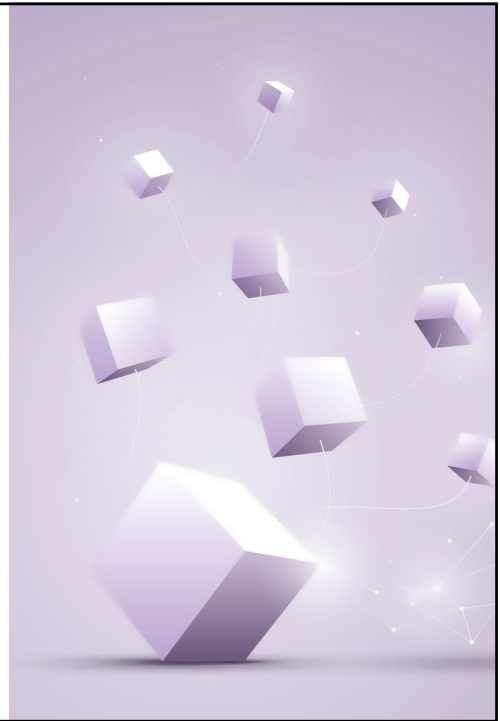


Delinquency Law Update

NC Association of District Court
Judges
Fall Conference 2023



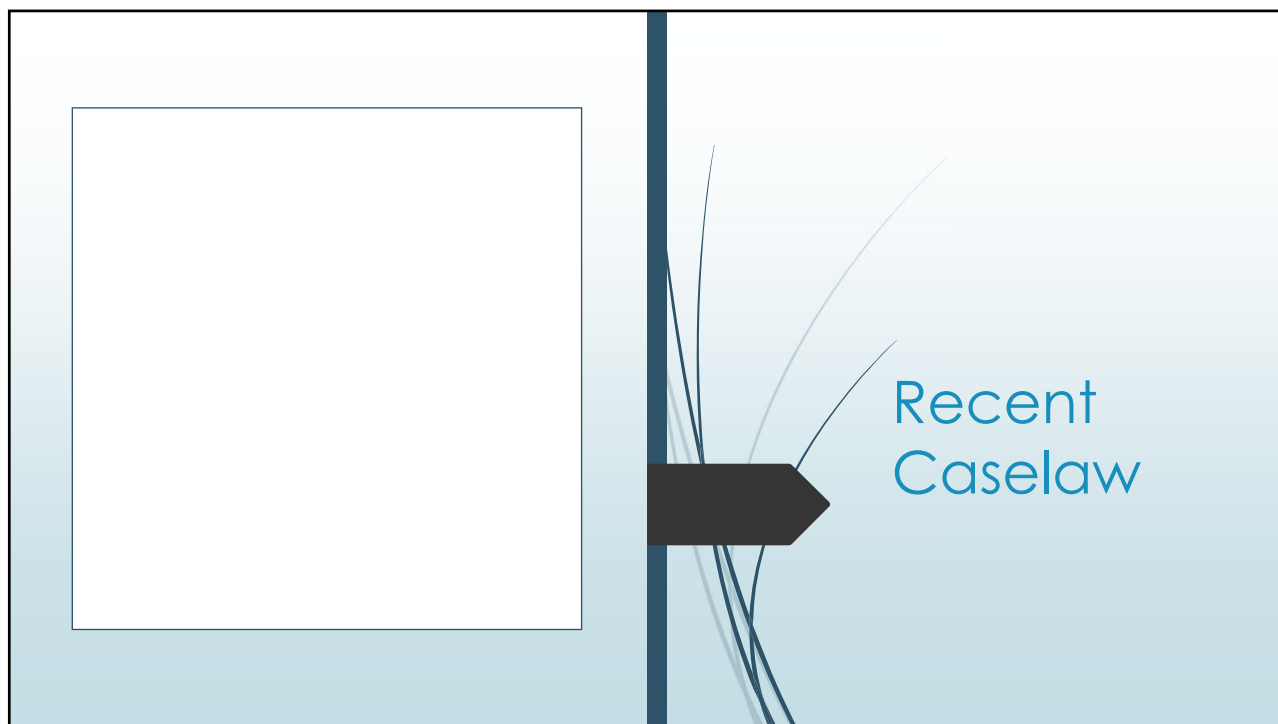
1

Hot Topics



- Recent caselaw
- Statutory changes
 - Mandatory transfer
 - Mental health assessments
 - Interrogation
 - Secure custody orders
 - Release of Information
 - Capacity to proceed

