Table of Contents

Jacqui Greene
UNC School of Government
greene@sog.unc.edu

Constitutionality of Prospective Raise the Age Effective Date

State v. Garrett, 2021-NCCOA-591 (November 2,2021)

Held: Reversed and Remanded

Facts: The defendant was charged with two class H felonies (felonious breaking or entering and larceny after breaking or entering) in October of 2016, when he was 16 years of age and before raise the age was implemented. The charges were under the exclusive jurisdiction of the criminal law under the statutory scheme in place at the time of the offense. Raise the age was passed in 2017 and took effect beginning with offenses committed on December 1, 2019. The expansion of juvenile jurisdiction was not retroactive. This case was set for trial in late 2017 and the defendant failed to appear. The defendant was arrested in 2019 and his case proceeded. The trial court granted a pretrial motion to dismiss, finding that the defendant's constitutional rights to equal protection, protection from cruel and unusual punishment, and due process were violated by prosecution as an adult.

Opinion: The **defendant's constitutional rights were not violated by trying the juvenile as an adult** for the reasons described below.

Equal Protection

The alleged equal protection violation was based on treating the same group of people differently at a different time (youth alleged to have committed class H felonies at age 16 prior to raise the age were automatically prosecuted as adults and, under raise the age, the same youth begin under juvenile jurisdiction and the case may be moved to superior court for trial as an adult). This is not a violation of equal protection rights because **no classification was created between different groups of people.**

Cruel and Unusual Punishment

Trying the defendant as an adult does not implicate the substantive limits on what can be made criminal as protected by the Eighth Amendment. Those limits have only been invoked in relation to the status of addiction to drugs or alcohol. In addition, the prosecution of juveniles as adults involves the procedure taken regarding a criminal offense alleged against a juvenile and not the substance of what is made criminal. **Trying the defendant as an adult does not criminalize a status.** It punishes criminal behavior pursuant to the procedure in place at the time of the offense. There is no claim under the Eighth Amendment.

Due Process

There is **no fundamental right in being tried as a juvenile in criminal cases.** The decision in Kent v. United States, 383 U.S. 541 (1966), is not controlling or instructive in this matter because the statutory structure in Kent was distinct from the statutory structure in this matter. There was not a protected interest at issue in this matter and procedural due process protections were not implicated. A rational basis test must be used to analyze substantive due process in this case as a fundamental right is not at issue. "**The decision to prosecute and sentence juveniles under the statutory scheme in place at the time they commit their offense is rationally related to the State's legitimate interest in having clear criminal statutes that are enforced consistently with their contemporaneous statutory scheme.** Prosecuting Defendant as an adult within the jurisdiction of the Superior Court was not a violation of substantive or procedural due process based simply upon the findings of fact regarding an impending change in how juveniles are prosecuted under the law

and Kent, which held that a violation of due process occurred when a juvenile's statutory right to the juvenile court having exclusive jurisdiction was violated without any hearing, findings, or reasoning." ¶ 29.

Most Restrictive Disposition and Admission

In the Matter of J.G., 2021-NCCOA-613 (November 16,2021)

Held: Vacated in Part, Reversed in Part, and Remanded

- Facts: Jake appeared in Wake County District Court and admitted to breaking or entering a motor vehicle. The transcript of admission provided that the most serious disposition was a Level 2 disposition. The court also informed Jake that the most serious disposition he could face was a Level 2 disposition. The case was transferred to Cumberland County District Court for disposition. The Cumberland County District Court ordered a Level 3 disposition.
- Opinion: The acceptance of a juvenile admission must be knowing and voluntary, as it is tantamount to acceptance of a guilty plea. Pursuant to G.S. 7B-2407(a)(6), the court must inform the juvenile of the most restrictive disposition on the charge before accepting the admission. **When the court plans to impose a disposition level higher than the level contained in the transcript of admission, the juvenile must be given the chance to withdraw the plea and be granted a continuance**. *In re W.H.*, 166 N.C. App. 643 (2004). Because the court entered a disposition level higher than the disposition level contained in the transcript of admission and Jake was not given the chance to withdraw his admission, his admission was not knowing and voluntary. The transcript of admission is vacated and the adjudication and disposition orders are reversed.

Communicating Threats of Mass Violence on Educational Property

In the Matter of Z.P., 2021-NCCOA-655 (December 7,2021)

Held: Affirmed in Part, Reversed in Part, Vacated and Remanded

- Facts: The juvenile, "Sophie," was adjudicated delinquent for communicating a threat of mass violence on educational property in violation of G.S. 14-277.6 after making a statement, in the presence of four classmates, that she was going to blow up the school. She was also adjudicated delinquent for communicating a threat to harm a fellow student in violation of G.S. 14-277.1 after stating that she was going to kill him with a crowbar and bury him in a shallow grave. Sophie argued that the State failed to present sufficient evidence to support the allegations of the charged offenses.
- Opinion: Proof of a "true threat" is required for an anti-threat statute. The true threat analysis involves both how a reasonable hearer would objectively construe the statement and how the perpetrator subjectively intended the statement to be construed. While there is a split in cases regarding what the State must prove regarding the perpetrator's subjective intent, this case is resolved because the **State did not meet its burden of showing that a reasonable hearer would have construed Sophie's statement as a true threat.** The three classmates who heard the threat and testified at the adjudication hearing did not think she was serious when she made the threat. Sophie had made outlandish threats before and never carried them out. Most of the classmates believed that Sophie was joking when she made the statement. There is not enough evidence to support an inference that it would be objectively reasonable for the hearers to think Sophie was

serious in this threat. The adjudication is reversed with respect to the offense of communicating a threat of mass violence on educational property.

The evidence provided regarding the threat to the classmate was sufficient. That evidence, when analyzed in the light most favorable to the State, established that the statement was made so that the classmate could hear it, the classmate took the threat seriously, and it would be reasonable for a person in the classmate's position to take the threat seriously because the classmate was smaller than Sophie and had previously been physically threatened by her. The adjudication of communicating a threat to harm a fellow student is affirmed. The case is remanded to district court to allow the trial court to reconsider the disposition in light of the reversal of the adjudication of communicating a threat of mass violence on educational property.

