

**Chapter X – THE JUVENILE COURT AND CHILD WELFARE**

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**I. INTRODUCTION**

The provision of child welfare services is frequently enhanced by the involvement of the court system. However, invoking the jurisdiction of the court system into a child welfare case is not a measure to be taken by the agency without careful consideration and planning. This careful consideration and planning must take into account that while the juvenile court process can be seen as an adversarial process, it is also a process that requires strong collaboration between the agency, the family, the service providers, and the court system. This duality of adversity and collaboration exists to serve the best interest of all parties involved by protecting the rights of both children and their parents and by holding the community accountable to serve the best interest of its families. Protecting the safety, well-being and permanency of children is not only the role of the agency but of the community, including the court system. The court system also plays a critical role in meeting the eligibility requirements of several funding sources that are essential to meeting the needs of North Carolina's children. North Carolina's child welfare practice model foundation is the use of Family-Centered Partnership Principles along with principles grounded in a System of Care approach. These principles are:

<u><b>Family Centered Practice Principles</b></u>	<u><b>System of Care Model Principles</b></u>
<ul style="list-style-type: none"><li>• Everyone desires respect</li><li>• Everyone needs to be heard</li><li>• Everyone has strengths</li><li>• Judgments can wait</li><li>• Partners share power</li><li>• Partnership is a process</li></ul>	<ul style="list-style-type: none"><li>• Interagency collaboration</li><li>• Child and family partnership</li><li>• Individualized strengths based care</li><li>• Cultural competence</li><li>• Community based services and supports</li><li>• Accountability to results</li></ul>

Despite the fact that the juvenile court process is adversarial in nature, staff from county child welfare agencies are strongly encouraged to use these principles to guide every interaction with every person the staff member encounters throughout the court process. This includes the judge, the family and the children, the agency's attorney, the parent's attorney, the Guardian ad Litem volunteer and the attorney advocate, the bailiff or sheriff's deputy, and any other court personnel. Specifically, maintaining professional relationships with parents' attorneys and attorney advocates in this adversarial process models for families and demonstrates to the court that partnerships are valued despite differences each group may have. Albeit only a small piece of the equation, these

interactions can become a part of the teaching process to help families successfully navigate the child welfare system.

To solidify these principles into everyday practice, agencies are strongly encouraged to develop a Memorandum of Agreement (MOA) or a Memorandum of Understanding (MOU) with their local court system to help establish a collaborative relationship between all the participants within the court process and can be used as the basis to establish local court rules and procedures. These memoranda can also help to improve outcomes of safety, permanency and well-being of abused, neglected and dependent children in the court system by increasing timely decisions and resolution of juvenile court cases and to conduct more meaningful, thorough hearings. When used as a “living document” these memoranda can help to identify trends which impact outcomes for children and their families and develop responsive strategies and highlight those training activities needed to enhance overall best practices in child welfare and juvenile court.

The court process, from the first hearing to the final disposition, is critical to the achievement of a timely, appropriate, permanent plan for children. The clock on the courtroom wall is ticking away a child's life, reminding all courtroom participants to make each hearing count as a step in the direction of permanence.

## **II. PURPOSE AND PHILOSOPHY**

The juvenile court is a branch of the district court whose primary function is the hearing, evaluation, and disposition of cases involving children alleged to be delinquent, undisciplined, abused, neglected, and/or dependent. In abuse, neglect, and dependency proceedings involving county child welfare agencies, juvenile court represents the power of the State to act in the best interests of children under 18 years of age. Thorough respect for this power and an understanding of the juvenile court's complex process is critical to the child welfare professional's success and efficacy in keeping children and their families safe. Within North Carolina's 100 counties, there are 42 separate judicial districts. Thus, several counties may be encompassed within a single court jurisdiction. A map overlaying North Carolina's 42 District Courts with its 100 counties may be found at <http://www.ioq.unc.edu/library/judicial/pdfs/District.pdf>. This chapter is intended to be a comprehensive examination of the role of the juvenile court in North Carolina's child welfare cases. However, recognizing that each case presents its own unique characteristics, workers are strongly encouraged to seek clarifications when needed from their supervisor, from their agency's child welfare leadership, from their agency's legal counsel, or from the North Carolina Division of Social Services.

## **III. SELECTED JUVENILE COURT SYSTEM DEFINITIONS**

Juvenile law is an exceptionally complex process and, as such, the courtroom can be a very intimidating environment for child welfare workers. Much like medicine, the legal profession uses some terminology that is confusing and foreign to everyday language.

This may contribute to the apprehension newer workers experience when attending court whereas more seasoned workers may have deduced some of the more complex terminology contextually throughout their exposure to the court process. Some of the more common terms used in the juvenile court setting, along with very brief definitions are below. This list is not intended to be all-inclusive nor are the definitions meant to be comprehensive. Terminology may vary from courtroom to courtroom. Combined with regular and careful observation of the court process, developing a working knowledge of juvenile court terminology will assist child welfare staff in becoming more comfortable and confident in working with the court system.

**50-B Order** - North Carolina General Statutes Chapter 50B provides that victims of domestic violence can get an order of protection from the court. Domestic Violence Restraining Orders ("50B", restraining orders, or DVPO's) are civil orders limiting the contact a person may have with a victim.

**Active Efforts** – In relation to the [Indian Child Welfare Act of 1978](#), the current and on-going activities to reunite an [American](#) Indian family

**Adjudication** - A hearing to determine whether a child has [experienced maltreatment](#) or whether another legal basis exists for the State to intervene to protect a juvenile

**Adjournment / Recess** - When the court takes a break either temporarily or to end a particular session.

**Affidavit** - A written statement of facts voluntarily made by a person under an oath or affirmation administered by a person authorized to do so by law

**Affirm** – A pledge to tell the truth under oath that is the equivalent to swearing to tell the truth or the formal approval of a trial court's order by an appellate court

**Appeal** – To seek the review of the trial court's decision by a higher court

**Attorney Advocate** - Attorney for the Guardian Ad Litem

**Bailiff / Deputy / Sheriff** - The law enforcement officer who is in charge of the courtroom during court proceedings

**Best Interest / Contrary to Welfare of the Child** - A child's right to have a safe permanent home balanced against the rights of the parents. This refers to the IV-E eligibility requirement that must be in the first court order that results in the child's placement.

**Child Planning / Day One Conferences** – A meeting, facilitated by a juvenile court case coordinator, comprised of the child (if appropriate), the parents and other relevant parties to determine the next course of action. These conferences, usually held prior to

the Non-Secure Custody hearing (7-Day), provide all parties in a juvenile court case the opportunity to talk to each other about how they can help the family and the child. For additional information, refer to the section entitled "[Day One Conferences or Child Planning Conferences \(CPC\)](#)" found in section VII of this chapter.

**Clear, Cogent, and Convincing Evidence** - Criteria for the burden of proof offered by the State. This is a higher standard than "preponderance of the evidence" used in most civil cases, but a lower standard than "beyond a reasonable doubt" used in criminal cases.

**Clerk of Court** - The Clerk of Court performs several roles regarding the local administration of justice. In juvenile matters, the clerk of court **maintains** the petition, court reports and court orders signed by the judge and disseminates notices of hearings.

**Closed Hearing / Session** - Only the persons directly involved in the action are present in the courtroom. The general public is not allowed.

**Contempt (Civil vs. Criminal)** - Contempt is to defy the authority of the court. Civil contempt is the willful failure to do something that the court has ordered. Criminal contempt is an act that obstructs justice.

**Consent Order** - An order entered by the court where all parties have agreed upon the findings, facts and conclusions

**Continuance** - An adjournment of a case from one day to another or to a later hour of the same day

**Court Improvement Project** – A federally funded initiative sponsored by the Administrative Office of the Courts to assess and improve the court practice in child **welfare** cases

**Court Report** - A formal written summary of a case prepared for the court that contains history and present conditions with recommendations for future actions

**Cross Examination** - The questioning of a witness by attorneys other than the one who called the person as a witness

**De Facto Father** - A person who has been acting in the role of the father of a child but that is not legally recognized. [*De Facto* - Latin: "in point of fact"]

**Defendant / Respondent** - The person on a juvenile petition alleged to have caused abuse, neglect, **and/or** dependency towards a juvenile

**Delinquent / Delinquency** - The commitment of an offense by a youth of what would be a crime if he or she were an adult

**Deposition** – A witness' testimony made out-of-court, reduced to writing for later court use or discovery

**Discovery** - A process that allows each party in a case to obtain information relevant to the case from the other parties

**Disposition** - Legal resolution to a case; determines what actions will be taken

**District Attorney / Assistant District Attorney** - Attorney for the State in a criminal proceeding

**Docket** - A formal record in which a judge or court clerk lists the proceedings for a particular court day or week (also sometimes referred to as the calendar)

**Emancipation Hearing** - A hearing to determine if a juvenile should be considered an adult, this act would free the parent from all legal obligations to the child

**Evidence** - Information or objects that tend to prove or disprove the existence of an alleged fact

**Ex Parte Hearing** - A hearing in which not all parties are present or given the opportunity to be heard [*Ex-Parte* – Latin: “from the part”]

**Family Court** - The term for the recognized judicial districts that **provide** additional resources (mostly personnel) to provide case management for family issues, such as custody and abuse, neglect and dependency. For additional information, refer to the section entitled “[Family Court](#)” found in section XI of this chapter.

**Family Drug Treatment Court** - The Family Drug/Dependency Treatment Court (FDTC) works with parent(s) / guardian(s) who are in danger of losing or have lost custody of their children due to abuse or neglect allegations and who have substance abuse issues

**Guardian ad Litem** - Statute mandated and court appointed team of an Attorney Advocate and a volunteer to represent the juvenile in court. [ad Litem - Latin: “guardian for the suit”]

**Hearsay** - An out-of-court statement made by someone other than the witness that is offered for the truth of that statement

**Impeachment** - The act of discrediting a witness or the act of challenging the accuracy or authenticity of evidence

**In camera (in-chamber) review** - A judge's private consideration of evidence. [Latin: “in a chamber”]

**Indigent Defense Services** - A group of attorneys who provide legal defense services to those individuals who are unable to afford them

**Injunction** - A court order compelling a party to do or refrain from doing a specified act

***In loco parentis*** - Acting as a temporary guardian of a child [Latin: "in place of a parent"]

**Judge** - A public official appointed or elected to hear and decide legal matters in court

**Judicial Determination / Order** - A written directive or command delivered by a court or a judge

**Juvenile Petition** - Official document containing allegations of child abuse, neglect, and/or dependency that is typically filed by the county [child welfare agency](#) (form [AOC-J-130](#))<sup>1</sup>

**Jurisdiction** - The court's power or right to exercise authority

**Legal Father** - The mother's husband at the time of the child's birth, regardless of whether the husband is the biological father, recognized by law as the legal parent

**Litigation / Litigant** - The process of carrying out a lawsuit, a person who is a party to a lawsuit

**Local Rules:** A judicial district's set of rules or policies, entered as an order by the chief district court judge, that govern the practical aspects of local court procedures, processes and forms. The local rules are an enforceable order of the court.

**Magistrate** - A judicial officer with limited jurisdiction and authority at the local level

**Mediation** - A method of non-binding dispute resolution involving a neutral party

**Motion** - A written or oral application requesting a court to make a specified ruling or order

**Order for Non-Secure Custody** – A temporary order that places the care, control, placement authority and maintenance of a juvenile with a county child welfare agency (form [AOC-J-150](#))<sup>2</sup>.

***Nunc Pro Tunc*** – Having retroactive legal effect through a court's inherent power [Latin "now for then"]

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<sup>1</sup> Refer to Attachment 4 (AOC-J-130)

<sup>2</sup> Refer to Attachment 5 (AOC-J-150)

**Objection (including overruled and sustained)** – Objection: a formal statement opposing something that has occurred or is about to occur in court; Overruled: the act of the court in rejecting a motion or objection made; Sustained: to allow or uphold as valid

**Parent's Attorney** - Attorney for the parent named in the petition

**Party to the Action / Proceedings** - A person named in the petition or has a role in the proceedings

**Preponderance of Evidence** – A standard of proof used in most civil cases, including some juvenile cases; meaning “more likely than not.” A judge gives greater weight of the evidence, including credibility, of one party over another.

**Pre-Trial Conference** - A meeting of all the parties prior to a trial to develop a mutual agreement on the direction of the case and actions to be taken

**Putative Father** - The alleged father

**Qualified Expert Witness** - A witness who is qualified by knowledge, skill, experience, training or education to provide a scientific, technical or other specialized opinion about the evidence or a fact issue

**Reasonable Efforts to Prevent Removal** - The IV-E eligibility requirement that in order to qualify for IV-E funds, there must be a judicial determination that the agency made reasonable efforts to prevent the child's removal from the home. This judicial determination should consist of a description of the specific efforts the agency made or why making the required efforts were not possible and the judge's finding that the efforts were reasonable or sufficient in the particular circumstance. This judicial determination must be made within sixty (60) days of the child entering the legal custody of the county child welfare agency or the child will not be IV-E eligible for the entire episode of care.

**Reasonable Efforts to Finalize a Permanent Plan** - The IV-E eligibility requirement that in order to qualify for IV-E funds, there must be a judicial determination that the agency made reasonable efforts to finalize the permanent plan of the child. This judicial determination should consist of a statement as to what the permanent plan is or has been what specific efforts the agency has made to finalize or achieve that plan, and the judge's finding that the efforts were reasonable or sufficient in the particular circumstance. This judicial determination must be made within twelve months of the date the child is considered to have entered care (the earlier of the date of adjudication or 60 days from the entry into the legal custody of the county child welfare agency) and every subsequent 12 months or the child will be ineligible until the requirement is met.

**Recuse** - To remove (oneself) as a judge/lawyer in a particular case because of prejudice or conflict of interest

**Relinquishment** - The willing abandonment of parents' rights

**Review Hearing** - A hearing to update the court on the status of the case

**Secure Custody Order** - An order that places the care, control, and maintenance of a juvenile in a locked facility

**Stipulate / Stipulation** - A voluntary agreement between opposing parties concerning a specific point or fact

**Subpoena** - An order calling for a person or for material items to be presented before the court

**Summons** - A notice requiring an individual to appear in court

**Termination of Parental Rights (TPR) Hearing** - A legal proceeding to free a child from a parent's legal custody so that others can adopt the child

**Testify / Testimony (always Under Oath)** - To provide verbal evidence to the court

**Witness** - An individual who has first hand knowledge of a situation

**Writ** - A court's written order commanding the addressee to do or refrain from doing some specified act

**Venue** - The county of the child's residence

**Verification** – A formal declaration made in the presence of one authorized to administer oaths, such as a notary public or a clerk of court, by which one swears to the truth of the statements in the document

Many other terms encountered during the course of the court process **are** defined succinctly and thoroughly in Black's Law Dictionary<sup>3</sup>

#### IV. THE "LIFE" AND "TIMES" OF A JUVENILE COURT CASE

As with the complex terminology that is used in juvenile court, understanding the systematic process that each case goes through can be equally confusing and intimidating. From the first filing of a petition through permanency, each case takes on a certain "life" and while each jurisdiction may have practices that are specific to that court, in general juvenile court cases follow a prescribed path. Just as with juvenile court terminology, developing an understanding of the path of the case will assist child welfare

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<sup>3</sup> Garner, B. (Ed.). (1999) *Black's Law Dictionary* (7th ed.). St. Paul: West Group.

staff in becoming more comfortable and confident in working with the court system. Perhaps one of the best examinations of the “life” of a juvenile court case **is** found in Chapter 4 of the text entitled Working with the Courts in Child Protection found at: <http://www.childwelfare.gov/pubs/usermanuals/courts/courts.pdf>. Written by The Honorable William G. Jones, a retired family court judge who served 25 years for the Mecklenburg County District Court, that manual (along with the entire Child Abuse and Neglect User Manual Series) is available online for viewing, download and printing from the Child Welfare Information Gateway at: <http://www.childwelfare.gov/pubs/usermanual.cfm>. Counties are strongly encouraged to have all workers that participate in juvenile court proceedings read and regularly refer to Judge Jones’ text.

Additionally, counties shall, throughout the life of an agency’s involvement with families, consistently explore with the family any American Indian heritage that family may have. It is critical for agencies to understand that at any point a family identifies the child as an **American** Indian Child of a federally recognized tribe; the agency is required to follow all provisions clearly outlined in the Indian Child Welfare Act. In discussing the tribe’s jurisdiction over child custody proceedings involving an Indian child the Act reads:

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

In discussing the tribe’s ability to intervene in the court’s proceeding, the Act goes on to read, “In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.”

