

Pre-Adjudication - Custody and Capacity

Juvenile Delinquency: A Course for District
Court Judges
November 8, 2021



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Temporary Custody

Taking physical custody without a court order
G.S. 7B-1900

Law enforcement

- Under same circumstances can arrest an adult (probable cause)

Law enforcement
or court counselor

- Grounds to believe undisciplined
- Juvenile absconded from a JJ facility



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Temporary Custody

Parents must be notified



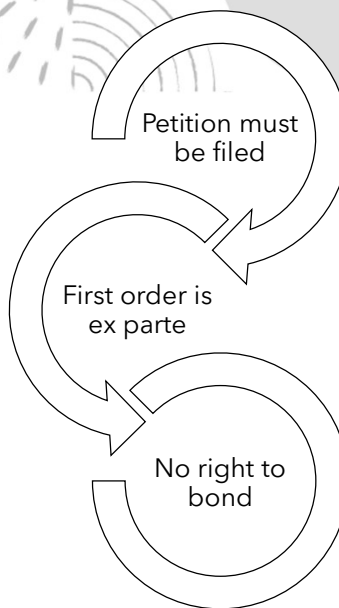
Max 12 hours, unless any part of weekend or holiday (then 24 max)



G.S. 7B-1901

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Custody Orders



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Nonsecure Custody

Process - G.S. 7B-1902, 1903

1. Consider release
 - Parent
 - Guardian
 - Custodian
 - Other responsible adult

2. Reasonable factual basis to believe allegations are true

3. Must be either
 - Runaway who consents to nonsecure custody or
 - Meet secure criteria, but nonsecure is in juvenile's best interests

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Nonsecure Custody

G.S. 7B-1905(a)

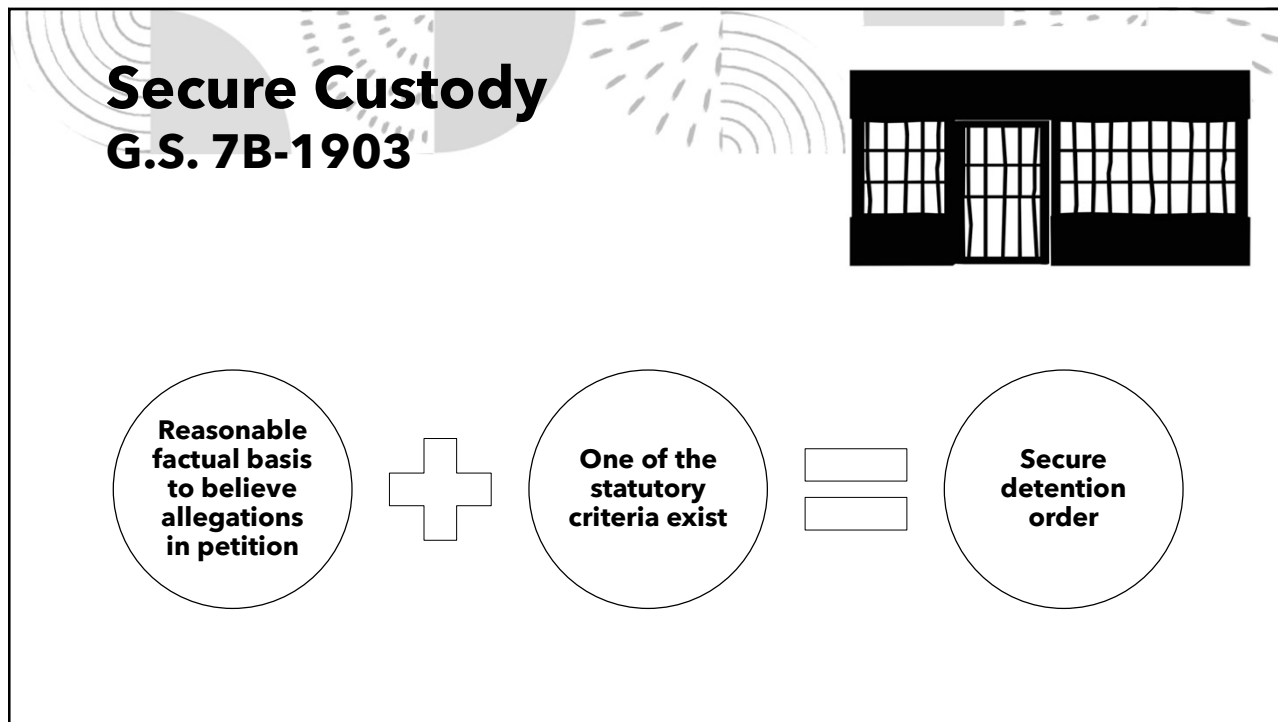
Place of nonsecure custody

First, must consider if there is a willing and able relative

DSS custody

Designated person for placement in foster home, DSS operated facility, or any other court-approved home or facility

