

2024 Delinquency Legislation

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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.

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Proving Use of Force to Establish Second-Degree Forcible Rape

In the Matter of D.R.J., __ N.C. App ____ (August 20, 2024)

Held: Dismissed in Part; Affirmed in Part

Facts: The juvenile's younger sister reported that the juvenile engaged in sexual intercourse with her. The sister was 13 years old and functioned at an 8-year-old level due to an intellectual disability. The sister testified that she told the juvenile no and to stop and that she did not give him permission and tried to leave the room. She also testified that her brother removed her clothes when she refused to remove them. On cross examination she stated that her brother did not hold her, grab her, or force her with his hands. She also stated that her brother made her come closer when she tried to step away from him and grabbed her and would not let her go. The juvenile's attorney attempted to elicit testimony from the grandparents regarding the sister's propensity for conflating things she saw on television as real because she had watched a show focused on a lifeguard being a predator the night before she reported the allegation. The court did not allow this line of questioning. The juvenile was adjudicated delinquent for felony second-degree forcible rape, misdemeanor sexual battery, and felony incest.

Opinion:

Motion to dismiss for insufficiency of the evidence

The juvenile alleged that the petitions for second-degree forcible rape and sexual battery should have been dismissed for failure to present substantial evidence of physical force. While the juvenile's attorney moved to dismiss at the close of the State's evidence, he did not renew that motion at the close of all evidence. This objection was therefore not preserved. The court did not invoke Rule 2 of the North Carolina Rules of Appellate Procedure to reach the merits of the issue to prevent manifest injustice because the unpreserved argument was without merit (as explained in the ineffective assistance of counsel analysis).

Ineffective assistance of counsel

The failure to renew the motion to dismiss the second-degree forcible rape and sexual battery petitions at the close of evidence does not constitute ineffective assistance of counsel. The juvenile cannot show prejudice from the failure to renew the motion because, had the attorney renewed the motion, the court would have properly denied it.

Denial of a motion to dismiss will be upheld if there is substantial evidence of each element of the offense and of the juvenile being the perpetrator. The juvenile's argument that there was not substantial evidence of force is without merit. Force can be established by actual physical force or constructive force. The Supreme Court's reasoning in *In re J.U.*, 384 N.C. 618 (2023), regarding force required to prove sexual battery, that "one cannot engage in nonconsensual sexual contact with another person without the application of some 'force,' however slight" applies to the use of force in second-degree forcible rape allegations as well. The evaluation of the sufficiency of conflicting evidence requires that any conflicts are resolved in favor of the State. The evidence showed the use of force, however slight, to compel the sister's submission and overcome any resistance. This meets the low bar needed to overcome a motion to dismiss.

Exclusion of testimony

The juvenile's attorney failed to make a showing demonstrating the substance of the grandparents' excluded testimony. The exclusion of evidence cannot be overruled when the record does not show what the witness would have testified to had they been permitted to testify. Appellate review of the issue of the exclusion of the testimony is hampered due to the failure to offer proof demonstrating the substance of the excluded testimony. This argument is dismissed.

Imposition of Disposition Without Review of Predisposition Report, Risk and Needs Assessment, or Review of Comprehensive Clinical Assessment

[In the Matter of K.S., ___ N.C. App. ___ \(June 4, 2024\), Unpublished](#)

Held: Affirmed

Facts: The juvenile admitted to violating his probation by removing his electronic monitoring device. The court did not receive a predisposition report or a risk and needs assessment before entering a new disposition as a result of the violation. The court also did not review the comprehensive clinical assessment (CCA) before entering the new disposition. The court entered a Level 3 disposition.

Opinion:

Order of disposition entered without a predisposition report or a risk and need assessment

The court is allowed to proceed with the dispositional hearing when the court makes a written finding that a predisposition report is not needed. G.S. 7B-2413. In this case, the court order included that "[t]he [c]ourt did not receive a predisposition report or a [r]isk and [n]eeds assessment prior to disposition being entered *per* [N.C.G.S. §] 7B-2413. That is why none of the above boxes are checked." Exact statutory language is not needed if the evidence and findings make the court's basis for the order clear. In this case it was clear that the court proceeded without a predisposition report because the report was not available and not needed.

