

# Hot Topics Related to TPRs & Orders Eliminating Reunification

By: Sara DePasquale  
UNC School of Government  
sara@sog.unc.edu

919 966 4289

Introduce  
the Issues

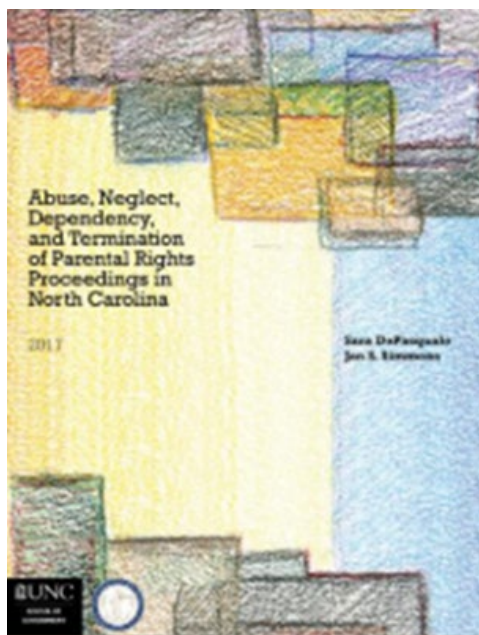


Reunification:  
Plan vs. Efforts

TPR

## On the Civil Side

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Chapter 9 +

## Child Welfare Case Compendium

New Search

Print Results

Search Terms



Termination of Parental Ri ▾

All Stages ▾

All Years ▾

Results: 106

Case Name & Citation

Case Description

# Complex Cases

Best Interest of the Child



Government  
Interests: Protect  
Child

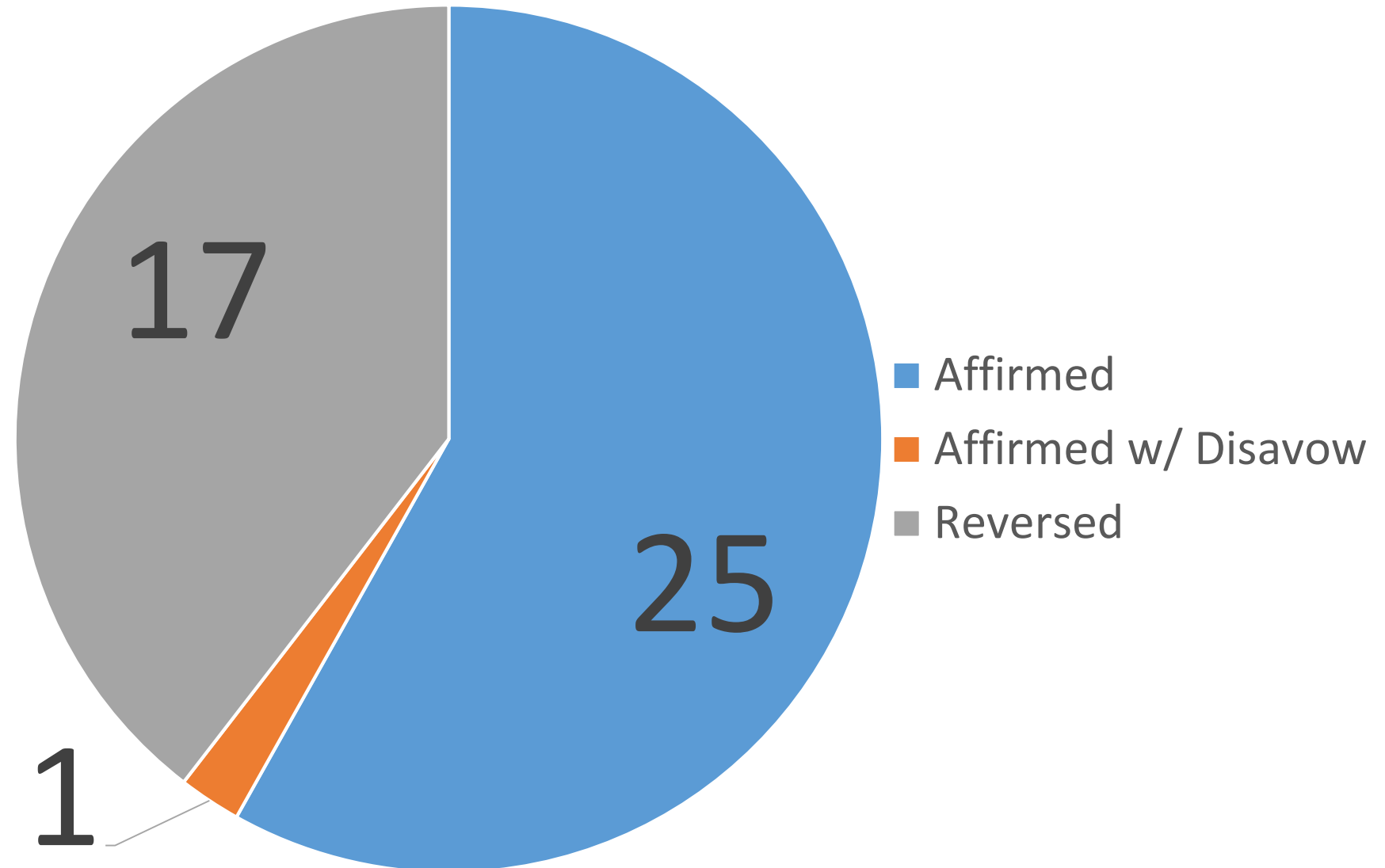
Constitutional Rights



# Trends and Warnings

- ❑ Constantly changing law
- ❑ Focus on individual words
- ❑ Findings, Findings, Findings
- ❑ Fact specific, making cases distinguishable

