

Pre-Adjudication – Custody and Capacity

JUVENILE DELINQUENCY: A COURSE FOR DISTRICT COURT JUDGES

NOVEMBER 13, 2023



Temporary Custody

G.S. 7B-1900

Law enforcement

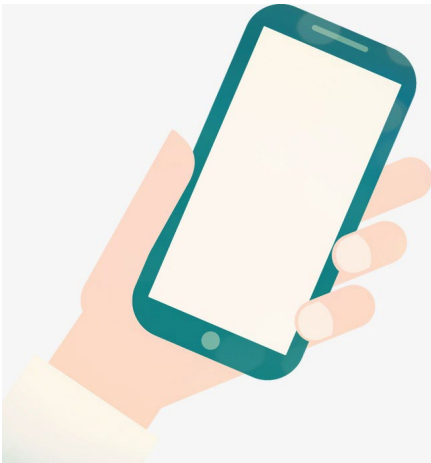
- Under same circumstances can arrest an adult (probable cause)

Law enforcement or court counselor

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

Temporary Custody

Parents must be notified



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



G.S. 7B-1901


Custody Orders

Petition
must be filed

First order is
ex parte

No right to
bond

1. Consider release

- Parent
 - Guardian
 - Custodian
 - Other responsible adult
- 

2. Reasonable factual basis to believe allegations are true



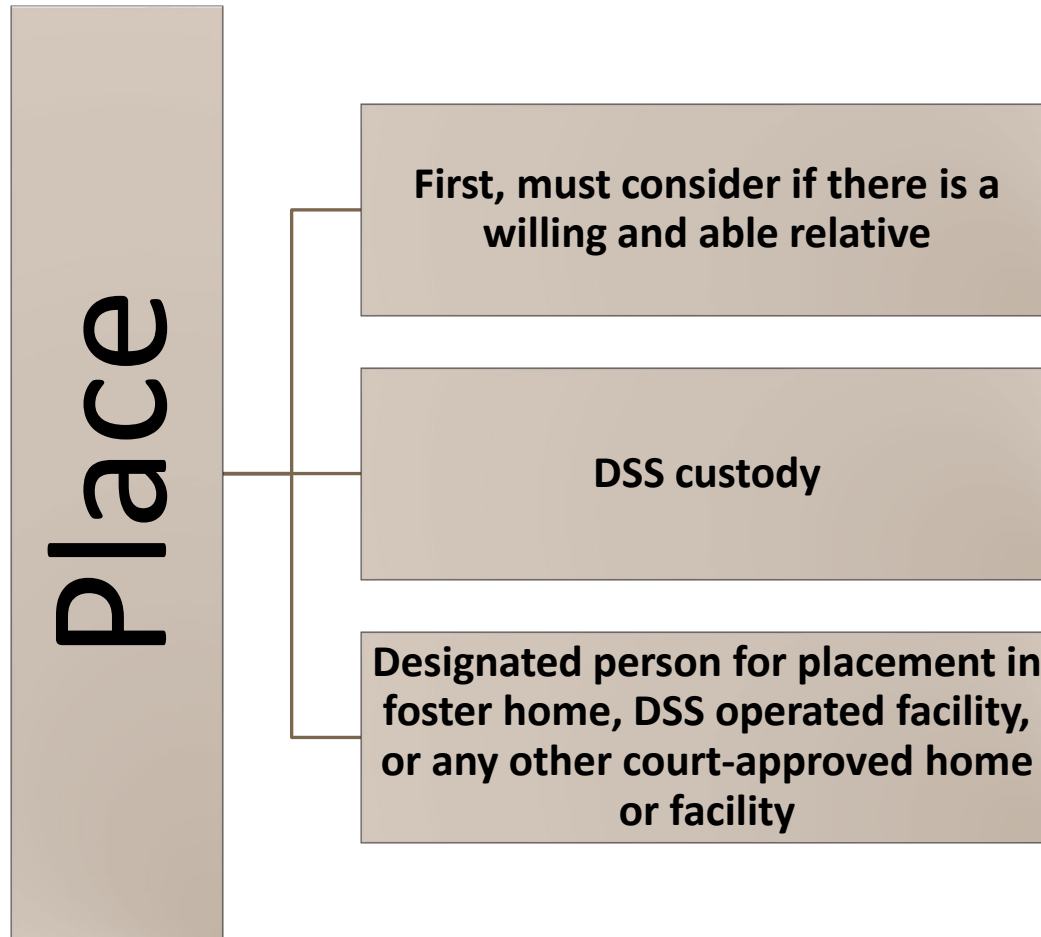
3. Must be either

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

Nonsecure Custody

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

Nonsecure Custody G.S. 7B-1905(a)

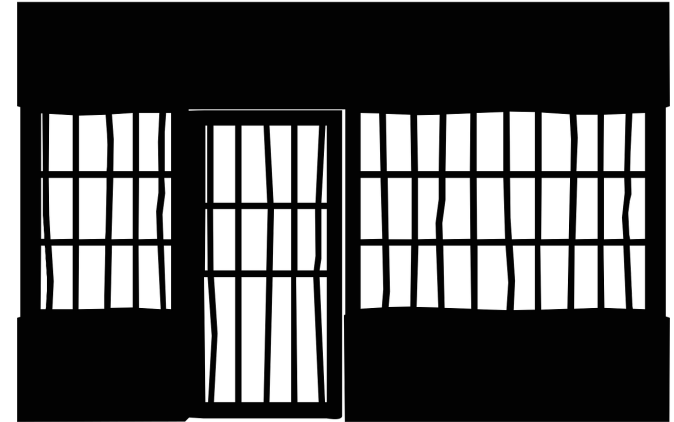


Secure Custody

G.S. 7B-1903

Reasonable factual basis to believe allegations in petition

One of the statutory criteria exist



Statutory Criteria – related to pending delinquency charge G.S. 7B-1903(b)

Charged with a **felony & danger to property or persons**

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

Willfully failed to appear on pending delinquency charge, provided had proper notice

Delinquency charge pending and **reasonable cause to believe will not appear**

Statutory Criteria – other Circumstances

G.S. 7B-1903(b)

Juvenile is an **absconder** from JJ facility or detention

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

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

Alleged **undisciplined** and willfully failed to appear after proper notice; 24-hour maximum and must be brought to court ASAP

Statutory Criteria – Probation of PRS Violation

G.S. 7B-1903 (b)(3), (d)

Willfully failed to appear on violation, provided had proper notice

If alleged to have committed acts that damage property or injure persons

These acts must be charged as delinquent offenses to qualify

(In re D.L.H., 198 N.C.App. 286 (2009))

Statutory Criteria – Pending Disposition or Placement

G.S. 7B-1903(c)

After adjudication, prior to disposition or pending placement pursuant to an order of disposition

Ongoing hearings for need for continued custody must occur every 10 calendar days (or every 30 days on juvenile's consent)

Orders for continued custody must be in writing with appropriate findings of fact

