



2024 Juvenile Defender Conference

Wednesday, August 28, 2024
School of Government, Room 2601

8:50 to 9:00

Welcome

Timothy Heinle, Teaching Assistant Professor
UNC School of Government, Chapel Hill, NC

9:00 to 12:00*

Updates to Juvenile Law and Defense, Including:

- **New Capacity Requirements**
- **Case Law Update**
- **Potential Legislative Changes to Raise the Age**

Jacqui Greene, Associate Professor of Public Law & Government
UNC School of Government, Chapel Hill, NC
Yolanda Fair, Project Attorney, and Burcu Hensley, Asst. Juv. Defender
North Carolina Office of the Juvenile Defender, Raleigh, NC

*Two fifteen-minute breaks will be taken during the morning.

12:00 to 12:45

Lunch

12:45 to 1:45

Juveniles, Mental Health, and the Justice System

Dr. Wijetunga, J.D., PhD., Clinical Asst. Professor
UNC School of Medicine, Dept. of Psychiatry, Chapel Hill, NC

1:45 to 2:00

Break

2:00 to 4:00

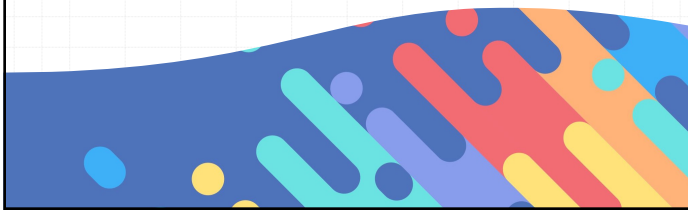
Offering and Challenging Experts: Primer and Workshops

Timothy Heinle, Teaching Assistant Professor
UNC School of Government, Chapel Hill, NC

This program offers 5.5 hours of CLE credit, pending Bar approval.

Juvenile Law Updates

2024 Juvenile Defender
Conference



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- Session Law 2024-17
- New capacity to proceed law
- Case update

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S.L. 2024-17



- Change to original juvenile jurisdiction
- Transfer changes
- Other delinquency changes
- Solicitation of minors to commit offenses

3



Effective Date
for Changes

Offenses
committed on
or after
December 1,
2024

4



Original Jurisdiction

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Offenses Committed at 16/17

Original Juvenile Jurisdiction

- F – I felonies that are not in Chapter 20
- All misdemeanors that are not in Chapter 20

Original Criminal Jurisdiction

- A – E felonies
- All Chapter 20 offenses

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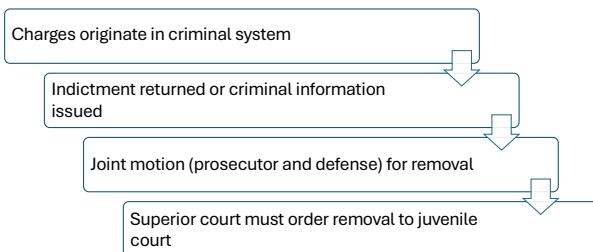
Place of Confinement

Criminal jurisdiction and under 18	Criminal jurisdiction and 18 or older	Juvenile Jurisdiction
• Juvenile detention	• Jail	• Juvenile detention*

* with exceptions for rare cases that did not begin before aging out and the person is 18 or older

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Removal



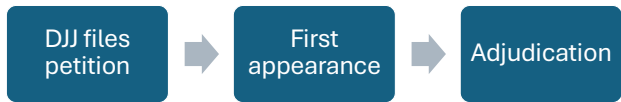
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When Removal is Ordered

- Order must be in writing and require DJJ to file a juvenile petition within 10 calendar days
- Superior court record must be expunged (per G.S. 15A-145.8)
- Superior court may issue a secure custody order if criteria in G.S. 7B-1903 are met

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Juvenile Procedure Following Removal



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S.L. 2024-17



- Change to original juvenile jurisdiction
- Transfer changes
- Other delinquency changes
- Solicitation of minors to commit offenses

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Cases Subject to Transfer

Mandatory Transfer

Class F, G felony at age 16/17
Class A felony at age 13/14/15

Discretionary Transfer

Class H, I felony at age 16/17
Class B1 – I felony at age 13/14/15

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Indictment Return Appearance (Mandatory Transfer Cases)	• Prosecutor must give immediate notice of return of true bill of indictment to district court • District court must calendar for an appearance within 5 business days of date indictment is returned • Court determines if notice was provided on returned indictment for mandatory transfer offense • If notice was provided, court must order transfer to superior court
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No Interlocutory Appeal of Mandatory Transfer Orders

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S.L. 2024-17



- Change to original juvenile jurisdiction
- Transfer changes
- Other delinquency changes
- Solicitation of minors to commit offenses

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Ongoing Secure Custody Hearings



Every **30** days in all cases



Parties can request and court can order an earlier hearing



Any earlier hearing must be scheduled within 10 calendar days of the date the request is made

17

Complainant and victim have **10** days from receipt of DJJ decision not to approve petition for filing to request prosecutor review of that decision



Time limit may be waived by DA

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Restitution

Joint and several
responsibility no longer
required; still allowed

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Notification only when
petition alleges Class A –
E felony

Automatic suspension
based on notification
(G.S. 7B-3101) or local
information sharing
(G.S. 7B-3100) prohibited

Principal must make
individualized decision on
student's status

School Notification of Filing of Delinquency Petition

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S.L. 2024-17



- Change to original
juvenile jurisdiction
- Transfer changes
- Other delinquency
changes
- Solicitation of minors to
commit offenses

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Solicitation of a minor by another minor to commit a felony or misdemeanor

Offense minor solicited to commit	Punishment for minor who engaged in the solicitation
Class A or B1 felony	Class C felony
Class B2 felony	Class D felony
Class H felony	Class 1 misdemeanor
Class I felony	Class 2 misdemeanor
Any other felony	Felony 2 classes below solicited felony
Any misdemeanor	Class 3 misdemeanor

G.S. 14-2.6(c)

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Solicitation of a minor by an adult to commit a felony or misdemeanor



Same class felony or misdemeanor as the offense the adult solicited the minor to commit

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Advocacy Tips

S.L.-2024-17

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Removal To Juvenile Court

- Requires joint motion of the prosecutor and defense attorney.
- There is no time period specified in statute, so can remove any time before the adult case is handed.
 - Investigate, Investigate!
 - If client not in custody, have client participate in services/activities to help their case.
- Utilize experts to gather information about your client and the case to convince the prosecutor to agree to removal

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16 and 17 year olds F-I felonies

- Remember nothing practically changes for 16 and 17 year olds charged with F-I felonies.
 - F-G still subject to mandatory transfer
 - H-I still subject to discretionary transfer
- Prosecutors still have discretion in these cases.
- Utilize your case investigation, expert assistance, and client's progress to keep the case in juvenile court when possible.

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Remand for 13, 14, 15 Year Olds

- Remand is now extended to 13-15 year olds transferred to adult court.
- Just as with remand in the past and removal now, there is no time frame/limits placed on remand.
- Utilize experts, investigation, client's progress to convince prosecutor to agree to remand.

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Secure Custody Hearings

Will now be held within 30 days of the initial hearing UNLESS, you or another party requests it be heard earlier.

The hearing **SHALL** be held within 10 day of the request

The statute does not mention anything about **virtual vs in person hearings** to meet the 10 day window. Nothing changes in making the decision to hold a virtual vs. in person secure hearing.

Right to Appeal to Transfer Decision

- Right to appeal **mandatory** transfer cases has been eliminated.
- However, right to appeal **discretionary** transfer cases still exists.
- Don't forget to appeal and preserve the record for discretionary transfer cases.

Solicitation (Minor to Minor)

- Make sure you check the charging instrument to ensure your client is charged with the correct offense level
- If charging instrument is incorrect be prepared to argue.

Offense minor solicited to commit	Punishment for minor who engaged in the solicitation
Class A or B1 felony	Class C felony
Class B2 felony	Class D felony
Class H felony	Class 1 misdemeanor
Class I felony	Class 2 misdemeanor
Any other felony	Felony 2 classes below solicited felony
Any misdemeanor	Class 3 misdemeanor

Restitution

May be joint and severable instead of shall be.

Determine which path is best for your client

Be prepared to argue why it should or shouldn't be joint and severable for your client.

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Our Agenda

- Session Law 2024-17
- New capacity to proceed law
- Case update

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Juvenile Capacity Law

G.S. 7B-2401.1 – 2401.5

Applies to offenses committed on or after January 1, 2025

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No Capacity When

unable to understand the nature and object of the proceedings against the juvenile,

to comprehend the juvenile's own situation in reference to the proceedings, *or*

to assist in the juvenile's own defense in a rational or reasonable manner because of...

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mental disorder,
intellectual disability,
neurological disorder,
traumatic or acquired brain injury, or
developmental immaturity.

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Developmental immaturity = “[i]ncomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional, and social development.”

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If No Capacity to Proceed, NO

discretionary
transfer

adjudication

disposition
(including a
violation of
probation)

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Capacity cannot be raised in
mandatory transfer cases until
AFTER transfer



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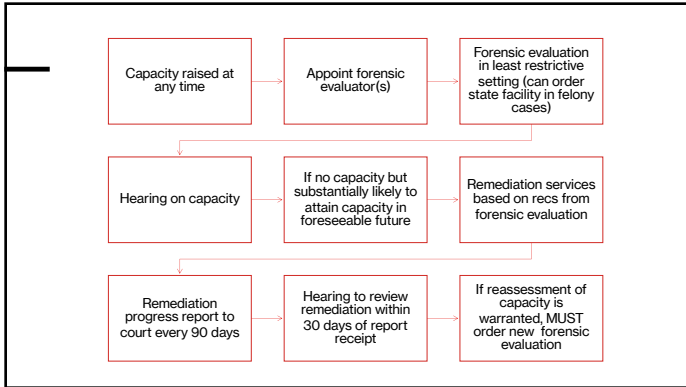
Mandate for Judicial Inquiry Regarding Capacity to Proceed

✓ In every case in which the
juvenile is younger than 12

✓ First time the juvenile appears
in court



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Juvenile Forensic Evaluators



DHHS charged with setting new standards

Current evaluators grandfathered in; will have 12 months to satisfy new standards

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Forensic Evaluation Must Include

Capacity to

- Appreciate allegations
- Appreciate range and nature of allowable dispositions
- Understand participant roles and adversarial nature of process
- Disclose pertinent facts to counsel
- Display appropriate courtroom behavior
- Testify regarding relevant issues
- Make reasonable and rational decisions
- Assist in defense in rational manner
- Any other factors evaluator deems relevant

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Forensic Evaluation Must Include

Whether capable, incapable, or incapable with ability to attain capacity in foreseeable future with remediation

Basis of incapacity

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Remediation

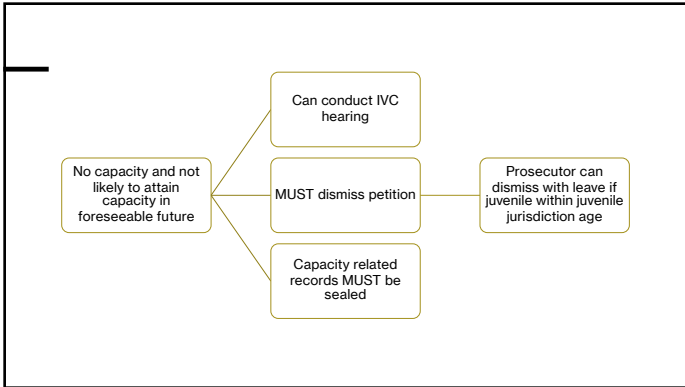
“[s]ervices directed only at facilitating the attainment of capacity to proceed for a juvenile who the court finds is incapable to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.”

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REMEDIATION TIME LIMITS

Most serious offense alleged	Remediation time limit
First-degree murder, forcible rape, statutory rape, forcible sexual offense, or statutory sexual offense	The sooner of 36 months from the finding of incapacity or the maximum jurisdiction of the juvenile court
Any other Class B1 – E felony	The sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 12 months can be granted for good cause. Remediation can never extend beyond the sooner of 24 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.
Class F – I felony or misdemeanor	The sooner of 6 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 6 months can be granted. Remediation can never extend beyond the sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.

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Advocacy Tips

Capacity

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Show up for the youth's evaluation or request to be present

DHHS facilities and evaluators often will give attorneys date/time of the location.

Sometimes being there is also a comfort to your client

Also helps you practically understand and observe the evaluation process first hand

Forensic Evaluation Tips

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Forensic Evaluation Tips

- Take time to read the entire evaluation to ensure it includes all required elements.
- If it doesn't, bring it up to the judge
- If needed, have your own expert review the evaluation and findings if necessary



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Defense Experts

This new procedure and process **DOES NOT** preclude defense counsel from seeking their own experts.

We still encourage you to seek whatever expert you think is best for your case and client's situation.

However, the court will follow this new procedure utilizing a forensic evaluator when capacity is at question

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Remediation Tips

Track

- Track your client's time and progress in remediation

File

- If you client has reached the maximum possible time for their offense type, file a motion to dismiss.