A tool that can assist counties in following these provisions is the ICWA Checklist ([DSS-5291](#)). This tool is useful in documenting the on-going efforts made in determining **American** Indian Ancestry, the efforts made to prevent the breakup of an **American** Indian Family, tribal notification and involvement as well as the family’s placement preferences.

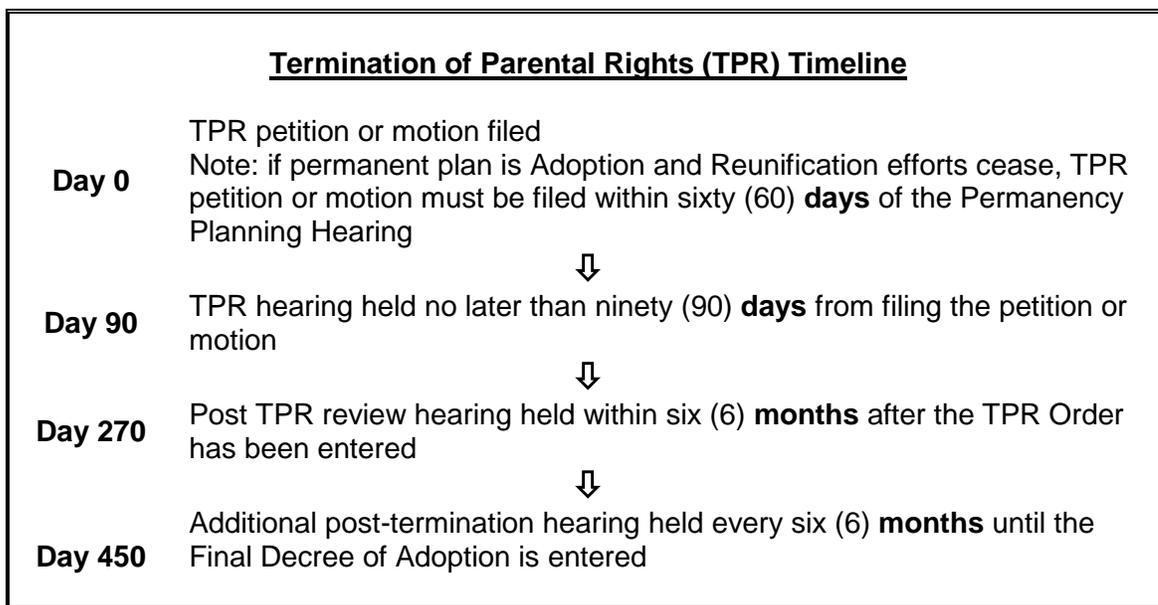
Just as with the “life” of a juvenile court case, from the first filing of a petition through permanency each case has certain “times” in which the various parts of the case must take place. In trainings provided to GAL Attorney Advocates, Deana Fleming, Associate Legal Counsel with the Administrative Office of the Courts, provides this examination of the timeframes that a typical court case follows:

**Juvenile Court Case Statutory Timeline**

<b>Day 0</b>	Juvenile Petition (form <a href="#">AOC-J-130</a> ) <sup>4</sup> and Non-Secure Custody Order (form <a href="#">AOC-J-150</a> ) <sup>5</sup> filed
	↓
<b>Day 7</b>	Initial hearing to determine need for continued non-secure custody as per <a href="#">N.C.G.S. § 7B-506(a)</a> which may be continued for up to ten (10) <b>business days</b> by consent; subsequent hearings within seven (7) <b>business days</b> and then thirty (30) <b>calendar day</b> intervals as per <a href="#">N.C.G.S. § 7B-506(e)</a>
	↓
<b>Day 60</b>	Adjudicatory hearing no later than sixty (60) <b>days</b> from filing as per <a href="#">N.C.G.S. § 7B-801</a> unless continued as per <a href="#">N.C.G.S. § 7B-803</a>
	↓
<b>Day 90</b>	Dispositional hearing should take place immediately following adjudication; if not, it shall be concluded within thirty (30) <b>days</b> of the adjudication hearing as per <a href="#">N.C.G.S. § 7B-901</a>
	↓
<b>Day 180</b>	Review of custody order as per <a href="#">N.C.G.S. § 7B-906</a> must be held within ninety (90) <b>days</b> of disposition with a subsequent review within six (6) <b>months</b>
	↓
<b>Day 365</b>	Permanency planning hearing must be held within twelve (12) <b>months</b> of initial order removing custody, and may be combined with reviews under <a href="#">N.C.G.S. § 7B-906</a> with subsequent permanency planning hearings at least every six (6) <b>months</b>

<sup>4</sup> Refer to Attachment 4 (AOC-J-130)

<sup>5</sup> Refer to Attachment 5 (AOC-J-150)



## V. JUVENILE COURT RELATED TRAININGS

As with all aspects of child welfare, training is an essential key to the success of the child welfare worker and to the agency as a whole in work, they do with families and their communities. Attendance at trainings, both internal and external, on the various issues related to the juvenile court process will enhance the worker's understanding of this complex system. To facilitate on-going professional development in this area, agencies are strongly encouraged to develop regular internal trainings related to the juvenile court process in general and on matters that may be specific to that agency's court district. These in-service trainings could include presentations from the agency's legal representative, from the district's judicial leadership, from court personnel, from the local Guardian ad Litem office, or from the local bar association. Information presented in these trainings could include issues such as testifying in court, understanding evidentiary standards, courtroom etiquette, court roles and responsibilities, etc. Offering joint trainings that include agency staff members, Guardian ad Litem volunteers, parents' attorneys, court personnel etc. helps to foster a collaborative relationship that flourishes even within the adversarial environment of the court system.

Mandated and optional trainings for county agency staff on issues specific to court offered by the North Carolina Division of Social Services include: *Legal Aspects of Child Welfare in North Carolina* (200 Series, Tier 1); *Financial and Legal Aspects of Adoption* (300 Series); and *IV-E: An Overview* (300 Series). Locations, training dates, and registration information related to these trainings and any other training offered by the North Carolina Division of Social Services can be accessed anytime at:

<https://www.ncswlearn.org>; a learning website for North Carolina's human services professionals hosted by the University of North Carolina at Chapel Hill School of Social Work.

*Legal Aspects of Child Welfare in North Carolina* is mandatory for all child welfare staff (including supervisors) employed in a county DSS within the first year of employment. Therefore, it is recommended for employees with less than one year of child welfare experience. The prerequisite for this training is *Child Welfare in North Carolina* (or completion of other required pre-service training required based upon date of employment and functional responsibilities). This training is a two-day foundation curriculum designed to provide child welfare services staff with legal information that will help them understand the role of the juvenile court in protecting abused, neglected, and/or dependent children, as well as the need to respect parents' rights through the use of family centered practice techniques.

*Financial and Legal Aspects of Adoptions* is a two-day specialized training, which covers the financial and legal components of the adoption process. The curriculum focuses on the framework of the adoption assistance benefit program and the statutory requirements of adoption in North Carolina. The NC Division of Social Services in collaboration with the NC Attorney General's Office developed this training. This course is open to child welfare social workers and supervisors employed in county child welfare agencies, as well as staff from private adoption agencies. This course is not mandatory for child welfare staff from county child welfare agencies. However, completion of the course does count towards the 24 hours of continuing education required annually following the first year of employment.

*IV-E: An Overview* is a one-day specialized curriculum focusing on the laws and policies regarding IV-E funding for children in custody or placement responsibility of county child welfare agencies. Topics covered include the importance of IV-E funding, court requirements, required court language, documentation, and eligibility and redetermination requirements. Due to the nature of this one-day training event, county staff are strongly encouraged to direct any case and county specific questions related to IV-E to the Children's Program Representative (CPR) or the Local Business Liaison (LBL). This course is open to staff and supervisors employed in a NC county child welfare agency in the areas of Income Maintenance, Work First, CPS Intake, CPS Assessments, CPS Occasional On-Call, CPS In-Home Services, Child Placement including Independent Living (LINKS), Foster Home Licensing, or Adoptions or individuals or agencies contracting with a county child welfare agency to provide any of those services (this does not include staff from private foster care / adoption agencies or private residential care agencies). Completion of this course counts towards the annual requirement of 24 hours of continuing education.

## VI. INVOKING THE JURISDICTION OF THE JUVENILE COURT

As stated previously, the act of filing a petition is a serious decision. **Except for cases in which the immediate safety of the child would be compromised, a Child and Family Team (CFT) meeting shall be held before any court action is taken.** If this is not possible due to an urgent need to remove the child in order to maintain safety, then the CFT meeting shall be held as soon after the removal as possible. This is an opportunity to bring the family, along with both formal and informal supports to the table in an effort to make a plan to keep the child safe, in his or her community, without court intervention. For more detailed information on conducting CFT meetings, refer to [Family Services Manual Volume I, Chapter VII – Child and Family Team Meetings](#).

A county [child welfare agency](#) may invoke the jurisdiction of the juvenile court in these situations related to child welfare: refusal to cooperate with or obstruction of a CPS Assessment, and request to adjudicate a child as abused, neglected, [and/or](#) dependent. The filing of a petition requesting adjudication of abuse, neglect, [and/or](#) dependency can be done for various reasons including the family's unwillingness to accept critically needed services; safety related circumstances that necessitate the need for immediate removal; and despite agency efforts to provide services the family has made no progress towards providing adequate care for the child. This chapter will examine each of these three areas in general and will explore some of the issues related to the filing of a petition.

### A. REFUSAL TO COOPERATE WITH / OBSTRUCTION OF A CPS ASSESSMENT

If, at any point during the CPS Assessment process, any person obstructs or interferes with the CPS Assessment, the director may file a Petition: Obstruction of or Interference with Juvenile Investigation (form [AOC-J-120](#))<sup>6</sup> and a Juvenile Summons and Notice of Hearing for Obstruction of or Interference with Juvenile Investigation (form [AOC-J-121](#))<sup>7</sup> naming that person as a respondent and requesting an order directing that person to cease such obstruction or interference. For purposes of this section, the person obstructing the CPS Assessment is not limited only to a parent or family member. The petition must first provide sufficient evidence to demonstrate that the allegations outlined in the report would meet one or more of the definitions under [N.C.G.S. § 7B-101](#) before proceeding to evidence of the person's conduct that constitutes obstruction or interference. When this evidence is established, then evidence of the person's obstruction or interference should be specifically stated and verified. At this point, the court may issue an Ex Parte Order to Cease Obstruction of or Interference with Juvenile Investigation (form [AOC-J-122](#))<sup>8</sup>.

<sup>6</sup> Refer to Attachment 1 (AOC-J-120)

<sup>7</sup> Refer to Attachment 2 (AOC-J-121)

<sup>8</sup> Refer to Attachment 3 (AOC-J-122)

It is vitally important that a thorough interview is conducted at Intake, and that the interview solicits sufficient information to make a clear-cut screening decision as to whether the allegations reported meet at least one of the legal definitions of abuse, neglect, and/or dependency. The use of the structured CPS Intake Report ([DSS-1402](#)) ensures that thorough, pertinent information is obtained, while the Structured Intake screening (refer to [Family Services Manual Volume I: Chapter VIII; Section 1407 – Structured Intake](#)) tools serve to guide screening decisions that are based on statutory definitions.

[N.C.G.S. § 7B-303](#) prohibits any person from obstructing or interfering with a CPS Assessment. Interference means refusing to disclose the whereabouts of the juvenile, refusing to allow access to the juvenile, refusing to allow the agency representative to observe or interview the juvenile in private, refusing to allow the agency representative to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the agency representative to carry out his duty to assess the child's safety.

When a person or entity interferes with the assessment process, it is the worker's obligation to adequately explain the need to thoroughly complete the assessment in order to ascertain the safety and well-being of the child. Oftentimes, individuals and organizations are mistrustful of government involvement in what is considered "private" matters. This mistrust often arises from a place of fear or from a lack of understanding. Often negative stereotypes and "worst case" scenarios that are sensationalized for dramatic impact feed the public's perception of child welfare intervention. It is incumbent upon any worker to understand and to acknowledge this mistrust. Often, simply having a rationale, non-threatening but frank discussion with the family or organization impeding the assessment can result in cooperation with the assessment. This discussion can center on explaining the child welfare process emphasizing service provision to the family and explaining that not every child that comes to the attention of a county agency is removed from their families. This discussion is not a bargaining session as the law is very clear that an order related to obstructing with or interfering with a CPS Assessment is enforceable by either civil or criminal contempt. Rather, the discussion is meant to model the partnership process by listening to and acknowledging fears, understanding the feelings, and explaining the need to proceed with the assessment within the provisions of the law. It is the Division's position that the provision of Child Protective Services, including visiting and interviewing the child in his or her home, with the parent's permission does not infringe upon Fourth Amendment rights. Securing parental consent to interview the child is vital; efforts to secure voluntary consent shall never be coercive. The worker shall explain his or her role and express a desire to interview the child in order to assess safety, risk, and the strengths and needs of the family. It is important to remember that the ability to interview children at

school or at childcare centers has not been compromised – schools and childcare centers are not private residences.

The debate regarding parental rights versus the provision of Child Protective Services is an issue that has existed for some time; however, it appears that the public's consciousness has been piqued in light of recent court decisions and media attention. The Fourth Amendment to the US Constitution reads as follows, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Family-centered practice and the concept of involving parents and both their formal and informal supports in decision-making throughout service provision can be challenging at times. It is important to remember that every interaction with the family and those supports is an opportunity to make a connection. Take the time to engage the family and the individuals that comprise the family's support network, recognize the strengths, help with transitions, provide choices, pay attention to the words used when interacting with families, and make an effort to act as a change agent, rather than an authority figure. Family members and their supports should be made to feel their involvement and participation throughout the life of the case is crucial and that their feedback is valued.

Despite a worker's best efforts towards family centered practice, there will be instances where a county child welfare agency must file an obstruction or interference petition in order to proceed with the CPS Assessment required in the provision of child protective services. If the family or person interfering with or obstructing the assessment is still unwilling to cooperate, he or she should be informed (again, in a rational and non-threatening manner) of the law and the potential outcomes of the filing of a petition in court. If necessary, the agency director or the designee can file a petition so that the court can hear the allegations and order the cessation of the obstruction. At the obstruction or interference hearing, all relevant information from the CPS report should be presented. The agency must demonstrate to the judge that the decision to initiate a CPS Assessment met the statutory threshold for abuse, neglect, and/or dependency. In determining what information from the CPS report is relevant, it is helpful to think in broad terms. The reporter's identity remains confidential. However, the judge may order disclosure of the reporter during the hearing. If the director believes the child is in immediate danger, he or she may seek an ex parte order. A detailed description of this procedure is outlined below.

**B.      REQUEST TO ADJUDICATE A CHILD AS ABUSED, NEGLECTED, AND/OR DEPENDENT**

**1.      Unwillingness to Accept Critically Needed Services**

When an allegation is substantiated or found to be “In Need of Services”, some families may refuse to follow through with services that are needed to keep the family intact. Other families may participate only marginally, receiving virtually no benefits from the process. In such situations, the agency shall document its efforts to gain cooperative participation from the family. If such efforts are not successful, this documentation shall be included with a petition to the court to order family participation in services. Just as when considering an obstruction or interference petition, agencies shall use the family centered practice Principles of Partnership to engage the family in a discussion of the need for the parents or caretakers to accept these critical services for either themselves or their children. Listening to the parents or caretakers about their thoughts, feelings, and concerns related to receiving these services and providing an open and honest discussion aimed at assisting the parents or caretakers in working through these issues may eliminate the need to proceed with filing a juvenile petition. In the event that filing a juvenile petition is necessary and upon an adjudication finding that the juvenile is abused, neglected, and/or dependent, N.C.G.S. § 7B-904 provides for a special dispositional hearing to determine whether the court shall order the parents, custodian, or guardian to participate with the child or children in medical, psychiatric, psychological, or other treatment. The statute outlines the authority of the court to require the caretaker to undergo treatment or counseling aimed at remediating or remedying behaviors or conditions that led or contributed to the juvenile being adjudicated as abused, neglected, and/or dependent or that led or contributed to the court’s decision to remove custody from the caretaker.

