



## Abuse, Neglect, and Dependency (A/N/D) Petitions: Sign and Verify

**Author :** Sara DePasquale

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Who signs an A/N/D/ petition and whether it is properly verified determines if the court has subject matter jurisdiction over the proceeding. Without subject matter jurisdiction, the court has no authority to act and any judgment entered is void. [In re T.R.P.](#), 360 N.C. 588 (2006). Because subject matter jurisdiction can be raised at any time, even for the first time on appeal, and it cannot be waived or consented to, a county could discover weeks, months, or years after the action is commenced that all its orders in the action are void. This is problematic for many reasons.

### The New Pre-adjudication Hearing Law

As of October 1, 2014, a district court must consider at a pre-adjudication hearing “whether the petition has been properly verified and invokes jurisdiction.” G.S. 7B-800.1(5a). Although the required inquiry is new, the need for a verified petition is not. This new provision in the statute codifies the 2007 suggestion of the court of appeals that trial judges check to make sure the A/N/D petition is signed and verified before proceeding with adjudication. [In re D.D.F.](#), 187 N.C. App. 388 (2007).

### Who Can Sign?

An A/N/D action is commenced by the filing of a petition [[G.S. 7B-401\(a\)](#)], a task that must be done by the director of a county department of social services. [G.S. 7B-401.1\(a\)](#). A director includes a “representative as authorized in G.S. 108A-14.” [G.S. 7B-101\(10\)](#). The director must sign a petition alleging sufficient facts to invoke the court's jurisdiction. [G.S. 7B-302\(d\)](#). The petition must be verified before an official who is authorized to administer oaths. [G.S. 7B-403\(a\)](#).

Only the director (or his or her authorized representative) of a county department of social services may sign a petition alleging a child is abused, neglected, or dependent. Although it is optimal for the person who signs the petition to identify his or her role as director or authorized representative, it is not a fatal jurisdictional defect if the role is not designated so long as the petition contains sufficient information for the court to determine the signor is the director or authorized representative. [In re Dj.L.](#), 184 N.C. App. 76 (2007). Because [G.S. 108A-14](#) authorizes a director to delegate his/her statutory duties, which includes assessing reports of suspected abuse and neglect and taking appropriate protective action, it is sufficient for a case worker to identify herself as the worker assigned to the case and list the department's mailing address on the petition. [In re D.D.F.](#), 187 N.C. App. 388 (2007).

In contrast, it is jurisdictionally fatal if a DSS employee signs someone else's name, even if that employee is authorized to do so. For example, a DSS case worker cannot sign the director's name and note it was made “by [the individual]” who signed the petition on behalf of the director. In order to have a proper signature and verification, the appropriate DSS employee must sign the petition in his or her own capacity and must personally appear before the person who verifies the oath. [In re A.J.H.-R.](#), 184 N.C. App. 177 (2007); [In re S.E.P.](#), 184 N.C.App. 481 (2007).

### What is a Verification?

A verification vouches for the validity of the allegations in and content of the petition. [In re T.R.P.](#) Verification is addressed by [G.S. 1A-1, Rule 11](#), which requires a statement that the contents of the pleading verified are true, or believed to be true, to the knowledge of the person making the verification. The language, “sworn and subscribed to,”

without more is insufficient, and therefore, a notarization without an oath or affirmation will not satisfy the verification requirement. *In re Triscari*, 109 N.C. App. 285 (1993).

The court of appeals discussed the requirements for a verification in [In re Dj.L.](#) and looked to both [G.S. 1A-1, Rule 11](#) and [G.S. 10B-40\(d\)](#). The form of a verification is set forth in [G.S. 10B-40\(d\)](#), which requires:

- the name of the principal who appeared in person,
- that the notary has personal knowledge or satisfactory evidence of the signatory's identity,
- that the principal who appeared in person before the notary signed and certified under oath or by affirmation as to the truth of the matters stated in the record,
- the date of the oath/affirmation, and
- the signature of the notary with the seal/stamp and date the commission expires.

Rule 11 requires a verification be made by affidavit of the party, which "...is '(a) written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.'" *Schoolfield v. Collins*, 281 N.C. 604, 612, 189 S.E.2d 208, 213 (1972), *citations omitted*. Although the [AOC form](#) petition does not include "magistrate" as a check box option for who verified the petition, a magistrate is authorized to administer oaths and to take affidavits for the verification of pleadings. [G.S. 7A-292\(1\), \(5\)](#); [G.S. 7B-404\(a\)](#).

