

Child Welfare: G.S. 7B-911 & Guardianship

By: Sara DePasquale & Cheryl Howell

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Purpose

- Protect constitutional rights of juveniles & parents
- Respect right to family autonomy
- Prevent inappropriate/unnecessary separation of juveniles & parents

G.S. 7B-100(1), (3)

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Purpose

Develop disposition that reflects

- consideration of facts,
- needs/limitations of juvenile,
- strengths/weaknesses of family
- provides services to protect juvenile

G.S. 7B-100(2), (4)

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Purpose

- Best interests of child paramount
- Services respecting juvenile's needs for safety, continuity, permanence
- When not in BIC to return home, placed in safe, permanent home within a reasonable period of time

G.S. 7B-100(3), (5)

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Protective Services

- Screen reports & perform assessments
- Casework
- Other counseling services to parents, guardians, other caretakers to
 - help prevent abuse/neglect
 - Improve quality of child care
 - Be more adequate parents...
- Preserve & stabilize family life

G.S. 7B-300

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At Any Dispositional Hearing

Relevant Dispositional Alternatives (7B-903)

- Dismiss
- Custody to Parent
- Custody to Suitable Person
- Guardian of the Person

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Permanency Priorities

Reunification

Adoption
Guardianship
Custody

APPLA
Reinstatement
of parental rts

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Concurrent Planning

What happens when a permanent plan is achieved?

7a Concurrent Planning

Reunification

AND (Choose one other plan)

