

Juvenile Law and Magistrates

I. Child Abuse, Neglect, Dependency

A. What do those terms mean?

1. They focus on the child's condition, not the person at fault.
2. They describe harm that is caused or threatened by the action, inaction, or incapability of a parent (or guardian, custodian, or similar person). [G.S. 7B-101]

B. When is a magistrate required to make a report to DSS?

1. Any person with cause to suspect that a child is abused, neglected, or dependent must make a report to DSS in the county where the child resides or is found.
2. This duty applies to everyone, regardless of profession. [G.S. 7B-301]

C. What must be reported?

1. First-hand knowledge of abuse, neglect, or dependency is not necessary.
2. To the extent known, a report must include
 - the child's name, age, address, and whereabouts if not at the home address;
 - name and address of the child's parents (or guardian, custodian, or caretaker);
 - names and ages of other children in the home;
 - description of any injury or condition resulting from abuse or neglect;
 - any other information that might be helpful to DSS; and
 - your name, address, and telephone number.

D. How should the report be made?

The report may be made orally or in writing – usually it will be a phone call.

E. What happens after a report is made?

1. DSS conducts an "assessment."
2. Within 5 working days after the report, DSS must give you written notice of whether the report was accepted and whether it was referred to law enforcement.
3. Within 5 working days after completing the assessment, DSS must give you a second written notice of whether it found abuse, neglect, or dependency; action DSS is taking to protect the child; and whether a petition was filed.
4. If you are not satisfied with DSS's decision, you have 5 working days after receiving the second notification to ask the prosecutor to review the case.
5. In some cases, DSS is required to contact law enforcement and the prosecutor.

F. Do magistrates have any authority or responsibility besides the duty to report?

1. Magistrate may "draw, verify, and issue petitions" [G.S. 7B-404], but only if
 - (a) authorized by chief district court judge,
 - (b) the clerk's office is closed, and
 - (c) DSS makes a request in an emergency.The petition must be delivered to the clerk's office as soon as it opens.
2. The chief district court judge, by administrative order filed in the clerk's office, may delegate to anyone (including a magistrate), authority to issue *nonsecure custody orders*. [G.S. 7B-502, -504]
3. The magistrate may be called on to record a judge's (or other authorized person's) action that is communicated to the magistrate by telephone. [G.S. 7B-508]

II. Delinquent and Undisciplined Juveniles

A. Definitions

1. *Juvenile* – under 18 and not married, emancipated, or in the armed services
2. *Minor* – under age 18
3. *Emancipated Minor* – under 18, but with many adult rights as a result of either (1) court order or (2) marriage
4. *Delinquent Juvenile* – a juvenile who commits a criminal act (or infraction or local ordinance violation or indirect contempt by a juvenile) while at least 6 and not yet 16
5. *Undisciplined juvenile* – a juvenile (at least 6 and not yet 18) who commits a “status offense:”
 - a. runs away from home for at least 24 hours; or
 - b. is regularly beyond the disciplinary control of a parent, guardian, or custodian; or
 - c. is found regularly in places it is unlawful for a juvenile to be; or
 - d. is under age 16 and is unlawfully absent from school (truant)

B. Significance of Juvenile’s Age

1. **age 5 and younger** – cannot be delinquent or undisciplined
2. **age 6 through 15** – conduct may be delinquent or undisciplined – intake through juvenile court counselor, who may
 - a. screen out,
 - b. divert, or
 - c. approve for filing as a petition in juvenile court
3. **age 13, 14, or 15** – if alleged offense is a felony, after probable cause the court may transfer the case to superior court for trial as an adult
4. **ages 14 and 15** – a juvenile may marry, but only if a district court order authorizes the marriage and the female is pregnant with or has given birth to the couple’s child
5. **age 16 or 17** –
 - a. juvenile is treated as an adult for criminal conduct
 - b. juvenile may remain subject to juvenile court jurisdiction for offenses committed before age 16
 - c. juvenile may petition the court for emancipation
 - d. juvenile may marry with consent of parent, guardian, or custodian
 - e. juvenile who is 17 ½ may be adjudicated incompetent and have a guardian appointed to serve after the juvenile becomes an adult.
6. **ages 18, 19, 20** –
 - a. if committed to DJJDP for 1st-degree murder, 1st-degree rape, or 1st-degree sexual offense, can remain in the juvenile system until his or her 21st birthday
 - b. if committed to DJJDP for any other Class A through E felony, can remain in the juvenile system until his or her 19th birthday
 - c. In all other cases, jurisdiction ends when the juvenile becomes 18.
7. **any age after reaching age 16** –
 - a. person may be charged, as a juvenile, for felony committed before age 16
 - b. juvenile court will conduct probable cause and either transfer or dismiss

