

North Carolina Criminal Law Blog

DSS Custody of a Juvenile in a Delinquency Case: When and Why It Cannot Be Combined with Secure Custody or YDC Commitment

September 23, 2025 [Jacquelyn Greene](#)

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The most recent Court of Appeals delinquency-related decision, *[In the Matter of D.H., ___ N.C.App. ___ \(August 20, 2025\)](#)*, [<https://appellate.nccourts.org/opinions/?c=2&pdf=44536>](https://appellate.nccourts.org/opinions/?c=2&pdf=44536) is one of a very few opinions that addresses a trial court's order placing a juvenile in the custody of a department of social services (DSS custody) through a delinquency disposition. This area of law can be very confusing for practitioners. At its core, the juvenile is in DSS custody without a petition alleging abuse, neglect, or dependency; instead, there is a petition alleging the juvenile is delinquent. The possibility of DSS custody is also available in undisciplined juvenile proceedings. This blog provides a brief overview of when the court can issue such an order in a delinquency or undisciplined case and explains why simultaneous nonsecure and secure custody orders and dispositional orders that include both DSS custody and commitment to a Youth Development Center (YDC) are a legal impossibility.

These Orders Are Issued Under and Governed by Delinquency Law

An order placing a juvenile in DSS custody may result from either an abuse, neglect, or dependency action, which is governed by Subchapter I of G.S. Chapter 7B, or a delinquency or undisciplined action, which is governed by Subchapter II of G.S. Chapter 7B. The procedures, standards, parties, and representation differ under Subchapters I and II even though the outcome discussed in this post – the juvenile’s placement in DSS custody – is the same. While there is one explicit area of overlap between the relevant laws in Subchapters I and II (discussed below), the laws that govern abuse, neglect, and dependency cases do not generally apply when DSS custody is ordered in the context of an undisciplined or delinquency matter. Instead, the laws governing the undisciplined or delinquency case generally govern the DSS custody order. Issuance of a DSS custody order in an undisciplined or delinquency case does not convert the case to an abuse, neglect, or dependency case.

DSS Nonsecure Custody Orders in Delinquency and Undisciplined Cases

A nonsecure custody order issued in a delinquency or undisciplined matter is an order that places the juvenile in DSS custody, or the custody of a person designated in the order for temporary residential placement. G.S. 7B-1905. The placement is not in a “secure” or locked facility (e.g., detention). See *In re J.W.*, **241 N.C. App. 44 (2015)** <<https://appellate.nccourts.org/opinions/?c=2&pdf=32959>>.

Nonsecure custody orders can be issued only when certain criteria apply. There must be a reasonable factual basis to believe that the allegations in the petition are true and 1) the juvenile is a runaway and consents to nonsecure custody or 2) the juvenile meets criteria for a secure custody order to be issued but the court finds that it is in the best interests of the juvenile to place the juvenile in a nonsecure placement. **G.S. 7B-1903(a)** <https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1903.pdf>.

The plain language in G.S. 7B-1903(a) allows for **either** the issuance of a nonsecure custody order **or** a secure custody order. The statute does not authorize the simultaneous issuance of both a nonsecure and a secure custody order.

The law on the place of secure **or** nonsecure custody also clearly authorizes only mutually exclusive options. **G.S. 7B-1905**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1905.pdf. When a nonsecure custody order is issued, placement can be with a department of social services or a person designated in the order for temporary residential placement in a licensed foster home, a DSS-operated facility, or any other home or facility approved by the court. When a secure custody order is issued the place of confinement is an approved detention facility or temporary confinement in a holdover facility (in the most serious felony cases). Secure and nonsecure custody are distinct options related to the physical custody of the juvenile – one consists of placement in a detention facility or other government-supervised confinement facility; the other does not involve a placement that restrains a juvenile's movement. See *In re J.W.*

Notice

There is no statutory requirement to provide DSS notice before issuing an order for nonsecure custody to DSS in a delinquency or undisciplined case. In practice DSS is often not in the courtroom in delinquency and undisciplined cases. Therefore, courts may choose to provide notice to DSS when a nonsecure custody order could be issued to facilitate communication about placement.

