

CHAPTER 10

THE PRE-PETITION STAGE AND THE ROLE OF DSS

Table of Contents

Sec.		
10.1	How a Case Enters the Court System.....	345
	A. Stage 1: Reporting Suspected Abuse, Neglect, or Dependency	345
	B. Stage 2: Screening Reports of Suspected Abuse, Neglect, or Dependency	345
	C. Stage 3: Investigating Reports of Suspected Abuse, Neglect, or Dependency.....	345
	D. Stage 4: Intervening in Confirmed Cases of Abuse, Neglect, or Dependency.....	345
	E. Stage 5: GAL Appointment and Court Involvement Commence	346
10.2	The Role and Responsibilities of DSS	346
	A. The DSS Family Support and Child Welfare Manual.....	346
	B. How DSS Fits into the Child Welfare System	346
	C. Organizational Structure of DSS	347
	D. The Focus of DSS: Stabilizing Family Life	347
	E. DSS Responsibilities and Children’s Services Standards.....	348
	F. Failure of DSS to Provide Child Welfare Services in Accordance with the Law.....	348
	G. DSS Operational Issues of Common Interest to GAL Attorney Advocates	348
	1. Voluntary placement.....	348
	2. Average caseloads.....	348
	3. Division of responsibilities between DSS and mental health agencies.....	349
	4. Placement Resources.....	349
	5. Child Placement Services.....	350
	6. The relationship between services and placement	351
	7. Frequency of contact by caseworkers	351
	H. Financial Support of Child	352
10.3	The Relationship Between DSS and GAL: DSS Policy and Inquiries	353
	A. Introduction	353
	B. Distinguishing Policy, Law, and Personal Perspective in Social Services Agencies	353
	1. Ascertaining the reasons behind a DSS decision	353
	2. Understanding DSS policy.....	354
	C. List of Children’s Program Representatives.....	354
10.4	Multiple Response System.....	355
	A. Introduction.....	355
	B. Effects of MRS on the GAL.....	355
10.5	The Responsible Individuals List.....	356
	A. Introduction	356
	B. Notice to Individual Responsible for Abuse or Severe Neglect.....	356
	C. Request for Expunction	356
10.6	Glossary of Common Terms Used by DSS.....	357
10.7	Common Forms Used by DSS	360

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

STATUTES

7B-300 Protective services..... 361
7B-301 Duty to report abuse, neglect, dependency, or death due to maltreatment..... 361
7B-302 Investigation by director; access to confidential information; notification of person making the
report 361
7B-303 Interference with investigation..... 363
7B-304 Evaluation for court..... 364
7B-305 Request for review by prosecutor..... 364
7B-306 Review by prosecutor..... 364
7B-307 Duty of director to report evidence of abuse, neglect; investigation by local law enforcement;
notification of Department of Health and Human Services and State Bureau of Investigation 365
7B-308 Authority of medical professionals in abuse cases..... 365
7B-311 Central registry; responsible individuals list..... 367
7B-320 Notification to individual responsible for abuse or substantial neglect 367
7B-321 Requests for expunction; director review..... 368
7B-322 District attorney review expunction request..... 369
7B-323 Petition for expunction; district court..... 370
7B-324. Persons ineligible to request expunction; stay of expunction proceeding pending juvenile court case .. 371
7B-401 Pleading and process 371
7B-403 Receipt of reports; filing of petitions 371
7B-404 Immediate need for petition when clerk’s office is closed..... 372

PRE-PETITION STAGE AND ROLE OF DSS

§ 10.1 How a Case Enters the Court System¹

A. STAGE 1: Reporting Suspected Abuse, Neglect, or Dependency

Someone in the community reports to the Department of Social Services (DSS) that he or she suspects a child is being abused or neglected or is dependent.

1. “Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing . . .” [N.C.G.S. 7B-301-see statute at the end of this chapter for further detail] No privilege can be grounds for failing to report except when knowledge is gained by an attorney during representation in the abuse, neglect or dependency case. [7B-310]

2. People making such reports are immune from liability if they cooperate with inquiry and investigation and act in good faith. [7B-309] Regarding immunity, see *Davis v. Durham City Schools*, 91 N.C. App. 520 (1988)(where principal was granted immunity after reporting suspected abuse); *Dobson v. Harris*, 352 N.C. 77 (2000)(issue of immunity was discussed when store clerk reported customer to DSS).

B. STAGE 2: Screening Reports of Suspected Abuse, Neglect, or Dependency

1. DSS investigates and then moves forward with the case whenever the allegations, if proved to be true, would fit the legal definition of abuse, neglect, or dependency and the alleged perpetrator is a caretaker, as defined by law. DSS must inform the reporter as to the action being taken. [7B-302]

2. In circumstances in which the allegations would not fit the legal definition of abuse, neglect, or dependency, the reporter is notified within five days that there will be no DSS investigation. DSS will refer the reporter to outreach services or other agencies as appropriate. [7B-302]

C. STAGE 3: Investigating Reports of Suspected Abuse, Neglect, or Dependency [7B-302]

1. DSS does an “investigative assessment” (investigation) of the report to determine the facts, the extent of the abuse or neglect, and the risk of harm to the child. If the DSS investigative assessment does not substantiate abuse or neglect, the case is closed.

2. The person making the initial report of abuse or neglect has the right to pursue a review by the prosecutor if DSS decides not to petition the court. [7B-302, 7B-305, 7B-306]

D. STAGE 4: Intervening in Confirmed Cases of Abuse, Neglect, or Dependency [7B-302]

1. If the DSS investigative assessment confirms abuse or neglect, which occurs in about 32 out of 100 cases, DSS then determines whether protective services should be provided or if a petition must be filed. Petitions are filed when DSS needs the court to intervene on the child’s behalf to eliminate the risk that child maltreatment will recur, or when the child should be removed from her or his home to ensure the child’s safety.

¹ The following section is short summary of the pre-petition process adapted from the GAL Volunteer Training Manual. Please see 7B-300 through 7B-311 for much greater detail on this process.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

2. If DSS finds evidence of abuse or any kind of physical harm by a parent or anyone else, such findings must be reported to appropriate law enforcement and the district attorney. [7B-307]

E. STAGE 5: GAL Appointment and Court Involvement Commence

Once a petition is filed, a GAL *must* be appointed when the petition alleges abuse or neglect and *may* be appointed where the petition alleges dependency. [7B-601] The matter is now a juvenile court case.

§ 10.2 The Role and Responsibilities of DSS

A. The DSS Family Support and Child Welfare Manual

The State Division of Social Services has a **Family Support and Child Welfare Manual**, providing information and guidance to social services agencies and social workers dealing with families and children. The hard-copy version of the manual is enormous and includes detailed explanations of all of the children's services standards in addition to a wealth of valuable information. There is also an online manual called the Family Support and Child Welfare Manual and although it is not as comprehensive, *many of the questions an AA or GAL is likely to have concerning DSS, DSS policy, or the foster care system can be answered by going to the online manual at:*

<http://zeus.dhhs.state.nc.us/olm/manuals/manuals.aspx?dc=dss>. (Note: At times, websites are updated or change; however, the manual should be located by searching NC DHHS Manuals Division of Social Services). This online manual is an excellent resource in comparing the policies of the North Carolina Department of Health and Human Services with local DSS district practice, and being knowledgeable of policies allows the GAL to ask appropriate questions regarding services.

