

## 2015 Juvenile Delinquency Legislation

### S.L. 2015-41 (H295) - Juvenile Media Release

- Amended G.S. 7B-3102(a) requires the Division of Juvenile Justice to release a statement about the level of threat posed by an escaped juvenile, only if deemed appropriate by the Division. Currently the statute requires the Division to release such a statement within 24 hours of a juvenile's escape without making an appropriateness determination. The level of threat posed by the escaped juvenile shall be determined by the Deputy Commissioner of Juvenile Justice or the Deputy Commissioner's designee. This Act became effective on May 29, 2015, when it was signed into law.

### S.L. 2015-47 (H294) - Prohibit Cell Phones to Delinquent Juveniles

- Amended G.S. 14-258.1(d) extends the provisions of this statute to delinquent juveniles who are in the custody of the Division of Juvenile Justice. A Class H felony offense is committed by (1) directly providing a cell phone to a delinquent juvenile who is in the custody of the Division of Juvenile Justice or (2) indirectly providing a cell phone to a delinquent juvenile who is in the Division's custody by giving it to another person for delivery to the juvenile. A delinquent juvenile is in the custody of the Division for purposes of this statute when the juvenile is confined in a youth development center or detention facility or being transported to or from such confinement. This Act becomes effective on December 1, 2015, and applies to offenses committed on or after that date.

### S.L. 2015-58 (H879) - Juvenile Code Reform Act

- This Act makes several changes to the Juvenile Code designed to increase due process protections for juveniles, reduce further entry of juveniles in the delinquency system, and reduce juvenile confinement. The entire Act becomes effective on December 1, 2015, and applies to offenses committed on or after that date.

#### *Due Process Protections*

- **Custodial Interrogation Age Increase** - Amended G.S. 7B-2101(b) increases from 13 to 15 the age at which a juvenile must have a parent or attorney present during a custodial interrogation in order for the juvenile's statement to be admissible. The practical effect of this change is that juveniles who are 14 or 15 may no longer waive the right to have a parent or attorney present during a custodial interrogation.
- **Bifurcated Hearing Requirement** - Amended G.S. 7B-2202(f) and G.S. 7B-2203(d) require that adjudication hearings be held separately from hearings to determine probable cause and transfer. This change will reverse several decisions by the Court of Appeals which held that entirely separate hearings for determining probable cause, transfer, and adjudication were not required by the Juvenile Code, "so long as the juvenile's constitutional and statutory rights are protected." See *In re G.C.*, \_\_ N.C. App. \_\_, 750 S.E. 2d 548 (2013); *In re J.J., Jr.*, 216 N.C. App. 366 (2011). Although the adjudication hearing must "be a separate hearing," it may still occur on the same day as probable cause and transfer, unless continued by the court for good cause.
- **Motion to Suppress Procedure** – New G.S. 7B-2408.5 establishes a procedure for filing motions to suppress in juvenile court, which is substantially similar to G.S. 15A-977 (motions to suppress

in superior court). Motions to suppress may be filed before or during the adjudication hearing. Motions made prior to the adjudication hearing must be in writing, supported by an affidavit, and served upon the State. The State may file an answer, which must be served on the juvenile's counsel, or the juvenile's parent or guardian, if the juvenile has no counsel. The court must summarily grant the motion under certain conditions and may summarily deny the motion under certain other conditions enumerated in the statute. If no summary determination is made, the court must hold a hearing and state its findings of fact and conclusions of law in the record. An order denying a motion to suppress may be reviewed upon an appeal of a final order in the juvenile matter. The exclusionary rule of G.S. 15A-974 also applies to this section. Although the Court of Appeals has interpreted G.S. 15A-974 as requiring the exclusion of evidence obtained as a result of a "substantial violation" of Chapter 15A, when applied to juveniles, the statute will likely be interpreted to exclude evidence obtained as a result of a substantial violation of Chapter 7B.

