

Intensive Juvenile Defender Training

March 4-5, 2020

School of Government, Chapel Hill, NC

ELECTRONIC MATERIALS*

*This PDF file contains "bookmarks," which serve as a clickable table of contents that allows you to easily skip around and locate documents within the larger file. A bookmark panel should automatically appear on the left-hand side of this screen. If it does not, click the icon—located on the left-hand side of the open PDF document—that looks like a dog-eared page with a ribbon hanging from the top.

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School of Government, Chapel Hill, NC

Wednesday, March 4

8:30 Check-in (*outside 2401*)

9:00 Welcome

John Rubin, Professor, School of Government

Austine Long, Project Attorney, Office of the Juvenile Defender

9:15 Overview of Juvenile Delinquency Proceedings (60 min)

Jacqueline Greene, Assistant Professor, School of Government

10:15 Break

10:30 Detention Advocacy (with in-class small group work) (90 min)

LaToya Powell, Assistant Legal Counsel, North Carolina Administrative Office of the Courts

Eric Zogry, Juvenile Defender, Office of the Juvenile Defender

12:00 Lunch (*SOG Dining room 1st floor*)

1:00 Developing a Pre-Adjudication Investigation & Discovery Plan (with in-class small group work) (90 min)

Burcu Hensley, Attorney, Hensley Law Firm

John Rubin, Professor, School of Government

2:30 Break (*snacks provided*)

2:45 Suppression: Search and Seizure & Interrogations (with in-class small group work) (90 min)

Kellie Mannette, Attorney, Law Office of Kellie Mannette

4:15 Transfer Hearings (45 min)

Dorothy Hairston-Mitchell, Clinical Assistant Professor & Supervising Attorney

Juvenile Law Clinic, North Carolina Central University School of Law

5:00 Adjourn for day

Thursday, March 5

9:00 Juvenile Capacity (60 min)

Lyana Hunter, Assistant Public Defender

Alexis Perkins, Assistant Public Defender

New Hanover County Office of the Public Defender

10:00 Break

10:15 Disposition Options and Advocacy (with in-class small group work) (75 min)

Kim Howes, Assistant Juvenile Defender

Austine Long, Juvenile Project Attorney

Office of the Juvenile Defender

11:30 Post-Disposition and Probation (45 min)

Sharif Deveaux, Assistant Public Defender, Wake County Office of the Public Defender

12:15 Lunch (*SOG Dining room 1st floor*)

1:15 Kids Are Different: Adolescent Brain Development and Behavior (60 min)

Maureen L. Reardon, Ph.D., Clinical and Forensic Psychologist

2:15 Ethics of Representing Juveniles (60 min *Ethics*)

Whitney Fairbanks, Interim Executive Director, Office of Indigent Defense Services

3:15 Break (*snacks provided*)

3:30 Raise the Age Strategies for Juvenile Defenders (90 min)

Mary Stansell, Assistant Public Defender and Juvenile Chief, Wake County Office of the Public Defender

5:00 Adjourn

CLE Hours

11.75 General

1 Ethic Hour

12.75 total hours *pending CLE approval

Case Problem

In re K.E.

Intensive Juvenile Defender Training

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UNC School of Government

Summary of Client Interview and Other Information

You represent Kat, a 15 year old girl, who has been charged with assault on a governmental officer or employee. The State claims that she admitted the offense. Kat is 5'1" tall, weighs 95 lbs, and wears her hair in a long braid down her back. Kat lives in "the strand," a very poor section of Panem City.

Kat's father is deceased. She lives with her mother, Paula, and her younger sister, Prim, 12, in a two bedroom apartment. Kat's mother suffers from a mental health disorder and works intermittently. Kat often misses school to stay home and care for her mother when she is ill. Kat also provides much of Prim's day-to-day care, either because her mother is working or ill. Kat has been in trouble on numerous occasions and the officers who patrol the district all claim to know her. Although she has no prior juvenile adjudications, she has had one case diverted and another dismissed. The Panem Juvenile Court Counselor's Office diverted a complaint for trespassing in 2019. Later that year, a petition for misdemeanor larceny alleging Kat stole a loaf of bread was dismissed after the complaining witness failed to show up to court. Since the time the current petition was filed, the Panem Juvenile Court Counselor's Office has filed three more petitions, two for trespassing and one for possessing a weapon on school property.

Kat is in the seventh grade at Panem Day School (PDS), a local charter school that requires that students wear uniforms. She is performing below grade level due to excessive absences and a diagnosed learning disability. She has an IEP, but it has not been updated since 2018. Kat does not know what services are outlined in her IEP or what learning disability she has. She is failing three out of five classes; and it is unlikely that she will be promoted to the eighth grade. PDS suspended Kat for the remainder of the school year because of the weapon on school property incident. Paula did not seek to have the suspension reviewed; and Kat is currently suspended. Kat was taken into secure custody for the assault on officer, where she remains at this time.

Kat told you that she is not the person who attacked Officer Snow. She says that she only admitted the assault because she was tired and wanted to go home. She says that she was home taking care of her mother on January 27. Paula says that she had a rough week that week and, while she knows that Kat stayed home with her a few days, she cannot remember which days exactly. PDS records show that Kat was not at school that day.

Police Report

On January 27, 2020, I was patrolling the market at the hob in response to recent complaints from the merchants of a rash of thefts and vandalism. It was the merchants' opinion, and this officer agrees, that the culprits were students. I was in uniform. I began my patrol at about 10:30am that morning. At approximately 1:30pm I observed a young female behaving suspiciously and began to follow her. After approximately thirty minutes of observation, I observed the young female slip a bag of candy into her back pack.

I approached the young female, who was wearing a red skirt and blue sweater. I asked to see what was in her backpack. She consented, but when I reached for the backpack she jerked it away. Since I was sure she was going to run, I took hold of the suspect by the forearm. She again jerked her forearm away and moved to strike me. I employed evasive maneuvers, but the young female continued to strike me. As I was attempting to remove my pepper spray from my belt, an unseen assailant approached me from behind and kicked my feet out from under me. I fell to the ground, landing on my back.

As I fell, I was able to see the assailant. She was wearing an outfit just like the other girl. She was approximately 5'5" tall, weighed approximately 110-120 pounds, and had long black hair that she wore in a braid. The young females ran in different directions. When I regained my feet, I gave chase of the young female who knocked me down, but the hob was crowded and I was unable to catch her.

I returned to the stall where the first young female stole the candy and interviewed eye witnesses. No one present knew the names of either of the young girls. I was able to learn that both were wearing the uniform for a nearby school, PDS.

Supplemental police report

On February 10 at approximately 11:00am, I went to Panem Day School and spoke with the principal, S. Crane, and the student resource officer, Officer Cato. Principal Crane informed me that 17 females were absent from school on January 27. He pulled up the student identification card pictures of each on his computer. I was able to identify Kat Everdeen as the girl who assaulted me. I was unable to identify the girl that stole the candy.

Principal Cato asked Everdeen's teacher, Ms. Trinket, to escort her to the principal's lounge where Officer Cato and I were waiting. When Everdeen arrived, Officer Cato instructed her to take a seat at the table. He sat directly across from Everdeen; Ms. Trinket sat next him; and I stood by the door.

Officer Cato, in his capacity as a school resource officer, and Trinket, in her capacity as a teacher, questioned Everdeen. Everdeen initially denied assaulting me. Officer Cato explained to her that the matter was going to court but that she had an opportunity to do the right thing. Everdeen continued to deny that she was the one who assaulted me. Trinket informed Everdeen that she had serious concerns about her excessive absenteeism and thought she might have to contact child services. Everdeen asked if she was going to get to go home. Cato informed her that if child services became involved, both she and her sister would be taken out of the home, but if she did the right thing her sister could stay. Everdeen admitted to Officer Cato and to Trinket that she assaulted me.

Everdeen's mother was notified to pick her up. I prepared a complaint for assault on a law enforcement official inflicting physical injury, a Class I felony, which I then filed with the Panem Juvenile Court Counselor's Office.

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

(a) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the officer.

(a1) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a member of the North Carolina National Guard while he or she is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the member.

(b) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties and inflicts serious bodily injury on the employee.

(c) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person does any of the following:

(1) Assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his or her official duties and inflicts physical injury on the officer.

(2) Assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties and inflicts physical injury on the employee.

