

Juvenile Delinquency Overview

What is a Delinquency Proceeding?

- Delinquency proceedings are civil proceedings. *In re Burrus*, 275 N.C. 517 (1969), G.S. 7B-2412.
- Subchapter II of Chapter 7B of the General Statutes provides the bulk of the procedure for delinquency cases.
- Juveniles have constitutional due process rights in delinquency cases. *In re Gault*, 387 U.S. 1 (1967), See also *In re Winship*, 397 U.S. 358, 365–68 (1970) (holding that allegations must be proved beyond a reasonable doubt for an adjudication of delinquency), *Breed v. Jones*, 421 U.S. 519, 531 (1975) (holding that jeopardy applies in delinquency cases).
 - G.S. 7B-2405 details right to:
 - Written notice of facts alleged in petition
 - Counsel
 - Confront and cross-examine witnesses
 - Privilege against self-incrimination
 - Discovery
 - All rights afforded adult offenders except the right to a jury trial, self-representation, and bail
- The language in delinquency cases is different than criminal language. Words such as defendant, trial, sentencing, and conviction are not used. Instead, words such as respondent, adjudication, disposition, and adjudication are used.

How a Delinquency Proceeding Begins

- The first step in initiating a delinquency proceeding is the filing of a complaint with the Juvenile Court Counselor (JCC).
- The JCC has a statutory obligation to conduct a preliminary inquiry to determine that there is delinquency jurisdiction over the matter and that the complaint is legally sufficient. If so, the JCC can choose to close, divert, or move the case to court through the filing of a petition. However, there are certain cases in which the JCC does not have this discretion. Certain alleged offenses are “nondivertible” by statute and must be filed as a petition and moved to the court process. G.S. 7B-1701, -1702, -1703.
- The JCC must inform the victim and complainant of its decision in each case. If the JCC does not move the case forward to court, the victim and the complainant both have a right to ask the prosecutor to review that decision. G.S. 7B-1704. If such a request is made, the prosecutor has 20 days from the time that the victim and complainant are given notice of the review to conduct a review of the determination that a petition will not be filed. The review must include conferences with the victim, the complainant, and the JCC. The prosecutor must then decide whether to uphold the decision not to file a petition or to direct that a petition be filed. The prosecutor must also provide notice to the victim and the complainant of their decision. G.S. 7B-1705.
- The court proceeding begins with the filing of a petition. It must allege the facts that involve jurisdiction over the juvenile. A petition must include only one juvenile. G.S. 7B-1802. A petition

is held to the same standard as an indictment in a criminal proceeding. A petition can be amended if it does not change the nature of the offense. The juvenile must be given a reasonable opportunity to prepare their defense. G.S. 7B-2400. For case examples regarding petition amendments that were not allowed, see *In re Davis*, 114 N.C. App. 253 (changed offense from “burning a public bldg” to “burning personal prop.”), *In re A.W.*, 189 N.C. App. 787 (changed offense from “injury to real property” to “injury to personal prop.”). For case examples regarding petition amendments that were allowed, see *In re Jones*, 11 N.C. App. 437, 181 S.E.2d 162 (amendment of larceny petition where the petition sufficiently alleged the offense of larceny, and the amendment in no way changed the nature of the offense but simply identified more specifically the owner of the alleged stolen property). *In re McKinney*, 157 N.C. App. 141 (2003) (amendment of date in 1st deg. Sex Offense petition from “around March 30, 2003” to “between April 1, 2000 and Oct. 27, 2000” was permissible), *In re R.M.*, 181 N.C. App. 759 (2007) (unpublished) (allowing these amendments: (1) to add the word “van” to “Toyota Sienna;” (2) to add the word “all” to indicate the total value of the money and the van; (3) to add “Arguetta” to “Carlos Adalberto Andrade” to reflect the victim's full name; (4) to add “in violation of GS 14–87, class D felony” to “GS 14–87;” (5) to add “2nd degree kidnapping” to “and kidnap;” (6) to add “restraining” to the juvenile's kidnapping charge; (7) to add “armed robbery in violation of” to “GS 14–39;” (8) to clarify “a Class E felony maximum commitment 19[sic] months or until 19th birthday;” (9) to add “The Juvenile is a delinquent as defined by GS 7B–1501(7) in that on or about the date shown in the county named above the juvenile unlawfully and willfully did” to the description of the no operator’s license charge; and (10) to add “in violation of” to “GS 20–7(A)” and “a class 2[sic] misdemeanor maximum commitment 60 days or 18th birthday.”

