. 550 (1991), *In re Shue*, 311 N.C. 586 (1984); and *In re Arends,* 88 N.C.App. 550 (1988*)* regarding the necessity of finding that the juvenile will receive proper care and supervision along with a finding of best interest in order to return the child home.

3. The court must find sufficient facts to show that the juvenile will receive proper care and supervision in a safe home. [7B-903(a)(2)(c) and 7B-906(d)]

4. Cannot return child home without a hearing: If a juvenile is removed, DSS may not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home. **[7B-903(a)(2)(c)]** This means that without a hearing, DSS cannot send the child back to the parent and call it a visit, unless the judge has approved the length of the visit and whether it may be unsupervised; or the court order specifically permits return to the parents home upon consent of all parties, including GAL. Oftentimes, return is dependent upon input of mental health service providers.

5. If custody is restored to a parent, the court shall be relieved of the duty to conduct periodic reviews of the placement. **[7B-906(d)]**

a. Applies to custody given to former non-custodial parent. Where custody changes from one parent to another in the child's best interest, the trial court was relieved of the duty to conduct periodic reviews of placement pursuant to 7B-905 and 7B-906(d). *Rholetter v. Rholetter*, 162 N.C. App. 653 (2004).

H. Criteria and Written Findings on Review

In each review hearing, the court shall consider the following criteria and make written findings regarding those that are relevant **[7B-906(c)]:**

1. **Services which have been offered** to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

2. Where the juvenile's return home is unlikely, the **efforts which have been made** to evaluate or plan for other methods of care.

3. **Goals of the foster care placement** and the appropriateness of the foster care plan.

4. **A new foster care plan**, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.

5. Reports on the **placements the juvenile has had and any services offered to the juvenile and the parent.**

6. An appropriate **visitation plan.**

7. **If the child is 16 or 17 years of age**, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

8. **When and if termination of parental rights should be considered**.

9. **Any other criteria** the court deems necessary.

Remember that "the court may consider any evidence including hearsay as defined in G.S. 8C-1, Rule 801, that the court finds to be *reliable, relevant, and necessary to determine the needs of the juvenile* and the most appropriate disposition." **[7B-906(c)]**

I. Other Issues to Be Considered on Review[15]

1. Whether services or responsibilities need to be clarified or modified due to the availability of additional information or changed circumstances

2. Whether intended foster care placement adequately meets all physical, emotional, and educational needs of children

3. Whether terms of child support need to be set or adjusted

4. Clarification of time frame and individuals responsible for events or accomplishment of goals

§ 3.5 Preparing for the Disposition or Review Hearings

(Note: some of the same preparations should be made for any dispostional hearing i.e. disposition, review and permanency planning hearings)

A. Defining the Position the GAL Is Taking on All Issues Relating to Disposition

By way of the GAL report, conversations with the GAL volunteer, staff, and others, the GAL AA must have a clear understanding of the GAL position that will be presented to the court on all of the following issues (as well as the reasons behind it):

- where the child should be placed
- what the child wants to see happen in this case
- the child's needs and what services should be offered to him or her
- the parent's needs, what changes they must make, and the services that should be offered to them; how this should play out in court orders, and by when goals should be accomplished

[15] Inspired by Resource Guidelines, pp. 71, 72.

- visitation between parent and child, supervised or unsupervised
- visitation between siblings
- child support
- whether recommended placement would cause the child to change schools and whether that is a problem (if so whether there is any way to avoid such a change)
- whether placement with parent should be conditioned on parent having no contact with certain individuals suspected of harming the child
- whether DSS has made reasonable efforts to prevent or eliminate the need for placement outside the home and what the response has been
- whether there has been an exhaustive effort to identify family and friends as potential placement alternatives
- whether the case should be moving toward reunification or termination
- when the case should be reviewed

It is important for the AA to convey to the GAL volunteer and staff that the AA receive certain information as it emerges, and not just at staff meetings or via a Guardian ad Litem report. Communication between the AA, GAL volunteer, and GAL staff is critical in representing the best interests of the child-client. Examples of information that should be passed on to the AA as it is received include copies of documents obtained by the GAL, notices that the child's placement may change or has changed or the child has run away, information that there are school problems or mental hospitalization, juvenile delinquency charges, unauthorized contact with parents, pregnancy, medical problems, and the like. Where documents are voluminous, the volunteer should speak to the AA to determine what the AA will need to see. **Receiving such information in a timely manner may enable the AA to do the extra preparation necessary in the case, including research, filing a motion, or subpoenaing and preparing records or witnesses**.

B. Assessing and Preparing the Evidence based on the Position of Each Party

Prior to disposition, the AA must identify disputed issues, undisputed issues, and those with room for negotiation. To effectively assess the evidence that he or she might need to present in the dispositional hearing, the AA should consider the following questions:

1. What is the position of the parents regarding disposition?

    - Where are they requesting that the child be placed? What argument will they make and what evidence will they have to support this request?
    - What are they saying about their past or future participation in certain services? Are they refuting certain assertions that DSS or the GAL will be making regarding past or future services?
    - What is their position concerning visitation? What evidence might they offer to support their position?