# See Them as Cases of First Impression



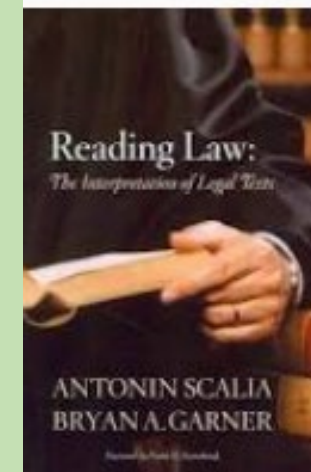
# Statutory Interpretation

## Court of Appeals

- G.S. 7B-401.1 (parties)
- G.S. 7B-101(10) (defs)
  - **DIRECTOR:** “...of the county department of social services *in the county in which the juvenile resides or is found...*”

## NC Supreme Court

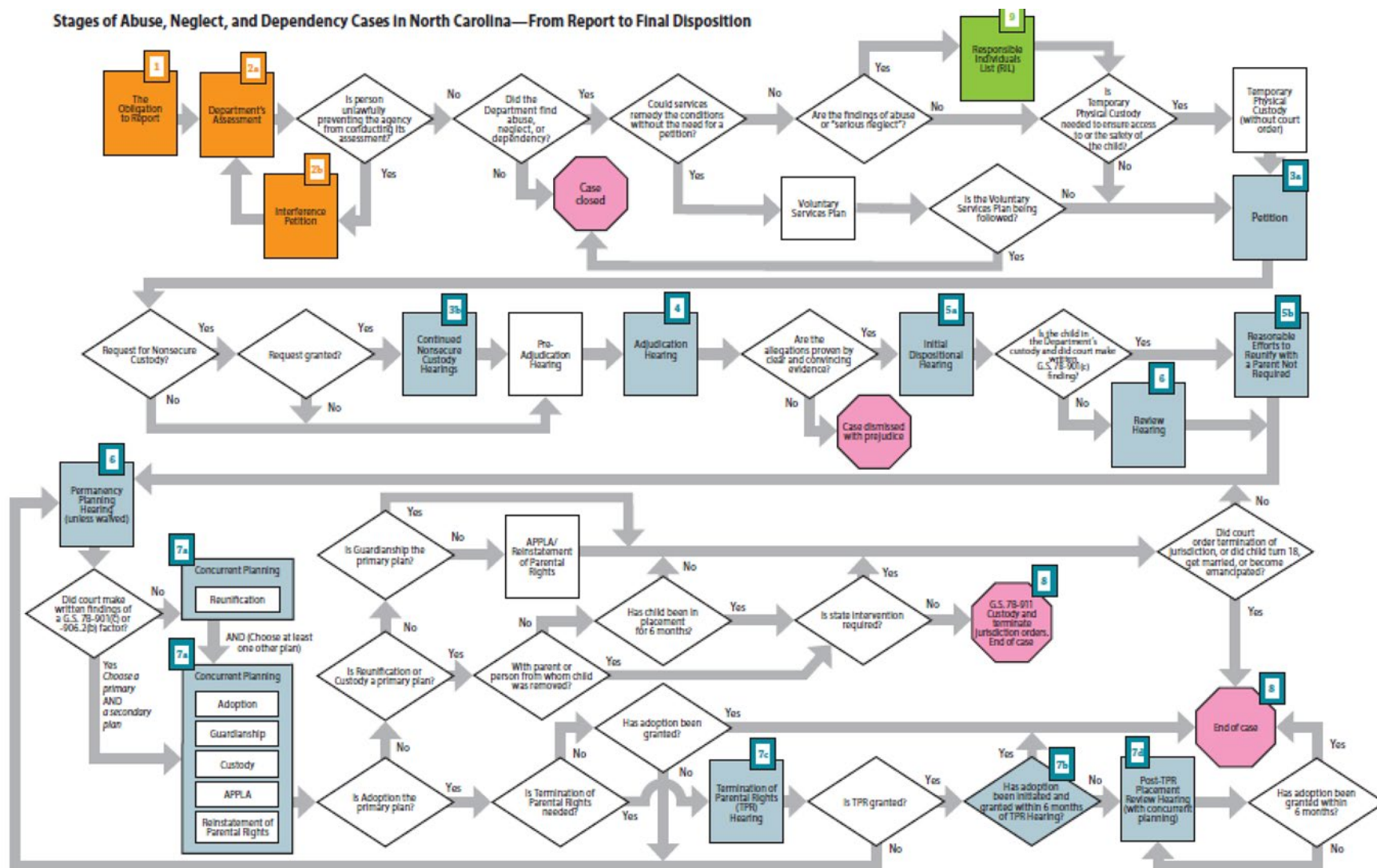
- Interpretation Too Rigid
- Whole-Text Canon



“Chapter 7B sets out a sequential process for abuse, neglect, or dependency cases.... the provisions in Chapter 7B establish one continuous juvenile case with several interrelated stages, not a series of discrete proceedings....”