Failure to consider the comprehensive clinical assessment

The juvenile was not prejudiced by the error. The juvenile had a pattern of behavior that included failing to comply with the terms of probation and failure to comply with evaluations. He was denied admittance to at least two psychiatric residential treatment facilities because of his refusal to comply with any evaluation. The court counselor stated that the juvenile was sabotaging his own CCA. There is no reasonable possibility that a different result would have occurred if the court had considered the care review team's recommendations.

Required findings regarding dispositional factors

The dispositional order was required to contain findings of fact to show that it considered the factors required in G.S. 7B-2501(c). The findings in the order were sufficient in regard to four of the factors and included:

Statutory requirement	Order contents
Seriousness of the offense	"The juvenile has ben adjudicated for a violent or serious offense and Level 3 is authorized" by statute
Need to hold the juvenile accountable	Juvenile "was in probation (Level 2 disposition) and continually violated the terms of his E.M., up to and including the night before the court date at which he admitted being in willful violation of his probation."
Public safety	The offense that formed the basis of a Level 2 disposition was a Class H felony
Degree of culpability	Juvenile's admission of a willful violation of probation

The fifth factor is the rehabilitative and treatment needs of the juvenile. The court presumed, without deciding, that the court did not sufficiently address this fifth factor. However, the omission of the predisposition report or risk and needs assessment was not prejudicial.

STATE OF NORTH CAROLINA

NC-JOIN No.

File No.

_____ County

In The General Court Of Justice
District Court Division**IN THE MATTER OF**

Name And Address Of Juvenile

**JUVENILE PETITION
(OUT-OF-STATE DELINQUENT)**☐ Absconder☐ Escapee☐ Accused Delinquent

G.S. 7B-4001; Section 600 Rules of the Interstate Compact for Juveniles

Juvenile's Date Of Birth

Age

Race

Sex

Category Of Offense

Name Of Complainant

☐ Felony, Class _____☐ Misdemeanor, Class _____, Or Infraction

Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)

☐ No ☐ Yes: (explain)

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

1. The juvenile named above is subject to the Interstate Compact for Juveniles as an absconder, escapee, or accused delinquent.
2. The names, addresses, and telephone numbers of the juvenile's parents, guardian, or custodian are as follows:

Name	Relationship/Title	Address	Telephone No.

3. The juvenile is an ☐ absconder ☐ escapee ☐ accused delinquent from the State of _____ and on or about _____ the juvenile was apprehended in the State of North Carolina.

The State of _____ and the State of North Carolina are members of the Interstate Compact for Juveniles, and the Court therefore has jurisdiction over the juvenile as set forth in G.S. 7B-4001 and the Section 600 Rules of the Interstate Compact for Juveniles. Specifically, the juvenile is an:

☐ absconder as defined by ICJ Rule 1-101 in that

(1) the juvenile is within the juvenile jurisdictional age limit established by the State of _____; and

(2) the juvenile is a probationer or parolee that has hidden, concealed, or absented him/herself so that he/she is unavailable for the legal process or authorized control of the supervising agency in that state.

☐ escapee as defined by ICJ Rule 1-101 in that

(1) the juvenile is within the juvenile jurisdictional age limit established by the State of _____; and

(2) the juvenile has made unauthorized flight from custody status or facility to which he/she has been committed by a lawful authority in that state.

☐ accused delinquent as defined by ICJ Rule 1-101 in that

(1) the juvenile is within the juvenile jurisdictional age limit established by the State of _____; and

(2) the juvenile is a person charged with an offense, _____, that if committed by an adult, would be a criminal offense in that state.

(See reverse side for ADDITIONAL FACTS AND CIRCUMSTANCES)

