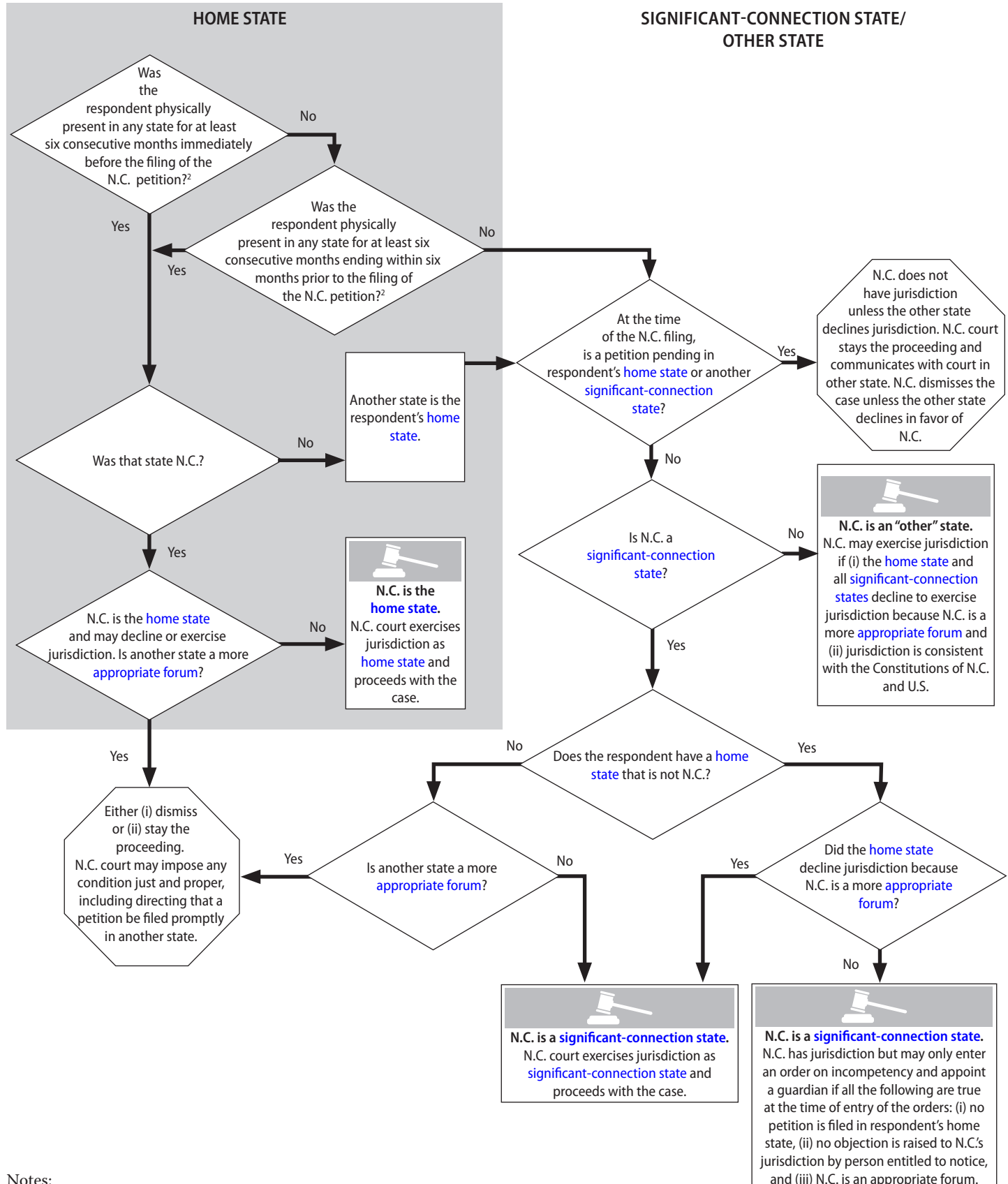


Does North Carolina Have Jurisdiction to Enter an Incompetency and Adult Guardianship Order?¹ (G.S. Chapter 35B, Article 2)



Notes:

1. This flowchart does not cover an N.C. court's authority to exercise **special jurisdiction**.
2. The court does not take into account periods of **temporary absence**.

Definitions/Explanation of Terms Used in Initial Filing Flowchart

Home State (G.S. 35B-15(a)(2)). The state where the respondent was physically present, including periods of temporary absence, for at least six consecutive months immediately prior to the filing of the petition; or, if none, the state in which the respondent was physically present, including periods of temporary absence, for at least six consecutive months ending within the six months prior to filing of the petition.

Temporary Absence. Temporary absence is not defined in G.S. Chapter 35B but includes short-term out-of-state travel for most purposes (e.g., vacation, business, or visits with family or friends).

Significant-Connection State (G.S. 35B-15(a)(3) and (b)). A state, other than the home state, with which the respondent has a significant connection other than mere physical presence and in which substantial evidence concerning respondent is available. To determine significant connection, the court shall consider

- the location of the respondent's family and of other persons required to be notified of the proceedings;
- the length of time the respondent was physically present in North Carolina and the duration of any absence;
- the location of the respondent's property; and
- the extent to which the respondent has ties to a particular state, including voting registration, tax return filings, vehicle registration, driver's license, social relationships, and receipt of services.

Appropriate Forum (G.S. 35B-20). To determine whether a state is an appropriate forum, the court shall consider all relevant factors, including but not limited to the following:

- any expressed preference of the respondent;
- whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- the length of time the respondent was physically present in or was a legal resident of this or another state;
- the distance of the respondent from the court in each state;
- the financial circumstances of the respondent's estate;
- the nature and location of relevant evidence;
- the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- the familiarity of the court of each state with the facts and issues in the proceeding; and
- if an appointment was made, the court's ability to monitor the conduct of the guardian.

Special Jurisdiction (G.S. 35B-18). A court that lacks jurisdiction as a home state, significant-connection state, or "other" state has special jurisdiction to

1. appoint a guardian of the person for up to ninety days if an *emergency* exists and the respondent is present and served in North Carolina (G.S. 35B-18(a)(1)) and
2. issue a protective order with respect to real or tangible personal property located in N.C. (G.S. 35B-18(a)(2))

An emergency in this context is a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian of the person is necessary because no other person has authority and is willing to act on the respondent's behalf. G.S. 35B-15(a)(1).