2. What is the position of DSS regarding disposition?

    - Where are they requesting that the child be placed? What argument will they make and what evidence will they have to support this request?
    - What are they saying about what must change and how that change will be brought about (what actions must be taken by the parents), and when do they expect to see improvement or resolution?
    - What types of services have been offered to the child and parents, and what types is DSS

going to recommend for both? What, if any, evidence will DSS offer to support their request for getting specific services ordered by the court?

- What is their position concerning visitation? What evidence might they offer to support their position? What is their view on supervised vs. unsupervised visitation?

3. Can the GAL offer additional evidence to support the GAL's position or refute an opposing position regarding any of the preceding issues?

C. Subpoenaing and Preparing Witnesses and Documents

The AA should not rely on another party or a promise to get necessary witnesses and documents to court. A subpoena should be issued by the AA anytime the AA knows a witness will be needed to testify to support the GAL's position, even if it ends up duplicating a subpoena issued by DSS. The AA should not assume that the witness or document will automatically convey the evidence he or she wants conveyed. Interviewing and/or preparing witnesses and reviewing documents are critical.

D. Receiving and Distributing GAL Court Report to All Parties prior to Dispositional Hearing

Some districts have local rules regarding the distribution of reports prior to hearing and place a time limit on the receipt of such reports. Even when such local rules do not exist, it is usually to everyone's advantage to receive the court reports in advance of disposition.

E. Determining Whether the Child Should Be Present in the Courtroom and/or Testify

G.S. 7B-906(c) specifically states that at every review hearing, the court shall consider information from a number of individuals *including* the juvenile. It is therefore clearly acceptable and desirable to allow the juvenile to have input in these proceedings. The question, then, is whether that input should be delivered via evidence entered by the juvenile's representative (the volunteer or attorney advocate) or by testimony from the juvenile. Although it is not always in the child's best interest to be in court, the language in the statute that allows for the juvenile's input can be interpreted to mean that the child's wishes should be heard. It is important to remember that the courtroom proceedings reflect this child's life and most of the evidence therefore will not come as a surprise to the child, even if such proceedings would be difficult.

The decision about whether to have the child present and/or testifying in the courtroom is difficult. Anyone who has had a significant personal or professional relationship with the child (especially mental health professionals) can be consulted about this matter. The decision should hinge on such factors as the following:

- what the child wants;
- age and maturity of the child;
- stability and fragility of the child including whether trauma is likely and, if so, to what degree;
- the type of testimony and evidence likely to be presented at trial;
- whether the child will be accompanied by someone able to provide comfort and security;
- whether there will be certain individuals in the courtroom whose very presence would be traumatic for the child;
- whether the presence of the child is likely to yield a positive or negative response or result from the judge;

- whether being present in court might help the child deal with his or her situation and feelings;
- whether the child may be permitted by the court to testify in a nontraditional setting, thereby reducing or eliminating some of the disadvantages of testifying;
- whether missing school is an issue for the child; and
- whether the child's testimony will be helpful to the court.

It may not be necessary for the child to attend an entire hearing. At times it may be beneficial for the child to be present only for certain parts of the hearing. The judge might be asked to place a child on telephone standby so that a child could be called at the appropriate time, or only if needed, to avoid having the child miss school or sit through portions of the hearing that are not beneficial or necessary. In addition, the AA should consider whether it is best to have the child testify in a nontraditional setting.

See § 7.2, on Evidence and § 12.5, both in this manual, for more detailed information concerning the child witness and children in court, including information on children testifying in a nontraditional setting.

§ 3.6 Court's Authority over Parents

A. Jurisdiction over the Parent

The court has jurisdiction over a parent of a child who has been adjudicated abused, neglected, or dependent, provided the parent has been properly served with the summons pursuant to G.S. 7B-406. [7B-200(b), 7B-406(c)] Jurisdiction over the parent is obtained when the parent is served with the summons.

B. Cost

If the court orders treatment for the juvenile pursuant to **7B-903(a)(3)**, the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered. **[7B-904(a)]** If ordered to participate in treatment, the cost shall be paid pursuant to 7B-903. **[7B-904]**

C. Parent's Participation in Child's Treatment

If the court finds that it is in the best interest of the child for the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to be directly involved in the child's treatment, the court may order that individual to participate in medical, psychiatric, psychological, or other treatment of the juvenile. **[7B-904(b)]**

D. Parent to Receive Treatment or Comply with Special Orders

The court may determine that the best interests of the child require that the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the child's adjudication or to the court's decision to deny custody to that person. If such a determination is made, the court may order that person to comply with a plan of treatment approved by the court or condition legal custody or physical placement of the child with the parent upon the parent's compliance with the plan of treatment. (The statute goes on to specify who pays for such treatment.) **[7B-904(c)]**