Length of Nonsecure Custody Order

Nonsecure custody orders in undisciplined and delinquency cases are structured to be short-term. Ongoing hearings on the need for continued nonsecure custody must be held at a regular cadence. The nonsecure custody order lasts only until the next hearing on the need for continued custody. An initial hearing on the need for continued custody must be held within seven calendar days of the issuance of the original nonsecure custody order. **G.S. 7B-1906(a)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1906.pdf. This hearing cannot be continued or waived. A subsequent hearing on the need for continued nonsecure custody must be held within seven business days (excluding weekends and holidays when the courthouse is closed). **G.S. 7B-1906(b)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1906.pdf. Hearings on the continued need for nonsecure custody must then be held at least every 30 calendar days. **G.S. 7B-1906(b)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1906.pdf. The statute allows juveniles alleged to be delinquent to waive ongoing hearings after the initial hearing is held.

The State has the burden of proving that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice at each hearing on the need for continued nonsecure custody. **G.S. 7B-1906(d)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1906.pdf. The court is required to receive testimony at the hearing and the juvenile and their parent, guardian, or custodian (which may be DSS under the nonsecure custody order) must have an opportunity to introduce evidence. The court must make a determination that continued nonsecure custody is warranted at each hearing. **G.S. 7B-1906(e)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1906.pdf. If the court determines that continued nonsecure custody is warranted, the nonsecure custody order lasts until the next hearing on the need for continued custody.

DSS Custody as a Dispositional Alternative

Placement of a juvenile in DSS custody is an allowable dispositional alternative in undisciplined and delinquency cases. DSS custody can be ordered for any juvenile who is adjudicated undisciplined and for some juveniles who are adjudicated delinquent when the juvenile is in need of more adequate care or supervision or needs placement. **G.S. 7B-2503(1)c.**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2503.pdf (undisciplined); **-2506(1)c**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2506.pdf (delinquent).

In a delinquency action, DSS custody may be ordered as a disposition following an adjudication of delinquency, but only as part of a Level 1 or Level 2 disposition for a juvenile who is younger than 18-years-old. The allowable dispositional alternatives, by disposition level, are provided in **G.S. 7B-2508(c)-(e)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2508.pdf. Placement in DSS custody is included on the list of allowable dispositional alternatives for both Level 1 and Level 2 dispositions; however, commitment to a YDC is not. Commitment to the Division of Juvenile Justice for placement in a YDC is the only allowable Level 3 disposition. G.S. 7B-2508(e). The court is allowed to enter a Level 2 disposition when the law otherwise requires a Level 3 disposition, and the court makes written findings that substantiate extraordinary needs on the part of the juvenile. G.S. 7B-2508(e). Under those circumstances the court is entering a Level 2 (and not a Level 3) disposition. Because a Level 3 disposition can only include commitment to the State for placement at a YDC and Level 1 and Level 2 dispositions cannot include commitment to the State for placement at a YDC, there cannot be a simultaneous commitment for placement at a YDC and placement in DSS custody.

Notice and Findings

DSS must have notice and an opportunity to be heard before the court can issue a dispositional order placing the juvenile in DSS custody in either an undisciplined or delinquency case. **[G.S. 7B-2503\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2503.pdf ., **[G.S. 7B-2506\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2506.pdf . Dispositional orders placing the juvenile in DSS custody in both

kinds of cases must also include a finding that the juvenile's continuation in their own home would be contrary to the juvenile's best interest. **[G.S. 7B-2503\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2503.pdf ., **[G.S. 7B-2506\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2506.pdf . This was one of the issues in *In the Matter of D.H.* This finding was

missing, which resulted in the disposition order being vacated and remanded for the trial court to include this required finding.

Requirement for Dispositional Review Hearings

Subchapter II of Chapter 7B expressly requires review of the placement of a juvenile in DSS custody through an order of disposition issued in an undisciplined or delinquency matter. These reviews are governed by G.S. 7B-906.1, which is a statute in Subchapter I of Chapter 7B (the law governing abuse, neglect, and dependency cases). **[G.S. 7B-2503\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2503.pdf ., **[G.S. 7B-2506\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2506.pdf . While indigent parents are not entitled to counsel when their child is

subject to an undisciplined or delinquency proceeding, indigent parents are entitled to counsel in the hearings reviewing the juvenile's placement in DSS custody under G.S. 7B-906.1. **[G.S. 7B-2503\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2503.pdf ., **[G.S. 7B-2506\(1\)c](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2506.pdf .

