

CHAPTER 9 OVERVIEW OF THE COURT PROCESS

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§ 9.1 The Juvenile Code

A. Legislative Changes

The Juvenile Code is in the North Carolina General Statutes Chapter 7B and contains the law relating to criminal delinquency matters, undisciplined matters, and civil abuse, neglect, and dependency matters all involving juveniles. Prior to legislative changes in 1998, the Juvenile Code was contained in Chapter 7A and had numerous provisions that mixed criminal and civil juvenile proceedings. But in the fall of 1998, the General Assembly completely revamped the Juvenile Code as it relates to delinquency matters and in fact separated delinquency from abuse, neglect, and dependency, putting their respective provisions in different places in the Juvenile Code. At the same time, the legislature also made significant changes to abuse, neglect, and dependency matters, mostly to accommodate the Federal Adoption and Safe Families Act of 1997 (“ASFA”).¹ Since 1998, amendments to the Juvenile Code continue to be enacted, some in an effort to further accommodate ASFA and others in an effort to clarify statutory language or strengthen the protection afforded to abused, neglected, and dependent children.

B. Understanding the Purpose and Definitions Contained in the Code

The purpose of the Juvenile Code and definitions to many of the terms used in the Code are stated in G.S. 7B-100 and 7B-101, which can be found at the end of this chapter of the manual. A clear understanding of the purpose of the Code and the definitions is crucial to an attorney advocate (AA) being able to accurately apply the law contained in the Code.

§ 9.2 Juvenile Court ²

A. Courtroom Division between Criminal Delinquency Matters and Abuse, Neglect, and Dependency Matters

Regular Juvenile Court is typically divided into two settings: (1) criminal delinquency and undisciplined matters petitioned by a juvenile court counselor and prosecuted by a district attorney and (2) civil abuse, neglect, and dependency matters petitioned by the Department of Social Services. There are other special juvenile sessions devoted to related juvenile matters, and termination of parental rights proceedings are also held in Juvenile Court.

In some locations, criminal and DSS matters are calendared on the same day, and court is not divided specifically between the two. In others, court calendars are devoted either to delinquency or to DSS matters, and they are entirely separate. Some districts have local court rules governing the procedures followed in juvenile matters; others simply go by unwritten local protocol. Obviously, one of the greatest variables in courtroom procedure is the way a particular judge is inclined to run court.

¹ Please see Chapter 11 in this manual for more information on the Adoption and Safe Families Act.

² This section is designed to be an introduction to juvenile court for those readers who have not had exposure to juvenile court.

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B. Narrative Outline of the Process: Petition, Nonsecure Custody, Adjudication, Disposition, and Review

When DSS substantiates a complaint of abuse, neglect, or dependency and decides to initiate a petition, they often identify an immediate need to remove a child. If so, they will obtain a nonsecure custody order and have a nonsecure custody hearing so the court can determine where the child should live pending adjudication on a petition. Juvenile matters are then divided into two primary stages: (1) an adjudicatory stage devoted to fact-finding and ruling on the allegations, and (2) a dispositional stage devoted to identifying the needs of the child and the parent, ways to address those needs, and settling on an outcome that is in the best interests of the child. Disposition can immediately follow adjudication or it can be delayed. Hearings conducted after disposition are called *review* hearings.

After disposition, the judge will conduct review hearings to determine if dispositional orders are being followed, whether the orders are appropriate, whether the parents are improving, and to examine placement plans for the child as well as the child's needs and whether they are being met. A special review hearing, called a *permanency planning hearing*, must be held at a specific point to ensure that a permanent plan is in place for the child and that the case is moving toward that plan. In some cases, once dispositional orders are carried out and the court finds the parents fit to care for their child, the child can be returned home. Sometimes, the judge may find that reunification efforts are futile or not in the best interests of the child and may order such efforts to cease. If returning the children home is not appropriate now or in the future, a termination of parental rights (TPR) petition can be filed if there are statutory grounds for termination, and a hearing will follow. Once a TPR is ordered, post-termination review hearings are held as the court and all of its players work toward a permanent placement for the child. The court retains jurisdiction over the juvenile until terminated by the court's order, the juvenile turns eighteen, or is emancipated, whichever occurs first.