Juvenile Waiver of Miranda Rights

State v. Benitez, 2022-NCCOA-261 (April 19,2022)

Held: Affirmed

- Facts: The trial court was instructed, on remand (*State v. Benitez*, 258 N.C. App. 491, 813 S.E.2d 268 (2018)), to conduct a review of the totality of the circumstances of the juvenile's statements to law enforcement to determine if the juvenile knowingly and voluntarily waived his Miranda rights. The juvenile made the statements at age 13 during two and a half hours of questioning that occurred at the Sheriff's office. The statements were made through an interpreter and in the presence of the juvenile's uncle. The juvenile' initial motion to suppress was denied, and he subsequently pled guilty to first-degree murder. On remand, the trial court again denied the motion to suppress.
- Opinion: Whether a juvenile understood *Miranda* warnings does not require testimony of an expert. It is a question of law to be answered by the court based on the evidence presented by both sides. **The trial court appropriately considered evidence regarding the circumstances surrounding the interrogation, as well as the juvenile's age, experience, education, background, intelligence, and capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. The trial court did not need further expert testimony on these topics to make its determination.** The trial court was also clear that evidence from the capacity hearing, held well after the interrogation occurred, was not used in determining that the defendant understood the *Miranda* warnings at the time of interrogation. The binding findings of fact support the trial court's denial of the motion to suppress.

Findings Required in Adjudication Orders

In the Matter of J.A.D, 2022-NCCOA-259 (April 19,2022)

Held: No Error in Part, Vacated and Remanded in Part

- Facts: A petition was filed alleging that the juvenile committed extortion by obtaining a digital image of a victim, without her knowledge or consent, in which she was in only her bra and underwear. The petition also alleged that the juvenile used the image to obtain food from the school cafeteria while threatening to expose the image if the victim refused to buy the food or do what the juvenile asked of her. The petition did not name the victim. The juvenile was adjudicated delinquent and the court entered a Level 1 disposition. On appeal the juvenile asserted that 1) the court lacked subject matter

jurisdiction because the petition was fatally defective in that it failed to name the victim, 2) the juvenile's motion to dismiss should have been granted because the crime of extortion requires threat of unlawful physical violence and the juvenile did not make such a threat, 3) there was a fatal variance between the threat alleged in the petition and the proof at the adjudication hearing, 4) the written findings in the adjudication order were insufficient, and 5) the disposition order was insufficient in its failure to contain findings of fact to demonstrate that the court considered all the required factors in G.S. 7B-2501(c).

- Opinion:

No Fatal Defect in the Petition

Juvenile petitions are generally held to the same standards as criminal indictments in that they must aver every element of the offense with sufficient specificity to clearly apprises the juvenile of the conduct being charged. Like an indictment, a fatally deficient petition fails to evoke the jurisdiction of the court. Central to the offense of extortion is the wrongfulness of the method by which the juvenile seeks to obtain something of value. Slip op. at ¶ 23. A charging instrument charging extortion need only aver the material elements of the offense, which are 1) that a wrongful demand was made with 2) the intent to demand something of value. Slip op. at ¶ 24. The petition in this case sufficiently alleged each of these elements. It was **not necessary to specifically name the victim**.

Threat Element of Extortion Does not Require Threat of Unlawful Physical Violence

Assuming, without holding, that G.S. 14-118.4 is an anti-threat statute, the court holds that First Amendment jurisprudence does not limit the application of this statute to threats of unlawful physical violence. Slip op. at ¶ 31. The definition of a true threat, as provided in *State v. Taylor*, 379 N.C. 589, 2021-NCSC-164, does not require that a threat includes unlawful physical violence. There is no constitutional rule that threats are protected speech unless they threaten unlawful physical violence. Slip op. at ¶ 34. The **State was not required to prove that the juvenile threatened unlawful physical violence.**

No Fatal Variance Between Petition and Evidence

The essential element of extortion is that the juvenile used a wrongful threat to obtain something of value. The **precise identification of what that thing of value was is not material, as long as the State proves that the juvenile obtained or attempted to obtain something of value.** Slip op. at ¶ 40. The specific language in the petition alleging that the juvenile sought to obtain food from the cafeteria was unnecessarily specific and therefore surplusage. The fact that the evidence showed that the juvenile asked the victim to do his homework and the petition alleged that he asked her to obtain food from the cafeteria did not create a fatal variance.

Insufficient Written Findings in the Adjudication Order

G.S. 7B-2411 requires that, at a minimum, the court state in a written adjudication order that the allegations in the petition have been proved beyond a reasonable doubt. Language on the pre-printed form used, stating that "The following facts have been proven beyond a reasonable doubt: . . ," followed by a finding that states, "[a]t the hearing before the judge, the juvenile was found to be responsible for extortion in violation of 14-118.4,"is insufficient to satisfy this statutory requirement. Only a conclusory statement that the juvenile was responsible for the offense is

insufficient. **The trial court must affirmatively state the burden of proof in its written findings without regard to the pre-printed language on the form.** The case is remanded for the court to make the necessary written findings in the adjudication order.

Insufficient Written Findings in the Dispositional Order

The dispositional order incorporated the predisposition report and the juvenile's risk and needs assessment by reference. **There were no written findings related to the factors the court is required to consider under G.S. 7B-2501(c) when ordering a disposition. The order is therefore insufficient.** Because the adjudication order is vacated, this disposition order is also vacated. However, the insufficiency of the disposition order provides an independent ground for vacating the disposition order. On remand, the trial court may hold a new dispositional hearing to hear additional evidence needed to appropriately consider the factors required by G.S. 7B-2501(c).

Court of Appeals Finds No Constitutional Violations Related to Pre-Raise the Age Prosecution in Criminal Court

Were the constitutional rights of defendants who were prosecuted as adults in criminal court for offenses that they committed at ages 16 or 17, and prior to December 1, 2019, violated because the jurisdictional changes under raise the age were not retroactive? The North Carolina Court of Appeals does not think so. The decision in *State v. Garrett*, 2021-NCCOA-591, answers this question.