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<p>Statutory Criteria - related to pending delinquency charge G.S. 7B-1903(b)</p>	<hr/> <p>Charged with a felony & danger to property or persons</p>
	<hr/> <p>Danger to persons & charged with misdemeanor, one element of which is assault on a person; or misdemeanor involving use, threatened use, or display of a firearm or other deadly weapon; or impaired driving or driving after consuming alcohol and under 21</p>
	<hr/> <p>Willfully failed to appear on pending delinquency charge, provided had proper notice</p>
	<hr/> <p>Delinquency charge pending and reasonable cause to believe will not appear</p>

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<p>Statutory Criteria - other Circumstances G.S. 7B-1903(b)</p>	<hr/> <p>Juvenile is an absconder from JJ facility or detention</p> <hr/> <p>Reasonable cause to believe detention is needed for protection of the juvenile due to recent suffered or attempted self-inflicted physical injury and was refused admission by hospital; 24-hour max to determine need for inpatient hospitalization</p> <hr/> <p>Alleged undisciplined due to running away, inappropriate or refuses nonsecure, and court finds need for up to 24-hours secure custody to evaluate need for treatment or facilitate reunification</p> <hr/> <p>Alleged undisciplined and willfully failed to appear after proper notice; 24-hour maximum and must be brought to court ASAP</p>
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<p>Statutory Criteria - Probation of PRS Violation G.S. 7B-1903 (b)(3), (d)</p>	<hr/> <p>Willfully failed to appear on violation, provided had proper notice</p> <hr/> <p>If alleged to have committed acts that damage property or injure persons These acts must be charged as delinquent offenses to qualify (<i>In re D.L.H.</i>, 198 N.C.App. 286 (2009))</p>
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<p>Statutory Criteria - Pending Disposition or Placement G.S. 7B-1903(c)</p>	<hr/> <p>After adjudication, prior to disposition or pending placement pursuant to an order of disposition</p> <hr/> <p>Ongoing hearings for need for continued custody must occur every 10 calendar days (or every 30 days on juvenile's consent)</p> <hr/> <p>Orders for continued custody must be in writing with appropriate findings of fact</p>
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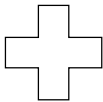
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Custody Hearings

G.S. 7B-1906

- Rules of evidence do not apply
- State bears the burden to show by clear and convincing evidence that:

Restraints on juvenile's liberty are necessary



No less intrusive alternative will suffice

- Must continue to meet detention criteria in G.S. 7B-1903

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Custody Hearings

Possible restrictions on liberty if released from secure custody (G.S. 7B-1906(f))	Written promise of parent, guardian, or custodian to produce juvenile for future proceedings
	Release into the care of responsible person or organization
	Restrictions on activities, associations, residence, or travel if reasonably related to securing presence in court
	Any other conditions reasonably related to securing presence in court

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Secure Custody Hearing Timeline G.S. 7B-1906 (a) - (b1)

