

# The Intersection of Guardianship, Involuntary Commitment, and Capacity to Proceed

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# Three Proceedings – Three Different Purposes

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## Guardianship

To provide a substitute decision maker for someone who lacks the capacity to manage their own affairs or make decisions relating to healthcare, behavioral healthcare, housing, or other services.



## Involuntary Commitment

To provide treatment for someone who needs treatment to prevent or ameliorate dangerous behavior but is unable to seek and comply with treatment on their own



## Capacity to Proceed

To determine if a criminal defendant can comprehend their situation or rationally assist in their defense



# Meet Paula

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- 36-year-old woman living in the community
- Diagnosed with schizophrenia and substance use disorder
- Adjudicated incompetent by a court three years ago
- County department of social services serves as her guardian of the person
- No assets
- Currently homeless
- Subject to two involuntary commitments in the last six months



# Meet Paula: Recent Development

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Paula's grandmother files a motion with the guardianship court expressing concern that Paula is

- living on the street,
- not receiving treatment, and
- engaging in sexual activity in exchange for drugs.



# Question

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What does it mean that Paula was adjudicated incompetent and a guardian was appointed to act on her behalf?



# Substituted Decision-Making Model

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The **essential purpose** of guardianship for an incompetent person is to replace the individual's authority to make **decisions** with the authority of a guardian **when the individual does not have adequate capacity to make such decisions.**

G.S. 35A-1201(a)(3)



# Chapter 35A: Two Step Process

- Filed before the Clerk of Superior Court

Step #1:  
Incompetency

- **Clear, Cogent and Convincing Evidence**

Step #2:  
Guardianship

- **Best Interests Standard**

# Incompetent Adult: Two Part Definition

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**Part 1:** An adult who lacks sufficient capacity

1. to manage their own affairs or
2. to make or communicate important decisions concerning their person, family, or property

**Part 2:** Unless these can be sufficiently met through a less restrictive alternative. (Added pursuant to S.L. 2023-124, eff. January 1, 2024).

G.S. 35A-1101(7), (8).



# Question

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What does it mean that the court appointed a guardian of the person for Paula?



# Powers and Duties of a Guardian of the Person

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- Entitled to care, custody, and control of the ward.
- Must provide for, as appropriate, the ward's training, education, employment, or habilitation/rehabilitation.
- Must establish the ward's place of abode, giving preference to places that are **not treatment facilities**.
  - If only available and appropriate places are treatment facilities, the guardian must give preference to **community-based treatment facilities**.



# Powers and Duties of a Guardian of the Person

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- Give any consent or approval necessary to enable the ward to receive
  - Legal
  - Psychological
  - Other professional care, counsel, treatment, or service
- Give any other consent or approval on the ward's behalf in the ward's best interests.

G.S. 35A-1241(2), (3)



# Question

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Does the fact that Paula has a guardian of the person mean that she can be forced into treatment?



# Limits on Decision-Making Authority

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A guardian of the person can:

- give informed consent to medical and mental health treatment
- help coordinate services
- arrange housing, placement, or treatment

Guardianship does not by itself authorize confinement or forced treatment.



# Question

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If Paula has a guardian, why is she still living on the street?



# Limits on the Effect of Guardianship

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Guardianship does not guarantee compliance or resources.

Possible constraints:

- Guardian not aware of or carrying out their role
- Paula's refusal to remain in treatment or available housing
- Lack of available treatment, housing, or other services to meet Paula's needs





# Question

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Paula's grandmother filed a motion with the court. What can the court do?



# Court's Oversight Role

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- After the appointment of a guardian, the court retains jurisdiction over the case.
- The court, in response to a motion or other information, may
  - Require the establishment of a guardian plan and program
  - Order status reports; hold status report hearings
  - Remove a guardian and appoint a new guardian



# Question

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Paula's guardian wants to admit Paula to a psychiatric inpatient facility.

Can she do this without using the involuntary commitment process?



