

# Checklists

The following Checklists are intended to assist the attorneys and judges who are participating in the various hearings involved in abuse, neglect, dependency, and related termination of parental rights proceedings. Users are cautioned that these Checklists are not meant to be a comprehensive guide.

Users should refer to the statutes directly. Questions about the interpretation of a statute may be answered by referring to the applicable Chapter and section within this Manual.

Additionally, these Checklists reflect the laws and published appellate decisions through February 15, 2022 and will not reflect any changes that may result from legislative action or appellate court interpretation that occur after that date.

**Checklist 1: Nonsecure Custody Orders**

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# Checklist 1

## Nonsecure Custody Orders

“Nonsecure custody” is a North Carolina specific term for a temporary emergency custody order that removes a child from their home while the adjudicatory hearing that determines whether the child is abused, neglected, and/or dependent is pending. Nonsecure custody is not appropriate in every case but is available when certain statutory criteria exist that show a nonsecure custody order is necessary to protect the juvenile. Although the initial order for nonsecure custody may be entered ex parte when the notice provisions of G.S. 7B-502 do not apply, subsequent hearings on the need for continued nonsecure custody are required.

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### AOC Form Orders:

AOC-J-150, [Order for Nonsecure Custody](#) (Oct. 2021).

AOC-J-151, [Order on Need for Continued Nonsecure Custody](#) (Oct. 2019).

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### Initial Nonsecure Custody Order and Subject Matter Jurisdiction

- A court action has been commenced by the filing of a verified petition alleging abuse, neglect, or dependency in district court by a county DSS. The petition was
  - filed with clerk’s office during hours when court was open.
  - accepted by magistrate when the clerk’s office was closed as authorized by G.S. 7B-404. G.S. 7B-402; 7B-403; 7B-405.
- The petition is properly signed by the department’s director or authorized representative. G.S. 7B-101(10); 7B-401.1(a); 7B-403(a).
- The petition is properly verified. G.S. 7B-403(a).
- The petition requests relief. N.C. R. Civ. P. 7(b)(1).
- NC has jurisdiction under the UCCJEA pursuant to G.S. Chapter 50A (review the allegations in the petition or attached affidavit addressing criteria specified by G.S. 50A-209 regarding the child’s status) (G.S. 7B-402(b)).
  - This is an initial child custody determination (G.S. 50A-201).
  - NC entered a child custody order prior to this action and NC has exclusive continuing jurisdiction (G.S. 50A-202).
  - NC has temporary emergency jurisdiction (G.S. 50A-204).
  - Another state has entered a child custody order but NC has jurisdiction to modify that order (G.S. 50A-203).
    - The child, the parents, and any person acting as a parent do not presently reside in the other state, or
    - The other state’s court has relinquished jurisdiction to NC and there is a court order from that other state relinquishing jurisdiction.

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## Compliance with Federal Laws

- Servicemembers Civil Relief Act: 50 U.S.C. 3931–3932*  
Before a judgment for petitioner (DSS) is entered,
  - Each respondent has made an appearance in the case. No SCRA affidavit is required.
  - For each respondent who has not made an appearance, there is an affidavit or allegation in the verified petition that addresses that respondent’s military status.
  - It appears that a respondent is in military service. When that respondent has not made an appearance, appoint an attorney to perform SCRA responsibilities.
  - A respondent is in military service. When the criteria of 50 U.S.C. 3931(d), (f) or 50 U.S.C. 3932 is met, a stay of at least ninety days is required.
  - Under the NC SCRA, a state national guard member has not provided a written or electronic copy of an order to active duty for more than thirty consecutive days that was issued by a state governor. G.S. 127B-27(3), (4); 127B-28.
  
- Indian Child Welfare Act: 25 C.F.R. 23.107*  
Mandatory inquiry as to child’s status as “Indian child” must be made of all participants at the commencement of the proceeding, with responses on the record. *See* 25 U.S.C. 1903(4) (definition of “Indian child”); *In re C.C.G.*, 2022-NCSC-3 (holding reason to know is based on political affiliation with tribe, not Native American ancestry).
  - The child is an Indian child. ICWA provisions apply.  
*Note:* If child resides or is domiciled on Indian land or is a ward of tribal court, tribal court has exclusive jurisdiction unless an exception applies. Provisions of “emergency proceeding” under ICWA must be followed.
  - A participant has “reason to know” the child is an Indian child. Follow ICWA provisions unless and until court determines on the record that the child does not meet the definition of Indian child. Confirm that DSS used and is using due diligence to identify and work with all the tribes child may (i) be member of or (ii) eligible for membership of when a biological parent is a member of a federally recognized tribe. A sufficient ICWA notice must be sent to all applicable tribes and the director of the regional office of the Bureau of Indian Affairs.
  - The child is not an Indian child and no participant has reason to know the child is an Indian child. Instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. ICWA does not apply.

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## Required Determinations for all Nonsecure Custody Orders: G.S. 7B-503(a)

- There is a reasonable factual basis to believe that the matters alleged in the petition are true.
- One or more of the conditions in G.S. 7B-503(a) exist (see statute for exact language):
  - abandonment;
  - physical injury, sexual abuse, or serious emotional damage;
  - exposed to substantial risk of physical injury or sexual abuse because of conditions created by or lack of adequate supervision or protection from a parent, guardian, custodian, or caretaker;

- need for medical treatment to prevent serious physical harm that may result in death, disfigurement, or substantial impairment of bodily functions and parent, guardian, custodian, or caretaker is unwilling or unable to consent to treatment;
- consent by parent, guardian, custodian, or caretaker; or
- child is a runaway and consents.
- There is a reasonable basis to believe that there are no other reasonable means available to protect the juvenile.

All three criteria must be satisfied.

*Note:* For continued nonsecure custody, G.S. 7B-506(b) sets forth that

- DSS has the burden of proving by clear and convincing evidence that the juvenile's continued placement in nonsecure custody is necessary; and
- the court is not bound by usual rules of evidence but must receive testimony and allow parties to introduce evidence and cross-examine witnesses.

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### **Initial Nonsecure Custody and Execution of the Order**

- Order authorizes law enforcement officer or other authorized person to take physical custody of the juvenile; leave copy of order with child's parent, guardian, custodian, or caretaker; and make due return of the order (G.S. 7B-504).  
Additionally, the court may determine
  - Based on the petition and request for nonsecure custody or petitioner's testimony that less intrusive remedy is not available, the law enforcement officer is authorized to enter private property to take physical custody of the juvenile.
  - There are exigent circumstances authorizing law enforcement officer to make forcible entry at any hour.
- The order may authorize the DSS director to consent to a Child Medical Evaluation (CME) if there are written findings demonstrating the director's compelling interest in having the CME before the first hearing on the need for continued nonsecure custody (G.S. 7B-505.1(b)).

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### **Continued Nonsecure Custody Preliminary Issues**

- The parties have been properly served or waived service (G.S. 7B-406; 7B-407; 7B-200(b)).
- Venue is proper, or venue is transferred pursuant to G.S. 7B-400.
- Will one of the hearings on the need for continued nonsecure custody be combined with a pre-adjudication hearing? G.S. 7B-800.1(b), see Checklist 2.

*Representation (G.S. 7B-601; 7B-602):*

- Parent's provisional counsel is
  - confirmed.
  - dismissed.
- Does an unrepresented parent desire and are they eligible for appointed counsel (may be reconsidered at any stage in the proceeding)? If yes, appoint counsel.
- If the parent wants to waive the right to counsel, has the court examined that parent on the record and made findings to show that the waiver is knowing and voluntary?

- Parent is under age 18 and not emancipated. A Rule 17 GAL is appointed.
- There is a substantial question as to parent's competency and need for a Rule 17 GAL. A hearing on that issue is required.
- Abuse and/or neglect is alleged. A GAL and attorney advocate has been appointed for the juvenile.
- Only dependency is alleged. The court exercises its discretion to appoint a G.S. 7B-601 GAL and attorney advocate.

