

Comparing A/N/D Dispositions
Custody with a Parent or Other Suitable Person – Guardianship of the Person
District Court Judges’ Conference, Summer 2019

By: Sara DePasquale, UNC School of Government

	Custody	Guardianship
Applicable Disposition Statutes	G.S. 7B-903(a)(4); 7B-911	G.S. 7B-903(a)(5); 7B-600
Definitions	<ul style="list-style-type: none"> • “Custody” is not defined by the Juvenile Code (G.S. Ch. 7B) <ul style="list-style-type: none"> ○ May apply to parent or non-parent • “Parent” is not defined by the Juvenile Code • “Custodian” is “the person or agency that has been awarded legal custody of a juvenile by a court.” G.S. 7B-101(8) 	<ul style="list-style-type: none"> • Only applies to non-parents • The Juvenile Code does not define “guardian of the person” • The rights of a guardian are specified in G.S. 7B-600 (note the court may limit what rights the guardian has) • 42 U.S.C. § 675(7): “legal guardianship” means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term ‘legal guardian’ means the caretaker in such a relationship.”
Party Status	<ul style="list-style-type: none"> • Parents: 7B-401.1(b) “shall be a party” unless one of three exceptions applies • Custodian: 7B-401.1(d) <ul style="list-style-type: none"> ○ The custodian at time the petition is filed shall be a party ○ Automatically becomes a party if custody is ordered as the child’s permanent plan [<i>see also</i> 7B-200(b)(iii)] 	Guardian: 7B-401.1(c) <ul style="list-style-type: none"> • Court-appointed general guardian or guardian of the person at time the petition is filed shall be a party • Automatically becomes a party if guardianship is ordered as the child’s permanent plan [<i>see also</i> 7B-200(b)(iii); -600(b)]
Intervention	Standing to Intervene: 7B-401.1(h)	

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Removal of Party	Removal as a party: 7B-401.1(g) If the court finds the person does not have legal rights that may be affected by the action and his/her continuation as a party is not necessary to meet the child's needs	
Dispositional Stage	Dispositional option available at any initial, review, and permanency planning hearing 7B-903(a)(4), (5); -906.1(i)	
Verification Required	If custody or guardianship ordered to a non-parent, verification by court that the person understands the legal significance of the placement/appointment and has adequate resources to care for the child is required 7B-906.1(j); <i>see also</i> 7B-903(a)(4) custody; -600(c) guardianship	
Financial Support	Court may order parent to pay a reasonable some of the child's cost of care if court finds the parent is able to do so 7B-904(d)	
		May be eligible for Guardianship Assistance Payments (GAP) if criteria met. See 10A NCAC 70P.0101-.0104
Visitation	Visitation must be addressed in order: 7B-905.1(c) If court retains jurisdiction, motion to modify visitation made pursuant to 7B-905.1(d)	
Participation in Dispositional Hearings as Non-Party	<ul style="list-style-type: none"> • Notice of review and permanency planning hearings provided to custodian and guardian [7B-906.1(b)(iii), (v)] • At initial disposition, review, and/or permanency planning hearings, even if not a party, the court may consider information from the custodian or guardian that it finds to be relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition [7B-901(a); -906.1(c)] • Court may order hearings waived, held at periods longer than 6 month intervals, or written reports be submitted to the court if the court finds by clear, cogent, and convincing evidence all 5 criteria in 7B-906.1(n) <ul style="list-style-type: none"> ○ Failure to make findings on all 5 criteria is reversible error [<i>In re P.A.</i>, 772 S.E. 2d 240 (2015)] 	
	If custody is placed with a parent, the court is relieved of the obligation to hold periodic judicial reviews by virtue of 7B-906.1(k) [the findings of -906.1(n) are not required]	