2



3

A slide with a light blue background and a dark blue vertical bar on the left. A dark blue arrow points from the bar towards the text. The text is in a blue, sans-serif font. Below the text is a bulleted list with five items, each with a dark blue square bullet point.

Disposition Orders
In the Matter of N.M., __ N.C.App. __ (9/19/23)

- MUST include written findings showing the court considered factors in G.S. 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.

4


otherwise be provided for the class of offense and delinquency history level. G.S. 7B-2508(g1).

6. **Other Findings:** (continue on attached page(s) if necessary)


NOTE: State any findings regarding the seriousness of the offense(s); the need to hold the juvenile accountable; the importance of protecting the public; the degree of the juvenile's culpability; the juvenile's rehabilitative and treatment needs; and available and appropriate resources. Also use this space for any findings that are required to support a particular disposition, such as a finding of the juvenile's ability to pay if the Court is ordering restitution.


(Over)

AOC-J-475, Rev. 12/21
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5



 Colloquy Before Juvenile Testifies
In the Matter of S.C., __ N.C.App. __ (9/5/23)

- ▶ G.S. 7B-2405 places affirmative duty on the COURT to protect the rights of the juvenile
- ▶ Court MUST engage in some colloquy before juvenile testifies to ensure juvenile understands the privilege against self-incrimination

6

Pleading Sexual Battery In the Matter of J.U., 887 S.E.2d 859 (2023)

Elements

- ▶ For the purpose of sexual arousal, sexual gratification, or sexual abuse
- ▶ Engages in sexual contact with another person
- ▶ **By force** and against the will of the other person

Petition

- ▶ 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

7

Hot Topics



- ▶ Recent caselaw
- ▶ **Statutory changes**
 - ▶ Mandatory transfer
 - ▶ Mental health assessments
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8

Mandatory Transfer – 13, 14, 15

Transfer triggered by PC finding **or returned indictment**
(offenses committed on or after 12/1/23)

Ongoing secure custody hearings every **30 days**
(can be 10 if requested by juvenile and good cause exists; offenses committed on or after 10/1/23)

9

Transfer Based on Returned Indictment



Finding that a qualifying indictment has been returned no longer required



Transfer triggered by notice under G.S. 15A-630

Offenses committed on or after 12/1/23

10

Mental Health Assessments

- ▶ Court must order DJJ to make a referral for a CCA if there is no CCA (or equivalent) within **90 days of disposition hearing**
- ▶ Suspected mental illness = identified through valid screening instrument (GAIN-SS) or other evidence
- ▶ Must review all CCAs and determine if care review team criteria are met
- ▶ Explicit authority to hold hearing after court-ordered evaluation (under G.S. 7B-2501 (a)). Can order compliance with evaluation or treatment recommended by the exam.

Offenses committed on or after 12/1/23

11

Interrogation of Youth Ages 16 and 17

Caretaker added to list of people juvenile has right to have present during questioning

If request PGC, law enforcement must make reasonable effort to contact that PGC

If PGC not available, a caretaker can be present

Offenses committed on or after 12/1/23

12

Caretaker Defined

“any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, a foster parent, an adult member of the juvenile's household, an adult entrusted with the juvenile's care, a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services.”

13

Secure Custody Orders

SCO can be issued before juvenile served with petition. Service must occur within 72 hours of detention. Court counselor can effectuate service.