*In re T.R.P.*, 360 N.C. 588 (2006)





# Definitions: G.S. 7B-101(18b), (18)

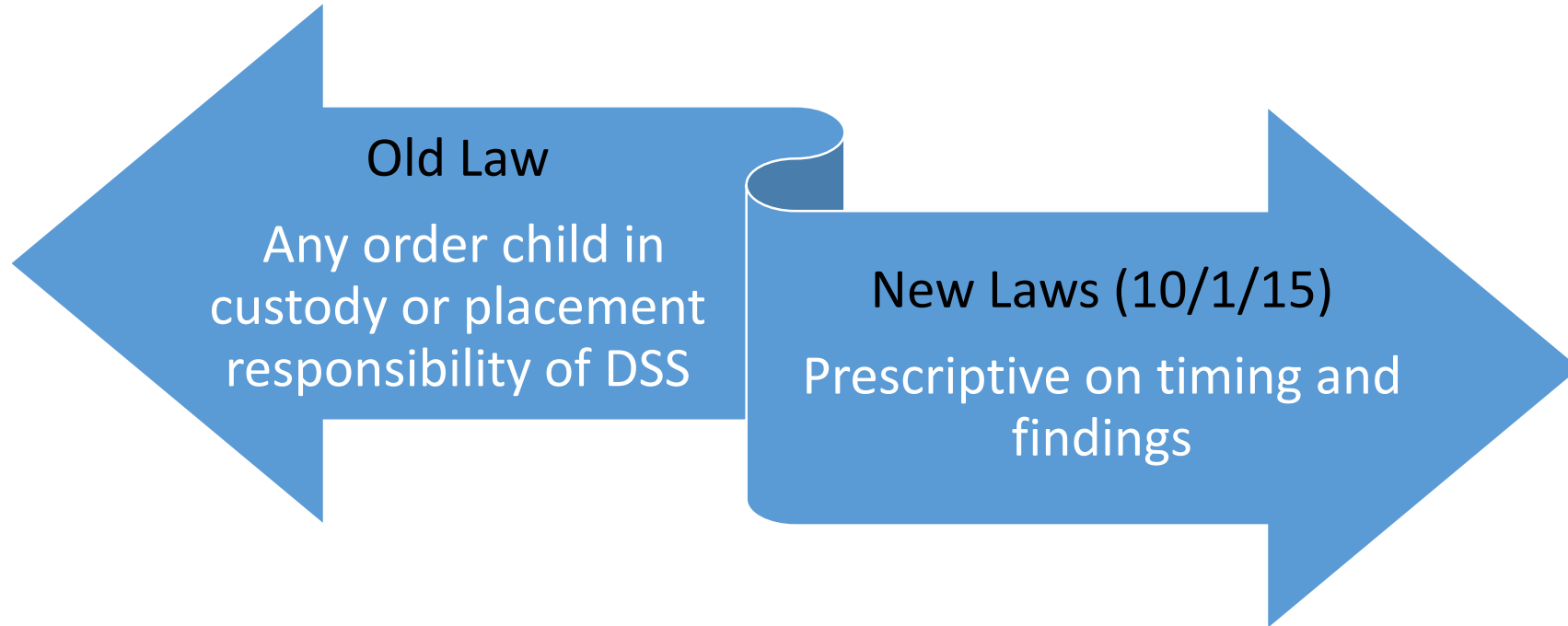
## **RETURN HOME or REUNIFICATION**

“Placement of the juvenile in the home of either parent or placement of the juvenile in the home of the guardian or custodian from whose home the child was removed by court order.”

## **REASONABLE EFFORTS**

Diligent use of preventive or reunification services by DSS when a juvenile's remaining at or returning to home is consistent with achieving a *safe, permanent home* for the juvenile *within a reasonable period of time*. If juvenile is not to be returned home, diligent and timely use of permanency planning services by DSS to develop and implement a permanent plan for the juvenile.