C. Governed by the Rules of Civil Procedure

Procedural issues in abuse, neglect, and dependency matters are governed by the Rules of Civil Procedure unless specifically addressed by the Juvenile Code.

D. Overlap between Civil and Criminal

A much more detailed discussion of the attorney advocate's role in such proceedings is included in Chapter 13 of this manual titled, "The Attorney Advocate's Role in Other Proceedings."

1. When juvenile is involved in both delinquency and abuse or neglect proceedings

Sometimes a juvenile involved in a delinquency case is also involved in an abuse, neglect, or dependency case. Occasionally a child will be taken into DSS custody as a result of what took place in court on a delinquency matter. A child already in DSS custody might also become involved in criminal activity that results in a delinquency petition. It is important to remember, however, that unless there is an abuse, neglect, or dependency petition, the statute does not give the court the authority to appoint a guardian ad litem pursuant to 7B-601.

2. When parent with criminal charges brings everyone into adult criminal court

Another overlap between the juvenile case and criminal proceedings occurs when the events that led to the petition for abuse or neglect result in criminal charges of the parent or caretaker. When criminal charges are pending against a parent or caretaker, the AA, the GAL staff, the

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volunteer, and the child probably will all end up being involved with law enforcement personnel and the district attorney's office. Many complex issues arise in such a situation, including whether and how to share information, under what circumstances the child should be interviewed or testify, and what kind of relationship the GAL should have with law enforcement officers and prosecutors. However, it is important to realize that the criminal process moves independently of the civil process, although each proceeding can influence the other in terms of timing and content, they don't always affect each other; therefore, decisions relating to the relationship between the two must be made on a case-by-case basis. [For information on agency sharing of information, see § 1.9.E.2; on the child witness, see § 7.2; on the role of the attorney advocate, see, Chapter 13.]

E. Continuances and a Child's Sense of Time

Continuances may be requested frequently, but *unless they are beneficial to the child's interest, the attorney advocate should oppose continuances*. A child's sense of time is very different from ours. If an infant or toddler waits months for a hearing, that wait is a significant portion of his or her life and may truly seem like a lifetime to the child. A school-age child who is uprooted from school and friends does not view a month (or three or four) as a short time at all.

Consider this excerpt from the insightful resource materials prepared for the National Council of Juvenile and Family Court Judges.

. . .When litigation proceeds at what attorneys and judges regard as a normal pace, children often perceive the proceedings as extending for vast and infinite periods.

The passage of time is magnified for children in both anxiety levels and direct effect. Three years is not a terribly long period of time for an adult. For a six-year-old, it can mean the difference between finding an adoptive family and failing to gain permanence because of age. If too much time is spent in foster care during these formative years, lifetime problems can be created.

Court delays caused by prolonged litigation can be especially stressful to abused and neglected children. The uncertainty of not knowing whether they will be removed from home, whether and when they will go home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home are frightening.³

Children should not be separated from their parents any longer than necessary, nor should they have to wait for permanent, out-of-home placement any longer than necessary. The faster a child's case is moved through the system, the less the child has to suffer. Attorney advocates should always push the judge to set the next court date for as soon as is practical, according to what needs to be accomplished prior to that date -- not according to the convenience of the parties involved. Legislative changes made to the statutes in 1998 put tighter time limitations on various stages of the proceedings to address the child's need for a faster, more efficient process.

F. Permanency Planning Is Always the Focus

³ National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases. Written by the Publication Development Committee Victims of Child Abuse Project, 1995, Hon. David E. Grossmann, chairman, p. 14.

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Throughout the juvenile court process, a safe *and* permanent home must be the focus and goal behind decisions and recommendations. The GAL volunteer and attorney cannot make getting the child into a safe place their only goal. Especially when termination seems possible or likely, potential adoptive placements are preferable to temporary foster care. The GAL attorney and volunteer cannot rest simply because a child has been placed in a safe, positive situation. If the placement situation is not permanent, there is still work to be done. A permanent placement refers not only to a placement that has the potential for adoption but also to one that is legally secure and cannot easily be “undone.” Steps must be taken to speed the process along to either return the child to the parents or terminate parental rights so that the child can be adopted, or another permanent placement option can be found. [For more information on options for permanency, see “Permanency Options” in the appendix of this manual.]