The question in *Garrett*

The *Garrett* decision involves the criminal prosecution of a defendant who was charged with felonious breaking or entering and larceny after breaking or entering at the age of 16. The offense occurred on December 13, 2015, long before the raise the age legislation was passed (S.L. 2017-57, §§ 16D.4.(a)-16D.4.(tt)) and took effect (beginning with offenses committed on December 1, 2019). He was charged in October 2016, and his case was set for trial in late 2017. Because he failed to appear, the case did not proceed to trial until 2019, after the raise the age legislation was passed.

Under the law in place at the time of the offense, there was no juvenile jurisdiction for this offense. Juvenile jurisdiction ended once a youth turned 16. Mr. Garrett was charged as an adult in the criminal justice system from the outset of the case. Had he been charged with committing the same offenses after raise the age took effect, his case would have begun as a juvenile matter. It could have become a criminal matter through the process of discretionary transfer, which requires a hearing and a judicial determination that the protection of the public and the needs of the juvenile would be served by transfer of the case to superior court. G.S. 7B-2203. The question in *Garrett* was whether criminal prosecution under the statute in place at the time of the offense violated the defendant's constitutional rights given the raise the age changes.

Trial court granted motion to dismiss

As a criminal matter, this case fell under the jurisdiction of the Mecklenburg County Superior Court. In light of the expansion of juvenile jurisdiction that applied prospectively in cases with the same facts as the facts in *Garrett*, the trial court granted the defendant's motion to dismiss under G.S. 15A-954(a)(4). The court found that his constitutional rights had been flagrantly violated and that there was irreparable prejudice to his preparation of the case, leaving no remedy but dismissal. The holding included that the defendant's constitutional rights against cruel and unusual punishment and to equal protection and due process of the laws had all been flagrantly violated. These holdings relied on

- The evolving standards of decency related to the treatment of juveniles in the criminal

justice system as evidenced by the line of U.S. Supreme Court cases that emphasize the reduced culpability, unique vulnerability, and malleability of juveniles (citing *Roper v. Simmons*, 543 U.S. 551 (2005) (prohibiting the juvenile death penalty); *Graham v. Florida*, 560 U.S. 48 (2010) (prohibiting juvenile life without parole in non-homicide offenses); *Miller v. Alabama*, 567 U.S. 460 (2012) (prohibiting mandatory life without parole for any juvenile offense); and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (applying *Miller* retroactively).
- The U.S. Supreme Court decision in *Kent v. United States*, 383 U.S. 541 (1966), which required a hearing, assistance of counsel, and a statement of reasons when ordering a discretionary transfer of a case from juvenile to criminal court.
- The failure to find a rational basis for distinguishing between automatic criminal prosecution and punishment at the time of this offense versus a 16-year-old who committed the same offense beginning on December 1, 2019.

The trial court also noted that the defendant was being denied what it called his "right to be treated as a juvenile, which he was at the time he allegedly committed these crimes, with all the attendant benefits granted juveniles to reform their lives." Slip op. at ¶6 (citing conclusion of law 9. from the trial court's order).

Court of Appeals finds no Constitutional violations

The Court of Appeals drew completely different conclusions. Not only did the Court of Appeals hold that none of the defendant's constitutional rights were flagrantly violated, it held that there were no constitutional violations at all.

Equal Protection

The Court of Appeals first held that the Supreme Court of North Carolina expressly rejected the same kind of equal protection claim in *State v. Howren*, 312 N.C. 454 (1984). In that case, the court held that a statutory change regarding the number of breath analyses needed to charge someone with driving while impaired was not an equal protection violation. It treated the same group of people differently before and after the statutory change. The change in the law did not involve different classifications for different groups of people. The Court of Appeals held that the defendant's right to equal protection was not violated in *Garrett* for the same reason. The variation in jurisdiction for the same offense at the same age did not create classifications between different groups of people. It treated the same group of people differently based on the law in place at the time of the offense.

Cruel and Unusual Punishment

The defendant's argument that his right against cruel and unusual punishment was violated was based on the Eighth Amendment's substantive limits on what can be made and punished as criminal. The Court of Appeals held that trying the defendant as an adult did not trigger this Eighth

Amendment protection. It first distinguished the facts of this case from the one instance in which any North Carolina or U.S. Supreme Court decision has applied this principle—to the status of being addicted to drugs or alcohol (*Robinson v. California*, 370 U.S. 660 (1962)). The Court went on to assert that prosecution of juveniles as adults does not involve the *substance* of what is made criminal, but the *procedure* to be followed when a juvenile is alleged to have committed a criminal offense. The Court noted that the crimes themselves are "undoubtedly within the police powers of North Carolina." Slip op. at ¶ 21. The court therefore held that the defendant had no Eighth Amendment claim.

Due Process

The Court of Appeals responded directly to the trial court's finding that the defendant had a right to be treated as a juvenile in its analysis of the defendant's due process claim. The Court noted that it was not clear that the trial court found the existence of a fundamental right or a protected interest. However, it also held that there is no protected interest or fundamental right related to "being tried as a juvenile in criminal cases, as opposed to being tried as an adult. We decline to create such a right under the veil of the penumbra of due process." Slip. Op. at ¶ 24.

The *Garrett* court went on to note that *Kent* was neither controlling nor instructive, reasoning that *Kent* applies only to the kind of discretionary transfer statutory scheme that existed in that case. In addition, the Supreme Court of North Carolina has held that the list of factors to be considered for transfer, contained in the appendix of the *Kent* decision, are not binding on North Carolina (citing *State v. Green*, 348 N.C. 588 (1998)).

Finally, the Court applied a rational basis test to the claim that the defendant's right to substantive due process was violated. The Court found that the State has a legitimate interest in updating statutes to reflect current ideals of fairness. In addition, prosecuting and sentencing defendants under the statutory scheme in place at the time of the offense is rationally related to the state's legitimate interest in "having clear criminal statutes that are enforced consistently with their contemporaneous statutory scheme." Slip op. at ¶ 29.