# Reasonable Efforts Not Required (Cease)



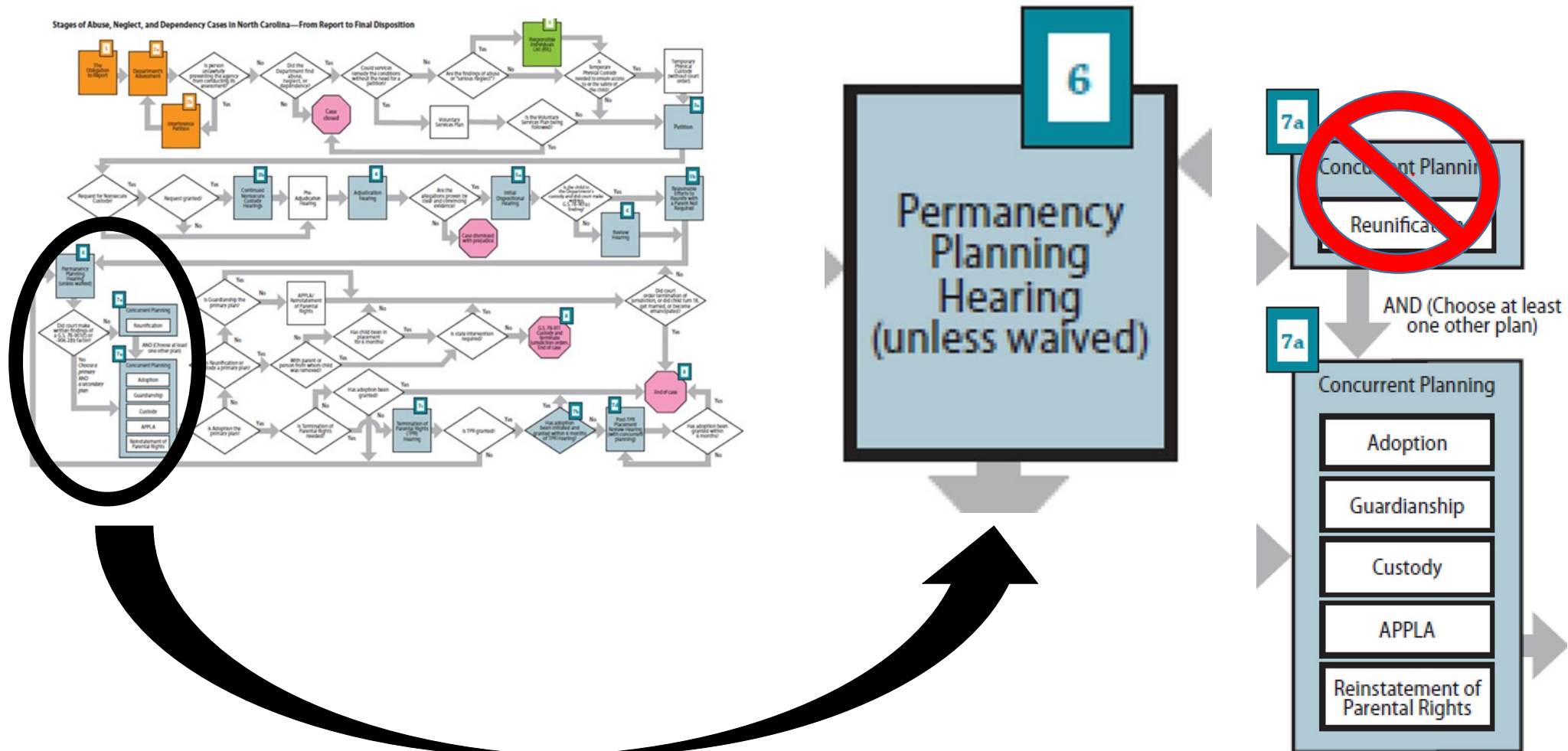
# Concurrent Permanency Planning

“The court shall adopt concurrent permanent plans and shall identify the primary and secondary plan”  
G.S. 7B-906.2(b)



“Concurrent planning shall continue until a PP is achieved”  
G.S. 7B-906.2(a1)