### **Why Does It Matter?**

Subject matter jurisdiction for all of the stages of an A/N/D proceeding is established when the action is commenced by the filing of a properly verified petition. [In re T.R.P.](#) The lack of subject matter jurisdiction in an A/N/D action returns the parties, including the child, to pre-petition status regarding custody [[G.S. 7B-201\(b\)](#)], which is likely to be contrary to a child's best interests. In addition, without a valid court order, the child may never have been eligible for federal IV-E assistance. 42 USC §672; 45 C.F.R. 1356.21. As a result, the IV-E dollars expended for that child may need to be repaid by the county.

## Verification of Petitions

[In re N.T.](#), \_\_\_ N.C. \_\_\_, 782 S.E.2d 502 (2016)

### **Held: Reversed Court of Appeals Opinion**

- Procedural History/Facts:
  - 2012: The county department files a neglect petition that is signed by an authorized representative of the director. In the verification section after “signature of person authorized to administer oaths,” an illegible signature following the letter “C” appears. The section for “title” is left blank. Child is adjudicated neglected and placed in the custody of the county department.
  - 2013: The county department files a motion to terminate parental rights (TPR).
  - 2014: The TPR is granted and respondent mother appeals based on lack of subject matter jurisdiction arguing the underlying neglect petition was not properly verified as required by statute.
  - 2015: The NC Court of Appeals vacates the TPR based on an improper verification of the petition. Without a properly verified petition, the court lacked subject matter jurisdiction to hear the underlying neglect action. As a result, all orders entered in that action are void ab initio, including the order granting custody to the county department. Without a custody order, the county department lacked standing under G.S. 7B-1103 to initiate a termination of parental rights proceeding. The N.C. Supreme Court grants petition for discretionary review.
- Although subject matter jurisdiction may be raised at any time, there is a presumption that a court has jurisdiction when it acts on a matter. The respondent, who is raising subject matter jurisdiction, has the burden of proving there is no jurisdiction.
- Verification is addressed by G.S. 1A-1, Rule 11(b) and G.S. 1-148. Rule 11 requires an affidavit where the person verifies that the contents of the pleading are to his or her knowledge true or upon information and belief are believed to be true. G.S. 1-148 authorizes a judge, magistrate, clerk of court, notary public, or any officer competent to acknowledge deeds to verify a pleading. A public official acting in his or her official duty is presumed to act in accordance with the law, and the contesting party has the burden of overcoming the presumption.
- Respondent mother did not show that the petition, which appeared to be facially valid, was not verified before a person who was authorized to administer oaths. There was no evidence or allegations to overcome the presumption that the person who signed as “the person authorized to administer oaths” did not act in his or her official capacity.

### **1-148. Verification before what officer.**

Any officer competent to take the acknowledgment of deeds, and any judge or clerk of the General Court of Justice, notary public, in or out of the State, or magistrate, is competent to take affidavits for the verification of pleadings, in any court or county in the State, and for general purposes.

### **7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths.

...

(5) To take affidavits for the verification of pleadings.

## **Selected Statutes Addressing Petitions re: Abuse, Neglect, Dependency**

### **7B-403. Receipt of reports; filing of petition.**

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

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### **7B-402. Petition.**

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of each party as determined by G.S. 7B-401.1, and allegations of facts sufficient to invoke jurisdiction over the juvenile. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

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

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

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

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

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

### § 7B-303. Interference with assessment.

(a) If any person obstructs or interferes with an assessment required by G.S. 7B-302, the director may file a petition naming that person as respondent and requesting an order directing the respondent to cease the obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the assessment; shall include a concise statement of the basis for initiating the assessment, shall specifically describe the conduct alleged to constitute obstruction of or interference with the assessment; and shall be verified.

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

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### 7B-405. Commencement of action.

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the issuance of a juvenile petition by a magistrate when the clerk's office is closed, which issuance shall constitute filing.

...

## Termination of Parental Rights

### 7B-1104. Petition or motion.

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant ...

