

Juvenile Delinquency Update

NC Association of District Court Judges
Fall Conference 2022

1

Update on Adjudication Order Findings

Signature _____

Date _____

2

Update to AOC adjudication order

Remember this?

In re J.A.D., 2022-NCCOA-259

Written findings in adjudication order must include that allegations were proven “beyond a reasonable doubt”

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Revised AOC-J-460

3. Based on the evidence presented:

- a. the allegations in the petition have not been proven beyond a reasonable doubt.
- b. the following allegations in the petition have been proven beyond a reasonable doubt: *(attach additional facts if necessary)*

CONCLUSIONS OF LAW

The Court concludes as a matter of law that in regard to the allegations in the petition(s) before the Court, the

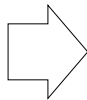
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Recodification of Injuring or Tampering with Vehicle

20-107



14-160.4

S.L. 2022-73, Effective December 1, 2022

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Concurrent jurisdiction over juvenile offenses on military installation

Concurrent jurisdiction with U.S. over military installation operated by the Department of Defense when:

- Violation of federal law by a juvenile
- Within boundaries of a military installation
- US Attorney or US District Court waives exclusive jurisdiction
- Violation of federal law is also a crime of infraction under state law

- G.S. 104-11.1(b)

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New juvenile jurisdiction for offenses on military installations

- When concurrent jurisdiction has been established, there is exclusive original juvenile jurisdiction over any juvenile alleged to be delinquent as the result of any alleged crime or infraction within the boundaries of a military installation

- Also added to the definition of vulnerable juvenile if juvenile age 6 – 10 commits crime or infraction on military installation

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Undisciplined Violations

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In re B.W.C., 2022-NCCOA 590 (Sept. 6, 2022)

Adjudicated
undisciplined

- Contempt warning for violation of conditions

Violation

- Motion for review
- Delinquency petition for indirect contempt

Admitted to
indirect contempt

- Placed on probation for 6 months

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Argument on Appeal

Delinquency adjudication for contempt resulting from noncompliance with a protective supervision order was not intended by the General Assembly, given the dispositional alternatives in an undisciplined case

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Holding

Undisciplined dispositional alternatives in the Juvenile Code ceased to control the dispositional alternatives once Brian was held in indirect contempt

Under the plain language of the indirect contempt statute (G.S. 5A-31) and the definition of delinquent juvenile (G.S. 7B-1501(7)), it was proper to adjudicate the juvenile delinquent as the result of a finding of indirect contempt based on his willful disobedience of the protective supervision order

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Notable Implications

- Indirect contempt is a minor offense (G.S. 7B-2508)
 - Assuming no delinquency history, will always be a Level 1 disposition
- No delinquency history points for an adjudication based on contempt (only relevant for subsequent delinquency dispositions)(G.S. 7B-2507(b))
- Right to counsel attaches when juvenile is alleged to be in contempt of court when alleged or adjudicated undisciplined (G.S. 7B-2000)

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Delinquency
FAQs



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Secure
Custody is
Only
Authorized
when
Explicitly
Allowed by
Statute

G.S. 7B-1903 pending juvenile matters, allegation of probation or PRS violation, protection of the juvenile, absconding

G.S. 7B-2506(12), (20) dispositional alternative

G.S. 7B-2510(e) finding of probation violation

G.S. 5A-32(c) direct contempt

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Secure Custody as the Result of a Probation Violation

Only if the juvenile is alleged to have committed acts that damage property or injure persons, G.S. 7B-1903(d)

Only applicable while the allegations of the violation are pending. *In re D.L.H.*, 198 N.C.App. 286, 292 (2009), *rev'd on other grounds*, 364 N.C. 214 (2010).