§ 9.3 Juvenile Court Players

A. The DSS Attorney

The DSS attorney represents the Department of Social Services through his or her representation of the social worker assigned to a given case. The DSS attorney acts similarly to a prosecutor in many courtrooms, as he or she may call cases for hearing and inform the court as to the status of each case. The DSS attorney, in the capacity of petitioner, is responsible for the initial presentation of evidence in each stage of the proceedings (excluding hearings on motions initiated by the GAL or parent’s attorney). The DSS attorney is also responsible for protecting the agency from liability. *See Chapter 10 of this manual for additional explanation of the role and responsibilities of DSS.*

B. The Parent’s Attorney

Every parent has the right to counsel and to court-appointed counsel in cases of indigency unless the parent waives that right. [G.S. 7B-602] If the parents’ interests could be in conflict, each must have a different attorney. The parent’s attorney has an obligation to represent the needs and desires of the parent, to protect the legal rights of the parent, and to advise the parent on legal matters. From a practical standpoint, it is preferable to have separate attorneys for each parent because even when parents feel their interests do not conflict, such interests may change throughout the course of a case.

C. The Department of Social Services Worker(s)

The social worker (often referred to as a caseworker) investigates the case, initiates a petition, usually removes the child from the home, and proceeds with further investigation to determine the needs of the family. The social worker (often more than one, each assigned to a different stage of the case) is responsible for determining and coordinating services for the family, for gathering evidence to present in court, for making recommendations to the court, and for monitoring and managing the case until DSS services are no longer needed. He or she also assists parents in identifying ways to carry out conditions imposed upon them by the court concerning evaluation, treatment, classes, programs, and other methods of improving their circumstances. The role and responsibilities of the social worker are explained in greater detail in Chapter 10 of this manual.

D. The Juvenile Court Clerk or Case Manager

The Juvenile Court Clerk maintains the schedule and calendar for juvenile cases, maintains confidential

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juvenile court files, records juvenile proceedings, and assists with clerical matters during court hearings. Some family court districts also have a Juvenile Court Case Manager that may schedule cases and otherwise assist with managing cases (*i.e.* monitoring timelines; prioritizing hearings; etc.). It is necessary to be familiar with your local district.

E. The Juvenile Court Judge

The judge hears and rules on all matters in juvenile court, including whether to adjudicate and where to place a child. Juvenile matters do not come before a jury. The judge orders appropriate services, orders reviews, and sometimes takes part in prehearing conferences. The judge is responsible for overseeing the courtroom proceedings and for determining the child's best interests. Some judges take an active role in case management and juvenile court improvement.

F. Guardian ad Litem Volunteer, Attorney Advocate, and Staff

Ideally, the Attorney Advocate and volunteer are both in the courtroom to represent the child. Sometimes staff is needed as well. Depending on the type of hearing, however, the presence of one or more of the three may not be required.

G. The Parent

The parent is served with a summons and required to be present at all hearings involving the child, though a hearing can proceed without a parent if the parent is properly served and noticed. The parent is responsible for meeting conditions or orders imposed by the court to improve his or her situation in order to get the child back. The parent may be involved in criminal proceedings involving the same circumstances alleged in the petition.

H. The Child

If possible, the child will explain any allegations to DSS or law enforcement, but every effort should be made to avoid having the child repeat his or her story unless absolutely necessary (the GAL should not be inquiring about the allegations). If possible, the child will convey information to the GAL regarding his or her life that will assist the GAL in determining the child's needs and best interests. Any wishes expressed by the child will be communicated to the court via the child, the GAL, or the AA. The child may or may not be present in court and may or may not testify. The GAL volunteer and attorney should monitor both matters. [See, § 2.7.H and § 7.2 regarding children in court and the child witness.] There are certain places in the Juvenile Code, however, that require notice to a child twelve and over and an opportunity for the child to convey information to the court. In any event, the child should be informed of all issues and resolutions related to the case in a manner that is appropriate to the child's level of maturity.