# Voluntary Admission to an Inpatient Psychiatric or Substance Abuse Facility

Adult presumed capable and competent

Admission pursuant to patient consent

Adult deemed “incapable”

Admission pursuant to patient’s prior consent in an advance instruction or the consent of a health care agent

Adult adjudicated “incompetent”

- Admission with consent of the guardian
- Requires judicial proceeding separate from guardianship

# Question

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If Paula does not want to be voluntarily admitted, but the guardian seeks voluntary admission, is it still “voluntary?”



# Incompetent Adult—Voluntary Admission to Inpatient MH/SA

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Guardian acts on behalf of incompetent adult

1. Applying for admission to the facility
2. Consenting to treatment in the facility

Standard for admission: mentally ill or a substance abuser and in need of treatment.

District court judge must review and concur in admission



# Involuntary Commitment

- Law enforcement custody and transportation
- Force & restraint authorized
- Judicial proceeding—counsel, hearing, district court order
- A finding of dangerousness is required
- Facility/court determines discharge
- Escape—law enforcement return

# Voluntary Admission

- **No** law enforcement custody and transportation
- **No** authority for force & restraint
- Judicial proceeding—counsel hearing, district court order
- **No** finding of dangerousness required
- Facility/court determines discharge
- Escape—law enforcement return



# Question

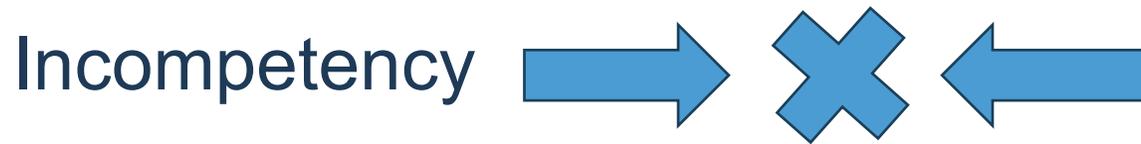
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Does Paula's incompetency finding affect involuntary commitment or voluntary admission?



# The proceedings “shall have no effect” upon each other

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- Involuntary commitment for mental health or substance abuse treatment
- Voluntary admissions for mental health or substance abuse treatment

**G.S. § 122C-203**



# Voluntary Admission to IDD Facilities

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Adult with intellectual or other developmental disabilities who

- has *not* been adjudicated incompetent
- may be admitted upon the adult's own application.

- has been adjudicated incompetent
- may be admitted upon application by the guardian.



# Question

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Paula is arrested for drug possession. What is the impact of the guardianship?



# Standard for Capacity to Proceed

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A defendant lacks capacity to proceed if, by reason of mental illness or defect, they are

1. unable to understand the nature and object of the proceedings,
2. comprehend their situation in reference to the proceedings, or
3. assist in their defense in a rational or reasonable manner.



# Impact of Incapacity Determination

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- The criminal prosecution must stop
- The criminal court judge considers involuntary commitment, including capacity restoration



# Role of Guardian in Criminal Case

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- A guardian may not enter a guilty plea in a criminal case on behalf of a defendant, whether the defendant is capable or incapable to proceed
  - *Kinkel v. Lawhead*, 246 P.3d 746 (Ct. App. Ore. 2011) (recognizing that capable defendant who has guardian has right to enter own plea)
  - *Commonwealth v. Delverde*, 496 N.E.2d 1357 (Sup. Ct. Mass. 1986) (refusing to allow guardian to enter plea for incapable defendant)



# Key Takeaways

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- Guardianship is primarily about removing decision-making authority from one person and giving that authority to someone else
- The guardian serves primarily as a conduit to **appropriate and available** services, treatment, and assistance
- Guardianship does not replace involuntary commitment procedures for psychiatric confinement and treatment
- A guardian may seek voluntary admission but the 122C procedures and standards still apply
- A civil determination of incompetency is not determinative of criminal incapacity





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