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Legal Uses of Secure Custody in Undisciplined Matters

1. Runaway: up to 24 hours (excluding weekends and holidays) if
 - i. not appropriate for or refuses nonsecure custody AND
 - ii. custody is needed to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodianG.S. 7B-1903(b)(7)

2. when juvenile willfully fails to appear after having notice.
Maximum 24 hours (excluding weekends and holidays)

G.S. 7B-1903(b)(8)

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Parents of juveniles ages 18/19

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Jurisdiction over Parents

The court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court if the parent, guardian, or custodian has been served with a summons. G.S. 7B-1601(g)

Failure of the parent, guardian, or custodian to appear or bring the juvenile before the court without reasonable cause or to comply with any order of the court pursuant to Article 27 of this Chapter may cause the court to issue a show cause order for contempt. G.S. 7B-1805(c)

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When a Parent Does Not Appear

The court may excuse the appearance of either or both parents or the guardian or custodian at a particular hearing or all hearings. G.S. 7B-2700

When the juvenile is under 18, the court can appoint a guardian of the person. Guardianship terminates at age 18, if not terminated sooner. G.S. 7B-2001

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Law Enforcement Record Confidentiality

G.S. 7B-3001(b)

Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile ... shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

- (1) The juvenile or the juvenile's attorney;
- (2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The prosecutor;
- (4) Juvenile court counselors; and
- (5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court

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Juvenile Law Bulletin on Juvenile Interrogation



JUVENILE LAW BULLETIN

NO. 2022/02 | SEPTEMBER 2022

Juvenile Interrogation

Jacquelyn Greene

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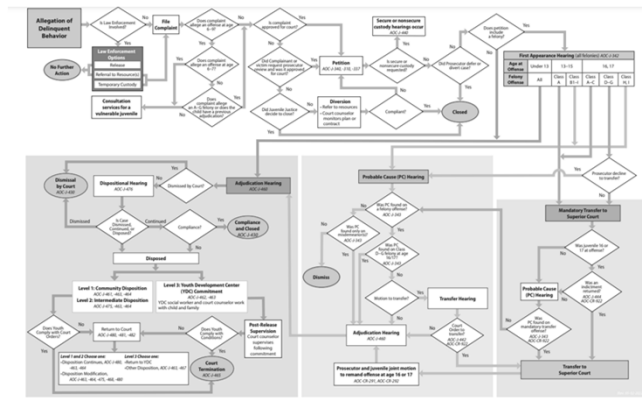
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Delinquency Flowchart

https://www.sog.unc.edu/sites/default/files/general_media/2022-05-03a%2020210311_JJRA%20Process2022%20edition_final.pdf



On the Civil Side
A UNC School of Government Blog
<https://civil.sog.unc.edu>

Blog on Procedure in Juvenile Homicide Cases

Procedure in Juvenile Homicide Cases

How does a case proceed when a juvenile is charged with a homicide offense? In classic lawyer fashion, the answer is that it depends. In almost all instances, the case will begin as a juvenile matter. However, the path the case follows once the juvenile case begins, and whether the case is ultimately adjudicated as a juvenile matter or prosecuted as a criminal matter, depends on the age of the juvenile at the time of the offense and the specific offense charged.

Nearly all Cases Begin as Juvenile Matters

The general rule in North Carolina since implementation of the Juvenile Justice Reinvestment Act

<https://civil.sog.unc.edu/procedure-in-juvenile-homicide-cases/>

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Questions



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Legally Permissible Uses of Juvenile Detention

One of the many unique features of the juvenile justice system is the law related to the permissible uses of detention. Called secure custody in the Juvenile Code, placement of a juvenile in detention is permitted only when specifically authorized by statute. This post reviews the legally allowable circumstances for the use of juvenile detention. If the situation of a particular juvenile does not match any of these circumstances, then the juvenile cannot be ordered to be held in a detention facility. Note that detention applies only to juveniles who are the subject of delinquency or undisciplined proceedings and is never permitted in an abuse, neglect, or dependency action.