(3) Assaults a member of the North Carolina National Guard while he or she is discharging or attempting to discharge his or her official duties and inflicts physical injury on the member.

For the purposes of this subsection, "physical injury" includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury.(1996, 2nd Ex. Sess., c. 18, s. 20.14B(a); 1997-443, s. 19.25(hh); 2001-487, s. 41; 2011-356, s. 1; 2015-74, s. 1.)

§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

(1) through (3) Repealed by Session Laws 1995, c. 507, s. 19.5(b);

(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;

(8) Repealed by Session Laws 1995, c. 507, s. 19.5(b);

(9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A "sports official" is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A "sports event" includes any interscholastic or intramural athletic activity in a primary, middle, junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or nonprofit organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(1) Inflicts serious injury upon another person or uses a deadly weapon;

(2) Assaults a female, he being a male person at least 18 years of age;

(3) Assaults a child under the age of 12 years;

(4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties;

(5) Repealed by Session Laws 1999-105, s. 1, effective December 1, 1999; or

(6) Assaults a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as an employee or volunteer, or assaults a school employee or school volunteer as a result of the discharge or attempt to discharge that individual's duties as a school employee or school volunteer. For purposes of this subdivision, the following definitions shall apply:

a. "Duties" means:

1. All activities on school property;

2. All activities, wherever occurring, during a school authorized event or the accompanying of students to or from that event; and

3. All activities relating to the operation of school transportation.

b. "Employee" or "volunteer" means:

1. An employee of a local board of education; or a charter school authorized under G.S. 115C-218.5, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes;

2. An independent contractor or an employee of an independent contractor of a local board of education, charter school authorized under G.S. 115C-218.5, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General

Statutes, if the independent contractor carries out duties customarily performed by employees of the school; and

3. An adult who volunteers his or her services or presence at any school activity and is under the supervision of an individual listed in sub-sub-subdivision 1. or 2. of this sub-subdivision.

(7) Assaults a public transit operator, including a public employee or a private contractor employed as a public transit operator, when the operator is discharging or attempting to discharge his or her duties.

(8) Assaults a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes or a campus police officer certified pursuant to the provisions of Chapter 74G, Article 1 of Chapter 17C, or Chapter 116 of the General Statutes in the performance of that person's duties.

(c1) No school personnel as defined in G.S. 14-33(c)(6) who takes reasonable actions in good faith to end a fight or altercation between students shall incur any civil or criminal liability as the result of those actions.

(d) Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person, or uses a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor, is guilty of a Class A1 misdemeanor. A person convicted under this subsection, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court.

A person committing a second or subsequent violation of this subsection shall be sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court.

The following definitions apply to this subsection:

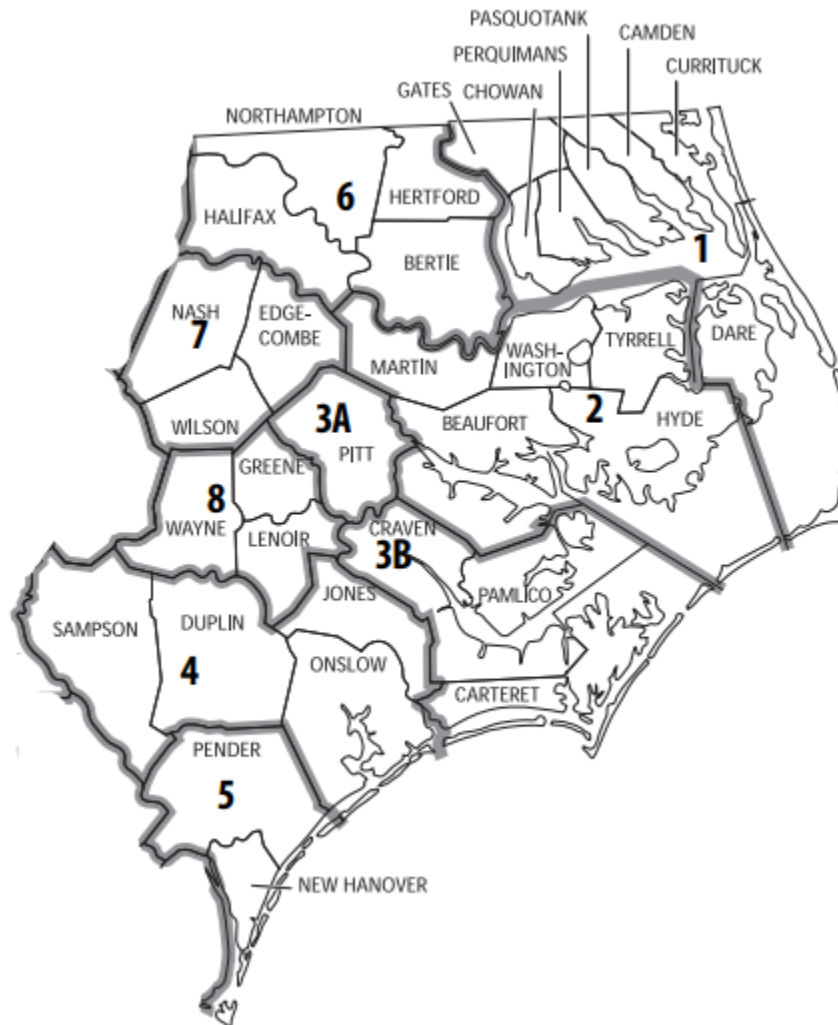
(1) "Personal relationship" is as defined in G.S. 50B-1(b).

(2) "In the presence of a minor" means that the minor was in a position to see or hear the assault.

(3) "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault. (1870-1, c. 43, s. 2; 1873-4, c. 176, s. 6; 1879, c. 92, ss. 2, 6; Code, s. 987; Rev., s. 3620, 1911, c. 193; C.S., s. 4215; 1933, c. 189; 1949, c. 298; 1969, c. 618, s. 1; 1971, c. 765, s. 2; 1973, c. 229, s. 4; c. 1413; 1979, cc. 524, 656; 1981, c. 180; 1983, c. 175, ss. 6, 10; c. 720, s. 4; 1985, c. 321; 1991, c. 525, s. 1; 1993, c. 286, s. 1; c. 539, s. 16; 1994, Ex. Sess., c. 14, s. 3; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 687, s. 1; 1995, c. 352, s. 1; 1995, c. 507, s. 19.5(b); 1999-105, s. 1; 2003-409, s. 1; 2004-26, s. 1; 2004-199, s. 7; 2005-231, s. 6.2; 2012-149, s. 1; 2014-101, s. 7; 2015-62, s. 4(b).)

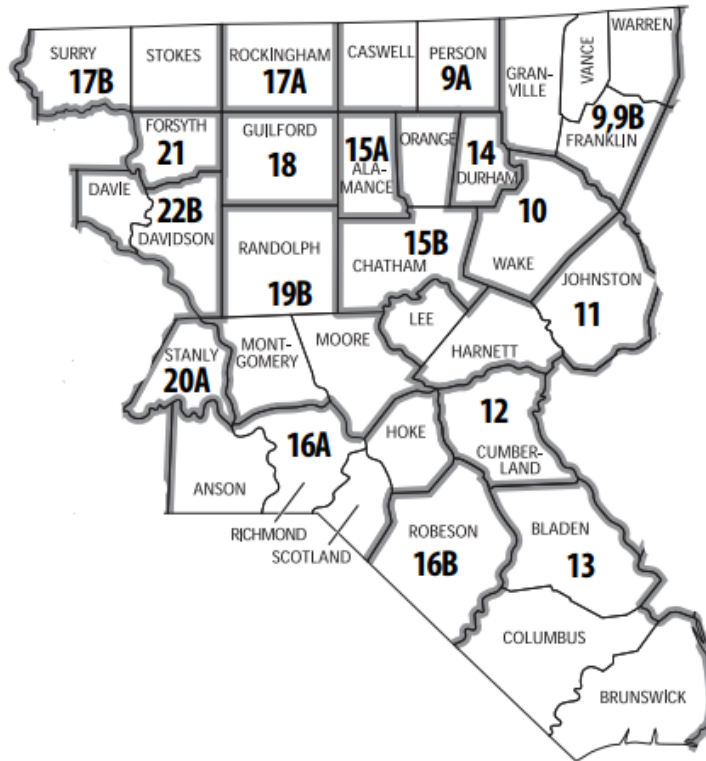
Office of the Juvenile Defender Regional Support Map