Questions remain

The court's analysis in *Garrett* leaves some unanswered questions. First, how does the line of U.S. Supreme Court decisions, beginning with *Roper v. Simmons* and holding that juveniles should be treated differently than adults under the criminal law, connect with the analysis by the Court of Appeals? While the *Garrett* trial court found that those decisions provide powerful evidence of evolving standards of decency related to the treatment of juveniles under the criminal law, the Court of Appeals did not include consideration of those decisions in it analysis.

Second, at times the Court of Appeals in *Garrett* characterized the juvenile justice system as simply a different forum for criminal prosecution. For example, the court noted that this case was not about

criminalization because “prosecution as an adult does not criminalize a status, but instead punishes criminal behavior by juveniles according to the procedures in place at the time of the offense.” Slip op. at ¶21. This view is somewhat at odds with the holding by the Supreme Court of North Carolina that juvenile proceedings are not criminal prosecutions and that a finding of delinquency is not synonymous with a conviction, see *In re Burrus*, 275 N.C. 517 (1969), and Juvenile Code provisions specifying that an adjudication of delinquency is not a criminal conviction, see G.S. 7B-2412. This leaves open the question of whether the difference between juvenile and criminal prosecution is simply procedural or whether it involves shifting cases from a civil to a criminal realm, resulting in exposure to criminal punishment that is protected by the Eighth Amendment instead of a civil penalty imposed in the context of a juvenile proceeding.

This may not be the last word

The defense in Garrett filed a petition for discretionary review with the Supreme Court of North Carolina. If granted, we may have more to come regarding these constitutional claims.

Beyond a Reasonable Doubt: Findings Required in Delinquency Adjudication Orders

Last month the Court of Appeals held in *In re J.A.D.*, 2022-NCCOA-259, that the findings in an adjudication order were deficient because they did not include an affirmative statement by the court, beyond the pre-printed language on the form, that the allegations in the petition were proven beyond a reasonable doubt. Given the minimal legal requirements for delinquency adjudication orders, drafting them can sometimes feel like a largely ministerial duty. However, this appellate decision is a good reminder that adjudication orders in delinquency cases must contain certain essential findings of fact.

Statutory Requirements in Adjudication Orders

G.S. 7B-2411 provides the requirements for adjudication orders in delinquency cases. It states that

[i]f the court finds that the allegations in the petition have been proved as provided in G.S. 7B-2409, the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication.

G.S. 7B-2409 requires that allegations in a delinquency petition be proven beyond a reasonable doubt in order to adjudicate a juvenile delinquent. Therefore, the Juvenile Code requires that adjudication orders contain:

- a finding that the allegations in the petition have been proven beyond a reasonable doubt,
- the offense date,
- the misdemeanor or felony classification of the offense, and
- the date of adjudication.

Findings of Fact that Support Each Element of the Offense are Not Necessary

Specific findings of fact regarding the elements of the offense are not statutorily required to be included in delinquency adjudication orders. The North Carolina Court of Appeals recognized this in In re J.V.J., 209 N.C.App. 737, 740 (2011), noting that section 7B–2411 does not require the trial court to delineate each element of an offense and state in writing the evidence which satisfies each element, and we recognize that section 7B–2411 does not specifically require that an adjudication order contain appropriate findings of fact. (citations and internal quotation and editing omitted)

There Must be Other Findings in Adjudication Orders

While findings of fact to support the elements of the offense are not required in delinquency adjudication orders, these orders must still have other written findings that comply with the statute. In 2011 the North Carolina Court of Appeals held that an adjudication order with nothing in the blank area where the trial court is to write the findings of fact which it has found to be proven beyond a reasonable doubt did not meet the statutorily required standard. In re J.J., Jr., 216 N.C.App. 366 (2011).

The Court Must Affirmatively State the Burden of Proof in Its Written Findings

The burden of proof is one of the required components of a delinquency adjudication order under the statute. This means that the findings must include that the allegation in the petition was proven beyond a reasonable doubt. The holding in *J.A.D.* makes clear that relying on pre-printed language in a form order is not sufficient for making that finding.

The adjudication order in *J.A.D.* included pre-printed language that stated "The following facts have been proven beyond a reasonable doubt: . . ." *In re J.A.D.,* 2022-NCCOA-259 at ¶ 45. The court wrote the following in the blank box that followed this pre-printed language:

> "[a]t the hearing before the judge, the juvenile was found to be responsible for extortion in violation of 14-118.4."

While the decision in *J.A.D.* does not detail whether this order was on AOC-J-460 (Juvenile Adjudication Order (Delinquent)), this is the same format used in that AOC form order. The Court of Appeals held that this was insufficient to meet the statutory requirement that the trial court affirmatively state the burden of proof in the written findings. *In re J.A.D.,* 2022-NCCOA-259 at ¶ 47. Pre-printed language that states the burden of proof is not sufficient. The court must affirmatively write on the form order that it finds the allegations were proven beyond a reasonable doubt.

The Adjudication Order Must Contain Findings that Address the Allegations in the Petition

The Court of Appeals found the findings in the adjudication order in *In re J.V.J.,* 209 N.C.App. 737 (2011), insufficient as well. That adjudication order stated:

> Based on the evidence presented[,][t]he following facts have been proven beyond a reasonable doubt:

> The court finds that [Joseph] is responsible.
>
> 1391–ASSAULT GOVT OFFICAL/–14–33 (C)(4) CLASS 1A MISD OCCURRED 11–23–09[.]

The Court of Appeals held that these findings were insufficient, as they failed to address the allegations in the petition. The court noted that "[r]ather than addressing the allegations in the petition in the blank area, the court used the space to (1) indicate, through a fragmentary collection of words and numbers, that an offense occurred and (2) state that Joseph was "responsible," which, as the trial court noted at the close of the adjudication hearing, is a verdict and may more properly be characterized as a conclusion of law rather than a finding of fact." *In re J.V.J.,* 209 N.C.App. 737, 740-741 (2011).