When Juvenile Matters are Pending

Pending Delinquency Matter

[G.S. 7B-1903\(b\)](#) lists five circumstances under which a juvenile with a pending delinquency matter can be held in detention. They include when the juvenile

1. is charged with a felony and has demonstrated that the juvenile is a danger to property or persons (G.S. 7B-1903(b)(1));
2. has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon (G.S. 7B-1903(b)(2));
3. has demonstrated that the juvenile is a danger to persons and is charged with impaired driving ([S. 20-138.1](#)) or driving by a person under age 21 after consuming alcohol or drugs ([G.S. 20-138.3](#)) (G.S. 7B-1903(b)(2a));
4. has willfully failed to appear on a pending delinquency charge (G.S. 7B-1903(b)(3)); or
5. there is reasonable cause to believe the juvenile will not appear in court (G.S. 7B-1903(b)(4)).

Pending Undisciplined Matter

The legally permissible use of detention for juveniles who are alleged to be undisciplined is limited to the following two narrow circumstances under G.S. 7B-1903(b).

1. If the juvenile is alleged to be undisciplined by virtue of being a runaway, detention can be used for up to 24 hours (excluding weekends and state holidays) only if a) the juvenile is inappropriate for a nonsecure custody placement or refuses nonsecure custody and b) the court finds that detention is needed to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian. G.S. 7B-1903(b)(7).
2. If, after proper notice, the juvenile willfully fails to appear in court. Under this circumstance,

the juvenile must be brought to court as soon as possible and cannot be held in detention for more than 24 hours (excluding weekends and state holidays). G.S. 7B-1903(b)(8).

Detention is therefore not allowed in most undisciplined cases and, for these two narrow exceptions, cannot exceed a period of 24 hours (excluding weekends and state holidays).

Pending Violation of Probation or Post Release Supervision

G.S. 7B-1903(d) allows for the use of detention under limited circumstances when a violation of probation or post release supervision is alleged. The alleged violation is not a sufficient basis on its own. There must also be an allegation that the juvenile committed acts that damage property or injure persons. This provision is only applicable while the allegations of the violation are pending. [*In re D.L.H.*, 198 N.C.App. 286, 292 \(2009\), *rev'd on other grounds*, 364 N.C. 214 \(2010\)](#).

Detention can also be used when a violation of probation or post release supervision is pending if, after receiving proper notice, the juvenile willfully fails to appear. G.S. 7B-1903(3).

Additional Proof Required at Hearings on Need for Continued Detention

Once a juvenile is ordered into secure custody, they are entitled by statute to ongoing hearings at which the court must determine that there continues to be a need for secure custody. [G.S. 7B-1906](#). The court is bound by the criteria described above in determining the need for continued secure custody at these hearings. In addition, the State is required to provide clear and convincing evidence that 1) restraints on the juvenile's liberty are necessary and 2) no less intrusive alternative will suffice. G.S. 7B-1906(d). The court must incorporate findings of fact that include the evidence relied on in any order to continue secure custody. The order must also include the purposes that continued custody is to achieve. G.S. 7B-1906(g).

When a Juvenile Absconds from a Secure Facility

Detention is authorized under G.S. 7B-1903(b)(5) after a juvenile absconds from any residential facility operated by the Division of Juvenile Justice (known as Youth Development Centers), any detention facility in North Carolina, or any comparable facility in another state.

After an Adjudication of Delinquency

Waiting for Disposition or Placement

According to G.S. 7B-1903(c), detention can be used following an adjudication of delinquency and before disposition. When placement is ordered as part of the disposition, detention can be used while waiting for that placement. If detention is used under either of these circumstances, ongoing hearings on the need for secure custody must be held every 10 days unless they are waived by the

juvenile through their counsel. However, these ongoing hearings cannot be waived for more than 30 days. Because (1) the requirement for ongoing hearings on the need for continued use of detention is embedded in same statute that authorizes the use of detention under these circumstances, and (2) waiver of these hearings cannot extend for more than 30 days, it appears that the legislature did not intend for a juvenile who has been adjudicated delinquent to experience lengthy periods of detention while awaiting disposition or pending placement.

