

Article 17.

Screening of Delinquency and Undisciplined Complaints.

§ 7B-1700. Intake services.

The chief court counselor, under the direction of the Division, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action, and to obtain assistance from community resources when court referral is not necessary. The juvenile court counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.3; 2011-145, s. 19.1(l).)

§ 7B-1700.1. Duty to report abuse, neglect, dependency.

Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301. (2009-311, s. 14.)

§ 7B-1701. Preliminary inquiry.

When a complaint is received, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

If a complaint against the juvenile has not been previously received, as determined by the juvenile court counselor, the juvenile court counselor shall make reasonable efforts to meet with the juvenile and the juvenile's parent, guardian, or custodian if the offense is divertable.

When requested by the juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

- (1) Murder;
- (2) First-degree rape or second degree rape;
- (3) First-degree sexual offense or second degree sexual offense;
- (4) Arson;
- (5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
- (6) First degree burglary;
- (7) Crime against nature; or
- (8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon. (1979, c. 815, s. 1; 1983, c. 251, s. 1; 1998-202, s. 6; 2001-490, s. 2.4; 2015-58, s. 2.1.)

§ 7B-1702. (Effective until December 1, 2019) Evaluation.

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Division. The intake process shall include the following steps if practicable:

- (1) Interviews with the complainant and the victim if someone other than the complainant;
- (2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
- (3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone. (1979, c. 815, s. 1; 1981, c. 469, s. 5; 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.5; 2011-145, s. 19.1(l).)

§ 7B-1702. (Effective December 1, 2019) Evaluation.

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Department and shall conduct a gang assessment. The intake process shall include the following steps if practicable:

- (1) Interviews with the complainant and the victim if someone other than the complainant;
- (2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
- (3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone. (1979, c. 815, s. 1; 1981, c. 469, s. 5; 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.5; 2011-145, s. 19.1(l); 2017-57, s. 16D.4(ee); 2017-197, s. 5.4.)

§ 7B-1703. Evaluation decision.

(a) The juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

(b) Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

(c) If the juvenile court counselor determines that a petition should not be filed, the juvenile court counselor shall notify the complainant and the victim, if the complainant is not the victim,

immediately in writing with specific reasons for the decision, whether or not legal sufficiency was found, and whether the matter was closed or diverted and retained, and shall include notice of the complainant's and victim's right to have the decision reviewed by the prosecutor. The juvenile court counselor shall sign the complaint after indicating on it:

- (1) The date of the determination;
- (2) The words "Not Approved for Filing"; and
- (3) Whether the matter is "Closed" or "Diverted and Retained".

Except as provided in G.S. 7B-1706, any complaint not approved for filing as a juvenile petition shall be destroyed by the juvenile court counselor after holding the complaint for a temporary period to allow review as provided in G.S. 7B-1705. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.6; 2017-57, s. 16D.4(t).)

§ 7B-1704. Request for review by prosecutor.

The complainant and the victim have five calendar days, from receipt of the juvenile court counselor's decision not to approve the filing of a petition, to request review by the prosecutor. The juvenile court counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant, the victim, and the juvenile court counselor of the time and place for the review. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.7; 2017-57, s. 16D.4(u).)

§ 7B-1705. Review of determination that petition should not be filed.

No later than 20 days after the complainant and the victim are notified, the prosecutor shall review the juvenile court counselor's determination that a juvenile petition should not be filed. Review shall include conferences with the complainant, the victim, and the juvenile court counselor. At the conclusion of the review, the prosecutor shall: (i) affirm the decision of the juvenile court counselor or direct the filing of a petition and (ii) notify the complainant and the victim of the prosecutor's action. (1979, c. 815, s. 1; 1981, c. 469, s. 6; 1998-202, s. 6; 2001-490, s. 2.8; 2017-57, s. 16D.4(v).)

§ 7B-1706. Diversion plans and referral.