Examples of Sufficient Written Findings in Delinquency Adjudication Orders

The North Carolina Court of Appeals has upheld three different versions of written findings regarding delinquency adjudications. They include:

- An order that included a chart with the offense date, offense, the date the petition was filed, the felony or misdemeanor classification, the offense class, and status (with the delinquency hearing box checked). This order also included language that stated, "The following facts have been proven beyond a reasonable doubt: ... After hearing all testimony in this matter the court finds beyond a reasonable doubt that the juvenile committed the offense of Sexual Battery and Simple Assault and he is ADJUDICATED DELINQUENT." In re K.C., 226 N.C.App. 452 (2013).
- An order finding that the following had been proven beyond a reasonable doubt: "[t]hat on or about the date of 10–16–2013, the juvenile did unlawfully and willfully steal, take, and carry away a White Apple [iP]hone with a pink and gray otter box case, the personal property of [Ms.] Nguyen having a value of $300.00." In re K.M.M., 242 N.C.App. 25 (2015).
- Use of an arraignment order and transcript of admission by juvenile form. The court wrote, ""BASED UPON THE JUVENILE'S ADMISSION AND THE EVIDENCE PRESENTED BY THE DA, THE COURT FINDS BEYOND A REASONABLE DOUBT THAT THE JUVENILE[] IS ADJUDICATED DELINQUENT." In re W.M.C.M., 2021-NCCOA-139.

Essential Take Aways

It can be challenging to reconcile these various holdings. They seem to boil down to at least that:

- the court must make written findings in delinquency adjudication orders,

- those findings must include an affirmative statement (beyond the pre-printed language) that the allegations were proven beyond a reasonable doubt,
- the findings must connect to the allegations, and
- orders must include the offense date, the felony or misdemeanor classification, and the adjudication date.

How to Comply with Federal Confidentiality Laws When Reviewing Comprehensive Clinical Assessments in Delinquency Cases

Comprehensive clinical assessments (CCA's) are frequently completed—and sometimes required—prior to ordering a disposition in a delinquency matter. G.S. 7B-2502(a2). You can find more information about when the statutory requirement is triggered in a previous blog. CCA's contain information about the juvenile's mental health and they may also contain information about substance use disorder treatment. These kinds of information are covered by federal confidentiality laws that are not specifically addressed by the Juvenile Code. While the federal laws generally prohibit disclosure absent a valid patient authorization, courts can order disclosure after following the required procedure and making certain findings. The North Carolina Administrative Office of the Courts (NCAOC) recently released new and revised forms that are structured to provide the court access to CCA's while complying with the requirements of federal confidentiality laws. This post explains why and how to use the new and revised forms.

Federal Confidentiality Laws that Cover CCA's

Health information that is protected by the Health Insurance Portability and Accountability Act (HIPAA) includes, among other things, information that

- Identifies the individual,
- Is created or received by a health care provider, health plan, or public health authority, and
- that relates to the past, present, or future physical or mental health or condition of an individual. 45 C.F.R. 160.103.

The information in a CCA falls squarely within this definition. As protected health information, a CCA can only be disclosed if there is a valid authorization for that disclosure from the juvenile's parent, guardian, or custodian (45 C.F.R. § 164.508) or in response to a court order that specifically authorizes its release (45 C.F.R. § 164.512(e)).

Federal law contains an additional layer of privacy protection for substance use disorder patient records. 42 C.F.R. Part 2. This law generally restricts disclosure of patient records that identify the patient as having or having had a substance use disorder. 42 C.F.R. § 2.12(a)(1). However, the federal regulations also provide a procedure for a court to order disclosure for noncriminal purposes under certain circumstances. 42 C.F.R. § 2.64. This structure can be used to order disclosure of substance use disorder information in a delinquency matter.

Step 1: Order Production of the CCA to the Court, to be Filed Under Seal

Because the CCA is subject to the privacy protections in HIPAA and 42 C.F.R. Part 2, it should not

be disclosed to the court without specific authorization from the juvenile and their parent, guardian, or custodian that complies with the applicable federal laws or without a specific court order that authorizes production of the CCA to the court.

CCA Completed Within 45 Days Prior to Adjudication

If there is a CCA that was completed within 45 days prior to adjudication in the case, then the court is not required to order the completion of a new CCA. G.S. 7B-2502(a2). However, the court does need to ensure compliance with federal privacy laws in obtaining access to that recent CCA. Side two of a new form, AOC-J-477, should be used in this circumstance to order production of the completed CCA.

This order requires the provider who completed the CCA to provide the CCA to the court under seal. There are two requirements in 42 C.F.R. Part 2 that must be met *before* the court orders disclosure, which are best managed if the CCA comes under seal for court review.

1. The provider must have notice of the intent to disclose the record and an opportunity to object to that disclosure. ("Opportunity" means an opportunity to appear in person or to file a written response. A response is not required, and many times a provider will choose not to be heard on the question of whether an order to disclose should be issued.)
2. The court must make certain findings regarding good cause in order to require disclosure of the CCA. The court must therefore have the opportunity to review the necessity for disclosure of the CCA prior to authorizing its disclosure.

If the court orders production of the CCA, there will need to be a gap in time between the adjudication and disposition hearings. The court can be told about the timely CCA following adjudication. The court can then order the provider to produce the CCA, and the provider must have time to comply with that order and to prepare any potential objection. It is possible to avoid this pause in the case *if a party or the court subpoenas the CCA, to be produced to the court under seal, prior to adjudication*. In that circumstance, the provider will have notice of the subpoena and opportunity to object without the need for a pause between adjudication and disposition. If a timely CCA is already in the court file, under seal, at the time of adjudication, then the court will not need to use the AOC-J-477. The court can move to step 2: order disclosure of the CCA.

CCA Not Completed Within 45 Days Prior to Adjudication

If a CCA was not completed within 45 days prior to adjudication, the court MUST order DJJ to make a referral for a CCA following adjudication if the juvenile has a suspected mental illness, developmental disability, or intellectual disability. G.S. 7B-2502(a2). The front of the AOC-J-477 should be used to order completion and production of a CCA under this circumstance. This order also requires that the CCA be provided to the court under seal and it gives the provider who completed the CCA notice and an opportunity to object to disclosure, as required by federal law.

Step 2: Order Disclosure of the CCA

The AOC-J-471 should be used to order disclosure of the CCA after that CCA has been produced to the court under seal. This form was revised to include the findings necessary for the court to order disclosure in compliance with federal privacy laws. It includes findings that

- the juvenile and the provider have been given notice and opportunity to be heard and
- that good cause exists for disclosure, as required by federal law.