# The Other Direct Appeal: the 906.2 Order



# Current Issue

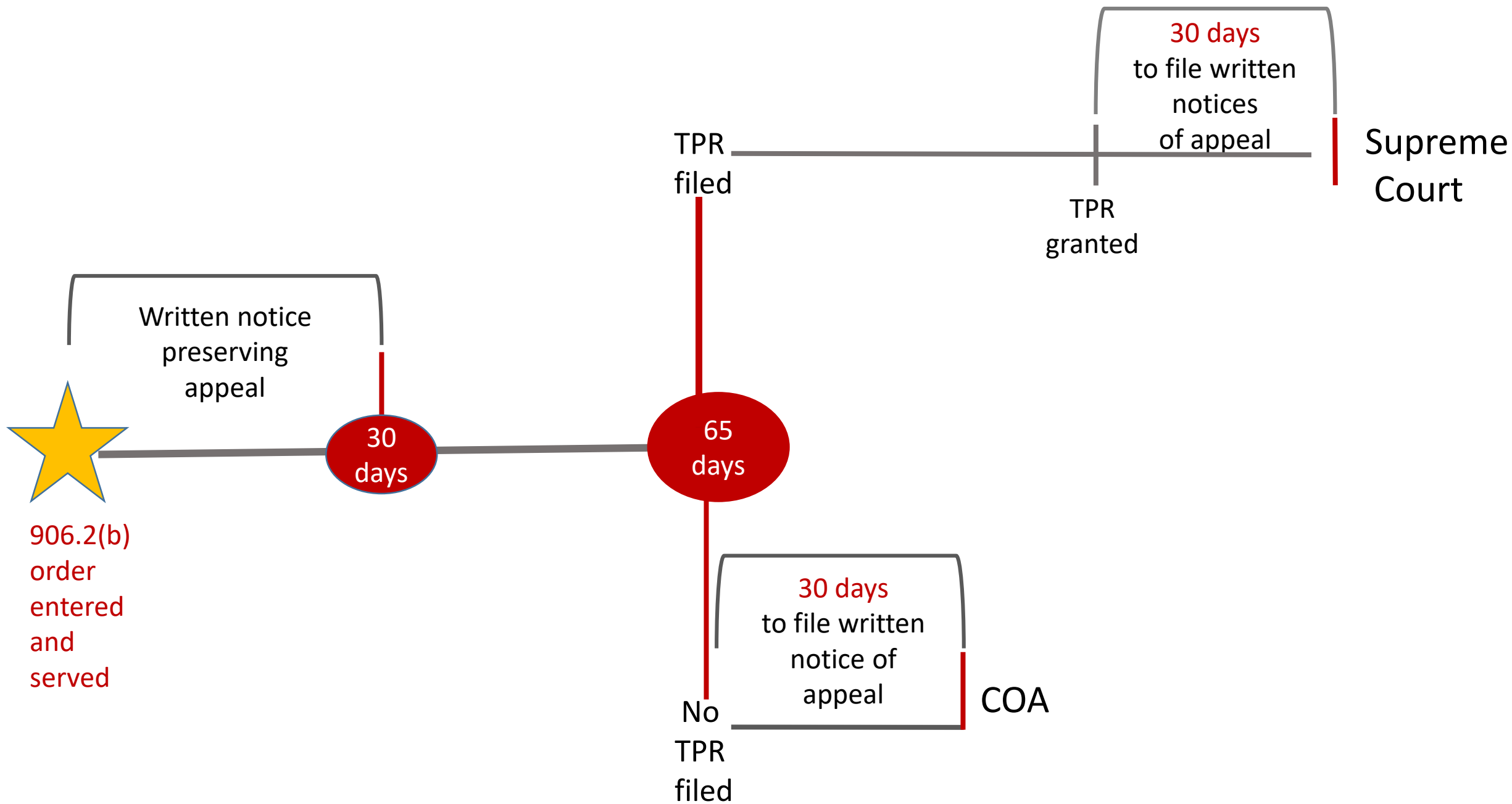


Reunification  
Efforts

The Shuffle  
& 2-Step  
S.L. 2019-33



Reunification  
as a Permanent  
Plan



Introduce  
the Issues



TPR



```
graph TD; A[Impact Constitutional Rights] --> B[Substantive]; A --> C[Procedural];
```

Impact  
Constitutional  
Rights

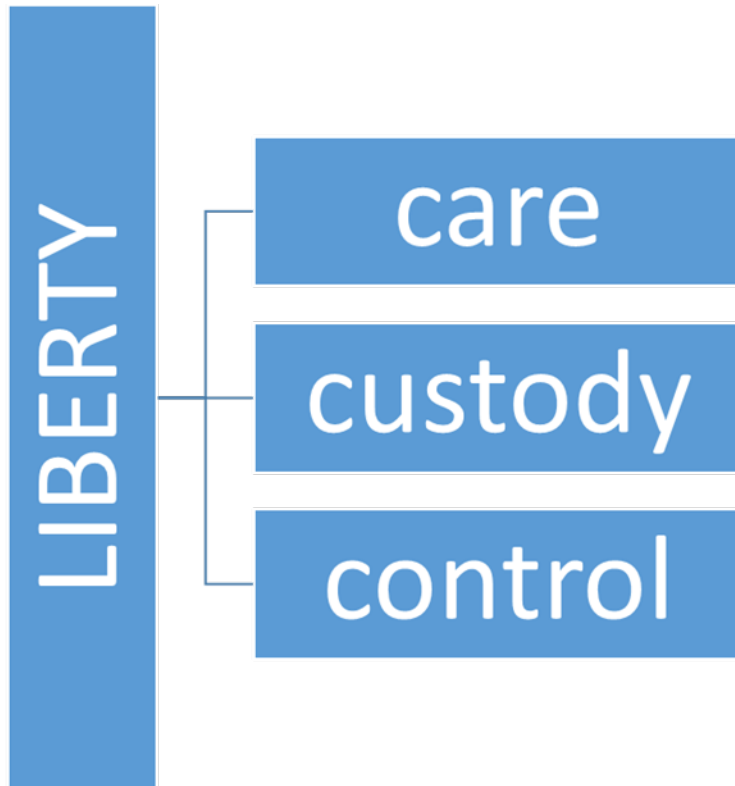
Substantive

Procedural



ART. 1, SEC. 19  
NC  
CONSTITUTION

... nor shall any state deprive any person of



without due process of law...

# Two Types

**Private**

**Agency**

## Impact on Permanency

**G.S. 7B-1100**

Recognize need

- for any child to have permanent plan of care at earliest possible age
- to protect all juveniles from unnecessary severance of parental relationship

Caution

Juvenile Code Is the First Place to Look

# Jurisdictional Issues

- Standing
- Proper Pleading
- Found or Resides
- UCCJEA

# Standing (G.S. 7B-1103)

Parent



Guardian

DSS / agency w/  
court ordered  
custody or  
relinquishment

A person the child  
has continuously  
lived w/ in the  
immediately  
preceding 2 years



Child's 7B-601 GAL

Adoption petitioner

# The Initiating Pleading

```
graph TD; A[The Initiating Pleading] --- B[Verified Petition]; A --- C[Verified Motion]
```

Verified Petition


Verified Motion

# Venue and Subject Matter Jurisdiction

North Carolina Counties








- Resides
- Found
- In custody of county DSS / agency



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## It's Complicated: Venue vs Jurisdiction in A/N/D and TPR Actions

This entry was contributed by Sara DePasquale on February 22, 2017 at 1:22 pm and is filed under Child Welfare Law.

Within North Carolina, the appropriate location of a district court where an abuse neglect or dependency (A/N/D) action is filed is a matter of venue. [GS 7B-400](#). And the appropriate location of the district court where a termination of parental rights (TPR) action is filed is a matter of jurisdiction. [GS 7B-1101](#). Why are they different? Because the statutes governing A/N/D and TPR proceedings have different requirements and impose different limitations on the parties and the court.