**2.      Safety Related Circumstances Indicating the Need for Immediate Removal**

Sometimes the risk to the safety of a child is so great that the agency must protect the child by removing the child from the home. **Voluntary Placement Agreements are not appropriate for use in this situation.** Removal of the child is most often accomplished through the filing of a Juvenile Petition (form AOC-J-130)<sup>9</sup> with either the local clerk of court’s office or when the clerk’s office is closed, with the local magistrate’s office (as per N.C.G.S. § 7B-404).

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<sup>9</sup> Refer to Attachment 4 (AOC-J-130)

[N.C.G.S. § 7B-500\(a\)](#) permits the [county child welfare](#) social worker to take temporary physical custody without a court order if there are reasonable grounds to believe that the juvenile is abused, neglected, [and/or](#) dependent and that the child would be injured or could not be taken into custody if it were first necessary to obtain a court order. This same statute permits the [county child welfare](#) social worker to arrange for the placement, care, supervision, and transportation of the juvenile while in the temporary custody of the social worker.

Upon notification by the CPS social worker, the agency director or the designee determines whether to file a petition for non-secure custody in accordance with [N.C.G.S. § 7B-502](#). If no petition is filed, the child must be returned to the parent from whom he [or she](#) was removed. When taking a juvenile into temporary custody, the agency shall:

- notify the parent, guardian or custodian that the juvenile has been taken into custody and advise the caretaker of the right to be present with the juvenile until a determination is made of the need for non-secure custody (worker must make every reasonable effort to notify the [caretaker](#); however, failure to notify the [caretaker](#) that the juvenile is in temporary custody shall not be grounds for release of the juvenile);
- release the juvenile to the parent, guardian or custodian when the need for custody no longer exists;
- file a petition within twelve (12) hours and obtain an order from the district court judge for non-secure custody if the need for non-secure custody exists

### **3. Despite Agency Efforts to Provide Services, No Progress Has Been Made Toward Providing Adequate Care for the Child**

At times, despite an agency's best efforts to engage the family and coordinate the necessary remedial services during the provision of CPS In-Home Services, families may not make sufficient and timely progress in addressing the issues that led to the child abuse, neglect, [and/or](#) dependency. Historically these cases have been referred to as "stuck cases" and the petitions filed to ameliorate these cases often carried various misnomers including "non-compliance petitions," "slow petitions," or "non-emergency petitions." In these cases, the agency can file a petition alleging that the child is abused, neglected, [and/or](#) dependent.

**This type of petition may only be filed following a Child and Family Team (CFT) meeting in which the agency outlines its concerns to the**

**family and potential consequences and the outcome of that CFT meeting is to proceed with the filing of a juvenile petition.**

It is important to note that a petition may be filed, asking for an adjudication of abuse, neglect, **and/or** dependency even when the agency is not seeking removal of the child from the legal custody of the **caretaker**. This may be the case when dealing with families who, despite diligent efforts made by both the agency and the Child and Family Team, remain uncooperative and refuse to work with the agency but the child is determined to remain safe in their home. The Juvenile Petition (form [AOC-J-130](#))<sup>10</sup> filed by county **child welfare agencies** in this situation is the same petition filed when the agency is seeking custody. The petition is simply filed without an Order for Non-Secure Custody (form [AOC-J-150](#))<sup>11</sup>. This is a matter that is outlined in [NCGS § 7B-302\(c\)](#), which reads:

If the assessment 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.

Once abuse, neglect, **and/or** dependency has been adjudicated, the judge may order the parents or **caretaker** to take certain steps to remediate the behaviors or conditions that led to the filing of the petition.

If the child has already been adjudicated abused, neglected, **and/or** dependent and, at a later date, the agency decides that non-secure custody is necessary to protect the child, the agency shall insure that the non-secure custody order removing the child contains language stating that the removal is in the child's best interest or that the child remaining in the home is contrary to the welfare of the child. This involves removing the child after a hearing on custody or, if non-secure custody grounds exist, obtaining an ex-parte non-secure custody order.

[N.C.G.S. § 7B-904](#) gives the court the authority to order the parents to attend and participate in parental responsibility classes, to provide transportation to the juvenile to keep appointments for treatments, and to

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<sup>10</sup> Refer to Attachment 4 (AOC-J-130)

<sup>11</sup> Refer to Attachment 5 (AOC-J-150)

take appropriate steps to remedy conditions in the home that led to the juvenile's adjudication. The statute specifically sets the procedure governing the contempt proceedings. Failure to comply with the order of the court may lead to the parent being found in civil or criminal contempt.

## **VII. STEP-BY-STEP LEGAL PROCESS (NOT INCLUDING TPR)**

The information that follows in this section is a general step-by-step examination of the most typical juvenile court actions that child welfare workers will encounter. Because Termination of Parental Rights (TPR) is such a complex issue, that process will receive a closer examination in a separate section within this chapter. While every effort has been made to accurately reflect the overall juvenile court process, the process each agency experiences may vary from district to district and possibly among cases within the same district. Just as every assessment and subsequent casework with every family is different and may even differ from one intervention to the next, the same may be said of juvenile court involvement. Circumstances with each court case may cause the case to take a path different from the one outlined in this chapter with various stages of the cases occurring in a different order that may be outlined here. Frequently, local rules play a definitive role in determining how cases are handled within the court district. The impact of these local rules may cause similar cases to appear very dissimilar from district to district. County agencies are strongly encouraged to learn more about the local court rules that may be applicable for their district. The local rules for each county can be found on the Administrative Office of the Courts website: <http://www.nccourts.org/courts/crs/policies/localrules/default.asp>.

Additionally, circumstances within each case may cause cases that appear to be similar in nature to take differing paths from one another. Developing a thorough understanding of the overall process enables the worker to remain flexible (and more successful) when cases do take alternate paths from those expected.

### **A. FILING OF A JUVENILE PETITION ALLEGING ABUSE, NEGLECT, OR DEPENDENCY AND JUVENILE SUMMONS**

For the purposes of this section, any references to a petition are in relation to the Juvenile Petition (Abuse / Neglect / Dependency) and not the Petition of Obstruction of or Interference with Juvenile Investigation. For more detailed information on this type of a petition, refer to the section of this chapter entitled [Refusal to Cooperate with / Obstruction of a CPS Assessment](#).

When an assessment results in a determination that a petition is needed for the protection of a child alleged to be abused, neglected, or dependent, the petition shall be drawn by the director or his designee, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.

When preparing the Juvenile Petition alleging abuse, neglect, and/or dependency, [N.C.G.S. § 7B-402](#) states, "The petition shall contain the name,

date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian, and allegations of facts sufficient to invoke jurisdiction over the juvenile.”

Using the Administrative Office of the Courts (AOC) Juvenile Petition (form [AOC-J-130](#))<sup>12</sup> ensures that all of the information required is captured. County [child welfare agencies](#) are strongly encouraged to record the allegations of fact regarding the [caretaker's](#) neglectful [and/or](#) abusive behavior along with allegations of fact of the harm this neglectful [and/or](#) abusive behavior has caused to the children. [Both](#) should be stated in a plain, concise, and objective manner. Petitions should also state the severity of harm and explain how the behavior of the [caretaker](#) has resulted in the children's condition. [The petition](#) should also state the ability and willingness of the [caretaker](#) to adequately care for the child and, if appropriate, any services the parents have been offered but have refused. Petitions should also specifically state the efforts the agency made with the family to prevent the need for removal of the child. Finally, the petition should state clearly that the children are in need of the court's protection by citing any relevant statutes.

Any petition initiated by the agency shall clearly state all of the conditions that would invoke the court's jurisdiction. The allegations shall also contain enough information to make a legally valid case. These allegations should be broad enough to allow introduction of all evidence that the agency considers important to the case. Allegations should only include what the agency believes to be facts in the case, not observations or opinions held by others. Workers should be aware that while only those allegations that rise to level of abuse, neglect, [and/or](#) dependency are to be included on the petition, some allegations might fit in more than one category. For example, one set of facts that the agency feels meet the level of abuse may also meet the level of neglect. Workers should, in consultation with their agency's legal counsel, thoughtfully examine the benefits and the drawbacks to pleading in the alternative in cases where allegations may fit within multiple adjudicatory categories. Additionally, while it is clear that some families commit multiple acts that rise to the level of abuse, neglect, or dependency, workers and their agency's attorney should also be strategic about which allegations are included on a petition. “Shotgun petitioning” is seen as a way of including every allegation the family has ever committed that rises to the level of abuse, neglect, or dependency (the figurative “throwing the book at someone”). While this approach may increase the number of chances to reach adjudication, it may also reduce an agency's credibility or decrease focus on the issues(s) that brought the child into custody. A close examination of the benefits and drawbacks of this approach is warranted.

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<sup>12</sup> Refer to Attachment 4 (AOC-J-130)

Juvenile Petitions should also include information relative to the agency's knowledge about issues specified under [N.C.G.S. § 7B-506\(h\)](#) including:

- paternity or information on absent / missing parent(s)
- known relatives able and willing to provide care for the child(ren);
- ICWA related issues
- MEPA related issues
- siblings or other juveniles remaining in the home and any specific findings of the assessment of the juveniles or any actions taken to secure the protection of the juveniles

Along with Juvenile Petitions, a Juvenile Summons must also be filed (form [AOC-J-142](#))<sup>13</sup>. [N.C.G.S. § 7B-406](#) reads, "Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons." In addition, the juvenile summons also contains the following information:

- a parent's rights to legal representation;
- in many districts, information relative to the date, time, and location of a prehearing conference or child planning conference;
- if the agency has assumed custody of the child or children when filing a petition, information related to the hearing on need for continued non-secure custody (7-day hearing);
- information that the dispositional order (or any subsequent order) may require certain activities of either the parent or the juvenile or may even remove the juvenile from the parent's custody;
- information related to the local law enforcement officer's ability or inability to serve the summons, petition, affidavit as to the status of a minor child, and order for non-secure custody (if applicable) on the persons identified within the summons;

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<sup>13</sup> Refer to Attachment 8 (AOC-J-142)

- a notice to parents, guardians, or caretakers that they may be held in contempt of court if they fail to show, without reasonable cause, at the hearing specified;
- an additional notice that with the service of the summons on the parents, guardians, or caretaker the court system has obtained jurisdiction over them and that their failure to comply with any court order may result in the court issuing a show cause order for contempt.

#### **B. REQUESTING AN ORDER FOR NON-SECURE CUSTODY**

In cases in which custody of the child has to be removed from the [caretaker](#) due to the immediate safety needs of the child, the agency is authorized to file an order for non-secure custody under [N.C.G.S. § 7B-502](#) which reads, "In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S.7B-503 when custody of the juvenile is necessary."

Per [N.C.G.S. § 7B-503](#) the court has the authority to issue non-secure custody orders. The criteria for issuing non-secure custody orders shall be met only when there is a reasonable factual basis to believe that the matters alleged in the petition are true and that:

- the juvenile has been abandoned; or
- the juvenile has suffered physical injury or sexual abuse; or
- the juvenile is exposed to a substantial risk of injury or sexual abuse due to the actions or inaction of the parent, guardian, or custodian; or
- the juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions and the parent, guardian, or custodian is either unable or unwilling to provide or consent to treatment; or
- the parent consents to continuation of the non-secure custody order; or
- the juvenile is a runaway and consents to non-secure custody; and
- that there is a factual basis to believe that no other reasonable means are available to protect the juvenile.

[N.C.G.S. § 7B-504](#) explains that the Order for Non-Secure Custody shall be in writing (form [AOC-J-150](#))<sup>14</sup> and directs a local law enforcement officer the authority to assume custody of the juvenile and to give a copy of the custody order to the juvenile's **caretaker**. [N.C.G.S. § 7B-505](#) designates the place of non-secure custody. This statute provides specific guidance on the location a juvenile may be placed, to which workers shall adhere. Prior to placement with a relative outside North Carolina, the placement must be in accordance with the Interstate Compact on the Placement of Children. For more information on the Interstate Compact Placement of Children refer to the [Family Services Manual Volume I, Chapter XI – Interstate/Intercounty Services to Children](#).

**C. PARENTS' APPOINTMENT OF COUNSEL / APPOINTMENT OF RULE 17 GUARDIAN AD LITEM**

In cases where the Juvenile Petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel, and to appointed counsel in cases of indigence, unless the parent waives that right.

In addition to the right to appointed counsel set forth above, a Guardian ad Litem shall be appointed in accordance with the provisions of [N.C.G.S. § 1A-1](#), Rule 17, to represent a parent in the following cases:

- Where issues related to a parent's diminished capacity are present, the court or any party may make a motion for the court to appoint a Rule 17 GAL to assist defense counsel with protection of due process; or
- Where the parent is under the age of eighteen (18) years.

**D. APPOINTMENT OF THE GUARDIAN AD LITEM (GAL)**

The judge may appoint a guardian to the juvenile when no parent appears in a hearing with the juvenile or the judge finds it would be in the best interest of the juvenile. A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. If the GAL is not an attorney, the judge shall also appoint an attorney in order to assure protection of the child's legal rights through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the child. The GAL and the Attorney Advocate have standing to represent the juvenile in all juvenile court actions where they have been appointed. [N.C.G.S. § 7B-601](#) mandates that once a Juvenile Petition is filed alleging abuse or neglect, a Guardian ad Litem is appointed to represent the juvenile before the court. In a dependency matter, the judge may appoint a Guardian ad Litem but is not required to do so.

<sup>14</sup> Refer to Attachment 5 (AOC-J-150)

The mission statement of the North Carolina Guardian ad Litem program most appropriately summarizes the role of a GAL volunteer:

The mission of the NC Guardian ad Litem program is to provide trained, independent advocates to represent and promote the best interests of abused, neglected and dependent children in the state court system and to work expediently toward a plan that ensures that these children are in a safe, permanent home.<sup>15</sup>

The individuals that comprise a local Guardian ad Litem office may vary but may include a District Administrator, a Program Supervisor, an Attorney Advocate (a contracted or staff attorney from the local bar association that represents the juvenile in court) and the GAL volunteer. Some GAL Programs may also have local office staff (usually called a Program Assistant). Volunteers are individuals from the community who receive thirty or more hours of intensive training, are sworn in before the court, and who represent the best interest of the child. The GAL volunteer also receives supervision from the GAL administrative staff and consults with GAL attorney advocates on legal matters.

The training manual for GAL volunteers may be viewed, downloaded and printed from <http://www.nccourts.org/citizens/gal/workbook.asp>. This link provides access to the workbook training manual by chapter (in Microsoft® Office Word), as well as a PDF version of the entire workbook.

Per [N.C.G.S. § 7B-601](#) the duties of the Guardian ad Litem Program:

“shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.”

The Guardian ad Litem Program and the county [child welfare agency](#) often share common goals, while sometimes representing differing perspectives. The GAL focuses on the best interests of the child and also reports to the court the wishes or preferences of the child. Both the GAL and the agency focus on the safety, permanency and well-being of the child and the need to achieve these goals in a

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<sup>15</sup> North Carolina Guardian ad Litem Fact Sheet. (n.d.). Retrieved May 10, 2008, from <http://www.nccourts.org/citizens/gal/factsheet.asp>

timely manner. The agency has the additional focus on strengthening of the family both during the court process and beyond.

Prior to each hearing, it is in the best interest of all parties for the agency and the GAL Program to collaborate by communicating with each other their perspective on the case, what their intentions are regarding presentation of evidence, and recommendations they intend to make in court. Collaboration between the GAL program and the agency is essential. This collaboration assures that, when possible, disputed issues are resolved prior to court hearings, thus better meeting the needs of the child and the family by moving the case more quickly toward resolution.

The GAL volunteer has the statutory authority under [N.C.G.S. § 7B-601\(c\)](#) to obtain any information or reports, whether confidential or not that may, in the GAL Program's opinion be relevant to the case. **The exception to this is in regards to federally protected information such as substance abuse diagnosis and treatment records.** For additional information, refer to the section entitled "[Obtaining Substance Abuse Records by Court Order](#)" within this chapter. The GAL volunteer should present his or her Order of Appointment to access the information, and the social worker should place a copy of the order in the child's record. The GAL and the agency shall share any information that is not otherwise federally protected and that will assist each in understanding the full issues of the case so that the child and family receive maximum benefit from the two services (for additional information on re-disclosure and confidentiality of records please refer to [Family Services Manual Volume I; Chapter VIII; Section 1428 – Confidentiality and Release of Information](#))

#### **E. DAY ONE CONFERENCES OR CHILD PLANNING CONFERENCES (CPC)**

Day One Conferences or Child Planning Conferences can be an invaluable strategy to all parties involved, especially the family. While not conducted statewide, these conferences are usually instituted in either Family Court or in Court Improvement Project (CIP) districts and are facilitated by court staff and may be the first hearing in which the parents are given the first opportunity to be present.