The information in this chapter is a mere overview of some aspects of DSS role and responsibilities. For more detail, the Family Support and Child Welfare Manual should be consulted.

See § 10.3 below, in this chapter, for information on the relationship between DSS and the GAL as well as information on understanding and ascertaining DSS policy.

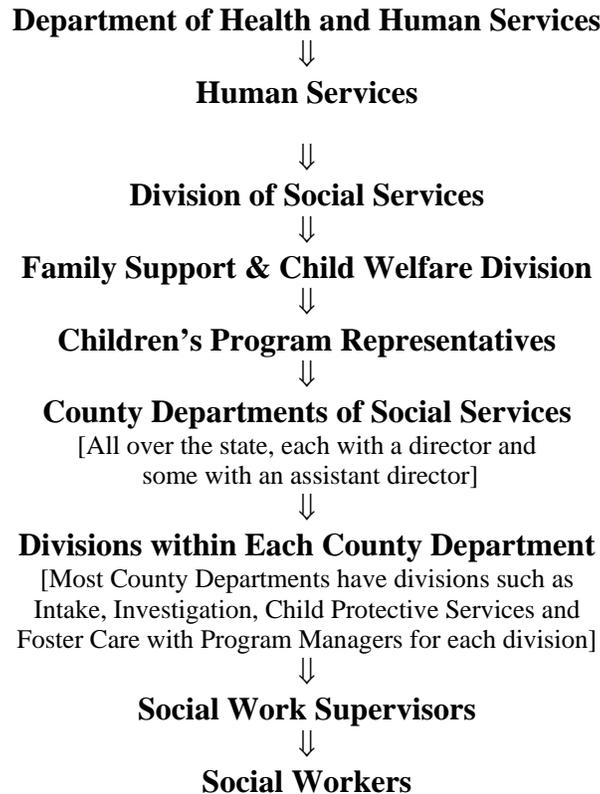
B. How DSS Fits into the Child Welfare System

The Department of Social Services, or, more specifically, the director of social services and the staff that he or she delegates, is charged, under G.S. 108A-14(a)(11), with the duty of investigating reports of child abuse and neglect and of taking appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B. In North Carolina, DSS agencies are administered at the county level and supervised by the state Department of Health and Human Services (Division of Social Services). [G.S. 108A-1] There is a principal-agent relationship between the Department of Health and Human Services pursuant to G.S. 108A-14. *In re J.L.H.*, --- N.C. App. ---, 645 S.E.2d 833 (2007)(dismissing appeals by county departments of social services of court order that transferred custody of juveniles to them due to principal-agent relationship between DHHS and the local agencies that rendered the appeal a nullity). *See also* accompanying sibling case, *In re Z.D.H.*, --- N.C. App. ---, 646 S.E.2d 374 (2007).

PRE-PETITION STAGE AND ROLE OF DSS

C. Organizational Structure of DSS

The structure below reflects the general flow of supervision, but it is important to keep in mind that individual county departments of social services set their own policies and procedures and run their own agencies. In other words, those who run county DSS agencies are employees of the county, not of the state, though the agencies operate as agents of the state.



The state Division of Social Services and the Family Support and Child Welfare Division provide supervision to county agencies through the issuance and interpretation of policies, standards, and methods designed to carry out the purposes of federal and state laws and rules adopted by the Social Services Commission. Supervision also includes consultation and technical assistance and reviewing, training, monitoring, and establishing corrective action as necessary to ensure that policies, standards, and methods are in operation to achieve equity and quality of service to clients. Direct operation of each county program is carried out by the individual agency, however, and each agency has its own policies and procedures.

D. The Focus of DSS: Stabilizing Family Life

The role of DSS is different from that of the Guardian ad Litem Program. By statute, DSS is charged with the responsibility of providing services to improve the quality of child care, to help the parents be more adequate parents or caretakers, and to preserve and stabilize family life. [G.S. 7B-300] DSS is therefore focused on stabilizing family life. In other words, although theoretically it is primarily

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

concerned with the welfare of the child, DSS cannot focus solely on the child and must work with the needs of all family members. The Guardian ad Litem Program, however, focuses specifically on the needs and best interests of the child (or children), and, consequently, will not always agree with the plan and recommendations of DSS.

E. DSS Responsibilities and Children's Services Standards

A social worker's numerous responsibilities in a given case are detailed primarily in Articles 3 and 4 of the Juvenile Code, some of which are set out at the end of this chapter. For more information on DSS standards and responsibilities, see "*Standards for Children's Services Delivery*," also at the end of this chapter. County agencies are expected to follow these guidelines set forth by the state Division of Social Services and the Children's Services Section, to help ensure that they carry out the law and utilize best practice methods. Detailed explanations of these standards can be found in the *DSS Family Support and Child Welfare Manual* referenced above.

F. Failure of DSS to Provide Child Welfare Services in Accordance with the Law

G.S. 108A-74 outlines the remedy for and procedure to address a failure on the part of DSS to provide protective services, foster care services, or adoption services in accordance with the law, or for failing to demonstrate reasonable efforts to do so. Such failures are first addressed with monitoring, special assistance, corrective planning, and advising by the Department of Health and Human Services (DHHS). If this does not bring about improvements in sixty days, state and federal funding can be withheld or DHHS can contract with other public or private agencies to provide such services.

G. DSS Operational Issues of Common Interest to GAL Attorney Advocates

1. Voluntary placement

a. Occasionally, DSS does not file a petition but places a child outside the home pursuant to a voluntary placement agreement with the parent(s). Since no petition is filed, a GAL is not involved with the case and the parents are not represented. The only involvement the court has in such placements is pursuant to **G.S. 7B-910**, which directs the court to determine

- the voluntariness of the placement,
- the appropriateness of the placement,
- whether the placement is in the child's best interest, and
- the types of services that have been or should have been provided the child's parents or caretaker.

b. At times the voluntary placement breaks down and the case ends up in court anyway. When this happens, the case before the court is often more difficult because the original problems have become more remote in time, and in the absence of judicial or GAL involvement, there is probably less concrete evidence to bring before the court.

For more information on voluntary placements, see § 1.6.D.

2. Average caseloads

According to the Children's Services Program Management Standards, average caseload standards shall be no greater than the following:

- Investigative Assessment: 1:12 families
- Child Protective Services Case Planning and Management: 1:12 families

PRE-PETITION STAGE AND ROLE OF DSS

- Foster care and adoption caseloads: 1:15 children; and licensure: 1:32 families, foster or adoptive

The supervisor/worker ratio shall not exceed 1:5.

3. Division of responsibility between DSS and mental health agencies ²

There is no clear-cut line drawn between mental health and DSS agencies to divide certain responsibilities that relate to issues of mental health for children and families. In general, when DSS believes that certain needs can best be addressed by the local mental health agency, DSS will seek services from that agency (many of the children in DSS custody are on Medicaid, and mental health is usually the only agency that can serve them). However, DSS may choose to contract with private providers rather than to use mental health agencies. Problems may arise, however, if the mental health agency is unavailable during certain hours, or if the agency cannot see the individual on a sufficiently frequent basis to meet the individual's needs. In addition, DSS and mental health may disagree as to the needs and required services for an individual. While agencies try to come to agreement on disputed issues, if there are differences that can't be resolved between the two agencies, each would make its recommendations to the court to let the judge make the final decision.