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- Session Law 2024-17
- New capacity to proceed law
- Case update

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In re B.W.C., 2022-NCCOA 590 (Sept. 6, 2022)

Adjudicated undisciplined	• Contempt warning for violation of conditions
Violation	• Motion for review • Delinquency petition for indirect contempt
Admitted to indirect contempt	• Placed on probation for 6 months

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Argument on Appeal

Delinquency adjudication for contempt resulting from noncompliance with a protective supervision order was not intended by the General Assembly, given the dispositional alternatives in an undisciplined case

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Holding

Undisciplined dispositional alternatives in the Juvenile Code ceased to control the dispositional alternatives once Brian was held in indirect contempt

Under the plain language of the indirect contempt statute (G.S. 5A-31) and the definition of delinquent juvenile (G.S. 7B-1501(7)), it was proper to adjudicate the juvenile delinquent as the result of a finding of indirect contempt based on his willful disobedience of the protective supervision order

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Notable Implications

- Indirect contempt is a minor offense (G.S. 7B-2508)
 - Assuming no delinquency history, will always be a Level 1 disposition
- No delinquency history points for an adjudication based on contempt (G.S. 7B-2507(b))
- Right to counsel attaches when juvenile is alleged to be in contempt of court when alleged or adjudicated undisciplined (G.S. 7B-2000)

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Figure 4.20
Recidivism Rates by Length of Juvenile Justice Involvement: Two-Year Follow-Up



RECIDIVISM



PRO BONO

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Force "clearly inferable" from allegation of touch against consent

[illegible]

- Indictment with non-jurisdictional defects will not be quashed or cast aside when they provide notice sufficient to prepare a defense and protect against double jeopardy

[illegible]

- Difference between what must be proved a trial and what must be alleged in indictment (here – defendant knew or reasonably should have known the victim was physically helpless)

[illegible]

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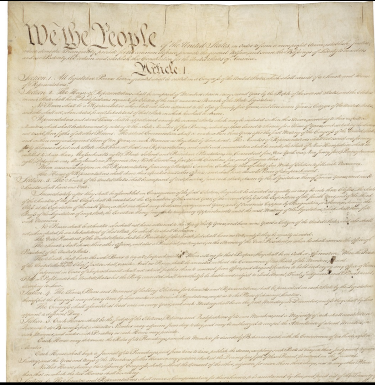


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Protected Speech or True Threat?



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True Threat

State v. Taylor, 379 N.C. 589 (2021)

- Objectively threatening statement
- Made by person with subjective intent to threaten a listener or identifiable group

Counterman v. Colorado, 600 U.S. 66 (2023)

- Must have proof of some subjective understanding of threatening nature of statement
- Mental state of recklessness is sufficient (conscious disregard of a substantial risk that communications would be viewed as threatening violence)

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True Threat Considerations

- (1) the context in which the statement was made
- (2) the nature of the language used
- (3) the reaction of the listeners upon hearing the statement

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True Threat Analysis

Objectively threatening

- Three student witnesses took statement seriously and were scared
- Daniel's tone was serious
- No one laughed in response; response was an offer to bring the guns



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True Threat Analysis

Subjective understanding

- Made statement to group of 15-17 students during school hours
- Statement was in a serious tone that could be overheard by two students
- Daniel made previous text threat against one of these students and made a video about blowing the student's brains out



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IN RE D.R.F., JR.:

**CONTINUING DISPOSITION FOR
TIME IN SECURE CUSTODY**

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G.S. 7B-2406 Continuances



For good cause to

receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile, or
allow for a reasonable time for the parties to conduct expeditious discovery



Extraordinary circumstances

when necessary for the proper administration of justice, or
in the best interests of the juvenile

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“He has been adjudicated delinquent on three prior communicating threats. One being another count of disorderly conduct at school. He was on probation for communicating threats when this happened. Obviously, if it was alluded to, I didn’t want to allude to it since we are now in a disposition or prior to disposition. Obviously, if there is any time to take this serious it is now. Unlike other ones, there is no history, but this there is history. I will show you the proof. He is a level II with four points. I will show you the approved complaints. Again, this is a pattern of conduct that needs to be stipend [sic], so I will ask Your Honor to waive disposition for seven days in order for the juvenile to be held in secure custody.”

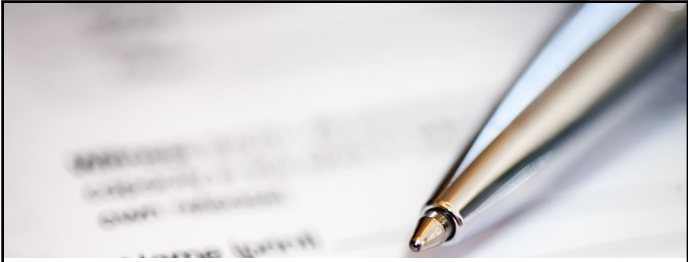
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MOOTNESS

“Capable of repetition, yet evading review”

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IN RE D.J.Y.
BLANK COURT COUNSELOR DECISION
BOX ON PETITION

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15-DAY EXTENSION OF TIME TO FILE PETITION		
Pursuant to G.S. 7B-1703, at the discretion of the undersigned chief court counselor, the time to file a petition in the above captioned case is extended 15 days.		
Date	Name Of Chief Court Counselor	Signature Of Chief Court Counselor
DECISION OF COURT COUNSELOR REGARDING THE FILING OF THE PETITION		
☐ 1. Approved for Filing		Date
☐ 2. Not Approved for Filing		Time ☐ AM ☐ PM
☐ a. Closed		Name Of Court Counselor Giving Telephonic Approval
☐ b. Diverted and Retained		Name And Title Of Person Receiving Telephonic Approval
Date	Signature Of Court Counselor	Signature Of Person Receiving Telephonic Approval
Best Practices Approved For Entry Of Entries		

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Absence of
Signature Not Cured
by:

- JCC signature in verification section of petition
- Completion of YASI and gang assessment and provision of predisposition report



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"It is well-established that the issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal.

The sufficiency of a juvenile petition is a jurisdictional issue that an appellate court reviews de novo."

Date of Offense: 16 May 2023
Petition Filed: 1 June 2023
Adjud/Dispo: 30 August 2023
Probation Until: ~ March 2024
Heard in CoA: 3 April 2024
Opinion Filed: 7 May 2024



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Jury Instruction on Adolescent Brain Properly Denied

State v. Smith, 289 N.C.App. 233 (2023)

"In this case, you may examine the defendant's actions and words, and all the circumstances surrounding the offense, to determine what the defendant's state of mind was at the time of the offense. However, the law recognizes that juveniles are not the same as adults. An adult is presumed to be in full possession of his senses and knowledgeable of the consequences of his actions. By contrast, the brains of adolescents are not fully developed in the areas that control impulses, foresee consequences, and temper emotions. Additionally, adolescents often lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.

You should consider all the circumstances in the case, any reasonable inference you draw from the evidence, and differences between the way that adult and adolescent brains functions in determining whether the State has proved beyond a reasonable doubt that defendant intentionally killed the victim after premeditation and deliberation."

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Line of Supreme Court decisions on adolescent brain development related to sentencing and not determinations of guilt

Potential to mislead jury because age at offense is not an element of the offense – "age is not considered nor contemplated in the analysis of premeditation and deliberation."

No evidence was presented on adolescent brain function; would that change the analysis?

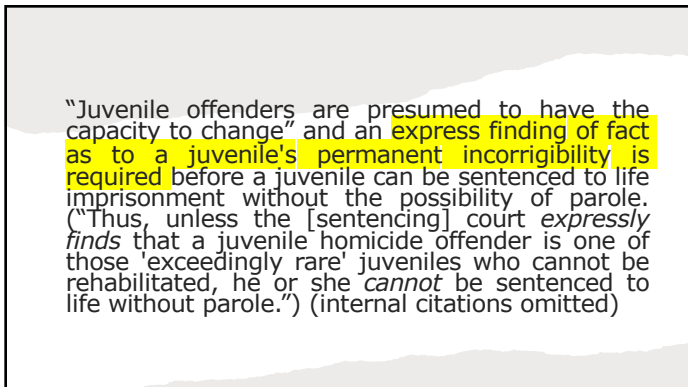
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North Carolina Criminal Law

A UNC School of Government Blog



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An Update on Life with and without Parole for Young Defendants



September 12, 2018 [Jamie Markham](#)

45 JLWOP cases pending resentencing
 28 felony murder (ineligible for LWOP), 17 eligible for LWOP
 6 of those cases were resentenced (again) to LWOP

35%

82

In re J.M., 894 S.E.2d 521 (2023)

- + Level 2 disposition
- + Ordered into DSS custody
- + Two months later the court entered a permanency planning order that removed DSS as custodian and placed juvenile in the temporary custody of grandma pending the DSS appeal of the dispositional order

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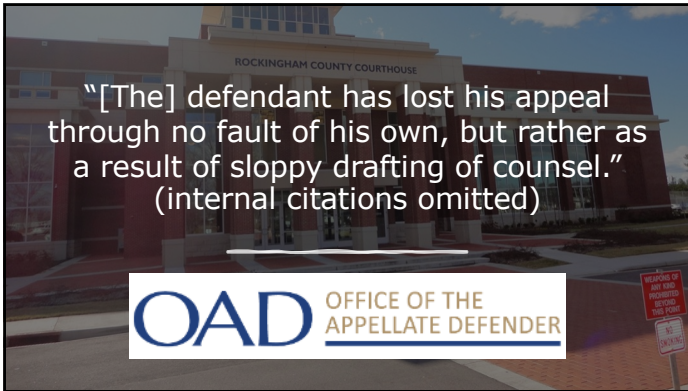
In re A.G.J., 291 N.C.App. 322

- + Written findings in dispositional order failed to demonstrate that court considered all factors in G.S. 7B-2501(c)
 - Related only to juvenile's living conditions and not the offense
 - Did not address culpability
 - Stating was a Class 1 MDM does not address seriousness of offense

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In re: S.C., 290 N.C. App. 312, 892 S.E.2d 106 (2023)

- Onslow County
- Youth must be advised of their rights before testifying

In re: N.M., 290 N.C. App. 482, 892 S.E.2d 643 (2023)

- Surry County
- At disposition, "the Court should make independent findings from the documents and indicate that each prong of NCGS §7B-2501(c) was thus considered."

State v. Borlase, 292 N.C. App. 54, 896 S.E.2d 742 (2024)

- Watauga County
- Court imposed LWOP by considering evidence of "irreparable corruption" through the crime itself (double homicide)

State v. Kelliher, 900 S.E.2d 239 (N.C. Ct. App. 2024)

- Cumberland County
- The trial court got it wrong again (vacated and remanded) (can't resentence on other matters that weren't remanded)

A blue ribbon award with a circular rosette at the top and two long tails hanging down.

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Delinquency Case Law Update

September 2022 through July 2024

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In re B.W.C.

877 S.E.2d 444 (N.C. Ct. App. 2022)

Gaston County

September 6, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41544>

Summary: Juvenile-appellant "Brian" appealed from an order adjudicating him as delinquent for indirect contempt and placing him on probation for six months. In April of 2021, Brian admitted to truancy in an undisciplined action for accruing 58 absences from school. During that proceeding, he was not represented by counsel. The matter was continued for disposition until June of 2021 with conditions imposed by the Court expressly requiring attendance at school with no further absences, amongst other requirements, with a warning that violation of the conditions may result in Brian being held in Contempt. At the undisciplined disposition hearing in June, Brian was placed on probation under the supervision of a court counselor with terms of probation including the contempt warning order previously entered. In August, a probation violation was filed alleging failure to attend school and a separate delinquency petition was filed alleging violation of the contempt warning. At this time, Brian was appointed counsel on the delinquency petition and counsel filed a motion to dismiss the petition, arguing violation of his due process and statutory rights as "N.C. Gen. Stat. § 7B-2505 read together with § 7B-2503 did not allow the trial court to pursue delinquency actions following an adjudication of undisciplined, and emphasizing the General Assembly's distinction between 'children adjudicated undisciplined versus children adjudicated delinquent[.]'" The trial court denied the motion to dismiss, and Brian admitted the indirect contempt alleged in the petition. The trial court found Brian to be delinquent and entered disposition.

Issues Affecting Youth: Whether the State may seek a delinquency adjudication for contempt in response to noncompliance with orders arising from an undisciplined adjudication? Yes, it may.

"Under a plain reading of N.C. Gen. Stat. §§ 7B-1501 and 5A-31, it is clear that [] Brian committed indirect contempt when he violated his disposition order by failing to attend school regularly, an action which was done outside of the direct presence of the trial court. Under N.C. Gen. Stat. § 5A-33, it was proper for the trial court to find Brian delinquent as a result of such contempt, as a juvenile's indirect contempt may be 'adjudged and sanctioned only pursuant to the procedures in Subchapter II of Chapter 7B of the General Statutes[.]' which contains N.C. Gen. Stat. § 7B-1501." (internal citations omitted).

In re J.M.

876 S.E.2d 874 (N.C. Ct. App. 2022)

Forsyth County

September 6, 2022

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=41541>

Summary: Juvenile-appellant "James" appealed from an adjudication order finding him responsible for simple assault. James took the witness stand to testify on his own behalf during the hearing and made several self-incriminating statements including linking his personal identity to that of social media identity otherwise implicated in the proceedings. The Court did not conduct any colloquy with James regarding his privilege against self-incrimination before James took the stand.

Issues Affecting Youth: Whether failure to hold the colloquy as required by N.C.G.S. §7B-2405 (privilege against self-incrimination) before a juvenile testifies on his own behalf constitutes reversible error? Yes, it can.

"In an adjudicatory hearing held 'to determine whether the juvenile is undisciplined or delinquent[,] . . . the [trial] court shall protect' the juvenile's 'privilege against self-incrimination[.]' '[P]ursuant to this statute, the trial court shall protect the juvenile's delineated rights, including the right against self-incrimination.' 'The use of the word 'shall' by our Legislature has been held by this Court to be a mandate, and the failure to comply with this mandate constitutes reversible error.'" (internal citations omitted).

In re A.O.

878 S.E.2d 657 (N.C. Ct. App. 2022)

Mecklenburg County

October 4, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41679>

Summary: "Anthony" was charged with common law robbery in regard to an attack on Mr. Rodriguez in the parking lot of a Fast Mart convenience store. Anthony was alleged to be one of five male, minority teenagers involved in the fight with Mr. Rodriguez. At trial, Mr. Rodriguez was unable to identify whether Anthony was the teenager who took Mr. Rodriguez's wallet, or "if it was another one." Anthony's motion to dismiss at close of State's evidence was denied. Anthony testified on his own behalf. The trial court provided no warnings to Anthony before he testified. Anthony testified that while he was not involved in the fight, he was the one to take the wallet. Anthony was adjudicated delinquent.

Issues Affecting Youth: Whether failure to hold the colloquy as required by N.C.G.S. §7B-2405 (privilege against self-incrimination) before a juvenile testifies on his own behalf constitutes reversible error? Yes, it can.

