

8.7 Nonsecure Custody

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Definition. Nonsecure custody is the granting of legal and physical custody without restriction on the juvenile’s freedom of movement to the Department of Social Services (DSS) or to a person other than the juvenile’s parent, guardian, or custodian. G.S. 7B-1903(a). The juvenile cannot be placed in a locked facility pursuant to a nonsecure custody order. Nonsecure custody is more often ordered in cases involving undisciplined juveniles but is sometimes ordered in delinquency cases.

Criteria. Before entering a nonsecure custody order, the court must first consider releasing the juvenile to the juvenile’s parent, guardian, custodian, or other responsible adult. G.S. 7B-1903(a). If the court places the juvenile in nonsecure custody, it must find that the juvenile meets one or more criteria for secure custody but that it is in the juvenile’s best interest to be in a nonsecure placement. G.S. 7B-1903(a)(2); *see supra* § 8.6C, Criteria for Secure Custody Pending Adjudication. If the court orders nonsecure custody, the court must give preference to a relative who is “willing and able to provide proper care and supervision of the juvenile” unless such placement is not in the juvenile’s best interest. G.S. 7B-1905(a). Otherwise, a juvenile must be placed in nonsecure custody with DSS, or a person designated by the court, for temporary residential placement in a licensed foster home or a home authorized to provide such care, a facility operated by DSS, or any other home or facility approved by the court and designated in the order. G.S. 7B-1905(a)(1)–(3).

Nonsecure custody with the Department of Social Services. Placement of the juvenile in nonsecure custody with DSS is rare. Nevertheless, if the court places the juvenile in the custody of DSS, counsel should determine the length and location of the placement and the name and contact information of the person responsible for the juvenile. Counsel should also discuss the placement with the juvenile. If the juvenile opposes the placement, counsel should present alternatives to the court at the next custody review hearing.

In some cases, DSS will file a petition under Subchapter I of the Juvenile Code alleging that the juvenile is abused or neglected. These cases are sometimes referred to as “dual jurisdiction or cross-over cases.” *See* Janet Mason, [*Dual Jurisdiction or Cross-Over Cases in Juvenile Court*](#) (District Court Judges’ Summer Conference, June 23, 2010). If DSS files a petition alleging abuse or neglect, the court must appoint a guardian ad litem and, if the guardian ad litem is not an attorney, an attorney advocate for the juvenile. G.S. 7B-601. The court will also hold proceedings to adjudicate the allegations in the petition. *See* G.S. 7B-800 through G.S. 7B-808 (Hearing Procedures). Counsel for the juvenile in the delinquency case does not represent the juvenile in the proceedings against the juvenile’s parent. *See* G.S. 7B-601(a) (stating that the guardian ad litem and attorney advocate “have standing to represent the juvenile in all actions under” Subchapter I of the Juvenile Code). Counsel should therefore maintain contact with the

guardian ad litem and attorney advocate in order to stay informed about the location of the juvenile, what services the juvenile is receiving, and other information that may bear on delinquency proceedings.

Advocating for nonsecure custody. Counsel for the juvenile might request nonsecure custody as an alternative to secure custody, particularly if there is a suitable relative with whom the juvenile would agree to live. The court also might be willing to place the juvenile in nonsecure custody with a responsible adult. Some juveniles, however, prefer to remain in secure custody rather than be in DSS placement. Counsel should discuss the alternatives with the juvenile before making a request to the court.

Initial order for nonsecure custody. A nonsecure custody order must be in writing and must direct the law enforcement officer or other authorized person to assume custody of the juvenile. G.S. 7B-1904. The juvenile should be in the officer's custody only for transportation to a DSS placement or to the person granted nonsecure custody by the court.

Review hearings. Hearings pursuant to a nonsecure custody order follow the procedures for a secure custody hearing except that the initial review hearing must be within seven calendar days of the court's placing the juvenile in nonsecure custody, a subsequent review hearing must be within seven business days, and further reviews must occur at intervals of no more than 30 calendar days. G.S. 7B-1906(b). The court must find that the juvenile meets the criteria for nonsecure custody under G.S. 7B-1903(a)(2). *See supra* § 8.6F, Secure Custody Hearing.

Continuation of nonsecure custody. The court must enter a written order finding that the juvenile meets one or more criteria for secure custody but that it is in the best interest of the juvenile to continue in nonsecure custody. G.S. 7B-1906(g). The findings of fact must set forth the evidence supporting the decision and the purposes of continuing nonsecure custody.