Custody Hearings

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**

G.S. 7B-1906

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

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

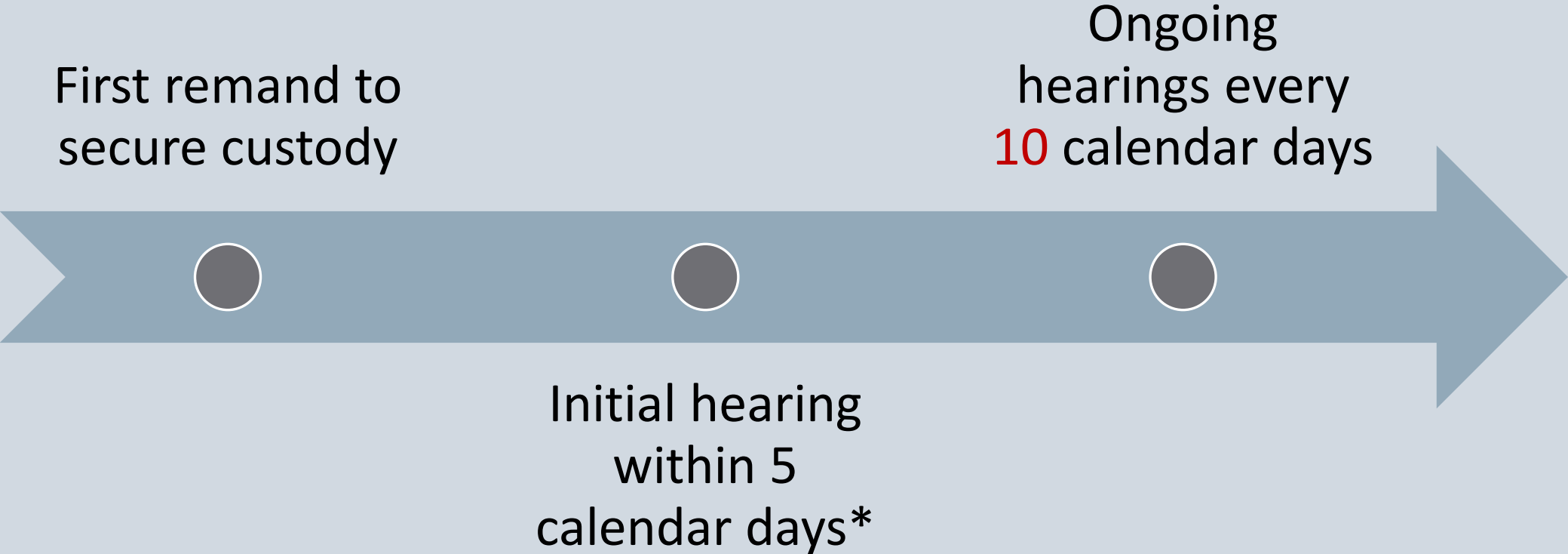
Release into the care of responsible person or
organization

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**

Custody Hearing Timelines (Usual)