"Our courts have consistently recognized that the State has a greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.' The General Assembly has taken measures to ensure that a juvenile's rights are protected during a delinquency adjudication. N.C. Gen. Stat. § 7B-2405 states, 'In the adjudicatory hearing, the court shall protect

the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law: . . . [t]he privilege against self-incrimination.” (internal citations omitted).

“‘[A]t the very least, some colloquy [is required] between the trial court and juvenile to ensure the juvenile understands his right against self-incrimination before choosing to testify at his adjudication hearing.’” (internal citations omitted).

In re H.T.S.

2022-NCCOA-754 (N.C. Ct. App. 2022)

[Unpublished Opinion](#)

Cumberland County

November 15, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41605>

Summary: Cumberland County Department of Social Services (CCDSS) appeals a Level 2 disposition order for a delinquent juvenile in which the juvenile was placed in CCDSS’s custody following an admission of guilt to assault with a deadly weapon. The disposition order did not contain findings of fact as required by NCGS §7B-2501(c), leaving the section of the Disposition Order for findings under §7B-2501(c) entirely blank, nor under §7B-2506, requiring a finding that placement with county DSS requires a finding that the juvenile’s continuation in his own home would be contrary to the juvenile’s best interest, and the related section on the Disposition Order was left blank for this section as well. During the hearing, counsel for DSS and the juvenile’s mother were asked if they wished to be heard; counsel for DSS provided a blanket objection to the juvenile being placed in DSS custody and the juvenile’s mother provided some remarks to the Court. Neither presented evidence. On appeal, CCDSS argued that the mother’s constitutional rights to parent the juvenile was infringed upon by the award of custody to CCDSS and that, by extension, custody with CCDSS was improper. It was also argued that failure to make the appropriate findings of fact in the Dispositional Order constituted fatal deficiency.

Issues Affecting Youth: Whether the trial court must make findings of fact showing the trial court considered all five factors in §7B-2501(c) and the single factor in §7B-2506(1)(c)? Yes, it must. Whether placement with the local Department of Social Services is contrary to the parent’s constitutional rights to parent the child? The issue was not reached.

“The trial court must consider all five factors under § 7B-2501(c), and the trial court’s dispositional order must reflect that the trial court considered all five factors. The trial court may indicate its consideration of the statutory factors in both its findings of fact, and in the conditions of the disposition itself.” (internal citations omitted)

In re J.M.M.C.

No. COA22-524, 2022 N.C. App. LEXIS 763 (Ct. App. Nov. 15, 2022)

[Unpublished Opinion](#)

Richmond County

November 15, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41844>

Summary: James was adjudicated delinquent of simple possession of marijuana and a Level 1 disposition was entered, ordering that James be placed on supervised probation for a term of 6 months. Trial counsel appealed prior to the court's entry of the written final order. The disposition order did not contain findings demonstrating it considered the factors listed in NCGS §7B-2501(c) in entering the dispositional order.

Issues Affecting Youth: Whether the trial court must make findings of fact showing the trial court considered all five factors in §7B-2501(c)? Yes, it must.

““The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law.’ ‘The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition.’” (internal citations omitted).

In re A.M.S.

No. COA22-266, 2022 N.C. App. LEXIS 821 (Ct. App. Dec. 6, 2022)

[Unpublished Opinion](#)

Davidson County

December 6, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41758>

Summary: Juvenile entered an *Alford* admission in district court to Possession of a Weapon on School Property and First-Degree Trespass. An assessment conducted by the Court Counselor indicated mental health concerns. During the admission, the Trial Court engaged in a colloquy with the juvenile including the following question by the trial court: “Do you understand at this hearing you have the right to say anything about your charge, and any statement that you make can be used as evidence against you?” The Trial Court accepted the admission and ordered Level 1 disposition with probation for 12 months and cooperation with any residential treatment programs recommended. The order did not refer the juvenile for a mental health evaluation.

Issues Affecting Youth: Whether the trial court must strictly comply with the statutory requirements of NCGS 7B-2407, which requires the Court ensure the juvenile's admission is the product of a fully informed choice by the juvenile? Yes, it must. Whether the trial court must make a mental health evaluation referral if there is any evidence of mental health issues? Yes, it must.

“Here, the Record reflects the trial court may have simply misspoken when it informed A.M.S. he had the right to ‘say anything about your charge[.]’ Indeed, this appears to be a simple misrecitation of the pre-printed form, which states: ‘you have the right to *not* say anything about your charge[s] . . .’ (emphasis added). Nevertheless, our case law compels a trial court’s oral inquiry ‘strictly comply’ with each requirement of N.C. Gen. Stat. § 7B-2407(a).” (internal citations omitted).

“...N.C. Gen. Stat. § 7B-2502(c)—now repealed but applicable to the Petitions in this case—required the trial court to refer [the juvenile] to the area mental health services director. The State [agrees, however] points to the more recently applicable N.C. Gen. Stat. § 7B-2502(a) as the statutory mandate requiring referral for a mental health evaluation.” (internal citations omitted).

In re J.B.

No. COA22-605, 2022 N.C. App. LEXIS 789 (Ct. App. Dec. 6, 2022)

[Unpublished Opinion](#)

Union County

December 6, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41880>

Summary: Juvenile “Jacob” appeals from orders adjudicating him delinquent for second-degree forcible rape and placing him on probation for twelve months. The matter was calendared, with consent of the parties, for a date certain “for probable cause and adjudication.” The court held a combined probable cause and adjudication hearing on that date after hearing evidence and entered disposition to include twelve months of probation. On appeal, the Court reviewed the colloquies in court regarding the calendaring of the court dates and noted that trial counsel objected to a virtual hearing but did not otherwise object to scheduling the probable cause and adjudication hearings together for the same date.

Issues Affecting Youth: Whether Jacob “invited error” by seeking a combined hearing and thus waived the right to appellate review concerning the invited error? Yes, he did.

“[A] defendant who invites error cannot be prejudiced as a matter of law. ‘The doctrine of invited error applies to a legal error that is not a cause for complaint because the error occurred through the fault of the party now complaining.’ ‘Thus, a defendant who invites error has waived his right to all appellate review concerning the invited error’” (internal citations omitted).

In re L.D.G.

No. COA22-286, 2022 N.C. App. LEXIS 804 (Ct. App. Dec. 6, 2022)

[Unpublished Opinion](#)

Buncombe County

December 6, 2022

<https://appellate.nccourts.org/opinions/?c=2&pdf=41667>

Summary: “Luke” was adjudicated delinquent for misdemeanor simple assault and misdemeanor disorderly conduct after the trial court denied his motions to dismiss for insufficient evidence. Luke was involved in an altercation in which law enforcement became involved in an attempt to break up the fight. The officer provided testimony during trial, including that Luke was at the bottom of two individuals in a fight. Parts of the officer’s testimony conflicted with his body cam footage, which was made a part of the record on appeal. The trial court denied Luke’s motion to suppress, adjudicated Luke to be delinquent, and ordered Level 1 disposition.

Issues Affecting Youth: Whether sufficient evidence was presented to survive a motion to dismiss? No, it was not.

“This Court reviews motions to dismiss for insufficient evidence de novo. In its ruling, the lower court must decide ‘whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense.’ ‘Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.’ The trial court should deny the motion to dismiss if ‘substantial’ direct or circumstantial evidence exists ‘to support a finding that the offense charged has been committed and that the [juvenile] committed it.’” (internal citations omitted).

“This Court must consider the evidence ‘in the light most favorable to the State,’ entitling the State to ‘every reasonable inference of fact that may be drawn from the evidence.’ When a party presents circumstantial evidence, ‘the court must consider whether a reasonable inference of [the juvenile’s] guilt may be drawn from the circumstances.’ When an inference is drawn, the court, as the fact finder in the juvenile matter, must then determine ‘whether the facts taken singly or in combination, satisfy [the court] beyond a reasonable doubt that the juvenile is delinquent.’ However, when the evidence presented advances ‘no more than a suspicion or conjecture as to . . . the commission of the offense . . . the motion should be allowed.’” (internal citations omitted).

State v. Smith

No. COA22-719, 2023 N.C. App. LEXIS 292

Buncombe County

June 6, 2023

<https://appellate.nccourts.org/opinions/?c=2&pdf=42349>

Summary: Mr. Smith was tried by jury and found guilty in Buncombe County for a first-degree murder offense. He was 16 years old at the time of the offense, a shooting murder in Asheville, NC. During the trial, and on appeal, defense objected and appealed on many grounds, including voluntary intoxication, lesser-included charge jury instructions, and of particular interest to youth defenders, a request for a special jury instruction on intent, premeditation, and deliberation for adolescents.

Issues Affecting Youth: Whether youth may receive a special jury instruction related to adolescent brain development and its effect on culpability in the absence of evidence of adolescent brain function. No, they may not.

“Although we agree the Supreme Court of the United States has stated ‘children are constitutionally different from adults for purposes of sentencing [,]’ it has never found this difference relevant to a finding of guilt. In fact, the Supreme Court has articulated their decisions do not ‘suggest an absence of legal responsibility where crime is committed by a minor.’ Defendant concedes that no court has held such and we decline to announce a new legal precedent.

Here, even if the statements in defendant's proposed instructions are, arguably supported by current scientific research, they are not supported by the evidence, since no evidence was presented on adolescent brain function, and they are not a correct statement of the law. The instruction for first-degree murder provided by the trial court fully encompassed the elements of the offense. Defendant's age is not considered nor contemplated in the analysis of premeditation and deliberation; therefore, this instruction would be incorrect and likely to mislead the jury.” (Internal citations omitted)

The Court's reference to the lack of evidence presented on adolescent brain development being different than that of adults' brain development, and thus the relevance to culpability, leaves open the door for defenders to ask for this special jury instruction during trials in which an expert or other witness provides testimony or evidence on the difference (and relevance) of adolescents' brains and their culpability.

In re: J.U.

No. 263PA21, 2023 N.C. LEXIS 419

Cumberland County

June 16, 2023

(On discretionary review of an unpublished opinion)

<https://appellate.nccourts.org/opinions/?c=1&pdf=42371>

Summary: The youth was charged adjudicated delinquent on misdemeanor sexual battery, the petition for which alleged that "the juvenile did unlawfully, willfully engage in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification." (While other charges were petitioned and adjudicated, this was the only remaining

charge that was appealed to the NC Supreme Court.) The trial court entered a Level II disposition order, and the youth was required to complete twelve months of probation and up to fourteen twenty-four-hour periods of secure custody in addition to fulfilling certain other requirements.

Issues Affecting Youth: Whether a sexual battery petition that fails to specifically allege the element of force was fatally defective and failed to invoke the trial court's jurisdiction. Under these circumstances, it was not.

"The petition here alleged that J.U. 'engage[d] in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification.' By alleging that J.U. touched B.A.'s vaginal area without her consent, the petition asserted a fact from which the element of force was, at the very least, 'clearly inferable,' such that 'a person of common understanding may know what [wa]s intended.' Thus, the factual allegations in the juvenile petition supported each element of misdemeanor sexual battery. The petition, therefore, complied with statutory pleading standards, and no jurisdictional defect existed." (Internal citations omitted)

Justice Earls dissented, with Justice Morgan joining, noting that the misdemeanor sexual battery statute requires an element of force, and that if the General Assembly had intended for the omission of the element of force, it could have constructed the statute like that of other states whose statutes do not require a showing of the element of force.

"'[T]he state has a *greater* duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.' Accordingly, our Court 'shall' protect '[t]he right to written notice of the facts alleged in the petition' in order 'to assure due process of law.'" (Internal citations omitted)

Justice Earls distinguishes that "acting against the will of the victim and acting with force are not synonymous, and the law draws a distinction between both actions," and "[w]hile the majority characterizes the pleading requirements listed in section 7B-1802 as 'highly technical[] [and] archaic[,],' those requirements are more properly characterized as constitutional procedural due process protections. Procedural due process is 'a guarantee of fair procedure.' While state action that deprives a person of 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law.*" (Internal citations omitted)

In re: S.C.

No. COA22-965, 2023 N.C. App. LEXIS 529

Onslow County

September 5, 2023

<https://appellate.nccourts.org/opinions/?c=2&pdf=42606>

Summary: A hearing was held in delinquency court on a petition for misdemeanor assault in which the youth testified on her own behalf. Before allowing the youth to take the stand, the Court did not conduct any colloquy with the youth nor advise her of her rights, including fifth amendment rights and protections. During her testimony, the youth made incriminating statements against herself, which statements were used by the State in its closing arguments. The youth was found responsible, and an adjudicatory order was entered. On appeal, the State conceded that the failure to advise the youth constituted reversible error; the adjudication was vacated and remanded.

Issues Affecting Youth: It is a clearly established statutory mandate that a youth must be advised of their rights before testifying on their own behalf in a delinquency proceeding, and that youth are afforded greater protections than adults during such proceedings.

“‘Our courts have consistently recognized that the State has a greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.’ ... ‘[T]he court shall protect the following rights of the juvenile and the juvenile’s parent, guardian, or custodian to assure due process of law,’ including ‘[t]he privilege against self-incrimination.’ ‘[B]y stating that the trial court shall protect a juvenile’s delineated rights, [the General Assembly] places an affirmative duty on the trial court to protect . . . a juvenile’s right against self-incrimination.’ ‘The plain language of N.C.G.S. § 7B-2405 places an affirmative duty on the trial court to protect the rights delineated therein during a juvenile delinquency adjudication.’” (internal citations omitted)

In re: N.M.

No. COA23-100, 2023 N.C. App. LEXIS 601

Surry County

September 19, 2023

<https://appellate.nccourts.org/opinions/?c=2&pdf=42606>

Summary: A hearing was had in delinquency court in this matter in regard to a fight on a school bus. The youth charged was found to be delinquent and adjudicated for simple assault and Level 1 disposition, including 12 months of probation. In the disposition order, the Court marked the pre-printed checkbox that it had received and considered the predisposition report, risk assessment, and needs assessment, as well as a Youth Assessment and Screening Instrument (YASI) full narrative assessment, but left the section entitled “Other Findings” blank, and did not make any independent findings about the contents of the submitted documents or any other dispositional factors required to be considered pursuant to NCGS §7B-2501(c). The Court of Appeals reversed the dispositional order and remanded for a new dispositional hearing.