EAST



District 1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans
District 2	Beaufort, Hyde, Martin, Tyrrell, and Washington
District 3A	Pitt
District 3B	Carteret, Craven, and Pamlico
District 4	Duplin, Jones, Onslow, and Sampson
District 5	New Hanover and Pender
District 6	Bertie, Halifax, Hertford, and Northampton
District 7	Edgecombe, Nash, and Wilson
District 8	Greene, Lenoir, and Wayne

CENTRAL



District 9 Franklin, Granville, Person, and Vance

District 9, 9B Vance and Warren

District 10 Wake

District 11 Harnett, Johnston and Lee

District 12 Cumberland

District 13 Bladen, Brunswick, and Columbus

District 14 Durham

District 19B Randolph

District 19D Moore and Hoke

District 20A Stanly and Montgomery

District 21 Forsyth

District 22B Davidson and Davie

District 15A Alamance

District 15B Chatham and Orange

District 16A Anson, Richmond, and Scotland

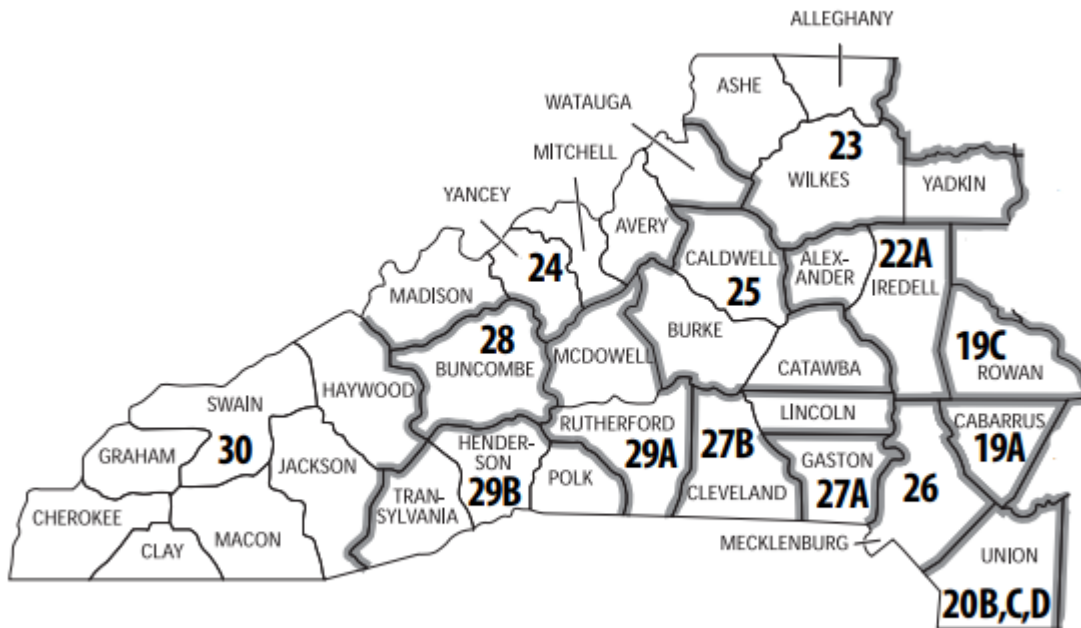
District 16B Robeson

District 17A Caswell and Rockingham

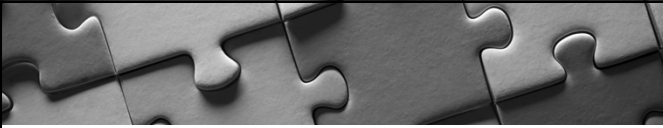
District 17B Stokes and Surry

District 18 Guilford

WEST



District 19A	Cabarrus
District 19C	Rowan
Districts 20B	Union
District 22A	Alexander and Iredell
District 23	Alleghany, Ashe, Wilkes, and Yadkin
District 24	Avery, Madison, Mitchell, Watauga, and Yancey
District 25	Burke, Caldwell, and Catawba
District 26	Mecklenburg
District 27A	Gaston
District 27B	Cleveland and Lincoln
District 28	Buncombe
District 29A	McDowell and Rutherford
District 29B	Henderson, Polk, and Transylvania
District 30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain





Juvenile Delinquency Overview

Intensive Juvenile Defender Training

1

Overview

	
Nature of Proceeding	Stages of the Proceeding
Purposes	Pre-Adjudication
Is it civil? Is it criminal?	Adjudication
Terminology	Disposition
Jurisdiction	Post-Disposition

2

Nature of the Proceeding

What is different about delinquency proceedings?

3

Youth Aren't Mini-Adults



- Race cars with strong accelerator and weak brakes
- Impulsive
- Peer Pressure
- Poor Judgment
- Lots of opportunity for CHANGE

4

Youth and the Constitution

"[Y]outh is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuosity[,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient."

Miller v. Alabama, 132 S. Ct. 2455, 2467 (2012).

5

Youth and the Constitution

"The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender forever will be a danger to society."

Montgomery v. Louisiana, 136 S. Ct. 718, 733 (2016).

6

Purposes of Delinquency Proceedings – G.S. 7B-1500

1. Protect the public
2. Deter delinquency and crime
 - Swift, effective dispositions that emphasize accountability
 - Appropriate rehabilitative services to juveniles and their families
3. Provide an effective system of intake services
 - For screening and evaluation of complaints
 - To refer to community-based services where court intervention not necessary for public safety
4. Provide uniform procedures that
 - Assure fairness and equity
 - Protect constitutional rights of juveniles, parents, and victims
 - Encourage proceeding with all possible speed

7

Civil? Criminal? What is this Proceeding?

- G.S. 7B-2412 Legal effect of adjudication of delinquency: NOT a conviction of a criminal offense
- “Juvenile proceedings, however, stand in a different light. Whatever may be their proper classification, they certainly **are not ‘criminal prosecutions’**” In re Burrus, 275 N.C. 517 (1969)

8

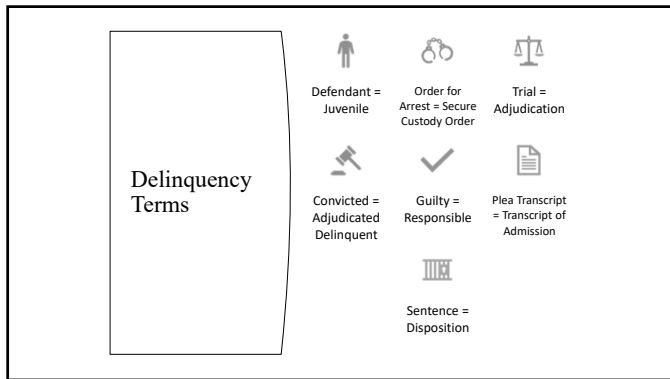
“A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a ‘receiving home’ or an ‘industrial school’ for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time.”

“Under our Constitution, the condition of being a boy does not justify a kangaroo court.”

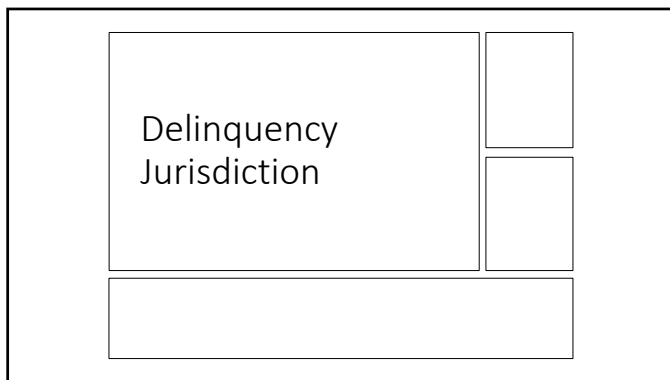
In re Gault, 87 S.Ct. 1428 (1967)

notice of charges	cross-examination
right to counsel	appellate review
confrontation	transcript of proceedings
self-incrimination	