Conferences are held either the day following (in the case of Day One Conferences) or within a few days (in the case of Child Planning Conferences) of the agency's filing a juvenile petition alleging abuse, neglect and/or dependency. The purpose of these conferences is to get the court case moving quickly and to assist the agency with court related issues of the case.

To move the court process forward, the Case Coordinator informs parties present of their rights, ensures there is counsel for parents and a Guardian ad Litem volunteer appointed for the child, ensures that the Juvenile Petition and Juvenile

Summons is served and sets the next hearing date. To assist the agency with the case, the Case Coordinator makes inquiries concerning the circumstances of the case; looks at issues such as the child's current placement; early parental visitation; availability of placement with relatives, extended family or family friends; and immediate service needs of the family.

## F. MEDIATION

"An increasing number of juvenile courts across the country are using mediation and other nonadversarial dispute resolution methods, such as family group conferencing, to settle child maltreatment and TPR cases. The mediation process usually is called 'dependency mediation' and is similar in many ways to settlement conferences, except that there is a skilled and trained mediator facilitating the discussion."<sup>16</sup>

As with Child Planning Conferences, not all 100 counties will operate in court districts where mediation is used. Like CFT meetings, these meetings are facilitated and involve the family and their supports (which, in this situation may include their attorney, the Attorney Advocate for the GAL and the agency's attorney). The North Carolina General Assembly enacted legislation in 2006 to provide for mediation services in juvenile court to resolve issues in cases in which a juvenile is alleged or has been adjudicated to be abused, neglected, **and/or** dependent, or in which a petition or motion to terminate a parent's rights has been filed. This service is not currently available in all counties, but the legislation calls for the Administrative Office of the Courts to establish permanency mediation in phases in all judicial districts in the state.

Mediation is a valuable tool for judges in juvenile court. Mediation is a process whereby a neutral third party, a mediator, acts to encourage and facilitate the resolution of a dispute between parties. It is informal and non-adversarial processes with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. The mediator is not a judge, lawyer, or counselor; rather the mediator is a trained, skilled facilitator who assists in defining and clarifying issues, helps reduce obstacles to communication, and provides the opportunity for exploring possible solutions to reaching agreement.

Local court rules in each judicial district determine the specific process that the judge will use to order the parties to participate in permanency mediation. The parties in permanency mediation consist of, at a minimum, each parent, the parent(s) attorney; agency social worker assigned to the case; permanency/foster care agency supervisor; agency attorney; attorney advocate; and GAL staff and/or volunteer. North Carolina uses a co-mediation model (two

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<sup>16</sup> Jones, W.G. (2006) *Working with the Courts in Child Protection*. Washington, D.C. United States Department of Health and Human Services, Administration for Children and Families.

mediators) which takes into account the large number and diversity of people present, the complexity of the work, and the demands of negotiating a petition and producing agreements to be written and signed off on in the session.

Mediation provides the opportunity for increased parental involvement in the development of a case plan tailored to the family's specific needs, as well as an opportunity for the agency to clearly articulate [its](#) expectations early in the case. By assisting to move a case to permanence more quickly, permanency mediation provides cost savings to both the foster care and court systems. Perhaps more importantly, moving to permanence provides emotional and physical stability for a child.

A thorough explanation is provided by [N.C.G.S. § 7B-202](#), which explains:

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or

written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court.

## **G. NON-SECURE CUSTODY HEARING**

A juvenile cannot be held in non-secure custody for more than seven (7) calendar days without a hearing on the merits or a hearing to determine the need for continued custody. The first hearing to determine the need for continued custody may be continued for up to ten (10) business days with the consent of parent, guardian, or custodian and, if appointed, the Guardian ad Litem. In addition, the court may require consent of additional parties or may schedule a hearing despite a party's consent to a continuance. The court must also make Reasonable Efforts findings required under [N.C.G.S. § 7B-507](#) at all similar hearings and all review hearings.

If the judge determines that a juvenile meets criteria for non-secure custody and should continue in custody, the judge issues an order to that effect. The Order on Non-Secure Custody<sup>17</sup> shall be in writing with appropriate findings of fact and signed and entered within thirty (30) days of the completion of the hearing. Findings of fact include the evidence that was relied upon to reach the decision, goals, and purposes that continued custody are to achieve. The order shall detail the reasonable efforts made by the agency to avoid or eliminate need for placement and whether such efforts should continue.

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<sup>17</sup> Refer to Attachment 11 (Sample Order on Non-Secure Custody)

As per [N.C.G.S. § 7B-506](#) a second hearing on continued non-secure custody shall be held within seven (7) business days after the first hearing is held. Hearings thereafter shall be held at intervals of no more than thirty (30) calendar days. All of these subsequent hearings may be waived only with the consent of the juvenile's parents and the juvenile's Guardian ad Litem. Additionally, the statute specifies that at every hearing to determine the need for continued non-secure custody, the court shall:

- inquire about the identity and location of missing parents and agency attempts to locate and serve them;
- inquire about whether a relative is willing and able to provide proper care and supervision in a safe home and, if so, order placement with that relative;
- inquire whether other juveniles remain in the home from which juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted and any actions taken or services provided by the agency for protection of the other juveniles;
- consider issues related to both MEPA and ICWA.

#### **H. ADJUDICATORY HEARING**

The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition.

[N.C.G.S. § 7B-802](#) explains, "The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in the petition." Adjudication means making a judgment (i.e., legally deciding whether something did or did not occur) based on either the evidence presented or either party agreeing (stipulating) to the existence or non-existence of the conditions of abuse, neglect, **and/or** dependency. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law ([N.C.G.S. § 7B-802](#)). The adjudicatory hearing must be held within sixty (60) days of the filing of the petition unless the judge orders that it be held later ([N.C.G.S. § 7B-801](#)). The allegations stated in the petition must be proven by clear and convincing evidence ([N.C.G.S. § 7B-807](#)). The judge may continue the hearing, for good cause, for as long as is reasonably required to receive additional evidence, reports, or assessments requested by the Court or other information needed in the best interest of the juvenile. The rules of evidence in civil cases apply in these proceedings. All adjudicatory and dispositional hearings shall be recorded.

If the judge finds that the allegations in the petition have been proven, he or she shall so state. If the judge finds that the allegations have not been proven, he or she shall dismiss the petition with prejudice and the juvenile will be released from non-secure custody.

The Order on Adjudication<sup>18</sup> shall be reduced to writing, signed, and entered no later than thirty (30) days following the completion of the hearing. If the order is not entered within thirty (30) days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within ten (10) days of the subsequent hearing required by this subsection.

#### **I. DISPOSITIONAL HEARING**

Following the adjudicatory hearing, the judge shall proceed to the dispositional hearing upon receipt of sufficient medical, social, psychiatric, psychological and educational information. The dispositional hearing (held only after an adjudication of abuse, neglect, and/or dependency has been made) outlines primarily the child's needs and then examines the parents' resources available and their barriers preventing the meeting of the child's needs. The dispositional hearing should occur immediately following the adjudicatory hearing if the court has sufficient information to proceed. If the court does not have sufficient information to proceed to the dispositional stage of the case, the case should be re-calendared as soon as possible thereafter once the court has sufficient information but must occur within thirty (30) days of the conclusion of the adjudicatory hearing ([N.C.G.S. § 7B-901](#)).

[N.C.G.S. § 7B-807](#) states:

"If the court finds that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in non-secure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker."

The purpose of the disposition is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. The initial approach, if possible, should be to safely maintain the juvenile in his or her own home and to use appropriate community resources. The judge may order community-level services for the juvenile and family. The dispositional hearing may be informal. The judge may consider written reports or other

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<sup>18</sup> Refer to Attachment 12 (Sample Order on Adjudication)

evidence concerning the needs of the juvenile. The juvenile and parent, guardian, or custodian may present evidence and advise the judge on the best interests of juvenile.

[N.C.G.S. § 7B-903](#) provides a thorough examination of dispositional alternatives available to judges. Upon adjudication, the judge may dismiss the case or may order that appropriate community level services be provided to the child and his family in order to strengthen the family situation. The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile.

1. The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.
2. In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:
  - a. require that the juvenile be supervised in the juvenile's own home by the agency in the juvenile's county, or by other personnel as may be available to the court; or
  - b. place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
  - c. place the juvenile in the custody of the county [child welfare agency](#) in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the agency in the county where the juvenile is found so that the agency may return the juvenile to the responsible authorities within the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to needed routine or emergency medical or surgical care or treatment.

If a juvenile is removed from the home and placed in the custody or placement responsibility of a county [child welfare agency](#), the director shall not allow unsupervised visitation with, or return of physical custody of the juvenile to the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

[N.C.G.S. § 7B-905](#) requires that when a juvenile is placed in the custody of a county [child welfare agency](#), the court may order the agency to arrange, facilitate, and supervise a visitation plan expressly approved by the court. The statute also makes clear that if the director makes a good faith determination that

the visitation plan outlined in the court order is not in the juvenile's best interest (because, for example, the juvenile is being abused during the visitation), the Director can temporarily suspend all or part of the visitation plan until further review by the court. The agency must document with clear and convincing reasons why the action was in the child's best interest and present evidence to the court at the next hearing or request an earlier review of the case.

In placing a juvenile in out of home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of a juvenile in a safe home. If the court finds that a relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. The Initial **Provider** Assessment ([DSS-5203](#)) shall be completed prior to placement and the Kinship Care Comprehensive Care Assessment ([DSS-5204](#)) shall be completed no later than 30 days following placement. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children. For more information on the Interstate Compact Placement of Children refer to the [Family Services Manual Volume I, Chapter XI – Interstate/Intercounty Services to Children](#).

Additionally, it is important for agencies to keep the Guardian ad Litem Program informed of any changes in the juvenile's status (specifically, the juvenile's placement). Per [N.C.G.S. § 7B-905\(d\)](#):

When a county department of social services having custody or placement responsibility of a juvenile intends to change the juvenile's placement, the department shall give the guardian ad litem for the juvenile notice of its intention unless precluded by emergency circumstances from doing so. Where emergency circumstances exist, the department of social services shall notify the guardian ad litem or the attorney advocate within 72 hours of the placement change, unless local rules require notification within a shorter time period.

### **3. Examinations of the Child and Professional Testimony**

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

- a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment.

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- b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the director of the Mental Health / Developmental Disabilities / Substance Abuse Services Local Management Entity (LME) serving the agency's county for appropriate action. A juvenile shall not be committed directly to a state hospital or other facility designed to serve these juveniles. The Mental Health / Developmental Disabilities / Substance Abuse Services LME serving the agency's county is responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.
- c. When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional that performed the mandated evaluation prior to returning custody of the juvenile to that individual.

As a part of the dispositional hearing, the district court has the authority over parents to:

- order the parents to pay cost of medical, psychiatric, or psychological examinations ordered for juvenile;
- order the parents to participate in their child's treatment;
- require treatment or counseling for parents or make legal custody or physical placement of the juvenile with the parent contingent upon the parent's compliance with the plan of treatment;
- order the parents to pay for their court ordered treatment; and/or
- order the parents to pay a reasonable sum for the cost of care of their child while in custody.

According to [N.C.G.S. § 7B-905](#), the Order on Disposition<sup>19</sup> shall be reduced to writing, signed, and entered no later than thirty (30) days from the completion of the hearing and shall contain findings of fact and conclusions of law. The order:

1. shall state the precise terms of the disposition, including who is responsible for carrying them out; and

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<sup>19</sup> Refer to Attachment 13 (Sample Oder on Disposition)

2. shall direct that the review hearing required by N.C.G.S. § 7B-906 will be held within ninety (90) days from the date of the dispositional hearing and, if practicable, shall set the date and time for the review hearing (for cases involving custody); and
3. shall comply with the requirements of the N.C.G.S. § 7B-507.

For children whose placement is in foster care, the dispositional order shall contain:

1. findings that the juvenile's continuation in or return home would be contrary to the juvenile's best interest;
2. findings as to whether reasonable efforts were made to prevent or eliminate the need for placement in foster care; and
3. required services or other efforts aimed at returning the juvenile promptly to a safe home.
4. Any order that places a juvenile in the custody of the agency shall state that the placement and care of the juvenile are the responsibility of the agency.

If the court finds through written findings of fact in the Order on Disposition that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in the order that reunification efforts are not required.

## **J. APPEAL**

According to N.C.G.S. § 7B-1001 and N.C.G.S. § 7B-1002, appeals on certain orders may be made by the juvenile (through the Guardian ad Litem), parent, guardian or custodian, state or county agency or any TPR petitioner. These appeals are heard by the North Carolina Court of Appeals. Notice of appeal shall be given in writing within thirty (30) days after entry of the order. However, if no disposition is made within sixty (60) days after entry of the order, written notice of appeal may be given within seventy (70) days after such entry. An expedited appeals process in juvenile abuse, neglect, and dependency exists under Rule 3A of the North Carolina Rules of Appellate Procedure.

**K.      REVIEW HEARING**

According to [N.C.G.S. § 7B-906](#), "In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing." The timeframes for the hearings as well as notification requirement are also outlined in that statute. The timeframes and notices are as follows:

- review hearings shall be conducted within ninety (90) days from the date of the dispositional hearing;
- review hearings shall be conducted within every six (6) months thereafter;

The agency shall make timely requests to the Clerk of Court to calendar each review at a session of court scheduled for the hearing of juvenile matters.

The Clerk of Court shall give no less than fifteen (15) days notice of reviews to:

- the parent or person standing in loco parentis;
- the juvenile regardless of age

Note: When a juvenile's case is being heard, agencies shall fully promote the participation of that child in the proceeding in a manner in which makes the child the most comfortable. This may be having the juvenile address the court, writing a letter to the judge, drawing a picture of what "permanent" might look like, etc. The discussion with the juvenile shall be centered on "how" they would like to participate in court, not "if" they will participate.

- the guardian;
- the custodian;
- the foster parent;
- the agency with whom custody is vested;
- the Guardian ad Litem;
- any other person the court may specify.

The court may waive or forego review hearings; may require written reports to the court by the agency in lieu of review hearings; or order that review hearings be held less often than every six (6) months if the court finds by clear, cogent, and convincing evidence that:

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- the juvenile has resided with a relative or been in custody of another suitable person(s) for at least one year;
- the placement is stable and in the juvenile's best interest;
- neither the juvenile's best interest or rights of any other party require a hearing every six (6) months;
- all parties are aware that the matter may be brought before the Court for review at any time by filing of a motion for review; and
- the court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person of the juvenile.

At every review hearing, the court shall consider information from the agency, the juvenile, the parents or person standing in loco parentis, the custodian, foster parents, the Guardian ad Litem, and any public or private agency. In each case, the court shall consider and make written findings regarding:

1. the efforts that the agency has made to reunite the family, whether the judge determines those efforts to be reasonable or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's need for a safe, permanent home within reasonable period of time;
2. where return home is unlikely, efforts which the agency has made to finalize or achieve some other plan for permanence and whether those efforts were reasonable;
3. goals of placement and the appropriateness of the foster care plan;
4. a new foster care plan, if continuation of out-of-home care is sought, that addresses the role the current foster parent will play in planning for the juvenile;
5. an appropriate visitation plan;
6. if the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;
7. reports on the placements the juvenile has had and any services offered to the juvenile and parents;
8. when and if termination of parental rights should be considered; and

9. any other criteria the court deems necessary.

The court, after making any findings of fact, may appoint a guardian of the person for the juvenile pursuant to [N.C.G.S. § 7B-600](#) or may make any disposition authorized by [N.C.G.S. § 7B-903](#), including authority to place child in the custody of either parent or any relative found by the court to be suitable and in the juvenile's best interest. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. The order (either the Order on Ninety-Day Review<sup>20</sup> or the Order on Six Month Review<sup>21</sup>) must be reduced to writing, signed, and entered within thirty (30) days of the completion of the hearing. If at any time, custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct judicial reviews of the placement.

#### **L. PERMANENCY PLANNING HEARING**

At a hearing designated by the Court, but at least within twelve (12) months after juvenile's placement, a review hearing shall be held and designated as a Permanency Planning Hearing. When notice is given to the parties, the notice of the hearing shall inform the parties that this hearing is specifically designated as the Permanency Planning Hearing and the general purpose of the hearing.