Issues Affecting Youth: In crafting dispositional orders, Courts must consider all five factors required by NCGS §7B-2501(c): (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. The Court must make *independent* findings on each of these factors, which means something above and beyond reading, considering, and/or incorporating by reference the predisposition report, risk assessment, needs assessment, or YASI assessment (or other such submitted documentation); while the information can come *from* these documents, the Court should make independent findings from the documents and indicate that each prong of NCGS §7B-2501(c) was thus considered.

“This Court has held ‘the trial court is required to make findings demonstrating that it considered the [N.C. Gen. Stat.] § 7B-2501(c) factors in a dispositional order entered in a juvenile delinquency matter.’ ‘The plain language of Section 7B-2501(c) compels us to find that a trial court must consider each of the five factors in crafting an appropriate disposition.’ (internal citations omitted)

In re J.M.

No. COA23-215, 2023 N.C. App. LEXIS 623

Cumberland County

October 3, 2023

<https://appellate.nccourts.org/opinions/?c=2&pdf=42645>

Summary: In a delinquency matter, custody of the youth was granted to the Cumberland County Department of Social Services. CCDSS appealed from this order, seeking relief from the grant of custody. By the disposition of the matter, custody was given to the youth’s grandmother. The Court of Appeals determined the issue to be moot and that no exception to reviewing the matter existed, and as such dismissed the appeal.

Issues Affecting Youth: While this case didn’t address a delinquency issue directly, it is likely the first case in which the issue of mootness, and the exceptions to that doctrine, are addressed in a delinquency case. While the Court of Appeals found that none of the exceptions applied in this case, Defenders should take note that the explanation of the “capable of repetition” prong may be applicable to many areas of delinquency defense, including but not limited to secure custody issues, and other issues that resolve at disposition of a matter and as such are generally not appealed, especially when an interlocutory appeal is not available. The argument is not one that is necessarily to be used in the courtroom (no immediate relief for the youth in custody), but defenders should keep in mind to contest secure custody, particularly if the youth is being detained illegally, so that the issue is preserved for appellate review.

“Nevertheless, there are five exceptions to this general rule of dismissal [for mootness]: (1) when a defendant voluntarily stops the challenged conduct; (2) when the challenged conduct involves an important public interest; (3) when the challenged conduct evades review but is capable of repetition; (4) when there are adverse collateral consequences of denying review; and (5) when other claims of class members remain.”

“[A] case is capable of repetition, yet evades review, when: (1) the challenged conduct is too fleeting to be litigated before the conduct ends; and (2) there is a reasonable expectation that the complaining party will be affected by the same conduct again. Under this exception, ‘the underlying conduct upon which the relevant claim rests [must be] necessarily of such limited duration that the relevant claim cannot be fully litigated prior to its cessation and the same complaining party is likely to be subject to the same allegedly unlawful action in the future.’”

“The first prong requires a brief controversy with a ‘firmly established’ endpoint. An example of such a controversy includes election misconduct. An election is short, and its conclusion is established by statute and ‘beyond the control of litigants.’ Because an election winner is declared soon after any alleged election misconduct, the scenario is too fleeting to be litigated before the election ends. Juvenile-custody controversies, however, are not too fleeting to be litigated before the controversy ends. Indeed, we regularly review juvenile-custody cases.” (all internal citations omitted)

In re: A.G.J.

No. COA23-323

Rockingham County

21 November 2023

<https://appellate.nccourts.org/opinions/?c=2&pdf=42749>

Summary of the Case: “Annie” admitted responsibility on two misdemeanors and disposition was entered, placing her on twelve months of probation and in the custody of the Rockingham Department of Social Services. Timely notice of appeal was filed, albeit not drafted with technical correctness, as the appeal did not indicate to which Court the appeal was being taken. Disposition was vacated and remanded for a new dispositional hearing that considered all factors required by statute.

Issues Affecting Youth: What findings by a court satisfy the requirement that all factors in NCGS 7B-2501(c) be considered? The majority opinion held that each factor must be individually considered within the dispositional order itself. However, Judge Stroud’s dissent indicated that “incorporating documents by reference” should satisfy the requirements of the statute if those referenced documents address all the factors.

“This Court’s precedents have made it clear that the trial court is required to make written findings in a disposition order entered in a juvenile delinquency matter, demonstrating it considered all the factors in Section 7B-2501(c).”

“As the dissenting judge, I will not attempt to reconcile years of arguably inconsistent case law and remain ‘trapped in a chaotic loop as different panels disagree[.]’ I simply note that here, by incorporating the pertinent documents into its order along with its additional findings of fact, the trial court satisfied North Carolina General Statute Section 7B-2501(c)”... (internal citations omitted)

Other Topic Affecting Youth Defenders: The process of appealing a juvenile delinquency matter can be a little tricky from some aspects – and yet very straightforward on others. Defenders should familiarize themselves with the appeals process – check out thoughts from Assistant Appellate Defender David Andrews on the specifics of appealing delinquency cases at the end of today’s Case Law Corner!

The appellate courts can get ugly when an appeal isn’t entered properly: “[I]t was ‘readily apparent that [the] defendant has lost his appeal through no fault of his own, but rather as a result of sloppy drafting of counsel.’” State v. Hammonds, 218 N.C. App. 158, 163, 720 S.E.2d 820, 823 (2012) Remember that improper appeals create jurisdictional issues and leaves the appellate defenders begging the courts to hear the case anyway. If you are unsure, please reach out to us or the Appellate Defender’s office and we will be happy to help!

In re: T.L.B.

No. COA23-565

Lincoln County

21 November 2023

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=42933>

Summary of the Case: Timothy admitted to the allegations of Secret Peeping, a class 1 misdemeanor, and Dissemination of Images Obtained in Violation of the Peeping Statute, a class H felony. The trial Court found Timothy to have a “Low” delinquency history and advised Timothy during the admission colloquy that the most serious or severe disposition level that could be imposed was a Level 1 Disposition. In fact, a class H felony, even for a Low Delinquency History, can be sentenced as Level 1 or Level 2. The trial court imposed a Level 1 disposition. Timely notice of appeal was filed, albeit not technically correct in its timing as the appeal was filed before the written order was filed.

Issues Affecting Youth: Whether the language on the AOC provided Transcript of Admission meets the statutory requirements to advise the youth of his right to confront witnesses? Yes, it does.

Jurisprudence “require[s] the juvenile to be informed of all six of the rights enumerated by the statute. Had the Supreme Court intended for a verbatim reading by the trial court of Section 7B-2407(a), it would have clearly stated so.” (Citations omitted)

Whether advising a youth that the most serious disposition a court could impose is a Level 1 disposition, even if the youth is eligible for Level 2 disposition, is a knowing and voluntary admission if the Court actually imposes Level 1 disposition? Yes, it is.

“[A] trial court does not err when it advises a juvenile of a specific disposition level it could receive, then orders the juvenile to the advised-of disposition level, even though it could have ordered a higher level. This is necessarily so because it cannot be said the admission was not knowing or voluntary when a juvenile receives the disposition level of which they were advised.

Are there exceptions to the mootness rule (which bars appellate courts from reviewing matters if they have become moot)? Yes. Two exceptions to this rule are the “capable of repetition, yet evading review” exception, and the “public interest” exception.

“The capable of repetition, yet evading review exception applies when: “(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.” (Citations omitted)

“Under the public interest exception to mootness, an appellate court may consider a case, even if technically moot, if it involves a matter of public interest, is of general importance, and deserves prompt resolution.” (Citations omitted)

Trial defenders should remember that appellate defenders can always make an argument that an issue should be reviewed even if it is moot under these exceptions. This may be particularly applicable in situations where judges routinely hold children in secure custody on illegal or improper grounds. Please contact us or the Appellate Defenders office if you’d like to become more familiar with this concept and how you might help preserve these issues for appellate review.

Thoughts on Appealing Juvenile Delinquency Matters from Appellate Defender David Andrews

In a very timely conversation on the juvenile defense listserv, a defender asked a question to which Assistant Appellate Defender David Andrews responded with a fantastic list of tips and things to remember when appealing juvenile delinquency cases. I’ve reproduced a lightly edited version of his response here – please reach out to us or to David with any questions or thoughts! (And if you’re not on the listserv but would like to be added, just let us know!)

The relevant statute for the right to appeal in delinquency cases is [N.C. Gen. Stat. 7B-2602](#).

Take a minute to read it. It’s not long.

*As a general matter, it’s easier to give oral notice of appeal. It’s just less complicated. However, you must be sure to give oral notice of appeal **after the judge orally enters disposition**. There are lots of cases where attorneys give notice of appeal after the client*

enters an admission (pleads guilty), but before the judge issues the disposition. Don't do that! The notice of appeal in that scenario is premature, invalid, and subjects the appeal to dismissal.

Also, as a general matter, you can't appeal directly from the adjudication order. Instead, **you can only appeal from a dispositional order.** Again, this is in the text of NCGS 7B-2602. (There's one complicated exception where you can give written notice of appeal from the adjudication order between the 60th and 70th day after the adjudication if no disposition has been entered)

NCGS 7B-2602 also says you can give written notice of appeal within 10 days after the disposition has been entered. The problem is that if you didn't give oral notice of appeal, you must keep checking with the clerk to see when the judge files the written dispositional order in the court file. That is, you cannot enter written notice of appeal until there is a file-stamped written order. If you give written notice of appeal on the same day of the dispositional hearing, but the judge doesn't file the written dispositional order until a week later, your written notice of appeal will – again – be premature, invalid, and subject the appeal to dismissal. (All of this is obviously complicated and frustrating. I've argued against some of this insanity to no avail) I've attached a sample written notice of appeal. **If you file a written notice of appeal, be sure to file it after the written order is file-stamped and serve a copy on the prosecutor.**

When you give notice of appeal, you can also ask, orally or in writing, that the dispositional order be stayed. A sample written stay motion is available in the [Trial Motions and Forms Index](#) section of the Defenders Portal. If you ask for a stay and your request is denied, then the appellate attorney could potentially ask the Court of Appeals for a stay. However, if you don't ask for a stay in juvenile court, the appellate attorney cannot ask for a stay. (This is a function of Rule 8 of the [North Carolina Rules of Appellate Procedure](#))

Lastly, you might want to fill out and include with your notice of appeal an appellate entries. The appellate entries is an order where the trial judge appoints the Office of the Appellate Defender to represent the client. You can find an appellate entries for delinquency cases [here](#). Whether you prepare the appellate entries or the clerk does, **please make sure that any and all hearings that occurred in the case are included in the box on the top left box on the front page.** If you don't, the appellate attorney will have to figure when any relevant hearings were – and that is time-consuming, difficult, and makes the appeal last longer. It is far easier and much more efficient if you, the trial attorney, include those dates on the appellate entries at the beginning of the appeal.

If you have questions, please post them email on the juvenile listserv so everyone can see the questions and answers. These issues come up frequently, and I think an open discussion would help everyone become more familiar with what needs to be done to get an appeal up to the Appellate Division. Please also feel free to reach out to me by sending an email to David.W.Andrews@nccourts.org

In re: M.E.W.

No. COA23-21

Guilford County

19 December 2023

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=42469>

Summary of the Case: The youth, a 16-year-old male, was charged with misdemeanor assault and felony possession of a stolen firearm in Greensboro. The charges arose from an allegation that the youth had pointed a rifle at his stepfather, who called the police. Police only located the rifle under a pile of clothing in the youth's bedroom after questioning the youth multiple times. Evidence was admitted as to the rifle being stolen, but no direct evidence as to the youth's knowledge of the stolen status of the gun. Trial counsel moved to suppress the youth's statement as to the location of the gun as well as moved to dismiss for lack of evidence of the youth's knowledge of the status of the gun. Both motions were denied by the trial court.

Issues Affecting Youth: On appeal, the Court reviewed the denial of the motion to dismiss *de novo* and upheld the decision, citing precedent that "a defendant's 'guilty knowledge may be inferred from incriminating circumstances. . . .'" (internal citations omitted) and finding that "there is substantial evidence supporting the trial court's determination that M.E.W. had reasonable grounds to believe the property to have been stolen." (citations omitted)

The Court remanded the case for further conclusions of law on the motion to suppress, stating, "we note that the motion to suppress presented the trial court with a couple of issues—a constitutional and statutory challenge. Conducting meaningful appellate review requires the trial court's rationale underlying its decision to deny the motion to suppress." (citations omitted) The Court declined to consider the *Miranda* and Public Safety Doctrine argument presented by the youth without the appropriate conclusions of law by the trial court.

State v. Borlase

No. COA22-985

Watauga County

2 January 2024

<https://appellate.nccourts.org/opinions/?c=2&pdf=42764>

Summary of the Case: Tristan Borlase was 17 years and 11 months old at the time he was charged with the murder of his parents. The State presented evidence that the youth acted with premeditation and deliberation and presented further evidence of the youth's lack of remorse after the events. Defense presented testimony from various experts and mitigation specialists

for consideration during the trial and sentencing phases. After trial and a *Miller* hearing, he was sentenced to two consecutive LWOP (life without parole) sentences.

Issues Affecting Youth: The majority opinion held that the trial considered all evidence presented and properly used its discretion in imposing two LWOP sentences. The court quoted *Roper v. Simmons* to “reiterate the ‘great difficulty [for the sentencing judge] of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption,’” (citations omitted, emphasis in original) placing literal emphasis on the characteristics of the youth at the time of the offense. The court held that “the trial court complied with the holding when it expressly found that there was no likelihood that Defendant would be rehabilitated during confinement.”

Judge Arrowood wrote a lengthy dissent (28 of the 44 page opinion), stating that the majority opinion renders meaningless the requirement that it consider the statutory *Miller* factors “by allowing the trial court to ignore credible evidence.” The dissent details the copious amounts of evidence offered as the circumstances of the youth throughout his life and took much issue with the majority opinion’s consideration of what constituted credible evidence.