As a Dispositional Alternative

Intermittent confinement in a detention facility is one of the many dispositional alternatives available for juveniles subject to Level 1 or Level 2 dispositional orders. For a Level 1 disposition, the court can order up to five 24-hour periods of intermittent confinement in a detention facility. [G.S. 7B-2506\(12\)](#). For a level 2 disposition, the court can order up to fourteen 24-hour periods of intermittent confinement in a detention facility. G.S. 7B-2506(20). While Level 2 dispositional orders can generally include Level 1 dispositional alternatives, a Level 2 order for intermittent confinement cannot be imposed consecutively with a Level 1 order for intermittent confinement at one dispositional hearing. G.S. 7B-2506(20).

In Response to a Finding of a Violation of Probation

If a violation of probation is alleged, the court must have a hearing to determine if the violation occurred. [G.S. 7B-2510\(e\)](#). The juvenile is entitled to notice of that hearing and the burden of proof is the greater weight of the evidence. If the court finds that the alleged violation occurred, the court has several options including an order for a term of confinement in detention for up to twice the term authorized for Level 1 and Level 2 dispositions (five and fourteen 24-hour periods, respectively).

For the Juvenile's Protection

There is statutory authority to hold a juvenile in detention when

1. there is reasonable cause to believe that the juvenile should be detained for their own protection because the juvenile recently suffered or attempted self-inflicted physical injury and
2. the juvenile was refused admission by one appropriate hospital. G.S. 7B-1903(6).

Under these circumstances, the juvenile can be held in detention for up to 24 hours to determine the need for inpatient hospitalization. A physician must be immediately notified when a juvenile is detained under this provision and the juvenile must be continuously supervised while in detention.

Contempt by a Juvenile

[G.S. 5A-31](#) lists several circumstances in which a youth between the ages of six and 18 can be held in contempt. When an act that qualifies as contempt by a juvenile is committed within sight or hearing of a presiding judicial official; is committed in, or in the immediate proximity to, the room where court proceedings are being held; and is likely to interrupt or interfere with matters that are then before the court, the juvenile can be held in direct contempt. G.S. 5A-31(b). The court must follow the procedure in [G.S. 5A-32](#) to hold a juvenile in direct contempt. If the court determines that the juvenile has committed direct contempt, the court can order any or all of the following

1. detention for up to five days,
2. up to 30 hours of community service,
3. evaluation to determine the needs of the juvenile. G.S. 5A-32(c).

The judicial official who holds the juvenile in direct contempt can terminate or reduce a detention sanction (and eliminate or reduce the number of hours of community service) if warranted by the juvenile's conduct and the ends of justice. G.S. 5A-32(d).

If a juvenile commits an act that qualifies as contempt by a juvenile and it is not direct contempt, then it is indirect contempt. The definition of delinquent juvenile includes acts of indirect contempt. [G.S. 7B-1501\(7\)a., -b.](#) Therefore, a new delinquency petition must be filed to pursue a finding if indirect contempt. Because these cases are delinquency matters, the criteria regarding allowable uses of detention under G.S. 7B-1903 apply. There are no criteria that specifically authorize the use of detention in an indirect contempt matter. Detention would therefore only be authorized if the juvenile has willfully failed to appear or there is reasonable cause to believe that the juvenile will not appear in court. G.S. 7B-1903(b)(3), -(4).

Minors Under Criminal Jurisdiction Who Would Otherwise be Confined in a Jail

[Part II of Session Law 2020-83](#) made a series of statutory changes to require that any person under 18 who is subject to criminal jurisdiction, either from the time charges are filed or as the result of a criminal conviction, and who would be confined in a jail as a result of that criminal matter, is now confined in a juvenile detention facility. You can find more details about those statutory changes in [this previous blog](#).

Because these minors are subject to criminal jurisdiction, the provisions of Subchapter II of Chapter 7B that govern the allowable use of detention described above do not apply to these cases. Instead, these minors may be confined pursuant to the various criminal laws that govern pretrial release, sentencing, and probation violations. Criminal procedure applies in these matters, with juvenile detention being the place of confinement instead of jail.