4. Placement Resources ³

When a child must be placed out of the home, placement resources include:

- a foster family home or group home licensed by the N.C. Department of Health and Human Services;
- a private, non profit child caring institution that is licensed or approved by the N.C. Department of Health and Human Services and is in compliance with Title VI of the Civil Rights Act;
- a foster care facility which is under the auspices of a licensed or approved private child care or child placing agency. Such foster care services programs must have been licensed by the N.C. Department of Health and Human Services and be in compliance with Title VI of the Civil Rights Act;
- a foster care facility that is licensed by the N.C. Department of Health and Human Services as a public or private group home and is in compliance with Title VI of the Civil Rights Act;
- a licensed or approved foster care facility located in another state when the placement is made in compliance with the Interstate Compact on the Placement of Children. The other state must agree to supervise the child and the facility must be in compliance with Title VI of the Civil Rights Act; or
- an unlicensed home that is approved by the court and designated in the court order.

² Note: this section was written before the dissolution of local mental health agencies resulting in the privatization of mental health service providers. Services vary from community to community and often depend on Local Mental Health Entities (LME's) that act as gatekeepers to services. The general message of this section is the same in that DSS agencies may defer individuals to local, but private, mental health facilities that take Medicaid.

³ From the North Carolina Department of Social Services Online [Family Support and Child Welfare Manual](#), Chapter IV, Section 1201, accessed August 2005.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

5. Child Placement Services⁴

Child placement services shall be provided to any child in the custody or placement responsibility of a County Department of Social Services. The agency shall provide regular community awareness and public education programs on: recognizing an reporting abuse, neglect, and dependency, an community coordination and cooperation in service provision. (Refer to Section 1201 of the Children's Services Manual, the Yellow Pages, page vii for more information about cultural competence.)

Child placement services include but are not limited to:

- Services to protect children in their own homes, strengthen families, and prevent out-of-home placement;
- Careful planning and decision making with the family about placement, when necessary;
- Assessing children's needs to ensure appropriate placement and services;
- Arranging and monitoring a placement appropriate to the child's needs;
- Involving the kinship network to provide planning, placement and other support for the child and family;
- Developing and arranging community-based services to support the child and family;
- Collaborating with other community service providers working with the family to ensure continuity of services and to prevent duplication of services;
- Referring the child and family to needed services, including clinical treatment;
- Providing treatment services, as appropriate;
- Preparing the child, the child's family, and the foster family for separation and placement, including negotiating and preparing visitation agreements;
- Assessing family strengths and needs to determine the appropriate plan for service;
- Providing ongoing risk assessment to determine risk to the child and to guide the case planning process;
- Working with the family to develop and implement the Out of Home Family Services Agreement;
- Monitoring and updating the Out of Home Family Services Agreement with the family;
- Providing case planning and management;
- Concurrent permanency planning with the family to develop alternative options to provide a permanent home for a child should reunification fail;
- Helping the family meet Out of Home Family Services Agreement objectives by providing information, instruction, guidance and mentoring on parenting skills;
- Providing counseling to the child and family to help the child and family cope with the grief resulting from the separation and placement;
- Arranging medical examinations and other services for the child;
- Supervising foster care facility to ensure that the child receives proper care during placement;
- Maintaining contact with the family and others significant to the case;
- Preparing for and participating in court proceedings;
- Maintaining a close working relationship with the agency attorney for guidance in the legal process;
- Periodically reviewing the Out of Home Family Services Agreement;
- Preparing for and facilitating Permanency Planning Action Team meetings;

⁴ From the North Carolina Department of Social Services Online [Family Support and Child Welfare Manual](#), Chapter IV, Section 1201, accessed August 2005.

PRE-PETITION STAGE AND ROLE OF DSS

- Providing transportation for children in foster care when needed and not otherwise available, including visits with parents, siblings, and relatives;
- Providing LINKS to assist older youth in learning life skills necessary to make a successful transition from foster care to living on his or her own;
- Ensuring that foster care placements across state lines are in compliance with the Interstate Compact on the Placement of Children;
- Recruiting, developing and supervising foster care families and child care facilities;
- Recruiting and assessing relatives and other kin as potential caregivers;
- Assessing and periodically reassessing foster care homes and facilities to determine if the home or facility meets the needs of the children it serves;
- Providing consultation, technical assistance, and training to assist foster families and foster care facilities to expand and improve the quality of care provided;
- Involving foster parents in the planning and decision making for children in foster care;
- Facilitating foster/adopt options for children and preparing foster/adoptive parents;
- Preparing children for adoptive placements and maintaining life books; and
- Maintaining the foster care case record and thorough documentation of case activities.

6. The relationship between services and placement

Services available to meet the needs of the child are not dependent on the child's type of placement. Whether the child is placed in a foster family, group home, with a relative, or in any other type of placement, the child should have the same opportunity for needed services. However, in any kind of placement, it is incumbent on the caregiver to bear a certain amount of responsibility to connect the child with necessary services. For example, group homes or foster parents who have physical custody of the child may agree to provide the child with therapy or transport the child to a service provider. The quality of that therapy and the consistency in getting the child to the service provider, however, will vary from placement to placement. As such, some disparity is inevitable in the quality and frequency of services received. It should be noted, however, that funding sources and amounts can vary depending on the type of placement (foster care vs. custody vs. guardianship, etc. . .) or certain eligibility factors of the child. For more information on this topic, see Subsection H below in this chapter, as well as "Permanency Options" in the appendix to this manual.

7. Frequency of contact by caseworkers ⁵

a. Immediately following substantiation: A social worker is expected to see a family within one week after substantiation of abuse, neglect, or dependency. A social worker is expected, at a minimum, to have face-to-face contact with both the child and the family at least twice a month and to have contact with a person or persons significant to the case twice a month as appropriate.

b. Once a child is placed out of the home: A social worker is expected to have face-to-face contact with the child and the caregiver at least once within the first week of initial and subsequent placement, then face-to-face contact with the child at least monthly. (See Children's Services Standards for exceptions.) When reunification is the permanent plan, a social worker is expected to have at least one face-to-face contact per month with the parent or persons from whom the child was removed, unless more frequent contact is needed. (Less frequent contact must be approved.) The social worker is expected to have contact at least twice per month with

⁵ Information obtained from Children's Services Program Management Standards.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

a person or persons significant to the case, unless more frequent contact is needed. Less frequent contact must be documented and approved.

H. Financial Support of Child

1. Introduction and practical considerations

While local departments of social services usually handle financial support for GAL child-clients in their custody, it is the GAL's job to advocate for expenditures that meet the child's needs when the GAL observes a need that is not being met. A child is entitled to child support from a parent who is able to pay it, but DSS and the court deal with such support obligations when the child is in DSS custody, and the money is used to offset DSS expenditures for the child.

DSS should be able to finance services and goods that are necessary to meet the child's basic needs. No checklist or chart outlines all of the possible "basic needs" of an individual child which is why disagreement sometimes arises about whether certain services or goods should be obtained by and paid for by DSS. DSS agencies are primarily funded by the same sources. Some agencies get additional funding from other sources. This puts agencies in varying positions when it comes to their ability to pay for certain services and goods for their clients. It is effective advocacy to ask questions regarding local funding and how it compares to state policies.