The court's authority, however, is limited to 7B-904. In the case *In re Cogdill*, 137 N.C. App. 504 (2000), the Court of Appeals ruled that the trial court did not have authority to require the mother to "secure and maintain stable housing and employment," stating that 7A-650 [now 7B-904] is the sole source of the trial court's authority over the parent and does not allow for such an order. (The question remains whether the judge may condition legal custody or physical placement of the child with the parent on compliance with certain expectations outside the scope of the statute without directly ordering the parent to meet those expectations.) Since *Cogdill*, however, the General Assembly enacted changes to 7B-904 giving the court more authority over the parent in the dispositional phase of a case as follows:

> **(d1)** "At the dispositional hearing or a subsequent hearing, the court may order the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to do any of the following:
>
> > (1) Attend and participate in parental responsibility classes if those classes are available in the judicial district in which the parent, guardian, custodian, or caretaker resides.
> >
> > (2) Provide, to the extent that person is able to do so, transportation for the juvenile to keep appointments for medical, psychiatric, psychological, or other treatment ordered by the court if the juvenile remains in or is returned to the home.
> >
> > (3) Take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker."

E. Child Support

The court may order a parent who is able to pay child support for a child who is removed from the parent's care. Payment of support is determined using the North Carolina Child Support Guidelines pursuant to G.S. 50-13.4(c). **[7B-904(d)]** However, the statute does not provide for the trial court to order a parent to contact a child support enforcement agency. *In re A.S.*, --- N.C. App. ---, 640 S.E.2d. 817 (2007)(order that parent contact CSE was remanded). Although the trial court does not have the authority to order a parent to contact a child support enforcement agency, the court can instruct DSS to open a IV-D child support action.

F. Contempt for Failure to Comply [7B-904(e)]

Failure of a parent who is personally served to participate or comply with orders may result in civil contempt: "Upon motion of a party or upon the court's own motion, the court may issue an order directing the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to appear and show cause why the parent, guardian, custodian, or caretaker should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this section."

§ 3.7 Court's Continuing Jurisdiction over the Case & GAL's Continuing Involvement

A. Jurisdiction over Child

Once the court obtains jurisdiction over a child, jurisdiction continues until terminated by order of the court, until the child's eighteenth birthday, or until the child is otherwise emancipated, whichever occurs first. **[7B-201]** This means that when a judge returns a child home, the case will not be terminated unless the judge formally orders that the case be terminated if that is what is intended.

B. GAL's Continuing Involvement

The GAL's responsibilities continue until a permanent plan has been achieved for the juvenile.[16] **[7B-601]** The judge's authority to modify any order or disposition made as a result of an adjudication continues during the minority of the child or until terminated by court order. **[7B-1000(b)]**

§ 3.8 Permanency Planning Hearing [7B-907]

If parties haven't already done so, now is the time for everyone involved to get serious about whether the case is moving toward termination or reunification, what needs to happen to achieve that goal, who needs to make it happen, and within what time limitations. It is advisable that the GAL and AA begin thinking about the permanent plan as early as disposition, and even begin to set forth concurrent plans. Parents are often told by social workers that they have a year to get their act together. The result is that parents often do not start completing the requirements of his or her case plan until reaching the permanency planning stage of the case. By introducing early in the case concurrent plans of custody or guardianship to a court-approved caretaker, or even termination of parental rights and adoption, parents can become more motivate to work toward reunification. The basic requirements of the statute are set out below. *Please see the appendix to this manual for a sample permanency planning order.*

A. Purpose

The purpose of the permanency planning hearing shall be to develop a plan to achieve a **safe, permanent home for the juvenile within a reasonable period of time**. **[7B-907(a)]**

B. Timing, Reason for Hearing

In any case in which custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing *within twelve* (12) *months* after the date of the *initial order removing custody* (often the nonsecure custody order), and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or, if necessary, to make a new permanent plan for the juvenile. **[7B-907(a)]**

[16] Historical note: prior to legislative changes made in 1999, 7B-601 stated that the Guardian ad Litem's appointment expired at the end of two years, although it did allow for reappointment upon a showing of good cause, as does the present statute.

C. Calendaring and Notice

"The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the Guardian ad Litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard." **[7B 907(a)]**

D. Sources of Information

"At any permanency planning review, the court shall consider information from the parent, the juvenile, the Guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the Guardian ad Litem, and any other person or agency which will aid it in the court's review." The court is permitted to consider any evidence, including hearsay evidence that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and make the most appropriate disposition. **[7B-907(b)]**

E. Criteria to Be Considered [7B-907(b)]

"At the conclusion of the hearing, if the juvenile is not returned home, the court *shall consider the following criteria and make written findings* regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;
(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
(5) Whether the county department of social services has, since the initial permanency [planning hearing], made reasonable efforts to implement the permanent plan for the juvenile;
(6) Any other criteria the court deems necessary."