Outcomes Related to the Use of Juvenile Detention

This post outlines the circumstances in which juvenile detention can be used under North Carolina law. The policy debate over whether juvenile detention should be used has been a national topic for many years. The Annie E. Casey Foundation has been investing in reducing reliance on the use of juvenile detention through its [Juvenile Detention Alternatives Initiative](#) for more than 25 years.

There is very little empirical research specifically on outcomes associated with the use of detention, although a recent 12-month recidivism study of a base sample of over 46,000 court filings in a northwest state found a “modestly predictive” relationship between pretrial juvenile detention and felony and misdemeanor recidivism within one year. Walker and Herting, *The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study*, *Crime & Delinquency* 2020, Vol. 66(13-14) 1865-1887. The recidivism effects in this study were found to be more significant for youth with little to no previous juvenile justice system involvement.

Before getting to this question of should detention be used, the legal question of whether detention can be used must be answered. If the matter falls under one of the statutorily authorized uses described in this post, then detention can be ordered. If not, then the question of should is not relevant because the use of detention is not legally authorized.

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S.L. 2022-73

- Recodification of injuring or tampering with vehicle from G.S. 20-107 to G.S. 14-160.4.
- A new G.S. 7B-1605 establishes juvenile jurisdiction for offenses committed within the boundaries of a military installation when concurrent jurisdiction has been established. A new subdivision (b) added to G.S. 104-11.1 provides that concurrent jurisdiction exists when:
 - there is a violation of federal law by a juvenile,
 - within the boundaries of a military installation,
 - a US Attorney or US District Court waives exclusive jurisdiction, and
 - the violation of federal law is also a crime or infraction under state law.
- The definition of vulnerable juvenile in G.S. 7B-1501 is amended to add any juvenile between the ages of 6 and 10 who is not a delinquent juvenile and who commits an act within the boundaries of a military installation that is a crime or infraction under state.

Delinquency Adjudication for Indirect Contempt on Violation of an Order for Protective Supervision

In the Matter of B.W.C., 2022-NCCOA-590 (September 6, 2022)

- Facts: Brian, age 15, was adjudicated undisciplined in April of 2021. He was given a contempt warning in open court following adjudication. A second order issued by the court on the date of the adjudication included that Brian was to attend school daily; have no unexcused absences, tardies, or suspensions; and complete all assigned schoolwork. This order included that Brian verbally acknowledged that he understood that violation of the conditions could result in being held in contempt. The related dispositional order, entered in June of 2021, placed Brian on protective supervision and required him to attend school regularly, among other things. It also provided that the contempt warning provided after adjudication remained in effect. A delinquency petition was filed in August of 2021 alleging that Brian had three unexcused absences and therefore was in indirect contempt of the court order. Brian filed a motion to dismiss, alleging that G.S. 7B-2505, read together with G.S. 7B-2503, did not allow for the trial court to pursue a delinquency action following an undisciplined adjudication and that pursuit of a delinquency adjudication was therefore a due process violation. The trial court denied the motion, Brian admitted to indirect contempt, and he was placed on probation for six months.
- Opinion: G.S. 7B-1501(7)(a) states that a juvenile [between the ages of 10 and 16] is delinquent if they commit indirect contempt, as defined in G.S. 5A-31. Under G.S. 5A-31, a juvenile commits indirect contempt when they engage in willful disobedience of, resistance to, or interference with a lawful court order and when that occurs outside the presence of a court. Indirect contempt by a juvenile can only be adjudged and sanctioned through a delinquency proceeding, as provided in Subchapter II of Chapter 7B of the General Statutes. Brian committed indirect contempt when he violated his undisciplined disposition by failing to attend school regularly. He was put on notice several times that such a violation would result in being held in contempt. The undisciplined dispositional alternatives in the Juvenile Code ceased to control the dispositional alternatives once Brian was held in indirect contempt. It was proper for the trial court to find Brian delinquent as a result of the contempt and in light of the trial court's multiple contempt warnings. The trial court did not err in dismissing the motion to dismiss.