The purpose of the Permanency Planning Hearing is to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. If the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.

A thorough examination of permanency placement options can be found in the Permanency Planning portion of the [Family Services Manual Volume I, Chapter IV: 1201 – Child Placement Services](#) but portions of that text are also discussed here:

Although there is never a guarantee of permanence, it is the intention that all work with the child, the family, the community, and the agencies involved targets a plan that supports permanence. The following permanent resolutions are most possible when relevant questions can be answered and the underlying issues they suggest have been addressed. There are **six** possible permanent plan goals: reunification, adoption, legal guardianship (with relatives or other kin), legal custody, [Reinstatement of Parental Rights](#), and Another Planned

<sup>20</sup> Refer to Attachment 14 (Sample Order on Ninety-Day Review)

<sup>21</sup> Refer to Attachment 15 (Sample Order on Six-Month Review)

Permanent Living Arrangement (APPLA). These options should all be considered and addressed from the beginning of placement and continuously evaluated. Although one option (reunification) may appear to be the primary plan, the other options should also be explored and planned concurrently. Some children in foster care will exit the system through other avenues.

#### **1. Reunification**

Reunification means that the biological/adoptive parent(s) or caretaker from whom the child was removed regains custody of the child. In most cases, reunification is the primary permanent resolution sought, and reasonable efforts to reunify the child with the parent must be demonstrated and documented to the court. Reunification is appropriate when the parent is capable of providing minimum sufficient level of care, even when there are areas of concern. A return to even marginally adequate parents is a better alternative than years in foster care, as long as the safety of the child can be ensured.

Reunification should be considered when:

- the issues that precipitated the child's removal have been addressed and resolved, and
- risk to the child has been reduced to a reasonable level; and
- the parents have made changes in their behavior and circumstances that were identified as needing to change before the child could be returned safely to the home; and
- the parent has demonstrated capacity and willingness to provide appropriate care for the child; and
- the child's safety and care in the home is reasonably expected to remain secure; and
- supports from the agency and community are in place to assist the family to remain intact.

Reunification should not be considered when the court has found that such efforts would be futile or would be inconsistent with the juvenile's need for a safe, permanent home within a reasonable period of time.

The agency is responsible for working with the parents to help them gain capacity to provide care for their children. This includes:

- working with the family to assess its strengths and resources, as well as the issues that must be resolved for reunification;
- helping the family to build its own capacity through the use of community resources, education and training, and mutual support;
- encouraging the child/youth to work with his **or** her family to resolve barriers to reunification;
- providing opportunities for the family to visit, in order to assure that the parents are able to care appropriately for the child;
- helping each family member to anticipate and constructively respond to conditions in the family unit that may endanger its stability;
- helping the family to connect with a support network of individuals and resources who will be available to them in the transition process;
- being available to the family for at least three months after reunification to help **it** remain stable. A trial home visit or aftercare services may be appropriate to help facilitate the transition. Refer to the discussion regarding trial home visits and aftercare found in [Family Services Manual Volume I; Chapter XIII: Child Welfare Funding Manual](#) for information on how to fund these services.

### **Agency Requirements Towards Reunification**

The agency's efforts and the results of involvement must be documented in the case record and court review documents in order to demonstrate to the court that the agency has made efforts toward reunification that may reasonably be expected to achieve the desired result.

A child who has been removed from the custody of a parent (or person acting *in loco parentis*) by a court order because of abuse or neglect may not be returned for any period of time without judicial review and findings of fact to show that child will receive proper care and supervision. A supervised visit does not fall within the meaning of the term "return" as long as a social worker is present at all times. The agency should work with its juvenile court to determine how the local judges interpret the law on trial visits.

In addition to the required timeframes for court reviews, parents, the Guardian ad Litem and the respective agency have a right to ask for a motion for review so

that the court may re-evaluate the plans for the child. Whenever there is a significant change in circumstances, a motion for review shall be filed by the agency. It is strongly recommended that a motion for review be filed with the court in all cases in which it is proposed that a child be returned, even on a trial basis, to a parent residing in another state. Parents have a legal right to ask the court for the return of their child even if the agency does not consider the situation appropriate. The agency may recommend against the return of the child at the time of the court hearing. The court maintains the right to return the child against agency recommendations if it so determines. If a child was accepted for placement as a result of a court order, the court must be kept informed of the child's progress.

## 2. Adoption

Adoption is the permanent plan offering the most stability to the child who cannot return to his or her parents. Factors to consider include whether or not the child is likely to return home and whether the child can be freed for adoption. In order for the child to be adopted, both parents must voluntarily relinquish their parental rights or their parental rights must be terminated by the court. The agency shall file a petition for termination of parental rights within sixty (60) calendar days of the agency's decision that the permanent plan is adoption or within sixty (60) calendar days of the hearing that determines that the plan is adoption unless the court makes other findings, as per [N.C.G.S. § 7B-907\(e\)](#). There must be legal grounds to terminate each parent's rights.

If an American Indian parent or custodian relinquishes his or her rights or consents to the plan of adoption, the consent is not valid unless procedures of the Indian Child Welfare Act are followed. This includes certification that the American Indian parent or custodian fully understood the nature of his or her relinquishment of rights and that interpreter services were provided if necessary. (A copy of the [Indian Child Welfare Act](#) is appended to the Adoption Services chapter of the Family Services Manual and the Indian Child Welfare Compliance Checklist is form [DSS-5291](#).)

When the child is legally freed for adoption, the agency shall make every effort to locate and place the child in an appropriate adoptive home. When adoption becomes the plan for a child, the agency shall develop a child-specific written strategy for recruitment of an adoptive home within thirty (30) days. At a minimum, the plan shall document the child-specific recruitment efforts such as the use of state, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in state and interstate placements.

Adoption by relatives or kin may be an option to consider if the relative or kin are willing to adopt and can provide a safe home. Care should be taken in assessing this option to consider whether there may be conflict or divided loyalties between the parent of the child and the adopting relatives and how these issues would be handled. If an adoption by relative or kin can be achieved, the child's sense of identity and family history can be preserved.

Adoption by foster parents is often an appropriate plan, especially if the child has developed a close relationship with the foster family. Such a plan has the benefit of providing continuity for the child with a family that **he or she** already knows without requiring an additional move. Increasingly, foster families are being recruited and trained to provide foster care, to work with the team toward reunification efforts, and to be willing to consider committing to the child permanently through adoption if reunification is not possible. These parents are sometimes referred to as "permanency planning families." Recruiting and training these families are key components of concurrent planning. Sometimes the child's parent(s) recognize that they cannot be the permanent family for the child. When they know and respect the care that their child is receiving from the foster family, they may voluntarily relinquish their parental rights so that the child can be adopted by that family. The advantage in this situation is that it allows for the possibility that the child and birth parent continue some relationship while the child is raised by a committed and caring adoptive family.

When adoption by a relative, kin, or foster parent is not an option, the agency should place the child in an approved adoptive home. There may be approved families waiting that may be appropriate for the child, or potential adoptive families may need to be recruited specifically for the child. Recruitment activities should include the use of media resources. The faith community is another valuable resource when recruiting potential adoptive families. The county **child welfare agencies** shall have current information available for prospective adoptive families that describes the kind of children needing placement, the availability of adoption assistance, and procedures for referring families they are unable to serve to other child placing agencies. In any case, all children who are free for adoption and who are not in their identified adoptive home shall be referred for listing on the North Carolina Adoption Exchange and in the North Carolina Photo Adoption Listing Service (PALS) book.

When adoption is being considered as a permanent plan, satisfactory answers to the following questions are needed:

- Have all relative placement options been considered and eliminated?

- Have the child's ethnic and cultural needs been considered and addressed? Refer to Family Services Manual Volume I; Chapter VI: 1201 – Adoption Services (Appendices P and D) for information on the requirements of the [Multi-Ethnic Placement Act](#) and the [Indian Child Welfare Act](#) (form [DSS-5291](#) can be used to answer these questions as well)
- Has the best interest of the child been considered and documented?
- Are the parents willing to relinquish their rights, or is the agency ready to proceed with termination of parental rights?
- Do legal grounds for termination of parental rights exist?
- Is the child already living with caretakers who are willing to adopt?
- How soon can the child be placed in an adoptive home?
- How long will the court process take?
- Who will help the child through the placement process?
- Has a pool of potential adoptive families been recruited or is the agency willing to commit to child-specific recruitment?
- Has the child's particular needs and strengths been thoroughly assessed and evaluated?
- Has a placement option that will be able to meet the child's needs been identified?
- What is the child's relationship with siblings?
- Should the child be placed with siblings and, if so, can this be accomplished?
- Is the child able to accept "parenting?"

#### **Agency Requirements Towards Adoption**

- When adoption becomes the primary permanency plan for a child, the agency shall within thirty (30) days develop a child-specific written strategy for recruitment of an adoptive home. At a minimum, the plan shall document the child-specific recruitment efforts such as the use

of state, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in state and interstate placements. The agency shall document its diligent and consistent efforts to locate and place the child in an appropriate adoptive home.

- When adoption is the alternative or secondary permanency plan for a child, the agency shall search for an appropriate adoptive family. Both in state and out-of-state options must be considered when making reasonable efforts to place the child in accordance with the permanency plan and to finalize the permanency plan.
- If adoption by a relative, kin, or foster parent is not an option, the agency should recruit an appropriate adoptive home for the child. Children and youth who are able to do so should be asked for their recommendations regarding potential adoptive families, since they may know individuals or families with whom they are comfortable.
- The agency shall conduct or arrange for an adoptive home study in accordance with agency policy.
- The agency shall have face-to-face contact with the child or youth at least monthly and shall keep the child appropriately informed about the agency's progress.
- Children who are free for adoption and who are not placed in their probable adoptive home shall be referred by the agency for listing in the North Carolina Adoption Exchange and the North Carolina Photo Listing Service book, as well as regional and national adoption exchanges including electronic exchange systems, in order to facilitate matches between persons interested in adoption and the children who are available.
- If the agency is unsuccessful in locating a person willing to adopt the child within one year, the permanency plan shall be changed unless the agency is able to justify to the court why the plan should remain "adoption". Justification will include the agency's progress toward locating a person willing to assume legal responsibility for the child.
- Youth who are reluctant to consider adoption shall be given an opportunity to talk in a facilitated Child and Family Team Meeting about **his or her** concerns. Other permanency options shall be offered, and the adolescent's preferred plan should be given strong consideration whenever feasible. Adolescents who wish to reunite with their birth families should be given an opportunity to visit them

under decreasing supervision, and provided with 24-hour access to emergency support should an unsupervised visit become untenable. The social worker shall work with the adolescent to process the visitation experience and to develop strategies to cope with problems that may come up in future visits.

Occasionally, a child may be placed in a "legal risk placement." A legal risk placement is the placement of a child who is not legally cleared for adoption at the time placement occurs. The family selected for placement of a child in such situations should have completed the adoptive study process and be deemed suitable to meet the child's needs. Prior to placement, the family should be fully informed of the child's legal status and of the potential that the child will be removed from the home should legal clearance not be accomplished for some reason. The family should be given time to consider carefully and thoroughly all aspects of undertaking a legal risk placement.

The purpose of legal risk placement is to move the child into a permanent home as soon as possible without jeopardizing the legal or social well-being of the child. Since, in making a legal risk placement, the agency does not yet have authority to consent to the child's adoption, the home in which the child is to be placed must be licensed as a foster home or approved by a court order. Legal risk placements are appropriate when the child is not yet legally free for adoption but there is a high probability that parental rights will be terminated. Legal risk placements have the advantage of providing an early transition for the child into the family where they are expected to live. The child and family can begin to form attachments with one another. Legal risk placements should only be used after careful consideration and preparation of the adopting family. It is strongly recommended that the agency consult with its attorney before pursuing this option.

### **3. Legal Guardianship**

When reunification efforts are determined to be contrary to the health, safety, or best interest of a child who is in the legal custody or placement authority of the county child welfare agency, the county shall assess relative or kinship placements as a permanent option, including the child's birth father and paternal relatives. If the family is willing to provide a permanent home for the child but is not willing to adopt, then guardianship and custody should be offered to the family as alternatives. The court must order a specific visitation plan in any custody order (unless the specific findings support no visitation). When seeking guardianship, the agency is strongly encouraged to make a recommendation to the court regarding a specific visitation plan as many

guardianship orders have been remanded on this issue since visitation is one of the specific rights that parents retain if guardianship becomes the permanent plan.

Guardianship [through juvenile court](#), as described in [N.C.G.S. § 7B-600](#), assigns legal authority for the custodian to act on behalf of the child without further agency involvement, but with continued supervision of the court. The legal authority of the guardian includes:

- the care, custody and control of the juvenile,
- the authority to arrange placement for the juvenile,
- the right to represent the juvenile in legal actions before the court,
- the right to consent to actions on the part of the juvenile including marriage, enlisting in the armed forces, and enrollment in school;
- a guardian may consent to remedial, psychological, medical or surgical treatment for the juvenile.

The authority of the guardian continues until the court terminates the guardianship or until the child is eighteen (18) years of age or is emancipated by the court. A guardian may resign from the position of guardian, but his **or** her authority cannot be removed unless he is determined by the court to be unfit. Guardianship [through juvenile court](#) does not confer authority over the disposition of a child's estate or management of his income

Persons assuming legal guardianship of children in the custody of the agency are not eligible for state foster care board payments. They are eligible for child support paid by the parents. The child may also be eligible for Medicaid, since the guardian's income is not considered. Countable income includes Social Security benefits, child support payments and, if applicable guardianship subsidy. If a person accepts guardianship of a child who was in foster care and later adopts that child, he will be able to receive adoption assistance payments on behalf of the child until the child is eighteen (18) years of age.

#### **Agency Requirements Towards Guardianship**

- Guardianship shall only be considered when reunification and adoption are ruled out as permanency options.
- The agency shall conduct and demonstrate diligent efforts to locate a

suitable person who is willing to assume guardianship of the child. Both in state and out-of-state options must be considered when making reasonable efforts to place the child in accordance with the permanency plan and to finalize the permanency plan. Such efforts shall be documented in the case record and the court report.

- If the agency is unsuccessful in locating a person willing to assume guardianship of the child within one year, the permanency plan shall be changed unless the agency is able to justify to the court why the plan should remain “guardianship.” Justification will include the agency’s progress toward locating a suitable person willing to assume legal responsibility for the child.
- The agency shall assess the suitability using the Comprehensive Assessment for Guardianship ([DSS-5205](#)) of the home for guardianship placement and shall recommend to the court based on their findings.
- The agency shall assist the prospective guardian through the court process and shall help him understand the responsibilities of guardianship.
- The agency will assure that the guardian is aware of resources that may be available to the family should they later decide to adopt the child.
- The agency shall remain available to provide follow-up services to the guardian on an as-needed basis for six months, in order to assure the stability and health of the placement. Please see the discussion regarding aftercare in the [Family Services Manual Volume I; Chapter XIII: Child Welfare Funding Manual](#) for information on how to fund these services.

In concurrent permanency planning, relatives and kin should be identified early and assessed for their potential as possible permanent placements for the child. North Carolina law requires the judge who orders a child’s placement or continued placement to consider whether an appropriate placement with a relative is available. If the judge finds that a relative is willing and able to provide proper care and supervision in a “safe home,” the judge must order placement of the child with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. When placement with a relative for the purposes of foster care is made, consideration should be made as to the potential for that placement to become permanent

through adoption or guardianship if reunification with the parent is not possible.

For relevant questions to be considered before identifying legal guardianship as the permanent plan, refer to the list of questions at the end of the discussion on legal custody. Legal guardianship can be given to a relative or any other person deemed suitable by the Court. Persons other than relatives to consider include foster parents or adults who have a kinship bond with the child, even if they are not related by blood.

#### **4. Legal Custody**

Legal custody is another permanency option for children, although legal custody is less “legally secure” than adoption or guardianship. Custody may be terminated based on a change in circumstances, regardless of the fitness of the guardian. The judge can order legal custody of a child to a relative, foster parent, or other adult person deemed suitable by the court. Legal custody has most of the same advantages and disadvantages as legal guardianship. The specific rights and responsibilities of a legal custodian, however, are defined by the court order rather than being fully defined in law. The custodian must show the court order to prove their right to act in a parental role.

