2015 JUVENILE DELINQUENCY LEGISLATIVE AND CASE LAW UPDATE

Part 1: Recently Enacted 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

- If enacted, this bill will amend G.S. 14-205.1 to prohibit the prosecution of minors for solicitation of prostitution. Instead, minors suspected of soliciting prostitution would 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).

Part 2: Recent North Carolina Appellate Court Decisions

I. Adjudication Orders

Findings of Fact

***In the Matter of K.M.M.*, 774 S.E.2d 430 (N.C. App. 2015).** The trial court included sufficient findings of fact in the adjudication order to comply with G.S. 7B-2411, which requires the court to find, at a minimum, that the allegations in the petition have been proved beyond a reasonable doubt. The trial court found in its written order that it was proved beyond a reasonable doubt "that on or about the date of 10-16-2013, the juvenile did unlawfully and willfully steal, take, and carry away a White Apple [iP]hone with a pink and gray otter box case, the personal property of [Ms.] Nguyen having a value of $300.00." G.S. 7B-2411 does not require the trial court to state in writing the evidence which satisfies each element of the offense. Therefore, the trial court made sufficient findings of fact to support the adjudication of delinquency.

II. Commitment to YDC

Maximum Possible Commitment Period

In the Matter of R.D., __ N.C. App. __, __ S.E.2d __ (Sept. 1, 2015). The trial court's disposition order did not violate G.S. 7B-2513(a), which authorizes a maximum commitment period that does not exceed the maximum possible sentence that *any adult* could receive for the

same offense, without consideration of prior record levels or the existence or nonexistence of aggravating and mitigating factors under structured sentencing. G.S. 7B-2513(a) provides that "[n]o juvenile shall be committed to a [YDC] beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense[.]" In this case, the juvenile was adjudicated delinquent for the Class I felony of breaking or entering a motor vehicle, for which an adult could be sentenced to a maximum of 21 months in the presumptive range or a maximum of 24 months in the aggravated range. The juvenile was committed for an indefinite period of at least 6 months, but not to exceed his 18th birthday, resulting in a maximum commitment period just short of 24 months. On appeal, he argued that because G.S. 7B-2513(a) does not explicitly reference the maximum *aggravated* term for an adult, his maximum possible commitment should be limited to the maximum presumptive term for an adult in a prior record level VI, based on the rule of lenity. The appellate court rejected this argument, relying on its holding in *In re Carter*, 125 N.C. App. 140 (1987), that former G.S. 7A-652 (the predecessor to G.S. 7B-2513(a)) authorized a maximum commitment equivalent to the maximum possible sentence that *any adult* could receive for the same offense. The court said that its rationale for the holding in *Carter* – maintaining "judicial flexibility" in juvenile dispositions – applies equally to G.S. 7B-2513(a).

***In a footnote, the court noted that a juvenile's commitment may, nonetheless, be extended beyond the maximum adult sentence when the Division of Juvenile Justice determines that an extension is necessary to continue the juvenile's plan of care or treatment. A juvenile must receive written notice of the extension at least 30 days prior to the juvenile's scheduled release date and may request a hearing to contest the extension. *See* G.S. 7B-2515.

III. Criminal Offenses

Sex Offense and Crime Against Nature

***In the Matter of J.F.*, 766 S.E.2d 341 (N.C. App. 2014).** (1) In a case involving first-degree sex offense and crime against nature petitions, the State was not required to present evidence of "sexual purpose." Sexual purpose is not an element of first-degree sex offense and crime against nature. Noting that the legislature intentionally included sexual purpose as an element of indecent liberties between children but omitted it from other sex offenses, the court held the omission was intentional, and it had no authority to add an additional element to an unambiguous criminal statute. (2) However, the court reversed the crime against nature adjudications for insufficient evidence of penetration. Penetration is not an element of a sex offense involving fellatio; but, it is an essential element of crime against nature. Therefore, evidence was insufficient to prove crime against nature because the victim testified that he "licked" but did not suck the juvenile's penis, and likewise, the juvenile "licked" his penis. The court distinguished *In re Heil*, 145 N.C. App. 24 (2001) (where it inferred penetration in a crime against nature case involving a 4-year-old victim who performed fellatio on an 11-year-old juvenile because the size difference between juvenile and victim and the fact that incident occurred in the close quarters of a closet suggested there was some penetration, however slight, of the juvenile's penis into the

victim's mouth), and rejected the State's argument that penetration could be inferred from the surrounding circumstances.