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### **Continued Nonsecure Custody Inquiries and Findings**

At each hearing on the need for continued nonsecure custody, the court must determine the following (G.S. 7B-505(b); 7B-506):

- Is paternity at issue? If so, what efforts have been made to establish paternity? Order must include findings and may provide for specific efforts to be taken.
- If a parent is missing, what is known about the identity and location of that parent, and what efforts have been undertaken to locate and serve that parent? Order must include findings and may provide for specific efforts to be taken.
- What efforts have been made by DSS to identify and notify the child's relatives for potential resources for placement or support of the juvenile? Within thirty days of the initial nonsecure custody order, has DSS filed with the court information about the efforts it has made?
- Are there other juveniles remaining in the home? If so, what are DSS's assessment findings relating to those children? What if any actions has DSS taken and/or what services has DSS provided to protect those children?

Additional findings when a child is placed or remains in nonsecure custody with DSS (G.S. 7B-507):

- Whether continuation in or return to the child's own home would be contrary to the child's health and safety.
- Whether reasonable efforts have been made to prevent the need for placement (child's health and safety are the paramount concern) (finding may be that reasonable efforts were precluded by an immediate threat of harm to the child).
- A statement that the child's placement and care are the responsibility of DSS.

Required placement considerations (G.S. 7B-505(a1), (b), (d)):

- In making its order, the court must consider whether it is in the child's best interests to remain in the child's community of residence.
  - Under Fostering Connections and the Every Student Succeeds Act (ESSA), is DSS considering the proximity of the placement to the child's school? Is the child remaining in their school based on a best interest determination made by DSS in consultation with others?
- Is a relative willing and able to provide care and supervision in a safe home? If so, placement must be ordered to that relative unless the court finds it is contrary to the child's best interests.
- Have reasonable efforts been made to place the siblings together absent DSS documentation that joint placement is contrary to the safety or well-being of any of the siblings?

- Does the placement comply with the Interstate Compact on the Placement of Children (ICPC)?
- Does the placement comply with the Multiethnic Placement Act (MEPA-IEP)?
- When ICWA applies, does the placement comply with ICWA placement preferences?

Additional inquiries the court may make to address the following issues as appropriate:

- Has a petition been filed pursuant to G.S. 7B-302(d1) (caregiver with history of violence when abuse of child alleged)? If so, what are the results of any resulting mental health evaluation (G.S. 7B-503(b))?
- Does the order need to address consent for medical care for the child that is not routine or emergency care, including a CME? If so, provisions of G.S. 7B-505.1 apply.
- Is the child a member of a state-recognized Indian tribe? If so, the court may order DSS to notify the state-recognized tribe of the need for nonsecure custody for the purposes of locating relatives or nonrelative kin for placement (G.S. 7B-505(c)).
- Financial support.

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## Outcomes

- Deny continued nonsecure custody, resulting in child's return home (the court must first consider the child's release to their parent, relative, guardian, custodian, or other responsible adult (G.S. 7B-503(a)).
- Continue nonsecure custody
  - Placement in nonsecure custody with (G.S. 7B-505(a))
    - DSS (the order must specify that placement and care are DSS responsibility and DSS must provide or arrange for the juvenile's placement unless the court orders a specific placement, G.S. 7B-507(a)(4)) or
    - a person designated in the order (after considering DSS recommendations, G.S. 7B-507(a)(4)).
  - Temporary residential placement may be in any of the following (G.S. 7B-505(a)):
    - the home of parent, relative, nonrelative kin, appropriate former foster parent, other person with legal custody of the child's sibling, or any home or facility approved by the court and designated in the order (*see also* G.S. 7B-505(c1), (b), (c));
    - a licensed foster home or home otherwise authorized by law to provide such care; or
    - a facility operated by DSS.
  - Order DSS to make diligent efforts to notify relatives and other persons with legal custody of the child's sibling that the child is in nonsecure custody, unless there is a finding that notification would be contrary to the child's best interests (G.S. 7B-505(b)).
  - Order visitation when custody is removed from a parent, guardian, or custodian or continues the child's placement outside of the home pursuant to G.S. 7B-905.1 (G.S. 7B-506(g1)).

*Note:* When siblings who have been removed from their home are not jointly placed, reasonable efforts for visitation or other ongoing interaction between the siblings should be made absent DSS documentation that it would be contrary to the safety or well-being of any sibling (G.S. 7B-505(a1)).

- May order services or other efforts aimed at returning the child to a safe home (G.S. 7B-507(a)(5)).
- Set next hearing date in compliance with time requirements of G.S. 7B-506(a).

*Note:* The court may not dismiss the petition or award permanent custody to a parent or other person without an adjudication on the merits.

## Checklist 2

### Pre-Adjudication

The court is required to consider criteria set forth in G.S. 7B-800.1 before the adjudicatory hearing. The pre-adjudication hearing may be combined with a hearing on the need for continued nonsecure custody or any pretrial hearing authorized by local rules. If nonsecure custody was not requested or granted, the pre-adjudication hearing is likely to be the first hearing in the action.

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#### Subject Matter Jurisdiction

- A court action has been commenced by the filing of a verified petition alleging abuse, neglect, or dependency in district court by a county DSS. The petition was
  - filed with clerk's office during hours when court was open.
  - accepted by magistrate when the clerk's office was closed as authorized by G.S. 7B-404.G.S. 7B-402; 7B-403; 7B-405.
- The petition is properly signed by the department's director or authorized representative. G.S. 7B-101(10); 7B-401.1(a); 7B-403(a).
- The petition is properly verified. G.S. 7B-403(a); 7B-800.1(a)(5a).
- The petition requests relief. N.C. R. Civ. P. 7(b)(1).
- NC has jurisdiction under the UCCJEA pursuant to G.S. Chapter 50A (review the allegations in the petition or attached affidavit addressing criteria specified by G.S. 50A-209 regarding the child's status) (G.S. 7B-402(b)).
  - This is an initial child custody determination (G.S. 50A-201).
  - NC entered a child custody order prior to this action and NC has exclusive continuing jurisdiction (G.S. 50A-202).
  - NC has temporary emergency jurisdiction (G.S. 50A-204) (*Note: The court's authority is limited to entering temporary custody orders when it is exercising temporary emergency jurisdiction, impacting the court's authority to proceed to adjudication*).
  - Another state has entered a child custody order but NC has jurisdiction to modify that order (G.S. 50A-203).
    - The child, the child's parents, and any person acting as a parent do not presently reside in the other state or
    - The other state's court has relinquished jurisdiction to NC and there is a court order from that other state relinquishing jurisdiction.

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#### Parties and Personal Jurisdiction: G.S. 7B-800.1(a)(2), (3), (5)

- Identify the parties to the proceeding (G.S. 7B-401.1):
  - DSS, the petitioner
  - Child
  - Parent 1



- Parent 2
- Putative father(s)
  - What efforts, if any, have been made to establish paternity, including identifying and locating missing parent?
  - Has paternity been established?
- Guardian
- Custodian
- Caretaker
- The parties have been properly served or waived service (G.S. 7B-406; 7B-407; 7B-200(b)).
- Have notice requirements been met?
- Any motions to intervene or remove a party as authorized by G.S. 7B-401.1(g), (h).

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**Representation: G.S. 7B-601; 7B-602; 7B-800.1(a)(1)**

- Parent's provisional counsel is
  - confirmed.
  - dismissed.
- Does an unrepresented parent desire and are they eligible for appointed counsel (may be reconsidered at any stage in the proceeding)? If yes, appoint counsel.
- If parent wants to waive the right to counsel, has the court examined the parent on the record and made findings to show that the waiver is knowing and voluntary?
- Parent is under age 18 and not emancipated. A Rule 17 GAL is appointed.
- There is a substantial question as to parent's competency and need for a Rule 17 GAL. A hearing on that issue is required.
- Abuse and/or neglect is alleged. A GAL and attorney advocate have been appointed for the juvenile.
- Only dependency is alleged. The court exercises its discretion to appoint a G.S. 7B-601 GAL and attorney advocate.

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**Relatives: G.S. 7B-800.1(4)**

- Has DSS identified and notified parents, relatives, or other persons with legal custody of the child's sibling(s) as potential resources for placement or support of the child?
- If nonsecure custody was ordered, within thirty days of that order, has DSS filed with the court information about the efforts it has made to make those notifications? (*see* G.S. 7B-505(b)).

