

Article 11.

Termination of Parental Rights.

**§ 7B-1100. Legislative intent; construction of Article.**

The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

- (1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.
- (2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.
- (3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.
- (4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act. (1977, c. 879, s. 8; 1979, c. 110, s. 6; 1998-202, s. 6; 1999-223, s. 5; 1999-456, s. 60.)

**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. Provided, that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the state of residence of the parent. Provided, that before exercising jurisdiction under this Article regarding the parental rights of a nonresident parent, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201 or G.S. 50A-203, without regard to G.S. 50A-204 and that process was served on the nonresident parent pursuant to G.S. 7B-1106. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under Chapter 48 of the General Statutes. (1977, c. 879, s. 8; 1979, c. 110, s. 7; 1979, 2nd Sess., c. 1206, s. 1; 1981, c. 996, s. 1; 1983, c. 89, s. 1; 1995, c. 457, s. 3; 1998-202, s. 6; 1999-223, s. 6; 1999-456, s. 60; 2000-144, s. 18; 2000-183, s. 2; 2003-140, s. 4; 2005-398, s. 14; 2007-152, s. 1.)

**§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the

petition in accordance with rules adopted by the Office of Indigent Defense Services, shall indicate the appointment on the juvenile summons, and shall provide a copy of the summons and petition to the attorney. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

- (1) Does not appear at the hearing;
- (2) Does not qualify for court-appointed counsel;
- (3) Has retained counsel; or
- (4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(a1) A parent qualifying for appointed counsel may be permitted to proceed without the assistance of counsel only after the court examines the parent and makes findings of fact sufficient to show that the waiver is knowing and voluntary. This examination shall be reported as provided in G.S. 7B-806.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17.

(d) The parent's counsel shall not be appointed to serve as the guardian ad litem and the guardian ad litem shall not act as the parent's attorney. Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Repealed by Session Laws 2013-129, s. 32, effective October 1, 2013, and applicable to actions filed or pending on or after that date.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. (2005-398, s. 15; 2009-311, s. 9; 2011-326, s. 12(b); 2012-194, s. 41; 2013-129, s. 32; 2021-100, s. 17.)

### **§ 7B-1102. Pending child abuse, neglect, or dependency proceedings.**

(a) When the district court is exercising jurisdiction over a juvenile and the juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the parent's rights in relation to the juvenile.

(b) A motion pursuant to subsection (a) of this section and the notice required by G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

- (1) Service must be in accordance with G.S. 1A-1, Rule 4, if one of the following applies:
  - a. The person or agency to be served was not served originally with summons.

- b. The person or agency to be served was served originally by publication that did not include notice substantially in conformity with the notice required by G.S. 7B-406(b)(4)e.
  - c. Two years has elapsed since the date of the original action.
- (2) In any case, the court may order that service of the motion and notice be made pursuant to G.S. 1A-1, Rule 4.

For purposes of this section, the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b1) If a parent who is served under G.S. 1A-1, Rule 4, with a motion under this section has an attorney of record, a copy of the motion and the notice served upon the parent shall also be sent to the parent's attorney.

(c) When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42. (1998-229, ss. 9.1, 26.1; 1999-456, s. 60; 2000-183, s. 3; 2011-332, s. 4.1.)

**§ 7B-1103. Who may file a petition or motion.**

(a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed by one or more of the following:

- (1) Either parent seeking termination of the right of the other parent.
- (2) Any person who has been judicially appointed as the guardian of the person of the juvenile.
- (3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction.
- (4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. 48-3-701.
- (5) Any person with whom the juvenile has resided for a continuous period of 18 months or more next preceding the filing of the petition or motion.
- (6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this responsibility.
- (7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency that may file a petition under subsection (a) of this section may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights.

