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Findings Required on Disposition Orders

[In the Matter of N.M., N.C.App. \(September 19, 2023\)](#)

Held: Disposition vacated and remanded

Facts: The juvenile was adjudicated delinquent for simple assault related to an incident on a school bus. The court received a predisposition report, risk and needs assessments, and a full YASI narrative assessment and entered a Level 1 disposition. The order was entered on the preprinted Juvenile Level 1 Disposition Order form. The boxes indicating that the court received, considered, and incorporated by reference the report and assessments were checked. The section entitled “Other Findings” was left blank.

Opinion: The trial must make oral and written findings showing that it considered the five factors mandated for consideration at disposition as contained in G.S. 7B-2501(c). This is true even when the information regarding the statutory factors is in the reports given to the court. The “Other Findings” section of the form must be filled with the trial court’s findings regarding the five factors in G.S. 7B-2501(c).

Court Mandate to Engage in Some Colloquy with Juvenile Before Juvenile Testifies

[In the Matter of S.C., N.C. App \(September 5, 2023\)](#)

Held: Adjudication and disposition vacated, remanded

Facts: The juvenile was charged with misdemeanor assault and denied the allegation. The court denied her attorney’s motion to dismiss after the close of the State’s evidence. The juvenile’s attorney then called the juvenile to the stand. The court did not ask the juvenile any questions or engage in any colloquy before the juvenile testified. On direct examination the juvenile stated that she punched the victim in the face. On cross-examination, the juvenile also stated that she pushed the victim. The juvenile was adjudicated delinquent for simple assault.

Opinion: The trial court violated G.S. 7B-2405(4) by allowing the juvenile to testify without the court first advising her of her privilege against self-incrimination. G.S. 7B-2405 places an affirmative duty on the court to protect the rights of the juvenile, including the privilege against self-incrimination. At the very least, some colloquy must occur between the court and the juvenile before the juvenile testifies to ensure that the juvenile understands their right against self-incrimination. The juvenile’s testimony was not harmless beyond a reasonable doubt because she incriminated herself by admitting that she either pushed or punched the victim. The State conceded reversible error in this case.

Element of Force Not Explicitly Required in Sexual Battery Petition

[In the Matter of J.U., 887 S.E.2d 859 \(June 16, 2023\)](#)

Held: Reversed and remanded

- **Facts:** The juvenile petition alleging sexual battery stated, “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.” On appeal following adjudication, the juvenile alleged that the petition was fatally defective for failing to allege the necessary element of force. The Court of Appeals agreed that the allegations in the petition were fatally defective in their failure to allege an application of force to the victim’s body sufficient to overcome any resistance the victim might make.
- **Opinion:** Juvenile petitions serve essentially the same function as criminal indictments and are generally held to the same standards. Contemporary pleading requirements remove unnecessary technicalities of common law pleading requirements. Indictments need only satisfy statute and constitutional purposes (sufficiency to prepare a defense and protect against double jeopardy). The law evolved from requiring elemental specificity in the pleading to the requirement in G.S. 15A-924 that an indictment alleges facts supporting each essential element of the offense. Magic words are not required. All that is required is that the petition contains factual elements supporting the elements of the offense charged. Hyper-technical scrutiny of juvenile petitions is not required. They only need to clearly identify the crime being charged.

It is not possible to “engage in nonconsensual sexual contact with another person without the application of some force, however slight.” (Slip op. at 12, internal quotations omitted). Force was clearly inferable in the petition by alleging that the juvenile touched the victim’s vaginal area without her consent. The petition therefore contained the factual allegations necessary to support each element of misdemeanor sexual battery and complied with the statutory requirements. There was no jurisdictional defect resulting from the failure to explicitly include the element of force in the petition.

2023 Delinquency Legislation

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Please note that this summary contains information about the parts of session laws that impact juvenile delinquency and undisciplined matters only. The session laws may contain other law changes not included in this summary.