Questions to consider when determining the recommendation for legal guardianship or legal custody are as follows:

- What pre-placement relationship existed between the child and the potential guardian or custodian, and does the child have any attachment to them?
- Have the potential guardians or custodians been carefully evaluated? Is there a written assessment or home study using both the Initial [Provider Assessment \(DSS-5203\)](#) and the Kinship Care Comprehensive Assessment ([DSS-5204](#))? (For complete instructions on completion of the Kinship Care Comprehensive Assessment refer to [DSS-5204ins](#)).
- Have the potential guardians or custodians been included in the shared decision-making process?
- Have both maternal and paternal relatives been considered?
- Is placement with relatives or kin a way to protect the child's roots in the community?

- Will placement with a particular relative mean that the child must leave the community?
- Have sibling attachments been considered? Will placement with siblings be positive for this child?
- Is this potential guardian or custodian related to all the siblings, and are they willing to take all the siblings whether related or not?
- Will this placement support the child's ethnic and cultural identity? For additional information on the Multi-Ethnic Placement Act and Indian Child Welfare Act refer to the Placement Decision Making section of the [Family Services Manual Volume I: Chapter IV: 1201 – Child Placement Services](#).
- Is the potential guardian or custodian willing to provide a home for this child through the child's minority?
- Are there the same issues in the extended family that existed with the parents?
- What will be the on-going relationship with the child's parents? Will there be lifelong conflicts with the child's parents or is there a possibility of an unofficial return to the child's parents?

While legal custody is not well defined in statute, it implies responsibility for the oversight of the child's care, protection, training, and personal relationships. Neither guardianship of the person nor custody confers authority over the disposition of the child's estate. If the child either has an estate or receives income, such as through the Social Security Administration (SSA), separate court action should be initiated to establish guardianship of the estate. For additional information on the appointment and responsibilities of the guardian of the estate, refer to [N.C.G.S. § 35A-1250](#); [N.C.G.S. § 35A-1252](#); and [N.C.G.S. § 1253](#).

A judge can order legal custody of a child to a relative, foster parent, or other adult person deemed suitable by the court. The specific rights and responsibilities of the legal custodian are spelled out in the court order and may be as extensive as that of a guardian or limited. Again, the court must order a specific visitation plan in any custody order (unless the specific findings support no visitation). When seeking custody with a court approved caretaker, the agency is strongly encouraged to make a recommendation to the court regarding specific visitation plan as many custody orders have been remanded on this issue since visitation is one

of the specific rights that parents retain if custody becomes the permanent plan.

### **Agency Requirements Towards Legal Custody**

- The agency shall conduct and demonstrate diligent efforts to locate a suitable person who is willing to assume custody of the child. Both in state and out-of-state options must be considered when making reasonable efforts to place the child in accordance with the permanency plan and to finalize the permanency plan. Such efforts shall be documented in the case record and the court report,
- If the agency is unsuccessful in locating a person willing to assume custody of the child within one year, the permanency plan shall be changed unless the agency is able to justify to the court why the plan should remain "custody". Justification will include the agency's progress toward locating a suitable person willing to assume legal responsibility for the child.
- The agency shall provide information to the potential custodian about more permanent and legally secure options, including adoption and legal guardianship.
- The Kinship Care Comprehensive Assessment ([DSS-5204](#)) shall be conducted to assure that the placement is physically appropriate.
- Potential conflicts with the birth parent shall be evaluated and discussed with the custodian.

### **5. Reinstatement of Parental Rights**

Reinstatement of Parental Rights (RPR) became a permanency option when N.C.G.S. § 7B-1114 went into effect. Circumstances that would allow this permanency option are very narrow. Only the youth, the county child welfare agency, or the youth's guardian ad litem attorney advocate may file a motion to reinstate parental rights. Three conditions must be met in order to consider filing a motion for RPR:

1. The youth is at least 12 years of age or if under the age of 12, extraordinary circumstances exist that warrant consideration of reinstatement of parental rights;
2. The youth does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable time period; and

3. The order terminating parental rights was entered at least three years prior unless the youth's plan is no longer adoption.

When the county child welfare agency with custody of the youth is considering RPR, it is important to hear from the youth and explore with his or her thoughts, concerns, needs, etc. Care should be taken to ensure that the former parent is interested and appropriate, as well as, what the impact might be for the youth. A youth may be afraid to freely speak in front of a parent for fear of being disloyal or hurtful; therefore, the youth should be given an opportunity to express himself or herself without the former parent present prior to any Child and Family Team (CFT) Meeting. A CFT is required to make a change in the permanent plan. Flexibility in who should attend the CFT to discuss RPR is also required. The youth should be able to invite any supports or connections that are important to him or her to the CFT. The CFT should assist the youth in making an informed decision and provide him or her with an understanding of any possible repercussions. If a youth does not currently have a guardian ad litem, one should be requested and will be required if a motion to reinstate parental rights is filed. Finally, it is important to clarify that the court will have the ultimate decision-making authority regarding implementing this as the youth's permanent plan and it would be considered as the concurrent plan until court ordered.

Questions for the youth and the team to consider when RPR is an option:

- What efforts have been made to achieve adoption or find a permanent guardian? Has the agency actively worked toward other permanent plan options?
- Has the former parent remedied the conditions that led to the youth's removal and placement in foster care and subsequent termination of parental rights? What specifically has changed? What evidence is there that the change will continue? Would the changed circumstance continue even if the former parent were to lose an existing support system?
- Will the youth receive appropriate care and supervision with the former parent?
- How mature is the youth and is the youth able to express his or her preference? Is there any reason to believe that the youth is receiving pressure from the former parent to choose this plan?
- Is the former parent willing to resume contact with the youth and have rights reinstated?

- Is the youth willing to resume contact with the former parent and have rights reinstated?
- What services would the former parent and youth require to succeed if rights are reinstated? Will therapy be required and will access to it be available, including insurance and transportation needs? What services would no longer be available when the youth is no longer in custody?
- Would this plan support the best interests of the youth? What LINKS services would still be available to the youth? Would the former parent and the youth be open to those services, if in the youth's best interests? What benefits might the youth have been counting on for his or her education? See <https://www.statevoucher.org/> and <http://www.ncreach.org/index.php>. Will the youth have health insurance?
- Would the youth be able to maintain current meaningful connections, including those with siblings? Does the youth have an ongoing relationship with any sibling? How is the connection supported? If the sibling was adopted, will the adoptive parent(s) be open to continuing the relationship that might include the adoptive child's former parent? If transportation is key to continuing the relationship, is it accessible? Will the sibling want to continue the relationship if it includes the former parent? Will there be new family dynamics to work through for the connection to continue? What are the other meaningful connections that the youth has and how will they be impacted?

If a former parent whose rights have been terminated contact the county child welfare agency or contacts the youth's guardian ad litem regarding RPR, then the youth must be informed of his or her right to file a motion for RPR.

When a motion for RPR is filed and the court determines it to be the permanent plan for the youth, the county child welfare agency will continue to have the responsibility for the youth's placement and care. This shall include supervising visitation and monitoring placement with the former parent, if ordered until a final determination is made to either reinstate parental rights or determine another permanent plan. When the court enters an order to reinstate a former parent's rights, these rights include custody, control, and support of the youth.

**6. Another Planned Permanent Living Arrangement (APPLA)**

This plan shall only be an appropriate primary permanency goal for youth who are age 16 to 18, or as a concurrent permanency goal for youth who are age 14 to 18.

APPLA is:

- A permanent living arrangement for a youth age 14 or over who resides in a family setting which has been maintained for at least the previous six (6) concurrent months; **and**
- in which the youth and **caretaker** have made a mutual commitment of emotional support **and**
- the youth has been integrated into the family; **and**
- the youth and **caretaker** are requesting that the placement be made permanent; **and**
- other permanency options, including adoption, guardianship, and custody have been determined to be inappropriate for the situation due to the youth's long-term needs;
- APPLA must be initially approved by the court and the Permanency Planning Action Team (PPAT) or within a CFT meeting prior to the change in the permanency plan and periodically reviewed by the court. The youth shall participate actively in court decisions regarding APPLA either through direct testimony or through written depositions to assure that the youth's preferences are heard and respected.

APPLA may be appropriate for relative or non-relative placements in licensed or court-approved non-licensed homes when the above criteria are met. The agency retains legal custody of the youth for the period of the APPLA. If the family is a licensed **caretaker** or becomes licensed, **it** shall receive standard board payments to help support the placement. If **it is** not a licensed foster care facility, the **family** shall be informed of and given the opportunity to become licensed.

### Agency Requirements Towards APPLA

The agency shall be required to provide and document services as follows:

- Child Placement Services to ensure the child's ongoing safety and well-being needs are met.
- Provision of relevant LINKS services, based on a written, objective assessment, and a plan developed with the youth (for additional information on LINK please refer to the North Carolina Links portion of the [Family Services Manual Volume I; Chapter IV: 1201 – Child Placement Services](#)).
- Access to resources for the youth through the LINKS program and other resources as appropriate;
- Diligent efforts to help the youth to establish a strong personal support network with friends and relatives; and
- Post-placement support for the [caretaker](#) in order to avoid placement disruption. Please see the discussion regarding aftercare in [Chapter XIII: Child Welfare Funding Manual](#) for information on how to fund these services.
- APPLA must be reviewed at least every six (6) months, or more often as needed, at a facilitated CFT meeting, which includes the youth and [caretaker](#), and [his or her](#) supports, as well as the agency LINKS liaison. The CFT meeting shall review the plan and the agency's effort to maintain the stability of the placement and to assist the youth in [the](#) transition to independence (for additional information on Child and Family Team Meetings, please refer to [Family Services Manual Volume I, Chapter VII – Child and Family Team Meetings](#)).
- Permanency planning hearings shall be conducted at required intervals and shall review agency recommendations and reports of the APPLA placement.

In discussing the Order on Permanency Planning Review<sup>22</sup>, [N.C.G.S. § 7B-907\(c\)](#) reads:

At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the

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<sup>22</sup> Refer to Attachment 16 (Sample Order on Permanency Planning Review)

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

### **Emancipation**

While emancipation is not a permanent placement option, and while very few youth pursue this (fewer still achieve), the process of emancipation is an issue that county [child welfare agencies](#) may, at some point, be required to address. Therefore, a brief review is warranted.

Emancipation occurs in a very few cases, whether through marriage, joining the armed forces, or emancipation by the court. Some youth will leave foster care without ever achieving a permanent family. It is the responsibility of the agency to prepare these children for self-sufficiency. It is also the responsibility of the agency to assist the child in forming a positive attachment to adults who can be a resource to that youth through the rest of [his or her](#) childhood and into adulthood. Efforts to achieve a permanent plan for the youth should always remain active.

If the director of the [county child welfare agency](#) is asked to consent to marriage of a child in the agency's custody, or to give permission for that child to join the armed services, exceptionally careful consideration shall be given to ensure that the child's safety and needs will be provided. Under [N.C.G.S. § 7B-3500](#) children ages 16-18 may petition the court for a judicial decree of emancipation while [N.C.G.S. § 7B-3504](#) states that in determining the best interests of the petitioner, the court will make the following considerations:

- the parental need for the earnings of the petitioner;
- the petitioner's ability to function as an adult;
- the petitioner's need to contract as an adult or to marry;
- the employment status of the petitioner and the stability of his/her living arrangements;
- the extent of family discord which may threaten reconciliation of the petitioner with his/her family;
- the petitioner's rejection of parental supervision or support; and
- the quality of parental supervision or support.

After the final decree of emancipation, the petitioner has the same right to make contracts and conveyances, to sue and be sued, and to transact business as if he **or** she **was** an adult. The parent is relieved of legal duties and obligations owed to the petitioner and are divested of all rights with respect to the petitioner. The decree of emancipation is irrevocable. Again, emancipation is not a permanent plan option.

#### **M.      ADOPTION RELATED COURT ISSUES**

For organizational purposes this chapter explores the intersection between the juvenile court and child welfare up to the point of TPR (which is examined next in this chapter). For adoption policies relative to court issues, please refer to [Family Services Manual Volume I; Chapter VI; Section 1302 – Legal Guides](#).

#### **VIII.      TERMINATION OF PARENTAL RIGHTS (TPR)**

Termination of Parental Rights is the legal severing of all rights and obligations of the parent to the child and of the child to the parent (except the child's right to inheritance from the parent, which continues until a final decree of adoption has been issued). This type of court action comes under the jurisdiction of the Juvenile Division of the District Court. The North Carolina General Statutes governing the legal framework for

Termination of Parental Rights can be found in the following statutes: [N.C.G.S. § 7B-1100](#); [N.C.G.S. § 7B-1101](#); [N.C.G.S. § 7B-1101.1](#); [N.C.G.S. § 7B-1102](#); [N.C.G.S. § 7B-1103](#); [N.C.G.S. § 7B-1104](#); [N.C.G.S. § 7B-1105](#); [N.C.G.S. § 7B-1106](#); [N.C.G.S. § 7B-1106.1](#); [N.C.G.S. § 7B-1107](#); [N.C.G.S. § 7B-1108](#); [N.C.G.S. § 7B-1109](#); [N.C.G.S. § 7B-1110](#); [N.C.G.S. § 7B-1111](#); [N.C.G.S. § 7B-1112](#). While no court action is to be taken lightly or without due cause, the sheer number of statutes dedicated to this one type of action underscores the seriousness and severity of this action.

As with any other juvenile court action, this particular action is initiated by the filing of a motion or petition for Termination of Parental Rights of the parent or parents whose consents have not been obtained. The Notice of Motion Seeking Termination of Parental Rights (form [AOC-J-210](#))<sup>23</sup> may be used when a TPR action is filed by motion. If a TPR is filed by petition, then the Summons in Proceeding for Termination of Parental Rights (form [AOC-J-208](#))<sup>24</sup> must be used. As with other petitions for Juvenile Court action, termination petitions are filed with the Clerk of Court. Due to the complex legal nature of termination proceedings, agencies seeking to have parental rights terminated should coordinate all aspects of this court action in close consultation with their legal counsel.

#### **A.      GROUNDS FOR TPR**

[N.C.G.S. § 7B-1111](#) provides that the first requirement for terminating the parental rights is a finding by clear, cogent and convincing evidence that one or more of the following conditions exist:

1. The court has found that the parent has abused or neglected the child in accordance with the definitions of [N.C.G.S. § 7B-101](#);
2. The parent has willfully left a child in foster care for more than twelve (12) months without showing to the satisfaction of the court that “reasonable progress under the circumstances has been made within 12 months in correcting those conditions that led to the removal of the child;”
3. The child has been placed in the custody of a county [child welfare agency](#), a licensed child placing facility, a child caring institution, or a foster home, and the parent, for a continuous period of six (6) months immediately prior to filing of TPR petition, has willfully failed to pay a reasonable portion of the cost of care for the child although physically and financially able to do so;
4. One parent has been awarded custody of the child 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

<sup>23</sup> Refer to Attachment 10 (AOC-J-210)

<sup>24</sup> Refer to Attachment 9 (AOC-J-208)

preceding the filing of the petition willfully failed without justification to pay for the care, support and education of the child, as required by said decree or custody agreement;

5. The father of a child born out of wedlock has not prior to filing of petition to terminate his parental rights: (a) established paternity, (b) legitimated the child, (c) married the mother of the child or (d) provided substantial financial support or consistent care with respect to the child and mother;
6. The parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child, and there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition;
7. The parent has willfully abandoned the child for at least six (6) consecutive months immediately preceding the filing of the petition. For the purposes of this section, a child may be willfully abandoned by his or her natural father if the mother of the child had been abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the child must be over the age of three months at the time of the filing of the petition;
8. The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; aided, abetted, attempted, conspired or solicited murder or voluntary manslaughter of the child, another child of the parent or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent or other child residing in the home;
9. The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

TPR is a two-part process. First, the agency must show by clear, cogent, and convincing evidence the existence of one or more grounds for TPR. Second, even if these grounds exist, the decision to terminate the parent's rights must be determined by the court to be in the child's best interest.

Prior to the filing of a TPR petition, agencies shall thoughtfully consider the following questions. The answers to these questions should be thoroughly discussed with the agency's legal counsel in consideration of preparing evidence for the court:

- Have all appropriate services been offered to the parents in a timely manner?
- Have the parents responded to these services in a way that demonstrates they are now able to provide a minimally sufficient level of care for their children?
- If the child has special needs, are the parents able, at the time of the TPR hearing, to meet those needs?
- Is there a reason to believe that the parents could materially improve the conditions or behavior that led to the removal of their child in the next three months if given the opportunity? Can any improvement be expected to last?
- What type of relationship have the parents maintained with their child since he/she was removed?
- What progress or problems has the child experienced while in foster care?