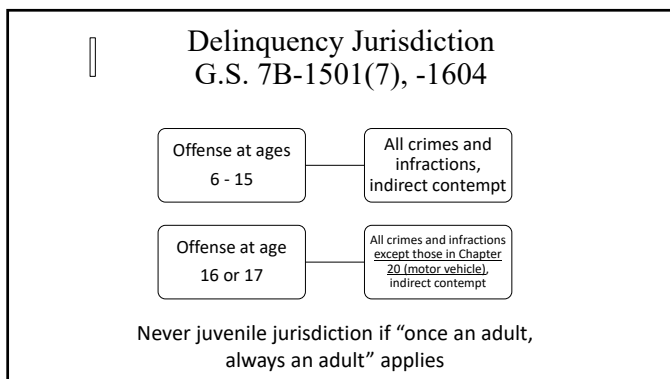
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10



11



12

Once an Adult, Always an Adult

No subsequent juvenile court jurisdiction for offense committed after conviction for ANY

Felony

Non-chapter 20 misdemeanor

Impaired driving offense

G.S. 7B-1604(b)

13

Exceptions to juvenile jurisdiction

Emancipated

Once an adult, always an adult

No juvenile jurisdiction

Armed services

Married

G.S. 7B-1501(17), -1604(a)

14

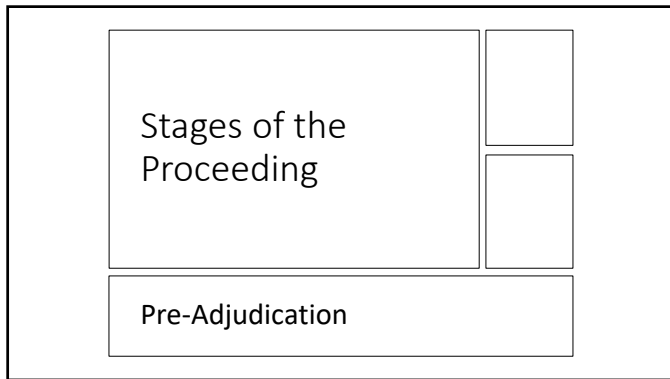
Length of Jurisdiction
G.S. 7B-1601

The court can always terminate jurisdiction sooner by its own order

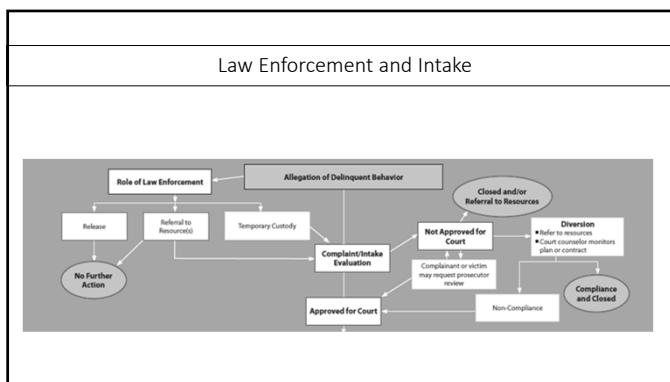
Offense committed under age 16	Youth reaches age 18*
Offense committed at age 16	Youth reaches age 19
Offense committed at age 17	Youth reaches age 20

* In some limited circumstances, jurisdiction for very serious felonies committed under age 16 and resulting in a commitment to a YDC can extend to age 19 or 21 (G.S. 7B-1602)

15



16



17

Nondivertible Offenses (G.S. 7B-1701)

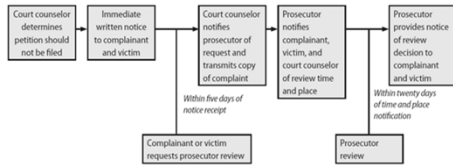
Alleged to have committed:

- murder,
- rape in the first or second degree,
- sexual offense in the first or second degree,
- arson,
- any felony drug offense,
- first degree burglary,
- crime against nature, or
- any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon

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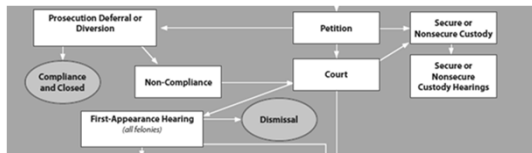
Victim Right to Prosecutor Review of Intake Decision – G.S.7B-1704, -1705

Figure 3.1. Process for Prosecutorial Review of a Decision Not to File a Petition



19

Preliminary Proceedings



20

Case Initiation – The Petition

G.S. 7B-1802

- Only valid pleading in juvenile court
- Name, date of birth, and address of the juvenile
- Name and last known address of the juvenile's parent, guardian, or custodian
- Allege the facts that invoke jurisdiction over the juvenile
- Shall NOT contain information on more than one juvenile

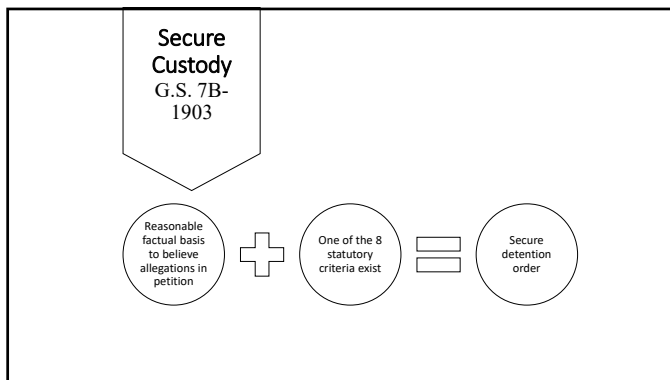
G.S. 7B-2400

- Can amend if doesn't change nature of offense alleged
- Juvenile must have reasonable opportunity to prepare defense