C. Do magistrates have specific authority or duties relating to delinquent or undisciplined juveniles?

1. There is no general duty to report undisciplined or delinquent conduct.
2. A magistrate may draw and verify a petition and accept it for filing. [G.S. 7B-1804(b)]
 - a. All magistrates have this authority, and no administrative order or special authorization is required.
 - b. This authority exists only if the clerk's office is closed and for emergencies, when the court counselor needs to file a petition to obtain a secure or nonsecure custody order.
 - c. No petition may be filed unless it has been "approved for filing" by a court counselor.
The petition must be delivered to the clerk's office as soon as it opens.
3. Magistrates do not have authority, under any circumstances, to authorize secure or nonsecure custody of a juvenile alleged to be delinquent or undisciplined. [The chief judge may delegate this authority only to court counselors.]
4. The magistrate may be called on to record a judge's or court counselor's action that is communicated to the magistrate by telephone.

D. When are minors – people under age 18 – charged and prosecuted like adults?

1. The minor committed (is alleged to have committed) the offense on or after his or her 16th birthday.
2. The minor is married.
3. The minor has a court order of emancipation.
4. The minor is in the armed services.
5. The offense occurred after the juvenile was convicted in superior court following the transfer of a case from juvenile court.

E. Do magistrates have access to information about juvenile cases?

1. Hearings in all juvenile cases are open to the public unless the court makes certain findings and orders a hearing or part of a hearing closed.
2. Juvenile records in the clerk's office are not public records, cannot be viewed by the public, and can be seen only by individuals who are listed in the statute (which does not include magistrates) or when authorized by court order.
3. Prosecutors may share information from a juvenile's record with magistrates, but a magistrate may not photocopy any part of the record. The information must remain confidential and may not be placed in any public record.
4. When someone is charged as an adult with a Class A1 misdemeanor or a felony committed before the defendant reached the age of twenty-one, for purposes of pretrial release the magistrate may use information from the defendant's juvenile record, but only if
 - a. the adjudication was for a Class A1 misdemeanor or a felony, and
 - b. the adjudication occurred after the juvenile reached age 13.

Juvenile Code: Abuse, Neglect, Dependency

§ 7B-404. Immediate need for petition [abuse, neglect, dependency] when clerk's office is closed.

(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

- (1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent, or
- (2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an assessment required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition is required in order to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition issued under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

§ 7B-405. Commencement of action [abuse, neglect, dependency].

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the issuance of a juvenile petition by a magistrate when the clerk's office is closed, which issuance shall constitute filing.

Juvenile Code: Delinquent and Undisciplined Juveniles

§ 7B-1804. Commencement of action.

(a) An action is commenced by the filing of a petition in the clerk's office when that office is open, or by a magistrate's acceptance of a petition for filing pursuant to subsection (b) of this section when the clerk's office is closed.

(b) When the office of the clerk is closed and the juvenile court counselor requests a petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw and verify the petition and accept it for filing, which acceptance shall constitute filing. The magistrate's authority under this subsection is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition accepted for filing under this subsection shall be delivered to the clerk's office for processing as soon as that office is open for business.

§ 7B-1907. Telephonic communication authorized.

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-1901, 7B-1903, and 7B-1904 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

§ 7B-3000. Juvenile court records.

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

- (1) The juvenile or the juvenile's attorney;
- (2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The prosecutor;
- (4) Court counselors; and
- (5) Probation officers in the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety, as provided in subsection (e1) of this section and in G.S. 15A-1341(e).

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with magistrates and law enforcement officers sworn in this State, but may not allow a magistrate or law enforcement officer to photocopy any part of the record.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

(e) Notwithstanding any other provision of law, if the defendant in a criminal proceeding involving a Class A1 misdemeanor or a felony was less than 21 years of age at the time of the offense, information obtained pursuant to subsection (b) of this section regarding the juvenile's record of an adjudication of delinquency for an offense that would be a Class A1 misdemeanor or a felony if committed by an adult, where the adjudication occurred after the defendant reached 13 years of age, may be used by law enforcement, the magistrate, the courts, and the prosecutor for pretrial release, plea negotiating decisions, and plea acceptance decisions. Information obtained regarding any juvenile record shall remain confidential and shall not be placed in any public record.

(e1) [omitted here]

(f) [omitted here]

(g) [omitted here]