“Such blatant disregard for precedent demands justification, but the majority offers none. Instead, it wrongly concludes that the sentencing judge considered the evidence presented and complied with the statute. Moreover, rather than acknowledge defendant’s evidence, the majority concentrates on excusing the trial court for its ‘significant consideration’ of the crime when sentencing defendant— ‘despite the fact that the case law warns against such a focus[.]’ In the process, the majority diminishes longstanding concerns surrounding the sentencing of juveniles and the importance of ‘considering an offender’s youth and attendant characteristics before imposing a life without parole sentence.’ (all citations omitted).

In re: G.J.W.L.

No. COA23-458

Surry County

2 January 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=42874>

Summary of the Case: “Gregory” was adjudicated responsible for one count of second-degree trespass and one count of disorderly conduct at a school arising out of the youth’s non-compliance with an SRO’s instructions to leave school property. Defense counsel moved to dismiss the disorderly conduct petition at the close of state’s evidence, but the motion was denied. Gregory took the stand to testify, and the trial court did not advise him of his right against self-incrimination. Defense counsel did not renew the prior motion to dismiss at the close of all evidence. The trial court entered a Level 1 disposition with twelve months of probation and community service.

Issues Affecting Youth and Youth Defenders: The challenge to the denial of the motion to dismiss was not addressed by the appellate court as the argument was not preserved and appellate review of the issue was waived when the motion to dismiss was not renewed at the close of all evidence.

However, the appellate court determined that because the trial court did not engage in any colloquy with Gregory in regard to his privilege against self-incrimination, this constituted reversible error and the adjudication order was reversed and a new hearing was ordered. “A trial court overseeing a juvenile-delinquency proceeding has a heightened obligation to protect the constitutional and statutory rights of any minors who appear before it.” (citations omitted)

In re: J.U.

No. COA20-812-2

Cumberland County

2 January 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43065>

Summary of the Case: This case is a [remand from the Supreme Court](#) from a discretionary review of an unpublished opinion from the Court of Appeals. Because the Supreme Court reversed the Court of Appeals’ holding that force was not alleged in the petition (holding that nonconsensual sexual contact with another person must inherently have the application of some ‘force,’ however slight), the Court of Appeals was unable to address the motion to dismiss as the matter had not been properly preserved for appeal and no manifest injustice existed to allow for invocation of Rule 2 for review of the matter. The court also indicated the issue of the failure of the trial court to include written findings of fact demonstrating it considered the dispositional factors was moot due to the probationary period having previously expired.

In re: K.J.B.H.

No. COA23-632

Davie County

6 February 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43164>

Summary of the Case: Kyle was adjudicated delinquent for sexual battery and the court imposed a Level 1 Disposition for “inappropriate touching” of another student on her breasts while on the school bus. Trial counsel moved to dismiss, both at close of state’s evidence, and at the close of all evidence, for failure to show sexual purpose. The trial court found that the State had met its burden to show sexual purpose. The trial court did not provide written findings showing it considered the five factors under NCGS §7B-2501 required for disposition.

Issues Affecting Youth: Defenders should review the opinion as a large portion of the opinion discusses the factual details received as evidence by the trial court that amounted to sufficient evidence of sexual purpose, including concessions of some factors that would seem to disfavor a showing of purpose. Significantly, the Appellate Court indicates that while some evidence was received of the existence of disabilities or other conditions that may have had some bearing on the Court’s analysis, sufficient evidence was not presented for the Court to consider those circumstances. Defenders should take note that Appellate Courts typically require evidence in the form of expert testimony or admission of relevant documents to fully establish such factors.

“We note that the Record shows Kyle has been diagnosed with attention deficit hyperactivity disorder and mild intellectual disabilities, and that he receives learning accommodations. While this could have had bearing on our analysis, there was no expert testimony as to Kyle’s diagnosis and accommodations...”

State v. Kevin Salvador Golphin

No. COA22-713

Cumberland County

6 February 2024

<https://appellate.nccourts.org/opinions/?c=2&pdf=42486>

Summary of the Case: In 1997, Defendant and his brother shot and killed two law enforcement officers when the officers attempted to arrest the brothers for stealing a car. Defendant was arrested, indicted, and tried, and in 1998 Defendant was found guilty by a jury of two counts of first-degree murder. Defendant was 17 years, 9 months, and 2 days old at the time of the murders. While originally sentenced to death for the offenses, a *Miller* resentencing hearing was held in April of 2022 and Defendant was resentenced to mandatory life imprisonment without the possibility of parole.

Issues Affecting Youth: What is the standard for review of a trial court’s analysis of the *Miller* factors during a sentencing or resentencing hearing? The appellate courts will review for abuse of discretion. Defenders should note that a sentencing court’s findings of fact may be challenged as unsupported by competent evidence, which may alter the appellate court’s review and analysis of the case.

“We first note that Defendant did not challenge any of the sentencing court’s findings of fact as unsupported by competent evidence. The sentencing court’s findings are therefore binding on appeal. . . . We acknowledge there is room for different views on the mitigating impact of each factor, but given the sentencing court’s findings, the court did not abuse its discretion in sentencing Defendant to consecutive terms of life imprisonment without the possibility of parole.”

State v. Riley Dawson Conner

No. COA23-470

Columbus County

19 March 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43132>

Summary of the Case: This opinion is the most recent in a series of opinions in the Kelliher/Conner series addressing de facto LWOP sentences for juveniles. In June of 2022, the North Carolina [Supreme Court reversed and remanded](#) Riley Dawson Conner’s case to the trial court for “further proceedings not inconsistent” with the opinion. The resentencing hearing was set for 1 November 2022 during which the trial court altered the sentence to comport with the 40-year “bright line rule” of the North Carolina Supreme Court, imposing a sentence in the mitigated range for both charges (murder, rape) and calculating that Conner would be eligible for parole at 39.4 years of incarceration.

Issues Affecting Youth: If there is no intent to impose LWOP, may consecutive sentences be imposed in Superior Court if the sum of those sentences are 40 years or less of incarceration before a youth is eligible for parole? Yes, it may.

“At resentencing, the trial court acknowledged its intent to comply with this ‘40-year bright-line rule,’ readopted its findings in mitigation, and imposed a sentence that met this requirement. The trial court followed the instructions outlined within the Supreme Court’s opinion. Based upon the analysis of *Conner II* and the trial court’s compliance with the opinion, the trial court did not err in its resentence of Defendant. . . . Similarly, ‘[w]hen multiple sentences of imprisonment are imposed on a person at the same time . . . the sentences may run either concurrently or consecutively, as determined by the court.’ N.C. Gen. Stat. § 15A-1354(a) (2023). Therefore, the determination rested within the trial court’s discretion to continue to impose consecutive terms on Defendant’s sentences.”

In re: S.C.

No. COA23-615

Wake County

19 March 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43187>

Summary of the Case: Rachel was charged with petitions arising out of a school fight at her middle school, which included injuries sustained by the assistant principal when attempting to break up the fight. Petitions were taken out for assault inflicting serious bodily injury, assault on a school employee, resisting a public officer, and simple affray, and an adjudicatory hearing was held on the petitions. At the close of all evidence, including the testimonies of the assistant

principal and SRO, Rachel moved to dismiss all allegations for insufficiency of the evidence. The trial court denied the motion and, ultimately, found Rachel was responsible for all four allegations.

The Appellate Court also addressed a question of jurisdiction of the CoA to review the matter.

Issues Affecting Youth: If the Court finds a youth responsible for both Felony Assault Inflicting Serious Bodily Injury and Misdemeanor Assault of a School Employee, must it arrest judgment on the misdemeanor charge? Yes, it must.

“While the State defends the result at trial on the basis that ‘felony assault inflicting serious bodily injury [] and misdemeanor assault of a school employee [] involve different statutory provisions and each offense contains an element not present in the other’ — seemingly conflating the statutory construction analysis with our elemental test for double jeopardy — it ignores the fact that the same could have been said for the offenses in *Jamison*. Accordingly, we vacate the adjudication order in part inasmuch as it did not arrest judgment for the charge under N.C.G.S. § 14-33(c)(6).” (internal citations omitted)

In re: E.M.

No. COA23-884

Yancey County

2 April 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43280>

Summary of the Case: Fourteen year old E.M. admitted responsibility, pursuant to plea agreement, to felonious breaking and entering, and the state dismissed remaining petitions against the youth for other related felonies. The facts of the case seem to indicate an emotionally charged setting for the victim and possibly community. The Court entered a Level 2 disposition order on the same day as the adjudication, and ordered E.M. to pay restitution, perform community service, and other terms of supervised probation. Notably, there was no specification as to the amount of restitution to be paid within the dispositional order (or the conditions of probation). Some information was presented to the court that other juveniles were involved in the breaking and entering(s), and that total damages came to \$20,949.00. The Court also did not make any findings of fact as to why a Level 2 disposition was being imposed since the Court did have authority to issue a Level 1 disposition in this matter.

Issues Affecting Youth: May a Court enter a blanket requirement that “restitution be paid” without consideration of the best interest of the juvenile, the ability of the juvenile to pay said restitution, and by extension, a specification of how much restitution is to be paid? No, it may not.

“The district court’s only finding regarding restitution was that E.M. was to pay restitution to the victim’s benefit within twelve months, and that there was joint and several liability. Here, the district court did not state with particularity, orally or in writing on the disposition order, the terms of restitution (i.e., the amount E.M. was to pay) or any findings showing that the court considered whether restitution was ‘fair and reasonable, and in the best interest of the juvenile.’ Thus, based on well-settled case precedent by this Court, we cannot determine whether the conditions of restitution are in the best interest of E.M., and therefore we remand this disposition order with instructions for the district court to make appropriate findings of fact.” (internal citations omitted)

“Pursuant to N.C. Gen. Stat. § 7B-2506(4) and (22), if the juvenile establishes to the court that she does not have, and could not reasonably acquire, the means to make restitution, then the court “shall not require the juvenile to make restitution.” (internal citations omitted)

May a Court enter a Level 2 Disposition Order when also authorized to enter a Level 1 Disposition Order without making any supporting findings of fact as to why a Level 2 Disposition Order is the most appropriate disposition? No, it may not.

“Under N.C. Gen. Stat. § 7B-2501(c), the court ‘shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile.’ N.C. Gen. Stat. § 7B-2501(c). The court determines which dispositional level is appropriate based on the juvenile’s delinquency history and the level of offense. N.C. Gen. Stat. § 7B-2508(f). Finally, ‘within the guidelines set forth in [N.C. Gen. Stat. § 7B-2508],’ the court shall 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. N.C. Gen. Stat. § 7B-2501(c).”

State v. Kelliher

No. COA23-691

Cumberland County

7 May 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43253>

Summary of the Case: This case is the continuing saga of the Kelliher/Connor line of cases dealing with the imposition of Life Without Parole for youth convicted of first-degree murder, and *per se* LWOP sentences created by concurrent sentences. This case is an appeal of the resentencing hearing after remand from the original opinion.

Issues Affecting Youth: May a trial court resentence on any sentences within a judgement upon remand of only one sentence within a judgment? No, it may not.

“When an appellate court remands a matter to the trial court, the remand may be general or limited; and, in the case of a limited remand, the appellate court may divest the trial court of discretion it would otherwise retain were the remand general. Here, where our Supreme Court clearly conveyed to the trial court its intent to limit the scope of its remand from Defendant’s prior appeal, the trial court was not authorized to conduct a new, discretionary sentencing hearing.”

In re: D.J.Y

No. COA23-1079

Rowan County

7 May 2024

<https://appellate.nccourts.org/opinions/?c=2&pdf=43432>

Summary of the Case: A petition was filed against “Dawson” alleging injury to personal property greater than \$200. The section of the juvenile petition titled “decision of court counselor regarding the filing of the petition” and as such, the box indicating “approved for filing” and the box for the court counselor’s signature were all left blank. The adjudication and disposition hearings were held approximately three months later. Dawson appealed, arguing that the Court did not have jurisdiction to hold the adjudication or disposition hearings.

Issues Affecting Youth: Is a petition that does not have the court counselor’s signature and decision to approve the filing a valid petition? No, it is not.

“‘[I]f the juvenile court counselor determines that a complaint should be filed as a petition,’ then he or she ‘shall include on it . . . the words ‘Approved for Filing’, shall sign it, and shall transmit it to the clerk of superior court.’ N.C. Gen. Stat. § 7B-1703(b).” (emphasis in original).

“This Court has held ‘that a petition alleging delinquency that does not include the signature of a juvenile court counselor, or other appropriate representative of the State, and the language ‘Approved for Filing,’ . . . fails to invoke the trial court’s jurisdiction in the subject matter.’ In so holding, this Court reasoned that finding a juvenile court counselor’s approval for filing to be a jurisdictional prerequisite would promote the purposes of the juvenile delinquency system . . .” (internal citations omitted.)

In re: D.R.F., JR.

No. COA23-473

Yadkin County

7 May 2024

<https://appellate.nccourts.org/opinions/?c=2&pdf=42897>

Summary of the Case: A petition was filed against “Daniel” alleging Communicating a Threat of Mass Destruction on Educational Property. Probable cause was found, and the Court proceeded to adjudicatory and disposition hearings. At the adjudicatory hearing, the State requested the trial court continue disposition for seven days while Daniel was held in secure custody, and the court did so hold Daniel in secure custody for seven days between the adjudicatory and dispositional hearings. The only articulated basis for the holding in secure custody was punitive.

Issues Affecting Youth: See the opinion for a discussion of “true threats,” requiring a subjective and objective showing of a true threat. Of note in this opinion, the holding of the youth in secure custody between adjudication and disposition, with no articulated basis for continuing disposition, was found as abuse of discretion by the trial court. Further, despite the issue being moot, such issues can be reviewed on appeal when the issue is “capable of repetition, yet evading review.”