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**Other Pretrial Issues**

- Venue is proper, or venue is transferred pursuant to G.S. 7B-400.
- Are there any motions to continue the adjudication hearing, which must be held within sixty days of petition being filed (G.S. 7B-801(c))? Continuances are limited by G.S. 7B-803 but permitted if there is
  - Good cause to continue the hearing for as long as reasonably necessary to receive

- additional evidence, reports, or assessments that the court has requested or other needed information in the best interests of the child.
- Good cause to allow reasonable time for the parties to conduct expeditious discovery.
  - Extraordinary circumstances that are necessary for the proper administration of justice or in the child's best interests (resolution of pending criminal charges arising from the same incident is not a sole extraordinary circumstance to continue the hearing).
  - Are there discovery motions pursuant to G.S. 7B-700?
  - Is DSS seeking to amend its petition as authorized by G.S. 7B-800?
  - Is a writ requested for an incarcerated party?
  - Is there a request for a video-hearing or a participant's alternative means of participating? (*see* G.S. 7A-49.6; 50A-111).
  - Is there a request for the hearing or part of the hearing to be closed (G.S. 7B-801(a))?
  - Is there a motion for genetic marker testing regarding paternity (G.S. 8-50.1(b1))?
  - Is a language interpreter needed?
  - Are accommodations for a disability needed to allow for participation in the proceeding?
  - Any other pretrial issue?
  - Stipulations or Consent Order (see Checklist 3: Adjudication)

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### Compliance with Federal Laws

- Servicemembers Civil Relief Act: 50 U.S.C. 3931–3932*  
Before a judgment for petitioner (DSS) is entered,
  - Each respondent has made an appearance in the case. No SCRA affidavit is required.
  - For each respondent who has not made an appearance, there is an affidavit or allegation in the verified petition that addresses that respondent's military status.
  - It appears that a respondent is in military service. When that respondent has not made an appearance, appoint an attorney to perform SCRA responsibilities.
  - A respondent is in military service. When the requirements of 50 U.S.C. 3931(d), (f) or 50 U.S.C. 3932 are met, a stay of at least ninety days is required.
  - Under the NC SCRA, a state national guard member has not provided a written or electronic copy of an order to active duty for more than thirty consecutive days that was issued by a state governor. G.S. 127B-27(3), (4); 127B-28.
- Indian Child Welfare Act: 25 C.F.R. 23.107*  
Mandatory inquiry as to child's status as "Indian child" (defined at 25 U.S.C. 1903(4)) must be made of all participants at the commencement of the proceeding, with responses on the record.
  - The child is an Indian child. ICWA provisions apply.  
*Note:* If child resides or is domiciled on Indian land or is a ward of tribal court, tribal court has exclusive jurisdiction unless an exception applies. Provisions of "emergency proceeding" under ICWA must be followed.
  - A participant has "reason to know" the child is an Indian child. Follow ICWA provisions unless and until court determines on the record that the child does not meet the definition of Indian child. Confirm that DSS used due diligence to identify and work with all the tribes child may (i) be member of or (ii) eligible for membership of when a biological

parent is a member of a federally recognized tribe. A sufficient ICWA notice must be sent to all applicable tribes and the director of the regional office of the Bureau of Indian Affairs.

- The child is not an Indian child and no participant has reason to know the child is an Indian child. Instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. ICWA does not apply.

# Checklist 3

## Adjudication

Prior to the adjudicatory hearing, the court should have held a pre-adjudication (or pretrial) hearing that addressed issues impacting the adjudication hearing (see Checklist 2). At the time of the adjudicatory hearing, the child may or may not be placed in nonsecure custody.

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### Child's Status

An adjudication determines the child's status as abused, neglected, or dependent based on conditions alleged in the petition. It is not a determination of a parent's, guardian's, custodian's, or caregiver's culpability.

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### AOC Form Order:

AOC- J-153, [Juvenile Adjudication Order \(Abuse/Neglect/Dependency\)](#) (Oct. 2013).

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### Procedure

- Hearing (G.S. 7B-802; 7B-805)
  - No default judgment or judgment on the pleadings is permitted.
  - DSS must prove the allegations in the petition by clear and convincing evidence (G.S. 7B-807).
  - The rules of evidence apply (G.S. 7B-804).
  - Evidence is limited to that which relates to the allegations in the petition; however, two exceptions allow for post-petition evidence: (1) neglect is alleged and the parent and child have been separated for a period of time before the petition is filed or (2) the establishment of paternity.
- Stipulations of adjudicatory facts (G.S. 7B-807(a))

Must comply with one:

  - be in writing, signed by each party stipulating to the specific facts, and submitted to the court.
  - be read into the record, followed by an oral statement of agreement from each party agreeing to the stipulated facts.
- Consent order (G.S. 7B-801(b1))

All three are required:

  - All parties are present or represented by counsel who is present and authorized to consent.
  - The child is represented by counsel (if a GAL has not been appointed to a juvenile who has been alleged to be a dependent juvenile only, this provision is not satisfied and a consent cannot be taken).
  - The court makes sufficient findings of fact.

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## Findings and Conclusions

The order shall (G.S. 7B-807)

- contain appropriate findings of fact (supported by competent evidence in the record);
- contain appropriate conclusions of law (supported by the findings of fact);
- if adjudicating the juvenile abused, neglected, or dependent, state that the allegations have been proved by clear and convincing evidence; and
- be entered (reduced to writing, signed by the judge who presided over the hearing, and filed with the clerk) no later than thirty days following completion of the hearing. If the order is not entered within thirty days, clerk schedules a subsequent hearing at the first session of the court scheduled to hear juvenile matters to determine and explain reason for delay and address any needed clarification for the order. Order is entered within ten days of that hearing.

*Note:* If the petition alleged more than one condition (abuse, neglect, dependency), the order should make findings and conclusions about each condition alleged.

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## Outcomes

The court adjudicates the existence or nonexistence of the condition(s) alleged in the petition based on a clear and convincing evidence standard (G.S. 7B-805; 7B-807).

- DSS failed to meet its burden of proof. Petition dismissed with prejudice. If child was placed in nonsecure custody, child must be released to parent, custodian, guardian, or caretaker. (G.S. 7B-807(a)).
- DSS met its burden of proof by clear and convincing evidence. Child is adjudicated as one or more of the conditions alleged in the petition:
  - abused, and/or
  - neglected, and/or
  - dependent.

If the child is adjudicated abused, neglected, and/or dependent, the court proceeds to an initial dispositional hearing to be concluded within thirty days of completion of the adjudicatory hearing (G.S. 7B-901). Pending entry of the initial dispositional order, the court should address the following in a temporary order:

- custody, placement, and visitation.

## Checklist 4

# Dispositional Findings and Options at Initial, Review and Permanency Planning

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### HOW TO USE THIS CHECKLIST: USE TOGETHER WITH A CORRESPONDING CHECKLIST FOR THE PARTICULAR DISPOSITIONAL HEARING (Initial, Review, Permanency Planning)

There are different types of dispositional hearings: initial, review, and permanency planning. Each hearing requires the court to examine certain specified factors and make certain findings. Some of those factors and findings apply to every initial, review, or permanency planning hearing, and others are specific to the hearing type. The court is also authorized at every dispositional hearing to order a dispositional plan that addresses issues related to placement, custody, services, and conditions that are imposed on the parties. This Checklist addresses those factors, findings, and dispositional options that apply to all the dispositional hearings and is meant to be **used together with the corresponding Checklist** that identifies additional factors, findings, and options that apply to the specific hearing type.

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#### Procedure

- Hearing (G.S. 7B-901; 7B-906.1)
  - Consent order (G.S. 7B-801(b1))
- All three are required:
- All parties are present or represented by counsel who is present and authorized to consent.
  - The child is represented by counsel (if a GAL has not been appointed to a juvenile who has been alleged to be a dependent juvenile only, this provision is not satisfied and a consent cannot be taken)
  - The court makes sufficient findings of fact.

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#### Evidentiary Issues

- The standard is the child's best interests, and there is no burden of proof on any party.
- The court considers evidence that is relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition, which may include hearsay testimony and written reports (G.S. 7B-901(a); 7B-906.1(c)).

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#### Required Placement Considerations

G.S. 7B-903(a1), (b):

- When placement is not with a parent, the court must consider whether a relative is willing and able to provide care and supervision in a safe home. If there is such a relative, placement must be ordered to that relative unless the court finds it is contrary to the child's best

interests.