S.L. 2023-114, H. 186 AN ACT TO MODIFY THE TRANSFER PROCESS FOR JUVENILES WHO ALLEGEDLY COMMITTED CERTAIN FELONIES, TO MODIFY THE CONFIDENTIALITY OF CERTAIN INFORMATION CONCERNING JUVENILES UNDER INVESTIGATION, TO MODIFY THE INTERROGATION PROCEDURES FOR CERTAIN JUVENILES, TO MODIFY THE SERVICE OF SUMMONS FOR JUVENILE PETITIONS, TO CLARIFY THE PROCESS FOR COURT-ORDERED EVALUATIONS FOR JUVENILES, TO CLARIFY MINORITY SENSITIVITY TRAINING FOR LAW ENFORCEMENT PERSONNEL, TO CLARIFY JUVENILE DETENTION TRANSFER, TO MAKE VARIOUS TECHNICAL AND CONFORMING CHANGES, AS RECOMMENDED BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF JUVENILE JUSTICE, TO CREATE LAWS TO EVALUATE WHETHER A JUVENILE HAS THE CAPACITY TO PROCEED, TO MODIFY CERTAIN LAWS RELATED TO SECURE CUSTODY ORDERS, TO AUTHORIZE CERTAIN DEPARTMENT OF INSURANCE LEASE EXPENSES, AND TO MAKE TECHNICAL CHANGES TO S.L. 2023-97.

Part I Transfer Process

- Amends G.S. 7B-2200.5(a)(1) to remove the requirement that the court make a finding that a bill of indictment has been returned against a juvenile charging the commission of a Class A – G felony before ordering the matter transferred to superior court for trial as an adult. Requires that the court transfer the case to superior court, unless the prosecutor declines to transfer the case as allowed by statute, when a juvenile is charged with committing a Class A – G felony at age 16 or 17 and the juvenile is provided notice of the return of a true bill of indictment as provided in G.S. 15A-630.
- Amends G.S. 7B-2200 to require the district court to transfer a case in which a Class A felony is alleged to have been committed by a juvenile at age 13, 14, or 15 and there is either (1) a finding of probable cause or (2) notice of the return of a true bill of indictment as provided in G.S. 15A-630. Previously, these cases could only be transferred following a finding of probable cause.
- Amends G.S. 7B-2202(a) to exempt cases transferred to superior court, based on a returned indictment alleging a Class A felony was committed at age 13, 14, or 15, from the requirement to hold a probable cause hearing.
- These changes apply to offenses committed on or after December 1, 2023.

Part II Confidentiality, “Lyric and Devin’s Law”

- Adds a new G.S. 7B-3103 to allow disclosure of identifying information about a juvenile when:

- The court finds, in a written order, that (1) a petition has been filed alleging that the juvenile committed a felony at age 13 or older, and (2) based on the juvenile’s record or alleged offense(s), that the juvenile presents a danger to self or others, and (3) good cause exists for the disclosure, or
- It is determined that exigent circumstances exist and the Division of Juvenile Justice (the “Division”) or a law enforcement agency within NC releases the information. If information is released as a result of a determination that exigent circumstances exist, the entity that released the information must seek a court order for the release of the information as soon as reasonably practicable, but no later than the first available session of a court in the county after the release of the information. If the court does not order release of the information, all previously released information must be removed from any publicly available website or social media account controlled by the Division or law enforcement agency.
- When disclosure is allowed, the Division or any law enforcement agency in NC may publicly release:
 - The juvenile’s first and last name and photograph,
 - Any offense alleged in the petition filed against the juvenile,
 - Whether a secure custody order has been issued for the juvenile,
 - A statement as to the juvenile’s threat to self or others, based on the juvenile’s record or the nature of the alleged offense and the level of concern of the Division or law enforcement agency.
- The Division or law enforcement agency must make a reasonable effort to notify a parent, legal guardian, or custodian of the juvenile before publicly releasing the information about the juvenile.
- If the court orders disclosure and the juvenile is taken into custody before information is publicly disclosed, the information shall not be publicly disclosed.
- If the juvenile is taken into custody after information is publicly disclosed, whether by court order or as the result of exigent circumstances, all released information must be removed from any publicly available website or social media account controlled by the Division or law enforcement agency.
- This new law applies to offenses committed on or after December 1, 2023.