## Purpose

Not be used  
to circumvent  
UCCJEA

G.S. 7B-1100(4)

## Pleading

Statement  
not filed to  
circumvent  
UCCJEA

G.S. 7B-1104(7)

# Personal Jurisdiction: Out-of-State Parents

- ◆ Jurisdiction under initial or modification jurisdiction under the UCCJEA
- ◆ Process served pursuant to G.S. 7B-1106
- ◆ Submits to court's jurisdiction
- ◆ Served while physically present in NC
- ◆ What about minimum contacts?

# Other Procedural Issues

- Sufficiency of notice

what are other  
words for  
sufficient?



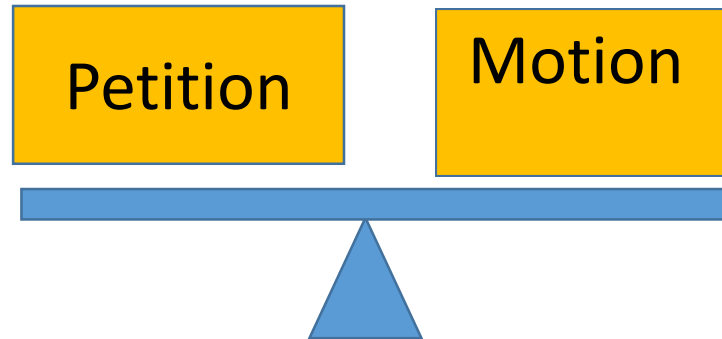
adequate, ample, enough,  
satisfactory, acceptable,  
decent, plenty, competent,  
tolerable, abundant



# Notice Pleading

Facts must put party on notice of acts, omissions, conditions at issue

≠ Recitation of alleged ground



No Difference: G.S. 7B-1104(6) to allege sufficient facts

# Other Procedural Issues

- Attorney appointment (provision vs. retained)
- GAL appointment (parent and/or child)
- ICWA
- Parent's participation in hearing

# The Grounds

## § 7B-1111.

### § 7B-1111. Grounds for terminating parental rights.

(a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a
- (11) The parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.