“We review the trial court’s ruling continuing the disposition hearing and placing Daniel in temporary secure custody pending disposition for an abuse of discretion. . . . there was no good cause for a continuance under N.C. Gen. Stat. § 7B-2406. Moreover, neither the State nor the trial court identified any extraordinary circumstance justifying the continuance. . . . Thus, there was no valid basis demonstrated to continue disposition and place Daniel in secure custody pending disposition. Therefore, the trial court abused its discretion by continuing disposition and placing Daniel in secure custody pending disposition.” (internal citations omitted)

“We have previously held a similar temporary secure custody order is reviewable on appeal even after its expiration and is properly before us on the grounds that it ‘is capable of repetition, yet evading review.’” (internal citations omitted)

In re: G.H.

No. COA23-939

Mecklenburg County

21 May 2024

[Unpublished Opinion](https://appellate.nccourts.org/opinions/?c=2&pdf=43527)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43527>

Summary of the Case: Petitions were sought against “John” in which the court counselor also sought a secure custody order. The Court denied the request to detain John and ordered that the court counselor develop a safety plan for the child. The court counselor did so but also directed John to attend Bridges Assessment Center. Defense moved to dismiss the petitions based on illegal detention of John at the Bridges Assessment Center. The trial court agreed, and after detailing a list of concerns with the court counselor’s actions, dismissed the petitions. The State appealed the dismissal.

Issues Affecting Youth: May the State take appeal from a dismissal with prejudice by the trial court? No, it may not.

“The State may [only] appeal: ‘(1) [a]n order finding a State statute to be unconstitutional; and [a]ny order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.’ N.C.G.S. § 7B-2604(b) (2023).”

We also recommend defenders read the opinion for the findings by the trial court in regard to Bridges Assessment Center and the reasoning for the trial court’s dismissal of the petitions.

State v. Singleton

900 S.E.2d 802

Wake County

23 May 2024

<https://appellate.nccourts.org/opinions/?c=1&pdf=43708>

Summary of the Issue: An indictment raises a jurisdictional concern only when it wholly fails to charge a crime; indictments with non-jurisdictional defects will not be quashed or cast aside when they provide notice sufficient to prepare a defense and protect against double jeopardy.

In re: K.S.

No. COA24-65

Forsyth County

4 June 2024

[Unpublished Opinion](#)

<https://appellate.nccourts.org/opinions/?c=2&pdf=43585>

Summary of the Case: “Kyle” was ordered to YDC under a Level 3 dispositional order after being found in violation of his terms of probation under a Level 2 dispositional order. Several aspects of the case were appealed, including a challenge to the Level 3 dispositional order and a challenge to anticipatory secure custody, although two of the three issues raised on appeal were not addressed due to what the Appellate Courts deemed was untimely appeal of the issues.

Issues Affecting Youth: The Appellate Court addressed the question of whether “the trial court erred by entering a dispositional order without making any supporting findings of fact, without making a finding that a predisposition report was not needed, and without reviewing the comprehensive clinical assessment before choosing a disposition,” and ultimately upheld the decision of the lower court. While this opinion isn’t necessarily consistent with previous rulings, this is an unpublished opinion and thus not binding or controlling authority, and defenders should be aware of how the Court’s analysis might be replicated in a trial setting.

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North Carolina Criminal Law Blog

The Adolescent Brain and Mens Rea

July 24, 2023 [Jacquelyn Greene](https://nccriminallaw.sog.unc.edu/author/jacqui22/)

[<https://nccriminallaw.sog.unc.edu/author/jacqui22/>](https://nccriminallaw.sog.unc.edu/author/jacqui22/)

Delinquency adjudications and criminal convictions of minors who have been transferred to Superior Court for trial as adults both require that the elements of the offense charged are proved beyond a reasonable doubt, including that the required criminal state of mind, or mens rea, existed. The adolescent mind has been the subject of substantial scientific research. This research grounded several United State Supreme Court decisions related to criminal punishment of minors and when *Miranda* warnings are necessary. However, the question of how the science of adolescent brain development does or does not connect to the mens rea requirements of various offenses is not well litigated. The North Carolina Court of Appeals dipped a toe in this area in its recent ruling in **[State v. Smith, __ N.C. App. __ \(June 6, 2023\)](https://appellate.nccourts.org/opinions/?c=2&pdf=42349)**

[<https://appellate.nccourts.org/opinions/?c=2&pdf=42349>](https://appellate.nccourts.org/opinions/?c=2&pdf=42349).

The Adolescent Brain and U.S. Supreme Court Jurisprudence

It would likely take a few law review articles to sufficiently detail the U.S. Supreme Court jurisprudence on the difference between juveniles and adults. Here is a very abbreviated primer.

Beginning in 2005 with its decision in ***Roper v. Simmons*, 543 U.S. 551 (2005)** <<https://supreme.justia.com/cases/federal/us/543/551/>>, the Supreme Court banned the death penalty for crimes committed by anyone under the age of 18. In its ruling, the Court held that there are fundamental differences between juveniles and adults. The Court discussed how certain characteristics of youth render them less culpable, which in turn diminishes the penological justifications for the death penalty. Those characteristics include

- A lack of maturity and an underdeveloped sense of responsibility that result in impetuous and ill-considered actions and decisions,
- Increased vulnerability to negative influences and outside pressures, including peer pressure, and
- Personality traits that are not as well formed and are more transitory.

Five years later, the Court held that the Eighth Amendment prohibits the imposition of life without parole sentences for juveniles who did not commit homicide and that these juveniles must be given a meaningful opportunity to obtain release. ***Graham v. Florida*, 560 U.S. 48 (2010)** <<https://supreme.justia.com/cases/federal/us/560/48/>>. The Court reiterated the reasoning about the unique nature of adolescence included in *Roper*. This included that, given the lack of maturity, vulnerability to peer pressure, and ongoing development in character prominent in adolescence, it is difficult to distinguish between a juvenile whose offending reflects transient immaturity and a juvenile whose offending reflects irreparable corruption. Therefore, while juveniles are not absolved from responsibility for criminal actions, their criminal actions are not as morally reprehensible as those of adults. The Court also recognized that psychology and brain science continue to show fundamental differences between juvenile and adult minds.

This line of reasoning was extended to hold that mandatory life without parole for juvenile homicide offenses violates the Eighth Amendment. ***Miller v. Alabama*, 567 U.S. 460 (2012)**

<https://supreme.justia.com/cases/federal/us/567/460/> . Once again, the Court relied on brain science (as well as what any parent knows). The Court pointed to transient rashness, a proclivity for risk, and an inability to assess consequences as distinctive attributes of youth that render imposition of the most severe penalties on youth too great a risk for disproportionate punishment. The concept that some adolescent crime reflects transient immaturity was reinforced in 2016 when the Court determined that the decision in *Miller* was retroactive on state collateral review. ***Montgomery v. Louisiana*, 577 U.S. 190 (2016)** <https://supreme.justia.com/cases/federal/us/577/14-280/> .

While the Court seemingly took a step back from this line of cases with its decision in ***Jones v. Mississippi*, 141 S. Ct. 1307 (2021)** <https://supreme.justia.com/cases/federal/us/593/18-1259/> , neither the reasoning nor the holding in *Jones* disturbed this jurisprudence related to the brain differences between adolescents and adults. The *Jones* decision held that a finding of permanent incorrigibility is not required to impose a sentence of life without parole for a juvenile homicide conviction. The Court held that, while the Eighth Amendment prohibits mandatory life without parole sentences in juvenile homicide cases, a discretionary sentencing scheme that does not require a finding of permanent incorrigibility is constitutionally sufficient. The decision explicitly declined to overrule *Miller* or *Montgomery* and it did not speak to the unique features of adolescence.

The developmental differences between children and adults were also central to the Court's holding that a child's age properly informs the analysis of whether a juvenile is in custody for purposes of *Miranda* warnings. In a case that originated right here in Chapel Hill, the Court stated, "to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults."

***J.D.B. v. North Carolina*, 564 U.S. 261, 281 (2011)**

<https://casetext.com/case/j-d-b-v-north-carolina-3> .

Recent Brain Research Continues to Find Significant Differences Between Adolescents and Adults

The Center for Law and Brain Behavior at Massachusetts General Hospital released a [White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers](https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/)

[in](https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/)

January of 2022. The white paper focuses on the difference between brain development of those in late adolescence (ages 18-21) in comparison to young adults (ages 22 -25). It also contains substantial information on brain development during middle adolescence (ages 14-17).

The white paper explains that one of the major differences between the middle and late adolescent brain and an adult brain is the impact that emotional content has on self-control. According to the white paper, brain research shows that “[a]dolescents, more so than children and adults, show impaired self-control when inhibiting responses to negative and positive emotional cues.” (p. 13). Adolescents show more sensitivity to sustained emotional arousal and, when under stress, are more likely to pursue immediate rewards instead of weighing long-term consequences and costs. Researchers found that the brain’s structural connectivity between the prefrontal cortex and the striatum is associated with risky decision-making that occurs under stressful conditions. These connections are still growing during middle and late adolescence.

The Argument in State v. Smith

Smith was convicted of committing first-degree murder when he was sixteen. According to witness statements, Smith shot the victim, Mr. Shields, in retaliation for Mr. Shields having sex with Smith’s fourteen-year-old sister. The witness also stated that as Smith got out of a car to approach the victim, someone was yelling at him not to “let it slide.” Slip Op. at 5.

Smith’s attorney requested that the court provide the following jury instruction:

In this case, you may examine the defendant's actions and words, and all of the circumstances surrounding the offense, to determine what the defendant's state of mind was at the time of the offense. However, the law recognizes that juveniles are not the same as adults. An adult is presumed to be in full possession of his senses and knowledgeable of the consequences of his actions. By contrast, the brains of adolescents are not fully developed in the areas that control impulses, foresee consequences, and temper emotions. Additionally, adolescents often lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.

You should consider all the circumstances in the case, any reasonable inference you draw from the evidence, and differences between the way that adult and adolescent brains function in determining whether the State has proved beyond a reasonable doubt that defendant intentionally killed the victim after premeditation and deliberation. Slip Op. at 21.

The court denied the request to provide this instruction and that denial was contested as part of the appeal. The proposed instruction raises an interesting question. Does the science regarding adolescent brain development impact the premeditation and deliberation necessary to be guilty of first-degree murder?

What are Premeditation and Deliberation?

Premeditation requires that the person thought about the act beforehand for some length of time, however short. ***State v. Bullock*, 26 N.C. 253 (1990)** <https://law.justia.com/cases/north-carolina/supreme-court/1990/469pa88-o.html>.

Given that the research on adolescent brain development speaks to differences in thinking, but not the very capacity to think, it is challenging to understand how developmental brain differences might impact premeditation.

However, an assessment of deliberation could arguably be impacted by the unique features of the adolescent brain. Deliberation “means an intent to kill, carried out in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation.” *State v. Bullock*, 26 N.C. 253, 257 (1990). The Supreme Court of North Carolina explained that “[t]he phrase “cool state of blood” means that the defendant’s anger or emotion must not have been such as to overcome the defendant’s reason.” *State v. Hunt*, 330 N.C. 425, 427 (1991).

<https://casetext.com/case/state-v-hunt-203>.

Smith’s Deliberation

As described above, the brain research on adolescent development raises questions about an adolescent’s ability to reason when in an aroused emotional state. In the present case, it appears that Smith may have been angered about the victim’s sexual relationship with his young sister and that he was being egged on by someone else. Can a sixteen-year-old brain form the requisite deliberation under those emotionally stressful circumstances? Or do developmental differences mean that emotional arousal can sometimes overcome an adolescent’s ability to reason in a manner such that there is no deliberation?

The Holding in *State v. Smith*

The Court of Appeals was not convinced that differences between adolescents and adults were relevant to the jury instructions in this case. The decision upholds the trial court’s determination not to allow the jury instruction. While the court of appeals acknowledged that the line of U.S. Supreme Court jurisprudence states that children are constitutionally different from adults, the court highlighted that the difference has been applied to sentencing determinations and not determinations of guilt. The court also explained that the jury instruction might actually mislead the jury because age at time of committing the offense is not an element of the offense. The court stated “[d]efendant’s age is not considered nor contemplated in the analysis of premeditation and deliberation.” Slip. Op. at 22.

However, the court of appeals may have left the door open on this question, as it noted that no evidence was presented on adolescent brain function. While the court was clear in this decision that age is not a factor in premeditation and deliberation, the research on adolescent brain development continues to evolve. Might the court's analysis of the meaning of deliberation be influenced if evidence regarding an adolescent's ability to reason during highly emotional situations is presented? The white paper explanation of how adolescent self-control is negatively impacted by high-stress situations may factor into the analysis of whether an adolescent was acting with a "cool state of blood." As the research evolves, legal arguments about the application of that research to necessary states of mind are also likely to continue.

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North Carolina Criminal Law Blog

Change to the Law of Juvenile Jurisdiction and Juvenile Transfer to Superior Court

July 23, 2024 [Jacquelyn Greene](#)

[<https://nccriminallaw.sog.unc.edu/author/jacqui22/>](https://nccriminallaw.sog.unc.edu/author/jacqui22/)

Session Law 2024-17

[<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2024-17.pdf>](https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2024-17.pdf)

enacts changes to the law regarding the scope of original juvenile jurisdiction beginning with offenses committed on or after December 1, 2024. Law changes regarding the existing process to transfer a case from juvenile to superior court will also take effect at that time. Read on for a description of the changes.

Narrowing of Original Juvenile Jurisdiction for Offenses at Ages 16 and 17

Under current law, original jurisdiction over all felonies alleged to have been committed at ages 16 and 17, other than motor vehicle offenses, is in juvenile court, though some felonies must, and other felonies may be transferred to criminal superior court. When S.L. 2024-17 takes effect, original jurisdiction for Class A – Class E felonies alleged to have been committed at ages 16 and 17 will lie in criminal court. This includes any offenses that are transactionally related to a Class A – Class E felony offense. Because these matters will fall under original criminal jurisdiction, they will originate in the same way all other criminal matters begin. S.L. 2024-17 § 1.

The one difference between these matters and other criminal matters is the place of confinement when the defendant is under age 18. If the defendant is held pending resolution of the charges and is under the age of 18, that defendant must be housed in a juvenile detention facility. **G.S. 15A-521** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-521.pdf. The defendant must be transported by the Division of Juvenile Justice (DJJ) to the custody of the sheriff in the county where the charges are pending when they turn 18.