Part III. Interrogation Procedures

- G.S. 7B-2101 is amended to add a new subdivision (a1) outlining the rights that juveniles age 16 and 17 have during a custodial interrogation. The right to have a caretaker present during a custodial interrogation is added to the existing list of rights.
- G.S. 7B-2101 is amended to add a new subdivision (a2), stating the if a juvenile who is 16 or 17 invokes their right to have a parent, guardian, or custodian present during questioning, law enforcement must make a reasonable effort to contact that person. If the parent, guardian, or custodian is not available, a caretaker can be present during questioning.
- G.S. 7B-2101 is amended to add a new subdivision (e), defining who is a caretaker for the purpose of new subdivision (a1). This definition is the same definition of caretaker contained in G.S. 7B-101(3)(the abuse, neglect, and dependency statute) and includes: “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."

- These changes apply to offenses committed on or after December 1, 2023.

Part IV. Other Juvenile Justice Modifications

- G.S. 7B-1806 is amended to clarify that a juvenile summons may be served by a law enforcement officer or a juvenile court counselor. Language is added to codify existing caselaw that a defense of lack of personal jurisdiction or insufficiency of service is waived if a parent, guardian, or custodian and the juvenile avail themselves to the court and do not raise an objection at the initial court appearance.
- G.S. 7B-2502 is amended to make the following changes to the option to order evaluation and treatment prior to disposition, to the requirements that the court order a comprehensive clinical assessment (CCA) in certain cases, and to the mandate that the court consider whether a care review team must be convened in certain cases:
 - Language is added to explicitly authorize the court to hold a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological or other evaluation or treatment after completion of a court-ordered examination to determine the needs of the juvenile. The court may order the juvenile to comply with any evaluation or treatment recommended by the examination.
 - Language is added to clarify that the obligation to order DJJ to make a referral for a CCA applies to a juvenile who has been identified with a suspected mental illness through the use of a validated screening instrument or other evidence presented to the court. The statute also continues to apply to a juvenile with a suspected developmental disability or intellectual disability.
 - The mandate that the court order DJJ to make a referral for a CCA is changed from cases in which there is no CCA (or it's equivalent) within 45 days before the adjudication hearing to cases in which there is no CCA (or it's equivalent) within 90 days before the disposition hearing.
 - The court is required to review all CCA's (or their equivalent) to determine if the statutory criteria for ordering DJJ to convene a care review team exist. This includes all CCA's ordered by the court and all CCA's that were completed within 90 days of the disposition hearing (and therefore not ordered by the court).
- Corrects a cross reference in the statutory authority to operate a juvenile detention facility in the same facility as a county jail when approved by the Division of Juvenile Justice.
- Makes the Division of Juvenile Justice responsible for creating, implementing, and evaluating annual juvenile minority sensitivity and racial and ethnic disparities training for law enforcement and Division personnel.

- Amends G.S. 7B-2204 to allow a juvenile who has been convicted and sentenced to an active sentence, following transfer of their case to superior court for trial as an adult, to be held in a juvenile detention facility pending transfer to the Division of Prisons.
- The changes in this Part apply to offenses committed on or after December 1, 2023.