F. Disposition upon Conclusion of Hearing

1. Generally: "At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile." **[7B-907(c)]**

a. Permanency Options.[17] There are four options of permanent plans:

1. Reunification with parent (includes non-removal parents)
2. Custody to a court-approved caretaker
3. Guardianship to a court-approved caretaker
4. Termination or relinquishment of parental rights followed by adoption

Older Youth: "Independent living" may *not* be characterized as a permanent plan, although youth 16 and older must have an independent living assessment pursuant to 7B-906(c)(7). It is often difficult to find a permanent placement for an older youth in foster care; however, DSS and GAL should still push for identification of a permanent custodian or guardian in the event that there is no adoptive parent.

b. Parents' Rights and Responsibilities. In the event that the court orders

1. **Visitation**. In the event that custody or guardianship is granted, the court must address the parents' "rights and responsibilities" pursuant to 7B-907(b)(2). If rights are not terminated, then the parent is still entitled to visitation, unless there is evidence presented and appropriate findings made by the court as to why visitation is denied. Further, the terms of visitation may not simply be delegated to the guardian or custodian, but must be determined by the court. The GAL should have input as to the appropriate type of visitation (unsupervised or supervised by the guardian or custodian) and terms (frequency, overnights, etc.).

Casenotes on the award of visitation:

The award of custody of a child and the award of visitation constitutes the exercise of a judicial function and may not be delegated to a custodian or guardian. To give the custodian or guardian of a child the authority to decide when, where, and under what circumstances a parent may visit his or her child could result in the complete deneial of the right; therefore, the trial court is not permitted to grant the privilege of visitation in the discretion of the custodian or guardian. *See In re L.B.*, --- N.C. App. ---, 639 S.E.2d. 23 (2007); *In re E.C.*, 174 N.C. App. 517 (2005); *In re Custody of Stancil*, 10 N.C. App. 545 (1971).

2. **Child Support**. In addition to the right of visitation, the parent is still financially responsible for the care of his or her child; therefore, the parent should be under a child support order to pay the custodian or guardian. In many cases, there is already a IV-D case pending, and it is just necessary for the custodian or guardian to be referred to the appropriate case worker to become the payee.

2. It is imperative that the court order follows the language of 7B-907

The Court of Appeals case *In re Dula*, 143 N.C. App. 16 (2001), *affirmed*, 354 N.C. 356, (2001), addressed the expectations for court orders resulting from permanency planning hearings. In this case, the trial court had stated in its "permanency planning juvenile review" order that there were no relatives willing and able to provide proper care and supervision of the child in a safe home, that DSS had made "reasonable efforts to prevent or eliminate the need for placement of the juvenile," and that a return of the child to the parent "would be an extremely dangerous action." The trial court then ordered custody of the child to remain with DSS,

[17] See Appendix for a comparison of permanency options and details regarding modification and financial implications.

reunification efforts to cease, and a plan of adoption for the child to "be pursued" by DSS. The court of appeals was apparently troubled by the failure of the trial court to follow the exact language of 7B-907 in its order, stating that since the child had been in the custody of DSS for 19 of the most recent 22 months, the trial court "was required to either direct DSS to initiate termination of parental rights proceedings against Respondent or make findings as permitted by section 7B-907(d)(1-3). The trial court did neither." (A footnote here stated that the order of the trial court directing DSS to pursue a plan of adoption was not sufficient compliance with section 7B-907(c)) The court of appeals went on to reverse and remand the trial court's order to be consistent with the mandate of section 7B-907(d). (It should be noted that there was a lengthy concurring and dissenting separate opinion in this case.)

However, the Court of Appeals subsequently explained that the trial court did not have to explicitly state findings pursuant to 7B-907 so long as they address those statutory factors *relevant* to the case. *In re J.C.S.*, 164 N.C. App. 96 (2004).

3. Orders directing action by DSS

a. "If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan." **[7B-907(c)]** (See *In re Dula*, 143 N.C. App. 16 (2001), *affirmed*, 354 N.C.356 (2001), where the parent had argued that it was error for the trial court to order all reunification efforts to cease but the court of appeals found no error since the trial court had made numerous findings regarding DSS's unsuccessful efforts to prevent or eliminate the need for placement outside the home. The Court of Appeals stated that DSS therefore had no obligation to reunify the parent and child but did have the obligation to locate permanent placement for the child.)

> "If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-507 [reasonable efforts] shall apply to any order entered under this section." **[7B-907(c)]**

b. "**If at any time custody is restored to a parent**, or findings are made in accordance with G.S. 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement." **[7B-907(c)]**

c. Ordering Pursuit of Termination of Parental Rights [7B-907(d)]

> "In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 12 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the director of the department of social services shall initiate a proceeding to terminate the parental rights of the parent unless the court finds:
>
> > (1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;
> > (2) The court makes specific findings why the filing of a petition for

> termination of parental rights is not in the best interests of the child; or
> (3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.
>
> If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services *shall file a petition to terminate parental rights within 60 calendar days* from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed. **[7B-907(e)]**