7a Concurrent Planning

Adoption

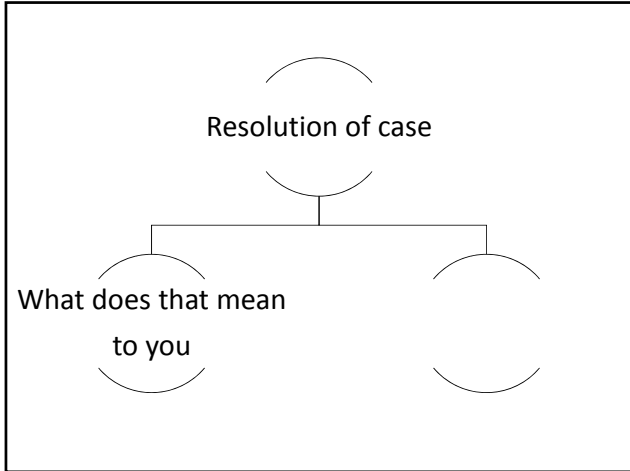
Guardianship

Custody

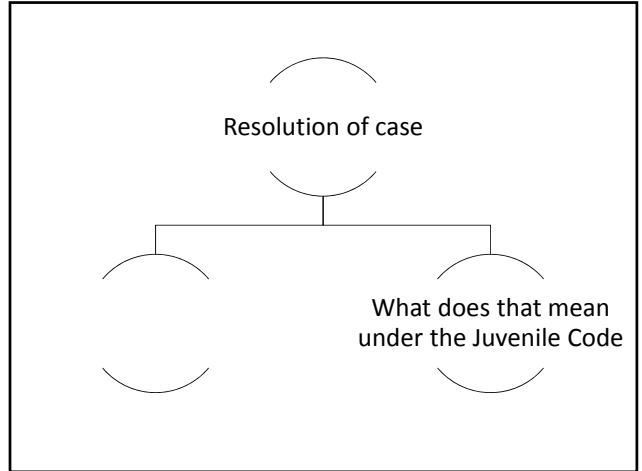
APPLA

Reinstatement of Parental Rights

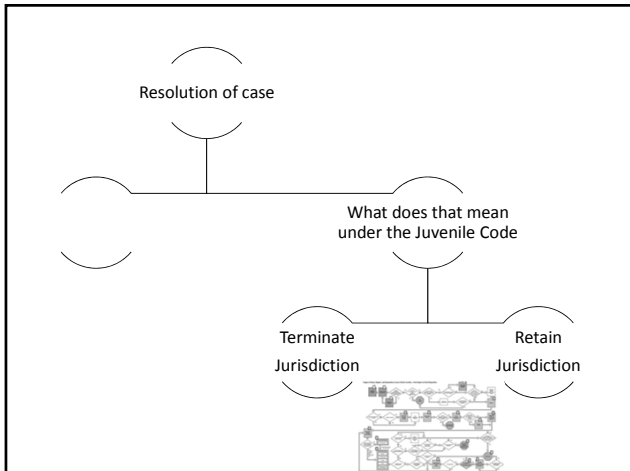
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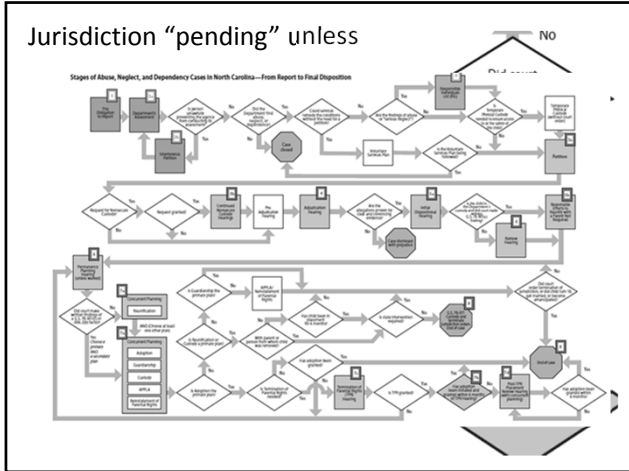
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Effect:
Termination of Jurisdiction

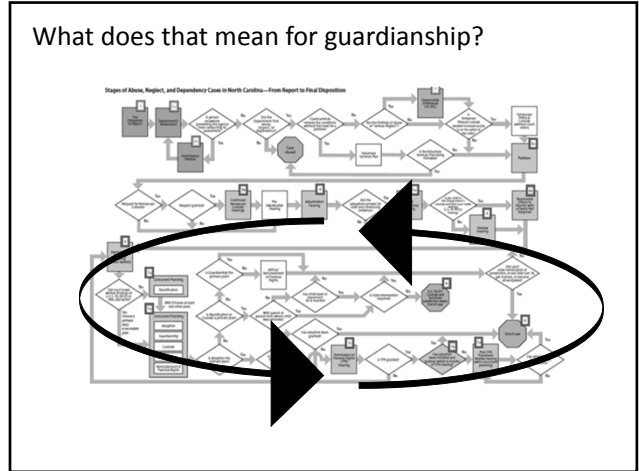
- No modification or enforcement of previously entered order
- Child's legal status & custodial rights revert to pre-petition unless
 - 7B-911 order
 - TPR order
 - Applicable law or valid order in another civil action provide otherwise

G.S. 7B-200(b)