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<p>Permanent Plans</p> <p>G.S. 7B-906.2</p>	<ul style="list-style-type: none"> Return Home/Reunification: Placement in the home of either parent or in the home of the guardian or custodian from whose home the child was removed by court order [7B-101(18b)] Reasonable Efforts: diligent use of preventive or reunification services by a DSS when the juvenile’s remaining at home or returning home is consistent with achieving a safe, permanent home within a reasonable period of time; if court determines juvenile not to be returned home, then the diligent and timely use of permanency planning services by DSS to develop and implement a permanent plan [7B-101(18)] <hr/> <p>Reunification (with a parent): G.S. 7B-906.2(a)(1)</p> <p>Custody to relative or other suitable person: 7B-906.2(a)(4)</p>	<p>Guardianship pursuant to G.S. 7B-600 [7B-906.2(a)(3)]</p>
<p>No Need for TPR</p>	<p>TPR not required when primary permanent plan is reunification, guardianship, or custody: <i>see</i> 7B-906.1(f)(1)</p>	
<p>Retention of Jurisdiction in 7B Action</p>	<ul style="list-style-type: none"> G.S. 7B-911 allows the court to terminate jurisdiction in the 7B action and transfer to and enter a Chapter 50 custody order that survives the termination of juvenile court jurisdiction [7B-200(b)(1)] The court may order custody as a permanent plan and retain jurisdiction without conducting regular periodic permanency planning hearings if the criteria of G.S. 7B-906.1(k) or (n) are met. <p><i>Note</i>, DSS remains a party until court terminates its jurisdiction, G.S. 7B-401.1(a)</p>	<ul style="list-style-type: none"> The court must retain jurisdiction in the 7B action. Otherwise, the legal status of parties reverts to pre-petition status and court lacks authority to modify or enforce guardianship order [7B-200(b)] Court may retain jurisdiction without conducting regular periodic permanency planning hearings if the criteria of G.S. 7B-906.1(n) are met. <p><i>Note</i>, DSS remains a party until court terminates its jurisdiction, G.S. 7B-401.1(a)</p>

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Transfer to Chapter 50	<p>G.S. 7B-911 If no Ch. 50 action exists, the 7B-911 order initiates the Ch. 50 action. The court designates parties and caption.</p> <p>If existing Ch. 50 action exists, 7B-911 custody order is filed in existing Ch. 50 action, resolves any pending claims, and modifies the existing Ch. 50 order. New party joined/caption made if applicable.</p> <p>7B-911(c)(2) Required Findings Failure to do so is reversible error, <i>In re J.D.R.</i>, 768 N.C. App. 172 (2015):</p> <ul style="list-style-type: none"> • No need for continued state intervention AND • If custody is not with a parent or person who the child was living with when the A/N/D petition was filed, at least 6 months have passed since the court determined the child’s placement with the person getting custody is the permanent plan <p>Additional Ch. 50 Findings Required [7B-911(c)(1)]</p> <p>Joint Custody permitted [50-13.2(b)]</p> <p>2 separate orders are not required; “The trial court may enter one order for placement in both the juvenile file and the civil file as long as the order is sufficient to support termination of juvenile court jurisdiction and modification of custody” <i>In re A.S.</i>, 182 N.C. App. 139, 142 (2007)</p>	

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Rights and Responsibilities	<p>G.S. 7B does not define or specify authority/duties of custodian</p> <p>Legal Custody: “the right and responsibility to make decisions with important and long-term implications for a child’s best interests and welfare” <i>Hall v. Hall</i>, 188 N.C. App. 527 (2008)</p> <p>Physical Custody: “physical care and supervision of a child” [G.S. 50A-102(14)]</p> <p>Although not designated in G.S. 7B, other statutes authorize a parent or custodian to take certain actions</p> <ul style="list-style-type: none"> • G.S. 51-2(a1) authorizes consent to marriage of 16–17 year old juvenile by <ul style="list-style-type: none"> • A parent with full or joint legal custody or • a person having legal custody or serving as a guardian of the underage child • School Enrollment: G.S. 115C-366 <ul style="list-style-type: none"> ○ Attend where child is domiciled or exception applies (which includes child living with adult who is domiciled in school district as result of being abandoned, abused, or neglected by the parent or legal guardian). Domicile is not defined under G.S. 115C <i>but see</i>, <i>Graham v. Mock</i>, 143 N.C. App. 315, 318 (2001) a domicile is someone’s permanent, established home, which is distinguishable from a temporary, although actual, place of residence. 	<p>Statutory Authority, 7B-600(a)</p> <ul style="list-style-type: none"> • Operate under court supervision with or without bond and may be required to file reports • Care, custody and control of child • May arrange suitable placement for child and represent child in court proceedings • May consent, in place of parent, to juvenile’s marriage, military enlistment, school enrollment, medical care <ul style="list-style-type: none"> ○ <i>Note</i>, some of this authority is designated in other statutes as well <ul style="list-style-type: none"> ▪ marriage is authorized by G.S. 51-2(a1)(2) ▪ school enrollment authorized by G.S. 115-366 ▪ consent to medical care is authorized by G.S. 90-21.1 [see also G.S. 90-21.4] ▪ military enlistment of a 17 year old with the written consent of a guardian who is entitled to child’s custody and control [10 U.S.C. §505] <p>What does not appear to be included?</p> <ul style="list-style-type: none"> • Financial matters: Guardian of the Estate may be needed via Ch. 35A • Consent to adoption (G.S. 48-1-101(8) limits definition of guardian to Ch. 35A guardian) • Appointment of a standby guardian under G.S. 35A-1373; <i>See</i> 35A-1371 (clerk has no jurisdiction when district court has assumed jurisdiction over the child under a Ch. 50 or A/N/D proceeding)