New Possibility of Removal to Juvenile Court

While these cases will begin as criminal matters, there will be a new process in the criminal law to shift the cases to juvenile jurisdiction. S.L. 2024-17 §§ 3.(a)-3.(c). This new process is called “removal.”

Removal will be available in any matter in which an indictment has been returned or a criminal information issued for a Class A – Class E felony offense alleged to have been committed at age 16 or 17, except for offenses that are violations of Chapter 20 of the General Statutes (motor vehicle law offenses). The question of removal will be at the discretion of the prosecutor and defense attorney. If the prosecutor and defense attorney file a joint motion for removal, the superior court must remove the case to juvenile court. A removal motion can be filed any time after the return of the indictment or the issuance of a criminal information and before the jury is sworn and impaneled. The prosecutor is required to provide a copy of the motion to DJJ before submitting the motion to the court.

If a removal order is issued:

- The superior court must expunge the criminal charges and superior court record according to the procedure in G.S. 15A-145.8.
- DJJ must file a juvenile petition in the case within 10 calendar days after removal.
- The superior court may issue a secure custody order if the defendant (who is now a juvenile in a delinquency matter) meets the criteria for issuing a secure custody order contained in **S. 7B-1903**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7

[B-1903.pdf](#)>. The prosecutor must give DJJ a copy of any secure custody order issued under these circumstances as soon as possible and no more than 24 hours after the order is issued.

Cases that are removed to juvenile court from superior court must have a first appearance in juvenile court within 10 days of the filing of the petition. S.L. 2024-17 § 2.(a). They will not have a probable cause hearing in juvenile court. S.L. 2024-17 § 2.(e). Therefore, these matters will move from a first appearance in juvenile court to adjudication.

Changes to Transfer Procedure

Fewer Cases Eligible for Mandatory Transfer

There are two categories of cases that require transfer from juvenile court to superior court for trial as an adult under current law. They are 1) Class A – G felonies alleged to have been committed and ages 16 and 17 and 2) Class A felonies alleged to have been committed at ages 13, 14, and 15. When the new law takes effect on December 1st, the first category of mandatory transfer cases will be narrowed to include Class F and Class G felonies alleged to have been committed at ages 16 and 17. The remaining current mandatory transfer offenses at these ages will no longer originate under juvenile jurisdiction and will therefore not be subject to transfer. They will begin as criminal matters. Under current law the prosecutor can choose not to transfer Class F and G felonies alleged to have been committed at ages 16 and 17 and that will remain true when the new law takes effect. **G.S. 7B-2200.5(a1).**

[<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf>](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf)

Standard Probable Cause Timeline in Mandatory Transfer Cases

Under current law a probable cause hearing is required to be held within 90 days of the first appearance in cases that allege that a Class A – Class G felony was committed at ages 16 and 17. **G.S. 7B-2200.5(c)** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf . A probable cause hearing is required within 15 days of the first appearance in the other category of mandatory transfer cases—cases in which a Class A felony is alleged to have been committed at age 13, 14, or 15. **G.S. 7B-2202(a)** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2202.pdf . S. L. 2024-17 adds a new G.S. 7B-2202(b1) to provide one timeline for all mandatory transfer cases. A probable cause hearing will be required to be held within 90 days of the first appearance in cases that allege that a Class F or Class G felony was committed at age 16 or 17 and cases that allege that a Class A felony was committed at age 13, 14, or 15.

Indictment Return Appearance

Section 2.(f) of S.L. 2024-17 details the procedure to be used when transfer in a mandatory transfer case is triggered by the return of a true bill of indictment. That procedure includes that:

- The prosecutor must notify the district court immediately when a true bill of indictment is returned charging a mandatory transfer offense (a Class F or G felony at age 16 or 17 or a Class A felony at age 13, 14, or 15).
- The district court must calendar the case for an appearance within five business days of the date the true bill of indictment was returned.
- The court proceeding is called an indictment return appearance (not a transfer hearing).
- The court must determine if notice of the indictment charging an offense subject to mandatory transfer was provided as required in **S. 15A-630** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-630.pdf .
- If the court determines that notice of a true bill of indictment charging the commission of a mandatory transfer offense was provided, then the court

must 1) transfer jurisdiction to superior court for trial as an adult and 2) determine conditions of pretrial release as is currently required in **S. 7B-2204**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2204.pdf .

Limitation on Right to Interlocutory Appeal of Transfer Order

Under current law there is a right to appeal any transfer order to the superior court after transfer is ordered. **G.S. 7B-2603**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2603.pdf . Notice of the appeal may be provided up to ten days after entry of the transfer order. This opportunity for an interlocutory appeal of the transfer order provides the basis for practices that keep cases confidential after transfer is ordered and until the time to appeal has tolled or the appeal is resolved. You can see a previous blog on **Dispelling Transfer Confusion** <https://nccriminallaw.sog.unc.edu/dispelling-transfer-confusion-10-day-appeal-window-orders-for-arrest/> for more detail on these practices.

Section 2.(g) of S.L. 2024-17 removes this right to an interlocutory appeal from mandatory transfer cases. Under the revised law, transfer orders issued in cases in which a Class A felony is alleged to have been committed at age 13, 14, or 15 or in which a Class F or Class G felony is alleged to have been committed at age 16 or 17 will only be appealable to the North Carolina Court of Appeals following a conviction in superior court. The elimination of the right to an interlocutory appeal in these matters will also eliminate the need for practices to keep these cases confidential during the ten-day window to file an interlocutory appeal.

Remand Expansion

Section 8.(a) of Session Law 2019-186

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-186.pdf> added the ability to remand back to juvenile court cases that were transferred to superior court for trial as an adult based on an allegation that a Class A – Class G felony was committed at age 16 or 17. This possibility of remand does not include matters transferred based on felony allegations alleged to have been committed at ages 13, 14, or 15.

Section 2.(c) of S.L. 2024-17 adds the possibility of remand for these cases that were omitted from S.L. 2019-186. The new opportunity for remand applies to any case that is transferred to superior court based on an allegation that a felony was committed at age 13, 14, or 15. The procedure is the same as the procedure for remand of cases that involve older youth and includes that:

- Remand is required on the filing of a joint motion in the superior court by the prosecutor and the juvenile's attorney.
- The prosecutor must provide a copy of the motion to DJJ before submitting the motion to the court.
- The superior court must remand the case on the filing of the joint motion.
- The superior court must expunge the superior court record according to **S. 15A-145.8**
<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-145.8.pdf> at the time of remand.
- The superior court may issue a secure custody order at the time of remand if the juvenile meets the criteria for issuing a secure custody order contained in **S. 7B-1903**
<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1903.pdf>.
- The prosecutor must provide a copy of any secure custody order issued by the superior court to DJJ as soon as possible and no later than 24 hours after the order is issued.

The case returns to juvenile jurisdiction on remand and proceeds to adjudication.

More to Come

S.L. 2024-17 also contains a handful of other changes related to juvenile delinquency procedure and dispositional alternatives. I will post a blog about those changes in August. If you would like to read up on them now, you can access my summary of the entirety of S.L. 2024-17 **here**
<<https://nccriminallaw.sog.unc.edu/wp-content/uploads/2024/07/2024-summary.pdf>>.

Changes to existing SOG resources related to juvenile jurisdiction, transfer and removal are in process. This includes a revised Juvenile Law Bulletin on transfer and removal and a revised edition of a juvenile delinquency process flowchart. I will send out information regarding the completed revised materials on our Juvenile Law Listserv. You are welcome to join the Listserv by clicking subscribe on **this page** <<https://www.sog.unc.edu/resources/listservs/recent-nc-court-decisions-juvenile-law-sogjuvenile>>.



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2024 Delinquency Legislation

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June, 2024
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H. 834 AN ACT TO MODIFY THE DEFINITION OF DELINQUENT JUVENILE, TO MODIFY THE TRANSFER PROCESS FOR INDICTED JUVENILE CASES, TO CREATE A NEW PROCESS TO REMOVE A CASE TO JUVENILE COURT, TO MAKE CHANGES TO SCHOOL USE OF INFORMATION, TO MAKE SECURE CUSTODY HEARING CHANGES, TO MAKE TECHNICAL CORRECTIONS, TO MAKE CHANGES TO CERTAIN DISPOSITIONAL ALTERNATIVES, AND TO INCREASE THE PUNISHMENT FOR AN ADULT TO SOLICIT A MINOR TO COMMIT A CRIME AND TO MODIFY THE NUMBER OF DAYS FOR REQUEST FOR REVIEW BY A PROSECUTOR

Modification of Definition of Delinquent Juvenile

- G.S. 7B-1501(7)(b) is amended to remove Class A – Class E felony offenses committed at the age of 16 and 17 from the definition of delinquent juvenile. The exclusion includes all offenses that are transactionally related to the Class A – Class E felony offense.

Modification of Transfer Process for Indicted Juvenile Cases

- G.S. 7B-1808(a) is amended to require a first appearance in juvenile court following the removal of a case from superior court to juvenile court (see below for a description of the new removal process).
- G.S. 7B-1906(b2) is amended to require a hearing to determine the need for continued secure custody within 10 calendar days of the issuance of a secure custody order in a matter that is removed from superior court to juvenile court (see below for a description of the new removal process).
- G.S. 7B-2200 is restructured to describe the current transfer process for felony offenses, other than Class A felonies, alleged to have been committed at age 13, 14 or 15 as discretionary transfer and to describe the current transfer process for Class A felony offenses alleged to have been committed at ages 13, 14, or 15 as mandatory transfer.
- G.S. 7B-2200 is amended to add a new subsection (c) to allow for remand of cases from superior court to juvenile court after transfer occurred in cases in which a felony is alleged to have been committed at ages 13, 14, or 15. The case must be remanded to district court upon joint motion of the prosecutor and the juvenile’s attorney. The prosecutor must provide the chief court counselor or their designee with a copy of the joint motion before submitting the motion to the court. The superior court must expunge the superior court record at the time of remand. The superior court may also issue a secure custody order at the time of remand if the juvenile meets the criteria for secure custody in G.S. 7B-1903. The prosecutor must provide a copy of any such secure custody order to the chief court counselor as soon as possible and no more than 24 hours after the order is issued.
- G.S. 7B-2200.5 is amended to remove Class A – E felonies alleged to have been committed at ages 16 and 17 from the procedure to transfer cases from juvenile jurisdiction to superior court for trial as an adult. Language governing the timing of probable cause hearings in cases that remain subject to the mandatory transfer procedure for Class F and Class G felonies alleged to

have been committed at ages 16 and 17 is removed from this section (and placed in G.S. 7B-2202(b1), as described below).

- G.S. 7B-2202(a) is amended to exclude juvenile cases that were removed from superior court to juvenile court from a probable cause hearing in juvenile court (see description of removal process below).
- G.S. 7B-2202 is amended to add a new subsection (b1) providing that a probable cause hearing must be held in any matter subject to mandatory transfer within 90 days of the juvenile's first appearance. The probable cause hearing may be continued for good cause.
- A new G.S. 7B-2202.5 is added to require an indictment return appearance in juvenile court within five business days of the date a true bill of indictment is returned in a matter subject to mandatory transfer. The prosecutor must immediately notify the district court if a true bill of indictment is returned in a matter subject to mandatory transfer. The court must calendar the matter for an appearance within five business days of the date that the indictment was returned. At the appearance, the court must determine if notice of a true bill of indictment charging the commission of an offense subject to mandatory transfer was provided in accordance with G.S. 15A-630. If the court finds that notice was provided, the court must transfer the matter to superior court for trial as an adult and determine conditions of pretrial release as required by G.S. 7B-2204.
- G.S. 7B-2603 is amended to remove the right to an interlocutory appeal of a transfer order in cases subject to mandatory transfer. Issues related to mandatory transfers can be appealed to the Court of Appeals only following conviction in superior court.

New Process to Remove Cases to Juvenile Court

- G.S. 7B-1902 is amended to provide authority for a superior court judge to issue a secure custody order when the superior court orders removal of a case to juvenile court.
- A new G.S. 15A-960 is added to create a process for removal of cases in which a Class A – Class E felony is alleged to have been committed at age 16 and 17 from superior court to juvenile court.
 - Removal is required on the filing of a joint motion by the prosecutor and the defendant's attorney. The motion can be filed any time after an indictment is returned or a criminal information is issued and before the jury is sworn and impaneled. The prosecutor must provide a copy of the joint motion to the chief court counselor or their designee before submitting the motion to the court. The removal order must be in writing and require the chief court counselor or their designee to file a juvenile petition within 10 calendar days after removal is ordered.
 - The superior court record must be expunged according to G.S. 15A-145.8 at the time of removal.
 - The superior court may issue an order for secure custody at the time of removal upon the request of the prosecutor and if the defendant meets the criteria to issue a secure custody order in G.S. 7B-1903. The prosecutor must provide the chief court counselor or their designee with a copy of any secure custody order issued at removal as soon as possible and no more than 24 hours after the order is issued.

- G.S. 15A-145.8 is amended to apply the same expunction process in place for cases that are remanded from superior court to juvenile court to cases that are removed from superior court to juvenile court.

Changes to School Use of Information

- G.S. 7B-3101 is amended to restrict school notification of the filing of a petition in a delinquency matter to cases that allege a Class A – Class E felony if committed by an adult. Language that prohibits an automatic suspension policy related to this notification is added. The principal is required to make an individualized decision related to the status of the student during the pendency of the delinquency matter.
- G.S. 115C-404(b) is amended to prohibit an automatic suspension policy related to juvenile court information received either as a felony notification under G.S. 7B-3101 or information gained from the examination of juvenile records under G.S. 7B-3100. The principal is required to make an individualized decision related to the status of the student during the pendency of the delinquency matter.

Secure Custody Hearing Changes

- G.S. 7B-1906(b) is amended to require hearings on the ongoing need for secure custody every 30 days in all delinquency cases. Parties can request and the court can order an earlier hearing. Earlier hearings must be scheduled within 10 calendar days of the request for the earlier hearing.