The agency must also present evidence that addresses "best interest" issues for the court. The following additional questions will help develop this evidence:

- **Wh**at relatives or other kin have been considered for permanent placement? Are there members of the kinship network who are willing and able to adopt the child? Is there an existing emotional attachment between the adult and child? Can the child maintain contact with them if they do not adopt the child? Will they be supportive of an adoptive placement? Will siblings remain together? Should **siblings remain together**?
- What is the potential for adoption by non-relatives? Will the foster parents adopt this child? Are there other adoptive parents waiting? Will the agency conduct a child specific recruitment effort?
- Is there a balance between what the child wants against what the child needs? Does the child understand the issues? What has the child said about his **or** her preferences? Who has talked to the child? Are there conflicting loyalty issues?
- How long has the child been waiting for a permanent home?

- What will happen to this child if TPR is not granted? Who will “parent” this child when he/she is an adult? Who will be his/her “forever” family?

Additionally, [N.C.G.S. § 7B-1110\(a\)](#) requires that the court must consider factors such as:

- the age of the juvenile;
- the likelihood that the juvenile will be adopted;
- whether TPR will aid in accomplishing the juvenile’s permanent plan;
- the bond between the juvenile and the parent;
- the quality of the relationship between the juvenile and any proposed placement and;
- any other relevant consideration.

## **B. PROCEDURES FOR FILING A TPR PETITION**

In agency placements, the agency having placement authority has the responsibility for legally clearing the child and directly filing the documents with the Clerk of Court. These documents contain identifying information and shall not be given to the adoptive parents or their attorney. In all other placements, the adoptive parents’ attorney has the responsibility to legally clear the child and file the documents with the Clerk of Court. The agency need not maintain legal clearance documents in [its](#) files except for children for whom [it has](#) placement authority.

## **C. TPR PROCESS**

Adoption may become the plan for children whose parents may not be available to give consent or whose parents may be unable or unwilling to care for the children. In these circumstances, one method of assuring that the children are legally cleared for adoption is by obtaining a court adjudicated termination of parental rights.

### **1. Petition for TPR**

A petition for termination of parental rights of a child’s parent or parents may be filed by the Director of the county [child welfare agency](#) or by a licensed private child-placing agency, if the agency has court ordered custody of the child or if the child has been relinquished for adoption to the agency by one of the parents or by the guardian of the person of the

child. Others who may file a petition include either parent, seeking termination of the other parent's parental rights; a judicially appointed guardian of the person of the child; any person with whom the child has lived for two or more years; and a Guardian ad Litem appointed to represent the minor child pursuant to [N.C.G.S. § 7B-601](#), who has not been relieved of this responsibility; and any person who has filed a petition for adoption.

The petition must contain information that is specified in [N.C.G.S. § 7B-1104](#), including the facts that are considered sufficient to warrant a determination that one or more of the grounds for terminating parental rights exists. If the identity and/or whereabouts of the parent are unknown, an affidavit should be attached to the petition indicating both this fact and the efforts undertaken to ascertain the identity and whereabouts of the parent. The affidavit is to be that of the petitioner. If the petitioner is not one of the child's parents, the affidavit should include information furnished to the petitioner by the parent, if available, such as a mother's sworn statement of circumstances that resulted in her pregnancy without her knowledge of the father's identity. Alternatively, the affidavit may be based on personal information or absence thereof about the child's parent or parents.

## **2. Preliminary Hearing in the Case of Unknown Parent(s)**

If it appears to the court before which the petition for Termination of Parental Rights is filed that the identity of the child's parent or parents is unknown, the court shall, within ten (10) days of the filing of the petition (or during the first available court period), conduct a preliminary hearing in an effort to ascertain the identity of the unknown parent. Though notice of this hearing is required only to the petitioner, the court may summon other persons to the hearing if it is felt that others may be apt to provide the identifying information.

If the identity and whereabouts of the parent are not ascertained, notice of a hearing to terminate parental rights shall be served upon the unknown parent by publication, as set forth in [N.C.G.S. § 7B-1105](#). If the unknown parent served by process of publication fails to answer the petition within the thirty-day time period prescribed in the notice, the statute mandates the court to issue an order terminating the unknown parent's parental rights.

## **3. Summons**

In cases in which the identity of the parent whose rights are sought to be terminated is known, diligent attempts must be made to provide personal

service of summons and petition. If personal service is not possible, the statute provides for alternate methods of service. The summons shall notify the parent to file written answer to the petition within thirty (30) days after service of summons and petition. [N.C.G.S. § 7B-1106](#) outlines the parties that should be recipients of the TPR summons. It should be noted that this statute indicates that the juvenile will receive service of the summons but goes on to also say, "Except that the summons and other pleadings or papers directed to the juvenile shall be served upon the juvenile's guardian ad litem if one has been appointed, service of the summons shall be completed as provided under the procedures established by [G.S. 1A-1, Rule 4\(j\)](#)." Recently, several Termination of Parental Rights matters have been vacated by the North Carolina Court of Appeals based on the lack of summons on the juvenile or **his or her** appointed Guardian ad Litem.

#### 4. TPR Hearing

After the time prescribed in the summons has expired, and whether there has been written answer to the petition from the **parents** served with the summons, the court shall conduct a hearing to determine the issues regarding termination of parental rights. [N.C.G.S. § 7B-1107](#) directs that:

Upon the failure of parent to file written answer to the petition or written response to the motion within thirty (30) days after service of the summons and petition or notice and motion, or within the time period established for a defendant's reply by [N.C.G.S. § 1A-1, Rule 4\(j1\)](#) if service is by publication, the court may issue an order terminating all parental and custodial rights of that parent with respect to the juvenile.

The court must appoint a Guardian ad Litem for the child to represent the child's best interests only if an answer is filed denying material allegations. If a Guardian ad Litem has already been appointed, pursuant to [N.C.G.S. § 7B-601](#), then the GAL and the Attorney Advocate continue to represent the juvenile. The court must also schedule a special hearing to determine the issues raised by the petition and the answer; and must provide notice of that hearing to the petitioner, **parent**, and GAL. The hearing shall not be scheduled less than ten (10) days or more than thirty (30) days from the time of serving notice and is often held just before the termination of parental rights hearing ([N.C.G.S. § 7B-1108](#)).

##### a. Adjudicatory Portion of Hearing

The burden at this stage is on the petitioning agency to show by clear, cogent and convincing evidence the existence of one or more grounds for termination of parental rights. The court may request additional

evidence, reports, and information and may continue the hearing for the time required for the receipt of such information ([N.C.G.S. § 7B-1109](#)). In addition, pursuant to this statute, the adjudicatory hearing on termination shall be held no later than ninety (90) days following the filing of the petition or motion unless the court has entered a continuance for up to ninety (90) days for good cause. Continuances beyond ninety (90) days shall only be granted in extraordinary circumstances for the proper administration of justice.

In cases in which an agency petitions the court for termination of parental rights of a child in its care and/or custody, it is essential that the agency case records contain well documented entries that indicate the type and frequency of agency attempts to involve the parent, to correct or better conditions that led to the child's removal, to establish paternity, to obtain reasonable support for the child, etc. The length of time the child has been in foster care, dates of contacts, kinds of contacts and quality of contacts, and contents of communication with the parent will be essential in establishing the agency's justification for termination. Agencies are strongly encouraged to discuss with their legal counsel whether the record itself should be taken to the hearing. Regardless of the agency's decision to take a record to court, accurate notations of factual data, such as dates of visits, etc. should be prepared and provide the basis of the social worker's sworn testimony at the hearing.

b. Disposition Portion of Hearing

If the court finds, based on clear, cogent, and convincing evidence, that if the court finds that irrespective of grounds that TPR is not in the juvenile's best interest, then the court shall dismiss the petition or deny the motion after setting forth facts and conclusions for the denial or dismissal. If the court finds that grounds do not exist, the court shall dismiss the petition or deny the motion after making the appropriate facts and conclusions. ([N.C.G.S. § 7B-1110](#)) At this stage of the proceeding, the petitioner does not have the burden of proof; the court hears all evidence and makes a discretionary determination of best interest. Should the court determine that despite the existence of circumstances warranting termination of parental rights, such action would not be conducive to the child's best interests, the court may dismiss the petition after first setting forth facts and conclusions upon which the decision for dismissal is based.

**5. Appeals**

[N.C.G.S. § 7B-1001](#) sets forth the provisions for an appeal of an adjudication or order of disposition by any person who has been a party to a termination of parental rights proceeding. The appeal is made to the North Carolina Court of Appeals.

**6. Effects of TPR Order**

A termination order has the effect of completely and permanently severing all parent/child rights and obligations between the parent and the child, except that the child's right to inherit from his **or her** parents will not be terminated until a Final Decree of Adoption has been issued. If the child is in the custody of a county **child welfare agency** or a licensed private child placing agency at the time the termination is filed, upon entry of the termination order that agency shall have all placement rights to the child, including the right to consent to the adoption. The agency's consent in such cases should be executed in writing. It is possible for the agency to be vested with consenting authority in some situations in which it was not the petitioner for termination of parental rights, such as if foster parents or a GAL petition for termination in regard to a child in agency custody. In the case of foster parent petitioners, it is anticipated that usually the agency will feel that adoption by such long-term caretakers is in the child's best interests and will agree for the foster parents to adopt. In cases in which the child had not been in agency custody or relinquished by one parent to an agency for adoptive placement and the petition for termination was filed by someone other than an agency director or representative, the court, upon terminating parental rights, may place custody of the child with the petitioner, or some other suitable person, or with an agency, according to the child's needs and interests.

**7. Post-Termination Reviews**

Per [N.C.G.S. § 7B-909](#) reviews are required following termination of parental rights in order to ensure that every reasonable effort is being made to finalize a permanent plan for the child who has been placed in the custody of a county agency or licensed child-placing agency. Placement reviews shall be held no later than six (6) months from the date of the termination of parental rights. Subsequent reviews shall be held every six (6) months until the juvenile is placed for adoption and a final decree of adoption is entered. Additionally, the appointment of the GAL Program continues until the decree of adoption is filed. At each review hearing, the court may consider information from the agency, the licensed child-placing agency, the Guardian ad Litem, the child, the foster parent, and any other person or agency the court determines is likely to

aid in the review. The court shall consider at least the following in its review:

- the adequacy of the plan developed by the county [child welfare agency](#) or licensed child-placing agency for a permanent placement;
- whether the child has been listed with the NC Adoption Resource Exchange, the N.C. Photo Adoption Listing Services (PALS), or any other specialized adoption agency;
- the specific recruitment efforts made by the agency to find a permanent home for the child;
- whether the agency's efforts toward achieving the permanent plan for the child are sufficient or reasonable.

The court shall affirm the agency's plans or require additional steps that are necessary to accomplish a permanent placement in the best interest of the child.

If the child has been placed for adoption prior to the date scheduled for the review, written notice of placement shall be given to the clerk and placed in the court file. The review hearing shall be cancelled and the clerk shall give notice of the cancellation to all persons previously notified.

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county [child welfare agency](#) or licensed child-placing agency. The Guardian ad Litem may request information from and consult with the agency concerning the selection process. [N.C.G.S. § 7B-908\(f\)](#) provides that if the Guardian ad Litem Program requests information about the selection process, the agency shall provide this information within five (5) days. The county [child welfare agency](#) or the private child placing agency must notify the GAL in writing of the filing of the adoption petition and the GAL has ten (10) days from the receipt of the written notification to raise any concerns about the adoption selection process.

## **IX. LEGAL MANDATES WHEN USING THE JUVENILE COURT**

### **A. CONTRARY TO THE WELFARE**

The very first court order must contain appropriate language if the child is to be IV-E eligible (for additional information on IV-E eligibility refer to [Family Services Manual Volume I; Chapter XIII: Child Welfare Funding Manual](#)). The order must

say that continuation in the home is contrary to the welfare of the child **or** removal is in the best interest of the child. This must be in the very first court order pertaining to the child's removal from the home. A finding that there were no other reasonable means to protect the juvenile meets this requirement. This must be in the initial removal order, which must be the Order on Non-Secure Custody <sup>25</sup> if the child is removed immediately by a non-secure order.

In addition, the court order must state that the agency has placement and care responsibility. Remember that custody does not necessarily equate to placement and care responsibility. The removal order must result in the immediate placement of the child from the home unless the court order specifies an alternative timeframe that assures the safety of the child. In instances when a child is removed as a result of a hearing on the merits of the petition, rather than a non-secure order, or pursuant to undisciplined or delinquent actions, or in a motion for review when the agency has custody but not placement, then the court order that results in placement must contain these findings because that would be the initial removal order. If this language is not in the very first court order, even if the findings are made later and included in a subsequent order, IV-E eligibility cannot be established for this removal period.

## **B. REASONABLE EFFORTS**

Within sixty (60) days of the removal of the child from the home, there must be a judicial determination that the efforts made by the county child welfare agency to prevent the removal of the child, were reasonable or sufficient. The court may also meet this requirement by finding that under the circumstances (such as imminent danger to the child), making no efforts was reasonable. The court may also find that no efforts were required if certain specific situations exist ([N.C.G.S. § 7B-507](#)). In cases where the agency is unable to locate the child, details of diligent efforts should be provided to the court. While the federal regulations allow a finding of reasonable efforts within sixty (60) days, [N.C.G.S. § 7B-506\(a\)](#) requires a finding of reasonable efforts at the non-secure custody hearing (as well as all subsequent non-secure, dispositional and review hearings), thus a judicial determination regarding reasonable efforts must be obtained at the earliest opportunity.

If reasonable efforts language is not in the findings of the court order within sixty (60) days of the child's entry into care, the child will not be IV-E eligible throughout the entire removal period. In some instances, children with whom the agency has not had previous contact are placed in the agency custody. A court order issued at the request of the agency within sixty (60) days of the removal must contain findings that address efforts around that removal and what efforts the agency is making to work toward reunification of the child and family. The

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<sup>25</sup> Refer to Attachment 11 (Sample Order on Non-Secure Custody)

child becomes eligible from the first day of the month in which the actual order is made that details reasonable efforts, if all other requirements have been met.

## **X. JUVENILE COURT DOCUMENTATION**

The child welfare worker's thorough preparation for court is a factor critical to effective and timely juvenile court decisions. The court report and the social worker's testimony must each accurately reflect the agency's knowledge of the child and family. The contents of court reports may differ according to the requirements of the juvenile court district. However, the purpose of the report is consistent-- to document the agency's findings; determinations of risk of further harm; plan goals and activities intended to correct the conditions that led to the request for custody and/or removal; and recommendations to the court for judicial action. It is strongly recommended that court reports be shared with all parties involved in any court action (including the **parent's** attorney, the Guardian ad Litem and the Attorney Advocate, etc.) before the day of court. The earlier this report can be shared among all parties the more likely that court hearings will proceed more timely and with fewer continuances.

### **A. NON-SECURE CUSTODY HEARING (SEVEN-DAY HEARING)**

This is generally the initial court report that the court will receive and this report shall contain the following information:

- why continuation in the home is contrary to the safety, health and best interest of the child;
- pre-petition history that the agency had with the family;
- description of the conditions alleged in the petition;
- description of specific efforts made by the agency to maintain the child in the home or, if the child was removed immediately, why the agency determined that such efforts were not in the child's interest;
- information about the child's family, including names and whereabouts of all legal and biological fathers and relatives or others who could be a temporary or permanent resource **or provider**.

## B. ADJUDICATION / DISPOSITION HEARING

The next type of court report shall, in addition to the information listed above, also contain the following:

- reasonable efforts made by the agency to prevent removal or to reunify children and families after removal when reunification is the plan;
- the current status of other juveniles who were living in the home from which the juvenile was removed and services provided for the protection of these juveniles;
- the identity and location of any missing parents and the agency's specific attempts to locate and serve them;
- information about relatives or other kin who are willing and able to provide proper care and supervision for the child in a safe home. This includes a formal assessment and recommendation of appropriate relatives, as well as justification when recommended relatives are not being considered as placement **options**;
- agency recommendations for a primary and **concurrent** permanent plan for the child;
- description of the parents' response to agency intervention and to services provided;
- description of the types, location, and frequency of visitation and parental functioning observed during the visits;
- recommendations regarding services to be provided and specific expectations of parental changes prior to return of custody.