Part V. Juvenile Capacity to Proceed

- Replaces the current G.S. 7B-2401 and adds new G.S. 7B-2401.1 – 2401.5 to establish a juvenile standard and procedure for determining capacity to proceed. The new law includes:
 - Prohibition from proceeding with a discretionary transfer, adjudication, or disposition (including a violation of probation) when the juvenile is 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:
 - mental disorder,
 - intellectual disability,
 - neurological disorder,
 - traumatic or acquired brain injury, or
 - developmental immaturity.
 - When the question of capacity is raised in a juvenile matter, the court can move forward with any motions that can be handled by counsel without the assistance of the juvenile.
 - Cases subject to mandatory transfer are not covered by this new juvenile capacity standard. Capacity to proceed in those cases cannot be addressed by the juvenile court. Capacity to proceed may be raised under Article 56 of Chapter 15A of the General Statutes after the case is transferred to superior court.
 - This new juvenile capacity standard also does not apply to cases in which the juvenile court did not obtain jurisdiction in the matter before the person aged out of juvenile jurisdiction.
 - The new G.S. 7B-2401.1 defines
 - Developmental immaturity as “[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.”
 - Division as the Division of Juvenile Justice
 - Forensic evaluation as “a full examination by a forensic evaluator using evidence-based psychological tools to determine if a juvenile has the capacity to proceed. This evaluation shall consist of a review of all available prior mental health and educational records of the juvenile and IQ testing and may include other developmentally appropriate testing for juveniles deemed relevant by the forensic evaluator.”
 - Forensic evaluation report as the written report from the forensic evaluator that contains the statutorily required information.
 - Incapacity to proceed as “[b]y reason of mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, the juvenile is 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.”
- Remediation as “[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.”
- The new G.S. 7B-2401.2 details the procedure to determine capacity and the hearing procedure, including that:
- The question of capacity can be raised at any time by the prosecutor, the juvenile, the juvenile’s attorney, or the court.
 - The court may appoint one or more forensic evaluators qualified by the Department of Health and Human Services to conduct juvenile forensic evaluations to examine and return a report on the juvenile.
 - When the juvenile is alleged to have committed an act that would be a felony if committed by an adult, the court can order the juvenile to a State facility for up to 60 days for observation and treatment to determine the juvenile’s capacity to proceed. The court must make a finding that this kind of exam is more appropriate if the court is ordering it without first ordering an exam in the community.
 - The court must order that the forensic evaluation is conducted in the least restrictive environment, considering the best interests of the juvenile and the safety of the public.
 - Forensic evaluations can be conducted anywhere within North Carolina and can be conducted outside of North Carolina for juveniles in residential facilities, as individually ordered by the court.
 - DJJ must arrange for transportation of juveniles held in secure custody to the ordered location of the forensic evaluation.
 - The forensic evaluation report must be completed within 30 days from the date that it was ordered. This deadline can be extended for good cause shown. The report must be provided to the court within:
 - 10 days following completion of the evaluation when the juvenile is alleged to have committed an offense that would be a misdemeanor if committed by an adult;
 - 30 days following completion of the evaluation when the juvenile is alleged to have committed an offense that would be a felony if committed by an adult; or
 - 60 days of entry of a court order for an independent evaluation, when that evaluation was ordered because the juvenile challenged the determination made by a court-ordered evaluator.
 - These deadlines can be extended in 30-day increments, but no longer than a total of 120 days.
 - Forensic evaluations must be submitted to the clerk of superior court in a sealed envelope addressed to the attention of the presiding judge and with a cover

statement that includes any conclusion about the juvenile's capacity to proceed. The clerk must send a copy of the covering statement to DJJ if the juvenile is being held in DJJ's custody. A copy of the full report must be provided to the juvenile's attorney. It must also be provided to the prosecutor any time the question of capacity is raised. Reports must be maintained as confidential records.

- The court must ask the prosecutor and the juvenile's attorney about the juvenile's capacity to proceed the first time the juvenile appears in court in every delinquency matter in which the juvenile is less than 12 years of age. This does not preclude the question of capacity from being raised at any other time during the proceedings.
- An order for a forensic evaluation stays all proceedings except for hearing to review the need for continued secure or nonsecure custody and proceedings related to transfer as the result of an indictment for offenses alleged to have been committed at age 16 or 17.
- When the question of capacity is raised, the court must hold a hearing to determine the juvenile's capacity to proceed. Parties may stipulate that the juvenile has capacity to proceed, but they may not stipulate that the juvenile lacks capacity to proceed.
- The juvenile must prove by a preponderance of the evidence that they do not have capacity to proceed.
- The court's order must include findings of fact to support its determination of the juvenile's capacity to proceed.
- The new G.S. 7B-2401.3 establishes a new credentialing process for juvenile forensic evaluators, details information that must be released to the forensic evaluator, addresses what must be considered during the forensic evaluation and included in the report, and tasks the North Carolina Administrative Office of the Courts with establishing reasonable reimbursement guidelines for the forensic evaluation and any related court appearances. This includes that:
 - The NC Department of Health and Human Services must designate and oversee a credentialing body to set and maintain minimum standards to qualify court-appointed juvenile forensic evaluators. Existing juvenile forensic evaluators will have 12 months to satisfy the new qualification standards once they are established.
 - Statements made by a juvenile during a forensic evaluation regarding the juvenile's responsibility for any criminal act that can result in an adjudication of delinquency or transfer to superior court for trial as an adult are not admissible in any juvenile or criminal proceeding against the juvenile. The forensic evaluation must not include any such statement.
 - The court must order the release of relevant confidential information to the forensic evaluator after ordering a forensic examination of the juvenile. The juvenile must be provided reasonable notice and an opportunity to be heard and the court must determine that the information is (1) relevant and necessary to the capacity hearing and (2) unavailable from any other source before