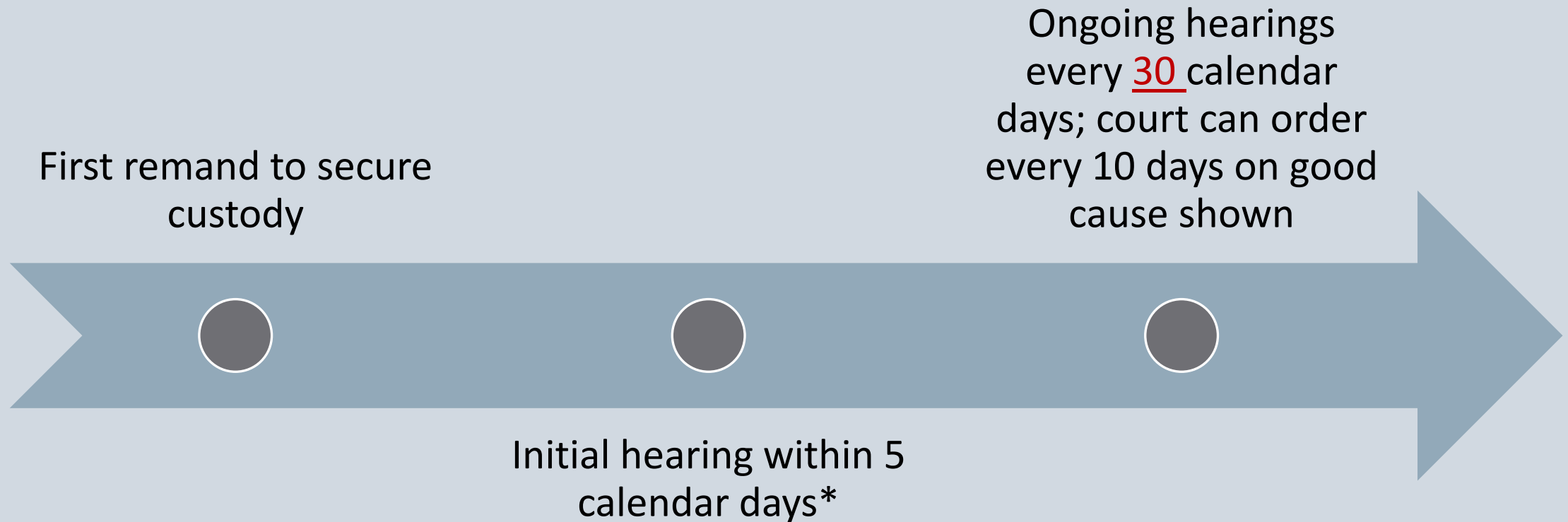
G.S. 7B-1906



* 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

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

If alleged to have committed 1) Class A felony at 13+ or
2) Class B1– Class G felony at age 16 or 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

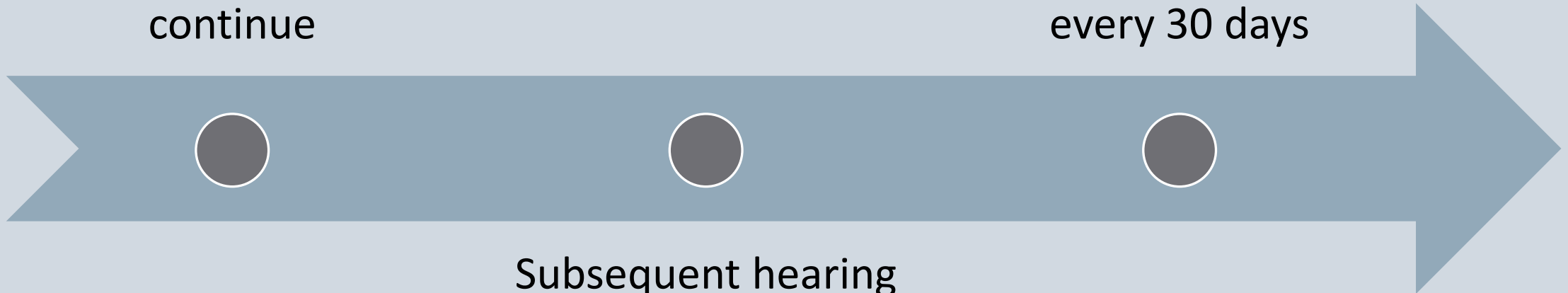
Nonsecure Custody Hearing Timeline

G.S. 7B-1906 (a) – (b1)

Initial hearing w/in 7
calendar days*

cannot waive or
continue

Ongoing hearings
every 30 days



Subsequent hearing
w/in 7 business days

* 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



Custody Scenarios

Capacity to Proceed

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)

Legal Standard =
Criminal Procedure
Act Incapacity to
Proceed

G.S. 7B-2401
explicitly
incorporates G.S.
15A-1001

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



THE QUESTION OF
CAPACITY CAN BE
RAISED AT ANY
TIME

G.S. 15A-1002(A)



How

ON MOTION BY THE
PROSECUTOR, JUVENILE,
JUVENILE'S ATTORNEY,
OR THE COURT
G.S. 15A-1002(A)

“Bona Fide Doubt” Inquiry

Court must initiate capacity hearing on its own when there is a *bona fide doubt* about the juvenile’s capacity to proceed.