- Once a petition is filed, the clerk must issue a summons to the juvenile and to their parent, guardian, or custodian (PGC). The summons and petition must be personally served on the juvenile and on the PGC. G.S. 7B-1806.

Jurisdiction

- Delinquency jurisdiction depends on the age at offense, the offense charged, and whether the juvenile has had a previous criminal conviction before the current offense was committed. G.S. 7B-1501(7), -1604.

Jurisdiction Rules by Age at Offense

< 8 or > 17 at offense	}	• No delinquency jurisdiction
8 or 9 at offense	}	• delinquency jurisdiction ONLY if Class A - G felony or delinquency adjudication prior to current offense
10, 11, 12 at offense	}	• Always delinquency jurisdiction
13, 14, 15 at offense	}	• Delinquency jurisdiction unless disqualifying criminal conviction before current offense
16 or 17 at offense	}	• No delinquency jurisdiction for chapter 20 offenses • Delinquency jurisdiction for other offenses unless disqualifying criminal conviction before current offense

* Disqualifying criminal conviction = all offenses except Chapter 20 misdemeanor offenses that do not involve impaired driving.

- The length of juvenile jurisdiction depends on age at offense and, if the juvenile is adjudicated for certain high-level felonies and committed to the YDC, on the adjudicated offense.
 - Generally, delinquency jurisdiction lasts until
 - 18th birthday for offenses committed under age 16
 - 19th birthday for offenses committed at age 16
 - 20th birthday for offenses committed at age 17 (G.S. 7B-1601)
- Extended jurisdiction for high-level felonies that result in YDC commitment:

Age at offense	Offense type	Commitment to age
Any	first degree murder, first-degree forcible rape, first-degree statutory rape, first-degree forcible sexual offense, or first-degree statutory sexual offense	21
Under 16	Other B1 - E	19
16	Other B1 - E	20
17	Other B1 - E	21

G.S. 7B-1602, -2513(a2)-(a3)

Custody

- Law enforcement can hold a juvenile in temporary custody for up to 12 hours (or 24 hours if a weekend or holiday is involved). G.S. 7B-1901(b)

- In order to hold a juvenile longer, the petition must be filed and a secure or nonsecure custody order must be issued. The initial order must be issued by a judge, unless there is a local administrative order that allows a JCC to issue the first custody order. G.S. 7B-1902
- G.S. 7B-1903 provides the criteria that must be met in order to issue a secure or a nonsecure custody order.
- When a juvenile is placed in custody, there must be ongoing hearings for the need for continued secure or nonsecure custody hearings. In the case of secure custody, an initial hearing on the need for continued custody must be held within five calendar days of the initial remand to secure custody. However, if the initial secure custody order was issued by the JCC, then this initial hearing must be held on the next regularly scheduled day of district court (whether that is scheduled as a juvenile session or not). The initial hearing cannot be waived or continued. G.S. 7B-1906(a).
- Once the initial hearing is held, ongoing hearings must be held every 10 calendar days for most cases. If the juvenile is alleged to have committed a Class A – G felony at age 16 or 17, then these ongoing hearings are required every 30 days. The juvenile can request a 10-day schedule and the court can order that 10-day schedule on a finding of good cause. The juvenile can waive these ongoing hearings, regardless of which schedule they are on. G.S. 7B-1906(b), -(b1).
- At hearings for the need for continued custody, the State bears the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The rules of evidence do not apply. The juvenile must always meet criteria in G.S. 7B-1903 in order for the court to continue holding the juvenile in custody. G.S. 7B-1906(d), -(e)