Sometimes the GAL and DSS disagree about which services or goods the agency should provide. The GAL may be confused about whether DSS is unable or unwilling to provide them. When disagreement occurs, every attempt should be made to work with the caseworker and DSS supervisor to discuss in detail the child's needs and the reasons behind DSS's position to make sure everyone has the same information. If agreement cannot be reached, the issue may be brought before the court for a decision by the judge. [For a discussion of how a GAL or AA should handle policy inquiries, see § 10.3, below, in this chapter.]

2. Foster Care Funding⁶

a. Introduction: All eligibility determinations, whether for Title IV-E of the Social Security Act or State Foster Home Funds, must begin with the inclusion or exclusion of the child's eligibility for IV-E foster care assistance. Such eligibility will affect foster care funding. Eligibility for IV-E assistance is a somewhat complicated matter and will not be discussed here. Please consult the online DSS Family Support and Child Welfare Manual referred to in this chapter for specific information.

b. Standard board rate: The main sources of financial support for children placed out of the home and put into the foster care system are federal, state, and county funds. North Carolina has a state standard board rate (SBR) of reimbursement that is based upon the age of the child:

- 0 – 5 years of age = \$390/month
- 6 – 12 years of age = \$440/month
- 13-18 years of age = \$490/month

Of this allotment, \$15 per child is considered a personal needs monthly allowance. For costs up

⁶ Most of the information in this section was compiled from the North Carolina DHHS On-Line Manual, Family Support and Child Welfare Manual, Chapter 8, Part V, Foster Care Funding (visited 7/29/2007).

PRE-PETITION STAGE AND ROLE OF DSS

to the SBR, the counties are partially reimbursed by Federal Financial Participation (recalculated every October), and the state and counties split the remaining nonfederal share of costs.

c. Foster care costs: Foster care costs, defined by federal regulations, include the following as essentials of daily living: shelter, meals, clothing, personal incidentals, school supplies, recreation, and individual supervision, as well as some specific day care and transportation costs under certain circumstances.

Any costs that exceed the SBR are assumed by the counties or by service providers. A Social Services Block Grant, one source of funding for special services, provides monies for services for children with special needs when costs for their care exceed the SBR. Another source for additional funding is the Division of Medical Assistance, which reimburses counties for some of the costs of case management services for children at risk of abuse, neglect, or exploitation. The State Maternity Home Fund is another possible source of financial support for any North Carolina resident experiencing a problem pregnancy and unable to remain in her own home and whose financial resources are inadequate to obtain an approved living arrangement.

Title IV-E eligible children placed out of home are automatically eligible for medical assistance through Medicaid, and non-IV-E eligible children may also receive Medicaid depending on certain income factors. A child's resources can also be a source of financial support, depending on the child's IV-E eligibility. A child's resources can include SSI, SSS, trust funds, endowment, or child support paid directly to the county DSS agency.

For a discussion of funding available for various alternative placement options such as custody or guardianship, please see "Permanency Options" in the appendix to this manual.

§ 10.3 The Relationship Between DSS and GAL; DSS Policy and Inquiries

A. Introduction

The Guardian ad Litem Program as a whole and the individuals within the program work closely with departments of social services generally and with individual caseworkers and supervisors. It is to everyone's advantage to foster a positive, professional relationship between GAL and DSS, without forgetting the necessity of advocating a certain position for a child even when GAL and DSS disagree. The key to a positive relationship often lies in communication. If the GAL and the DSS caseworker are well informed about each other's perspectives on the case and the reasons behind those perspectives, they are more likely to either reach an agreement or deal positively with their differences of opinion. In other words, the GAL should not just read DSS reports, as there is no substitute for talking to the caseworker!

B. Distinguishing Policy, Law, and Personal Perspective in Social Services Agencies

1. Ascertaining the reasons behind a DSS decision

There are times when a GAL believes that a social worker should do something that the social worker is unwilling to do. The social worker's reasons for unwillingness could be rooted in DSS policy, in state or federal law, or in individual philosophy and perspective. When the GAL

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

considers the issue very important, it is critical that the GAL ascertain the reason behind the social worker's unwillingness. Once the GAL ascertains the reason, he or she can determine, with the help of the attorney advocate, whether it is possible and within the law for the social worker to take the action the GAL is requesting, whether and how hard to push, or whether granting the request is in fact impossible.

2. Understanding DSS policy ⁷

State laws govern the way abuse, neglect, and dependency cases are handled, and federal law dictates much of the language in these state laws. There are also Administrative Rules handed down by the Social Services Commission that govern abuse, neglect, and dependency cases. Federal and state law and Administrative Rules are binding on those who deal with such cases. DSS agencies also deal with policies and standards handed down by state and local authorities that they are expected to adhere to, although these policies are not considered binding as law.

The Family Support and Child Welfare Section of the state Division of Social Services sets forth policies, standards, and practice guidance for local social services agencies. Such policies and standards are based on both law and concepts of best practice. Each individual DSS agency also has its own set of policies to accommodate local practice. Local DSS agencies are subject to a biennial review by the Family Support and Child Welfare Section, which scores the agency on compliance with the Standards for Children's Services Delivery. Agencies are scored in six different areas, and if the agency scores below 80 in any given area, it is required to craft a program improvement plan. The state must approve the plan and will then follow up on it to ensure compliance. Noncompliance results in measures taken pursuant to G.S. 108A-74, discussed above in § 10.2.E.

To better understand DSS policy on a certain issue or to ask a question about what the policy is, social workers and social work supervisors should be able to explain local DSS policy. Questions about policy handed down from the state Division of Social Services via Family Support and Child Welfare can also be addressed to the Children's Program Representative (CPR) for that location. The CPR's are distributed in four field offices, so the GAL may call the applicable field office and ask for the CPA for the appropriate county.

C. Children's Program Representatives ⁸

Joy Gossett (828) 225-1028

Counties: Catawba, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania, Watauga.

Donna Beck (828) 645-3794

Counties: Anson, Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Montgomery, Richmond, Rowan, Stanly, Union

⁷ Standards for Children's Services Delivery are set forth by the state Division of Social Services through the Children's Services Section, and can be accessed at this website: http://info.dhhs.state.nc.us/olm/manuals/dss/csm-10/man/CSs1201c1-09.htm#P279_28658 (visited 7/31/07). These standards are guidelines that county agencies are expected to follow to help ensure that they carry out the law and utilize best practice methods.

⁸ These CPR County Assignments are effective January 16, 2007. Note that changes do occur. The CPR Supervisor is currently Keith Davis, 919-733-7831 ext. 279 or keith.davis@ncmail.net.