- In making its order, the court must consider whether it is in the child's best interests to remain in the child's community of residence.
  - Under Fostering Connections and the Every Student Succeeds Act (ESSA), is DSS considering the proximity of the placement to the child's school? Is the child remaining in their school based on a best interest determination made by DSS in consultation with others?
- Does the placement comply with the Interstate Compact on the Placement of Children (ICPC)?
- When the court has found the child has been physically abused by an individual, if that individual has a history of violent behavior against people, the court must consider the opinion of the mental health professional who performed an evaluation required by G.S. 7B-302(d1) before returning the custody of the child to that individual.

G.S. 7B-903.1(c):

- Before *DSS recommends* unsupervised visitation or a return of the child's physical custody to a parent, guardian, custodian, or caretaker *from whom the child was removed*, DSS must provide the court with documentation of at least two observations of visits between the child and removal parent, guardian, custodian, or caretaker, where each visit was at least one hour and the visits were at least seven days apart. The observations must occur within thirty days before the hearing where the recommendation is being made by DSS. Note that the DSS observation is not required before DSS recommends placement with the non-removal parent or when another party in the case seeks placement with the removal parent, guardian, custodian, or caretaker.

Other considerations:

- Does the placement comply with the Multiethnic Placement Act (MEPA-IEP)?
- When ICWA applies, does the placement comply with ICWA placement preferences?
- Have reasonable efforts been made to place siblings together absent DSS documentation that a joint placement is contrary to the safety or well-being of any of the siblings (G.S. 7B-903.1(c1))?

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**Dispositional Alternatives (Placement and Custody): G.S. 7B-903(a); 7B-906.1(d1), (i), (j), (l)**

The court may combine any of the applicable alternatives when it finds the disposition to be in the child's best interests.

- Dismiss the case (appropriate when no purpose would be served by continuing to exercise jurisdiction; legal status of the child and parents reverts to the status that existed prior to the filing of the petition, G.S. 7B-201(b)).
- Continue the case to allow the parent, guardian, custodian, caretaker, or others to take appropriate action.
- In-home supervision by DSS in the child's county or by another individual available to the court, subject to any conditions placed on the parent, guardian, custodian, or caretaker.

- Custody ordered to
  - Parent;
    - Court must consider whether jurisdiction in juvenile proceeding should be terminated and custody ordered pursuant to G.S. Chapter 50 (G.S. 7B-911).
  - relative, other suitable person, or private agency offering placement services;
    - Court has verified the person receiving custody
      - understands the legal significance of the placement (this applies to each person) and
      - will have adequate resources to care appropriately for the child.
    - Court must consider whether jurisdiction in juvenile proceeding should be terminated and custody ordered pursuant to G.S. Chapter 50 (G.S. 7B-911).
  - DSS in the county of the child's residence (or, if the child's residence is in another state, in the county where the child is found for return to appropriate authorities in the child's home state);
    - Decision making authority when DSS has custody of the child: G.S. 7B-903.1
      - Court may delegate any part of DSS authority to make decisions that are generally made by a child's custodian to the child's parent, foster parent, or other individual.
      - Court may set out alternative parameters for who approves normal childhood activities for child after finding it is not in the child's best interest to allow the child's placement provider (e.g., foster parent) to make such decisions without court or DSS approval.
      - Court must find there will be proper care and supervision in a safe home before DSS may allow unsupervised visits or return physical custody of the child to the parent, guardian, custodian, or caretaker from whom the child was removed.
      - If the order needs to address consent for medical care for the child that is not routine or emergency care, provisions of G.S. 7B-505.1(c) apply.
- Appointment of a guardian pursuant to G.S. 7B-600.
  - Court has verified the person being appointed guardian
    - understands the legal significance of the appointment (this applies to each person) and
    - will have adequate resources to care appropriately for the child.

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### Required Findings when Child Placed or Continues in Out-of-Home Care

G.S. 7B-903(a2), (a3):

- Continuation in/return to the child's own home would be contrary to the child's health and safety.
- Whether DSS has made reasonable efforts made to prevent the need for placement (child's health and safety are the paramount concern) (finding may be that reasonable efforts were precluded by an immediate threat of harm to the child).

G.S. 7B-905.1

- Visitation order that is in child's best interests and consistent with child's health and safety.



- The visitation order must include either
  - Minimum outline
    - minimum duration,
    - minimum frequency, and
    - whether visits must be supervised. If court is ordering supervised visitation, court must find parent has the ability to pay before ordering a parent to pay for the cost of supervision. When visitation is ordered, the plan may specify conditions under which visitation may be suspended.
  - No visitation. There must be a finding that visitation is not in the child's best interests consistent with the child's health and safety (G.S. 7B-905.1(b)) or a parent forfeited their right to visitation. Visitation cannot be denied solely on the basis of a parent's positive drug screens (G.S. 7B-905.1(b1)).
- If the court retains jurisdiction and waives further permanency planning hearings, all parties must be informed of the right to file a motion for review of the visitation plan.

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**Order Addressing Child's Evaluation and Treatment: G.S. 7B-903(d), (e); 7B-904**

*Note that emergency hearings addressing the continued hospitalization for a juvenile who (i) is in DSS custody, (ii) presented to a hospital emergency department for mental health treatment, and (iii) does not medically require continued hospitalization, are governed by G.S. 122C-142.2 and 7B-903.2.*

The court may order the following:

- Evaluation of the child by a physician, psychiatrist, psychologist, or other qualified expert, to determine the needs of the child.
  - When evaluation ordered and after its completion, the court must conduct a hearing to determine the treatment needs of the child and payment for the treatment.
  - Notice of the hearing must be given to the county manager or person designated by the chair of the board of county commissioners of the child's county of residence.
  - Payment of cost of evaluation or treatment by the parent or other responsible parties or, if the parent is unable to pay, by the county.
- DSS to coordinate with the appropriate representative of the area mental health, developmental disabilities, and substance abuse services or other managed care organization to develop a treatment plan for a child the court determines has a mental illness or developmental disability.
- Participation in child's treatment by a parent, guardian, custodian, stepparent, adult member of the child's household, or an adult caring for the child, if found to be in the child's best interest.

The court may not order the child's commitment directly to an institution (that order is void).

- Although not an order, the court may sign and consent to a child's admission to a hospital or developmental center for persons with intellectual or developmental disabilities if such admission is required and the parent, guardian, or custodian refuses to consent.

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### Order Directed to Parents or Others: G.S. 7B-904

The court may order a parent, guardian, custodian, or caretaker who has been served with a summons (or has otherwise submitted to the court's jurisdiction) to

- attend and participate in parenting classes if available in the judicial district where the parent, guardian, custodian, or caretaker lives;
- provide transportation for the child to keep appointments for any treatment ordered by the court (if the child is in the home and to the extent the person is able to provide transportation);
- take appropriate steps to remedy conditions in the home that led or contributed to the adjudication or to the court's removal of the child from the home;
- upon finding it is in the child's best interests, to participate in psychiatric, psychological, or other treatment or counseling directed towards remedying the behaviors or conditions that led or contributed to the child's adjudication or court's removal of the child from that person's custody, and may
  - require compliance with treatment plan approved by the court or
  - condition legal custody or physical placement of the child on compliance with that treatment
  - order the individual to pay the cost of the treatment and if unable to do so, may
    - order the county to pay when the compliance with treatment is a condition for legal custody or physical placement of the child with that parent or other adult.
    - order treatment currently available from a local mental health program.
- A parent over whom the court has personal jurisdiction may be ordered to pay a reasonable portion of the cost of the child's care based on the parent's ability to do so when legal custody of the child is vested with someone other than the parent.

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### Additional Components of Order: G.S. 7B-905; 7B-906.1(h)

The order shall

- contain appropriate findings of fact (supported by competent evidence in the record);
- contain appropriate conclusions of law (supported by the findings of fact);
- be entered (reduced to writing, signed by the judge who presided over the hearing, and filed with the clerk) no later than thirty days following completion of the hearing. If the order is not entered within thirty days, clerk schedules a subsequent hearing at the first session of the court scheduled to hear juvenile matters to determine and explain reason for delay and address any needed clarification for the order. Order is entered within ten days of that hearing.
- Complete
  - Checklist 5 for initial dispositional hearing,
  - Checklist 6 for review hearing, or
  - Checklist 7 for permanency planning hearing.