(c) (See Editor's note) No person whose actions resulted in a conviction under G.S. 14-27.21, 14-27.22, 14-27.23, or 14-27.24 and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile. (1977, c. 879, s. 8; 1983, c. 870, s. 1; 1985, c. 758, s. 1; 1987, c. 371, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 4; 1998-202, s. 6; 1998-229, s. 9.1; 1999-456, s. 60; 2000-183, s. 4; 2004-128, s. 13; 2015-181, s. 23; 2015-264, s. 33(b); 2021-132, s. 1(l).)

**§ 7B-1104. Petition or motion.**

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile", who shall be a party to the action, and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

- (1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.
- (2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.
- (3) **(See Editor's note)** The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. 14-27.21, 14-27.22, 14-27.23, or 14-27.24 and the conception of the juvenile need not be named in the petition.
- (4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.
- (5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.
- (6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.
- (7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act. (1977, c. 879, s. 8; 1979, c. 110, s. 8; 1981, c. 469, s. 23; 1987, c. 550, s. 15; 1998-202, s. 6; 1999-223, s. 7; 1999-456, s. 60; 2000-183, s. 5; 2004-128, s. 14; 2009-38, s. 2; 2015-181, s. 24; 2015-264, s. 33(c).)

#### **§ 7B-1105. Preliminary hearing; unknown parent.**

(a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall, within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in the county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may order the petitioner to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106.

(c) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing, but the court may cause summons to be issued to any person directing the person to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to

identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

- (1) Designate the court in which the petition is pending;
- (2) Be directed to "the father (mother) (father and mother) of a male (female) juvenile born on or about \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_, \_\_\_\_\_, respondent";  
(date)  
(city)  
(State)
- (3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In Re Doe" substituted therefor);
- (4) State that a petition seeking to terminate the parental rights of the respondent has been filed;
- (5) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
- (6) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(e) The court shall issue the order required by subsections (b) and (d) of this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(f) Upon the failure of the parent served by publication pursuant to subsection (d) of this section to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

(g) No summons shall be required for a parent whose name or identity is unknown and who is served by publication as provided in this section. (1977, c. 879, s. 8; 1987, c. 282, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2011-295, s. 12; 2018-68, s. 5.1.)

#### **§ 7B-1105.1. Preliminary hearing; safely surrendered infant.**

(a) Within 10 days from the date of filing of a petition to terminate the parental rights of a surrendering or non-surrendering parent of a safely surrendered infant, or during the next term of court in the county where the petition is filed if there is no court in the county in that 10-day period, the court shall conduct a preliminary hearing to address the infant's safe surrender. The preliminary hearing shall be recorded and shall be closed unless the surrendering parent appears and requests that it be open. The purpose of the hearing shall be to ascertain the circumstances of the safe surrender in order to determine any efforts that should be made to ascertain the identity and location of either parent and to establish appropriate notice regarding termination of parental rights proceedings.

(b) The court shall inquire of the director of the department of social services as to all of the following:



- (6) State that a petition seeking to terminate the parental rights of the respondent has been filed and the purpose of the termination hearing.
- (7) Notice that if the parent is indigent, the parent is entitled to appointed counsel and may contact the clerk immediately to request counsel.
- (8) State the date and time of the pretrial hearing pursuant to G.S. 7B-1108.1 and notice that the parent may attend the hearing.
- (9) Direct the respondent to file with the clerk a written answer to the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1).
- (10) State that if the parent fails to answer the petition within the time prescribed and the court determines the ground for termination has been proved and that termination of that parent's rights is in the best interests of the juvenile, the respondent's parental rights to the juvenile will be terminated.

Upon completion of the service by publication, an affidavit of the publisher shall be filed with the court.

(f) The court shall issue the order required by this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(g) No summons is required for a parent who is served by publication. (2023-14, s. 6.2(f).)

**§ 7B-1106. Issuance of summons.**

(a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the juvenile. However, a summons does not need to be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency or to any parent who has consented to the adoption of the juvenile by the petitioner.
- (2) Any person who has been judicially appointed as guardian of the person of the juvenile.
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction.
- (4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction.
- (5) Repealed by Session Laws 2009-38, s. 3, effective May 27, 2009.