PRE-PETITION STAGE AND ROLE OF DSS

Roslyn Thompson (828) 766-9510

Counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cleveland, McDowell, Mitchell, Rutherford, Wilkes, Yancey

Joyce White (336) 315-1073

Counties: Alamance, Caswell, Davidson, Davie, Forsyth, Orange, Person, Randolph, Rockingham, Stokes, Surry, Yadkin, Guilford

Gale Trevathan (252) 937-5705

Counties: Chatham, Durham, Franklin, Granville, Halifax, Harnett, Johnston, Lee, Nash, Vance, Wake, Warren, Wilson

Susan Moss (910) 485-1439

Counties: Bladen, Brunswick, Columbus, Cumberland, Duplin, Hoke, Moore, New Hanover, Pender, Robeson, Sampson, Scotland

Jeffrey Olson (910) 397-1501

Counties: Beaufort, Carteret, Craven, Edgecombe, Greene, Hyde, Jones, Lenoir, Onslow, Pamlico, Pitt, Wayne

Janet Thursby (252) 446-2166

Counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Martin, Northhampton, Pasquotank, Perquimanns, Tyrell, Washington

§ 10.4 Multiple Response System

A. Introduction

Multiple Response System (MRS) refers to a family-centered approach to child welfare that reflects a belief that the family is its own primary source of intervention and look to family members for support in a larger social and environmental context. MRS interventions focus on assessing the family's immediate and extended community through needs assessment, resource identification, and service delivery. This family centered practice attempts to respect a family's right of self-determination and capabilities on the assumption that families have the ability to grow and change with proper supportive interventions.⁹ Note that although the family assessment response is used in any family situations where neglect is substantiated, social workers can still use the investigative assessment response for reports of child abuse and selected neglect cases.¹⁰

B. Effect of MRS on the GAL

This change in investigative philosophy that tries to strengthen families is appropriate in many situations to prevent the necessity of filing a juvenile petition, and some districts have seen a decline in filings of petitions. However, as a result of MRS in some cases, DSS has worked with the family for months exhausting community resources. A juvenile petition may then be filed because parents are not complying with their family services agreement, and it is necessary to invoke juvenile court jurisdiction to order parents to comply. Because the families have been working intensely with DSS and other community resources pre-petition without appropriate progress, the GAL must question whether reunification can in fact be successful when these supports have been exhausted. Perhaps with court-intervention, the parents can succeed in reunification; however, the GAL must explore other permanency options for the child-client as early as disposition.

⁹ Most of the information in this section was compiled from the North Carolina DHHS On-Line Manual, Family Support and Child Welfare Manual, Chapter 8, Part III, Multiple Response System (visited 7/30/2007).

¹⁰ "Family assessment response" is defined as a response to selected reports of child neglect and dependency as determined by DSS 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. 7B-101(11a)

§ 10.5 The Responsible Individuals List

A. Introduction

In addition to the requirement that the Department of Health and Human Services (DHHS) maintain a confidential central registry of abuse, neglect, an dependency cases and child fatalities resulting from alleged maltreatment [7B-311(a)], DHHS must also maintain a list of responsible individuals identified by county DSS agencies as the result of investigative assessment responses.¹¹ DHHS may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children. [7B-311(b)] Because the responsible individuals list is not confidential, as in the case of the central registry, there is an expunction process to protect due process that individuals placed on this list can invoke.

B. Notice to Individual Responsible for Abuse or Substantial Neglect [7B-320]

An individual found responsible for a determination of abuse or serious neglect must be notified in writing within five (5) working days of the completion of the investigative assessment response. The notice must include the following:

- A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.
- A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.
- A statement informing the individual that the individual's name has been placed on the responsible individuals list as provided in *G.S. 7B-311*, and that DHHS may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services.
- A clear description of the actions the individual must take to have his or her name removed from the responsible individuals list, including information regarding how to request an expunction by the director of the individual's name from the responsible individuals list and procedures for seeking review by the district attorney and for seeking judicial review of the director's decision not to remove the individual's name from the list.

C. Request for Expunction

1. Review by director. Within thirty (30) days after notice, the responsible individual may request that the DSS director reviews the decision. *See* 7B-321 for details.

2. Review by district attorney. Within thirty (30) days of the director's refusal to expunge an individual's name, the responsible individual may request that the district attorney review the decision. *See* 7B-322 for details.

3. Petition for expunction in district court. As a final action, the responsible individual may file a petition for expunction that is heard in district court. *See* 7B-232 for details.

¹¹ "Investigative assessment response" is defined as a response to reports of child abuse and selected reports of child neglect an dependency as determined by the DSS director using a formal information gathering process to determine whether a juvenile is abused, neglected or dependent. 7B-101(11b).

PRE-PETITION STAGE AND ROLE OF DSS

§ 10.6 Glossary: Common Terms Used by DSS ¹²

Activities - The steps that the social worker and the family members take to achieve the objectives. Activities should not be confused with objectives.

Allowable costs¹³ - Foster care costs, defined by federal regulations, to provide the essentials of daily living, which include shelter, meals, clothing, personal incidentals, school supplies, recreation and individual supervision. Also, some specific day care and transportation costs are allowable costs under certain circumstances.

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, or 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....” (G.S. 7B-101(3))

Child Program – A single center or home, or a group of centers or homes, both which are operated by one owner or supervised by a common entity. (10 N.C.A.C. 9.0102)

Concurrent permanency planning¹⁴ ensures that alternative plans are developed in the event that placement prevention efforts fail. In cases of removal, alternative permanency options are developed while reunification efforts are being made. If reunification fails, an alternative permanency plan has been developed and can be implemented swiftly. It is not inconsistent to work toward reunification while building a case which will support alternative planning and alternative resolutions.

DHHS Facilities - Schools, institutions, or divisions operated by the Department of Health and Human Services.

Eligible Child Care Agency¹⁵ - An agency which has applied and qualified for a state established Facility Rate.

Facility Rate¹⁶ - State established (allowable) cost of care for eligible child care agencies.

Family Centered Practice¹⁷ - Family centered practice is a social work approach to services that departs significantly from traditional individualized practice approach. Traditional social work services typically focus on the individual and are provided in an office setting. Practitioners tend to be specialists who assess needs and develop strategies to help the individual cope more effectively with his/her environment. Services tend to be intangible services such as counseling, guidance, treatment, assessment, and referral. In contrast, family centered practice focuses on the family with full knowledge and appreciation for its dynamics. The social worker goes to the family's home and/or community to provide or arrange for services. The practitioner is flexible in weaving together a comprehensive service delivery system that involves the family's resources,

¹² Some of the definitions in this glossary are drawn from the DSS Family Support and Child Welfare Manual accessed online August 2005.

¹³ From the North Carolina Department of Social Services Family Support and Child Welfare Manual, Chapter IV, Section 1203, accessed August 2005.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

community resources, and public resources. Services reflect the needs of the family, from the tangible to the intangible. The family-centered services practitioner values family resources, respects diversity among families, supports parental efforts to care for their children, and approaches crises as opportunities for change.

Family Risk Assessment - The formal assessment completed after a CPS report is substantiated and at other points in the case. The term *Family Risk Assessment*, when capitalized, refers to the worksheet itself. When the term *risk assessment* is not capitalized, it refers to the concept of assessing risk to the child any time. [See the Risk Assessment Worksheet at the end of this chapter]

Family Services Case Plan, Part A (formerly known as an intervention plan) - The plan of action developed by the treatment social worker and the family that addresses the issues identified in the initial, and subsequently developed, risk assessments. [See the Family Services Case Plan, Forms, at the end of this chapter.]

Family Services Case Plan, Part AA - The plan of action and underlying reasons for pursuing permanency other than reunification. See this case plan at the end of this chapter.

Family Services Case Plan, Part B - This part of the case plan deals with placement. It is a tool for documenting the appropriateness of the permanent plan as well as the present placement, and provides the opportunity to document the partnership with the placement provider. See this case plan at the end of this chapter.