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§ 9.4 Rights of the Child, Rights of the Parent

A. Rights of the Child

There is an ongoing debate at the national level about the legal rights of children in the context of child protection proceedings. One specific component of that debate is whether children's voices should be expressed in terms of their wishes, in terms of their best interests, or both, and whether the vehicle for the child's voice should be the child himself, a volunteer CASA or GAL, an attorney, or any combination of all three.

In North Carolina, the framework for abuse, neglect, and dependency cases itself sets up certain rights for children. Within this framework once a petition is filed, children have the right to have their best interests represented by a GAL (who must focus only on the child) throughout the course of a case. While the statute does not specifically set up a framework for representation of the child's expressed wishes, the GAL program Guidelines for Best Practice set the expectation that any wishes expressed by the child will be taken into account in determining best interest and conveyed to the court.⁴ The process for child protection cases generally centers on the best interest of the child, determined by way of a hearing with an opportunity for all parties to be heard.

In addition, some sections in the Juvenile Code require that children 12 years old or older get notice of certain proceedings and some require the judge to receive information from the child in certain proceedings and/or give the child an opportunity to be heard. (*See, e.g.*, 7B-901, -906, -907, -908.) In all proceedings, the GAL, who represents the child, has the right to notice and an opportunity to fully participate in anything related to the case since the juvenile is a party (pursuant to 7B-601) and acts through his or her GAL.⁵

The United States Constitution does not address the rights of children, and the U.S. Supreme Court has never held specifically that the child has a right to be heard in abuse or neglect proceedings. Of course, various United States Supreme Court cases have dealt with children's rights issues but those cases do not involve the rights of children in civil abuse and neglect proceedings but usually delinquency matters. (*But see Lassiter v. Department of Social Services*, 452 U.S. 18 (1981)(addressing the due process rights of a parent involving termination of parental rights proceedings and of liberty interests for choices made in matters of family life and held that a parent does not have a constitutional right to counsel in a TPR case.)

B. Rights of the Parent⁶

1. Equal Protection

An individual's status as a parent and his expectancy of exercising and enjoying the functioning of parenthood do fall within those "fundamental rights of family life" protected by the Fourteenth Amendment.⁷ Where fundamental rights are involved, statutes are typically subject

⁴ GAL Guidelines for Best Practice, IV-2, 2000 (Attorney Work Standards which are also set out in this manual in § 8.4).

⁵ See § 12.5 in this manual for more discussion on children in court.

⁶ For a more detailed discussion of the rights of parents, see Ilene Nelson, *Children and the Law: A Casebook for Practice*, Administrative Office of the Courts, 1992, pp. 15 - 21.

⁷ *See Meyer v Nebraska*, 262 U.S. 390 (1923), *Pierce v Society of Sisters*, 268 U.S. 510 (1925); *Moore v East Cleveland*, 431 U.S. 494 (1977); *Cleveland Bd. of Educ. v LaFleur*, 414 U.S. 632 (1974); *Wisconsin v Yoder*, 406 U.S. 205 (1972); *Griswold v Connecticut*, 381 U.S. 479 (1965), *Stanley v Illinois*, 405 U.S. 645 (1972); *Zablocki v Redhail*, 434 U.S. 374

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to a “strict scrutiny” test, placing the burden on the state to show a “compelling state interest.”⁸ Some cases relating to the fundamental rights of family examine whether there is a "substantial relation to [an] important state interest" or whether the means selected are "appropriate or necessary" or "needlessly, arbitrarily, or capriciously impinge upon . . . [a] vital area of . . . constitutional liberty." ⁹

North Carolina courts have been asked to consider the constitutionality of certain termination of parental rights grounds on the basis of equal protection in the past. In the case of *In re Biggers*, 50 N.C. App. 332 (1981), the North Carolina Court of Appeals found that the grounds for termination based on failure to support and on neglect did not violate equal protection. In so doing, the court performed an analysis of the interests and stated the following:

