

# Juvenile Law: A/N/D and TPR

Sara DePasquale  
School of Government  
N.C. Association of District Court Judges  
2013 Fall Conference

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## Changes

- Reporting
- Parties to the Proceeding
- Parent Representation
- Pre-Adjudication Hearing
- Nonsecure Custody Placement Options
- Visitation
- Review and Permanency Planning Hearings
- Transfer to Civil Domestic Court
- TPR/Adoption
- Responsible Individual List
- Notices of Appeal

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## Caylee's Law:

S.L. 2013-52 Effective: Dec. 1st



Amends G.S. 7B-301  
Class 1: Misdemeanor

Also, "disappearance of a child" under 16  
G.S. 14-318.5  
Class I Felony

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### Definition of Abuse Expanded



Human Trafficking  
Involuntary Servitude  
Sexual Servitude  
(S.L. 2013-368; Oct 1st)

Teenage Prostitution: DSS Report

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### Parties to the Proceeding

G.S. 7B-401.1

Petitioner



Juvenile



Need not be served with  
Summons, G.S. 7B-406

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### Parents

#### Exceptions

- TPR
- Relinquish
- Conviction of 14-27.2 or 14-27.3  
AND conception of child



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## OTHERS

### Who are Necessary Parties?

- Guardian
- Custodian (definition change in 7B-101(8))

### When?

- At time petition filed, or
- Automatic upon permanent plan

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## What About Caretakers?

- Who are they?
- **Maybe**
  - Only if allegations related to caretaker and Caretaker assumed status/obligation of parent, **OR**
  - Court order

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## Removal of a party

- DSS
  - Termination of Jurisdiction
- Guardian/Custodian/Caretaker
  - **Court finds:**
    - No legal rights that may be affected by action and
    - Continuation as party not necessary to meet juvenile's needs

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### Intervention: LIMITED

- G.S. 7B-401.1(h)
  - 4 adults (“parties”)
  - Another County DSS
  - G.S. 7B-1103(b)
- Others:
  - Can be heard
    - G.S. 7B-901, 906.1



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### Overturing PDR

GAL



Waiver of counsel



*In re S.L.L. (2004)*

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### GAL for Parent

- P.D.R.

Vs.



*Legislative Changes*

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### Rule 17 GALs for Respondents

- Role is substitution
- Infant parent vs. "incompetent" parent
- Trigger = Substantial question of competency (discretion)
- Who can raise it?
- Definition: G.S. 35A-1101(7)
  - *In re L.B.*
  - *In re J.A.A.*
- Standard is unknown
- Payment by IDS

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### Waiver of Court Appointed Counsel

- G.S. 7B-602(a1) and 1101.1(a1)
  - waiver is permitted only after the Court:
    - Examines the parent
    - Makes findings that waiver is knowing and voluntary
- Recorded (G.S.7B-806)

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### Pre-Adjudication Venue



County 2

County 1

**G.S. 7B-400**

- Child residence or is found
- DSS conflict: either county
- Court order: good cause (petitioner is the same)
- Post-adj. by 7B-900.1

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### Pre-Adjudication Hearing 7B-800.1

- Retention or release of provisional counsel
- Identification of the parties
- Paternity/identify & locate missing parent
- Relatives, potential placement/support options
- Summons, service of process, notices requirements met
  - G.S. 7B-407 (service by publication, G.S. 1A-1, Rule 4(j))
- Pretrial motions:
  - Respondent GAL
  - Discovery
  - Amendment of the Petition
  - Motions to Continue
    - G.S. 7B-803
- Stipulations (G.S. 7B-807) / Consent Orders (G.S. 7B-801)

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### Nonsecure Custody



G.S. 7B-506(g)  
Any party may schedule hearing on need for continued placement

7 day, 7 day, 30 day, 60 day

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Placement Priority  
Parents, relatives, then...