# Checklist 5

## Initial Disposition

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This Checklist includes those factors, findings, and options that are specific to the initial disposition conducted pursuant to G.S. 7B-901(c). **USE TOGETHER WITH CHECKLIST 4**, which contains additional required factors, findings, and options that apply.

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### AOC Form Order:

AOC- J-154, [Juvenile Disposition Order \(Abuse/Neglect/Dependency\)](#) (Oct. 2015).

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### Required Evidence

- DSS must submit a predisposition report or the court must make a written finding that the report is unnecessary (G.S. 7B-808).
- 

### Required Inquiries and Findings: G.S. 7B-901(b)

- Is paternity at issue? If so, what efforts have been made to establish paternity? Order must include findings and may provide for specific efforts to be taken.
  - If a parent is missing, what is known about the identity and location of that parent, and what efforts have been undertaken to locate and serve that parent? Order must include findings and may provide for specific efforts to be taken.
  - What efforts have been made to identify and notify the child's relatives, parents, or other persons with legal custody of the child's sibling(s) as potential resources for the child's placement or support? If nonsecure custody was ordered, within thirty days of that order, has DSS filed with the court information about the efforts it has made to make those notifications? (*see* G.S. 7B-505(b)).
- 

### Order and Required Findings for Ceasing Reunification Efforts: G.S. 7B-901(c)

When a child is placed in DSS custody, the court must order (unless exception below applies) that reasonable efforts are not required if it makes written findings that

- A court of competent jurisdiction determines or has determined that an aggravated circumstance exists because the parent committed, encouraged, or allowed any of the following on the child:
  - sexual abuse;
  - chronic physical or emotional abuse;
  - torture;
  - abandonment;
  - chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the child; or
  - any other act, practice, or conduct that increased the enormity or added to the injurious

consequences of the abuse or neglect.

- The parent's rights to another child were involuntarily terminated by a court of competent jurisdiction.
- A court of competent jurisdiction determines has determined that the parent
  - committed murder or voluntary manslaughter of another child of theirs;
  - aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of this child or another of the parent's children;
  - committed felony assault resulting in serious bodily injury to this child or another of the parent's children;
  - committed sexual abuse against this child or another of the parent's children; or
  - has been required to register as a sex offender on any government-administered registry.

Despite making a written finding of one of the above factors,

- the court finds there is compelling evidence warranting continued reunification efforts.

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**Additional Components of Order: G.S. 7B-905**

The order shall

- state the precise terms of the disposition, including the person(s) responsible for carrying out whatever is required in the disposition, as well as the person or agency in whom custody is vested;

Although not required, the court may include the next hearing date (G.S. 7B-906.1(a)).

- If custody was not removed from the parent, guardian, or custodian, a review hearing must be scheduled within ninety days.
- If custody has been removed from the parent, guardian, or custodian, a permanent planning hearing must be scheduled
  - within ninety days or
  - within thirty days when reunification efforts have been ceased (G.S. 7B-901(d)).

- 
- Complete Checklist 4 for additional requirements.**

# Checklist 6

## Review

Review hearings occur when custody has not been removed from a parent, guardian, or custodian. *See* G.S. 7B-906.1(a). This Checklist includes those factors, findings, and options that are specific to a review hearing. **USE TOGETHER WITH CHECKLIST 4**, which contains additional required factors, findings, and options that apply.

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### Required Notice: G.S. 7B-906.1(b)

- The clerk provided fifteen days' notice of the hearing and its purpose to the
  - parents;
  - child (if 12 or older);
  - the child's GAL;
  - if applicable, the guardian or custodian (including agency with custody);
  - the person providing care for the child unless DSS filed written documentation with the clerk that it sent notice to that person; and
  - any other person or agency the court specifies.

---

### Required Factors and Findings: G.S. 7B-906.1(d)

At every review hearing, the court must consider the following criteria and make written findings of those that are relevant:

- Services that have been offered to prevent the removal or reunite the child with either parent, regardless of whether the child resided with the parent at the time of removal, or with the guardian or custodian from whom the child was removed.
- Reports on the juvenile's continuation in and the appropriateness of the juvenile continuing to remain in the home of their parent, guardian, or custodian.
- Reports on visitation and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.
- Whether efforts to reunite the child with either parent clearly would be unsuccessful or inconsistent with the child's health or safety and need for a safe, permanent home within a reasonable period of time. The court must consider reunification efforts regardless of whether the child lived with the parent, guardian, or custodian at the time of the removal.
  - If the court determines efforts would be unsuccessful or inconsistent, the court must schedule a permanency planning hearing within thirty days to address concurrent permanency planning under G.S. 7B-906.2. (The court does not have the authority to order that reunification efforts cease at a review hearing).
- Reports on placements the child has had, the appropriateness of the child's current placement, and the goals of the child's foster care plan, including the role the current foster parent will play in the planning for the child.
- If the child is 16 or 17 years old, a report on an independent living assessment and, if appropriate, an independent living plan.

- Any other criteria the court deems necessary.

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**Additional Components of Order: G.S. 7B-906.1**

Although not required, the court may include the next hearing date (G.S. 7B-906.1(a)):

- If custody was not removed from the parent, guardian, or custodian, a review hearing must be scheduled within six months.
- If custody has been removed from the parent, guardian, or custodian, a permanency planning hearing must be scheduled within thirty days (G.S. 7B-901(d)(1a)).

Absent extraordinary circumstances, when the parent, guardian, or custodian has successfully completed court-ordered services and the juvenile is residing in a safe home, the court may

- Terminate jurisdiction under G.S. 7B-906.1(d2) or 7B-911, or
- Waive further review hearings (until a party files a motion for review and alleges a significant fact) (G.S. 7B-906.1(d2), (k1)).

- 
- Complete Checklist 4 for additional requirements.**

# Checklist 7

## Permanency Planning

Permanency planning hearings occur when custody has been removed from a parent, guardian, or custodian. The court is required to make numerous statutory findings at the permanency planning stage. However, the statutory findings are not applied universally to all permanency planning hearings but instead are conditioned on specific circumstances (e.g., a permanency planning hearing involving a child who is 14 years old or older, or what is ordered). This Checklist addresses the various circumstances and the different factors, findings, and options that apply to permanency planning hearings. **USE TOGETHER WITH CHECKLIST 4**, which contains additional required factors, findings, and options that apply.

---

### Required Notice: G.S. 7B-906.1(b)

- The clerk provided fifteen days' notice of the hearing and its purpose to the
  - parents;
  - child (if 12 or older);
  - the child's GAL;
  - if applicable, the guardian or custodian (including agency with custody);
  - the person providing care for the juvenile unless DSS filed written documentation with the clerk that it sent notice to that person; and
  - any other person or agency the court specifies.

*Note:* If an objection to a deficient notice is raised (e.g., less than fifteen days' notice provided), the court may not proceed with a permanency planning hearing. If no objection is raised, the party waives the issue of insufficient notice.

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### Required Findings and Conclusion at Every Permanency Planning Hearing

#### G.S. 7B-906.1(d)

The court must consider the following criteria and make written findings of those that are *relevant*:

- Services that have been offered to prevent the removal or reunite the child with either parent, regardless of whether the child resided with the parent at the time of removal, or with the guardian or custodian from whom the child was removed.
- Reports on the juvenile's continuation in and the appropriateness of the juvenile continuing to remain in the home of their parent, guardian, or custodian.
- Reports on visitation and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1.
- Whether efforts to reunite the child with either parent clearly would be unsuccessful or inconsistent with the child's health or safety and need for a safe, permanent home within a reasonable period of time. The court must consider reunification efforts regardless of whether the child lived with the parent, guardian, or custodian at the time of the removal.

- Reports on placements the child has had, the appropriateness of the child's current placement, and the goals of the child's foster care plan, including the role the current foster parent will play in the planning for the child.
- If the child is 16 or 17 years old, a report on an independent living assessment and, if appropriate, an independent living plan.
- Any other criteria the court deems necessary.