Court counselor added as person who can secure custody of juvenile under an SCO

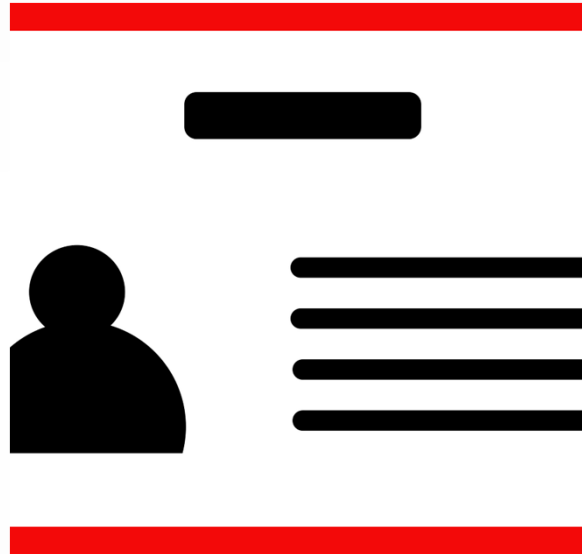
Incorporates criminal law standard (G.S. 15A-401(e)) for when LE can enter a private residence or vehicle, and use force during that entry, to take juvenile into custody

Offenses committed on or after 12/1/23

14

Release of Identifying Information – “Lyric and Devin’s Law”

- ▶ Allowed when:
 - ▶ Petition filed alleging felony at age 13 or older,
 - ▶ Juvenile presents danger to self or others based on their record or the allegations, and
 - ▶ Good cause exists for disclosure

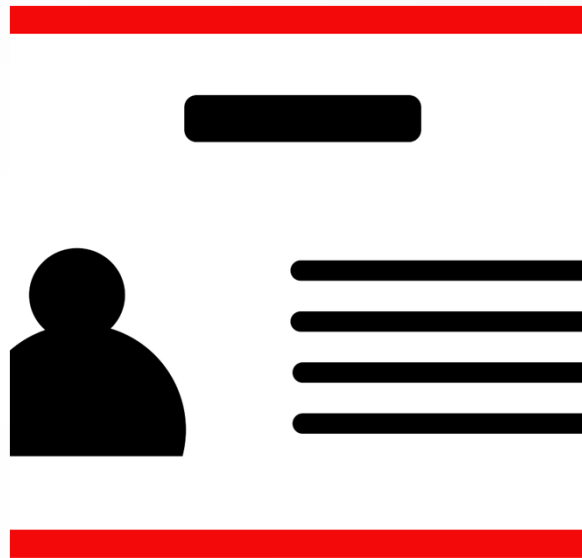


Offenses committed on or after 12/1/23

15

Release of Identifying Information – “Lyric and Devin’s Law”

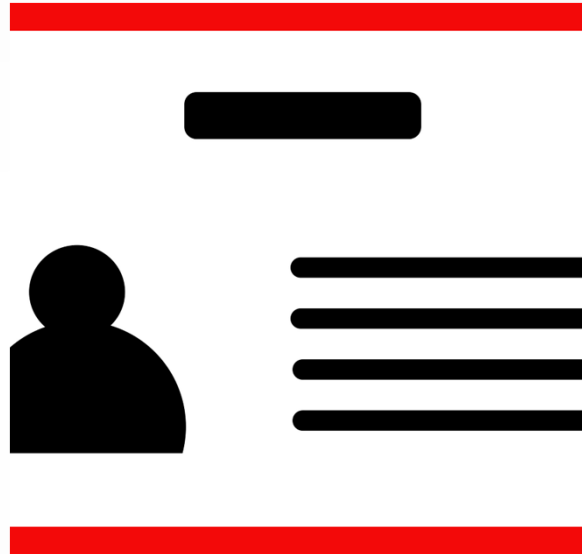
- ▶ Requires
 - ▶ Written court order
 - ▶ With findings



16

Release of Identifying Information – “Lyric and Devin’s Law”