All parents have the duty to support their children within their means, and the State, as the parens patriae of all children, may enforce that duty to prevent children from becoming public charges. 3 Lee, N.C. Family Law § 229 (3d ed. 1963). In G.S. 7A-289.32(4), the legislature has concluded that a child's best interest is served by a termination of parental rights when his parents cannot provide reasonable support. This statute meets the standard of strict judicial scrutiny, where fundamental rights are involved, under the equal protection clause. The State undoubtedly demonstrates a compelling interest for the health, welfare and safety of minor children, and this interest is directly related to the purpose of the statute. See also N.C. Ass'n for Retarded Children v. State of N.C., 420 F. Supp. 451 (M.D.N.C. 1976); In re Johnson, 45 N.C. App. 649, 263 S.E. 2d 805 (1980). "It certainly is not an unreasonable or arbitrary exercise of the police power for the State to intervene between parent and child where that child is helpless and defenseless and is endangered by parental neglect, inattention, or abuse." In re Lassiter, 43 N.C. App. 525, 527, 259 S.E. 2d 336, 337 (1979), review denied, 299 N.C. 120, 262 S.E. 2d 6 (1980). In sum, we conclude that G.S. 7A-289.32(4) does not violate the equal protection clause by discriminating among persons similarly situated since it applies to all parents equally and allows due consideration of their specific individual financial circumstances.

Id. at 339.

2. Due Process

The following is an excerpt from Children and the Law: A Casebook for Practice, by Ilene Nelson:

Only when a parent fails in fulfilling the responsibilities owed to a child should the state intervene in a parent-child relationship. Parents have an important interest in the protection and preservation of their right to the custody and care of a child. *Lassiter v. Durham County Department to Social Services*, 452 U.S. 18, 27, *reh'g denied*, 453 U.S. 927 (1981); *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923). The state's interference with a parent-child

(1978); and *Caban v Mohammed*, 441 U.S. 380 (1979).

⁸ *Moore v East Cleveland*, *supra*; *Shapiro v Thompson*, 394 U.S. 618 (1969).

⁹ *In re Jonathan E.G.*, 436 N.Y.S.2d 546, 552 (1980)(citing *Caban v Mohammed supra*, *Moore v East Cleveland, supra*, *Cleveland Bd. Of Educ. v. LaFleur, supra*).

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relationship treads upon the fundamental rights of a parent, thereby threatening destruction of a family unit. The U.S. Supreme Court has emphasized that "parents retain a vital interest in preventing the irretrievable destruction of their family life." *Santosky v. Kramer*, 455 U.S. 745 (1982).

When the state becomes involved in overseeing a parent-child relationship, the parent is entitled to the rights of due process: the right to notice and the opportunity to be heard. Procedural safeguards for parents interested in a child are especially warranted in adoption and termination of parental rights cases. See *Santosky v. Kramer*, 455 U.S. 745 (1982) (due process requires the state to prove the need to terminate parental rights by the presentation of clear and convincing evidence); *Lehr v. Robertson*, 463 U.S. 248 (1983) (putative father entitled to notice of adoption proceedings); *In re Clark*, 76 N.C. App. 83, 332 S.E.2d 196 *appeal dismissed*, 314 N.C. 665, 335 S.E.2d 322 (1985).

Generally, all of the procedural safeguards that apply in any civil case apply in juvenile court matters. However, there is one glaring exception. The United States Supreme Court has stated that:

[a] mother who is the custodian of her child pursuant to a court order may not invoke the Fifth Amendment privilege against self-incrimination to resist a subsequent court order to produce the child. . . . Even assuming that the act of production would amount to a communication regarding Bouknight's control over, and possession, of [her child] that is sufficiently incriminating and testimonial in character, she may not invoke the privilege to resist the production order in the present circumstances. The ability to invoke the privilege is greatly diminished when invocation would interfere with the effective operation of a generally applicable regulatory regime constructed to effect the State's public purposes unrelated to the enforcement of its criminal laws. *Baltimore City Department of Social Services v. Bouknight*, 493 U.S. 549, 550 (1990).