### Non Relative Kin

G.S. 7B-505 and 506

Definition for All Juveniles: "Substantial Relationship"

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**Vs.**

Definition for child members of state recognized tribe



29,274  
(2011)

Notice to tribe: locate and identify nonrelative kin

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### *Adoptive Couple v. Baby Girl*



*Purpose: Prevent removal*



**HOLDING**

- Prevent breakup: TPR – discontinuance of relationship reunification/remedial services  
25 U.S.C. 1912(d)
- Continued custody: beyond reasonable doubt serious emotional or physical damage to child  
25 U.S.C. 1912(f)
- Adoption placement preferences  
25 U.S.C. 1915(a)

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### Visitation 7B-905.1

- Custody with DSS
  - “The court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.” Multiple remands by COA.
  - Now, order must include
    - the minimum frequency and length
    - level of supervision.
  - New language gives DSS more discretion to determine who supervises visits, where they occur and how to respond to scheduling conflicts

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### Visitation 7B-905.1(c)

- Custody with guardian
  - Minimum frequency and length
  - Supervision level
  - “May authorize additional visitation as agreed upon by the respondent and custodian or guardian.”

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### Motion for review

G.S.7B-905.1(d)

- Court retains juris.
- GAL/DSS written recommendations
- Mediation  
G.S. 50-13.1(d) – (f)




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### Reminder

### More from Chapter 50



*In re T.R.T. (2/19/13)*  
 50-13.2(e) applies to all custody cases

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### Review and Permanency Planning G.S. 7B-906.1

**Timing:**

- Review: 90 days from dispositional hearing and 6 months after
- PPH: w/in 12 months of initial order or after first PPH
- Every 6 months
- Relieved if
  - Custody with parent (k)
  - Court may allow written reports or longer time if:
    - Clear, cogent & convincing ev. of ea. factor 906.1(n)(1)-(5) [the old 906(b)]

**Written Relevant Findings:**

Review: 906.1(d)(1) – (7)  
 Permanency Planning Hearing where child not with parent: 906.1(e)(1)-(6)

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### Return Home/Reunification G.S. 7B-101(18)



Overtun

*In re J.D.M. (2011)*  
*In re Eckard (2002)*

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### 7B-911



Inquire: Terminate jurisdiction?

If not....

no periodic reviews  
 What if new report A/N/D

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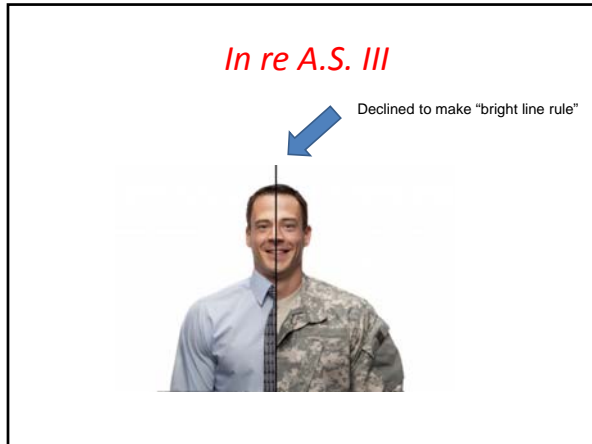
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**Service of TPR Petition**  
G.S. 7B-1106(a2)

- Respondent's attorney, not relieved of responsibility
- *In re D.E.G.* (Aug. 6)
  - Justifiable basis
  - Notice
  - Permission of Court

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**TPR Grounds of Unwed Father**

- G.S. 7B-1111(a)(5)
  - Prior to filing petition....
    - Establish paternity
    - Codifies *In re J.K.C.* (2012)
      - Rebuttable Presumption Judicially Established: Birth Certificate or Amended Birth Certificate
- **Caution**
  - *In re S.D.W.* (July 2)
    - G.S. 48-3-601 Application would violate father's constitutional rights if grasped the opportunity

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**Adoption Selection**  
G.S. 7B-1112.1

- Foster parents/placement provider who want to adopt
  - Must Be Considered
  - Notice
  - Motion for Judicial Review
  - NOT a party

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**Review after Relinquishment**  
G.S. 7B-909

- S.L. 2013-129 v. S.L. 2013-236
- 6 months after relinquishment if no adoption, review needed
- (b1): Void Relinquishment
  - 15 days' notice
  - Right to be heard
- (c): if void, no further reviews

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**Responsible Individuals List**

- DSS notice unable to be personally served
  - Diligent efforts to locate
  - Last known address, cert mail, return receipt
  - Ex parte hearing for placement
    - Evade service?
- Petition for Judicial Review Only
  - Filed within 15 days from notice (DSS: "business")
  - No consolidation; Timing is silent
- Judicial review hearing: 45 days instead of 15
  - Can be stayed if A/N or criminal action pending

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## Notices of Appeal

- Notice to Preserve
- Codify Rule 3.1 of the Rules of Appellate Procedure



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