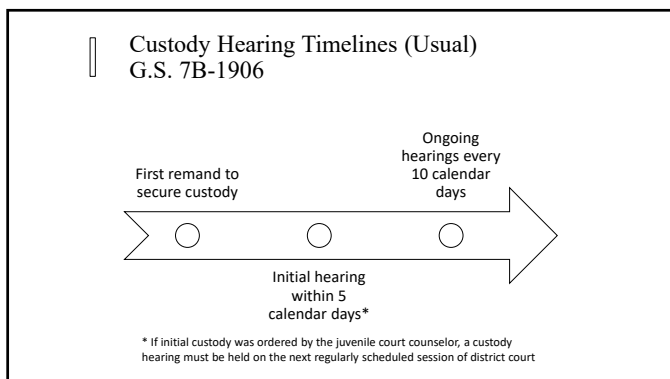
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	Custody Orders	<div>Petition must be filed</div> <div>First order is ex parte</div> <div>No right to bond</div>
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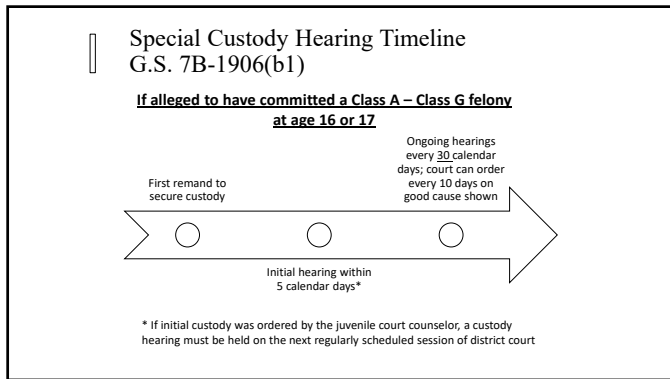
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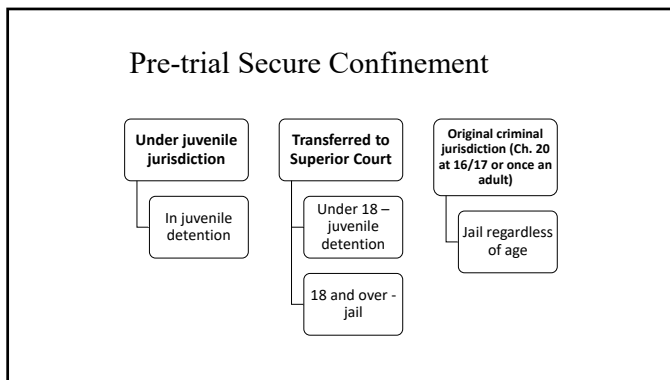
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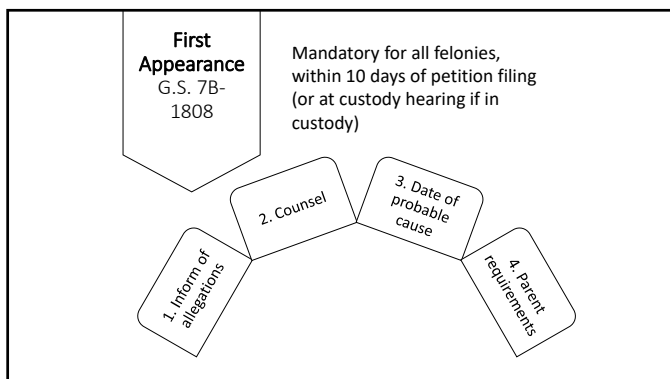
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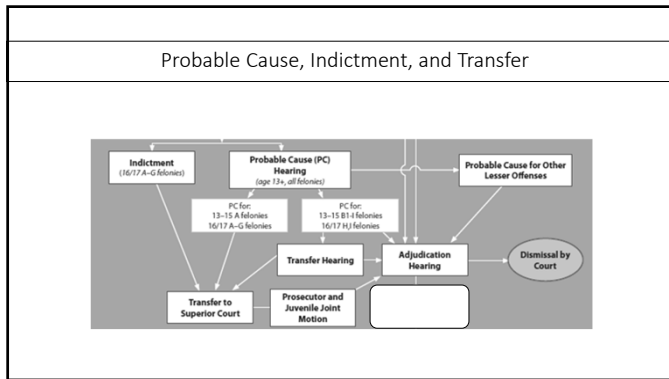
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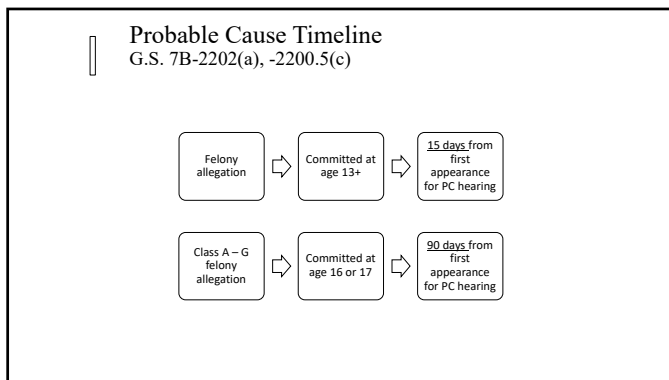
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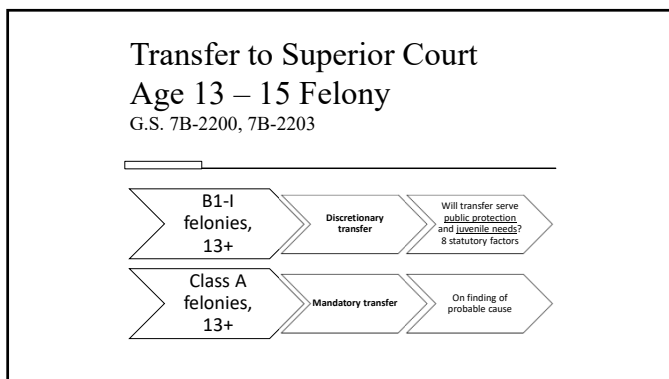
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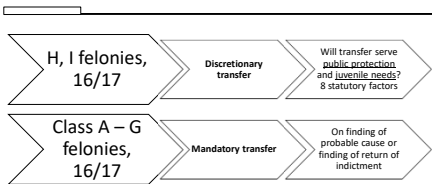
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Transfer Hearing Factors (discretionary transfers) G.S. 7B-2203(b)

Factors that MUST be considered in determining transfer	age
	maturity
	intellectual functioning
	prior record
	prior rehabilitation attempts
	available juvenile facilities and programs and likelihood of benefit from treatment and rehabilitative efforts
	whether alleged offense was committed in an aggressive, violent, premeditated, or willful manner
	seriousness of the offense and whether protection of the public requires adult prosecution

31

Transfer to Superior Court Age 16 – 17 Felony G.S. 7B-2200.5, 7B-2203



32

If Transfer Ordered



Must set bond



Immediate appeal to Superior Court



Fingerprinting Required

33

Transfer of All Related Offenses

G.S. 7B-2203(c)

“When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony”

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Case transferred

- Alleged offense at 16 or 17

Must be remanded to juvenile court

- On joint motion of DA and juvenile's attorney

Must expunge superior court record

- Per 15A-145.8 (new)

35

Stages of the Proceeding

Adjudication

36

Adjudication Hearing

- Rules of evidence apply
G.S. 7B-2408
- Must be separate from probable cause and transfer hearings
G.S. 7B-2202(f)(2)
G.S. 7B-2203(d)
- Beyond a reasonable doubt
G.S. 7B-2409

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Adjudication – Juvenile Rights

Written notice of facts alleged in petition	Counsel
Confront and cross-examine witnesses	Privilege against self-incrimination
Discovery	All adult offender rights EXCEPT bail, self-representation, and jury trial

G.S. 7B-2405

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Juvenile Admissions G.S. 7B-2407

Court must address juvenile personally

➔

Determine any prior arrangement regarding admission

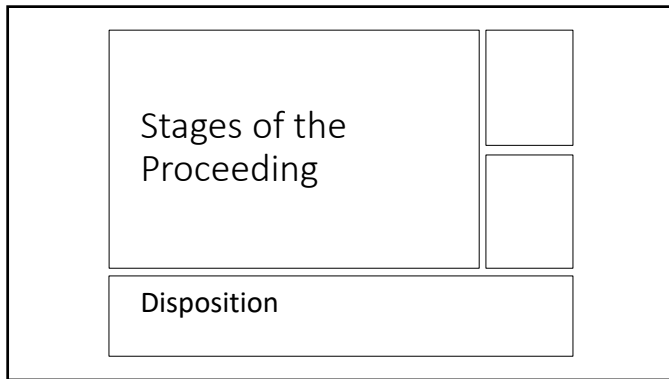
➔

Factual basis for admission

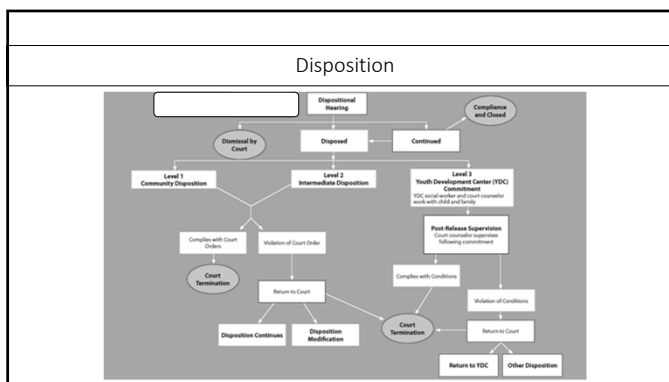
Juvenile Admissions G.S. 7B-2407

- Mandatory 6-part colloquy
- Must be an informed choice without any improper pressure
- Statement of facts by prosecutor or defense, written statement of juvenile, or sworn testimony

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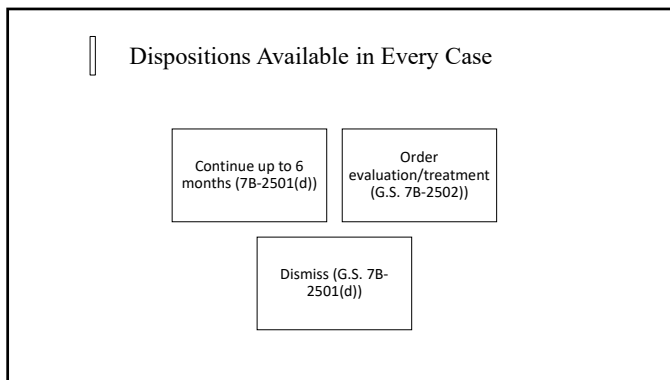
41