(a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the juvenile court counselor may divert the juvenile pursuant to a diversion plan, which may include referring the juvenile to any of the following resources:

- (1) An appropriate public or private resource;
- (2) Restitution;
- (3) Community service;
- (4) Victim-offender mediation;
- (5) Regimented physical training;
- (6) Counseling;
- (7) A teen court program, as set forth in subsection (c) of this section.

As part of a diversion plan, the juvenile court counselor may enter into a diversion contract with the juvenile and the juvenile's parent, guardian, or custodian.

(b) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the juvenile court counselor may enter into a diversion contract with the juvenile and the parent, guardian, or custodian; provided, a diversion contract requires the consent of the juvenile and the juvenile's parent, guardian, or custodian. A diversion contract shall:

- (1) State conditions by which the juvenile agrees to abide and any actions the juvenile agrees to take;
- (2) State conditions by which the parent, guardian, or custodian agrees to abide and any actions the parent, guardian, or custodian agrees to take;
- (3) Describe the role of the juvenile court counselor in relation to the juvenile and the parent, guardian, or custodian;
- (4) Specify the length of the contract, which shall not exceed six months;
- (5) Indicate that all parties understand and agree that:
 - a. The juvenile's violation of the contract may result in the filing of the complaint as a petition; and
 - b. The juvenile's successful completion of the contract shall preclude the filing of a petition.

After a diversion contract is signed by the parties, the juvenile court counselor shall provide copies of the contract to the juvenile and the juvenile's parent, guardian, or custodian. The juvenile court counselor shall notify any agency or other resource from which the juvenile or the juvenile's parent, guardian, or custodian will be seeking services or treatment pursuant to the terms of the contract. At any time during the term of the contract if the juvenile court counselor determines that the juvenile has failed to comply substantially with the terms of the contract, the juvenile court counselor may file the complaint as a petition. Unless the juvenile court counselor has filed the complaint as a petition, the juvenile court counselor shall close the juvenile's file in regard to the diverted matter within six months after the date of the contract.

(c) If a teen court program has been established in the district, the juvenile court counselor, upon a finding of legal sufficiency, may refer to a teen court program, any case in which a juvenile has allegedly committed an offense that would be an infraction or misdemeanor if committed by an adult. However, the juvenile court counselor shall not refer a case to a teen court program (i) if the juvenile has been referred to a teen court program previously, or (ii) if the juvenile is alleged to have committed any of the following offenses:

- (1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-138.5, or 20-138.7, or any other motor vehicle violation;
- (2) A Class A1 misdemeanor;
- (3) An assault in which a weapon is used; or
- (4) A controlled substance offense under Article 5 of Chapter 90 of the General Statutes, other than simple possession of a Schedule VI drug or alcohol.

(d) The juvenile court counselor shall maintain diversion plans and contracts entered into pursuant to this section to allow juvenile court counselors to determine when a juvenile has had a complaint diverted previously. Diversion plans and contracts are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or examination. Diversion plans and contracts shall be destroyed when the juvenile reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of the court, whichever is longer.

(e) No later than 60 days after the juvenile court counselor diverts a juvenile, the juvenile court counselor shall determine whether the juvenile and the juvenile's parent, guardian, or custodian have complied with the terms of the diversion plan or contract. In making this determination, the juvenile court counselor shall contact any referral resources to determine whether the juvenile and the juvenile's parent, guardian, or custodian complied with any recommendations for treatment or services made by the resource. If the juvenile and the juvenile's

parent, guardian, or custodian have not complied, the juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition within 10 days after making the determination. If the juvenile court counselor does not file a petition, the juvenile court counselor may continue to monitor the case for up to six months from the date of the diversion plan or contract. At any point during that time period if the juvenile and the juvenile's parent, guardian, or custodian fail to comply, the juvenile court counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition. After six months, the juvenile court counselor shall close the diversion plan or contract file. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.9.)

§ 7B-1707. Direct contempt by juvenile.

The preceding sections of this Article do not apply when a juvenile is ordered pursuant to G.S. 5A-32(b) to appear and show cause why the juvenile should not be held in contempt. (2007-168, s. 4.)