

## Juvenile Delinquency Update

2017 FALL DISTRICT COURT JUDGES CONFERENCE  
ASSISTANT PROFESSOR LATOYA POWELL

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## Recent Appellate Decisions

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## State v. Saldierna

- 16 y.o., Spanish-speaking juvenile with 8<sup>th</sup> Grade education
- He could write in English but struggled to read or understand it as spoken
- Interrogated at police station following arrest
- LEO gave him *Miranda* waivers in English and Spanish
- But, LEO read only the English version
- Juvenile signed & initialed the English version
- He then asked "Um, can I call my mom?"
- LEO gave him a cell phone but he did not reach his mother
- LEO resumed the interrogation, and then he confessed
- Trial court denied juvenile's Motion to Suppress

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### State v. Saldierna

**July 2015**

- NC COA reversed
- LEO's failed to clarify juvenile's "ambiguous" invocation of rights

**December 2016**

- NC SCT reversed COA decision
- Invocation of juvenile rights must be "unambiguous"
- LEO's not required to clarify ambiguous statements

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### State v. Saldierna (NC SCT 2016)

- ▶ Rights under G.S. 7B-2101 are analogous to *Miranda* rights
  - ▶ Invocation of *Miranda* rights must be "unambiguous" and officers have no duty to clarify a juvenile's ambiguous request. *Davis v. U.S.* (1994)
- ▶ *Miranda* framework applies to juvenile rights under G.S. 7B-2101(a)
- ▶ Reversed and remanded to COA to review juvenile's *waiver of rights*
- ▶ **Dissenting Opinion** - Majority opinion inconsistent with *J.D.B. v. NC* and "greater protection" provided by G.S. 7B-2101

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**July 2017**

- NC COA reversed (again)
- Juvenile's waiver of rights was involuntary

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### State v. Saldierna (NC COA 2017)

- ▶ Juvenile's waiver of rights was not **knowingly, willingly, and understandingly** made as required by G.S. 7B-2101(d)
- ▶ Voluntaryness depends on totality of the circumstances
  - No evidence of prior experience with law enforcement
  - Due to his age, intellectual functioning, and language barriers, he likely did not understand his rights
  - Thus, he could not voluntarily waive them
  - And, juvenile's request to call mom after signing a waiver showed his uncertainty
- ▶ "To be valid, a waiver should be voluntary, not just on its face, *i.e.*, the paper it is written on, but in fact."

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### State v. Watson



- ▶ 16 y.o. juvenile verbally waived rights but initialed box on waiver of rights form indicating that mom was present.
- ▶ **Held:** Affirmed
  - ▶ Clerical error on the waiver of rights form did not constitute an invocation of defendant's juvenile rights.
  - ▶ Evidence supported trial court's finding that this was a clerical mistake.

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### In re T.K.

- School fight case (juvenile was not the aggressor)
- Adjudicated delinquent for Disorderly Conduct for using "profanity"
- Petition was not signed by a JCC or marked as "Approved for Filing" as required by G.S. 7B-1703(b)
- **Held:** Vacated and Dismissed for lack of subject-matter jurisdiction




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### Is D.E.P. consistent with V.M.?

- ▶ *In re V.M.* (2011) – “We have previously held that trial court must make findings referencing G.S. 7B-2501(c).”
  1. Seriousness of the offense
  2. Need to hold juvenile accountable
  3. Importance of protecting public
  4. Juvenile’s degree of culpability
  5. Juvenile’s rehabilitative and treatment needs
- ▶ *In re D.E.P.* (2017) – Court said it *clarified* but did not overrule *V.M.*
- ▶ **Note:** If a conflict exists, earlier precedent controls. *In re Appeal from Civil Penalty*

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### In re S.A.A.

- ▶ 13-year-old adjudicated delinquent for sexual battery based on Halloween night incident involving “glow gloves”
- ▶ Two 11-year-old girls accused juvenile of touching their “boobs”
- ▶ **Held:** Vacated and remanded
  - With children, sexual purpose element may not be inferred from the act itself
  - Requires “evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting”
  - Such evidence did not exist in this case




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### Juvenile Justice Reinvestment Act

S.L. 2017-57




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## Juvenile Age Increase

Effective Dec. 1, 2019

- New definition of "delinquent juvenile" includes 16 and 17-year-olds who commit crimes, infractions, or indirect contempt by a juvenile, but **excludes motor vehicle offenses**
- Also excludes juveniles who:
  1. are 18 and older;
  2. have been transferred to and convicted in superior court; and
  3. have been **convicted of a felony or misdemeanor, including motor vehicle offenses, in district or superior court**

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## Motor Vehicle Exclusion

"Motor vehicle offense" is currently undefined.