## Selected Statutes Re: Nonsecure Custody (Abuse, Neglect, Dependency)

### 7B-502. Authority to issue custody orders; delegation.

(a) In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary. The order for nonsecure custody may be entered ex parte. Unless the petition is being filed pursuant to G.S. 7B-404, telephonic

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communication that the department will be seeking nonsecure custody shall be given to counsel, or if unavailable, to a partner or employee at the attorney's office when any of the following occur:

- (1) The department has received written notification that a respondent has counsel for the juvenile matter.
- (2) The respondent is represented by counsel in a juvenile proceeding within the same county involving another juvenile of the respondent.

Notice is not required to provisional counsel appointed pursuant to G.S. 7B-602.

(b) Any district court judge shall have the authority to issue nonsecure custody orders pursuant to G.S. 7B-503. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order which shall be filed in the office of the clerk of superior court. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order pursuant to G.S. 7B-503.

### **7B-508. Telephonic communication authorized.**

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

### **7B-503. Criteria for nonsecure custody.**

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and any of the following apply:

- (1) The juvenile has been abandoned.
- (2) The juvenile has suffered physical injury or sexual abuse.
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
- (6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means

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available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

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### **7B-504. Order for nonsecure custody.**

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to take physical custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, custodian, or caretaker by the official executing the order.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms. If the court finds on the basis of the petition and request for nonsecure custody or the testimony of the petitioner that a less intrusive remedy is not available, the court may authorize a law enforcement officer to enter private property to take physical custody of the juvenile. If required by exigent circumstances of the case, the court may authorize a law enforcement officer to make a forcible entry at any hour. The officer is not required to inquire into the regularity or continued validity of the order and shall not incur criminal or civil liability for its due service.

### **7B-505. Placement while in nonsecure custody.**

(a) A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care; or
- (2) A facility operated by the department of social services; or
- (3) Any other home or facility, including a relative's home approved by the court and designated in the order.

(b) In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile.

(c) If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin or other persons with legal custody of a sibling of the juvenile are willing and able to provide proper care and supervision of the juvenile in a safe home. The court may order the department to notify the juvenile's State-recognized tribe of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for placement. The court may order placement of the juvenile with nonrelative kin if the court finds the placement is in the juvenile's best interests.

(d) In placing a juvenile in nonsecure custody under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. In placing a juvenile in nonsecure custody under this section, the court shall consider

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the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter.

### § 7B-505.1. Juvenile placed in nonsecure custody of a department of social services.

...

(b) When placing a juvenile in nonsecure custody of a county department of social services pursuant to G.S. 7B-502, the court may authorize the director to consent to a Child Medical Evaluation upon written findings that demonstrate the director's compelling interest in having the juvenile evaluated prior to the hearing required by G.S. 7B-506.

...

### 7B-507. Juvenile placed in nonsecure custody of a department of social services.

(a) An order placing or continuing the placement of a juvenile in the nonsecure custody of a county department of social services:

- (1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's health and safety.
- (2) Shall contain specific findings as to whether a county department of social services has made reasonable efforts to prevent the need for placement of the juvenile. In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount concern. The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile. A finding that reasonable efforts were not made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile.
- (3) Repealed by Session Laws 2015-136, s. 7, effective October 1, 2015, and applicable to actions filed or pending on or after that date.
- (4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the department is to provide or arrange for the foster care or other placement of the juvenile, unless after considering the department's recommendations, the court orders a specific placement the court finds to be in the juvenile's best interests.
- (5) May order services or other efforts aimed at returning the juvenile to a safe home.

### 7B-506. Hearing to determine need for continued nonsecure custody.

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued



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custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

...

### **7B-905.1. Visitation.**

(a) An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety. The court may specify in the order conditions under which visitation may be suspended.

(b) If the juvenile is placed or continued in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court. The plan shall indicate the minimum frequency and length of visits and whether the visits shall be supervised. Unless the court orders otherwise, the director shall have discretion to determine who will supervise visits when supervision is required, to determine the location of visits, and to change the day and time of visits in response to scheduling conflicts, illness of the child or party, or extraordinary circumstances. ...

## **Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)**

### **50A-102. Definitions.**

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

### **50A-209. Information to be submitted to court.**

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

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- (1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;
- (2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and
- (3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivisions (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

### **50A-201. Initial child-custody jurisdiction.**

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

- (1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;
- (2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:
  - a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

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- b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;
  - (3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or
  - (4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).
- ...