**G.S. 7B-906.2(c): Required Findings**

- The court must make a finding about whether the department's efforts toward reunification were reasonable. The finding is not required when reunification efforts have been previously ceased.
- The court must make findings of the efforts the department made toward
  - the primary permanent plan in effect before the hearing and
  - any secondary permanent plans in effect before the hearing.

**G.S. 7B-906.2(c): Required Conclusion**

- The court must make a conclusion as to whether efforts to finalize the permanent plan were reasonable to achieve timely permanence for the child.

**G.S. 7B-906.2(d)**

The court shall make written findings as to *each* of the following, which demonstrates the degree of success or failure toward reunification:

Whether the parent

- is making adequate progress under the plan within a reasonable period of time;
- is actively participating in or cooperating with the plan, the department, and the child's GAL;
- remains available to the court, department, and child's GAL;
- is acting in a manner that is inconsistent with the child's health or safety.

**G.S. 7B-906.1(g)**

At the conclusion of *each* permanency planning hearing, the court

- shall make specific findings of the best permanent plans to achieve a safe, permanent home for the child within a reasonable period of time;

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**Any Permanency Planning Hearing Where Child Not Placed with Parent: G.S. 7B-906.1(e)**

Additionally, the court must consider the following criteria and make written findings about those that are *relevant*:

- Whether it is possible for the child to be placed with a parent within the next six months and, if not, why such placement is not in the child's best interests.
- Where placement with a parent is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established and, if so, rights and responsibilities that should remain with the parents.



- Where the child's placement with a parent is unlikely within six months, whether adoption should be pursued and, if so, any barriers to the child's adoption, including whether a termination of parental rights should be considered.
- Where the child's placement with a parent is unlikely within six months, whether the child should remain in the current placement, or be placed in another permanent living arrangement and why.
- Whether the department, since the initial permanency planning hearing, has made reasonable efforts to implement the permanent plan.
- Any other criteria the court deems necessary.

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### **Juvenile Is 14 or Older and in DSS Custody: G.S. 7B-912(a), (b)**

Additional findings are required when the juvenile is 14 and older. At every permanency planning hearing, the court must inquire about and make written findings of *each* of the following:

- The services provided to assist the teen in making a transition to adulthood.
- The steps the department is taking to ensure that the foster family or other licensed placement provider follows the reasonable and prudent parent standard.
- Whether the teen has regular opportunities to engage in age- or –developmentally appropriate activities.

At or before the permanency planning hearing immediately following the juvenile's 17<sup>th</sup> birthday and at every permanency planning hearing held afterwards, the court must

- inquire as to whether the juvenile has a copy of their birth certificate, social security card, health insurance information, driver's license or other identification card, any educational or medical records the juvenile requests, and information about how the juvenile can participate in Foster Care 18–21 and
- determine the person or entity that should assist the juvenile in obtaining these documents before he or she turns 18.

At each permanency planning hearing after the juvenile turns 17 years of age,

- the department has included in its report to the court information specified in G.S. 7B-912(b1), which addresses the juvenile's transition to adulthood.

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### **Special Circumstances and Additional Findings Delaying or Relieving DSS's Initiation of TPR: G.S. 7B-906.1(f), (m)**

When the court finds a TPR is necessary to perfect the primary permanent plan, the department shall file a TPR petition (or motion) within sixty days from the entry of the order unless

- the court makes written findings regarding why the petition (or motion) cannot be filed in sixty days and specifies a time frame in which the TPR petition (or motion) must be filed.

The requirement that the department file a TPR petition (or motion) applies when either

- the department has custody or placement responsibility of child who has been placed outside the home for twelve of the most recent twenty-two months or

- a court of competent jurisdiction has determined a parent has abandoned the child; committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of this child or another child of the parent.

The department is not required to initiate a TPR if the court finds *any* of the following:

- the primary permanent plan is guardianship or custody with a relative or other suitable person;
- the court makes specific findings as to why filing the TPR petition is not in the child's best interests; or
- the department has not provided the child's family with services it deems necessary when reasonable efforts are still required to enable the child's return to a safe home. G.S. 7B-906.1(f).

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#### **Required Findings to Waive Further Permanency Planning Hearings: G.S. 7B-906.1(k), (n)**

The court may waive further permanency planning hearings, may require written reports to the court by the person or agency with custody of the child in lieu of permanency planning review hearings, or order that the hearings be held less often than every six months if the court finds *each* of the following by *clear, cogent, and convincing evidence*:

- The child has resided in the placement for at least one year or the child has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).
- The placement is stable and continuation of the placement is in the child's best interests.
- Neither the child's best interests nor any party's rights require that permanency planning hearings be held every six months.
- All parties are aware that the matter may be brought before the court at any time by the filing of a motion or on the court's own motion.
- The court order has designated the relative or other suitable person as the child's permanent custodian or guardian of the person.

*Note:* When juvenile has been removed from a parent and legal custody is ordered to either parent, the court is relieved of the duty to hold periodic hearings.

---

#### **Order for Permanent Plans: G.S. 7B-906.2(a)–(b)**

The court must adopt one or more concurrent permanent plans

- it finds are in the child's best interest G.S. 7B-906.2(a) and must identify

- the primary permanent plan and
- the secondary permanent plan G.S. 7B-906.2(b)

unless

- concurrent planning is not required because a permanent plan is or has been achieved G.S. 7B-906.2(a1).

### The court

- must order the department to make efforts toward finalizing the primary and secondary permanent plans and
- may specify efforts that are reasonable to timely achieve permanence for the child.

There are six permanent plans, some of which require specific findings.

- Reunification** must be a primary or secondary plan unless the court makes written *findings of one of the following*:
  - The court made findings at initial disposition under G.S. 7B-901(c) that reunification efforts are not required.
  - The court made findings under G.S. 7B-906.1(d)(3).
  - The permanent plan is or has been achieved so there is no concurrent (secondary) plan.
  - The court made findings that reunification efforts clearly would be unsuccessful and made the four findings enumerated in G.S. 7B-906.2(d) (see page 2). When this G.S. 7B-906.2(b) finding is made, reunification must be eliminated as a permanent plan (*see* G.S. 7B-906.2(b)).
  - The court made findings that reunification efforts would be inconsistent with the child's health or safety and made the four findings enumerated in G.S. 7B-906.2(d) (see page 2). When this G.S. 7B-906.2(b) finding is made, reunification must be eliminated a permanent plan (*see* G.S. 7B-906.2(b)).
- Adoption**
- Guardianship**
  - The court finds by clear and convincing evidence that the parent has waived their paramount constitutional rights to care, custody, and control of their child(ren) because they are unfit, have neglected the child's welfare, or are acting inconsistently with their constitutionally protected status.
  - The court must verify that the person receiving guardianship
    - understands the legal significance of the appointment (applies to each person) and
    - will have adequate resources to appropriately care for the child. G.S. 7B-906.1(j).
- Custody** to a relative or other suitable person
  - The court finds by clear and convincing evidence that the parent has waived their paramount constitutional rights to care, custody, and control of their child(ren) because they are unfit, have neglecting the child's welfare, or are acting inconsistently with their constitutionally protected status.
  - The court must verify that the person receiving custody
    - understands the legal significance of the placement (applies to each person) and
    - will have adequate resources to appropriately care for the child. G.S. 7B-906.1(j).
  - Under G.S. 7B-911**, the court must determine whether jurisdiction in the juvenile action should be terminated, and custody ordered pursuant to G.S. Chapter 50. If the answer is yes, the court must follow the requirements of G.S. 7B-911 and make findings that
    - are required under G.S. Chapter 50,
    - there is not a need for continued state intervention on behalf of the juvenile through a juvenile court proceeding, and
    - at least six months have passed since the court determined the child's placement with the person to whom the court is awarding custody is the permanent plan for the child.

- This finding is not required when custody is being awarded to
    - a parent or
    - a person with whom the child was living when the petition was filed.
  - Another Planned Permanent Living Arrangement (APPLA)** under G.S. 7B-912(c), (d)
    - The court must find *each* of the following:
      - The juvenile is 16 or 17 years old.
      - The department has made diligent efforts to place the teen permanently with a parent or relative or in a guardianship or an adoptive placement.
      - There are compelling reasons that it is not in the teen's best interests to be placed permanently with a parent or relative or in a guardianship or adoptive placement.
      - APPLA is the best permanent plan for the teen.
      - After questioning the teen, addresses the teen's desired permanency outcome.
  - Reinstatement of Parental Rights** pursuant to G.S. 7B-1114.
- 
- Complete Checklist 4 for additional requirements.**

# Checklist 8

## Termination of Parental Rights Hearing

This Checklist addresses preliminary matters, the adjudication of grounds, and the disposition for termination of parental rights proceedings related to an abuse, neglect, or dependency action.