Although the placement is reviewed under G.S. 7B-906.1, the dispositional hearing is held in the delinquency or undisciplined action. The case does not convert to an abuse, neglect, or dependency case just because a statute in Subchapter I of G.S. Chapter 7B applies. The petition underlying the matter remains an undisciplined or delinquency petition and the adjudication is of the juvenile as delinquent or undisciplined. The court does not have subject matter jurisdiction based on a petition that alleges abuse, neglect, or dependency since one was not filed by DSS. If DSS did file a new petition alleging abuse, neglect, or dependency, then the juvenile would be involved in two distinct juvenile matters—one in which they have been adjudicated undisciplined or delinquent and another in which they are alleged to be abused, neglected, or dependent.

Length of Custody Order

DSS custody orders issued as part of dispositions in undisciplined or delinquency cases last until the court amends the disposition order to remove the DSS custody provision or until the court no longer has jurisdiction in the matter. In *In the Matter of D.H.*, DSS argued that the court lost jurisdiction once the disposition was entered. The Court of Appeals rejected this argument and reaffirmed the existing statutory structure regarding delinquency jurisdiction.

Delinquency (and undisciplined) jurisdiction lasts until the court terminates jurisdiction or the juvenile ages out of jurisdiction. Juveniles age out of undisciplined jurisdiction when they turn 18. **[G.S. 7B-1600\(b\)](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1600.pdf. The age at which a juvenile ages out of delinquency jurisdiction depends on the age they were at the time of the offense. If they were under 16, jurisdiction ends when they turn 18. **[G.S. 7B-1601\(b\)](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1601.pdf. If they were age 16 at the time of their offense, they age out of juvenile jurisdiction when they turn 19. **[G.S. 7B-1601\(b1\)](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1601.pdf. If they were 17 at the time of their offense, they age out of juvenile jurisdiction when they turn 20. **[G.S. 7B-1601\(b1\)](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1601.pdf. Extended jurisdiction is allowed for certain felony offenses that result in a Level 3 disposition. **[G.S. 7B-1602](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1602.pdf. However, the provision allowing use of DSS custody as a delinquency disposition is limited to juveniles who are under the age of 18.

[G.S. 7B-2506\(1\)](#)

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2506.pdf.

Given this structure, a DSS custody order issued as part of an undisciplined or delinquency disposition can last until the juvenile turns 18. The only mechanisms available to terminate the custodial arrangement sooner are a modification of the order of disposition or court termination of jurisdiction in the delinquency or undisciplined matter.

What if the Juvenile Needs a Consenter?

Courts sometimes look to issue a DSS custody order in combination with a secure custody order or a Level 3 delinquency dispositional order because the juvenile does not have a parent, guardian, or custodian available to consent to the care they need. While a nonsecure custody order to DSS or a dispositional order of DSS custody is not authorized in this situation, the Juvenile Code allows the court to appoint a guardian for a juvenile in an undisciplined or delinquency case when 1) no parent, guardian, or custodian appears in a hearing with the juvenile or 2) the court finds it would be in the best interests of the juvenile. **G.S. 7B-2001**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2001.pdf. The guardianship statute allows for the possibility of a very broad guardianship but permits the court to order a more limited guardianship. The court could appoint DSS to be the guardian of the child under this statute for the limited purposes of consent in combination with the issuance of a secure custody order or a Level 3 order of disposition.

Want More Details?

My colleague, Sara DePasquale, and I wrote a Juvenile Law Bulletin on the issuance of DSS custody orders in the context of delinquency cases. You can find the bulletin at

https://www.sog.unc.edu/sites/default/files/reports/2019-07-19%2020190464_JLB_201902.pdf

https://www.sog.unc.edu/sites/default/files/reports/2019-07-19%2020190464_JLB_201902.pdf. It reflects the law as it existed in 2019 and includes more detailed discussion of these and other related issues. Many thanks to Sara for helping me construct this blog and her ongoing collaboration on this complicated topic.



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