3. Custody rights

a. Parent v. grandparent: Courts have been known to award custody to a grandparent in a custody action against a parent. The United States Supreme Court addressed the issue of grandparent's visitation in *Troxel v. Granville*, 530 U.S. 57 (2000). Chapter 50 of the NC General Statutes specifically addresses grandparent issues in several provisions. *Penland v. Harris*, 135 N.C. App. 359 (1999), is a North Carolina case that discusses a grandparent's right to seek custody and/or visitation of a grandchild and discusses the Chapter 50 provisions. Other recent cases include *Montgomery v. Montgomery*, 136 N.C. App. 435 (2000); *Price v. Breedlove*, 138 N.C. App. 149 (2000); *Shaut v. Cannon*, 136 N.C. App. 834 (2000). See also *In re Ore*, 160 N.C. App. 586 (2003) (holding that grandmother who had physical custody of a juvenile for two years could file TPR petition); *In re Badzinski*, 79 N.C. App. 250, *disc. rev. denied*, 317 N.C. 703 (1986); *Best v. Best*, 81 N.C. App. 337 (1986); *Moore v. Moore*, 89 N.C. App. 351 (1988).

b. Foster parent v. parent and/or grandparent and/or DSS:¹⁰

¹⁰ Information on Rights of Foster Parents obtained from Children and the Law, p. 173 -74. For more detailed

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- i. The N.C. General Statutes require notice to foster parents and require courts to consider information from the foster parents in various places in the Juvenile Code but never raise the foster parent to the status of a party from the petitioning phase of the case through disposition and review.¹¹ However, a foster parent can petition for termination of parental rights under certain circumstances [see 7B-1103(5)].
- ii. *Oxendine v. Catawba County DSS*, 303 N.C. 699 (1981), discusses the rights of foster parents to seek custody of a child in the legal custody of DSS. Here the foster parents had filed a complaint seeking permanent custody of their foster child where the natural parents had voluntarily released their parental rights and surrendered the child to DSS. The court found the foster parents to be without standing.
- iii. In a custody dispute involving foster parents, DSS, and an eighteen-year-old father, the court concluded that the best interests of the child warranted giving custody to the foster parents, because neither the father nor grandparents would be fit and proper parents. The court in this case found that permitting the foster parents to intervene in this action was appropriate pursuant to Rule 24(b) of the Rules of Civil Procedure. The court distinguished this case from *Oxendine* (see above). In *Oxendine*, the case was controlled by G.S. 48-9 *et seq.* and standing to bring an action, but this case is not, because both parents have not released the child for adoption and the case involves permissive intervention, not standing to bring an action. *In re Scarce*, 81 N.C. App. 531, *cert. denied*, 318 N.C. 415 (1986).
- iv. The U.S. Supreme Court discussed the rights of foster parents and the unit of a foster family with respect to constitutionally protected interests in *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1977).

information on the rights of foster parents, see Children and the Law, pp. 171 - 77.

¹¹ Note that Session Law 2007-276 effective October 1, 2007 gives foster parents the “right to be heard” as opposed to simply an “opportunity.”

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§ 9.5 Court Hearings in Abuse, Neglect and Dependency Cases

Statute/Event	Timing	Criteria or Factors Considered (Consult statute. List below may be highlights only.)	Procedural Requirements	Decisions to Be Made
Initial Non-Secure Custody Order 7B-500, 7B-502 7B-503, 7B-504 7B-505	Upon motion for nonsecure custody brought by DSS or GAL. The initial nonsecure custody order may be granted as the result of a hearing or may be an ex parte order.	Criteria that must be met: <ul style="list-style-type: none"> • reasonable factual basis to believe matters alleged in petition are true, • no other reasonable means available to protect the juvenile, • must first consider release of juvenile to parent, relative, guardian, custodian, or other responsible adult, • must consider whether it is in the juvenile’s best interest to remain in his or her community of residence, • must find that the juvenile meets one of the following criteria: <ol style="list-style-type: none"> 1. has been abandoned 2. has suffered physical injury or sexual abuse 3. is exposed to substantial risk of physical injury or sexual abuse . . . 4. is in need of medical treatment . . . 5. the parent, guardian, or custodian consents to nonsecure custody 6. the juvenile is a runaway and consents to nonsecure custody 	Statute does not set forth a burden of proof but merely states the criteria for a nonsecure custody order.	The judge must determine whether the child should be removed from the custody of the parent or caretaker. If so, where the child should be placed pending adjudication. The judge cannot dismiss the petition at the nonsecure stage, but DSS can. [Note that temporary custody under 7B-500 and 7B-501 is possible without a nonsecure custody order under certain circumstances and where the child might be injured or could not be taken into custody if it were first necessary to obtain a court order. A hearing must be held within 12 hours or 24 if on a weekend.]
Non-Secure Custody Hearings 7B-500, 7B-502 7B-503, 7B-504 7B-505, 7B-506, 7B-507	Nonsecure custody hearing must be within 7 days after removal. After initial hearing, 2nd hearing within 7 days, then within 30 day intervals.	The judge applies the same criteria set out above from 7B-503 to determine the need for an initial order of nonsecure custody and orders continuing nonsecure custody. Reasonable efforts findings pursuant to 7B-507 must be made when an order placing or continuing the placement of the child in the custody or placement responsibility of DSS is made.	Burden of proof is on DSS, and the standard of proof is by clear and convincing evidence. Nonsecure custody hearings are informal and the formal rules of evidence need not apply.	The judge must decide whether the child should be in nonsecure custody or remain in nonsecure custody and where the child should be placed. Whether reasonable efforts have been made or whether the court may order such efforts to be unnecessary or to cease due to the presence of certain circumstances set out in 7B-507