IV. Interrogation and Confession

Invocation of Juvenile Rights

State v. Saldierna, __ N.C. App. __, 775 S.E.2d 326 (2015). The trial court erred in denying the juvenile's motion to suppress where the juvenile made an ambiguous statement implicating his statutory right to the presence of a parent or guardian during questioning, which was not clarified by interrogating officers before continuing the interrogation. An officer verbally read the 16-year-old juvenile his rights and gave him copies of a "Juvenile Waiver of Rights" form, which the juvenile initialed and signed to indicate that he understood his rights and wished to answer questions without a lawyer or parent present. Prior to the interrogation, the juvenile asked "Can I call my mom?" The juvenile was permitted to call his mother but was unable to reach her. Officers resumed questioning, and the juvenile confessed. The Court of Appeals held that (1) competent evidence supported the trial court's finding that the juvenile's request to call his mom was "an ambiguous request to speak to his mother" and was not an unambiguous request to have her present. (2) However, due to the defendant's status as a juvenile, his ambiguous statement triggered a requirement by officers to clarify whether he was invoking his right to have a parent present during the interview. The court distinguished the right to have a parent present during questioning from other rights enumerated in G.S. 7B-2101(a), which simply codify the *Miranda* rights guaranteed to everyone by the federal constitution. Thus, case law establishing that invocation of *Miranda* rights (including by juveniles) must be unequivocal did not control the analysis. Rather, the inclusion of this additional, statutory protection for juveniles "reflects the legislature's intent that law enforcement officers proceed with great caution in determining whether a juvenile is attempting to invoke this right." The court said its holding was significantly supported by recent legislation, S.L. 2015-58, which amends G.S. 7B-2101(b) to raise from 14 to 16 the age at which a juvenile can waive the right to have a parent or attorney present during a custodial interrogation, noting that children just a few months younger than the juvenile can *never* waive this right.

***Author's note:* The opinion does not mention G.S. 7B-2101(c), which provides that questioning must cease "if the juvenile indicates in any manner and at any stage" that the juvenile does not wish to be questioned further. This statute would have been relevant if the juvenile had argued that his request to call his mother was an indication that he did not wish to be questioned further without her being present.

V. Jurisdiction

Jurisdiction Pending Appeal

***In the Matter of J.F.*, 766 S.E.2d 341 (N.C. App. 2014).** In a sex offense case, the trial court lacked jurisdiction to conduct a dispositional hearing after the juvenile appealed the adjudication order under G.S. 7B-2602, which allows a juvenile to appeal the adjudication order when no

disposition has been entered within 60 days. Unless a statute provides otherwise, an appeal stays further proceedings in the trial court until the cause is remanded by mandate of the appellate court.

VI. Juvenile Petitions

Sufficiency of Allegations

***In the Matter of J.F.*, 766 S.E.2d 341 (N.C. App. 2014).** (1) Two juvenile petitions alleging first-degree sex offense under G.S. 14-27.4(a)(1) and two petitions alleging crime against nature under G.S. 14-177 provided sufficient notice because the allegations followed the statutory language of both offenses. The petitions charging first-degree sex offense allege the juvenile "did unlawfully, willfully and feloniously . . . [e]ngage in a sexual act with [M.H.], a child under the age of thirteen (13) years," identifying M.H. by his full name and stating that the "victim was 7." One petition further alleges that the "juvenile performed fellatio on victim," while the other alleges that the "victim performed fellatio on juvenile." The petitions charging crime against nature allege the juvenile "did unlawfully, willfully and feloniously . . . commit the abominable and detestable crime against nature with [M.H.]," identifying M.H. by his full name and stating that the "victim was 7." Likewise, one petition alleges that the "juvenile performed fellatio on victim," while the other alleges that the "victim performed fellatio on juvenile." The State was not required to identify the particular sex acts involved or describe the manner in which they were performed, and if the juvenile required more detail about whether the petitions alleged the same or multiple acts of fellatio, the juvenile should have moved for a bill of particulars. (2) The court rejected the juvenile's argument that the two petitions alleging the victim performed fellatio on the juvenile were defective because the victim was the "actor." First-degree sex offense and crime against nature do not require that the accused perform a sex act *on* the victim but rather that he "engage[] in a sexual act *with*" the victim.