# Relevant Time Period Court Considers

Differs depending on the ground

Some grounds are limited to before the petition

Others include the circumstances AT TIME of adjudication hearing

Must look at the statute

# Abandonment





# 2 Different Grounds

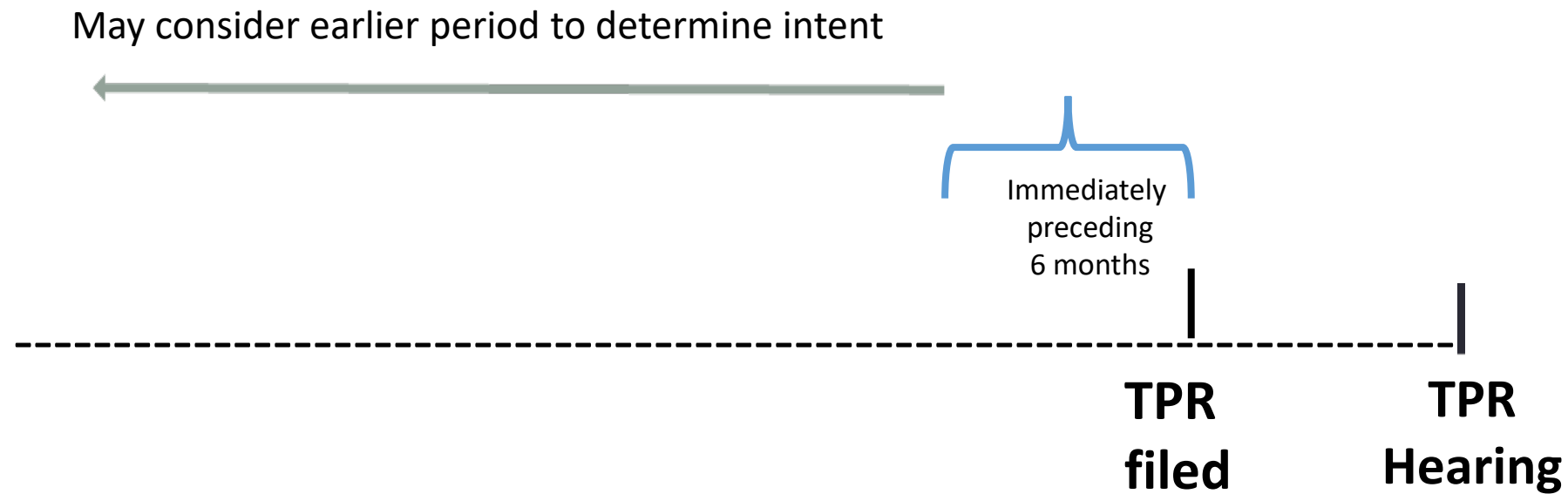
## **G.S. 7B-1111(a)(1)**

- Neglect

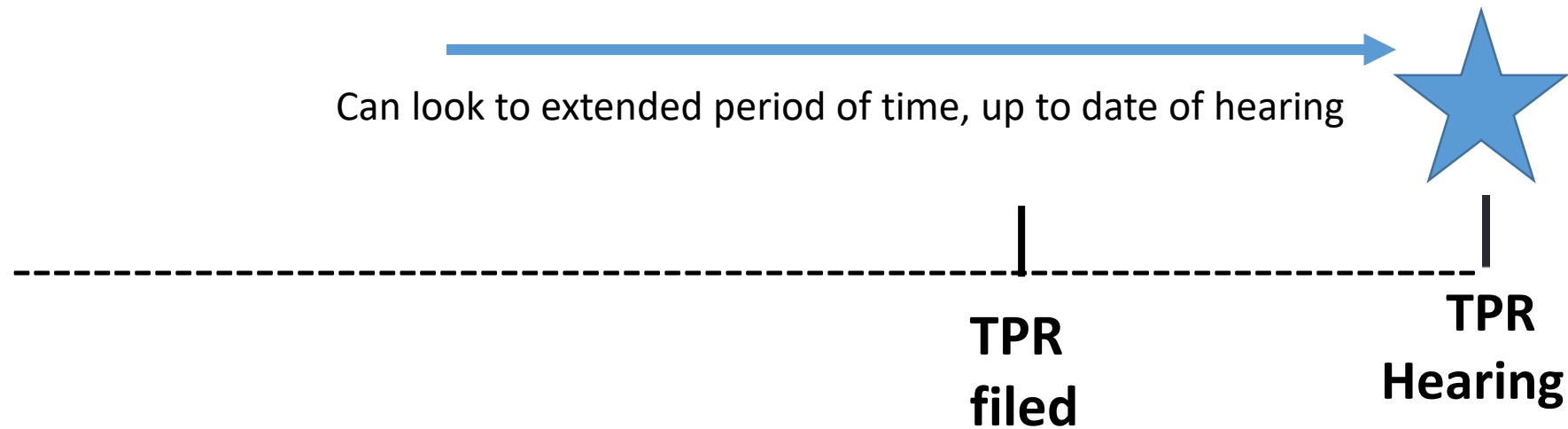
## **G.S. 7B-1111(a)(7)**

- willfully abandoned child for at least 6 consecutive months immediately before TPR filed; or
- w/in first 7 days of child's life, voluntarily abandoned child in a "safe surrender," and at least 60 consecutive days have passed before TPR filed

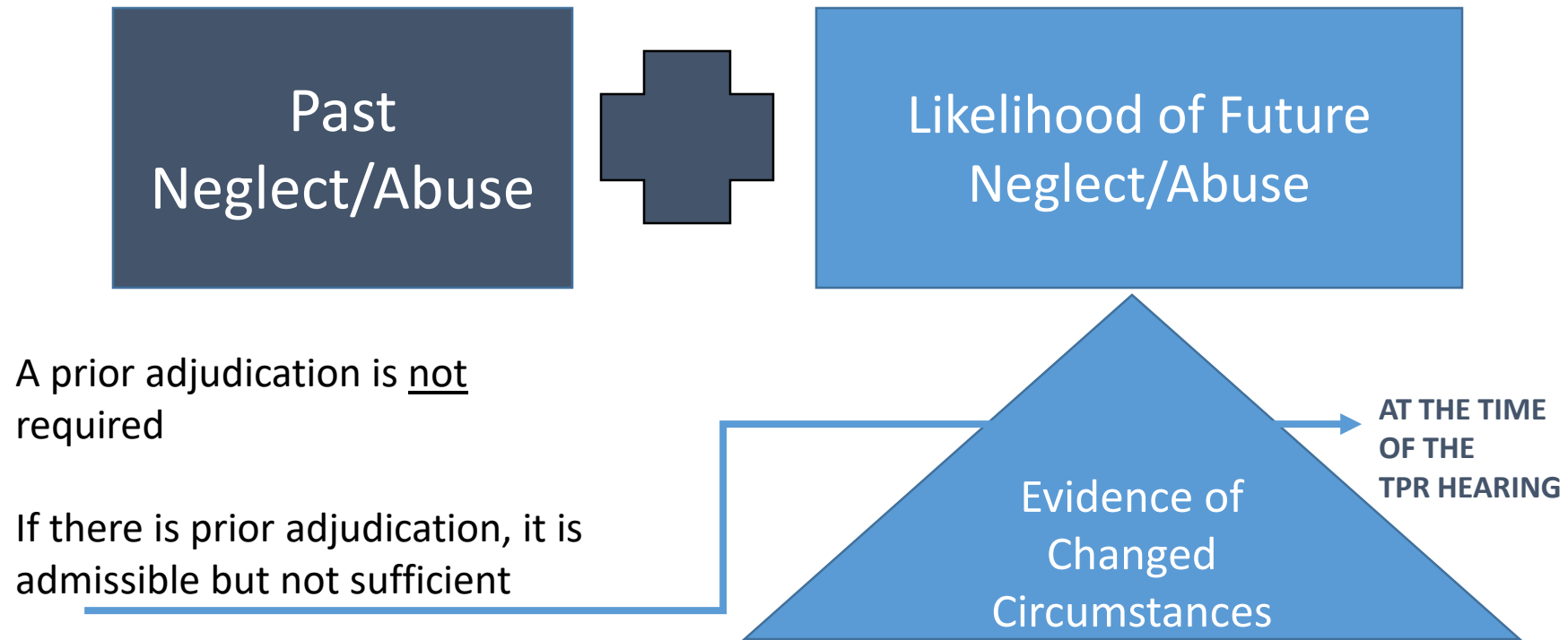
# Determinative time period under G.S. 7B-1111(a)(7)



# Determinative time period under G.S. 7B-1111(a)(1)



# Abuse or Neglect: Current or Prior, but must prove



# Willfulness: Finding of Fact

- Ability/Limitations
- Single Act
- Some Efforts

# Failure to make reasonable progress, G.S. 7B-1111(a)(2)

- The parent has willfully left the child in foster care or other placement
- more than 12 months
- without reasonable progress under the circumstances
- in correcting conditions that led to removal.