<div>Selecting a Disposition</div> <div>G.S. 7B-2502(c).</div>	<div>The role of mental health</div> <ul style="list-style-type: none"> • <i>In re E.M.</i> 823 S.E.2d 674(January 15, 2019) <ul style="list-style-type: none"> • When evidence of mental health issues arise, referral of the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action is mandatory. "Evidence of mental illness compels further inquiry by the trial court <i>prior to entry of any final disposition.</i>" • See blog post "Mental Health Evaluations Required Prior to Delinquency Dispositions" https://civil.sog.unc.edu/mental-health-evaluations-required-prior-to-delinquency-dispositions/ 	
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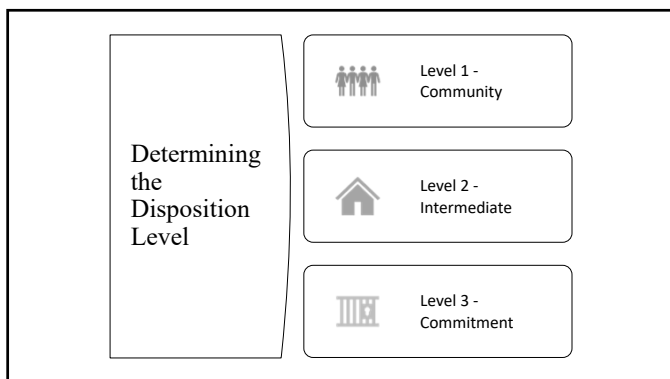
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	<p>Required Disposition Considerations G.S. 7B- 2501(c)</p>	<p>Seriousness of offense</p> <hr/> <p>Need to hold juvenile accountable</p> <hr/> <p>Importance of protecting public safety</p> <hr/> <p>Degree of culpability</p> <hr/> <p>Rehabilitative and treatment needs of juvenile indicated by risk and needs assessment</p>
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Disposition Chart

Delinquency History			
Offense	Low	Medium	High
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

G.S. 7B-2508(f)

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Exceptions

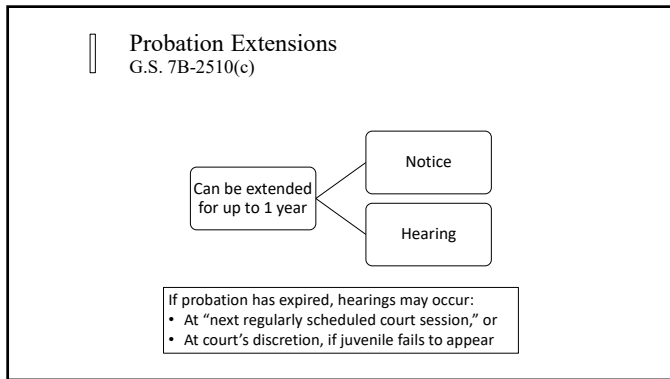
- **Level 3** allowed if doesn't land on a 3 on the chart, but:
 - A **Level 2** is allowed and the juvenile has been previously committed (a prior Level 3 disposition) – G.S. 7B-2508(d)
 - Disposition is being entered for a minor offense and the youth has 4 or more prior adjudications. Each successive offense must have been committed after adjudication of the preceding offense – G.S. 7B-2508(g)
- **Level 2** allowed if falls into required Level 3 on chart and court makes written findings of extraordinary needs – G.S. 7B-2508(e)
- Gang enhancement – offense was part of criminal gang activity = + 1 Level – G.S. 7B-2508(g1), -2508.1

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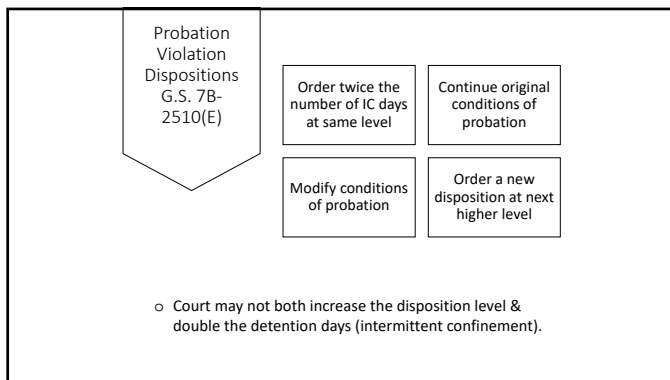
Stages of the Proceeding

Post-Disposition

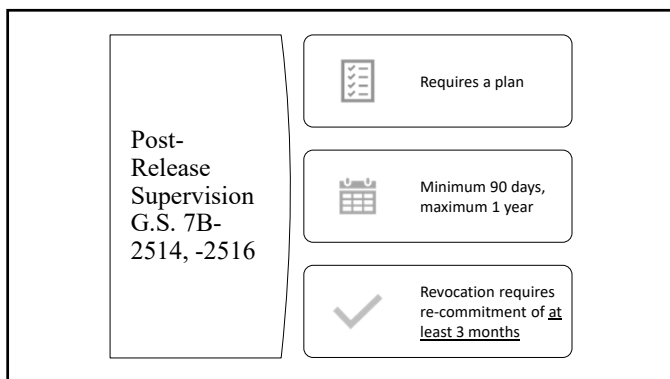
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Terminating Jurisdiction

- Court may terminate at any time
- Completion of probation term does not automatically terminate jurisdiction
- Age limits on jurisdiction if not terminated by the Court prior to aging out

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Appeals
G.S. 7B
-2602,
-2605

Directly to NC Court of Appeals.

Juvenile must be released, unless court enters compelling reasons in writing.

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The Indictment Process and Juvenile Transfer

Author : Jacquelyn Greene

Categories : [Procedure](#)

Tagged as : [juvenile procedure](#), [juvenile transfer](#)

Date : January 28, 2020

The capacity to transfer a juvenile matter to superior court as a result of the return of an indictment was added to the Juvenile Code as part of the law changes that raised the age of juvenile court jurisdiction. [S.L. 2017-57 §16D.4.\(e\)](#) as amended by [S.L. 2019-186 §8.a](#). Never before had the indictment process been connected to delinquency matters in juvenile court. This new structure requires a finding in the juvenile matter after an indictment has been returned. It raises a range of questions about procedure and confidentiality. This post will review when indictment can be used to trigger the transfer process, highlight what is known and not known about the procedure that must accompany the new use of indictment in delinquency matters, and address the question of confidentiality of an indictment that is used to form the basis of a judicial finding in juvenile court.

When Indictment Triggers Juvenile Transfer

The new [G.S. 7B-2200.5\(a\)\(1\)](#) provides that all Class A – Class G felonies alleged to have been committed by a juvenile at age 16 or 17 **must** be transferred to superior court for trial as an adult after “[n]otice to the juvenile and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.”

This one sentence constitutes the entirety of the new law that specifically addresses the use of the indictment process to trigger juvenile transfer. The language provided makes a few key requirements clear:

1. Indictment only triggers transfer on Class A – Class G felonies alleged to have been committed at ages 16 and 17. I refer to these as “qualifying indictments” for the rest of this post.
2. The district court must make a finding in the juvenile matter that a qualifying indictment has been returned.
3. Transfer to superior court happens only after the juvenile has been provided notice and the district court makes the finding that a qualifying indictment has been returned.
4. Nothing more than notice and a finding of the return of a qualifying indictment is required before transfer. In fact, transfer must occur once notice is provided and the finding is made.

How Does an Indictment Come to District Court?

Pursuant to [G.S. 15A-621](#), the grand jury is a body “impaneled by a superior court and constituting a part of such court.” According to [G.S. 15A-641\(a\)](#) an indictment “is a written accusation by a grand jury, filed with a superior court, charging a person with the commission of one or more criminal offenses.” Finally, [G.S. 15A-628\(c\)](#) requires that all bills of indictment submitted by the prosecutor to the grand jury be “returned by the foreman of the grand jury to the presiding judge in open court.”

None of the statutes governing the indictment process provide for a procedure to return an indictment to a juvenile proceeding in district court. As a part of superior court, the grand jury must return its indictments to the presiding judge—the superior court judge. There is no statute providing alternate procedures to either return a true bill of indictment to a juvenile matter or to provide the indictment to the district court in any other way.

However, the Juvenile Code now clearly requires that a qualifying true bill of indictment become part of the juvenile record in district court in order for the district court to make the findings necessary to order the required transfer of the juvenile proceeding. As part of the many form revisions completed by the Administrative Office of the Courts in response to raise the age, a new form was created for the district court to use when transferring a case to superior court based on a qualifying indictment. Form [AOC-J-444](#) is the form that district courts should be using when finding that a qualifying indictment has been returned and transferring the case to superior court. The district court should also use [AOC-CR-922](#), Release Order for Juvenile Transferred to Superior Court for Trial, to order conditions of pretrial release after the transfer is ordered.