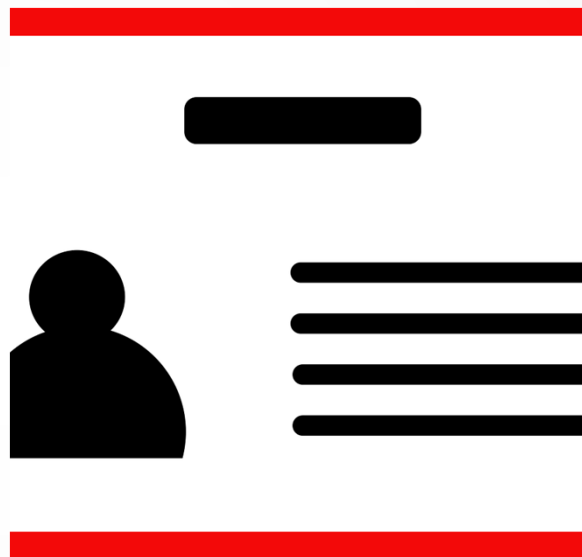
- ▶ Also allowed when
 - ▶ Exigent circumstances exist
 - ▶ DJJ or LE releases information
- ▶ Must seek court order as soon as reasonably practicable and at least at first available session of a court in the county following information release



17

Release of Identifying Information – “Lyric and Devin’s Law”

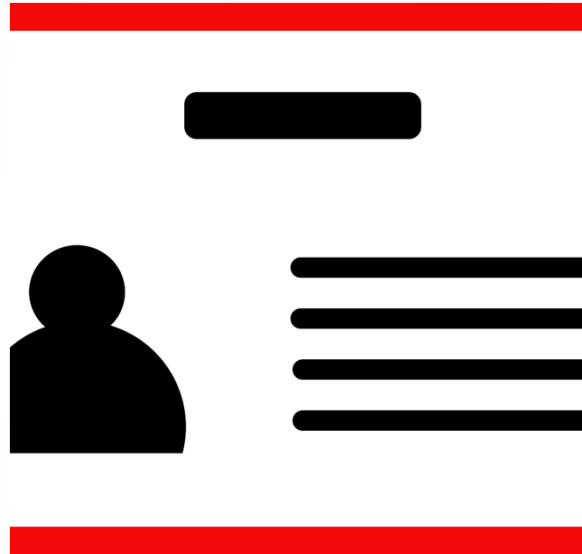
- ▶ Information that can be released
 - ▶ First and last name
 - ▶ Photograph
 - ▶ Offense(s) alleged in petition
 - ▶ If a SCO has been issued
 - ▶ Statement as to threat to self or others and level of concern of DJJ or LE



18

Release of Identifying Information – “Lyric and Devin’s Law”

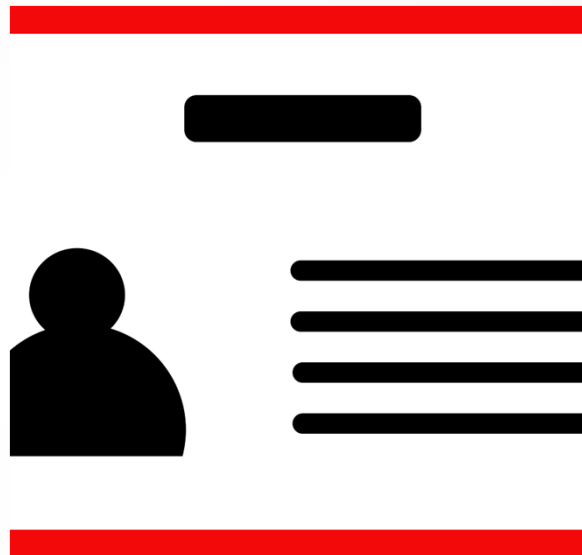
- ▶ Before release of information
 - ▶ DJJ or LE must make reasonable efforts to notify PGC
 - ▶ If taken into custody before release, no release allowed



19

Release of Identifying Information – “Lyric and Devin’s Law”

- ▶ Information must be removed from publicly available websites, DJJ or LE social media accounts if
 - ▶ Court does not order release after release under exigent circumstances, or
 - ▶ Taken into custody



20

New Juvenile Capacity Law



Big changes

New standard
Remediation process with
maximum timelines



Class in Fall 2024

21

I'm Here for You

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