- ordering release of these records. Records that can be released include the juvenile petition, secure and nonsecure custody orders, the law enforcement incident report, the juvenile’s delinquency history, detention records, any prior medical and mental health records, and any school records of the juvenile. Federal law that protects confidential records continues to apply.
- If the forensic evaluator is of the opinion that a juvenile is incapable to proceed, the written forensic report must recommend any treatment or education needed for the juvenile to attain capacity, if any; include the likelihood that the juvenile will attain capacity in the foreseeable future because of the recommended treatment or education; assess the probable duration of the treatment or education needed to attain capacity; and, if treatment is recommended, recommend the least restrictive environment for the provision of services.
- The new G.S. 7B-2401.4 establishes a remediation process that may be used when the court finds that the juvenile lacks capacity to proceed and is substantially likely to attain capacity in the foreseeable future. The purpose of remediation is for the juvenile to attain capacity to proceed.
- Remediation services must be provided in the least restrictive environment considering the best interests of the juvenile and the safety of the public. The court is required to consider eight additional statutory factors when determining where services may be provided.
 - The court may enter an order for the juvenile to be assessed for involuntary commitment when the juvenile is found incapable to proceed based on mental disorder, intellectual disability, neurological disorder, or traumatic or acquired brain injury but substantially likely to attain capacity and the court finds all available less restrictive alternatives are inappropriate.
 - Requirements for an order for remediation services are established.
 - Time limits on remediation services are established as follows:

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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- The remediation service provider must provide reports to the court at least every 90 days and include information detailed in the statute.
 - Statements made by a juvenile during remediation that could result in an adjudication of delinquency or transfer to superior court for trial as an adult are not admissible in any juvenile or criminal proceeding against the juvenile and must not be included in remediation documentation.
 - The court must hold a hearing to review remediation services within 30 days of receipt of the remediation progress report. If the court determines that a reassessment of capacity is warranted, the court must order a new forensic evaluation. The new evaluation must be performed by the original forensic evaluator when possible. The remediation provider must notify the court when remediation services are completed and the case must be calendared for an appearance within 30 days of completion of remediation services.
- The new G.S. 7B-2401.5 provides statutory authority for the court to conduct a hearing to determine if the juvenile meets the criteria for involuntary commitment when the court finds that the juvenile does not have capacity to proceed and is not likely to attain capacity in the foreseeable future. It also requires that the court dismiss the petition after finding that the juvenile lacks capacity to proceed and is not likely to attain capacity in the foreseeable future. The prosecutor may voluntarily dismiss any allegations in the petition with leave as long as the juvenile is within the age limit for juvenile jurisdiction. Records regarding the juvenile’s capacity must be sealed after the conclusion of the capacity hearing or after the juvenile is found not to be substantially likely to restored to or attain capacity on the foreseeable future.
- G.S. 7B-1906 is amended to add a new subdivision (b3) establishing that secure custody hearings must be held every 30 days after the question of capacity is raised. Ongoing hearings can be held every 10 days on the juvenile’s request and for good cause shown. Ongoing secure custody hearings can be waived with the consent of the juvenile.
- This new capacity law applies to offenses committed on or after January 1, 2025.