4. Timing of orders

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. The statute governing permanency planning orders specifically provides that if the order is not entered within thirty (30) days following the completion of the hearing, the juvenile clerk shall schedule a subsequent hearing at the first juvenile court session scheduled following this thirty (30) day period to determine and explain the reason for the delay and to obtain any needed clarification regarding the order's contents. The order shall be entered within ten (10) days of this subsequent hearing.[18]

5. Combining hearings is prudent, but statutory requirements must be met

It is important to note that 7B-907 allows permanency planning hearings to be combined with review hearings. It will often be prudent for such hearings to be combined, but when they are, it is important to realize that the requirements for both types of hearings must be met. For example, it is simple to label a review hearing a "permanency planning hearing" but the label itself is not what makes it a permanency planning hearing. Unless a hearing is conducted pursuant to the requirements of 7B-907, the hearing cannot be considered a "permanency planning hearing" and an additional permanency planning hearing will still have to be conducted.

§ 3.9 Civil Child Custody Order: An Alternative Disposition [7B-911]

Juvenile court judges now have the statutory ability to award custody and transfer the case to domestic court thus terminating juvenile court jurisdiction. The result is that any subsequent motions for modification of the custody order must be file in domestic court pursuant to G.S. § 50-13.7. Parents are no longer entitled court-appointed counsel if indigent. The award of custody may be to a parent or other appropriate person in accordance with the governing statutes of Chapter 50 relating to custody actions between parents and non-agency third parties. In order to enter the civil child custody order, the court must make findings and conclusions that support the entry of a custody order in accordance with Chapter 50, or if there already exists a Chapter 50 custody action, then there must be findings and conclusions that support a modification of custody pursuant to G.S. 50-13.7. **[7B-911(c)]** In a separate order terminating juvenile court jurisdiction, the court must find the following:

[18] Session Laws 2005-398 added this mandate for a subsequent hearing when an order is not timely entered effective October 1, 2005.

(1) that there is *no longer a need for continued state intervention* on behalf of the juvenile under Chapter 7B; *and*
(2) that at least *six (6) months have passed* since the court made the determination that the juvenile's placement with the person to whom the court is awarding custody is the *permanent plan* for the juvenile.

NOTE: this second finding is *not* necessary if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.

Casenote:

Although the statute contemplates two orders, the Court of Appeals has interpreted this statute to hold that there is no requirement that the trial court enter two different orders in a neglect action; the trial court may enter one order for placement in both the juvenile file and the civil file as long as the order was sufficient to support termination of juvenile court jurisdiction and modification of custody. *In re A.S.*, -- N.C. App. --, 641 S.E.2d 400 (2007).

§ 3.10 Disposition Pending Appeal [7B-1003]

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, may issue unless the court orders otherwise. When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.[19] *For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.* The provisions of subsections (b) and (c) of G.S. 7B-905 shall apply to any order entered under this section that provides for the placement or continued placement of a juvenile in foster care.

§ 3.11 Disposition after Appeal [7B-1004]

"Upon the affirmation of the order of adjudication or disposition of the court by the court of appeals or by the supreme court in the event of such an appeal, the court shall have authority to modify or alter the original order of adjudication or disposition as the court finds to be in the best interest of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within ten days thereafter as to why the modifying order should be vacated or altered."

§ 3.12 Review When Parent Has Surrendered Child for Adoption or Adoption Is Dismissed or Withdrawn [7B-909]

Section 7B-909 sets out certain circumstances under which a case must be calendared for review when parents have surrendered a child for adoption or adoption is dismissed or withdrawn. S*ee statute at the end of this chapter for details.*

[19] This sentence was added by 1999 legislation. See Chapter 1, subsection VI.C.3., in this manual for more provisions related to "violent caregivers" (person responsible for abuse with a history of violent behavior).

CHECKLISTS AND WORKSHEETS

§ 3.13 Checklist for Disposition or Review

Disposition Preparation

____ Received a copy of the GAL report.

____ Clarified any confusing or problematic issues in conversations with GAL and staff (have received updated information on the case and had the opportunity to meet with GAL and staff).

____ The child will/ will not be present at the hearing. _____ The child will/will not testify.

____ Aware of the child's feelings regarding this proceeding and have prepared the child for the proceedings or to testify.

____ Prepared to advocate for the GAL's position concerning all issues detailed below under "key issues that should be addressed at disposition or review"

____ Aware of placement alternatives that have been explored, the pros and cons of each.

____ Have knowledge of DSS position regarding issues for disposition or review.

____ Have enough knowledge of parent(s)' position regarding issues for disposition or review to allow for adequate preparation for hearing.

____ Have subpoenaed necessary witnesses or documents for hearing, or have arranged for specific persons and/or documents to be available for hearing.