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Statute/Event	Timing	Criteria or Factors Considered	Procedural Requirements	Decisions to Be Made
<p>Adjudicatory Hearing 7B-801, 7B-802, 7B-805, 7B-807, 7B-902</p>	<p>Must be heard within 60 days of the date of the filing of the petition unless the judge finds good cause for continuance.</p>	<p>Whether the allegations in the petition are proven by clear and convincing evidence. (Whether the child is in fact abused, neglected, or dependent as defined by 7B-101.)</p>	<p>The allegations in the petition must be proven by clear and convincing evidence.</p> <p>The formal rules of evidence in civil cases are applicable.</p> <p>The burden of proof is on DSS.</p>	<p>The judge must decide whether the allegations in the petition have been proved by clear and convincing evidence. If so, the juvenile is adjudicated abused, neglected, or dependent. If not, the judge must dismiss the petition. If there is an adjudication, the judge must decide whether to proceed immediately to disposition or set a date for a dispositional hearing.</p>
<p>Dispositional Hearing 7B-900, 7B-901, 7B-903</p>	<p>Should be heard immediately following adjudication but can be postponed pending necessary collection of information.</p>	<p>What must happen in order to accommodate the best interests of the child or children and to achieve a safe, permanent home within a reasonable period of time?</p> <p>Whether reasonable efforts have been made or whether the court may order such efforts to be unnecessary or to cease due to the presence of certain circumstances set out in 7B-507.</p>	<p>Hearing may be informal (with respect to Rules of Evidence) and the court can consider hearsay evidence that is relevant and reliable.</p> <p>The statute does not place the burden of proof on any party but states that sufficient evidence must be presented to enable the court to make a determination regarding best interest.</p>	<p>The judge must decide whether the child should be returned home or placed outside the home according to the best interests of the child. The judge must also determine:</p> <ul style="list-style-type: none"> • where the child should be placed • what services the child should receive • what services the parent(s) should receive • what kind of visitation is appropriate • what directives to make to the parent concerning expected changes or accomplishments on the part of the parent that would place him or her in a better position to care for a child (but cannot order parent to do things unless statute permits) • any other details pertaining to the above or to the needs of the child or parents.

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Statute/Event	Timing	Criteria or Factors Considered	Procedural Requirements	Decisions to Be Made
Review Hearings 7B-903, 7B-906	Must be held within 90 days from date of the dispositional hearing if child is removed; every 6 months thereafter.	Same considerations as for dispositional hearings, plus the court will consider the following: <ul style="list-style-type: none"> • Whether certain services have been provided, what the response has been to such services, and whether additional services are needed. • Whether the parent has complied with court directives. 	Same procedural requirements as for dispositional hearings.	Same decisions as in dispositional hearings.
Permanency Planning Hearing 7B-907	<p>In cases of removal, required within 12 months after initial order removing child, and subsequent hearings are at least every 6 months thereafter.</p> <p>Also required within 30 days of a judge's decision in any hearing that reasonable efforts are not required or shall cease.</p>	<ol style="list-style-type: none"> (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. 	<p>Same as for dispositional and review hearings.</p> <p>May be combined with regular review hearing, but must meet requirements of 7B-907.</p>	<p>The judge must 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 make any disposition authorized by 7B-903.</p> <p>Whether reasonable efforts have been made or whether the court may order such efforts to be unnecessary or to cease due to the presence of certain circumstances set out in 7B-507.</p> <p>If the child is not returned home, the judge shall enter an order directing DSS to carry out the plan and document the steps in the plan.</p> <p>If the child has been outside the home for 12 of most recent 22 months or meets any other criteria set out in 7B-907(d), the judge shall order DSS to initiate TPR proceedings unless the exceptions in 7B-907(d) are met. Such TPR petition shall be filed within 60 days of the permanency planning hearing.</p>