### **50A-202. Exclusive, continuing jurisdiction.**

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

- (1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or
- (2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

### **50A-203. Jurisdiction to modify determination.**

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

- (1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or
- (2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

### **50A-204. Temporary emergency jurisdiction.**

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with

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mistreatment or abuse. (Note, abandonment is defined at G.S. 50A-102(1) as “left without provision for reasonable and necessary care or supervision.”)

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

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### Initial Nonsecure Custody Checklist for Magistrates When the Clerk's Office Is Closed

#### Preliminary Issues

- The petition is signed by the county department director or authorized representative, is properly verified, and accepted by the magistrate.
- The court has jurisdiction under the UCCJEA (based on the information required by G.S. 50A-209, which is either contained in the petition or in an attached affidavit (see AOC-CV-609)).
- N.C. is the juvenile's home state
- N.C. has exclusive continuing jurisdiction
- N.C. has jurisdiction to modify another state's order
- N.C. has temporary emergency jurisdiction

#### Servicemembers Civil Relief Act (SCRA) (50 U.S.C. §§3931 - 3932)

- Each respondent appeared in the case. No SCRA Affidavit is required.
- A respondent has not appeared in the case but there is an affidavit or allegations in the verified petition that address the non-appearing respondent's military status (see AOC-G-250).
- The affidavit or verified petition shows the respondent is in the military. Note, an attorney must be appointed for that respondent. Make clerk of court aware.
- If respondent is in the military, he/she has not requested a stay.

#### The Indian Child Welfare Act (ICWA), Mandatory inquiry under the new federal regulations Effective December 12, 2016 (25 CFR 23.107)

- The child is not an Indian Child and the participants (including the attorney) before me do not have reason to know the child is an Indian Child. ICWA does not apply
  - The child is an Indian child. ICWA applies.
  - A participant (including the attorney) before me has reason to know the child is an Indian child. Treat proceeding as if ICWA applies until court determines otherwise.
- Indian child is defined at 25 USC § 1903(4). The child is

## 2016 Magistrates Conference

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- a member of a federally recognized Indian tribe or
  - eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe.
- Responses to the above inquiry should be part of the record. Make sure court is aware of the inquiry and responses.

### Person Authorized to Approve a Request for Nonsecure Custody

- \_\_\_ There is an administrative order filed in the clerk's office that authorizes a magistrate to approve a nonsecure custody order (G.S. 7B-502(b)).
- \_\_\_ There is not an administrative order filed in the clerk's office that authorizes a magistrate to approve a nonsecure custody order. Telephonic communication has been made between the magistrate and the district court judge or if applicable other person who is authorized to approve a nonsecure custody order as designated in an administrative order that is filed in the clerk's office. (G.S. 7B-502(a); 7B-508)

### Required Inquiries and Determinations for all Nonsecure Custody Hearings

All three of the following criteria must be met (See G.S. 7B-503).

- \_\_\_ There is a reasonable factual basis to believe that the matters alleged in the petition are true.
- \_\_\_ One or more of the six conditions specified in G.S. 7B-503(a) exist.
- (1) The child has been abandoned.
  - (2) The child has suffered physical injury or sexual abuse.
  - (3) The child is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
  - (4) The child is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the child's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
  - (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
  - (6) The child is a runaway and consents to nonsecure custody.
- \_\_\_ There are no other reasonable means available to protect the child.

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### The Initial Order for Nonsecure Custody (See AOC-J-150)

The Order shall

- Specify that the court has subject matter jurisdiction (must have a properly signed and verified petition and UCCJEA jurisdiction).
- Specify the criteria that exists to support the entry of a nonsecure custody order (G.S. 7B-503).
- Direct a law enforcement officer or other authorized person to take physical custody of the child and to make due return on the order. (G.S. 7B-504).
  - The order may authorize a law enforcement officer to enter a private property to take physical custody of the child if there are findings (based on the petition and request for nonsecure custody or the petitioner's testimony) that a less intrusive remedy is not available. There may also be findings that exigent circumstances require a law enforcement officer to make a forcible entry at any hour. (G.S. 7B-503).
- Under G.S. 7B-505(a), order nonsecure custody to a county department or a person who is identified in the order for temporary placement in
  - A parent's or relative's home
    - Note, the court shall first consider whether a relative is willing and able to provide proper care and supervision of the child in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement with the relative unless the court finds that placement with the relative would be contrary to the best interests of the child (G.S. 7B-505(b));
    - If a relative lives outside of North Carolina, the placement must comply with the Interstate Compact on the Placement of Children (ICPC) (G.S. 7B-505(d); 7B-3800).
  - A licensed foster home or a home otherwise authorized by law to provide such care;
  - A facility operated by the department of social services; or
  - Any other home or facility approved by the court.
- If custody is removed from a parent, guardian, or custodian, order visitation pursuant to G.S. 7B-905.1.
- Consider whether it is in the juvenile's best interest to remain in the child's community of residence (G.S. 7B-505(d)). Note, under federal law, consider the child's continuation in his or her current school if placement is made in a different school district.
- Order the county department to make diligent efforts to notify relatives and any persons with legal custody of the child's siblings that the child is in nonsecure custody and of any hearings on the need for continued nonsecure custody, unless the court finds such notification would be contrary to the best interests of the child. G.S. 7B-505(b).