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	<ul style="list-style-type: none"> • Medical Care: G.S. 90-21.1 <ul style="list-style-type: none"> ○ Physician may treat child with consent of parent or “any person acting as guardian, or any person standing in loco parentis to said child.” [See G.S. 90-21.4 Immunity of physician, references “Parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment.”] • Military enlistment of a 17 year old with the written consent of a parent who is entitled to child’s custody and control: 10 U.S.C. §505(a) 	
<p>Modification or Enforcement of Order</p>	<ul style="list-style-type: none"> • If 7B-911 applied (jurisdiction in 7B action terminated and action transferred Ch. 50), a motion to modify or enforce must be filed in the Ch. 50 action [7B-911(b)] <ul style="list-style-type: none"> ○ To modify, a substantial change in circumstances must be shown, G.S. 50-13.7 ○ Mandatory mediation unless waived for good cause, which includes allegation of the child’s abuse or neglect... [G.S. 50-13.1(b), (c)] ○ Parents not entitled to court appointed counsel ○ Child’s 7B-600 GAL is not reappointed ○ DSS is not a party 	

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<ul style="list-style-type: none"> • If court retained jurisdiction and ordered custody to parent or custodian under 7B-903(a)(4), any party may file a motion under -906.1 or -1000 <ul style="list-style-type: none"> ○ If motion is filed under G.S. 7B-906.1, best interests is the standard ○ If motion is filed under 7B-1000, the court may modify or vacate based on either <ul style="list-style-type: none"> • Substantial change in circumstances OR • The needs of the juvenile • <i>See In re K.L., 802 S.E.2d 588 (2017)</i> ○ Parents may obtain court appointed counsel [-602(a)] ○ Child’s GAL may be reappointed [-601] ○ DSS continues to be a party [-401.1(a)] ○ Mediation is discretionary, G.S. 7B-202 	<ul style="list-style-type: none"> • Any party may file a motion under -906.1 or -1000 <ul style="list-style-type: none"> ○ If motion is filed under G.S. 7B-906.1, best interests is the standard ○ If motion is filed under 7B-1000, the court may modify or vacate based on either <ul style="list-style-type: none"> • Substantial change in circumstances OR • The needs of the juvenile • <i>See In re K.L., 802 S.E.2d 588 (2017)</i> ○ Parents may obtain court appointed counsel [-602(a)] ○ Child’s GAL may be reappointed [-601] ○ DSS continues to be a party [-401.1(a)] ○ Mediation is discretionary, G.S. 7B-202 • When a 7B-906.1 or -1000 motion is filed, the court <ul style="list-style-type: none"> ○ may order DSS to investigate and file report and testify; ○ ensures a GAL for child has been appointed and notified of pending motion [7B-600(b)]; ○ may appoint an attorney for indigent parent [-602(a)] • To terminate a “permanent” guardian, court must find: 7B-600(b); -1000 <ul style="list-style-type: none"> ○ Relationship between guardian and child is no longer in BIC ○ Guardian is unfit ○ Guardian has neglected duties ○ Guardian is unwilling or unable to continue

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		<p>This criteria does not apply to guardianship appointment that is not the permanent plan (i.e., at initial disposition or a review). <i>See In re J.D.C.</i>, 174 N.C. App. 157 (2005)</p> <ul style="list-style-type: none"> • Automatically ends when juvenile is 18, emancipated, or adoption [7B-600(a); see 48-2-102(b)]
Standing to file TPR	<p>G.S. 7B-1103(a)(1), (5)</p> <ul style="list-style-type: none"> ○ Parent ○ Person with whom the child has resided for a continuous period of 2 years or more next preceding the filing of the petition or motion (the status of custodian is irrelevant) 	<p>G.S. 7B-1103(a)(2)</p> <ul style="list-style-type: none"> ○ Guardian of the person
Foster 18-21 Program		<p>Very limited circumstances: If guardianship arrangement occurs when juvenile is 16 or 17 and is receiving Guardianship Assistance (GAP), may be eligible for Foster Care 18-21 if meet the other eligibility criteria. 10A NCAC 70P.0104</p>