- *State v. Staten*, 172 N.C. App. 673, 678 (2005); sua sponte hearing not required
- *State v. Hollars*, 266 N.C.App. 534 (2019); sua sponte hearing required



“Bona Fide Doubt” Inquiry

Only if there is “substantial evidence” before the court

- irrational behavior or demeanor in court
- mental health history
- prior medical opinions on competence to stand trial
- court colloquy with juvenile regarding understanding
- concerns raised by juvenile’s attorney



Statutory mandates (G.S. 15A-1002(b)(1))



Hold a hearing to determine capacity to proceed

Give reasonable notice to the juvenile and the prosecutor

Hold hearing after any court ordered examination



Capacity Hearings

Can stipulate to capacity

CANNOT stipulate to lack of capacity

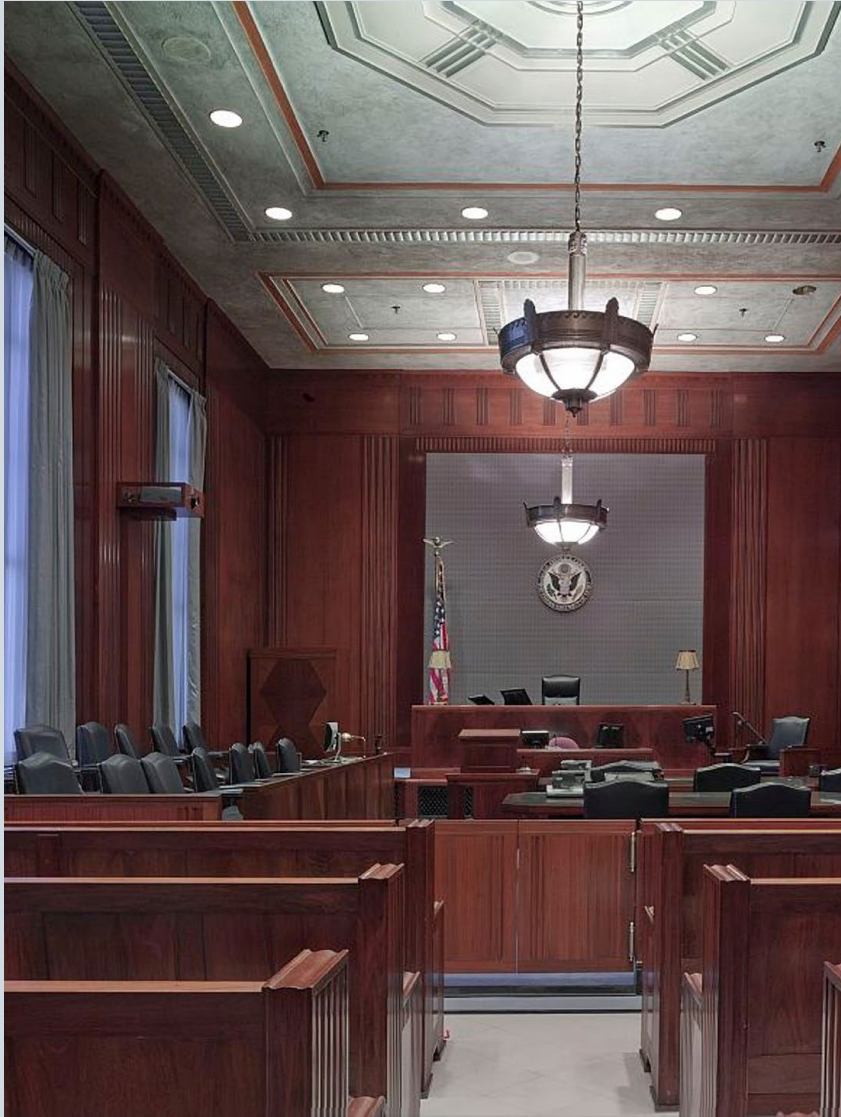


Capacity Hearings

Examiner's report is admissible

- G.S. 15A-1002(b)(1a), -1002(b)(2)

Juvenile must have opportunity to present evidence



Capacity Hearings

Juvenile has burden to prove incapacity

- *In re H.D.*, 184 N.C. App. 188, 645 S.E.2d 901 (2007) (unpublished)