If the court makes those findings, then the court can order disclosure of the CCA to the court and the parties for consideration of whether the court should convene a care review team. Absent a patient authorization that is valid under the federal privacy laws, this is the only way that the court and the prosecutor can have access to the CCA. The order also prohibits redisclosure of the CCA unless redisclosure is otherwise authorized by applicable confidentiality laws.

The AOC-J-471 should also be used to order a care review team if the court makes the necessary findings contained in the section of the form titled “Findings on review of Assessment.” G.S. 7B-2502(a3).

Ordering Disclosure of Other Expert Examinations Containing Mental Health and/or Substance Use Disorder Information

Expert examinations may also be ordered in delinquency cases outside of this CCA process. G.S. 7B-2502(a) allows the court to order an examination by any qualified expert as needed to determine the needs of the juvenile. Side two of form AOC-J-476 should be used to order an expert examination in a delinquency matter. This form was also recently revised to include language that complies with any applicable federal privacy laws. Using the same structure in place when ordering a CCA, the form orders the provider to submit the evaluation to the court under seal and gives the provider notice and opportunity to object to disclosure of the examination.

Once the court receives the expert examination under seal, the bottom half of side one of the form provides the findings needed to order disclosure of the expert examination to the court and the parties. These are the same findings noted above in the AOC-J-471. If, on review of the sealed examination, the court can make the findings, then the court can order disclosure. The front of this form includes such an order. The order limits disclosure to the use permitted by G.S. 7B-2502(a)—to determine the needs of the juvenile. The order also limits redisclosure of the examination to redisclosure that is otherwise allowed or required under applicable confidentiality laws.

Keeping Track of This Process

If you have read this far, you may be feeling a little overwhelmed. There are many moving pieces

related to providing access to the assessments that may be needed to get to disposition in a delinquency case while complying with federal privacy laws. The basic structure to remember is:

- The court can order access to private mental health and substance use disorder information of a juvenile under certain circumstances.
- The court must first order production of the assessment under seal or the CCA can be subpoenaed for production to the court under seal.
- Then, if the court can make the required findings, the court can order disclosure of the assessment for the limited purpose necessary in the delinquency matter.

Thinking about this process early in the case and ensuring that the proper orders are issued at the appropriate time will help reduce the amount of time a case has to pause in order to comply with the requirements of federal privacy laws.

Special thanks to my colleague, Mark Botts—our SOG expert in mental health law, and to Lindsey Spain of the NCAOC for their collaboration in helping me to understand this issue and their review of this blog.

Title 42 - Public Health

Chapter I - Public Health Service, Department of Health and Human Services

Subchapter A - General Provisions

Part 2 - Confidentiality of Substance Use Disorder Patient Records

Authority: 42 U.S.C. 290dd-2.
Source: 82 FR 6115, Jan. 18, 2017, unless otherwise noted.

Subpart E - Court Orders Authorizing Disclosure and Use

§ 2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290dd-2 and the regulations in this part. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under the regulations in this part.

(b) *Examples.*

(1) A person holding records subject to the regulations in this part receives a subpoena for those records. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under the regulations in this part.

(2) An authorizing court order is entered under the regulations in this part, but the person holding the records does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person holding the records must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of the regulations in this part.

§ 2.62 . . . [Order not applicable to records disclosed without consent to researchers]

. . .

§ 2.63 Confidential communications.

(a) A court order under the regulations in this part may authorize disclosure of confidential communications made by a patient to a part 2 program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

[82 FR 6115, Jan. 18, 2017, as amended at 85 FR 80632, Dec. 14, 2020]

§ 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which the applicant asserts that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given written consent (meeting the requirements of the regulations in this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be provided:

(1) Adequate notice in a manner which does not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in *§ 2.64(d)*.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of the regulations in this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§ 2.65-§ 2.67

. . .

STATE OF NORTH CAROLINA

NC-JOIN No.

File No.

_____ County

In The General Court Of Justice
District Court Division

NOTE TO COURT: *Use only if the Court previously ordered the production of a juvenile's comprehensive clinical assessment or its equivalent to be filed under seal AND the juvenile is eligible for a Level 3 disposition and/or Psychiatric Residential Treatment Facility (PRTF) placement.*

IN THE MATTER OF		
Name Of Juvenile		
Juvenile's Date Of Birth	*Age*	*Date Of Hearing*

ORDER TO DISCLOSE AND ORDER ON REVIEW OF COMPREHENSIVE CLINICAL ASSESSMENT OR EQUIVALENT MENTAL HEALTH ASSESSMENT

G.S. 7B-2502(a2) through (a4)

FINDINGS ON DISCLOSURE OF RECORDS

On the matter of ordering disclosure of records that are confidential under 42 C.F.R. Part 2, 45 C.F.R. Parts 160 and 164, and G.S. Chapter 122C, the Court hereby finds the following:

1. The Court previously ordered the production of the juvenile's comprehensive clinical assessment records to be filed under seal.
2. The Court has the authority to order disclosure of confidential information. [42 C.F.R. § 2.64, 45 C.F.R. § 164.512(e), G.S. 122C-54(a)]
3. The juvenile and the provider have been given notice and an opportunity to be heard. [42 C.F.R. § 2.64]
4. Good cause exists for ordering disclosure of the assessment because:
   a. Other ways of obtaining the information are not available or would not be effective; and
   b. The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services. [42 C.F.R. § 2.64]

ORDER TO DISCLOSE RECORDS

It is hereby ORDERED that:

1. The written record of the comprehensive clinical assessment or its equivalent be disclosed to the Court and the parties for consideration of whether to convene a care review team as required by G.S. 7B-2502(a3).
2. The parties shall not further disclose this record unless otherwise permitted or required by the applicable confidentiality laws.