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*If the order places the juvenile in the nonsecure custody of a county department, the order must include the following*

- Findings that the child's continuation in or return to his or her own home would be contrary to the child's health and safety.
- Findings of whether the county department has made reasonable efforts to prevent the need for the child's placement.
- A statement that the child's placement and care are the responsibility of a county department and that the county department must provide or arrange for the child's placement unless the court orders a specific placement.
- May order services or other efforts aimed at returning the child to a safe home.
- If there are findings of a county department director's compelling interest in obtaining a child medical evaluation (CME) before the first hearing on the need for continued nonsecure custody, the county department's authority to consent to a CME pursuant to G.S. 7B-505.1(b).

*Note, effective December 12, 2016, if ICWA applies, additional findings will be required under 25 CFR 23.113*

### **Length of the order (G.S. 7B-506(a))**

- No child shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the need for continued custody or a hearing on the merits. A hearing on the need for continued nonsecure custody may be continued for up to 10 business days if the child's parent, guardian, custodian, or caretaker and the child's GAL (if one is appointed) consent to the continuance.
- When an order has been entered by an official exercising the authority delegated to him/her through an administrative order that is filed with the clerk (G.S. 7B-502), a hearing to determine the need for continued nonsecure custody must be conducted on the next regularly scheduled session of district court in the city or county where the order was entered so long as that session is scheduled within seven calendar days. If the session will not be held within seven calendar days, the hearing on the need for continued nonsecure custody may be conducted at another regularly scheduled session of district court in the district where the order was entered.



County

In The General Court Of Justice  
District Court Division

IN THE MATTER OF:

Name And Address Of Juvenile

PETITION  
OBSTRUCTION OF OR INTERFERENCE  
WITH JUVENILE INVESTIGATION  
(ABUSE/NEGLECT/DEPENDENCY)

G.S. 7B-303

Juvenile's Date Of Birth      Age      Race      Sex

Name Of Petitioner

Name And Address Of Respondent 1

Name And Address Of Respondent 2

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

- On or about (date) \_\_\_\_\_, the Department of Social Services (DSS) of the county named above received a report of abuse, neglect or dependency concerning the juvenile named above, which requires an investigation as set forth in G.S. 7B-303.
- The name, addresses and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:

NAME	RELATIONSHIP OR TITLE	ADDRESS	TELEPHONE

- Respondent(s), without lawful cause, has obstructed and/or interfered with the investigation. The obstruction and/or interference consists of the following:
  - a. refusal to disclose the whereabouts of the juvenile.
  - b. refusal to allow personal access to the juvenile.
  - c. refusal to allow observation and/or interview of the juvenile in private.
  - d. refusal to allow access to confidential information and/or records after proper request by DSS pursuant to G.S. 7B-303.
  - e. refusal to allow DSS to arrange for an evaluation of the juvenile by a physician or other expert.
  - f. other conduct which makes it impossible for DSS to carry out its duty to investigate: (specifically describe respondent's conduct)

- 4. There is reason to believe that the juvenile is in need of immediate protection and/or assistance. The basis for that belief is as follows:

(See ADDITIONAL ALLEGATIONS on Reverse)

WHEREFORE, the Petitioner prays for the following relief:

1. That the Court hear this case and determine that the allegations are true.
2. That the Court enter an order directing the respondent(s) to cease obstructing or interfering with the investigation.
3. That the Court issue an immediate ex parte order directing the respondent(s) to cease such obstruction or interference.
4. For such other and further relief as the Court deems just and proper.

