



North Carolina Criminal Law

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Legally Permissible Uses of Juvenile Detention

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One of the many unique features of the juvenile justice system is the law related to the permissible uses of detention. Called secure custody in the Juvenile Code, placement of a juvenile in detention is permitted only when specifically authorized by statute. This post reviews the legally allowable circumstances for the use of juvenile detention. If the situation of a particular juvenile does not match any of these circumstances, then the juvenile cannot be ordered to be held in a detention facility. Note that detention applies only to juveniles who are the subject of delinquency or undisciplined proceedings and is never permitted in an abuse, neglect, or dependency action.

When Juvenile Matters are Pending

Pending Delinquency Matter

G.S. 7B-1903(b) lists five circumstances under which a juvenile with a pending delinquency matter can be held in detention. They include when the juvenile

1. is charged with a felony and has demonstrated that the juvenile is a danger to property or persons (G.S. 7B-1903(b)(1));
2. has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon (G.S. 7B-1903(b)(2));
3. has demonstrated that the juvenile is a danger to persons and is charged with impaired driving (**S. 20-138.1**) or driving by a person under age 21 after consuming alcohol or drugs (**G.S. 20-138.3**) (G.S. 7B-1903(b)(2a));

4. has willfully failed to appear on a pending delinquency charge (G.S. 7B-1903(b)(3)); or
5. there is reasonable cause to believe the juvenile will not appear in court (G.S. 7B-1903(b)(4)).

Pending Undisciplined Matter

The legally permissible use of detention for juveniles who are alleged to be undisciplined is limited to the following two narrow circumstances under G.S. 7B-1903(b).

1. If the juvenile is alleged to be undisciplined by virtue of being a runaway, detention can be used for up to 24 hours (excluding weekends and state holidays) only if a) the juvenile is inappropriate for a nonsecure custody placement or refuses nonsecure custody and b) the court finds that detention is needed to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian. G.S. 7B-1903(b)(7).
2. If, after proper notice, the juvenile willfully fails to appear in court. Under this circumstance, the juvenile must be brought to court as soon as possible and cannot be held in detention for more than 24 hours (excluding weekends and state holidays). G.S. 7B-1903(b)(8).

Detention is therefore not allowed in most undisciplined cases and, for these two narrow exceptions, cannot exceed a period of 24 hours (excluding weekends and state holidays).

Pending Violation of Probation or Post Release Supervision

G.S. 7B-1903(d) allows for the use of detention under limited circumstances when a violation of probation or post release supervision is alleged. The alleged violation is not a sufficient basis on its own. There must also be an allegation that the juvenile committed acts that damage property or injure persons. This provision is only applicable while the allegations of the violation are pending. **In re D.L.H., 198 N.C.App. 286, 292 (2009), rev'd on other grounds, 364 N.C. 214 (2010).**

Detention can also be used when a violation of probation or post release supervision is pending if, after receiving proper notice, the juvenile willfully fails to

appear. G.S. 7B-1903(3).

Additional Proof Required at Hearings on Need for Continued Detention

Once a juvenile is ordered into secure custody, they are entitled by statute to ongoing hearings at which the court must determine that there continues to be a need for secure custody. **G.S. 7B-1906**. The court is bound by the criteria described above in determining the need for continued secure custody at these hearings. In addition, the State is required to provide clear and convincing evidence that 1) restraints on the juvenile's liberty are necessary and 2) no less intrusive alternative will suffice. G.S. 7B-1906(d). The court must incorporate findings of fact that include the evidence relied on in any order to continue secure custody. The order must also include the purposes that continued custody is to achieve. G.S. 7B-1906(g).

When a Juvenile Absconds from a Secure Facility

Detention is authorized under G.S. 7B-1903(b)(5) after a juvenile absconds from any residential facility operated by the Division of Juvenile Justice (known as Youth Development Centers), any detention facility in North Carolina, or any comparable facility in another state.

After an Adjudication of Delinquency Waiting for Disposition or Placement

According to G.S. 7B-1903(c), detention can be used following an adjudication of delinquency and before disposition. When placement is ordered as part of the disposition, detention can be used while waiting for that placement. If detention is used under either of these circumstances, ongoing hearings on the need for secure custody must be held every 10 days unless they are waived by the juvenile through their counsel. However, these ongoing hearings cannot be waived for more than 30 days. Because (1) the requirement for ongoing hearings on the need for continued use of detention is embedded in same statute that authorizes the use of detention under these circumstances, and (2) waiver of these hearings cannot extend for more than 30 days, it appears that the legislature did not intend for a juvenile who has been adjudicated delinquent to experience lengthy periods of detention while awaiting disposition or pending placement.