The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4. Prior to service by publication under G.S. 1A-1, the court shall make findings of fact that a respondent cannot otherwise be served despite diligent efforts made by petitioner for personal service. The court shall approve the form of the notice

before it is published. The parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor.

(a1) If a guardian ad litem has been appointed for the juvenile pursuant to G.S. 7B-601 and has not been relieved of responsibility or if the court appoints a guardian ad litem for the juvenile after the petition is filed, a copy of all pleadings and other papers required to be served shall be served on the juvenile's guardian ad litem or attorney advocate pursuant to procedures established under G.S. 1A-1, Rule 5.

(a2) If an attorney has been appointed for a respondent pursuant to G.S. 7B-602 and has not been relieved of responsibility, a copy of all pleadings and other papers required to be served on the respondent shall be served on the respondent's attorney pursuant to procedures established under G.S. 1A-1, Rule 5.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor juvenile;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
- (3) Notice that any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding shall continue to represent the parent unless otherwise ordered by the court;
- (4) Notice that if the parent is indigent and is not already represented by appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and that the appointment of provisional counsel shall be reviewed by the court at the first hearing after service;
- (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the petitioner upon filing of the answer or 30 days from the date of service if no answer is filed; and
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1111, the department shall file a written answer and shall be deemed a party to the proceeding. (1977, c. 879, s. 8; 1981, c. 966, s. 2; 1983, c. 581, ss. 1, 2; 1995, c. 457, s. 4; 1998-202, s. 6; 1998-229, ss. 10, 27; 1999-456, s. 60; 2000-183, s. 13; 2001-208, s. 28; 2001-487, s. 101; 2009-38, s. 3; 2009-311, s. 10; 2011-295, s. 13; 2013-129, s. 33; 2017-161, s. 11.)

#### **§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

- (1) The parents of the juvenile. However, notice does not need to be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency or to any parent who has consented to the adoption of the juvenile by the movant.

- (2) Any person who has been judicially appointed as guardian of the person of the juvenile.
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction.
- (4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.
- (5) The juvenile's guardian ad litem or attorney advocate, if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.
- (6) Repealed by Session Laws 2009-38, s. 4, effective May 27, 2009.

The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b).

- (b) The notice required by subsection (a) of this section shall include all of the following:
  - (1) The name of the minor juvenile.
  - (2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.
  - (3) Notice that any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.
  - (4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.
  - (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the motion will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.
  - (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a movant, is served with a motion seeking termination of a parent's rights, the director shall file a written response and shall be deemed a party to the proceeding. (2000-183, s. 6; 2009-38, s. 4; 2009-311, s. 11.)

**§ 7B-1107. Failure of parent to answer or respond.**

Upon the failure of a respondent parent to file written answer to the petition or written response to the motion within 30 days after service of the summons and petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court may issue an order terminating all parental and custodial rights of that parent with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the petition or motion. (1977, c. 879, s. 8; 1979, c. 525, s. 3; 1987, c. 282, s. 2; 1998-202, s. 6; 1998-229, s. 10; 1999-456, s. 60; 2000-183, s. 7.)

**§ 7B-1108. Answer or response of parent; appointment of guardian ad litem for juvenile.**

(a) Any respondent may file a written answer to the petition or written response to the motion. Only a district court judge may grant an extension of time in which to answer or respond. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the guardian ad litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with good cause shown the local guardian ad litem program consents to the appointment.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise. (1977, c. 879, s. 8; 1981 (Reg. Sess., 1982), c. 1331, s. 3; 1983, c. 870, s. 2; 1989 (Reg. Sess., 1990), c. 851, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2000-183, s. 8; 2003-140, s. 7; 2009-311, s. 12; 2011-295, s. 14.)