____ Have done any necessary preparation of witnesses or documents for hearing.

Dispositional or Review Hearing

Persons who should be present:
Judge _____
Parent(s)_____
Parent(s) atty(s) _____
_____
DSS caseworker _____
GAL volunteer _____
GAL atty advocate _____
Agency attorney _____
Court reporter or recording equipment _____
Relatives with legal standing, other custodial adults: _____
_____
_____
Security personnel _____

Persons whose presence may be needed:
Child(ren) _____
Extended family members _____
Counselor/therapist _____
Experts _____
Law enforcement officers _____
Foster parents _____
Juvenile court counselor _____
Probation or parole officer _____
Other service providers _____
_____
_____
Anyone else with knowledge about the family situation _____
_____

Key issues that should be addressed at disposition or review:

____ Where the child should be placed (for review: how is placement going?):

____ What the child's needs are and what services should be offered to the child:

____ What the parents' needs are, what changes they must make, and the services that should be offered to them. (For review, the key question is also what have they done so far to improve their circumstances, and where do they go from here?)

____ What orders need to be entered by the court?

____ What is the timetable for accomplishment of goals?

____ Visitation between parent and child:

____ Visitation between siblings:

____ Whether recommended placement will cause the child to change schools, whether that is a problem and whether there is any way to avoid such a change:

____ Whether return to parent or placement with parent should be conditioned on certain people having no contact with parent and/or child:

____ Whether DSS has made reasonable efforts to prevent or eliminate the need for placement outside the home. What has the response been to such efforts?

____ Whether there has been an exhaustive effort to identify family and friends as potential placement alternatives:

____ Whether the case should be moving toward reunification or termination:

___ When the case should be reviewed:

§ 3.14 Checklist for Permanency Planning Hearing

(To be used in addition to "Checklist for Disposition or Review" to ensure compliance with 7B-907)

____ Completed "Checklist for Disposition or Review" in addition to the issues set out below
____ This hearing is being conducted on _____ (date) as a "permanency planning hearing" pursuant to G.S. 7B-907

____ This hearing is being held within 12 months after the date of the initial order removing custody, entered on, _____ (date), OR
____ This hearing is being held within 30 days after the date of the hearing at which the court found that reasonable efforts are not required or shall cease, which was held on _____(date), OR
____ this hearing is a subsequent hearing held at least every six months after the initial permanency planning hearing which was held on _____(date), AND
____ this hearing is/is not (circle one) being combined with a review hearing required by 7B-906.

Information the court shall consider
____ The court has considered information from the following persons:
____ parent ____ guardian ____ Guardian ad Litem, ____ juvenile
____ any foster parent, relative, or preadoptive parent providing care for the child
_____(names)
____ custodian or agency with custody _____(name)
____ any other person or agency which will aid it in the court's review
_____(names)

Ordering pursuit of termination of parental rights
Check all that apply:
____ This juvenile has been in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 12 (12 is only in effect for cases pending or filed as of January 1, 2002 and prior to that date it is 15) of the most recent 22 months; OR
____ a court of competent jurisdiction has determined that the parent has abandoned the child; OR
____ the parent has committed murder or voluntary manslaughter of another child of the parent; OR
____ the parent has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent

____ Due to one or more of the above checked factors, the director of the department of social services must initiate a proceeding to terminate the parental rights

OR

____ There was no initiation of termination of parental rights due to the following:
____ the court has made findings that the permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;
____ the court has made specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or
____ the court has made findings that the department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

Criteria the court must consider
____ The court has considered the following criteria and made findings regarding those that are relevant as

described below

____ Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interest to return home:

____ Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents:

____ Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption:

____ Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why:

____ Whether the county department of social services has, since the initial permanency planning hearing, made reasonable efforts to implement the permanent plan for the juvenile (applying 7B-507):

____ Any other criteria the court deems necessary:

Permanency plans, disposition, and reasonable efforts

____ At the conclusion of the hearing the judge made the following specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time:

_____ Other dispositional orders are as follows:

____ The judge did not order the child returned home and made the following orders directing the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan:

____ The next permanency planning hearing date is: _____ OR
____ The court is relieved of the duty to conduct further reviews because custody has been restored to a parent.

STATUTES

DISPOSITION, REVIEW AND PERMANENCY PLANNING

§ 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-808. Predisposition report

(a) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.

(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs.

(c) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure would not be in the best interest of the juvenile. Such local rules or administrative order may not:

(1) Prohibit a party entitled by law to receive confidential information from receiving that information.

(2) Allow disclosure of any confidential source protected by statute.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2003-140, § 2, eff. June 4, 2003; S.L. 2004-203, § 17, eff. Aug. 17, 2004.

§ 7B-900. Purpose

The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and the juvenile's family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile. Thus, the court should arrange for appropriate community-level services to be provided to the juvenile and the juvenile's family in order to strengthen the home situation.

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

§ 7B-901. Dispositional hearing

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2003-62, § 1, eff. May 20, 2003; S.L. 2005-398, § 4, eff. Oct. 1, 2005.

Note: House Bill 698 ratified July 17, 2007 effective October 1, 2007 changes “opportunity to present evidence” to “right to present evidence.” This change is to conform to federal IV-E funding requirements.