Family Services Case Plan, Part C - A form to involve the team (parents, relatives, social workers, placement providers, and community members) in examining, assessing, and reviewing the placement of the child(ren) and the various aspects of that placement.

Family Services Case Plan, Part D - Case plan for independent living.

Federal Financial Participation (FFP)¹⁸ - The percentage of foster care reimbursement that is available from Title IV-E for Title IV-E eligible children who are in licensed foster care placements.

Foster care placement¹⁹ is *temporary substitute care* provided to a child who must be separated from his or her own parents or caretakers when the parents or caretakers are unable or unwilling to provide adequate protection and care. A child in foster care is a child for whom a licensed public or private child placing agency has legal custody and/or placement responsibility, whether or not he/she has been removed from his/her home.

Child placement services are designed to:

- strengthen, preserve and/or reunite families after children have come into agency custody or placement responsibility by helping families improve the conditions in the home that caused agency intervention;
- ensure a single, stable, safe, nurturing, and appropriate temporary living arrangement for children removed from their homes;
- achieve an alternative safe, permanent home for all children in agency custody or placement responsibility who cannot return home.

Every child needs and deserves a stable, permanent home that is safe and that provides love, care, and nurture. Most children are best served by remaining in the custody of their own families. Therefore, foster care placement shall not be considered until reasonable efforts have been made to preserve a child's safety, health, and well-being in his or her own home.

Foster Child - An individual less than eighteen years of age who has not been emancipated under the

¹⁸ *Id.* at Chapter IV, Section 1203.

¹⁹ *Id.* at Chapter IV, Section 1201.

PRE-PETITION STAGE AND ROLE OF DSS

provisions of Chapter 7B of the General Statutes . . . who is dependent, neglected, abandoned, destitute, orphaned, delinquent, or otherwise in need of care away from home and not held in detention. Individuals who have reached their eighteenth birthday and sign a voluntary boarding home agreement in order to remain in foster care do not meet the definition of foster child for the purposes of child protective services.

Goal - The comprehensive, overall, long-term outcome toward which all Family Services Case Plan, Part A (Intervention Plan) objectives and activities are directed. It is a broad, descriptive statement. There will be only one goal identified in each Family Services Case Plan, Part A (Intervention Plan).

Group Home - “A residential child-care facility operated either under public or private auspices which receives twenty-four hour care for no more than nine children. This number includes the care givers’ own relatives under the age of 18. The composition of the group shall include no more than two children under the age of two, four children under the age of six, and six children under the age of twelve. A group home shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.” (10 NCAC 41S .0201)

Intervention Plan - Former term for what is now known as the Family Services Case Plan (see definitions above).

Legal Risk Placement or Legal Risk Home - Placement in a pre-adoptive situation prior to clearance for adoption. The term *legal risk* refers to the risk in the permanence of a placement because the child has not been legally cleared for adoption by termination of parental rights or other legal prerequisites.

Objective - A statement that describes a specific, desired outcome. It is more specific than a goal and specifies exactly what change is wanted. Theoretically, there can be an unlimited number of objectives in Family Services Case Plan, Part A.

Permanence²⁰ is defined as a life-long family relationship with at least one adult that promotes a sense of mutual belonging and is legally secure. A legally secure placement is defined as a placement in which the direct caregiver has the legal authority to make parental decisions on behalf of the child; e.g. return to the birth parents, assignment of legal custody or legal guardianship of the person of the child, or adoption of the child.

Protection Plan - A temporary plan of care for the child that will usually be completed by the investigation social worker before the transfer of the case to the treatment social worker. It is not the Family Services Case Plan. CPS Intake and Investigation Standard #12 - As appropriate, a protection plan shall

- be developed jointly with the family;
- be in writing;
- specifically address the removal of the condition, situation, or persons that threaten the safety or well-being of the child.

Residential Child-Care Facility - Staffed premises with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children’s camps that provide foster care.

Residential Therapeutic Camp - A residential treatment facility in a camping environment which is designed to help individuals develop behavior control, coping skills, self-esteem, and interpersonal skills. Services may include supervised peer interaction, provision of healthy adult role models, and supervised recreational, educational and therapeutic experiences. The facilities typically serve children and adolescents who are emotionally disturbed or who have mental retardation or other developmental disabilities.

²⁰ *Id.*

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

Residential Treatment Facility - A facility which provides a structured living environment for children and adolescents who are primarily mentally ill and who may also be multi-handicapped and for whom removal from home is essential to facilitate treatment. Services are designed to address the functioning level of the child or adolescent and include training in language or communication skills, social relationships, and recreational skills.

Safe Home:²¹ - North Carolina law defines a safe home as one in which a child is not at substantial risk of physical or emotional abuse or neglect.

Standard Board Rate (SBR) - The amount of foster care funding that is established by the General Assembly, which determines the amount of state funds that will be included in the amounts established. (For example: The standard board payment for a non-IV-E eligible child, who is 15 years old, is \$415.00 per month, 50% of which is reimbursed by the state. For the same age child, who is IV-E eligible, the state match is 18.5%.)

State Foster Home Funds - A source of state funds that is appropriated to reimburse county Department of Social Services for non-IV-E eligible children in licensed foster care placements.

State Funds - A source of state funds that is appropriated to reimburse private non-profit child care agencies which are members of the State Funds Program.

Therapeutic Home - A residential facility primarily located in a private residence which provides professionally trained parent-substitutes who work intensively with individuals in providing for their living, socialization, therapeutic and skill-learning needs. The parent-substitutes have skills and training above those of alternative family living service providers and receive close supervision and support from program staff.

Title IV-E Funds²² - A source of federal funds that is available to reimburse county departments of social services and eligible child care agencies for Title IV-E eligible children in licensed foster care placements.

§ 10.7 Common Forms Used by DSS

Being familiar with the forms used by departments of social services can be helpful when reviewing DSS files. The forms can be accessed online at: <http://info.dhhs.state.nc.us/olm/forms/forms.aspx?dc=dss> (last visited 7/31/07). The following is a list of the form numbers that are commonly used in family assessments and child protective:

- dss-1402 CPS Intake Report
- dss-1789 Voluntary Placement Agreement
- dss-5106 MRS Case Tracking Form
- dss-5203 Kinship Care Initial Assessment
- dss-5201ia North Carolina Family Assessment Needs/Strengths
- dss-5231 North Carolina Safety Assessment
- dss-5239 In Home Family Services Agreement
- dss-5242ia Visitation/Contact Plan

²¹ From the North Carolina Department of Social Services DSS Family Support and Child Welfare Manual, Chapter IV, Section 1201

²² *Id.* at Chapter IV, Section 1203.

PRE-PETITION STAGE AND ROLE OF DSS

STATUTES

§ 7B–300. Protective services

The director of the department of social services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the investigation and screening of complaints, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to child care facilities as defined in G.S. 110–86.

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

§ 7B–301. Duty to report abuse, neglect, dependency, or death due to maltreatment

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B–101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's investigation of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the director shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the investigation there is reason to suspect that sexual abuse has occurred, the director shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report.