As a Dispositional Alternative

Intermittent confinement in a detention facility is one of the many dispositional alternatives available for juveniles subject to Level 1 or Level 2 dispositional orders. For a Level 1 disposition, the court can order up to five 24-hour periods of intermittent confinement in a detention facility. **G.S. 7B-2506(12)**. For a level 2 disposition, the court can order up to fourteen 24-hour periods of intermittent confinement in a detention facility. G.S. 7B-2506(20). While Level 2 dispositional orders can generally include Level 1 dispositional alternatives, a Level 2 order for intermittent confinement cannot be imposed consecutively with a Level 1 order for intermittent confinement at one dispositional hearing. G.S. 7B-2506(20).

In Response to a Finding of a Violation of Probation

If a violation of probation is alleged, the court must have a hearing to determine if the violation occurred. **G.S. 7B-2510(e)**. The juvenile is entitled to notice of that hearing and the burden of proof is the greater weight of the evidence. If the court finds that the alleged violation occurred, the court has several options including an order for a term of confinement in detention for up to twice the term authorized for Level 1 and Level 2 dispositions (five and fourteen 24-hour periods, respectively).

For the Juvenile's Protection

There is statutory authority to hold a juvenile in detention when

1. there is reasonable cause to believe that the juvenile should be detained for their own protection because the juvenile recently suffered or attempted self-inflicted physical injury and
2. the juvenile was refused admission by one appropriate hospital. G.S. 7B-1903(6).

Under these circumstances, the juvenile can be held in detention for up to 24 hours to determine the need for inpatient hospitalization. A physician must be immediately notified when a juvenile is detained under this provision and the juvenile must be continuously supervised while in detention.

Contempt by a Juvenile

G.S. 5A-31 lists several circumstances in which a youth between the ages of six and 18 can be held in contempt. When an act that qualifies as contempt by a juvenile is committed within sight or hearing of a presiding judicial official; is committed in, or in the immediate proximity to, the room where court proceedings are being held; and is likely to interrupt or interfere with matters that are then before the court, the juvenile can be held in direct contempt. G.S. 5A-31(b). The court must follow the procedure in **G.S. 5A-32** to hold a juvenile in direct contempt. If the court determines that the juvenile has committed direct contempt, the court can order any or all of the following

1. detention for up to five days,
2. up to 30 hours of community service,
3. evaluation to determine the needs of the juvenile. G.S. 5A-32(c).

The judicial official who holds the juvenile in direct contempt can terminate or reduce a detention sanction (and eliminate or reduce the number of hours of community service) if warranted by the juvenile's conduct and the ends of justice. G.S. 5A-32(d).

If a juvenile commits an act that qualifies as contempt by a juvenile and it is not direct contempt, then it is indirect contempt. The definition of delinquent juvenile includes acts of indirect contempt. **G.S. 7B-1501(7)a., -b.** Therefore, a new delinquency petition must be filed to pursue a finding of indirect contempt. Because these cases are delinquency matters, the criteria regarding allowable uses of detention under G.S. 7B-1903 apply. There are no criteria that specifically authorize the use of detention in an indirect contempt matter. Detention would therefore only be authorized if the juvenile has willfully failed to appear or there is reasonable cause to believe that the juvenile will not appear in court. G.S. 7B-1903(b)(3), -(4).

Minors Under Criminal Jurisdiction Who Would Otherwise be Confined in a Jail

Part II of Session Law 2020-83 made a series of statutory changes to require that any person under 18 who is subject to criminal jurisdiction, either from the time charges are filed or as the result of a criminal conviction, and who would be

confined in a jail as a result of that criminal matter, is now confined in a juvenile detention facility. You can find more details about those statutory changes in **this previous blog**.

Because these minors are subject to criminal jurisdiction, the provisions of Subchapter II of Chapter 7B that govern the allowable use of detention described above do not apply to these cases. Instead, these minors may be confined pursuant to the various criminal laws that govern pretrial release, sentencing, and probation violations. Criminal procedure applies in these matters, with juvenile detention being the place of confinement instead of jail.

Outcomes Related to the Use of Juvenile Detention

This post outlines the circumstances in which juvenile detention can be used under North Carolina law. The policy debate over whether juvenile detention should be used has been a national topic for many years. The Annie E. Casey Foundation has been investing in reducing reliance on the use of juvenile detention through its **Juvenile Detention Alternatives Initiative** for more than 25 years.

There is very little empirical research specifically on outcomes associated with the use of detention, although a recent 12-month recidivism study of a base sample of over 46,000 court filings in a northwest state found a “modestly predictive” relationship between pretrial juvenile detention and felony and misdemeanor recidivism within one year. Walker and Herting, *The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study*, Crime & Delinquency 2020, Vol. 66(13-14) 1865-1887. The recidivism effects in this study were found to be more significant for youth with little to no previous juvenile justice system involvement.

Before getting to this question of should detention be used, the legal question of whether detention can be used must be answered. If the matter falls under one of the statutorily authorized uses described in this post, then detention can be ordered. If not, then the question of should is not relevant because the use of detention is not legally authorized.