Reasonable progress  
up to the time of hearing

1 year child in placement

Court  
order of  
removal

TPR  
filed

TPR  
Hearing



# NonSupport

## Willful failure to pay

Ability to  
pay  
finding  
required

- reasonable portion of cost of care
- for child in placement
- for 6 months before TPR filed
- 7B-1111(a)(3)

## Willful failure to comply with

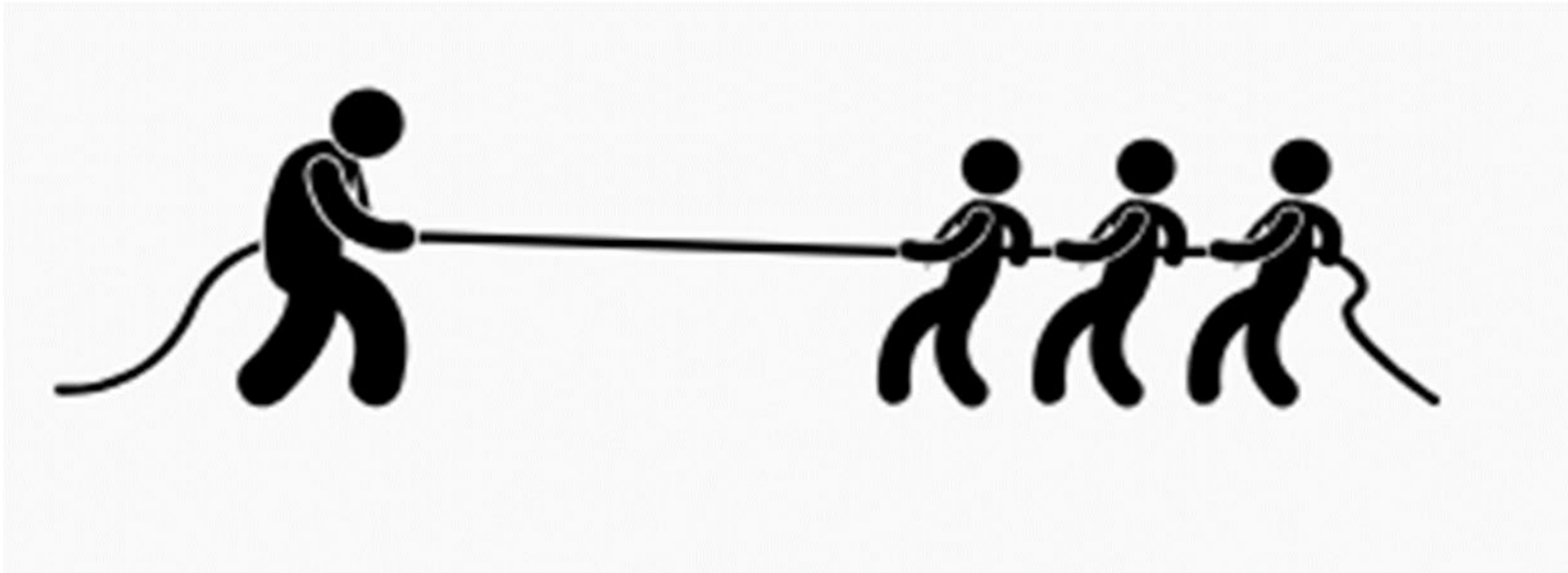
Ability to  
pay  
finding  
NOT  
required

- support provisions of court order or custody agreement
- for one year before TPR filed
- 7B-1111(a)(4)



# # of grounds

- Must have one



Ground(s) found

Adjudication



Not an Automatic TPR

Disposition

A silhouette of a person's head and shoulders is shown on the left side of the frame. The background is dark and textured, with a bright orange circular light source visible in the lower right. The text "Is it in the child's best interests?" is centered in the image.

Is it in the child's best interests?

# Purpose

Ensure BIC are of **paramount consideration** by court;  
When not in BIC to return home, placed in safe, permanent home within a reasonable period of time

G.S. 7B-100(5)

## Purpose

Action in **child's best interests** should be taken when interests of child and parents or others conflict

G.S. 7B-1100(3)

Ending a parent-child relationship is a decision the court must weigh carefully, mindful of constitutional protections and statutory safeguards. Those safeguards, however, are to be applied practically so that the **best interests of the child**—the **polar star** in controversies over child neglect and custody—are the paramount concern.

In re L.M.T.

# Six Factors: G.S. 7B-1110

1. Age
2. Likelihood of adoption
3. Will TPR aid in accomplishing permanent plan
4. Bond between juvenile & parent
5. Quality of relationship between juvenile & proposed placement provider
6. Any relevant consideration

# Standard of Review

## Question of Law:

1. de novo review

## Adjudication:

1. Are findings supported by clear, cogent, and convincing evidence?
2. Do the findings support the conclusions?

## Disposition:

1. Did the court abuse its discretion?
2. Did the court act within its authority?
3. Did the court make sufficient findings about relevant best interest factors?





**Who Ya  
Gonna  
Call?**