By preponderance of the evidence

- *See Cooper v. Oklahoma*, 517 U.S. 348 (1996)
- *State v. Moss*, 178 N.C. App. 393 (2006) (unpublished) (following *Cooper*)



CAPACITY IS A LEGAL CONCLUSION FOR THE COURT

- Experts cannot testify to the ultimate question of capacity
- Judge must resolve conflicts in evidence and
- Make a conclusion based upon appropriate findings of fact



Court order must contain findings of fact to support the court's determination of the juvenile's capacity to proceed

G.S. 15A-1002(b1)



If a juvenile lacks capacity

The court cannot

- conduct adjudication, disposition, or violation hearings

The court can

- 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

Options
When
No
Capacity
to
Proceed

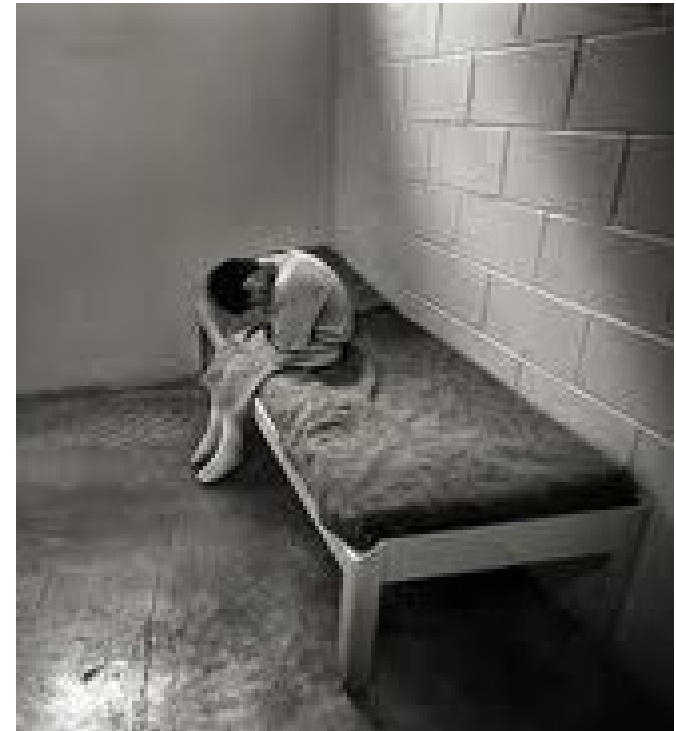
Dismissal

Involuntary commitment proceeding
(G.S. 15A-1003)

Reduce charges to divertible offense,
refile and divert

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)





S.L. 2023-114, Part V.

Juvenile Capacity to Proceed

- new juvenile standard
- new possibility of juvenile remediation

MUCH MORE TO COME



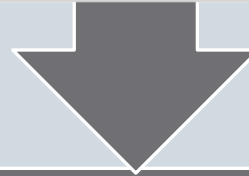
Restraints

May subject a juvenile to physical restraint in the courtroom only when the judge finds:

the restraint to be reasonably necessary to maintain order,

prevent the juvenile's escape,

or provide for the safety of the courtroom.



Whenever practical, the judge shall provide the juvenile and the juvenile's attorney an opportunity to be heard to contest the use of restraints



Findings of fact in support of the order required

G.S. 7B-2402.1

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name Of Juvenile

**ORDER FOR USE OF
JUVENILE RESTRAINTS**

G.S. 7B-2402.1

This matter is properly before the Court. This Court has jurisdiction over the subject matter of this proceeding and of the person of the juvenile. The following persons were present at the hearing:

Name	Relationship/Title	Name	Relationship/Title

FINDINGS OF FACT

The Court makes the following findings of fact:
(NOTE: Court must check either Finding 1 or 2 below.)

- 1. The juvenile and/or the juvenile's attorney have been given an opportunity to be heard to contest the use of restraints during the proceeding.
- 2. It is not practical to provide the juvenile and/or the juvenile's attorney an opportunity to be heard to contest the use of restraints during the proceeding.