#### **§ 7B-1108.1. Pretrial hearing.**

(a) The court shall conduct a pretrial hearing. However, the court may combine the pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial hearing order is required. At the pretrial hearing, the court shall consider the following:

- (1) Retention or release of provisional counsel.
- (2) Whether a guardian ad litem should be appointed for the juvenile, if not previously appointed.
- (3) Whether all summons, service of process, and notice requirements have been met.
- (4) Any pretrial motions.
- (5) Any issues raised by any responsive pleading, including any affirmative defenses.
- (6) Any other issue which can be properly addressed as a preliminary matter.

(b) Written notice of the pretrial hearing shall be in accordance with G.S. 7B-1106 and G.S. 7B-1106.1. (2009-311, s. 13.)

#### **§ 7B-1109. Adjudicatory hearing on termination.**

(a) The hearing on the termination of parental rights shall be conducted by the court sitting without a jury and shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 90 days from the filing of the petition or motion unless the judge pursuant to subsection (d) of this section orders that it be held at a later time. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.

(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, counsel shall be appointed to represent them in accordance with rules adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition or motion.

(c) The court may, upon finding that reasonable cause exists, order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the juvenile's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the juvenile is at issue, the court may order a similar examination of any parent of the juvenile.

(d) The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

(e) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent. The adjudicatory order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. The rules of evidence in civil cases shall apply. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights. (1977, c. 879, s. 8; 1979, c. 669, s. 1; 1981, c. 966, s. 3; (Reg. Sess., 1982), c. 1331, s. 3; 1983, c. 870, s. 2; 1989 (Reg. Sess., 1990), c. 851, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2000-144, s. 19; 2000-183, s. 9; 2001-208, ss. 7, 22; 2001-487, s. 101; 2003-304, s. 2; 2005-398, s. 16; 2011-295, s. 15; 2013-129, s. 34.)

#### **§ 7B-1110. Determination of best interests of the juvenile.**

(a) After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule

801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party. (1977, c. 879, s. 8; 1981 (Reg. Sess., 1982), c. 1131, s. 1; 1983, c. 581, s. 3; c. 607, s. 3; 1998-202, s. 6; 1999-456, s. 60; 2000-183, s. 10; 2001-208, s. 23; 2001-487, s. 101; 2005-398, s. 17; 2011-295, s. 16.)

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

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

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by the decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following:
  - a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services. The petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.
  - b. Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.
  - c. Legitimated the juvenile by marriage to the mother of the juvenile.
  - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
  - e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.
- (6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.
- (7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant as a safely surrendered infant pursuant to Article 5A of this Subchapter for at least 60 consecutive days immediately preceding the filing of the petition or motion.
- (8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home; or has committed murder or voluntary manslaughter of the other parent of the child.

The petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was by way of a jury verdict or any kind of plea. If the parent has committed the murder or voluntary manslaughter of the other parent of the child, the court shall consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification.

- (9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home. This ground shall not apply to a parent whose parental rights were terminated as a result of the other child being a safely surrendered infant.
- (10) Where the juvenile has been relinquished to a county department of social services or a licensed child-placing agency for the purpose of adoption or placed with a prospective adoptive parent for adoption; the consent or relinquishment to adoption by the parent has become irrevocable except upon a showing of fraud, duress, or other circumstance as set forth in G.S. 48-3-609 or G.S. 48-3-707; termination of parental rights is a condition precedent to adoption in the jurisdiction where the adoption proceeding is to be filed; and the parent does not contest the termination of parental rights.
- (11) The parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.

(b) The burden in these proceedings is on the petitioner or movant to prove the facts justifying the termination by clear and convincing evidence. (1977, c. 879, s. 8; 1979, c. 669, s. 2; 1979, 2nd Sess., c. 1088, s. 2; c. 1206, s. 2; 1983, c. 89, s. 2; c. 512; 1985, c. 758, ss. 2, 3; c. 784; 1991 (Reg. Sess., 1992), c. 941, s. 1; 1997-390, ss. 1, 2; 1997-443, s. 11A.118(a); 1998-202, s. 6; 1998-229, ss. 11, 28; 1999-456, s. 60; 2000-183, s. 11; 2001-208, s. 6; 2001-291, s. 3; 2001-487, s. 101; 2003-140, s. 3; 2005-146, s. 1; 2007-151, s. 1; 2007-484, s. 26(a); 2012-40, s. 1; 2013-129, s. 35; 2018-47, s. 2; 2023-14, s. 6.2(g).)