VII. Motions to Dismiss

Juvenile As Perpetrator

***In the Matter of K.M.M.*, 774 S.E.2d 430 (N.C. App. 2015).** There was substantial evidence identifying the juvenile as the perpetrator of a misdemeanor larceny such that the trial court did not err by denying his motion to dismiss. On October 16, 2013, at approximately 5:30 p.m., three African-American males stole the victim's iPhone from her table at a Wendy's restaurant and then ran away. The victim chased after them and encountered a man, Mr. Wall, who had just driven past three African-American males down the street. Mr. Wall drove back to the same location and saw the males again, and they ran. Both the victim and Mr. Wall reported to police officers that the juvenile was wearing a red jacket and that another suspect was wearing gray. Mr. Wall identified the juvenile and one of his companions in a showup later that same day, and the victim identified the juvenile at the adjudication hearing. When the juvenile was apprehended, he was wearing a red hoodie jacket and had a Wendy's spoon in his back pocket, along with two Wendy's receipts that were time-stamped 5:29 p.m. and 5:33 p.m., despite his denial that he had been at Wendy's that day.

VIII. Probation Violation Hearings

Revocation Based on Hearsay Evidence

***In the Matter of Z.T.W.*, 767 S.E.2d 660 (N.C. App. 2014).** Relying upon a recent decision by the North Carolina Supreme Court, the court held that the trial court did not err by revoking the juvenile's probation based solely upon the admission of hearsay evidence. *See State v. Murchison*, 367 N.C. 461 (2014) (holding that, since the formal Rules of Evidence do not apply in probation revocation hearings, the trial court did not err by revoking the defendant's probation and activating his suspended sentence based solely on hearsay evidence). Also, the trial court's failure to advise the juvenile about the consequences of testifying at his probation revocation hearing did not affect the validity of the probation revocation because the holding of *In re J.R.V.*, 212 N.C. App. 205 (2011) (requiring the trial court to advise a juvenile of his right against self-incrimination under G.S. 7B-2405(4), if the juvenile chooses to testify at his own adjudication hearing) applies only to adjudication hearings.

Sufficiency of Notice

In the Matter of D.S.B., 768 S.E.2d 922 (N.C. App. 2015). (1) Despite a clerical error referencing a previously expired term of probation for a "minor" offense, the motion for review provided adequate notice to the juvenile that he might receive a Level III disposition for violating his probation because the motion accurately stated the expiration date of the current probation term, which was for a Class H felony, and listed violations that occurred after the juvenile was placed on probation with the specified expiration date. (2) Assuming *arguendo*, that the motion for review failed to provide adequate notice, the record established the juvenile had *actual* notice that a Level III disposition was possible, in part, because his counsel acknowledged at the hearing that a YDC commitment "was on the table," and the juvenile did not object when the trial court expressly confirmed that he was on probation for committing the Class H felony of larceny from the person.

Willfulness of Violation

***In the Matter of Z.T.W.*, 767 S.E.2d 660 (N.C. App. 2014).** The trial court did not err by finding the juvenile to be in willful violation of his probation by not attending school regularly and violating school rules by communicating threats to a teacher. (1) The juvenile failed to preserve his argument that the trial court did not consider his disability and Individualized Education Plan (IEP) in determining whether the probation violations were willful because no evidence was presented at the hearing to show the juvenile lacked the ability to comply with these conditions of his probation. *See* N.C. R. App. P. 10(a)(1). Also, the trial court explicitly found that the "Juvenile was able to control his behavior and comply with the applicable school rules." Thus, although not preserved, the argument had no merit. (2) Even if the juvenile did not willfully violate the school rules by threatening his teacher, the juvenile's numerous unexcused absences provided an independent basis for his probation revocation.

IX. Secure Custody Orders

Validity of Secure Custody Order

***In the Matter of Z.T.W.*, 767 S.E.2d 660 (N.C. App. 2014).** The trial court did not err by ordering, under G.S. 7B-1903(c), that the juvenile be held in secure custody pending his transfer to an out of home placement. (1) G.S. 7B-1906(g), which requires a written order with appropriate findings of fact regarding the evidence relied upon and the purposes for continued custody, applies to secure custody following an initial accusation of delinquency, rather than when the trial court orders secure custody pending disposition or pending an out-of-home placement under G.S. 7B-1903(c). (2) There was ample justification for the court's decision to place the juvenile in secure custody pending his out-of-home placement, including the juvenile court counselor's recommendation, which was based on the juvenile's school suspensions, anger-related difficulties, and disobedience at home, as well as the testimony of the juvenile, the juvenile's mother, and a school resource officer.