Part VI. Secure Custody Order Modifications

- Amends G.S. 7B-1904 to
 - add a juvenile court counselor as a person who can assume custody of a juvenile as the result of the issuance of a secure custody order, and
 - authorize issuance of an initial secure custody order after filing of a petition and before the juvenile has been served with that petition. The petition must be served on the juvenile within 72 hours after the juvenile is detained.
- Adds a new G.S. 7B-1904.5 to include language, previously contained in G.S. 7B-1904, regarding law enforcement exemption from liability for executing a secure custody order that is complete

and regular on its face. Adds language detailing when law enforcement can enter a private premises or vehicle, and use force during such entry, in order to take a juvenile into custody pursuant to a secure custody order. The language mirrors language in G.S. 15A-401(e), applicable when law enforcement is arresting an adult.

- These changes apply to offenses committed on or after December 1, 2023.

S.L. 2023-75, H 813 AN ACT TO MODIFY LAWS RELATING TO PRETRIAL RELEASE

- Amends G.S. 7B-1906(b1) to require ongoing hearings to determine the need for secure custody every 30 calendar days for juveniles who are accused of committing a Class A felony at age 13, 14, or 15. Hearings may be held every 10 days on request of the juvenile and for good cause as determined by the court. This is the same secure custody hearing schedule that applies to cases in which a Class A – G felony is alleged to have been committed by a juvenile at age 16 or 17 and places all mandatory transfer cases on the same secure custody hearing schedule.
- This change applies to offenses committed on or after October 1, 2023.

North Carolina Criminal Law Blog

Changes Coming to Delinquency Procedure: Transfer and Mental Health Evaluations

September 26, 2023 by [Jacquelyn Greene](#)

<https://nccriminallaw.sog.unc.edu/author/greene/>

[Session Law 2023-114](#)

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2023-114.pdf>

includes many provisions that change the law governing delinquency cases. This is the first in a three-part series of blogs detailing those changes. It covers the changes to the laws that govern transfer of cases to superior court for trial as an adult and the mandate to assess mental health needs before disposition through the comprehensive clinical assessment (CCA) and care review processes. All of the S.L. 2023-114 changes described in this blog will apply to offenses committed on or after December 1, 2023.

Transfer Changes

Mandatory transfer of Class A felonies alleged to have been committed at ages 13, 14, or 15

Mandatory transfer of Class A felonies alleged to have been committed at ages 13, 14, or 15 is not new in North Carolina. **Section 1 of Session Law 1979-815** <<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/1979-1980/SL1979-815.pdf>> enacted mandatory transfer of all capital felonies alleged to have been committed at ages 14 or 15 following a finding probable cause. **Session Law 1991-842** <<https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/1991-1992/SL1991-842.html>> changed the category of offenses subject to mandatory transfer from capital felonies to Class A felonies. This mandatory transfer structure was extended to cases in which Class A felonies were alleged to have been committed by juveniles at age 13 in **Section 25 of Session Law 1994, Ex. Sess. – 22** <<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/1993-1994/SL1994-22es.pdf>> .

This mandatory transfer structure requires the court to order transfer only after a finding of probable cause. Part I of S.L. 2023-114 adds the return of a true bill of indictment as a mechanism that triggers mandatory transfer in these cases. Under the new law, mandatory transfer is triggered in cases in which a Class A felony is alleged to have been committed at ages 13, 14, or 15 either (1) on a finding of probable cause or (2) on notice of the return of a true bill of indictment. These are the same mechanisms that trigger mandatory transfer in cases in which a Class A – G felony is alleged to have been committed at age 16 or 17. G.S. 7B-2200.5(a).

It is noteworthy that that timeline for holding a probable cause hearing was not changed as part of the new law. **[G.S. 7B-2202\(a\)](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2202.pdf governs probable cause hearings in these cases and continues to require a probable cause hearing within 15 days of the juvenile's first appearance. The probable cause hearing can be continued for good cause. Therefore, the indictment will need to be returned within 15 days of the first appearance unless the probable cause hearing is continued. Otherwise, a probable cause hearing will be required. Probable cause hearings in mandatory transfer cases for offenses committed at age 16 or 17 must be held within 90 days of the juvenile's first appearance. **[G.S. 7B-2200.5\(c\)](#)**
https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf .

The legislature also aligned the secure custody hearing timeline in these cases with the secure custody hearing timeline for mandatory transfer cases in which the offense is alleged to have been committed at ages 16 or 17. This change was made in **[S.L. 2023-75](#)**

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/2023-2024/SL2023-75.html> and applies to offenses committed on or after October 1, 2023. Once the change takes effect, ongoing hearings to determine the need for continued secure custody in cases in which a Class A felony is alleged to have been committed at ages 13, 14, or 15 will be required to be held every 30 days. The hearings can be required every ten days on request of the juvenile and for good cause. These ongoing secure custody hearings can also be waived with the juvenile's consent.

Indictment procedure changes

Under current law, when an indictment is returned in a case that is subject to mandatory transfer for an offense alleged to have been committed at age 16 or 17, the court must transfer the case to superior court on (1) notice to the juvenile and (2) a finding by the court that a qualifying indictment has been returned. **[G.S. 7B-2200.5\(a\)](#)**

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf .

Part I of S.L. 2023-114 (1) removes the requirement that the court make a finding that a qualifying indictment has been returned and (2) requires transfer to superior court after the juvenile is provided notice of the returned indictment as provided in **G.S. 15A-630** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-630.pdf, the notice requirement for returned indictments in criminal cases. This standard for ordering transfer based on notice of the return of a true bill of indictment will apply to all offenses subject to mandatory transfer. This includes Class A – G felonies when committed at ages 16 or 17 and Class A felonies when committed at ages 13, 14, or 15.

While the juvenile court will no longer need to make a finding that a qualifying indictment has been returned, there are two things that the juvenile court must do in order to transfer the case. First, the juvenile court must order transfer of the case. The only way that superior court can obtain jurisdiction in these matters is through transfer of the case from juvenile court to superior court. ***State v. Dellinger*, 343 N.C. 93, 95 (1996)** <https://casetext.com/case/state-v-dellinger-11>. Under the new statutory structure, the juvenile court must transfer the case after the juvenile has received notice of the returned indictment. Therefore, the juvenile court must somehow confirm that the juvenile has received notice and then issue an order that transfers the case.

The second thing that the juvenile court must do at transfer is determine conditions of pretrial release for the juvenile (who becomes a defendant in a criminal matter once transfer is ordered). **G.S. 7B-2204(a)** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2204.pdf. It is also a best practice for the court to inquire as to ongoing representation for the juvenile after transfer is ordered. You can read more about why ensuring continuous representation is so critical at the time of transfer in this **blog** <https://nccriminallaw.sog.unc.edu/appointment-of-attorneys-in-juvenile-transfer-cases/>.

Given that the juvenile court must ensure that the juvenile received notice, issue a transfer order, and determine conditions of pretrial release, it seems that the removal of the need to make a finding that a qualifying indictment was returned does not also obviate the need for an appearance to order mandatory transfer.

Mental Health Assessment and Care Review Team Changes

Mandate for court to order a referral for a CCA

Part IV of S.L. 2023-114 also contains amendments to the law that governs court ordered assessments in delinquency cases. This is an area of law that has been rapidly evolving over the last few years. For context, you can access these blogs about [caselaw that began in 2019](https://www.sog.unc.edu/blogs/nc-criminal-law/mental-health-evaluations-required-prior-delinquency-dispositions) and resulted in [statutory change in 2021](https://www.sog.unc.edu/blogs/nc-criminal-law/legislative-changes-required-mental-health-assessments-entering-delinquency-disposition-new) . **S.L. 2021-123** [. This evolution shifted the statutory mandate from the requirement that the court order the area authority to conduct a CCA prior to ordering disposition in any case where there was evidence of suspected mental illness or developmental disability to the current structure.](https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/2021-2022/SL2021-123.html)