First Appearance and Probable Cause

- A first appearance is required for all cases in which a felony is alleged. It must occur within 10 days of the filing of the petition (or at the initial hearing on custody if the juvenile is in custody). It can be continued for good cause. G.S. 7B-1808
- A probable cause hearing is required in all cases in which a felony is alleged to have been committed at age 13 or older. The hearing is generally required to occur within 15 days of the first appearance. However, if the juvenile is charged with a Class A – G felony committed at age 16 or 17, then the probable cause hearing must occur within 90 days of the first appearance. It also will not be required if the case is transferred to superior court as a result of a returned indictment before the probable cause hearing is required. Probable cause hearings can be continued for good cause. G.S. 7B-2202, -2200.5(c)

Transfer

- All cases in which a felony is alleged to have been committed at age 13 or older are potentially subject to transfer to superior court for trial as an adult. Whether transfer is mandatory and how transfer occurs depends on the age of the juvenile at the time of the offense and the offense charged.

Table 1. Transfer Mechanisms by Age at Offense and Felony Classification

Age at Offense	Felony Classification	Transfer Mechanism	Mandatory?
13–15	A	Finding of probable cause ^a	Yes ^b
	B1–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing ^c	No ^d
16, 17	A–C	Finding of probable cause or return of an indictment ^e	Yes ^f
	D–G	Finding of probable cause or return of an indictment ^g	Only if prosecutor chooses to transfer ^h
	H–I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing. ⁱ	No ^j

a. G.S. 7B-2200.

b. *Id.*

c. G.S. 7B-2200, -2203.

d. *Id.*

e. G.S. 7B-2200.5(a).

f. *Id.*

g. *Id.*

h. G.S. 7B-2200.5(a1).

i. G.S. 7B-2200.5(b), -2203.

j. *Id.*

- A case can be remanded back to juvenile court after transfer on a joint motion from the prosecutor and the juvenile’s attorney. Remand is required if a joint motion is filed. The prosecutor must inform the JCC that a joint motion will be filed and of any secure custody order that may be issued when the case is remanded. The superior court record must be expunged on remand. G.S. 7B-2200.5(d)

Adjudication

- An adjudication hearing cannot be combined with a probable cause or a transfer hearing. It must be a separate hearing. G.S. 7B-2202(f) and G.S. 7B-2203(d)
- The rules of evidence apply at an adjudication hearing. G.S. 7B-2408
- Allegations must be proved beyond a reasonable doubt. G.S. 7B-2409
- The court must inform the juvenile of their privilege against self-incrimination before the juvenile testifies at their own adjudication hearing. *In re A.O.*, 2022-NCCOA-651 (October 4, 2022)
- The court must engage in a 6-part colloquy with the juvenile prior to accepting an admission. The court must also determine if there was a prior arrangement regarding an admission and determine that there is a factual basis for the admission. Factual basis may be based on a statement of facts made by the prosecutor. A transcript of admission will not cure any defects in the procedure required in court. G.S. 7B-2407

Disposition

- The court may be required to order DJJ to arrange for a comprehensive clinical assessment (CCA) prior to entering a disposition. This is the case when juvenile with a suspected mental illness, developmental disability, or intellectual disability has been adjudicated delinquent and a CCA has not been completed within 45 days of the adjudication hearing. If the court must order the CCA, then the court must review the CCA before disposition. If the court finds sufficient evidence that the juvenile has severe emotional disturbance or intellectual disability, that, in the court's discretion, substantially contributed to the juvenile's delinquent behavior, and the

juvenile is eligible for a Juvenile Justice Level 3 disposition and/or is recommended for a Psychiatric Residential Treatment Facility (PRTF) placement, the court must order a care review team to be convened by DJJ. The care review team must develop a recommendation plan for appropriate services and resources that address the identified needs of the juvenile and submit that recommendation to the court within 30 calendar days of the date of the court order convening the care review team. The court must review the recommendation plan when determining the juvenile's disposition. G.S. 7B-2502(a2) – (a4)