While the forms needed to order a transfer based on an indictment are in place, the question of exactly how the indictment is supposed to reach district court remains. Under existing law, it appears that the indictment must first be returned to the presiding judge of superior court in the same way that all other indictments are returned. It also seems clear that the indictment must be made available to the district court in the juvenile proceeding before transfer as there is no superior court matter when the indictment is initially returned. The superior court matter only begins once the district court finds that a qualifying indictment has been returned and the matter is transferred to superior court. In the absence of a clear procedure, courts are creating their own processes for moving these indictments to district court.

Is the Indictment Confidential?

While grand jury proceedings are generally secret ([G.S. 15A-623\(e\)](#)), indictments are not usually considered confidential documents. The presiding judge (here again, a reference to the presiding superior court judge), can direct that a bill of indictment be sealed until the defendant is arrested or appears before the court. [G.S. 15A-623\(f\)](#).

At the same time, [G.S. 7B-3000](#) expressly provides that juvenile court records are not public records. Pursuant to this statute, the juvenile court record can be made available only to a short list of individuals (such as the juvenile and his or her attorney, the juvenile's parents, the prosecutor, and court counselors) absent a court order. The default legal status of an indictment is therefore the opposite of the default legal status of a juvenile court record—the indictment is public unless ordered sealed whereas the juvenile court record is confidential unless a court allows access through a court order.

This discrepancy raises the question of whether an indictment that must be part of the juvenile record before becoming part of a superior court case is confidential during the period before transfer. The plain language of G.S. 7B-3000(b) states that "All juvenile records shall be withheld from public inspection, and except as provided in this subsection, may be examined only by order of the court." None of the exceptions in the statute address the return of an indictment. With clear statutory language in place that does not allow for access to an indictment that is part of a juvenile record without a court order, it seems that any indictment that is part of the juvenile court record is confidential in exactly the same way that the rest of the juvenile court record is confidential.

G.S. 15A-623(f), which allows the superior court judge to seal an indictment, could be used to preserve the confidentiality of the indictment while it is part of the juvenile matter in district court. Under that statute, the presiding superior court judge has the authority to seal a bill of indictment until the defendant "appears before the court." As discussed above, the court reference in this statute is the superior court. Therefore, it appears legally permissible for the superior court judge to seal a true bill of indictment that must be transmitted to a district court to trigger transfer of a juvenile matter until the case is transferred and the juvenile (now a defendant in a criminal proceeding) appears in superior court.

That same indictment is required for the superior court matter to proceed and therefore must also become part of the superior court record. Once the matter is in superior court it is governed by the criminal procedure act. The indictment will be unsealed once the youth appears in the superior court matter and will become public information in the same way that any other indictment in the criminal justice system is public information. At the end of all of this procedure, it seems the same indictment will be both part of a confidential juvenile court record and part of a public record in a

criminal matter.

Key Takeaways

In thinking about the new use of a true bill of indictment to trigger transfer orders in juvenile proceedings, I am left with these key takeaways:

- In the absence of clear statutory procedure, courts need to develop a process to provide a true bill of indictment to district court,
- District courts should be using AOC-J-444 and AOC-CR-922 once a qualifying indictment is returned in a juvenile matter, and
- Indictments that must first become part of a juvenile proceeding should be sealed until the juvenile matter is transferred and the youth appears in superior court.



Raise the Age FAQs

Author : Jacquelyn Greene

Categories : [Uncategorized](#)

Date : October 22, 2019

Training efforts to support implementation of the Juvenile Justice Reinvestment Act, or “raise the age,” are in full swing. With the December 1, 2019 implementation date drawing near, I have had the pleasure of teaching about the new law at many fall conferences and at five regional workshops. Common questions have been raised across these venues. This blog contains answers to some of those commonly asked questions as well as information on how to access further training and resources.

1. Which Chapter 20 motor vehicle misdemeanor offense convictions bar future juvenile court jurisdiction under once an adult, always an adult?

The new [G.S. 7B-1604\(b\)](#) will prohibit any future juvenile court jurisdiction for almost all youth who have a previous conviction in criminal court. This is often referred to as “once an adult, always an adult.” However, there is an exception to this prohibition. Youth who have a conviction for a misdemeanor Chapter 20 motor vehicle offense that does not involve impaired driving or who have been found responsible for a motor vehicle infraction are not included under once an adult, always an adult. Any youth with one of these convictions should still be treated as a juvenile if they are age 16 or 17 at the time of any non-chapter 20 offense.

One of the scenarios that we discuss during the raise the age workshop involves a 17-year-old who has a previous conviction under [G.S. 20-138.3](#), driving by a person under age 21 after consuming alcohol or drugs. Many workshop participants have been surprised to learn that this is not an offense that involves impaired driving for the purpose of once an adult, always an adult.

Several participants have asked me for a list of the chapter 20 misdemeanors that do not involve impaired driving and therefore do not trigger once an adult, always an adult. It turns out that is a very long list that includes all kinds of driver’s license, vehicle registration, and rules of the road violations, among other things. It is much less complicated to remember what does qualify as an impaired driving offense for the purposes of once an adult, always an adult. Pursuant to [G.S. 7B-1604\(b\)](#), misdemeanors that involve impaired driving are those offenses listed as impaired driving offenses in [G.S. 20-4.01\(24a\)](#). There are only two misdemeanor offenses that fall under the definition of impaired driving offenses under [G.S. 20-4.01\(24a\)](#). They are:

- Impaired driving under [20-138.1](#) and
- Impaired driving in a commercial vehicle under [G.S. 20-138.2](#).

Juvenile court will never have jurisdiction over any subsequent offense committed by a youth after he or she has been convicted under either one of these statutes. *Any other chapter 20 misdemeanor conviction or finding of responsibility for a chapter 20 infraction does not disqualify the youth from future juvenile court jurisdiction.*

2. Can the indictment process be used to begin a case with a Class A – Class G felony alleged to have been committed at age 16 or 17 directly in Superior Court?

The short answer is no. The return of an indictment on a Class A – Class G felony alleged to have been committed at age 16 or 17 is one of two potential triggers for automatic transfer of the case to superior court. [G.S. 7B-2200.5](#) However, the transfer can only be accomplished in the context of a delinquency case initiated through the filing of a

juvenile petition. While the new statute does not dictate when an indictment should be returned as part of the delinquency proceeding, it is clear that there is no capacity for the superior court to establish jurisdiction other than through an order of transfer issued by the district court in the juvenile matter. Therefore, any indictment must be returned to a juvenile matter in district court. Once the juvenile receives notice of the return of the indictment and the district court finds that the bill of indictment has been returned, the case must be transferred to superior court.

3. If a prosecutor intends to consent to return of a Class G felony to juvenile court, can the matter simply remain in juvenile court or must it first be transferred?

The new [G.S. 7B-2200.5](#) mandates that every Class G felony alleged to have been committed at age 16 and 17 be transferred to superior court on a finding of probable cause or the return of an indictment. There is no way to proceed in the juvenile matter that alleges a felony at age 13 or older without a finding of probable cause. [G.S. 7B-2202](#). It is therefore not possible to move forward in a juvenile proceeding on a Class G felony without triggering the automatic transfer.

The capacity for reverse waiver, added in [S.L. 2019-186](#), requires that any proceeding, with an alleged offense committed by someone at age 16 or 17 and transferred to superior court, be remanded back to juvenile court on joint motion of the prosecutor and the youth's attorney. [G.S. 7B-2200.5\(d\)](#). There are no additional parameters on this reverse waiver capacity beyond consent of the prosecutor and the juvenile. It is therefore possible that a Class G offense could be remanded back to juvenile court for juvenile processing. However, this can only be accomplished through a reverse waiver that follows the initial mandatory transfer.

4. Where will older adolescents be housed if they are held securely while their cases are pending?

The answer to this question depends on three things:

1. Which system has original jurisdiction over the offense?
2. Which system continues to have jurisdiction over the offense?
3. How old is the youth?

Which system has original jurisdiction over the offense?

Nearly all offenses alleged to have been committed by youth at ages 16 and 17 will originate under juvenile jurisdiction once raise the age takes effect. [G.S. 7B-1501\(7\)b](#). Any youth under the jurisdiction of the juvenile court and ordered into secure custody must be held in a juvenile detention setting. [G.S. 7B-1905](#).

