Initial Removal of a Child from a Home Because of Suspected Abuse, Neglect, or Dependency, Amended G.S. 7B-504

Spoiler Alert !! Effective June 2, 2015, amendments were made to G.S. 7B-504.

Report and Assessment

In NC, an adult who suspects a child is abused, neglected, or dependent by a parent, guardian, custodian, or caretaker must make a report to the county department of social services (DSS) where the child lives or is found. G.S. 7B-301(a). DSS will determine if the report warrants an investigation. If an investigation is needed, DSS will assess whether abuse, neglect, or dependency has occurred and if a child must be immediately removed from the home in order to protect him or her. G.S. 7B-302(a), (c). If a child's immediate removal is necessary, DSS must file an abuse, neglect, or dependency (A/N/D) petition in district court. G.S. 7B-302(d).

Taking a Child into Temporary Custody, G.S. 7B-500, -501

Drafting and filing an A/N/D petition takes time; time that may place the child in further danger. If a DSS worker or law enforcement officer believes a child is abused, neglected or dependent and would be injured or could not be taken into custody before obtaining a court order, the child may be taken into "temporary custody." Temporary custody means to take physical custody of a child and provide for that child's personal care and supervision. Temporary custody may only last for a maximum of 12 hours unless any of those 12 hours falls on a Saturday, Sunday, or legal holiday; in that case, it may last up to 24 hours. If DSS decides to seek an order for nonsecure custody, it must obtain the nonsecure custody order from the district court before the 12 or 24 hour time period expires.

Seeking Nonsecure Custody

The district court does not have jurisdiction to order nonsecure custody until DSS files an A/N/D petition for that child. *In re* Ivey, 156 N.C. App. 398 (2003). When a child's circumstances meet the required statutory criteria, DSS will make a request for nonsecure custody.

A court may only order nonsecure custody if:

1. there is a "**reasonable factual basis to believe**" the allegations in the petition are true,
2. at least one of the following applies:
    - the child has been abandoned;
    - the child has suffered a physical injury or has been sexually abused;
    - the child is exposed to a substantial risk of physical injury or sexual abuse;

    - A parent, guardian, custodian, or caretaker is unwilling or unable to consent to medical treatment for the child, which would cure, alleviate, or prevent the child from suffering physical harm, such as death, disfigurement, or substantial impairment of bodily functions;
    - the parent, guardian, custodian, or caretaker consents; or
    - the child is a runaway who consents to the nonsecure custody order, and
3. there is a "**reasonable factual basis to believe**" there are no other available reasonable means to protect the child.

G.S. 7B-503(a).

If the court denies the request for nonsecure custody, DSS does not have authority to keep custody of the child. DSS must immediately return the child to his or her parent, guardian, custodian, or caretaker. *In re* O.S., 175 N.C. App. 745 (2006); *In re* Guarante, 109 N.C. App. 598 (1993).

The Nonsecure Custody Order

If the court determines the criteria for nonsecure custody are met, the court must issue an initial nonsecure custody order. G.S. 7B-503(a). This initial order is only effective for a maximum of 7 calendar days or 10 business days, if the child's parent, guardian, custodian, or caretaker and the child's guardian ad litem consent to the later time period. The time limitation is tied to the court holding the first continued nonsecure custody hearing, which cannot be waived. G.S. 7B-506(a).

The initial order for nonsecure custody has several provisions, such as the grounds for its issuance and the child's placement in nonsecure custody. One provision addresses how it will be executed.

Executing a Nonsecure Custody Order and Fourth Amendment Implications, G.S. 7B-504

The initial nonsecure custody order directs a law enforcement officer or authorized person to "take physical custody of the juvenile." This removal may be considered a seizure, implicating a child's **Fourth Amendment right** to be free from an unreasonable seizure. *Words of Faith Fellowship, Inc. v. Rutherford County DSS*, 329 F.Supp. 2d 675 (2004). In addition, if the child is not already in "temporary custody," an officer or authorized person will need to remove the child who is designated in the order from the child's home, school, daycare, etc. A person, including a child, has varying degrees of a reasonable expectation of privacy depending on the setting. Someone's expectation of privacy is highest in his or her home. *In re* Stumbo, 357 N.C. 279 (2003).

The Juvenile Code recognizes that both children and parents have constitutional rights. G.S. 7B-100(1). The **Fourth Amendment** restricts the government in civil as well as criminal matters and applies to both civil and criminal government authorities. *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985). **Fourth Amendment** restrictions apply to county DSS social workers investigating child abuse. *Words of Faith*, supra; *In re* Stumbo (Martin, J., concurring).

Prior to June 2, 2015, G.S. 7B-504 failed to address a law enforcement officer's or authorized representative's authority to enter a private residence to take custody of the child named in the nonsecure custody order. Some officers believed a separate warrant was needed and returned to court to obtain a warrant in situations where entry into a home was denied.

Effective June 2, 2015, S.L. 2015-43 **amended G.S. 7B-504** by explicitly allowing the court to "authorize a law enforcement officer to enter private property to take physical custody of the juvenile." The court may also authorize a law enforcement officer to make a forcible entry at any hour if required by exigent circumstances. In order to authorize an officer's entry into private property, the court must find a less intrusive remedy is not available, based upon either the allegations in the A/N/D petition and request for nonsecure custody or DSS' testimony. The need to enter private property must, therefore, be addressed in the petition or at the time the request for nonsecure custody is made.

The parent, custodian, guardian, or caretaker must be given a copy of the order by the person authorized to execute the nonsecure custody order. The law enforcement officer or authorized person must make due return of the order after it is executed.

Although a nonsecure custody order is not a warrant, it is a court order that is based on a petition alleging specific facts regarding a child's need for protection as a result of an environment or condition caused by the child's parent, guardian, custodian, or caretaker. Execution of a nonsecure custody order has no criminal investigative purpose but rather has the purpose of protecting the child from further harm.

The standard for the nonsecure custody order is a **"reasonable factual basis to believe"** and not probable cause. However, "the reasonable grounds standard accommodates the government's noble efforts to reduce the incidence of child abuse and neglect without wholly abrogating the constitutional rights of children and caregivers." *In re* Stumbo at 296 (Martin, J., concurring).

The AOC Form, (AOC-J-150, Rev. 6/15)

The AOC has revised the Order for Nonsecure Custody to reflect the new provisions of G.S. 7B-504.

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