## C. REVIEW HEARING

The majority of court reports that will be written are for Review Hearings. These shall inform the court whether the Out-of-Home Family Services Agreement (**DSS-5240**) has been followed and whether the family has made progress on the goals of the plan. In order to facilitate the court's understanding of this, the court report shall contain the following information:

- description of the agency's work with the family and the family's response to intervention since the last review hearing;
- recommended changes to the visitation order;

- description of progress or lack of progress toward achievement of the goals set forth in the previous court order
- description of the efforts that the agency has made toward achievement of the permanent plan (reunification, adoption, etc.)

As appropriate, the court report will also outline a description of the status of positive changes and address the following questions:

- Would the agency recommend unsupervised or trial home visits in the home this time?
- Would the agency remove the child today if the circumstances were as they are now?
- Has the agency remained focused on the critical risk issues identified by the reunification assessments?
- Have the expectations of the family changed due to previously unknown critical factors?

If appropriate, an assessment of the reasons for lack of positive changes should also be outlined in the court report. For the parents, this may be an inability or unwillingness to change. For the agency or community, there may be a lack of appropriate resources to help the family or the agency may not have had sufficient time to provide all needed services. The report should also clearly reflect the status of alternative permanent plans that are being developed or may be explored and recommended changes to the primary permanent plan goal, when appropriate. Finally, depending at which stage the review hearing may be occurring, the report may need to address whether there are grounds for Termination of Parental Rights and whether it is in the best interests of the child to begin proceedings for TPR.

#### **D. PERMANENCY PLANNING HEARING**

This court hearing is held to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period. As a result, the court report shall contain the agency's findings and recommendations on:

- reasonable efforts made by the agency toward reunifying the child and family or if the permanent plan is other than reunification, efforts made by the agency toward achievement of that plan;

- whether it is possible for the juvenile to be returned home immediately or within the next six months and, if not, why return home is not in the juvenile's best interests;
- when return home is unlikely within the next six months, information about relatives or other suitable persons who are willing to adopt, become legal guardian of the person of the juvenile or legal custodian of the child;
- when return home is unlikely within six months, whether the permanency plan goal should be changed and whether the juvenile should remain in the same placement or be placed in another placement and why.

#### **E. POST-TERMINATION OF PARENTAL RIGHTS REVIEW**

As required under ([N.C.G.S. § 7B-908](#)), Post-Termination of Parental Rights Reviews are designed to, "ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests." Thus, these court reports shall contain:

- description of the efforts that the agency has made toward achievement of the permanent plan
- the current status of the child;
- the steps taken by the agency to find an adoptive family for the child, including what recruitment efforts have occurred on behalf of the child, which listings have been posted to on state, regional, and national exchanges; and any completed or pending referrals made to private agencies;
- the results of the recruitment efforts; and
- the plans for the child and possible barriers to the implementation of the plans.

**XI. SPECIAL ISSUES**

**A. CONTINUANCES**

North Carolina Supreme Court Rules require that each judicial district adopt policies on limiting continuances. The State of North Carolina District Court Model Continuance Policy (1997, Rule 4) state the following regarding juvenile abuse and neglect cases:

The goal of a case management plan for juvenile court is to put the courts in the best position to ensure the safety of children, and give them the best possible chance of living in stable, permanent families. Therefore, continuances should be allowed only when it serves the child's best interest. Participants must come to court prepared to meet each statutory obligation that is required for resolution of these matters. Accordingly, juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting for hearing. In resolving court conflicts, juvenile cases shall take precedence over all other matters.

Continuances should not be allowed for the convenience of attorneys or parties. Continuances should be granted in extraordinary circumstances such as the illness of an attorney, inability to locate witnesses, or service of process has not yet been completed. When cases are calendared, parties should be prepared for, and expect, a meaningful event to occur. When cases are continued as a matter of practice, usually upon request and agreement of both parties and their counsel, valuable court time is lost, and time is lost towards achieving permanence for children

[N.C.G.S. § 7B-803](#) states:

“The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.”

Often, how the local court districts have complied with Supreme Court's requirement of the adoption of policies limiting continuances is to include this information in the court district's local rules. It should be noted that for IV-E eligibility requirements, continuances are not sufficient to meet the requirement unless the court actually hears evidence related to the agency's efforts to prevent removal.

**B. CHANGING VENUE**

[N.C.G.S. § 7B-400](#) states:

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

Transfers of the physical juvenile court case are made by the Clerks of Court and are not as simple as sending one file from one district to another. In lay terms, a motion (in the sending county) to transfer a case from one district to another is made and notice is provided to the receiving district and the receiving county [child welfare agency](#). A hearing is held on the motion, at which the receiving agency should be permitted to be heard.

**C. FAMILY COURT**

Family Court is a group of specially trained judges and staff in a district who seek to quickly respond to family and child concerns. In Family Court, a case coordinator assigns one judge to one family to hear the matters that occur when a family breaks apart, such as divorce, child custody and visitation, property sharing and alimony. In districts without Family Court, each of these family matters is assigned separately to whichever judge is holding court on the date of the hearing, so they may not be familiar with all of the family's issues.

Case coordinators also assign a specially trained judge to one family to hear charges of child abuse, neglect, dependency, and juvenile delinquency. Judges and staff work to make sure that these cases are heard in court regularly, based on time standards in the law.

One of the goals of family court is to encourage families to reduce conflict and solve problems through mediation outside of court, rather than having the judge conduct a trial. Mediation can be used to settle money matters such as child support, and/or to reach an agreement on child custody and visitation. Another goal of Family Court is to complete hearings on family matters within one year. Family court staff keeps the legal issues moving through the court process by scheduling hearings according to time standards and organizing court calendars so that meaningful events occur at each court session.

**D. PETITION AMENDMENT**

As per [N.C.G.S. § 7B-800](#), “The court may permit a petition to be amended when the amendment does not change the nature of the conditions upon which the

petition is based.” A Juvenile Petition may need to be amended by an agency if additional information becomes available. As with any court related action, the decision to amend a petition to add to or remove information from the original petition must be carefully weighed by the agency in close consultation with its legal counsel. There is no specific Juvenile Petition Amendment form available. Agencies may simply file the Juvenile Petition for Abuse / Neglect / Dependency (form [AOC-J-130](#))<sup>26</sup> with the amended information included.

#### **E. MODIFYING OR VACATING ORDERS**

The court has the authority to modify or vacate any previous orders per [NCGS § 7B-1000](#). The statute reads, “Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interest of the juvenile, and the court may modify or vacate the order in light of changes in the circumstances or the needs of the juvenile.” The ability of the court to modify or vacate any order or disposition continues until the juvenile reaches the age of eighteen (18), until the juvenile is otherwise emancipated, or until the court case is terminated by order of the judge.

#### **F. OBTAINING SUBSTANCE ABUSE RECORDS BY COURT ORDER**

Alcohol and drug abuse patient records are protected under the federal regulations, [42 CFR Part 2](#) and cannot be disclosed or re-disclosed without the patient’s written consent unless otherwise provided for in the regulations. 42 CFR Part 2 allows for substance abuse records to be released without written consent under the following conditions:

1. To medical personnel to meet a bona fide medical emergency;
2. To qualified personnel for the purpose of conducting scientific research, audits or program evaluation, and;
3. If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. (See below for instructions on how to obtain this court order.)

However, no State law may either authorize or compel any disclosure prohibited by the federal regulations. The Guardian ad Litem’s general appointment letter does not allow them access to information about the diagnosis or treatment of substance abuse for the child or parent/caretaker. If the GAL does not have a court order explicitly allowing for the release of alcohol or drug abuse patient records for the child or parent/caretaker, those records and any references to them would have to be removed from the record prior to the GAL’s review.

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<sup>26</sup> Refer to Attachment 4 (AOC-J-130)

Please note that a violation of any provision of 42 CFR Part 2 is subject to a criminal penalty, a fine of not more than \$500.00 for the first offense and not more than \$5,000.00 for any subsequent offense.

Securing the parent/caretaker's consent for release of substance abuse assessment or treatment patient's records is vital. It is also important that the consent is voluntary and has not been coerced. The social worker should discuss the reasons the information is needed and ensure that the parent/caretaker understands their records are protected and the consent can be revoked at any time.

If the parent/caretaker refuses to sign the Consent for Release of Confidential Information ([DSS-5297](#)) and the information is needed to ensure the safety, well being and permanency of a child, then a court order and subpoena may be obtained to compel the disclosure of the patient substance abuse assessment or treatment records.

[42 CFR 2.61](#) states:

An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee-3, 42 U.S.C 290dd-3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.”

The following are examples of incorrect requests for disclosures using 42CFR 2.61:

- A person holding records subject to 42 CFR Part 2 receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order.
- An authorizing court order is entered, but the person does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of 42 CFR Part 2

[42 CFR 2.64](#) provides the procedures and criteria for orders authorizing disclosures for noncriminal purposes.

These procedures and criteria are:

**Application.** An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

**Notice.** The patient and the person holding the records from whom disclosure is sought must be given:

- (1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and
- (2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

**Review of evidence: Conduct of hearing.** Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

**NOTE:** This court order and subpoena cannot be obtained until the parent / caretaker has entered treatment.

For additional information, refer to: [Family Services Manual Volume I; Chapter VIII; Section 1428 – Confidentiality and Release of Information.](#)

## **G. COURTROOM DECORUM / ETIQUETTE**

While this section is not comprised of policy, agencies are strongly encouraged to discuss this issue with all child welfare staff just as they would do with family-centered practice. Indeed, good courtroom decorum is nothing more than family-centered practice applied to the courtroom setting and combined with common sense manners. Primarily, any text on courtroom etiquette examines two primary

areas: attire and manners. Underestimating the impact that one's attire may have in court is a mistake that can have unintended consequences for the agency. Unwritten standards for courtroom attire vary from district to district, but a good general guideline is to dress as if attending a special function. Attending court in business/professional attire is most generally preferred. An excellent resource for more information on this topic can be found at:

<http://www.lexisnexis.com/associates/career/career0706.asp>. While this particular webpage is directed primarily at attorneys, the same general principles apply to child welfare staff as well. Some additional general guidelines include:

- be punctual, whether at the start of court proceedings or when returning from a recess;
- refrain from chewing gum, eating, or drinking while observing court and certainly never while addressing the court directly;
- when addressed by the court be brief, concise, and respectful (the Judge should be addressed as "Your Honor" or "Judge" and all others should be addressed using appropriate salutatory titles such as Ms., Mr., Dr., Rev., etc.);
- silence (or turn off) all mobile devices including **mobile** telephones, pagers, etc.; never talk on a **mobile** telephone during court proceedings;
- refrain from sidebar conversations with others during court proceedings;
- do not address the court without having been addressed by the court first (**the** agency's legal counsel is **the agency's** voice in court proceedings until the court addresses **a person** directly);
- refrain from demonstrating any outward response to anything said or done in the courtroom;
- be prepared at all times, as **the** case may be called out-of-turn from the established docket;

#### **H. DELINQUENT AND UNDISCIPLINED JUVENILES PLACED INTO AGENCY CUSTODY**

At times, the court will place delinquent or undisciplined juveniles into the custody of **the county child welfare** agency. When this occurs, the court order that places the juvenile in the **agency's** custody should address the reasonable efforts requirements and the best interest of the juvenile. If the court order does not, the agency must file a motion to provide evidence in court to get an order that

includes the language or the agency has the option of filing a Juvenile Petition (form [AOC-J-130](#))<sup>27</sup> in lieu of a motion if deemed appropriate by the agency. Thereafter, court reviews shall be held at the same frequency as when children are adjudicated abused, neglected, and/or dependent.

**I. JUVENILES PLACED INTO THE CUSTODY OF A COUNTY CHILD WELFARE AGENCY BY A CIVIL COURT**

Juveniles are occasionally placed in agency custody by a civil court. When this occurs, the agency shall consider the court's findings related to the placement of the juvenile in agency custody as a Child Protective Services referral, assign the referral as either an abuse, neglect, and/or dependency report based on the court's findings, assign a response timeframe and assign to either the Family Assessment Response or Investigative Response (as determined by the agency and in accordance with policy). The agency shall also file a petition for abuse, neglect, and/or dependency as appropriate to the situation and based on the findings of the court. The agency shall also have the responsibility of completing a thorough assessment and reaching a case decision as outlined in [Family Services Manual Volume I; Chapter VIII; Section 1408 – Investigative and Family Assessments](#). The case decision reached by the agency, at a minimum, should culminate in a finding of dependency, as the judge has presumably made a judicial determination that neither parent is capable of caring for the child when custody of the child was transferred to the agency. Once the Juvenile Petition (form [AOC-J-130](#))<sup>28</sup> has been filed, the agency shall file an Order to Assume Non-Secure Custody (form [AOC-J-150](#)).<sup>29</sup> This petition should be filed immediately upon the judge's entering an oral order in Civil Court.

By obtaining an adjudication of abuse, neglect, and/or dependency, agencies are able to bring the juvenile into the case review and permanency planning process, and are able to access federal foster care funds.

**J. REVIEW OF VOLUNTARY FOSTER CARE PLACEMENTS**

As outlined in [N.C.G.S. § 7B-910](#), the court has the statutory obligation to review placements from voluntary agreements that are made between parents or guardians and the agency. The court makes findings about:

- voluntariness of the placement;
- appropriateness of the placement;

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<sup>27</sup> Refer to Attachment 4 (AOC-J-130)

<sup>28</sup> Refer to Attachment 4 (AOC-J-130)

<sup>29</sup> Refer to Attachment 5 (AOC-J-150)

- whether placement is in the best interest of the juvenile; and
- services that have been or should be provided to eliminate the need for placement.

The court may approve the continued placement of the juvenile in foster care on a voluntary basis; disapprove placement; or direct the agency to petition for legal custody.

An initial review hearing shall be held not more than ninety (90) days after placement and calendared upon request by the agency. An additional review hearing shall be held ninety (90) days thereafter and any review hearings at such times as the court shall deem appropriate. A juvenile shall not remain in voluntary placement longer than six (6) months without the agency filing a petition alleging abuse, neglect, and/or dependency. For additional information on Voluntary Placements Agreements refer to the Placement Decision Making section of the [Family Services Manual Volume I; Chapter IV: Child Placement Services](#).

## **XII. RECOMMENDED READINGS / VIEWINGS / RESOURCES**

Broun, K. & Blakey W. (2001) *Evidence* (3<sup>rd</sup> ed.). St. Paul: Black Letter Series® West Group.

Courter, G. (Director / Cameraman / Editor), Courter G. (Producer / Writer) (2004). *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care* [DVD]. United States

Hatcher, K. (2002) *North Carolina Guardian ad Litem Attorney Practice Manual*. West Group.

Jones, W.G. (2006) *Working with the Courts in Child Protection*. Washington, D.C. United States Department of Health and Human Services, Administration for Children and Families.

Laver, M. (1999) *Foundations for Success: Strengthening Your Agency Attorney Office*. American Bar Association's Center on Children and the Law.

Lubet, S. (2000) *Modern Trial Advocacy: Law School Edition*. Notre Dame: National Institute for Trial Advocacy.

Mason, J. (2003) *Reporting Child Abuse and Neglect in North Carolina* (2<sup>nd</sup> ed.). Chapel Hill: The University of North Carolina at Chapel Hill Institute of Government.

North Carolina Administrative Office of the Courts Website on The North Carolina Court System: <http://www.nccourts.org>.

North Carolina Office of Administrative Hearings Listing of North Carolina Administrative Codes: <http://reports.oah.state.nc.us/ncac.asp>.

North Carolina General Assembly's Listing of North Carolina General Statutes: <http://www.ncga.state.nc.us/gascripts/statutes/statutes.asp> .

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### **XIII. CONCLUSION**

For select child welfare cases, there is no question that the juvenile court must be involved for a variety of reasons--due to the immediate and grave danger to the child, as a result of a family's unwillingness to make necessary changes, or possibly as a result of an individual's obstruction of a Child Protective Services Assessment. In any case, the application of sound, professional judgment is crucial in making the decision to invoke the jurisdiction of the court, as there are positive and negative aspects of involving the court. The involvement of the court can have a far-reaching impact on families and can produce consequences that change families permanently. The courts may help parents see the seriousness of the situation, and to know that their behavior must change. The family may finally get the help they need through court-ordered services. Agencies must weigh potential gains against potential damage in determining the most appropriate course of action.