#### **§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

- (1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(a)(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile, except as otherwise provided in G.S. 7B-908(d), as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part

7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

- (2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile. (1977, c. 879, s. 8; 1983, c. 870, s. 3; 1995, c. 457, s. 5; 1998-202, s. 6; 1998-229, s. 11; 1999-456, s. 60; 2000-183, s. 12; 2011-295, s. 17; 2012-194, s. 2.)

#### **§ 7B-1112.1. Selection of adoptive parents.**

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. In selecting the adoptive parents, any current placement provider wanting to adopt the child shall be considered. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five business days. The county department of social services shall notify the guardian ad litem and the foster parents of the selection of prospective adoptive parents within 10 days of the selection and before the filing of the adoption petition. If the guardian ad litem disagrees with the selection of adoptive parents or the foster parents want to adopt the juvenile and were not selected as adoptive parents, the guardian ad litem or foster parents shall file a motion within 10 days of the department's notification and schedule the case for hearing on the next juvenile calendar. The department shall not change the juvenile's placement to the prospective adoptive parents unless the time period for filing a motion has expired and no motion has been filed. The Department shall provide a copy of a motion for judicial review of adoption selection to the foster parents not selected. Nothing in this section shall be construed to make the foster parents a party to the proceeding solely based on receiving notification and the right to be heard by filing a motion. In hearing any motion, the court shall consider the recommendations of the agency and the guardian ad litem and other facts related to the selection of adoptive parents. The court shall then determine whether the proposed adoptive placement is in the juvenile's best interests. (2011-295, s. 18; 2013-129, s. 36.)

**§ 7B-1113: Repealed by Session Laws 2005-398, s. 18, effective October 1, 2005.**

#### **§ 7B-1114. Reinstatement of parental rights.**

(a) A juvenile whose parent's rights have been terminated, the guardian ad litem attorney, or a county department of social services with custody of the juvenile may file a motion to reinstate the parent's rights if all of the following conditions are satisfied:

- (1) The juvenile is at least 12 years of age or, if the juvenile is younger than 12, the motion alleges extraordinary circumstances requiring consideration of the motion.
- (2) The juvenile does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time.
- (3) The order terminating parental rights was entered at least three years before the filing of the motion, unless the court has found or the juvenile's attorney

advocate and the county department of social services with custody of the juvenile stipulate that the juvenile's permanent plan is no longer adoption.

(b) If a motion could be filed under subsection (a) of this section and the parent whose rights have been terminated contacts the county department of social services with custody of the juvenile or the juvenile's guardian ad litem regarding reinstatement of the parent's rights, the department or the guardian ad litem shall notify the juvenile that the juvenile has a right to file a motion for reinstatement of parental rights.

(c) If a motion to reinstate parental rights is filed and the juvenile does not have a guardian ad litem appointed pursuant to G.S. 7B-601, the court shall appoint a guardian ad litem to represent the best interests of the juvenile. The appointment, duties, and payment of the guardian ad litem and the guardian ad litem attorney shall be the same as in G.S. 7B-601 and G.S. 7B-603.

(d) The party filing a motion to reinstate parental rights shall serve the motion on each of the following who is not the movant:

- (1) The juvenile.
- (2) The juvenile's guardian ad litem or the guardian ad litem attorney.
- (3) The county department of social services with custody of the juvenile.
- (4) The former parent whose rights the motion seeks to have reinstated.

A former parent who is served under this subsection is not a party to the proceeding and is not entitled to appointed counsel but may retain counsel at the former parent's own expense.