- ▶ Likely applies only to prior Motor Vehicle Act (G.S. Ch. 20) offenses
  - i.e., DWI, DWLR, Cell phone use by minor, reckless driving, speeding
- ▶ Unclear whether it applies to other motor vehicle offenses
  - Unauthorized use of a MV (G.S. 14-72.2)
  - Breaking and entering of a MV (G.S. 14-56)
  - Maintaining a vehicle for use or sale of CS (G.S. 90-108(a)(7))

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## Maximum Age of Jurisdiction

Effective Dec. 1, 2019

- For 16-year-olds, until age 19
- For 17-year-olds, until age 20

Beyond maximum age of jurisdiction,

- Court has **indefinite jurisdiction** over felonies and related misdemeanors to either transfer the case to superior court or dismiss the petition

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## Expedited Transfer for 16 & 17 y.o.

### Effective Dec. 1, 2019

- For Class A-G felonies, transfer is mandatory upon:
  - notice of an indictment, or
  - a finding of probable cause after notice and a hearing
- For Class H or I felonies, transfer requires a transfer hearing

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## Indictment by Prosecutor

### Potential Questions

- ▶ Does 15-day deadline in G.S. 7B-2202 apply?
  - Note that a PC hearing may be continued for "good cause"
- ▶ Does indictment process impact juvenile court counselor's role?
  - JCC's must still complete intake
  - Can still divert felonies (unless non-divertible under G.S. 7B-1701)
- ▶ What about confinement?
  - 16 & 17 y.o. must be detained in juvenile facilities pending conviction
    - G.S. 7B-2204

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## Juvenile Gang Suppression

### Effective Dec. 1, 2019

- JCC's must begin conducting gang assessments during intake
  - G.S. 7B-1702
- Results of the gang assessment become part of JCC's record
  - G.S. 7B-3001(a)
- New G.S. 7B-2508.1 defines "*criminal gang*," "*criminal gang activity*," & "*criminal gang member*"
- **Gang Crime Disposition Enhancement** (New G.S. 7B-2508(g1))
  - **Requires** enhancement of juvenile's disposition level, if court finds offense was committed as part of criminal gang activity

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## Gang Enhancement

**Potential Questions**

- ▶ New G.S. 7B-2508(g1) does not set forth:
  - Method of proof?
  - Burden of proof?
- ▶ Compare to G.S. 7B-2507(f) ("proof of prior adjudications")
  - Requires proof by a "preponderance of the evidence"
  - Specifies acceptable methods of proof:
    - Stipulation of the parties
    - Original or copy of court records
    - Copy of DPS or DJJ records
    - Any other method deemed reliable by court

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## Greater Protections for Victims

**Effective Oct. 1, 2017**

**Victims**

- Must be notified of petition filing decision, reasons for the decision, and whether matter was closed, diverted, or retained;
- Must be notified of right to have prosecutor review filing decision under amended G.S. 7B-1704 and G.S. 7B-1705; and
- Under new G.S. 143B-806(b)(14a), DJJ must develop system for informing victims about status of pending complaints and right to review the filing decision.

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## Greater LEO Access to Information

**Effective Oct. 1, 2017**

- DJJ must begin tracking "**consultations with law enforcement**" that do not result in the filing of a petition per amended 7B-3001(a)
- Court Counselors must share info. with LEO's related to:
  - Juvenile's delinquency record & consultations with LEO's;
  - When requested for the purpose of assisting LEO's during the investigation of an incident that could lead to the filing of a complaint
- **Certain Limitations Apply:**
  - LEO's may not obtain records from JCC's
  - LEO's must maintain confidentiality of any information shared

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## Jwise Access

**Effective July 1, 2017**

- By July 1, 2018, AOC must expand access to Jwise to include prosecutors and juvenile defense attorneys
- Access is limited to records related to juvenile delinquency proceedings
- AOC must also develop statewide inquiry access for Jwise users

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## School-Justice Partnerships

**Effective July 1, 2017**

- New G.S. 7A-343(9g) authorizes statewide implementation of school-justice partnerships by AOC Director
- To be established by chief district court judges in collaboration with local law enforcement agencies and school officials
- Purpose is to reduce in-school arrests, out-of-school suspensions, and expulsions

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## Training for Law Enforcement

**Effective July 1, 2017**

- New juvenile justice training is required for both entry-level LEO's and veterans
- To be developed by NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs' Education and Training Standards Commission in conjunction with DACJJ

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### Juvenile Jurisdiction Advisory Committee

**Effective July 1, 2017**

- 21-member committee within DACJJ will study and plan for the implementation
- Appointments were due by October 1, 2017
- Interim report due to the General Assembly by March 1, 2018
- Final report due by January 15, 2023

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### "New" Juvenile Justice Section

**Effective December 1, 2017**

- ▶ New G.S. 143B-630 establishes the Division of Adult Correction and Juvenile Justice (DACJJ) within the Department of Public Safety
- ▶ New G.S. 143B-800 establishes the Juvenile Justice Section within DACJJ to exercise the powers and duties previously performed by the Division of Juvenile Justice
- ▶ Conforming changes throughout the General Statutes were made to reflect the official name change

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### Questions?

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