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### Subject Matter Jurisdiction

- The TPR action is initiated by a person or agency with standing as authorized by G.S. 7B-1103(a).
- The petition or motion is properly verified (G.S. 7B-1104).
- The petition or motion requests relief. N.C. R. Civ. P. 7(b)(1).
- The petition or motion is filed in the judicial district where the juvenile resides in, is found in, or is in the county where a department (or licensed child-placing agency) with legal or actual custody of the juvenile is located at the time the petition or motion is filed (G.S. 7B-1101).
- NC has jurisdiction under the UCCJEA pursuant to G.S. Chapter 50A (review the allegations in the petition or attached affidavit addressing criteria specified by G.S. 50A-209 regarding the child's status) (G.S. 7B-1101):
  - This is an initial child custody determination (G.S. 50A-201).
  - NC entered a child custody order prior to this action and NC has exclusive continuing jurisdiction (G.S. 50A-202).
  - Another state has entered a child custody order, but NC has jurisdiction to modify that order (G.S. 50A-203).
    - The child, the child's parents, and any person acting as a parent do not presently reside in the other state or
    - The other state's court has relinquished jurisdiction to NC, and there is a court order from that other state relinquishing jurisdiction.
- For a nonresident parent, process was served pursuant to G.S. 7B-1106 (G.S. 7B-1101). *Note*, minimum contacts with North Carolina are not required.

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### Preliminary Issues

- The pretrial hearing required by G.S. 7B-1108.1 has been conducted or is combined with the adjudicatory hearing.
- Do any pretrial motions need to be decided?
- Is paternity an issue? If so, has a motion for genetic marker testing been made (G.S. 8-50.1(b1))?
- Has the court found reasonable cause exists to order, pursuant to G.S. 7B-1109(c), that
  - the child be examined by a psychiatrist, licensed clinical psychologist, physician, public or private agency, or any other expert to ascertain the child's psychological or physical condition or needs or

- the parent be examined by a psychiatrist, licensed clinical psychologist, physician, public or private agency, or any other expert to ascertain the parent's ability to care for the child?
- For the unknown parent, the court held a hearing pursuant to G.S. 7B-1105 to determine the parent's name or identity.
- The parties have been properly served or waived service (G.S. 7B-1106; 7B-1106.1; 7B-1102).
  - Before service by publication on a known parent was made
    - The court made findings that the respondent could not otherwise be served despite diligent efforts made by the petitioner, and the court approved the form of the notice (G.S. 7B-1106(a)) and.
    - The affidavits required by Rule 4(j1) have been filed with the court.
- An answer or response was filed denying material allegations in the petition or motion. A GAL and attorney advocate have been appointed for the child as required by G.S. 7B-1108(b).
- No answer or response denying material allegations has been filed, but the court exercised its discretion to appoint a GAL and attorney advocate as permitted by G.S. 7B-1108(c).

*Parent Representation: G.S. 7B-1101.1; 7B-1109(b)*

- If provisional counsel was appointed, has the appointment been confirmed or should provisional counsel be dismissed pursuant to G.S. 7B-1101.1(a)?
- If respondent wants to waive the right to counsel, has the court examined the respondent on the record and made findings to show that the waiver is knowing and voluntary?
- The parent is under age 18 and is not emancipated. A Rule 17 GAL is appointed.
- There is a substantial question as to parent's competency and need for a Rule 17 GAL. A hearing on that issue is required.

At the adjudicatory hearing, the court must inquire as to whether respondent is present and represented by counsel. If not represented, court must inquire as to whether respondent wants counsel and is indigent and if so, appoint counsel and continue hearing for a reasonable time to allow counsel to prepare a defense.

*Timing of Hearing: G.S. 7B-1109(a), (b), (d)*

- Are there any motions to continue the hearing, which must be held within ninety days of the petition or motion being filed (G.S. 7B-1109(a))? Continuances are limited (G.S. 7B-1109(b), (d)).
  - Is there good cause to continue hearing for up to ninety days from the date of the initial petition to receive additional evidence, reports, or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other needed information in the best interests of the child?
  - Continuance beyond ninety days may be granted when a written order states the grounds for the continuance based on extraordinary circumstances that are necessary for the proper administration of justice (*see* G.S.7B-803, resolution of pending criminal charges arising from the same incident is not a sole extraordinary circumstance to continue the hearing). The burden of showing there are extraordinary circumstances is on the party requesting the continuance.
  - If the court appoints an attorney to a parent who was unrepresented at the hearing, the

court must grant the parent an extension of time as is reasonable to permit appointed counsel to prepare a defense.

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### Compliance with Federal Laws

*Servicemembers Civil Relief Act: 50 U.S.C. 3931–3932*

Before a judgment for petitioner (DSS) is entered,

- Each respondent has made an appearance in the case. No SCRA affidavit is required.
- For each respondent who has not made an appearance, there is an affidavit or allegation in the verified petition that addresses that respondent’s military status.
- It appears that a respondent is in military service. When that respondent has not made an appearance, appoint an attorney to perform SCRA responsibilities.
- A respondent is in military service. When the requirements of 50 U.S.C. 3931(d), (f) or 50 U.S.C. 3932 are met, a stay of at least ninety days is required.
- Under the NC SCRA, a state national guard member has not provided a written or electronic copy of an order to active duty for more than thirty consecutive days that was issued by a state governor. G.S. 127B-27(3), (4); 127B-28.

*Indian Child Welfare Act: 25 C.F.R. 23.107*

Mandatory inquiry as to child’s status as “Indian child” must be made of all participants at the commencement of the proceeding, with responses on the record. *See* 25 U.S.C. 1903(4) (definition of “Indian child”); *In re C.C.G.*, 2022-NCSC-3 (holding reason to know is based on political affiliation with tribe, not Native American ancestry).

- The child is an Indian child. ICWA provisions apply.  
*Note:* If child resides or is domiciled on Indian land or is a ward of tribal court, tribal court has exclusive jurisdiction unless an exception applies. A TPR does not meet the exception for an emergency proceeding.
- A participant has “reason to know” the child is an Indian child. Follow ICWA provisions unless and until court determines on the record that the child does not meet the definition of Indian child. Confirm that petitioner/movant used and is using due diligence to identify and work with all the tribes child may (i) be member of or (ii) eligible for membership of when a biological parent is a member of a federally recognized tribe. A sufficient ICWA notice must be sent to all applicable tribes and the director of the regional office of the Bureau of Indian Affairs.
- The child is not an Indian child and no participant has reason to know the child is an Indian child. Instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. ICWA does not apply.

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### Adjudication: G.S. 7B-1109; 7B-1111

- The petitioner or movant proved by clear, cogent, and convincing evidence at least one of the alleged grounds.

*Note:* The evidence must support findings of fact sufficient to support a conclusion of law that the alleged ground exists. The rules of evidence apply to adjudication hearings. There must be a

hearing; no default judgment or judgment on the pleadings is permitted (G.S. 7B-1107).

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**Dispositional Determination of Best Interest: G.S. 7B-1110(a)**

When one or more grounds are adjudicated, the court must determine whether it is in the child's best interest to terminate parental rights by considering the following factors and making written findings of fact about those that are *relevant*:

- the child's age;
- likelihood of the child's adoption;
- whether termination will aid in the accomplishment of the child's permanent plan;
- the bond between the child and the parent;
- the quality of the relationship between the child and the proposed adoptive parent, guardian, custodian, or other permanent placement;
- any other relevant consideration.

*Note:* At disposition, the court may consider any evidence, including hearsay, that it finds to be relevant, reliable, and necessary to determine the child's best interests.

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**Order: G.S. 7B-1109(e); 7B-1110**

- The court must find facts and adjudicate (i.e., make a conclusion of law regarding) the existence or nonexistence of each ground alleged in the petition or motion.
- The order must be entered (signed by the judge presiding over the hearing and filed with the clerk) within thirty days following completion of the hearing. If the order is not entered within thirty days, clerk schedules a subsequent hearing at the first session of the court scheduled to hear juvenile matters to determine and explain reason for delay and address any needed clarification for the order. Order is entered within ten days of that hearing.