- The disposition hearing is informal and any evidence, including hearsay, which is relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition is allowed. The juvenile and their PGC must have an opportunity to present evidence and to advise the court regarding the disposition they believe to be in the juvenile's best interest. G.S. 7B-2501
- The court can choose among the statutorily permissible dispositions. When making the choice, the court must select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon: (1) The seriousness of the offense; (2) The need to hold the juvenile accountable; (3) The importance of protecting the public safety; (4) The degree of culpability indicated by the circumstances of the particular case; and (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment. G.S. 7B-2501(c)
- The court can always continue the case for up to six months or dismiss the case without entering a disposition. G.S. 7B-2501(d)
- Other dispositional alternatives are governed by the disposition Level in the case. The Level is determined by calculating the juvenile's delinquency history level per G.S. 7B-2507 and the offense classification provided by G.S. 7B-2508(a). Once that information is known, the Disposition Chart contained in G.S. 7B-2508(f) dictates the disposition Level in the case, or two Levels from which the court may choose.
- There are also some instances in which the court can depart from the Level dictated by the Disposition Chart. This includes that:
 - The court can impose a Level 3 for minor offense if 4 or more prior offenses (each committed after adjudication of preceding offense) (G.S. 7B-2508(g))
 - If it is proved beyond a reasonable doubt that the adjudicated offense was part of criminal gang activity, must impose a disposition one Level higher than the chart dictates (G.S. 7B-2508(g1))
 - A Level 2 can be elevated to Level 3 if the juvenile has a prior Level 3 disposition (G.S. 7B-2508(d))
 - A Level 2 disposition may be imposed instead of a Level 3 disposition if the court submits written findings on the record that substantiate extraordinary needs on the part of the juvenile (G.S. 7B-2508(e))
- There are a range of dispositional alternatives for Level 1 and Level 2 dispositions. They can be found in G.S. 7B-2506. Subdivisions (1) through (13) and (16) are available for Level 1 dispositions. Subdivisions (1) through (23) are available for Level 2 dispositions, and a Level 2 disposition must include at least one alternative found in subdivisions (13) through (23). G.S. 7B-2508(c), -(d)

- A Level 3 disposition requires commitment to the DJJ for placement in a Youth Development Center (YDC). Most YDC commitments are indeterminate. They require at least six months of commitment, and the actual release date is determined by DJJ based on the juvenile's treatment progress. A determinate commitment between six months and two years can be entered by the court when the juvenile is age 14 or older, has been previously adjudicated delinquent for two or more felonies, and has previously been committed to the YDC. G.S. 7B-2513(a), -(b)

Post-Disposition

- Probation violation hearings are held to the same standards as dispositional hearings. They are informal and the rules of evidence do not apply. The standard of proof to establish the violation is greater weight of the evidence. The same act can be both the basis of a new delinquency petition and a violation of probation. G.S. 7B-2510(e)
- G.S. 7B-2510(e) details the options for the court following a finding of a probation violation. They include:
 - Continuing or modifying the original conditions of probation
 - Ordering twice the number of allowed IC days at the same Level as the original disposition Level
 - Ordering a new disposition at the next higher Level. The court cannot both increase the IC days and order a higher disposition Level. G.S. 7B-2510(e)
- On release from a YDC, juveniles are supposed to have at least 90 days of post release supervision (PRS) in the community. PRS can last up to 1 year, as long as the juvenile remains under juvenile jurisdiction. Following a finding of a violation of PRS, on the greater weight of the evidence, the court can revoke PRS or make any other disposition authorized by the Juvenile Code. G.S. 7B-2514, -2516