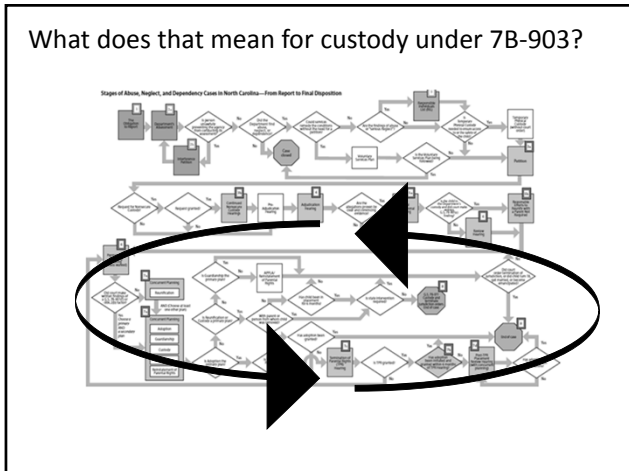
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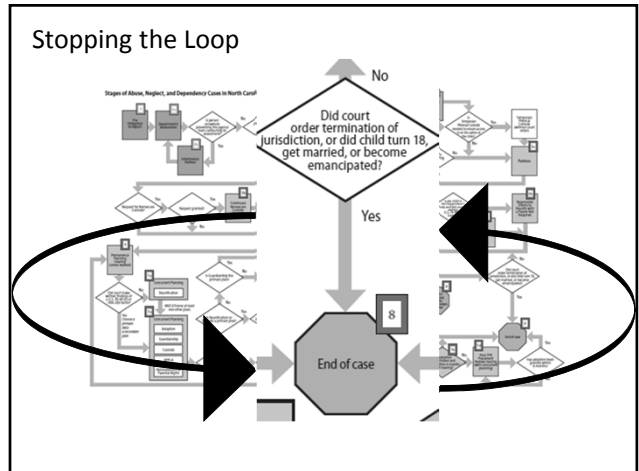
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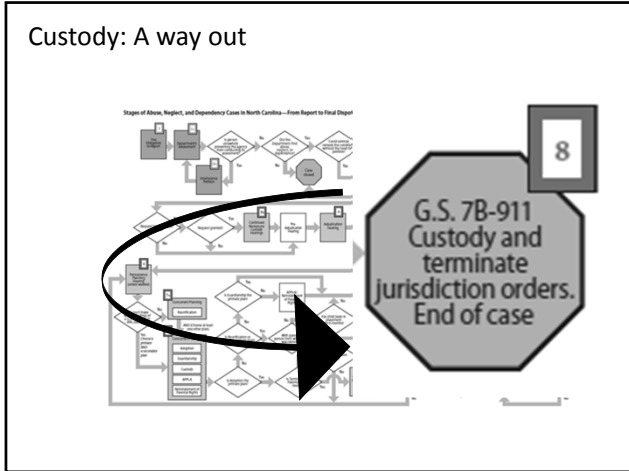
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GS 7B-911

- Enacted in 2005 as result of concern relating to:
 - Conflicting orders in juvenile and Chapter 50 cases, and
 - The length of time juvenile cases remain “pending”
 - S.L. 2005-320
- Legislation created:
 - Juvenile court priority, and
 - Juvenile court authority to end state intervention and allow custody issues to be handled as private matter in civil court when there is no more need for state involvement

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Sherrick, 209 NC App 166 (2011)

- “In certain cases which have originated as abuse, neglect, or dependency proceedings under Chapter 7B of the General Statutes, a time may come when involvement by the Department of Social Services is no longer needed and the case becomes a custody dispute between private parties which is properly handled pursuant to the provisions of Chapter 50. [citation omitted] N.C. Gen.Stat. § 7B-911 sets forth a detailed procedure for transfer of such cases which will ensure that the juvenile is protected and that the juvenile’s custodial situation is stable throughout this transition.”

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Overview

- When juvenile court determines there is no need for “continued State intervention on behalf of the juvenile though a juvenile court proceeding”, the court can transfer the juvenile proceeding to a Chapter 50 custody proceeding.
- The juvenile judge creates a Chapter 50 custody order.
- The juvenile judge terminates the jurisdiction of the juvenile court
- All further matters relating to custody will be addressed in the Chapter 50 case

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GS 7B-911

- Amended in 2013 to require that ***whenever you “place custody with a parent or other appropriate person,”*** you ***“shall consider*** whether or not jurisdiction in the juvenile proceeding should be terminated and custody of the juvenile awarded to a parent or other appropriate person pursuant to GS 50-13.1, 50-13.2, 50-13.5, and 50-13.7.”
 - S.L. 2013-129

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Sherrick

- “The procedure required by N.C. Gen.Stat. § 7B-911 is not a mere formality which can be dispensed with just because the parties agree to a consent order. Jurisdiction cannot be conferred upon the court by consent, but the trial court must exercise its jurisdiction only in accordance with the applicable statutes.”
 - Court of Appeals vacated all orders entered in civil custody case because order transferring case from juvenile court to civil court did not contain findings required by 7B-911(c)