Technical Corrections to Part V of S.L. 2023-114 (juvenile capacity)

- G.S. 7B-2401.2(d) is corrected to remove reference to a 30-day timeline for the completion of a forensic evaluation report.
- Effective dates are added to ensure that the entirety of the new law takes effect beginning with offenses committed on or after January 1, 2025.
- G.S. 7B-2401.4(f)(3) is amended to require good cause to grant an extension of remediation.
- G.S. 7B-1904 is amended to add a missing “than.”
- G.S. 7B-2401.5 is amended to prohibit placement of a juvenile in a situation where that juvenile will come into contact with adults for any purpose when the juvenile is subject to involuntary civil commitment.

Changes to Certain Dispositional Alternative

- G.S. 7B-2506(4) and G.S. 7B-2506(22) are amended to allow, but not require, joint and several responsibility for all participants in an offense that resulted in loss or damage to a person when restitution is ordered.

Increase Punishment for Certain Crimes

- G.S. 14-2.6 is amended
 - to define an adult as a person 18 years or older and to define a minor as a person who has not reached the age of 18 years;

- to include adults and minors as people who can be punished for soliciting another adult to commit a felony or misdemeanor offense;
- to establish solicitation of a minor to commit a felony or misdemeanor offense by another minor as an offense, as pictured in the table below;

Offense minor solicited to Commit	Punishment for minor who engaged in the solicitation
Class A or B1 felony	Class C felony
Class B2 felony	Class D felony
Class H felony	Class 1 misdemeanor
Class I felony	Class 2 misdemeanor
Any other felony	Felony 2 classes below solicited felony
Any misdemeanor	Class 3 misdemeanor

- to create a new offense when an adult solicits a minor to commit a felony or misdemeanor. An adult who solicits a minor to commit a felony or misdemeanor is guilty of the same class felony or misdemeanor the adult solicited the minor to commit.

Modify Number of Days for Request for Review by a Prosecutor

- G.S. 7B-1704 is amended to increase the number of days a complainant and a victim have to request prosecutor review of the decision of the juvenile court counselor not to file a petition in a delinquency matter. The number of days is increased from five days from receipt of the juvenile court counselor's decision not to approve the petition for filing to 10 days. The district attorney may waive this time limit.

Effective Date

- The act becomes effective December 1, 2024, and applies to offenses committed on or after that date, except for the technical amendments to the juvenile capacity law which take effect on January 1, 2025 and apply to offenses committed on or after that date.

Mental Health Issues in Justice-Involved Youth

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Focus



Common developmental and psychopathological issues in youth



2

Focus



Common developmental and psychopathological issues in youth



Adjudicative capacity



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Agenda

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- Developmental Immaturity
- Psychopathology
 - Trauma and related disorders
 - Mood disorders
 - Psychosis
 - Neurodevelopmental disorders

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Agenda

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SCHOOL OF MEDICINE

- Developmental Immaturity
- Psychopathology
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 - Psychosis
 - Neurodevelopmental disorders

}

Trauma

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Agenda

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SCHOOL OF MEDICINE

- Developmental Immaturity
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 - Psychosis
 - Neurodevelopmental disorders

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Development

↑ ↓

Psychopathology

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Developmental Immaturity

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What is developmental immaturity?

- As a clinical (biological/psychological) construct:
 - **Incomplete** development: Relative to adults
 - **Delayed** development: Relative to peer-aged youth
- Domain-specific
- Dimensional, not categorical

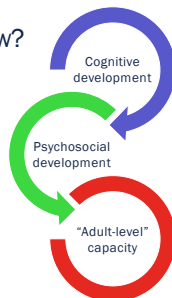
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What is developmental immaturity?

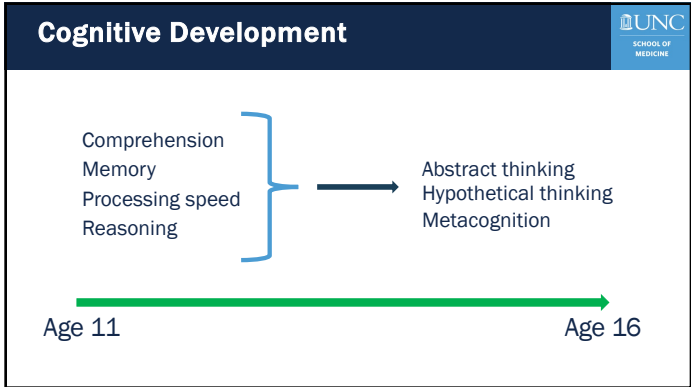
The adolescent brain is different, but how?

Relevant domains

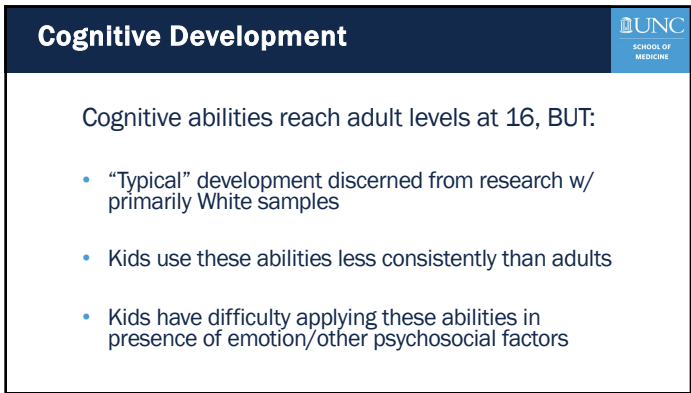
- Cognitive development
- Psychosocial development



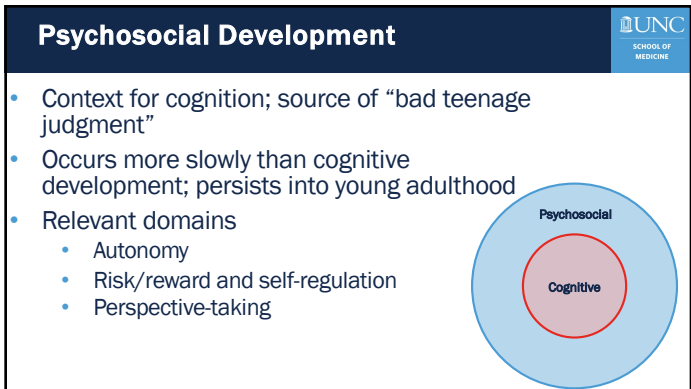
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Psychosocial Development: Autonomy



- Children socialized to depend on parents/caregivers for decision-making
- Compliant/suggestible
- 13 to 15 years old: Shift to increased salience for peer influence
- 16+ years old: Development of true autonomous decision making

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Psychosocial Development: Risk/Reward



- Greatest risk for risky behavior: Ages 16-19
- Attributable to:
 - Poor behavioral/emotional control
 - Impaired perception of risk (sometimes)
 - Underestimate negative consequences, overvalue rewards
 - Overestimate negative consequences of *not* engaging in behavior
 - Value short-term over long-term reward

Even
when not
impulsive

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Psychosocial Development: Perspective-Taking



- **Interpersonal**
 - Difficulty understanding others' perspectives
- **Temporal**
 - Difficulty placing consequences of decision in context of time
 - Both neurological and environmental



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Psychopathology

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Psychopathology: The Basics

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General Population


Juvenile Justice Population

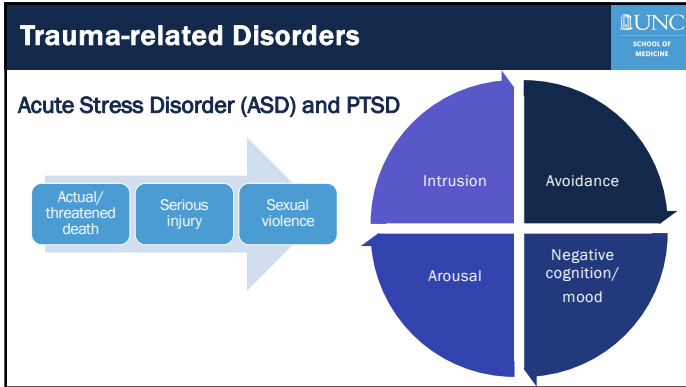
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Psychopathology: The Basics

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- Can look different in kids relative to adults (and different in kids of different ages)
- Development  psychopathology
- Signs/symptoms on continuum from "normal" to pathological
- Symptoms may be adaptive one context and not in another
- Lots of symptom overlap
- Comorbidity is rule rather than exception
- Trauma

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ASD/PTSD Signs

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Behavioral • Developmental regression (bedwetting, clinginess) • Aggression/impulsivity • Poor concentration/spaciness (interviews, school performance) • Avoidance (triggers, topics) • Jumpiness	Physical • Unexplained symptoms (e.g., stomach aches) • Sleep disturbance/fatigue
Psychological • Mood lability (anger $\leftrightarrow$ sadness) • Guilt/shame • Emotionally numb/detached	Interpersonal • Withdrawal • Pervasive mistrust/paranoia

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Depressive Disorders

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Major Depressive Disorder: At least two weeks of depressed mood or loss of interest in activities previously enjoyed AND 5+ of following:

- Weight/appetite changes
- Sleep changes
- Fatigue
- Worthlessness/guilt
- Poor concentration
- Thoughts of death/suicide

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Depressive Disorders



Disruptive Mood Dysregulation Disorder

- Severe, recurrent **temper outbursts** inconsistent w/ developmental level/disproportionate to provocation
- Persistent **irritable/angry** mood between outbursts
- Symptom start before age 10

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Depression Signs



Behavioral

- Tearfulness
- Apathy
- Poor concentration/spaciness (interviews, school performance)
- Indecision
- *Irritability

Physical

- Unexplained symptoms
- Sleep disturbance/fatigue
- Appetite/weight changes
- Poor hygiene

Psychological

- Sadness, *anger
- Worthlessness/low self-esteem
- Hopelessness, lack of future orientation
- Memory changes

Interpersonal

- Sensitive to criticism
- Withdrawal

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Bipolar Disorders



Characterized by **mania** and (often but not always) depression

Elevated or *irritable mood for a week (4 days for hypomania) and 3+ of following:

- Inflated self-esteem/grandiosity
- Decreased need for sleep
- Pressured/rapid speech
- Racing thoughts
- Distractibility
- Increased goal-directed behavior
- Risky behavior

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Mania Signs



Behavioral

- Productive/prolific
- Risky behavior (spending, sex)
- *Irritability
- Rapid speech
- Hyperactivity

Physical

- No sleep (or very little sleep!)

Interpersonal

- Conflict, disrupted relationships

Psychological

- Grandiosity (e.g., special powers)
- Euphoria
- Mood lability
- Racing thoughts
- Distractibility

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Psychosis



What is psychosis?

- Positive symptoms: Hallucinations, delusions, disorganized speech/behavior
- Negative symptoms (Schizophrenia): Withdrawal (can look like depression!)
- Primary psychotic disorders (e.g., Schizophrenia) typically present in early adulthood
 - Signs of disorder (*prodromal psychosis*) seen in adolescence
- Children and adolescents can experience psychosis because of substance use

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Psychosis Signs



Behavioral

- Bizarre behavior
- Confusing/nonsensical speech
- Responding to things you can't hear/see
- Long response latency
- Zoning out

Psychological

- Emotional flatness
- Bizarre beliefs
- Confusion/distractability

Physical

- Poor hygiene

Interpersonal

- Social withdrawal/isolative behavior
- Impaired social/emotional reciprocity (eye contact, conversation)
- Paranoia

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Neurodevelopmental Disorders

Three Major Disorders

- **Attention Deficit/Hyperactivity Disorder (ADHD)**
- **Intellectual Disability**
- **Autism Spectrum Disorder**
- Lots of comorbidity among these disorders, and with other mental disorders

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ADHD

- A disorder of **executive dysfunction** (difficulty organizing thoughts and behavior)
- Pervasive (across contexts/environments) inattention and/or hyperactivity
- Signs/symptoms of **inattention**
 - Makes careless errors
 - Difficulty sustaining attention
 - Appears to not listen when spoken to directly
 - Disorganized
 - Loses things
 - Forgetful
- Signs/symptoms of **hyperactivity**
 - Fidgety, difficulty remaining seated
 - Restless
 - Loud, excessively talkative
 - Difficulty taking turns, waiting to speak
 - Runs/climbs inappropriately
 - Appears "driven by a motor"

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Intellectual Disability

- Significant **intellectual impairment**
 - **IQ < 70**
 - Borderline intellectual functioning still important consideration!
- Significant **adaptive functioning impairment**
 - Cannot function as expected given age/developmental stage
 - Assessed using structured tools
- Onset during **"developmental period"**
- Severity based on degree of adaptive functioning impairment
 - Mild most common, also most likely to be missed
 - Diagnosis does not come until demands of school/life exceed abilities
 - Symptom overshadowing
- **Signs:** Acquiescence, heightened need for social acceptance, compliance

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Autism Spectrum Disorder



- **Persistent, pervasive deficits in social-emotional reciprocity**
 - Impaired back-and-forth conversation
 - Poor eye contact, abnormal body language
 - Reduced sharing of emotion/"flat" appearance
 - Difficulty understanding, establishing, maintaining relationships
- **Restricted, repetitive behavior, activities, interests**
 - Repetitive movements, sounds
 - Rigid routine
 - Restricted interests/tastes
 - Hyper/hyposensitive to sensory input (often sounds, textures)
- **Symptoms present in early developmental period**
 - But, like ID, diagnosis may not happen until life demands exceed abilities; masking common in mild cases

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Wrap-Up



- **"Normal" cognitive and psychosocial development** = impairment in understanding, reasoning, assisting counsel, decision-making for some kids (especially kids in early adolescence)
- Even youth who have the cognitive capacity to understand the legal system and their case and communicate clearly with counsel may have impaired decision-making due to psychosocial immaturity.
- Psychopathology = exacerbation of developmental immaturity in cognitive and social domains
- Many symptoms are non-specific
 - Trauma
 - Anger, irritability, impulsivity, authority problems not necessarily sign of oppositionality/antisociality
 - Somatic symptoms important to consider
 - Comorbidity

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Thank you!

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