**VERIFICATION**

Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.

<b>SWORN AND SUBSCRIBED TO BEFORE ME</b>		<i>Signature Of Petitioner</i>
<i>Date</i>	<i>Signature Of Person Authorized To Administer Oaths</i>	<input type="checkbox"/> <i>Director</i> <input type="checkbox"/> <i>Authorized Representative Or Director</i> _____ <i>County Department Of Social Services</i>
<input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i>		<i>Address</i>
<input type="checkbox"/> <i>Notary</i>	<i>Date My Commission Expires</i>	
<b>SEAL</b>	<i>County Where Notarized</i>	<i>Telephone No.</i>

# STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice  
District Court Division

\_\_\_\_\_ County

## IN THE MATTER OF:

## JUVENILE PETITION (ABUSE/NEGLECT/DEPENDENCY)

Name And Address Of Juvenile

Juvenile's Date Of Birth

Age

Race

Sex

G.S. 7B-101, -400, -402

Name Of Petitioner

Condition Alleged

Abused

Neglected

Dependent

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

1. The juvenile named above resides in the district at the address shown above, was found in the district as alleged herein, or venue exists pursuant to G.S. 7B-400(a) or (b).
2. The information required by G.S. 50A-209 is set out in the **Affidavit As To Status Of Minor Child (AOC-CV-609)**, which is attached hereto and incorporated herein by reference.
3. The names, addresses, and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:

NAME	RELATIONSHIP OR TITLE	ADDRESS	TELEPHONE NO.

4. The juvenile is an abused juvenile, neglected juvenile, or dependent juvenile, as alleged more specifically below: *(Check only the blocks that apply.)*

- A. The juvenile is an **ABUSED JUVENILE**, in that the juvenile's parent, guardian, custodian, or caretaker:
- 1. has inflicted or allowed to be inflicted on the juvenile a serious physical injury by other than accidental means.
  - 2. has created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.
  - 3. has used or allowed to be used upon the juvenile cruel or grossly inappropriate devices or procedures to modify behavior.
  - 4. has committed, permitted, or encouraged the commission of a sex or pornography offense with or upon the juvenile in violation of the criminal law.
  - 5. has created or allowed to be created serious emotional damage to the juvenile.
  - 6. has encouraged, directed, or approved of delinquent acts involving moral turpitude committed by the juvenile.
  - 7. has committed or allowed to be committed an offense of human trafficking, involuntary servitude, or sexual servitude against a child.

Specifically, on or about *(date or time period)* \_\_\_\_\_: *(State facts supporting allegations that the juvenile is an abused juvenile as indicated above. Attach additional pages if necessary.)*

(See reverse side for additional allegations)

- B. The juvenile is a **NEGLECTED JUVENILE**, in that the juvenile:
- 1. does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker.
  - 2. has been abandoned.
  - 3. is not provided necessary medical care.
  - 4. is not provided necessary remedial care.
  - 5. lives in an environment injurious to the juvenile's welfare.
  - 6. has been placed for care or adoption in violation of law.

Specifically, on or about (date or time period) \_\_\_\_\_: (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

- C. The juvenile is a **DEPENDENT JUVENILE**, in that:
- 1. the juvenile needs assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision.
  - 2. the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

Specifically, on or about (date or time period) \_\_\_\_\_: (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

I request the Court to hear the case to determine whether the allegations are true and whether the juvenile is in need of the care, protection, or supervision of the State.

**VERIFICATION**

Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		<i>Name And Address Of Petitioner</i>
<i>Date</i>	<i>Signature Of Person Authorized To Administer Oaths</i>	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Magistrate		<i>Signature Of Petitioner</i>
<input type="checkbox"/> Notary	<i>Date My Commission Expires</i>	<i>Telephone No.</i>
<b>SEAL</b>	<i>County Where Notarized</i>	<input type="checkbox"/> Director <input type="checkbox"/> Authorized Representative Of Director _____ County Department of Social Services

**WITNESS(ES)**

NAME	ADDRESS	TELEPHONE NO.

\_\_\_\_\_ County

**IN THE MATTER OF:**

**ORDER FOR  
NONSECURE CUSTODY  
(ABUSE/NEGLECT/DEPENDENCY)**

Name And Address Of Juvenile

Juvenile's Date Of Birth      Age      Race      Sex

G.S. 7B-502 through -505.1, -508

Name And Address Of Parent/Guardian/Custodian/Caretaker

Name And Address Of Parent/Guardian/Custodian/Caretaker

Based upon the verified petition, this Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile.