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All 7B-911 custody orders must include:

- All findings and conclusions required to support the new Chapter 50 custody order
 - Always best interest findings
 - Third party custody findings and conclusions when custody/visitation awarded to non-parent in case involving a parent
 - Modification findings when new order modifies an existing Chapter 50 custody order
- Finding that there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding
- Finding that at least 6 months has passed since the court made the determination that the juvenile’s placement with the person to whom the court is awarding custody is the permanent plan for the juvenile
 - This finding is not required if custody is awarded to a parent or to a person with whom the child was living when the petition was filed

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Procedure for entry of 7B-911 custody order

- When there is an existing Chapter 50 custody case:
 - New custody order is filed in the existing case
 - If claim is pending in existing case, new order must resolve the claim
 - If new order modifies an existing custody order, new order also must contain findings and conclude there has been a substantial change in circumstances
 - If new order involves persons who are not parties in existing case, court must order that the new persons be joined as parties and order that caption of case changed accordingly

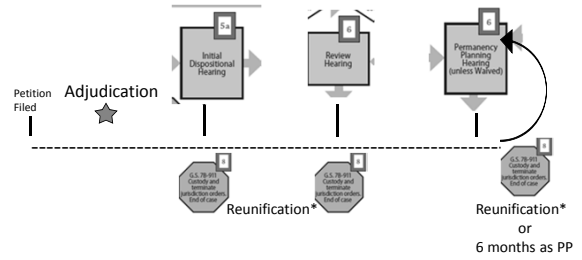
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Procedure for entry of custody order

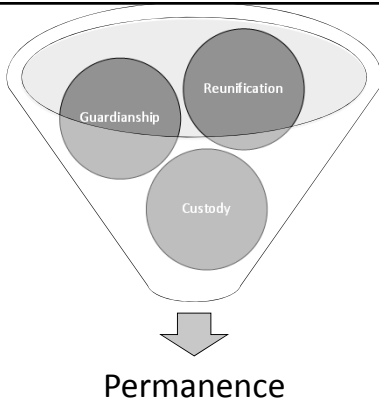
- When there is no existing Chapter 50 custody case:
 - Court must “instruct the clerk to treat the order as the initiation of a civil action for custody.”
 - Court shall designate the parties to the action and tell the clerk how the case should be captioned
 - There is no filing fee unless the court orders one or more parties to pay the fee.
 - The order is filed in the newly created action

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When is 7B-911 available?



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Questions for you

- What are you hoping to accomplish?
- Which disposition will do that?

Custody with a Parent or Other Suitable Person – Guardianship of the Person
District Court Judges' Conference, Summer 2018
 By: Sara DaPagnola, 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 (S.S. Ch. 7B) ◦ May apply to parent or non-parent 	<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-

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Is it possible to terminate jurisdiction with that disposition?

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Do you want to be in the loop or is a different dispositional alternative appropriate?

- Need for protective services?
- What happens if there is a new report?
- Do you want regular reviews to be available?
- Is there a reason the Ch. 50 process would not be sufficient?
- Does the juvenile need to participate and be represented?
- Other?

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§ 50A-206. Simultaneous proceedings.

- “(a) Except as otherwise provided in G.S. 50A-204, a court of this State **may not exercise its jurisdiction** under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Article, **unless the proceeding has been terminated** or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.”

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Impacts the UCCJEA

- **Modification vs Simultaneous Jurisdiction:**
 - If juvenile case is not terminated, NC has jurisdiction even if all parties leave the state
 - If juvenile case is terminated without a 7B-911 order, jurisdiction is determined for next custody proceeding as if it is an initial custody determination
 - If juvenile case is terminated and custody order is created pursuant to 7B-911, modification jurisdiction applies
 - NC case no longer is ‘pending’
 - NC loses continuing exclusive jurisdiction when all parties leave the state

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