#### *Reducing Further Entry of Juveniles in the Delinquency System*

- **Petition Procedure for New Offenders** - Amended G.S. 7B-1701 requires that upon receipt of a complaint alleging a divertible offense, juvenile court counselors must "make reasonable efforts" to meet with the juvenile and the juvenile's parent or guardian, if the Division has not previously received a complaint against the juvenile. This provision suggests that the General Assembly believes that meeting personally with juveniles and their parents will influence court counselors to approve more diversions and file fewer juvenile petitions.
- **Voluntary Dismissal by Prosecutor** - New G.S. 7B-2404(b) authorizes prosecutors to voluntarily dismiss a juvenile petition with or without leave. If the prosecutor dismisses a petition with leave because the juvenile failed to appear in court, the petition may be refiled, "if the juvenile is apprehended or apprehension is imminent." This change removes uncertainty about a prosecutor's authority to dismiss juvenile cases (which, in practice, already occurs) and creates a uniform procedure for doing so. However, the last sentence of the statute may lead to questions regarding whether refiling the petition is permitted only when a dismissal with leave is based on the juvenile's failure to appear.
- **Prior Adjudication Definition** - Amended G.S. 7B-2507 defines a "prior adjudication" as "an adjudication of an offense that occurs before the adjudication of the offense before the court." Although not explicit in the statute, the "offense before the court" refers to the offense for which a disposition is being entered. This change reverses [\*In re P.Q.M.\*](#), 754 S.E.2d 431 (2014), which defined a prior adjudication as an adjudication that existed prior to the disposition hearing and entry of the disposition (similar to prior convictions under Structured Sentencing). Presumably, the new definition will reduce the number of adjudications that count towards a juvenile's delinquency history, thereby reducing the length and type of confinement authorized at disposition.
- **Extension of Probation** - Amended G.S. 7B-2510(c) provides that prior to the expiration of an order of probation, the court may extend the term for an additional period of one year, after notice and a hearing (currently, the statute only requires a hearing). The extension hearing may occur after the probation term has expired at the *next regularly scheduled court date* or at the court's discretion, if the juvenile fails to appear in court. This change makes clear that a juvenile must receive notice of the extension prior to the expiration of the term. It also shortens the time period in which a court may hold the extension hearing after the term has expired, which the

Court of Appeals previously described as “a reasonable time after its expiration.” [In re T.J.](#), 146 N.C. App. 605, 607 (2001). Although not explicitly stated, the “next regularly scheduled court date,” refers to the next regularly scheduled session of juvenile court in the city or county where the order was entered, similar to expedited custody review hearings, required under G.S. 7B-1906(a) when a secure custody order is issued by a court counselor.

- **Probation Violation Dispositions** - Amended G.S. 7B-2510(e) provides that when a juvenile violates probation, the court may either increase the disposition level to the next higher level on the disposition chart or order up to twice the amount of detention days authorized by G.S. 7B-2508, but may not do both, as currently authorized.
- **Notice of Right to Expunction** - New G.S. 7B-2512(b) requires the trial judge to inform the juvenile, either orally or in writing, about the juvenile’s right to expunction under G.S. 7B-3200, if relevant to the juvenile’s case, at the time of entering the disposition.

#### *Reducing Juvenile Confinement*

- **Secure Custody Review Hearings** - Amended G.S. 7B-1903(c) codifies the holding of [In re D.L.H.](#), 198 N.C. App. 286 (2009), and requires custody review hearings be held at least every 10 calendar days when a juvenile is placed in secure custody pending disposition or out-of-home placement, unless the juvenile waives the right to a hearing through counsel. Review hearings may be waived for no more than 30 calendar days with the juvenile’s consent, and the custody order must be in writing with appropriate findings of fact.
- **Restraint of Minors Under 10** - New G.S. 7B-1903(f) prohibits the use of physical restraints to transport a juvenile under the age of 10, for an evaluation of the juvenile’s need for medical or psychiatric treatment under G.S. 7B-1903(b), if the juvenile does not have a pending delinquency charge, unless “reasonably necessary for the safety of the officer, authorized person, or the juvenile.”
- **Imposition of Intermittent Confinement Days** - Amended G.S. 7B-2506(12) and G.S. 7B-2506(20) require the court to determine the timing and imposition (currently, only timing) of intermittent confinement days. This change appears to codify long-standing case law stating that the court may not delegate its authority to court counselors to impose dispositional options. See [In re S.R.S.](#), 180 N.C. App. 151, 158 (2006).

#### **S.L. 2015-72 (H552) – Graffiti Vandalism Offense**

- This Act creates a new statute, G.S. 14-127.1, which defines the crime of graffiti vandalism. The first offense is punishable as a Class 1 misdemeanor and carries a mandatory minimum fine of \$500, and if a community or intermediate punishment is imposed, up to 24 hours of community service. The offense is elevated to a Class H felony, if the person has two or more convictions under this section, the current offense was committed after the second conviction, and the second offense was committed after the first conviction. The Act also amends G.S. 14-132(d) to clarify that the offense of defacing a public building, statue, or monument is a Class 2 misdemeanor, unless the conduct is covered by the new G.S. 14-127.1 or another provision of law providing greater punishment. The Act becomes effective on December 1, 2015, and applies to offenses committed on or after that date.

**S.L. 2015-183 (H134) - Soliciting Prostitution/Immunity for Minors**

- This Act amends G.S. 14-205.1 to prohibit the prosecution of minors for solicitation of prostitution. Instead, minors suspected of soliciting prostitution must be treated as undisciplined juveniles and taken into protective custody, pursuant to Article 19 of Chapter 7B. In 2013, a similar law was passed to make minors immune from prosecution for prostitution under G.S. 14-204 (see [Session Law 2013-368](#)).