
A Fine Mess: Dual Jurisdictional Cases

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Two cases referenced for dual jurisdiction:

- Juvenile Delinquency/Undisciplined
- Abuse/Neglect/Dependency



How do you get a dual jurisdictional case?

- Petition alleging A/N/D and petition alleging delinquency/undisciplined.
 - Involved in DSS as a young child and a delinquency petition is filed while still in DSS custody
 - A/N/D petition filed while delinquency petition is pending
 - Young mother has a pending juvenile delinquency petition and her child is alleged to be Abused, Neglected or Dependent
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How do you get a dual jurisdictional case?

- **Dispositional Alternative for Delinquency and Undisciplined Juvenile Cases**
 - §7B-2503(1)(c). Dispositional alternatives for undisciplined juveniles.
 - §7B-2506(1)(c). Dispositional alternatives for delinquent juveniles.
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§7B-2503 & 2506(1)(c):...the judge may:

If the director of the department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of a department of social services in the county of the juvenile's residence...An order placing a juvenile in custody...shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906...

Thoughts of the DSS on custody given to it as a dispositional alternative

- Before October 1, 2009, DSS would kick and scream about a juvenile being placed in its custody
 - October 1, 2009 amendment to 7B-2503 & 2506 added the language “If the director of the department of social services has received notice and an opportunity to be heard”
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Thoughts of the DSS on custody given to it as a dispositional alternative

- DSS receives Title VI, Part E—Federal Payments for Foster Care and Adoption Assistance.
 - According to VI-E, a state plan of reasonable efforts and a statement of best interest before taking a child into DSS custody and any change in custody, whether foster care or relative care, is required in order to receive Federal Funding.
 - DHHS DSS Manuel, Chapter X, Section 9 H states: “the court order that places the juvenile in the department’s custody should address the reasonable efforts requirements and the best interest of the juvenile.” If not, “the agency must file a motion to provide evidence in court to get an order that includes the language or the agency has the option of filing a Juvenile Petition in lieu of a motion if deemed appropriate by the agency.
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Effect of 7B-906 review

- Skips the adjudication and disposition phases of the A/N/D process
 - Effectively does not require that an A/N/D petition be filed.
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Perspective: Lawyer for Juvenile in Delinquency Court

- Role of the Lawyer of the Juvenile in Delinquency Court:
 - Essentially criminal representation
 - Advise your client on the law, facts, outcome
 - Represent Expressed Interests of the Juvenile, but advise on his/her Best Interests
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When does your representation end?

- Once disposition is entered?
 - Fill out fee app...done
 - Is your representation re-invoked once a motion for review is filed? Do you still represent the juvenile from disposition until probation or other disposition is terminated?
 - My opinion: Like criminal representation and ends once disposition is entered
 - No affidavit of indigency, so you are automatically re-appointed at a motion for review or probation violation.
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Your client is taken into DSS custody while you still represent him/her

■ Issues:

- Small Districts—few attorneys, potential conflicts
 - Parent or Guardian is required to be in court
 - Where is juvenile living? Does your court district still have venue?
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Conflicts of Interest

- Can you serve as GAL for your client?
 - Don't think so. GAL represents Best Interest to the court. You represent Expressed Interest to the court. Many times, these are different.
 - Can you represent a parent of your client?
 - Don't think so. Many times you are directly contrary to what the parent is doing. May want them to go to jail.
 - Can you represent DSS?
 - You are representing Best Interest of child to the court; however, like GAL, this could be completely different than expressed interests.
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Parent/Guardian Required to be in Court

- Will the Social Worker be there?
 - Will the GAL be there?
 - Will the Foster Parent there?
 - Who is subject to the supplemental order?
 - Parent? SW? GAL? Foster Parent?
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Where is the Juvenile Living?

- If the Juvenile is living in a foster home or group home out of your district, there may be an issue of Venue.
 - 7B-1800 addresses Venue
 - Adjudication: Venue is where the offense is alleged to have occurred
 - Disposition: Venue may be transferred by the court to the new district; the new district may request Venue; or Juvenile may motion for change of Venue and the Court shall transfer the proceeding.
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Pros to a Dual Jurisdictional Case:

- More Services

- Two agencies working toward placement and/or rehabilitation: DSS and DJJDP

- Negotiation Tool?

- As a Dispositional Alternative, Mama does not want DSS digging more into her home life. Can be used to negotiate a disposition that requires Mama to get involved, if not, then DSS will get involved.
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“Improper” means for Dual Jurisdiction

- Court orders DSS custody of Juvenile prior to disposition
 - Not subject to 7B-2503 or 2506
 - DSS usually files petition based on Court order
 - Should be dismissed
 - Court “asks” DSS to investigate early in the delinquency phase
 - This may not be bad
 - Put safety plan into effect for parents and/or more services for the child
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QUESTIONS?

COMMENTS? STORIES?

Contact Information

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