*Outcomes:*

- Dismiss the petition/Deny the motion.  
At least one of the following must apply:
  - None of the alleged grounds have been proved by clear, cogent, and convincing evidence.
    - Make appropriate findings of fact and conclusions of law.
  - At least one alleged ground was proved but it is not in the child's best interest to terminate parental rights.
    - Must include the facts and conclusions on which the dismissal/denial is based.
- Grant the petition or motion.
  - The order that adjudicates a ground states that the findings are based on clear, cogent, and convincing evidence.
  - The order must include findings of fact about the factors that were relevant to the determination of the child's best interests.
  - If the juvenile was not in the custody of DSS or a child-placing agency at the time the TPR petition or motion was filed, the order may place the juvenile in the custody of the petitioner/movant, some other suitable person, DSS, or a child-placing agency as may appear to be in the child's best interests (G.S. 7B-1112(2)).



## Findings Relating to Particular Grounds

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Following are reminders of *some* of the necessary findings of fact relating to five of the most frequently alleged grounds involving a TPR with an underlying abuse, neglect, or dependency proceeding.

### **Neglect or Abuse: G.S. 7B-1111(a)(1)**

For this ground, neglect and abuse are defined by G.S. 7B-101(15) and (1) respectively. This ground requires findings of

- current neglect or abuse or
- if the child has been separated from the parent for a long period of time,
  - past neglect or abuse and
  - a likelihood of repetition of neglect or abuse if the child were returned home.
- Neglect under either prong above requires a finding of harm or substantial risk of harm to the juvenile.

*Note:* The court looks at the circumstances and fitness of the parent at the time of the TPR hearing.

### **Willfully leaving the child in foster care or other placement for more than a year without making reasonable progress under the circumstances to correct conditions that led to the child's removal: G.S. 7B-1111(a)(2)**

This ground has two prongs:

- the child has willfully been left in foster care or placement outside the home for over twelve months before the filing of the TPR petition or motion (removal must be due to a court order) and
- at the time of the TPR adjudicatory hearing, the parent has not made reasonable progress under the circumstances to correct the conditions that led to the child's removal.

Poverty cannot be the basis for the TPR.

There must be findings

- sufficient to support a conclusion of willfulness, which requires findings about what the parent did in relation to what the parent was capable of doing;
- that address a parent's failure to make reasonable progress in relation to the conditions that led to the child's removal from the home; and
- that show that the child's placement outside the home for at least a year has been pursuant to a court order.

### **Willfully failed to pay a reasonable portion of the child's cost of care although physically and financially able to do so: G.S. 7B-1111(a)(3)**

If the child has been placed in the custody of DSS, a licensed child-placing agency, child-caring institution, or a foster home, there must be findings that show

- the nonpayment of a reasonable portion of the cost of the child's care for at least six months before the filing of the TPR petition or motion;
- the parent's ability to pay some amount greater than what the parent paid during the relevant six-month time period (*Note:* if there is a child support order or voluntary support agreement

- (VSA), the parent's ability to pay was found by that order or VSA); and
- the parent's failure to pay was willful.

**Dependency with a reasonable probability it will continue for the foreseeable future: G.S. 7B-1111(a)(6)**

For this ground, dependency is defined by G.S. 7B-101(9). This ground requires findings that

- the parent does not have an ability to provide care or supervision to the child (based on any cause or condition, e.g., mental illness, substance abuse, incarceration);
- the parent lacks an available alternative child care arrangement for the child; and
- the parent's incapability is likely to continue for the foreseeable future (but is not required to be permanent, throughout the child's minority, or for a known precise duration).

**Abandonment**

A TPR based on abandonment can be based on two different grounds:

- G.S. 7B-1111(a)(1), neglect, as the definition of neglect in G.S. 7B-101(15) includes a juvenile who has been abandoned;
- G.S. 7B-1111(a)(7), a parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the TPR petition or motion.

Under G.S. 7B-1111(a)(7), findings must address

- a parent's willful intent to forego all parental duties and relinquish all parental claims (e.g., no financial support for, contact with, or inquiries about the child)
- during the relevant six-month time period.

# Checklist 9

## Post-TPR Review Hearing

The post-TPR review hearing is governed by G.S. 7B-908. Its purpose is to ensure that every reasonable effort is being made to provide for a permanent plan for a child who has been placed in the custody of a department (DSS) or licensed child-placing agency (agency), which is consistent with the child's best interest. Post-TPR review hearings replace permanency planning hearings when there is an underlying abuse, neglect, or dependency action. G.S. 7B-906.1(o). Post-TPR review hearings are required even when there is not an underlying abuse, neglect, or dependency action.

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### When Required: G.S. 7B-908(b)

The post-TPR review hearing must be held within six months from the date of the termination hearing when the child is in DSS (or agency) custody and

- both parents' parental rights have been terminated by an action brought by DSS or an agency with custody of the child, the child's GAL, the child's guardian of the person, or the person with whom the child has lived continuously for at least eighteen months immediately preceding the filing of the TPR action, or
- one parent's parental rights have been terminated and the other parent's rights have been relinquished under G.S. Chapter 48.

Post-TPR hearings are held every six months until the child is adopted.

*Note:* The statute governing post-TPR review hearings does not authorize the court to waive holding these hearings. If a permanent plan other than adoption is achieved (e.g., guardianship), under G.S. 7B-908, post-TPR review hearings continue to be conducted every six months.

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### Required Notice: G.S. 7B-908(b)(1)

The clerk must give notice no more than thirty days and no less than fifteen days prior to each post-TPR review hearing to

- the child if 12 or older;
- the child's GAL, if any;
- the child's legal custodian or guardian;
- the person providing care for the child (DSS may send the notice and file written documentation with the clerk that it has done so); and
- any other person or agency the court specifies.

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**Appointment of GAL for Child: G.S. 7B-908(b)(2)**

If the child was unrepresented by a GAL at the TPR hearing, the court may

- appoint a GAL at the first post-TPR review hearing and
- continue the case for as much time as is necessary for the GAL to become familiar with the facts of the case.

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**The Hearing: G.S. 7B-908(a), (b)(1)**

- Unless the court directs otherwise, the child, child's GAL, legal custodian, guardian, and person providing care for the child may participate in the hearings.
- A parent whose rights have been terminated or who has executed a relinquishment that is no longer revocable is not a party to the proceeding unless there is a pending appeal of the TPR order and the order is stayed pending the appeal.
- The court may consider any evidence, including hearsay evidence, that it finds to be relevant, reliable, and necessary to determine the child's needs and most appropriate disposition.

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**Required Inquiries and Findings: G.S. 7B-908(c)**

The court must consider the following factors and making written findings of those that are *relevant*:

- the adequacy of the permanency plans developed by DSS (or the agency) for permanent placement relevant to the child's best interests and DSS's (or the agency's) efforts to implement the plans;
- whether the child has been listed for adoptive placement with NC Kids Adoption and Foster Care Network or any other child-specific recruitment program or whether the court finds, based on the child's best interests, that there is an exemption to the listing;
- efforts previously made by DSS or the agency to find a permanent placement for the child;
- whether the current placement is in the child's best interests.

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**Order: G.S. 7B-908(d), (d1), (e1)**

The court must

- make findings of fact (supported by competent evidence), and do one of the following:
  - affirm DSS's (or the agency's) plan or
  - Order a different plan identified in G.S. 7B-906.2(a).

The court may

- order concurrent permanent plans if that is in the child's best interests),
- specify efforts that are necessary to accomplish the permanent plan(s) that is in the child's best interests,
- order a placement it finds to be in the child's best interests, if the child is not placed with prospective adoptive parents as selected in G.S. 7B-1112.1 and the court has considered DSS's recommendations.

- The order must be entered (signed by the judge presiding over the hearing and filed with the clerk) within thirty days following completion of the hearing. If the order is not entered within thirty days, clerk schedules a subsequent hearing at the first session of the court scheduled to hear juvenile matters to determine and explain reason for delay and address any needed clarification for the order. Order is entered within ten days of that hearing.