§ 7B-902. Consent judgment in abuse, neglect, or dependency proceeding

Nothing in this Article precludes the court from entering 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.

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

§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile

(a) The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care 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 the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care 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. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(b) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, 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.

(c) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, § 23, eff. July 1, 1999; S.L. 1999-318, § 6, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2002-164, § 4.8, eff. Oct. 23, 2002; S.L. 2003-140, § 9(b), eff. June 4, 2003.

§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or dependent

(a) If the court orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7B-903, the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) At the dispositional hearing or a subsequent hearing if the court finds that it is in the best interests of the juvenile for the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to be directly involved in the juvenile's treatment, the court may order the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to participate in medical, psychiatric, psychological, or other treatment of the juvenile. The cost of the treatment shall be paid pursuant to G.S. 7B-903.

(c) At the dispositional hearing or a subsequent hearing the court may determine whether the best interests of the juvenile require that the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care. If the court finds that the best interests of the juvenile require the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo treatment, it may order that individual to comply with a plan of treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care upon that individual's compliance with the plan of treatment. The court may order the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to pay the cost of treatment ordered pursuant to this subsection. In cases in which the court has conditioned legal custody or physical placement of the juvenile with the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care upon compliance with a plan of treatment, the court may charge the cost of the treatment to the county of the juvenile's residence if the court finds the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care is unable to pay the cost of the treatment. In all other cases, if the court finds the parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care is unable to pay the cost of the treatment ordered pursuant to this subsection, the court may order that individual to receive treatment currently available from the area mental health program that serves the parent's catchment area.

(d) At the dispositional hearing or a subsequent hearing, when legal custody of a juvenile is vested in someone other than the juvenile's parent, if the court finds that the parent is able to do so, the court may order that the parent pay a reasonable sum that will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(d1) At the dispositional hearing or a subsequent hearing, the court may order the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to do any of the following:

(1) Attend and participate in parental responsibility classes if those classes are available in the judicial district in which the parent, guardian, custodian, or caretaker resides.

(2) Provide, to the extent that person is able to do so, transportation for the juvenile to keep appointments for medical, psychiatric, psychological, or other treatment ordered by the court if the juvenile remains in or is returned to the home.

(3) Take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker.

(e) Upon motion of a party or upon the court's own motion, the court may issue an order directing the parent, guardian, custodian, or caretaker served with a copy of the summons pursuant to G.S. 7B-407 to appear and show cause why the parent, guardian, custodian, or caretaker should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this section.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 318, § 7, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2001-208, § 3, eff. Jan. 1, 2002.

§ 7B-905. Dispositional order

(a) The dispositional order shall be in writing, signed, and entered no later than 30 days from the completion of the hearing, and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within 90 days from of the date of the dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order shall comply with the requirements of G.S. 7B-507. Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile's placement is continued outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court. If the director subsequently makes a good faith determination that the visitation plan may not be in the best interests of the juvenile or consistent with the juvenile's health and safety, the director may temporarily suspend all or part of the visitation plan. The director shall not be subjected to any motion to show cause for this suspension, but shall expeditiously file a motion for review.

(d) When a county department of social services having custody or placement responsibility of a juvenile intends to change the juvenile's placement, the department shall give the guardian ad litem for the juvenile notice of its intention unless precluded by emergency circumstances from doing so. Where emergency circumstances exist, the department of social services shall notify the guardian ad litem or the attorney

advocate within 72 hours of the placement change, unless local rules require notification within a shorter time period.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, § 24, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2001-208, §§ 4, 18, eff. Jan. 1, 2002; S.L. 2005-398, § 5, eff. Oct. 1, 2005.

§ 7B-906. Review of custody order

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b).

(c) At every review hearing, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to

be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.

(3) Goals of the foster care placement and the appropriateness of the foster care plan.

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.

(6) An appropriate visitation plan.

(7) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

(8) When and if termination of parental rights should be considered.

(9) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. The order must be reduced to writing, signed, and entered within 30 days of the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(e) Deleted by S.L. 1998-229, § 25, eff. July 1, 1999.

(f) The provisions of G.S. 7B-506.1 shall apply to any order entered under this section.

(g) If the court determines that the juvenile shall be placed in the custody of an individual other than the

parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, §§ 8, 25, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2000-124, § 2, eff. October 1, 2000; S.L. 2001-208, § 19, eff. Jan. 1, 2002; S.L. 2003-62, § 2, eff. May 20, 2003; S.L. 2003-140, § 9(c), eff. June 4, 2003; S.L. 2005-398, § 6, eff. Oct. 1, 2005.

Note: Session Law 2007-276 effective October 1, 2007 changes “opportunity to be heard” to “right to be heard” in the last line of subsection (a). This change is to conform to federal IV-E funding requirements.

§ 7B-907. Permanency planning hearing

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-507 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 12 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the director of the department of social services shall initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless

the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed.

(f) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile.