Currently, the court is required to order DJJ to make a referral for a CCA when

- the juvenile has a suspected mental illness, developmental disability, or intellectual disability, and
- A CCA (or an equivalent assessment) has not been conducted within 45 days before the adjudication hearing. **G.S. 7B-2502(a2)** [. <https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2502.pdf> .](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2502.pdf)

The most significant change to the law under S.L. 2023-114 is that the second criteria regarding the timing of the CCA is changing. Under the new law, the mandate for the court to order DJJ to make a referral for a CCA will apply to cases in which there is no CCA within **90 days of the disposition hearing**. Because the mandate to order a CCA applies any time the court is entering a disposition in a delinquency matter, including as a result of a violation of probation which may occur many months after adjudication, measuring the recency of the assessment against the date of the disposition hearing will ensure that timely assessments are available at all dispositions.

The statutory changes also include clarifying language about when suspected mental illness should trigger the mandate for a new CCA. The current statute applies the mandate to “the case of a juvenile with a suspected mental illness.” G.S. 7B-2502(a2). The new statutory language clarifies that the mandate applies in cases in which a juvenile has been identified with a suspected mental illness through the use of a validated screening instrument or other evidence. DJJ utilizes the GAIN-SS, a validated screening instrument, during intake. Therefore, if the court receives evidence that the juvenile was identified on the GAIN-SS as having a suspected mental illness, the juvenile will meet the criteria under the statute. The juvenile can also meet the criteria if there is other evidence to show that the juvenile has been identified with a suspected mental illness. The existing criteria of suspected developmental disability or intellectual disability will also continue to meet the statutory criteria.

Mandate for the court to consider whether a care review team must be ordered

Under the current statute, if the court orders DJJ to make a referral for a CCA, the court must review that CCA and consider whether the statutory criteria for ordering a care review team exist before the court can proceed to disposition. G.S. 7B-2502(a3). This language excludes cases in which there is a timely CCA because the court does not order a referral for a CCA in these cases. S.L. 2023-114 adds language to G.S. 7B-2502(a3) to require the court to review any CCA and consider whether criteria for ordering a care review team are met, whether the CCA was ordered by the court or whether it was within 90 days of disposition and therefore not ordered by the court. Under the amended statute, the court will be required to review all CCAs prior to disposition to determine if the criteria for ordering a care review team are met. As is the case under current law, the court must order a care review team if the criteria contained in G.S. 7B-2502(a3) are met.

Authority to hold a hearing to order treatment following a court-ordered evaluation

G.S. 7B-2502(a) gives the court broad authority, after adjudication, to order an examination of the juvenile by a physician, psychiatrist, psychologist, or other qualified expert as needed for the court to determine the needs of the juvenile. Prior to the restructuring of this statute in S.L. 2021-123, the statute also provided authority for the court to then hold a hearing on the examination results and to order compliance with evaluation or treatment. When the statute was reorganized, the link from the discretionary court-ordered exam to a hearing was lost. S.L. 2023-114 restores that link, adding language into G.S. 7B-2502(a) to allow the court to conduct a hearing after completion of an examination ordered at the court's discretion. The court can order the juvenile to comply with any evaluation or treatment recommended by the examination as a result of that hearing.

More to Come

S.L. 2023-114 contains many more law changes that apply to delinquency cases. Stay tuned for blogs in October and November that will address changes to juvenile investigations, issuance and execution of initial orders for secure custody, and confidentiality. There is also a new, comprehensive juvenile capacity to proceed law that is part of S.L. 2023-114. It takes effect in January, 2025. I'll be writing and teaching about that throughout 2024.



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North Carolina Criminal Law Blog

The Adolescent Brain and Mens Rea

July 24, 2023 by [Jacquelyn Greene](#)

<https://nccriminallaw.sog.unc.edu/author/greene/>

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>.

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/>](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/>](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/>](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 January of 2022](https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/). 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 functions 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/1990/469pa88-0.html>](https://law.justia.com/cases/north-carolina/supreme-court/1990/469pa88-0.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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