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

§ 7B–302. Investigation by director; access to confidential information; notification of person making the report

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

the report. When the report alleges abandonment, the director shall immediately initiate an investigation, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future

PRE-PETITION STAGE AND ROLE OF DSS

investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

Added by S.L. 1998–202, § 6, eff. July 1, 1999. Amended by S.L. 1998–229, §§ 2, 19, eff. July 1, 1999; S.L. 1999–190, § 2, eff. June 18, 1999; S.L. 1999–318, § 2, eff. Oct. 1, 1999; S.L. 1999–456, § 60, eff. Aug. 13, 1999; S.L. 2001–291, § 1, eff. July 19, 2001.

§ 7B–303. Interference with investigation

(a) If any person obstructs or interferes with an investigation required by G.S. 7B–302, the director may file a petition naming said person as respondent and requesting an order directing the respondent to cease such obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the investigation, shall specifically describe the conduct alleged to constitute obstruction of or interference with the investigation, and shall be verified.

(b) For purposes of this section, obstruction of or interference with an investigation means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B–302, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out the duty to investigate.

(c) Upon filing of the petition, the court shall schedule a hearing to be held not less than five days after service of the petition and summons on the respondent. Service of the petition and summons and notice of hearing shall be made as provided by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court to be a necessary party. If at the hearing on the petition the court finds by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an investigation required by G.S. 7B–302, the court may order the respondent to cease such obstruction or interference. The burden of proof shall be on the petitioner.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

(d) If the director has reason to believe that the juvenile is in need of immediate protection or assistance, the director shall so allege in the petition and may seek an ex parte order from the court. If the court, from the verified petition and any inquiry the court makes of the director, finds probable cause to believe both that the juvenile is at risk of immediate harm and that the respondent is obstructing or interfering with the director's ability to investigate to determine the juvenile's condition, the court may enter an ex parte order directing the respondent to cease such obstruction or interference. The order shall be limited to provisions necessary to enable the director to conduct an investigation sufficient to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days after the entry of an ex parte order under this subsection, a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order. An order entered under this subsection shall be served on the respondent along with a copy of the petition, summons, and notice of hearing.

(e) The director may be required at a hearing under this section to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency as required by G.S. 7B-301.

(f) An order entered pursuant to this section is enforceable by civil or criminal contempt as provided in Chapter 5A of the General Statutes.

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

§ 7B-304. Evaluation for court

In all cases in which a petition is filed, the director of the department of social services shall prepare a report for the court containing the results of any mental health evaluation under G.S. 7B-503, a home placement plan, and a treatment plan deemed by the director to be appropriate to the needs of the juvenile. The report shall be available to the court immediately following the adjudicatory hearing.

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

§ 7B-305. Request for review by prosecutor

The person making the report shall have five working days, from receipt of the decision of the director of the department of social services not to petition the court, to notify the prosecutor that the person is requesting a review. The prosecutor shall notify the person making the report and the director of the time and place for the review, and the director shall immediately transmit to the prosecutor a copy of the investigation report.

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

§ 7B-306. Review by prosecutor

The prosecutor shall review the director's determination that a petition should not be filed within 20 days after the person making the report is notified. The review shall include conferences with the person making the report, the protective services worker, the juvenile, if practicable, and other persons known to have pertinent information about the juvenile or the juvenile's family. At the conclusion of the conferences, the prosecutor may affirm the decision made by the director, may request the appropriate local law enforcement agency to investigate the allegations, or may direct the director to file a petition.

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

PRE-PETITION STAGE AND ROLE OF DSS

§ 7B–307. Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services and State Bureau of Investigation

(a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B–101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services investigation being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7B–301 involves abuse or neglect of a juvenile in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

(b) If the director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7B–101 in a child care facility, the director shall immediately so notify the Department of Health and Human Services and, in the case of sexual abuse, the State Bureau of Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the records of the department of social services.

(c) Upon completion of the investigation, the director shall give the Department written notification of the results of the investigation required by G.S. 7B–302. Upon completion of an investigation of sexual abuse in a child care facility, the director shall also make written notification of the results of the investigation to the State Bureau of Investigation.

The director of the department of social services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission.

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

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

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

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

retain custody in the facility shall exist for up to 12 hours from the time and date contained in the written certification.

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

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

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

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

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

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

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

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

PRE-PETITION STAGE AND ROLE OF DSS

§ 7B-311. Central registry; responsible individuals list

(a) The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to rules adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law.

(b) The Department shall also maintain a list of responsible individuals identified by county directors of social services as the result of investigative assessment responses. The Department may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(c) It is unlawful for any public official or public employee to knowingly and willfully release information from either the central registry or the responsible individuals list to a person who is not authorized to receive the information. It is unlawful for any person who is authorized to receive information from the central registry or the responsible individuals list to release that information to an unauthorized person. It is unlawful for any person who is not authorized to receive information from the central registry or the responsible individuals list to access or attempt to access that information. A person who commits an offense described in this subsection is guilty of a Class 3 misdemeanor.

(d) The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, including:

- (1) Procedures for filing data.
- (2) Procedures for notifying a responsible individual of a determination of abuse or serious neglect.
- (3) Procedures for correcting and expunging information.
- (4) Determining persons who are authorized to receive information from the responsible individuals list.
- (5) Releasing information from the responsible individuals list to authorized requestors.
- (6) Gathering statistical information.
- (7) Keeping and maintaining information placed in the registry and on the responsible individuals list.
- (8) A definition of "serious neglect".

Added by S.L. 1998-202 § 6; amended S.L. 1999-456 § 60; amended S.L. 2005-399 § 2 added "responsible individuals list" to the end of the section heading.

§ 7B-320. Notification to individual responsible for abuse or substantial neglect

(a) Within five working days after the completion of an investigative assessment response that results in a determination of abuse or serious neglect, the director shall notify the Department of the results of the assessment and shall give personal written notice to the responsible individual of the determination.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

(b) If personal written notice is not obtained within 15 days of the determination being made, the director shall send the notice to the responsible individual by registered or certified mail, return receipt requested, and addressed to the responsible individual at the individual's last known address. Only the responsible individual may receive the notice.

(c) The notice shall include all of the following:

(1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

(2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.

(3) A statement informing the individual that the individual's name has been placed on the responsible individuals list as provided in *G.S. 7B-311*, and that the Department of Health and Human Services may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(4) A clear description of the actions the individual must take to have his or her name removed from the responsible individuals list. The description shall include information regarding how to request an expunction by the director of the individual's name from the responsible individuals list and procedures for seeking review by the district attorney and for seeking judicial review of the director's decision not to remove the individual's name from the list.

Added by S.L. 2005-399 § 3.

§ 7B-321. Requests for expunction; director review

(a) An individual who has been identified as a responsible individual as the result of an investigative assessment response may, within 30 days after receipt of the notice under *G.S. 7B-320(c)*, request that the director who determined the abuse or serious neglect and identified the individual as a responsible individual expunge the individual's name from the responsible individuals list. A request for expunction under this subsection shall be in writing, addressed to the director who determined the abuse or serious neglect and identified the individual as a responsible individual, and delivered in person or by certified mail, return receipt requested, within 30 days after receipt of notice.