Date	*Name Of Judge (type or print)*	*Signature Of Judge*

FINDINGS ON REVIEW OF ASSESSMENT

The Court, on review of the comprehensive clinical assessment or equivalent mental health assessment in this case, makes the following Findings of Fact:

1. The juvenile has been adjudicated delinquent and has a suspected mental illness, a developmental disability, or an intellectual disability.
2. A comprehensive clinical assessment or equivalent mental health assessment has been completed.
3. The juvenile is eligible for a Juvenile Justice Level 3 Disposition and/or is recommended for a Psychiatric Residential Treatment Facility (PRTF) placement.
4. The Court has reviewed the assessment and finds sufficient evidence that the juvenile:
   ☐ a. Has a severe emotional disturbance, as defined in G.S. 7B-1501(24a), a developmental disability, as defined in G.S. 122C-3(12a), or an intellectual disability, as defined in G.S. 122C-3(17a).
   ☐ b. Does not have a severe emotional disturbance, as defined in G.S. 7B-1501(24a), a developmental disability, as defined in G.S. 122C-3(12a), or an intellectual disability, as defined in G.S. 122C-3(17a).

☐ 5. In the Court's discretion, the Court finds that the juvenile's severe emotional disturbance, developmental disability, or intellectual disability ☐ did ☐ did not substantially contribute to the juvenile's delinquent behavior.

ORDER ON REVIEW OF ASSESSMENT

It is hereby ORDERED that:

☐ A care review team be convened by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety and assigned to the case.

The care review team shall develop a recommendation plan for appropriate services and resources that address the identified needs of the juvenile and shall submit a recommendation to the Court at a hearing set for *(specify date)* _____ which the Court will consider in determining the juvenile's disposition.

NOTE TO COURT: *Date set must be within 30 days of the date of this order.*

☐ A care review team is not warranted.

Date	*Name Of Judge (type or print)*	*Signature Of Judge*

NOTE TO COURT: *If the Court determines that the juvenile does not have health insurance and that the parent or funding from the Juvenile Justice Section of the Department of Public Safety is unable to pay the cost of the assessment, evaluation, or treatment, the Court shall conduct a hearing pursuant to G.S. 7B-2502(b) to determine who should pay and shall notify the county manager, or any other person who is designated by the chair of the board of county commissioners, of the hearing using form AOC-J-240A.*

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's Date Of Birth | *Age* | *Date Of Hearing*

DISPOSITION CONTINUANCE ORDER/ ORDER TO DISCLOSE EXPERT EXAMINATION RECORDS

G.S. 7B-2501(d), -2502(a)

DISPOSITION CONTINUANCE ORDER

☐ **Continuance For Family To Implement Approved Plan** [G.S. 7B-2501(d)]. The case be continued for *(specify time, not to exceed six months)* _____ to allow the juvenile's family an opportunity to meet the juvenile's needs through the following plan, which the Court approves:

Date | *Name Of District Court Judge (type or print)* | *Signature Of District Court Judge*

NOTE TO COURT: *Use the sections immediately below to order disclosure of the records of an expert examination that the Court previously ordered pursuant to G.S. 7B-2502(a). To order that an expert examination be completed pursuant to G.S. 7B-2502(a), use Side Two of this form. To order that a comprehensive clinical assessment be completed pursuant to G.S. 7B-2502(a2), use form AOC-J-477, Side One. Use form AOC-J-471 for the Court's review of a comprehensive clinical assessment as required by G.S. 7B-2502(a3) and to order disclosure of the assessment for that review.*

FINDINGS ON DISCLOSURE OF EXPERT EXAMINATION RECORDS

On the matter of ordering disclosure of records that are confidential under 42 C.F.R. Part 2, 45 C.F.R. Parts 160 and 164, and G.S. Chapter 122C, the Court hereby finds the following:

1. The Court previously ordered the production of the juvenile's expert examination records to be filed under seal.
2. The Court has the authority to order disclosure of confidential information. [42 C.F.R. § 2.64, 45 C.F.R. § 164.512(e), G.S. 122C-54(a)]
3. The juvenile and the provider have been given notice and an opportunity to be heard. [42 C.F.R. § 2.64]
4. Good cause exists for ordering disclosure of the expert examination records because:
   a. Other ways of obtaining the information are not available or would not be effective; and
   b. The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services. [42 C.F.R. § 2.64]

ORDER TO DISCLOSE EXPERT EXAMINATION RECORDS

It is hereby ORDERED that:

1. The written record of the expert examination be disclosed to the Court and the parties. The Court will use the expert examination to determine the needs of the juvenile.
2. The parties shall not further disclose this record unless otherwise permitted or required by the applicable confidentiality laws.

Date | *Name Of District Court Judge (type or print)* | *Signature Of District Court Judge*

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's Date Of Birth | *Age* | *Date Of Hearing*

EXPERT EXAMINATION ORDER

G.S. 7B-2502(a)

NOTE TO COURT: *Use the sections immediately below to order that an expert examination be completed pursuant to G.S. 7B-2502(a). To order disclosure of the records of an expert examination that the Court previously ordered pursuant to G.S. 7B-2502(a), use the Findings On Disclosure Of Expert Examination Records and Order To Disclose Expert Examination Records sections found on Side One of this form. To order that a comprehensive clinical assessment be completed pursuant to G.S. 7B-2502(a2), use form AOC-J-477, Side One. Use form AOC-J-471 for the Court's review of a comprehensive clinical assessment as required by G.S. 7B-2502(a3) and to order disclosure of the assessment for that review.*

FINDINGS ON EXPERT EXAMINATION

The Court hereby finds that examination by a physician, psychiatrist, psychologist, or other qualified expert is needed for the Court to determine the needs of the juvenile.

ORDER FOR EXPERT EXAMINATION

It is hereby ORDERED that:

1. An examination by a *(specify type(s) of expert(s))* _____ be completed to aid the Court in determining the needs of the juvenile.
2. The provider identified below shall provide a written copy of the examination to the Court to be filed under seal.
3. The records shall be transmitted to the Court in a sealed envelope addressed to the Clerk of Superior Court in this county with the file number clearly marked on the outside of the envelope.
4. The Clerk shall place these records under seal in the juvenile's court file.
5. This Order shall serve as notice to the juvenile and the provider of the Court's intent to disclose these records for review by the Court. At the time of filing the sealed records, the provider may, but is not required to, file written objections to the disclosure of these records, and may, but is not required to, further argue any objections at the court hearing set below.
6. The records shall be available for the Court at a hearing set for *(specify date)* _____ to determine the needs of the juvenile.