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Statute/Event	Timing	Criteria or Factors Considered	Procedural Requirements	Decisions to Be Made
Termination of Parental Rights Hearing 7B-1100 through 7B-1112	<p>DSS ordered or required to initiate termination proceedings in cases involving certain circumstances set out in 7B-907(d) or upon the initiative of DSS or the GAL when circumstances warrant termination.</p> <p>Must be held within 90 days of filing petition or motion for termination (effective for actions pending or filed on or after 1/1/02)</p>	<p>Are facts sufficient to show that grounds for terminating the parental rights of the parent exist as set out in 7B-1111?</p> <p>Whether or not grounds exist, is it in the best interests of the child to terminate parental rights?</p>	<p>The termination hearing is a bifurcated process. First, there is an adjudicatory hearing to determine whether grounds for termination exist. At the adjudicatory hearing the formal rules of evidence apply, the burden is on DSS, and the standard is by clear, cogent and convincing evidence.</p> <p>Following adjudication is the dispositional phase of the case where the court makes a determination as to best interest. The petitioner does not carry a burden, the court makes a discretionary determination, and the formal rules of evidence may not apply.</p>	<p>The judge must determine whether grounds for termination exist and whether it is in the best interest of the child to terminate.</p> <p>If a determination is made that grounds do not exist or that it is not in the best interest of the child to terminate, the judge must dismiss the case.</p> <p>The judge must decide where the child should be placed.</p>
Post-termination of parental rights placement court review 7B-908	<p>Within 6 months of the date of termination and every 6 months thereafter until child is adopted.</p>	<ol style="list-style-type: none"> 1. The adequacy of the plan developed by DSS or a child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan; 2. Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and 3. The efforts previously made by DSS or other agency to find a permanent home for the child. 	<p>Procedural requirements are the same as in dispositional and review hearings. Hearing may be informal (with respect to Rules of Evidence) and the court can consider hearsay evidence that is relevant and reliable.</p>	<p>The court, after making findings of fact, shall affirm the plans for the child or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.</p> <p>The court has the authority to make any dispositional option provided in 7B-903.</p>

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STATUTES

§ 7B-100. Purpose

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

- (1) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;
- (2) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family.
- (3) To provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence; and
- (4) To provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents.
- (5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time.

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, § 5, eff. June 4, 2003.

§ 7B-101. Definitions

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles.--Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14- 177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and

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G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances.--Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker.--Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk.--Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Community-based program.--A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(6) Court.--The district court division of the General Court of Justice.

(7) Court of competent jurisdiction.--A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) Criminal history. -- A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian.--The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(9) Dependent juvenile.--A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director.--The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

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(11) District.--Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. -- A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. -- A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge.--Any district court judge.

(13) Judicial district.--Any district court district as established by G.S. 7A-133.

(14) Juvenile.--A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(15) Neglected juvenile.--A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner.--The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor.--The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts.--The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(18a) Responsible individual. -- An individual identified by the director as the person who is responsible for rendering a juvenile abused or seriously neglected.

(19) Safe home.--A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(20) Shelter care.--The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(21) Substantial evidence. -- Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. -- Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed

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for transactions.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998- 229, §§ 1, 18, eff. July 1, 1999; S.L. 1999-190, § 1, eff. June 18, 1999; S.L. 1999-318, § 1, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2005-55, § 1, eff. Oct. 1, 2005; S.L. 2005-399, § 1, eff. Oct. 1, 2005.