ADDITIONAL FACTS AND CIRCUMSTANCES			
I request the Court to hear the case to determine whether the allegations are true and whether the juvenile is subject to the Interstate Compact for Juveniles as an absconder, escapee, or accused delinquent.			
VERIFICATION			
Being first duly sworn, I say that I have read the allegations in the petition and that the same are true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true.			
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Signature Of Complainant	
Date	Signature Of Person Authorized To Administer Oaths	Title Or Relationship To Juvenile	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		Agency (if applicable)	Telephone No.
<input type="checkbox"/> Notary	Date My Commission Expires	Address	
SEAL	County Where Notarized	City, State, Zip	
WITNESS(ES)			
Name		Address	Telephone No.
Date Complaint Received By Division Of Juvenile Justice Of The Department Of Public Safety			
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			
<input type="checkbox"/> 1. Approved for Filing <input type="checkbox"/> 2. Not Approved for Filing <input type="checkbox"/> a. Closed <input type="checkbox"/> b. Diverted and Retained		Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
		Name Of Court Counselor Giving Telephonic Approval	
		Name And Title Of Person Receiving Telephonic Approval	
Date	Signature Of Court Counselor	Signature Of Person Receiving Telephonic Approval	
Post-Diversion Approval For Filing Of Petition			
<input type="checkbox"/> Approved for Filing	Date	Signature Of Court Counselor	
REVIEW BY PROSECUTOR OF DECISION NOT TO APPROVE FOR FILING			
The undersigned prosecutor conducted a review pursuant to G.S. 7B-1704 and 7B-1705 of the court counselor's determination not to approve the complaint for filing and hereby <input type="checkbox"/> authorizes <input type="checkbox"/> does not authorize the complaint to be approved for filing.			
Date Of Review	Date Petition Filed (if applicable)	Name Of Prosecutor (type or print)	Signature Of Prosecutor

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

JUVENILE PETITION
(OUT-OF-STATE NON-DELINQUENT RUNAWAY)

Juvenile's Date Of Birth

Age

Race

Sex

Name Of Complainant

G.S. 7B-4001; Section 600 Rules of the Interstate Compact for Juveniles

Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)

☐ No ☐ Yes: (explain)

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

1. The juvenile named above is subject to the Interstate Compact for Juveniles as a non-delinquent runaway.
2. The names, addresses, and telephone numbers of the juvenile's parents, guardian, or custodian are as follows:

Name	Relationship/Title	Address	Telephone No.

3. The juvenile is a non-delinquent runaway from the State of _____ and on or about _____ the juvenile was apprehended in the State of North Carolina.

The State of _____ and the State of North Carolina are members of the Interstate Compact for Juveniles, and the court therefore has jurisdiction over the juvenile as set forth in G.S. 7B-4001 and the Section 600 Rules of the Interstate Compact for Juveniles.

Specifically, the juvenile is a non-delinquent runaway as defined by ICJ Rule 1-101 in that:

- (1) the juvenile is within the juvenile jurisdictional age limit established by the State of _____; and
- (2) the juvenile voluntarily left their residence without the permission of their legal guardian or custodial agency or refuses to return to their residence as directed by their legal guardian or custodial agency.

(See reverse side for ADDITIONAL FACTS AND CIRCUMSTANCES)

ADDITIONAL FACTS AND CIRCUMSTANCES			
I request the Court to hear the case to determine whether the allegations are true and whether the juvenile is subject to the Interstate Compact for Juveniles as a non-delinquent runaway.			
VERIFICATION			
Being first duly sworn, I say that I have read the allegations in the petition and that the same are true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true.			
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Signature Of Complainant	
Date		Title Or Relationship To Juvenile (if applicable)	
Signature Of Person Authorized To Administer Oaths		Agency (if applicable)	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		Address	
<input type="checkbox"/> Notary	Date My Commission Expires	City, State, Zip	
SEAL	County Where Notarized	Telephone No.	
WITNESS(ES)			
Name		Address	Telephone No.
Date Complaint Received By Division Of Juvenile Justice Of The Department Of Public Safety			
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			
<input type="checkbox"/> 1. Approved for Filing <input type="checkbox"/> 2. Not Approved for Filing <input type="checkbox"/> a. Closed <input type="checkbox"/> b. Diverted and Retained		Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
		Name Of Court Counselor Giving Telephonic Approval	
		Name And Title Of Person Receiving Telephonic Approval	
Date	Signature Of Court Counselor	Signature Of Person Receiving Telephonic Approval	
Post-Diversion Approval For Filing Of Petition			
<input type="checkbox"/> Approved for Filing	Date	Signature Of Court Counselor	
REVIEW BY PROSECUTOR OF DECISION NOT TO APPROVE FOR FILING			
The undersigned prosecutor conducted a review pursuant to G.S. 7B-1704 and 7B-1705 of the court counselor's determination not to approve the complaint for filing and hereby <input type="checkbox"/> authorizes <input type="checkbox"/> does not authorize the complaint to be approved for filing.			
Date Of Review	Date Petition Filed (if applicable)	Name Of Prosecutor (type or print)	Signature Of Prosecutor