Added by S.L. 1998-229, § 8.1, eff. Jan. 1, 1999. Amended by S.L. 1998- 229, § 25.1, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2001-208, §§ 5, 20, eff. Jan. 1, 2002; S.L. 2003-62, § 3, eff. May 20, 2003; S.L. 2003-140, § 9(d), eff. June 4, 2003; S.L. 2005-398, § 7, eff. Oct. 1, 2005.

Note: Session Law 2007-276 effective October 1, 2007 changes “opportunity to be heard” to “right to be heard” in the last line of subsection (a). This change is to conform to federal IV-E funding requirements.

§ 7B-909. Review of agency's plan for placement

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters in any case where:

(1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or

(2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.

(b) In any case where an adoption is dismissed or withdrawn and the juvenile returns to foster care with a department of social services or a licensed private child-placing agency, then the department of social services or licensed child-placing agency shall notify the clerk, within 30 days from the date the juvenile returns to care, to calendar the case for review of the agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters.

(c) Notification of the court required under subsection (a) or (b) of this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) or (b) of this section. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

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

2005-398, § 9, eff. Oct. 1, 2005.

Note: Session Law 2007-276 ratified July 17, 2007 effective October 1, 2007 deletes subsection (b), and under subsection (c) replaces “place for adoption and the adoption petition is filed by the adoptive parents” to “the subject of a decree of adoption.” The result is that the juvenile court will continue to have reviews under this subsection until the adoption petition is finalized.

§ 7B-910. Review of voluntary foster care placements

(a) The court shall review the placement of any juvenile in foster care made pursuant to a voluntary agreement between the juvenile's parents or guardian and a county department of social services and shall make findings from evidence presented at a review hearing with regard to:

(1) The voluntariness of the placement;

(2) The appropriateness of the placement;

(3) Whether the placement is in the best interests of the juvenile; and

(4) The services that have been or should be provided to the parents, guardian, foster parents, and juvenile, as the case may be, either (i) to improve the placement or (ii) to eliminate the need for the placement.

(b) The court may approve the continued placement of the juvenile in foster care on a voluntary agreement basis, disapprove the continuation of the voluntary placement, or direct the department of social services to petition the court for legal custody if the placement is to continue.

(c) An initial review hearing shall be held not more than 90 days after the juvenile's placement and shall be calendared by the clerk for hearing within such period upon timely request by the director of social services. An additional review hearing shall be held 90 days thereafter and any review hearings at such times as the court shall deem appropriate and shall direct, either upon its own motion or upon written request of the parents, guardian, foster parents, or director of social services. A juvenile placed under a voluntary agreement between the juvenile's parent or guardian and the county department of social services shall not remain in placement more than six months without the filing of a petition alleging abuse, neglect, or dependency.

(d) The clerk shall give at least 15 days' advance written notice of the initial and subsequent review hearings to the parents or guardian of the juvenile, to the juvenile if 12 or more years of age, to the director of social services, and to any other persons whom the court may specify.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2001-208, § 21, eff. Jan. 1, 2002.

§ 7B-911. Civil child-custody order

(a) After making proper findings at a dispositional hearing or any subsequent hearing, the court on its own motion or the motion of a party may award custody of the juvenile to a parent or other appropriate person pursuant to *G.S. 50-13.1*, *50-13.2*, *50-13.5*, and *50-13.7*, as provided in this section, and terminate the court's jurisdiction in the juvenile proceeding.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to *G.S. 50-13.7*; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed.

Added by S.L. 2005-320 § 4.

§ 7B-1000. Authority to modify or vacate

(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b).

(b) In any case where the court finds the juvenile to be abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile, until terminated by order of the court, or until the juvenile is otherwise emancipated.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2000-124, § 3, eff. October 1, 2000.

§ 7B-1003. Disposition pending appeal

(a) During an appeal of an order entered under this Subchapter, the trial court may enforce the order unless the trial court or an appellate court orders a stay.

(b) Pending disposition of an appeal, unless directed otherwise by an appellate court or subsection (c) of this section applies, the trial court shall:

(1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the exception of Article 11 of the General Statutes; and

(2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

(c) Pending disposition of an appeal of an order entered under Article 11 of this Chapter where the petition for termination of parental rights was not filed as a motion in a juvenile matter initiated under Article 4 of this Chapter, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if there be any, within 10 days thereafter, as to why the modifying order should be vacated or altered.

(d) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual pending resolution of an appeal.

(e) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered during an

appeal that provides for the placement or continued placement of a juvenile in foster care.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 318, § 8, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2001-208, § 27, eff. Jan. 1, 2002; S.L. 2003-140, § 8, eff. June 4, 2003; S.L. 2005-398, § 12, eff. Oct. 1, 2005.

§ 7B-1004. Disposition after appeal

When an order of the court is affirmed by the Court of Appeals or by the Supreme Court, the trial court may modify or alter the original order as the court finds to be in the best interests of the juvenile to reflect any change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1999- 456, § 60, eff. Aug. 13, 1999; S.L. 2005-398, § 13, eff. Oct. 1, 2005.