Initial hearing w/in 5 calendar days* cannot waive or continue

Ongoing hearings every 30 days for A - G felonies alleged at 16/17

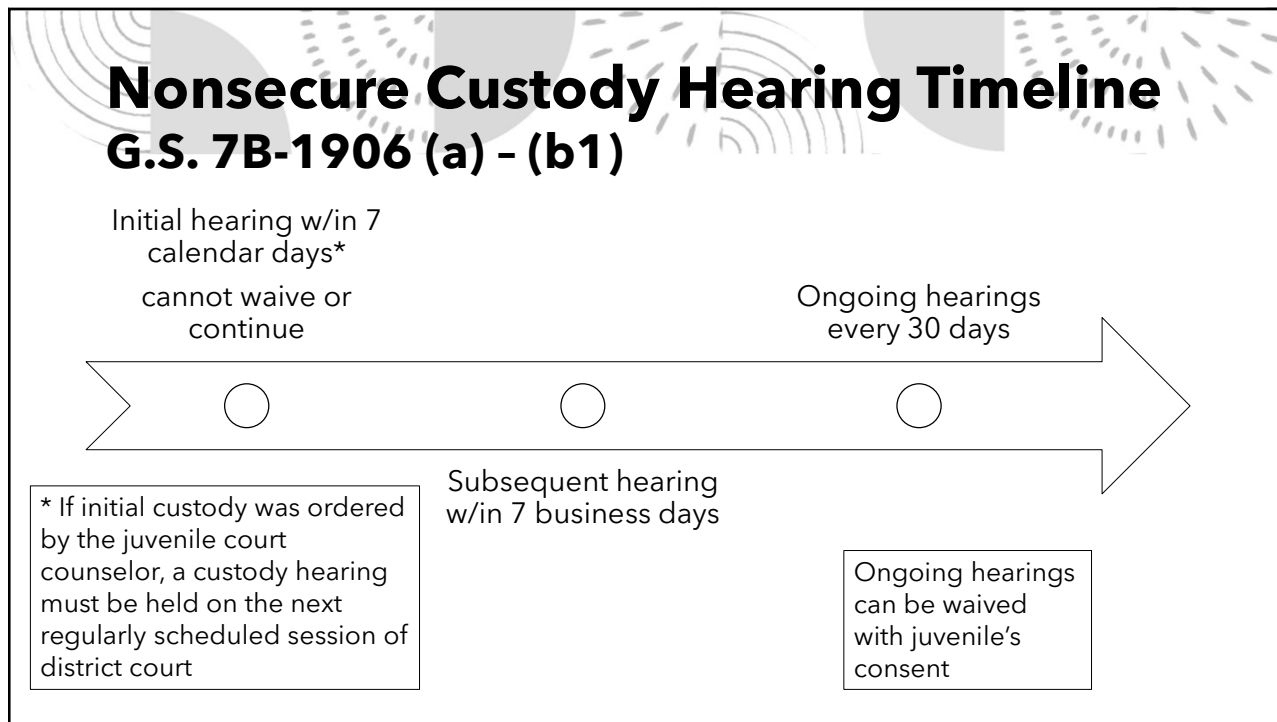


* If initial custody was ordered by the juvenile court counselor, a custody hearing must be held on the next regularly scheduled session of district court

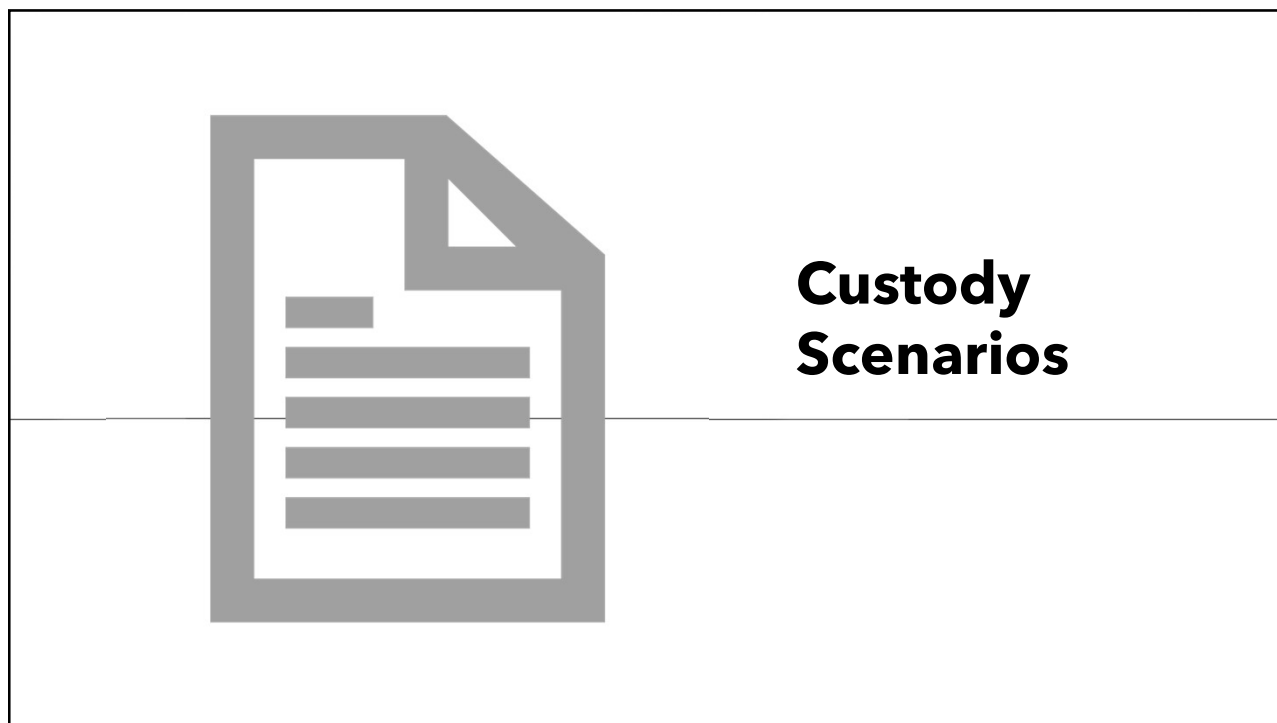
Ongoing hearings every 10 days is general rule