(b) Upon receipt of a timely request for expunction under subsection (a) of this section, the director shall review all records, reports, and other information gathered during the investigative assessment response. The purpose of the review is to determine whether there is substantial evidence to support the determination and the placement of the individual's name on the responsible individuals list. Within 15 working days of receipt of the request for expunction, the director shall proceed as follows:

(1) If the director decides that there is not substantial evidence in the records, reports, and other information gathered during the investigative assessment response to support a determination of abuse or serious neglect and to support the identification of the individual as a responsible individual, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list. The director shall also prepare a written statement of the director's decision and send the statement to the individual seeking expunction, by personal delivery or first-class mail.

(2) If the director decides that there is substantial evidence in the records, reports, and other information gathered during the investigative assessment response to support a determination of abuse or serious neglect and to support the identification of the individual as a responsible individual, the director may uphold or modify the

PRE-PETITION STAGE AND ROLE OF DSS

director's prior decision accordingly and refuse the request for an expunction. The director shall prepare a written statement of the director's decision including the reasons for the decision. The statement shall clearly indicate that it is a final decision and include information regarding the amount of time the individual has to request a review by the district attorney or to file a petition for expunction with the district court. The director shall send the statement to the individual seeking expunction by personal delivery or first-class mail. The director shall also include a second notice containing the information required by *G.S. 7B-320(c)* and a copy of a petition for expunction form.

(c) If the director does not provide a written response to a request for expunction within 15 working days after its receipt, the failure shall be considered a refusal to expunge the individual's name, and the individual may request a review of the decision by the district attorney or file a petition for expunction with the district court.

(d) If the director modifies the prior determination, the director shall notify the Department of Health and Human Services, which shall change its records upon receipt of the notification.

(e) An individual whose request for expunction has been refused by a director under this section may, within 30 days after receipt of the notice of refusal, request a review of the director's decision by the district attorney under *G.S. 7B-322* or file a petition requesting expunction with the district court under *G.S. 7B-323*.

Added by S.L. 2005-399 § 3.

§ 7B-322. District attorney review expunction request

(a) Within 30 days of the receipt of notice of the director's refusal to expunge the individual's name under *G.S. 7B-321(b)* or (c), the individual may request a review of the director's decision by the district attorney of the prosecutorial district in which the abuse or serious neglect report arose. The district attorney may delegate the review of the director's decision to a designee within the district attorney's office. The individual shall request a review under this section by submitting a letter directed to the attention of the district attorney. The letter shall contain the name, date of birth, address of the individual seeking expunction, and the name of the juvenile who was the subject of the determination of abuse or serious neglect. Failure to make a timely request to the district attorney to review the director's decision shall constitute a waiver of the individual's right of review by the district attorney, but shall not bar the individual from filing a petition for expunction under *G.S. 7B-323*.

(b) The director shall provide the district attorney all the information the director used in making the determination. The district attorney shall review the director's decision to refuse to expunge the individual's name from the responsible individuals list, and within 30 days' receipt of the request to review, make a determination of agreement or disagreement with the director's decision.

(c) If the district attorney determines that there is not substantial evidence to support a determination of abuse or serious neglect and to support the identification of an individual as a responsible individual, the district attorney shall notify the individual and the director in writing. The director shall notify the Department of Health and Human Services within five working days of the district attorney's determination, and the Department shall change its records upon receipt of the notification.

(d) If the district attorney determines that there is substantial evidence to support a determination of abuse or serious neglect and to support the identification of an individual as a responsible individual, the district attorney shall notify the director, and the individual in writing.

Added by S.L. 2005-399 § 3.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

§ 7B-323. Petition for expunction; district court

(a) Within 30 days of the receipt of notice of the director's decision under *G.S. 7B-321(b)* or (c), or within 30 days from the date of a determination by the district attorney under *G.S. 7B-322*, whichever is later, an individual may file a petition for expunction with the district court of the county in which the abuse or serious neglect report arose. The request shall be by a petition for expunction filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director. The petition for expunction shall contain the name, date of birth, and address of the individual seeking expunction, the name of the juvenile who was the subject of the determination of abuse or serious neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for expunction constitutes a waiver of the individual's right to file a petition for expunction and to a district court hearing.

(b) The clerk of court shall maintain a separate docket for expunction actions and upon receipt of a filed petition for expunction shall calendar the matter for hearing at a session of district court hearing juvenile matters and send notice of the hearing to the petitioner and to the director. Upon the request of a party, the court shall close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the correctness of the director's decision determining abuse or serious neglect and identifying the individual seeking expunction as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court shall have discretion to permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

(c) At the hearing, the following rights of the parties shall be preserved:

- (1) The right to present sworn evidence, law, or rules that bear upon the case.
- (2) The right to represent themselves or obtain the services of an attorney at their own expense.

(3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(d) Within 30 days after completion of the hearing, the court shall enter a signed, written order containing findings of fact and conclusions of law. A copy of the order shall be served on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence the correctness of the determination of abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director's decision and order the director to notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list. If the court concludes that sufficient evidence has not been presented to support a determination of abuse, but there is sufficient evidence to support a determination of serious neglect and the identification of the individual seeking expunction as a responsible individual, the court shall modify the director's decision and order the director to notify the Department of Health and Human Services to change the entry on the responsible individuals list to that of neglect.

(e) Notwithstanding any time limitations contained in this section or the provisions of *G.S. 7B-324(a)(3)* or (4), a district court may review a determination of abuse or serious neglect at any time if the review serves the interests of justice or for extraordinary circumstances.

(f) A party may appeal the district court's decision under *G.S. 7A-27(c)*.

Added by S.L. 2005-399 § 3.

PRE-PETITION STAGE AND ROLE OF DSS

§ 7B-324. Persons ineligible to request expunction; stay of expunction proceeding pending juvenile court case

(a) Any individual who has been identified as a responsible individual in an abuse or serious neglect case is not entitled to challenge the placement of the individual's name on the responsible individuals list if any of the following apply:

(1) The individual is criminally convicted as a result of the same incident. The district attorney shall inform the director of the result of the criminal proceeding, and the director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.

(2) The individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same incident. The director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.

(3) That individual fails to make a timely request for expunction with the director who made the determination of abuse or serious neglect and identified the individual as a responsible individual.

(4) That individual fails to file a petition for expunction with the district court in a timely manner.

(5) That individual fails to keep the county department of social services informed of the individual's current address during any request for expunction so that the individual may receive notification of the director's decisions.

(b) If, prior to or during any proceeding provided for in this section, an individual seeking expunction is named as a respondent in a juvenile court case resulting from the same incident, the director, the district attorney, the district court judge, or the Court of Appeals shall stay any further proceedings for the expunction of that individual's name from the responsible individuals list until the juvenile court case is concluded or dismissed. If a juvenile court case resulting from the same determination of abuse or serious neglect is dismissed, or concludes without an adjudication of abuse or neglect, or with an adjudication that differs from the prior determination, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list or modify the prior decision of the director accordingly.

Added by S.L. 2005-399 § 3.

§ 7B-401. Pleading and process

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

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

§ 7B-403. Receipt of reports; filing of petition

(a) All reports concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the director of the department of social services for screening. Thereafter, if it is determined by the director that a report should be filed as a petition, the petition shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.

GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL

(b) A decision of the director of social services not to file a report as a petition shall be reviewed by the prosecutor if review is requested pursuant to G.S. 7B-305.

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

§ 7B-404. Immediate need for petition when clerk's office is closed

(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent, or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an investigation required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition is required in order to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition issued under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

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