Name And Address Of Provider

Date | *Name Of District Court Judge (type or print)* | *Signature Of District Court Judge*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Expert Examination Order was served on the provider named above by:

☐ hand delivery to the provider named above.
☐ depositing a copy in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the ☐ provider ☐ *(if provider is a corporation)* officer, director, or managing agent of the corporation at the address shown above.
☐ Other manner of service *(specify)*

Date Served | *Name Of Person Serving (type or print)* | *Signature Of Person Serving*

STATE OF NORTH CAROLINA

NC-JOIN No.

File No.

_____ County

In The General Court Of Justice
District Court Division

NOTE TO COURT: *Use this side of the form only if a juvenile adjudicated delinquent has a suspected mental illness, developmental disability, or intellectual disability and has **not** received a CCA or equivalent mental health assessment within the last 45 days before the adjudication hearing. Use form AOC-J-471 for the Court's review of the assessment and to order disclosure of the assessment for that review.*

IN THE MATTER OF

Name Of Juvenile

Juvenile's Date Of Birth	*Age*	*Date Of Hearing*

COMPREHENSIVE CLINICAL ASSESSMENT-ORDER TO COMPLETE ASSESSMENT AND PRODUCE RECORDS

42 C.F.R. § 2.64, 45 C.F.R. § 164.512(e); G.S. 7B-2502(a), 122C-54(a)

FINDINGS

The Court hereby finds the following:

1. The juvenile has been adjudicated delinquent and has a suspected mental illness, developmental disability, or intellectual disability. [G.S. 7B-2502(a2)]
2. A comprehensive clinical assessment or equivalent mental health assessment has not been conducted within the last 45 days before the adjudication hearing.
3. Pursuant to G.S. 7B-2502(a2), the Court is required to order a comprehensive clinical assessment or equivalent mental health assessment.
4. Further, it is necessary and required for the Court to review a copy of the assessment to determine whether a care review team must be ordered pursuant to G.S. 7B-2502(a3).

ORDER

It is hereby ORDERED that:

1. An assessment be completed that evaluates the developmental, emotional, behavioral, and mental health needs of the juvenile.
2. The provider identified below shall provide a written copy of the assessment to the Court to be filed under seal.
3. The records shall be transmitted to the Court in a sealed envelope addressed to the Clerk of Superior Court in this county with the file number clearly marked on the outside of the envelope.
4. The Clerk shall place these records under seal in the juvenile's court file.
5. This Order shall serve as notice to the juvenile and the provider of the Court's intent to disclose these records for review by the Court as required by G.S. 7B-2502(a3). At the time of filing the sealed records, the provider may, but is not required to, file written objections to the disclosure of these records, and may, but is not required to, further argue any objections at the court hearing set below.
6. The records shall be available for the Court at a hearing set for *(specify date)* _____ to determine whether to convene a care review team pursuant to G.S. 7B-2502(a3) and (a4).

Name And Address Of Provider

Date	*Name Of District Court Judge (type or print)*	*Signature Of District Court Judge*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order To Complete Assessment And Produce Records was served on the provider named above by:

☐ hand delivery to the provider named above.
☐ depositing a copy in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the ☐ provider ☐ *(if provider is a corporation)* officer, director, or managing agent of the corporation at the address shown above.
☐ Other manner of service *(specify)*

Date Served	*Name Of Person Serving (type or print)*	*Signature Of Person Serving*

STATE OF NORTH CAROLINA | *NC-JOIN No.* | *File No.*

_____ County

In The General Court Of Justice
District Court Division

NOTE TO COURT: *Use this side of the form only if a juvenile adjudicated delinquent has a suspected mental illness, developmental disability, or intellectual disability and a CCA or equivalent mental health assessment was conducted within the last 45 days prior to adjudication. Use form AOC-J-471 for the Court's review of the assessment and to order disclosure of the assessment for that review.*

IN THE MATTER OF

Name Of Juvenile

Juvenile's Date Of Birth	*Age*	*Date Of Hearing*

COMPREHENSIVE CLINICAL ASSESSMENT ALREADY COMPLETED - ORDER TO PRODUCE RECORDS

42 C.F.R. § 2.64, 45 C.F.R. § 164.512(e); G.S. 7B-2502(a), 122C-54(a)

FINDINGS

The Court hereby finds the following:

1. The juvenile has been adjudicated delinquent and has a suspected mental illness, developmental disability, or intellectual disability. [G.S. 7B-2502(a2)]
2. A comprehensive clinical assessment or equivalent mental health assessment has been conducted within the last 45 days before the adjudication hearing. [G.S. 7B-2502(a2)]
3. It is necessary and required for the Court to review a copy of the assessment to determine whether a care review team must be ordered pursuant to G.S. 7B-2502(a3).

ORDER

It is hereby ORDERED that:

1. The provider identified below shall provide a written copy of the comprehensive clinical assessment or the equivalent mental health assessment to the Court to be filed under seal.
2. The records shall be transmitted to the Court in a sealed envelope addressed to the Clerk of Superior Court in this county with the file number clearly marked on the outside of the envelope.
3. The Clerk shall place these records under seal in the juvenile's court file.
4. This Order shall serve as notice to the juvenile and the provider of the Court's intent to disclose these records for review by the Court as required by G.S. 7B-2502(a3). At the time of filing the sealed records, the provider may, but is not required to, file written objections to the disclosure of these records, and may, but is not required to, further argue any objections at the court hearing set below.
5. The records shall be available for the Court at a hearing set for *(specify date)* _____ to determine whether to convene a care review team pursuant to G.S. 7B-2502(a3) and (a4).

Name And Address Of Provider

Date	*Name Of District Court Judge (type or print)*	*Signature Of District Court Judge*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order To Produce Records was served on the provider named above by:

☐ hand delivery to the provider named above.
☐ depositing a copy in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the ☐ provider ☐ *(if provider is a corporation)* officer, director, or managing agent of the corporation at the address shown above.
☐ Other manner of service *(specify)*

Date Served	*Name Of Person Serving (type or print)*	*Signature Of Person Serving*