Ongoing hearings can be waived with juvenile's consent

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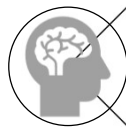
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Capacity to Proceed

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Capacity to Proceed Standard

A juvenile lacks capacity to proceed if, **by reason of mental illness or defect**, he/she is unable to:



understand the nature and object of the proceedings



comprehend his/her own situation in reference to the proceedings, OR



assist in his/her defense in a rational or reasonable manner

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Capacity to Proceed Motions

May be made at any time by any party

- Court may appoint "one or more impartial experts" to examine juvenile
- Must hold a hearing - G.S. 15A-1002(b)(1)

Court must initiate capacity hearing when there is a **bona fide doubt** about capacity

- *State v. Staten*, 172 N.C. App. 673, 678 (2005)
- Requires "substantial evidence" of incapacity
 - ✓ irrational behavior or demeanor in court
 - ✓ mental health history
 - ✓ prior finding of incapacity

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If Juvenile Lacks Capacity

- Conduct adjudication hearing
- Conduct disposition hearing
- Transfer



- ✓ **Hear pre-trial motions the juvenile's attorney can handle without the juvenile's assistance**
 - G.S. 15A-1001(b)
 - *Jackson v. Indiana*, 406 U.S. 715, 740-41 (1972)
- ✓ **Enter temporary custody orders pending capacity hearing or civil commitment proceedings**
 - G.S. 15A-1002(c)

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If Juvenile Lacks Capacity

Options Dismissal

Diversion - reduce to a lesser, divertible offense

Refer to LME/MCO (G.S. 7B-2502)

Involuntary Commitment (G.S. 15A-1003)

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Capacity to Proceed

- Indefinite confinement of criminal defendant who lacks capacity to proceed violates due process, unless defendant is civilly committed.
- *Jackson v. Indiana*, 406 U.S. 715 (1972)



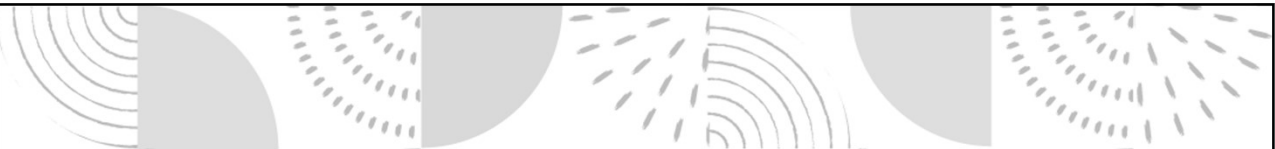
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Capacity to Proceed

A juvenile who lacks the mental capacity to proceed may not be tried or punished in juvenile court.

- NC law
 - 7B-2401, 15A-1001, 15A-1002, 15A-1003
- Due Process
 - *Drope v. Missouri*, 420 U.S. 162 (1975)

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Restraints

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