(e) The movant shall ask the clerk to calendar the case for a preliminary hearing on the motion for reinstatement of parental rights within 60 days of the filing of the motion at a session of court scheduled for the hearing of juvenile matters. The movant shall give at least 15 days' notice of the hearing and state its purpose to the persons listed in subdivisions (d)(1) through (d)(4) of this section. In addition, the movant shall send a notice of the hearing to the juvenile's placement provider. Nothing in this section shall be construed to make the former parent or the juvenile's placement provider a party to the proceeding based solely on being served with the motion or receiving notice and the right to be heard.

(f) At least seven days before the preliminary hearing, the department of social services and the juvenile's guardian ad litem shall provide to the court, the other parties, and the former parent reports that address the factors specified in subsection (g) of this section.

(g) At the preliminary hearing and any subsequent hearing on the motion, the court shall consider information from the county department of social services with custody of the juvenile, the juvenile, the juvenile's guardian ad litem, the juvenile's former parent whose parental rights are the subject of the motion, the juvenile's placement provider, and any other person or agency that may aid the court in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and whether reinstatement is in the juvenile's best interest. The court shall consider the following criteria and make written findings regarding the following that are relevant:

- (1) What efforts were made to achieve adoption or a permanent guardianship.
- (2) Whether the parent whose rights the motion seeks to have reinstated has remedied the conditions that led to the juvenile's removal and termination of the parent's rights.
- (3) Whether the juvenile would receive proper care and supervision in a safe home if placed with the parent.

- (4) The age and maturity of the child and the ability of the child to express the child's preference.
- (5) The parent's willingness to resume contact with the juvenile and to have parental rights reinstated.
- (6) The juvenile's willingness to resume contact with the parent and to have parental rights reinstated.
- (7) Services that would be needed by the juvenile and the parent if the parent's rights were reinstated.
- (8) Any other criteria the court deems necessary.

(h) At the conclusion of the preliminary hearing, the court shall either dismiss the motion or order that the juvenile's permanent plan become reinstatement of parental rights. If the court does not dismiss the motion, the court shall conduct interim hearings at least every six months until the motion is granted or dismissed. Interim hearings may be combined with posttermination of parental rights review hearings required by G.S. 7B-908. At each interim hearing, the court shall assess whether the plan of reinstatement of parental rights continues to be in the juvenile's best interest and whether the department of social services has made reasonable efforts to achieve the permanent plan.

(i) At any hearing under this section, after making proper findings of fact and conclusions of law, the court may do one of the following:

- (1) Enter an order for visitation in accordance with G.S. 7B-905.1.
- (2) Order that the juvenile be placed in the former parent's home and supervised by the department of social services either directly or, when the former parent lives in a different county, through coordination with the county department of social services in that county, or by other personnel as may be available to the court, subject to conditions applicable to the former parent as the court may specify. Any order authorizing placement with the former parent shall specify that the juvenile's placement and care remain the responsibility of the county department of social services with custody of the juvenile and that the department is to provide or arrange for the placement of the juvenile.

(j) The court shall either dismiss or grant a motion for reinstatement of parental rights within 12 months from the date the motion was filed, unless the court makes written findings why a final determination cannot be made within that time. If the court makes such findings, the court shall specify the time frame in which a final order shall be entered.

(k) An order reinstating parental rights restores all rights, powers, privileges, immunities, duties, and obligations of the parent as to the juvenile, including those relating to custody, control, and support of the juvenile. If a parent's rights are reinstated, the court shall be relieved of the duty to conduct periodic reviews.

(l) An order shall be entered no later than 30 days following the completion of any hearing pursuant to this section. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(m) The granting of a motion for reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights.

(n) A parent whose rights are reinstated pursuant to this section is not liable for child support or the costs of any services provided to the juvenile for the period from the date of the order terminating the parent's rights to the date of the order reinstating the parent's rights. (2011-295, s. 18; 2013-129, s. 37.)