1. As grounds for the issuance of this Order, the Court finds that there is a reasonable factual basis to believe that the matters alleged in the petition are true, that there are no other reasonable means available to protect the juvenile, and (check one or more)

- a. the juvenile has been abandoned.
- b. the juvenile has suffered physical injury or sexual abuse.
- c. the juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
- d. the juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
- e. the parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
- f. the juvenile is a runaway and consents to nonsecure custody.

2. Efforts by DSS to prevent or eliminate the need for the juvenile's placement include: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

OR

3. Efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, and placement of the juvenile in the absence of such efforts was reasonable. (Describe immediate threat of harm.)  
\_\_\_\_\_  
\_\_\_\_\_.

4. Based on the above findings, the Court concludes that it is contrary to the juvenile's welfare to remain in the home.

5. Based on the (check one or more)  petition and request for nonsecure custody,  testimony of the petitioner, the Court concludes that a less intrusive remedy than entering private property to take physical custody of the juvenile is not available.

**TO ANY LAW ENFORCEMENT OFFICER OR DIRECTOR OF A COUNTY DEPARTMENT OF SOCIAL SERVICES**

YOU ARE ORDERED to take physical custody of the above-named juvenile(s) for placement in nonsecure custody and to make due return on this Order. You are also ordered to give a copy of this Order to the juvenile's parent, guardian, custodian, or caretaker named above.

The juvenile(s) shall be placed in nonsecure custody with:

- 1. the Department of Social Services of the county named above. The department may place the juvenile in a licensed foster home, a home otherwise authorized by law to provide temporary residential care, a facility operated by the department, or the following relative's or nonrelative kin's home or other home or facility, which the Court hereby approves:

\_\_\_\_\_

(Over)

The department is authorized to arrange for, provide, or consent to:

- a. routine medical and dental care or treatment; emergency medical, surgical, psychiatric, psychological, or mental health care or treatment; and testing and evaluation in exigent circumstances.
- b. treatment the medical provider recommends in order to cure, alleviate, or prevent the juvenile from suffering physical harm pursuant to 1(d) set forth above as a ground for nonsecure custody.
- c. a Child Medical Evaluation. The following findings demonstrate the director's compelling interest in having the juvenile evaluated prior to the hearing on the need for continued nonsecure custody:  
\_\_\_\_\_  
\_\_\_\_\_.

2. (designate person, if the Court places the juvenile directly, not through DSS) \_\_\_\_\_

A further hearing to determine the need for continued nonsecure custody, whether with DSS or someone else shall be held:

Date Of Hearing	Time Of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Place Of Hearing
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- 3. The juvenile is a member of a State-recognized tribe. The Department of Social Services shall notify the juvenile's State-recognized tribe of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for placement.
- 4. The Department of Social Services shall make diligent efforts to notify relatives and, if applicable, other persons with legal custody of the juvenile's sibling, of nonsecure custody and subsequent hearings.

**TO ANY LAW ENFORCEMENT OFFICER**

- (No. 5 on Side One must be checked) YOU ARE AUTHORIZED to enter private property to take custody of the juvenile.
- and you are authorized to make forcible entry at any hour if that is required by exigent circumstances of the case.

Date	Signature Of Judge/Judge's Designee	
Maximum Duration Of Custody	Name Of Judge/Judge's Designee (type or print)	<input type="checkbox"/> Judge <input type="checkbox"/> Judge's Designee

**If the person above gives telephonic approval:**

Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name And Title Of Person Receiving Telephonic Approval	Signature Of Person Receiving Telephonic Approval
---	--	---

**RETURN ON ORDER**

Date Order Received	Date Order Returned
---------------------	---------------------

- 1. The juvenile named in this Order was taken into custody at \_\_\_\_\_  AM  PM, on (date) \_\_\_\_\_, and taken to \_\_\_\_\_; I gave a copy of this Order to the person named below.
- 2. Though diligently sought, the juvenile named in this Order could not be found in this county. (Add any comments or information about the juvenile's possible whereabouts.)

Name Of Person Who Has Personally Received A Copy Of This Order (type or print)	Signature And Title Of Person Making Return
Relationship To Juvenile	Department Or Agency