There are two exceptions to original juvenile court jurisdiction following raise the age implementation. No chapter 20 offenses alleged to have been committed by youth at ages 16 and 17 will ever be under juvenile jurisdiction. In addition, any youth who has a disqualifying previous criminal conviction under once an adult, always an adult will never again fall under juvenile jurisdiction. To the extent that any youth falls under one of these exclusions to juvenile jurisdiction, that youth will be processed as an adult. Therefore, any pretrial confinement in these matters will remain in adult jail.

Which system continues to have jurisdiction over the offense?

As long as a juvenile remains under the jurisdiction of the juvenile court, the place of secure custody must be in a juvenile detention setting. [G.S. 7B-1905](#). This will be the case even if a juvenile turns 18, or even 19, as long as that juvenile is being held in secure custody in a matter that is under the jurisdiction of the juvenile court.

The law regarding housing of youth who become a defendant in a criminal matter following transfer of their case from juvenile to criminal court is different. This is where the age of the youth becomes important.

How old is the youth?

Once a proceeding is transferred to superior court for criminal processing, the age of the youth dictates their place of confinement if they are not released pending their trial.

- Youth who are defendants in cases that are transferred, are not released pretrial, and are under the age of 18 will remain in juvenile detention.
- Youth who are defendants in cases that are transferred, are not released pretrial, and are age 18 or over will be confined in the adult jail in the locality where their charges arose. [G.S.7B-2204](#)

5. How can people in my office access training if they cannot attend a workshop?

Several workshop participants have asked me about additional training for their colleagues. It has become clear to me that, despite my best efforts, I cannot possibly train everyone interested in training in an in-person format. The SOG is therefore planning to webcast the October 30th Raise the Age Workshop that is being held here in Chapel Hill. [Registration](#) for that webcast is available on our website. You can also find the [handouts](#) from the workshops on our website.

You can also find a comprehensive [Juvenile Justice Reinvestment Act Implementation Guide](#) available for purchase on the SOG website. Finally, I am developing a series of short videos that highlight the key raise the age provisions in bite-sized chunks. The videos will be added to the [juvenile law microsite](#) at the SOG soon.



Mental Health Evaluations Required Prior to Delinquency Dispositions

Author : Jacquelyn Greene

Categories : [Uncategorized](#)

Tagged as : [7B-2502\(c\)](#), [juvenile delinquency](#), [juvenile disposition](#), [juvenile mental health](#)

Date : January 22, 2019

Last week the Court of Appeals breathed new life into a decades-old law that requires district courts to refer juveniles who have been adjudicated delinquent, prior to disposition, to the area mental health, developmental disabilities, and substance abuse services director for an interdisciplinary evaluation if any evidence that the juvenile is mentally ill has been presented. This new decision, [In the Matter of E.M., ___ N.C.App. ___ \(January 15, 2019\)](#), raises many questions like, does it really mean any evidence of mental illness? And does it matter if the juvenile has already received mental health services? And who is the area mental health, developmental disabilities, and substance abuse services director anyways?

G.S. 7B-2502(c) – the statutory requirement

[G.S. 7B-2502\(c\)](#) requires a referral from the court to the area mental health, developmental disabilities, and substance abuse services director for appropriate action if the court believes or if there is evidence presented to the effect that the juvenile is mentally ill or developmentally disabled. The statute then requires the area mental health, developmental disabilities, and substance abuse services director to arrange an interdisciplinary evaluation of the juvenile and to mobilize resources to meet the juvenile's needs.

In *E.M.*, the juvenile was committed to the YDC and placed in the custody of the Department of Social Services as a result of probation violations. Relying on G.S. 7B-2502(c), the court held that “Evidence of mental illness compels further inquiry by the trial court *prior to entry of any final disposition*.” Slip Op. at 6, quoting *In re Mosser*, 99 N.C.App. 523 at 529 (1990). The disposition in *E.M.* was vacated and the case remanded because this required referral to mental health was not made prior to disposition. While the decision does not address what exactly the interdisciplinary evaluation must entail or what constitutes adequate resource mobilization, the court is clear that the statute is intended to engage the area mental health services director's involvement in crafting the juvenile's disposition. Slip Op. at 8.

This statute has been around for decades. S.L. 1971-1180, §3 took away the then existing power of the court to directly order mental health commitment at disposition and, instead, allowed the court to order the area mental health director to arrange an interdisciplinary evaluation of the child and make recommendations to the court. S.L. 1973-1157 shifted that new permissive language into a mandate, replacing the “may” with a “shall” in terms of the referral, expanded the mandate to apply to cases “in which there is evidence presented to the effect that the child is mentally ill or mentally retarded,” and added the requirement that the area mental health director also mobilize resources to meet the child's needs. Those amendments from the early 1970's are the core of today's statute.

Is there a threshold amount of evidence of mental illness that triggers the referral requirement?

Juvenile justice researchers have consistently found that prevalence rates of mental illness among youth in contact with the juvenile justice system are extremely high. Studies have found that somewhere between 50 and 75 percent of youth who encounter the juvenile justice system meet criteria for a diagnosable mental health disorder, *see, e.g.,* Lee A. Underwood and Aryssa Washington, *Mental Illness and Juvenile Offenders*, International Journal of Environmental Research and Public Health; Basel Vol. 13, Issue 2 (Feb. 2016); 1-14. Is a referral to mental health required under

7B-2502(c) for all of these juveniles?

In *E.M.* there was a significant body of evidence presented to the court regarding the juvenile's mental illness. This included three risk and needs assessments filed between October 2017 and January of 2018 that indicated both a history of and continuing need for mental health services, a clinical disposition report that indicated major behavioral issues and a history of four previous diagnosis, and testimony that chronicled a history of significant mental health treatment and ongoing need presented at the hearing.

However, in the case relied on by the court in *E.M.*, *In the Matter of Mosser*, 99 N.C.App. 523 (1990), far less evidence of mental illness was presented. In *Mosser* the court relied on the statement of the juvenile's mother indicating that the juvenile had been diagnosed as manic-depressive and was being treated with medication to trigger the required referral for an interdisciplinary evaluation under G.S. 7B-2502(c). The statute itself provides no threshold that must be met in order to trigger the referral requirement. It simply states that "If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled" then the referral shall be made.

What if the juvenile has already received mental health services?

In both *E.M.* and *Mosser* the juvenile had already received mental health services. In fact, *E.M.* appears to have received a wide range of services that included in-home, outpatient, and inpatient services. The holding in *E.M.* requires referral for an interdisciplinary evaluation despite this history. It seems then that courts must make the referral for evaluation prior to issuing a disposition even if the juvenile has previously been evaluated and has received mental health services.

Wait, my county doesn't have an "area mental health, developmental disabilities, and substance abuse services director." Who is that?


You are right if you have discovered that your locality doesn't have an area mental health, developmental disabilities, and substance abuse services director. Remember that this part of the statute was enacted in 1971? Well, the mental health system has undergone many substantial changes since that time and those changes are not reflected in the language of G.S. 7B-2502(c).

The definitions provided in G.S. 122C-3 (in the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985) provide the legal bridge from the "area director" referenced in G.S. 7B-2502(c) to the actual entity now performing this function, the "Local management entity." G.S. 122C-3(2a) explains that the "area director" is the administrative head of the "area authority" and G.S. 122C-3(20b) provides that the "Local management entity" (LME) means an area authority. Because of the way the mental health services system is currently structured, all LME's are also currently "managed care organizations" (MCO's), making the entity to whom the referral under G.S. 7B-2502(c) must go the "LME/MCO."

If you don't know who your local LME/MCO is, you can go [here](#) to access the DHHS LME/MCO directory.

Implications

Given the high prevalence rates of mental illness among justice-involved youth, this decision has the potential to significantly increase the number of referrals to LME/MCOs for evaluation prior to delinquency dispositions. While this might slow the time to disposition and raise concerns about funding to support interdisciplinary evaluations, it could also provide a basis for continuing to turn to the mental health system to meet the mental health needs of justice-involved youth with mental health disorders.



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NC Administrative Office of the Courts

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NC Office of the Juvenile Defender

Detention Advocacy
Intensive Juvenile Defender Training
March 4, 2020

1

What is “Detention”?

- The secure confinement of a juvenile under a court order
 - G.S. 7B-1501(8)
- Also referred to as “secure custody”
- Equivalent to jail for adults
- Typically ordered for delinquent youth pending adjudication, disposition, or post-disposition pending placement
- Undisciplined youth may be held for up to 24 hrs, in limited circumstances

2





Durham Youth Home

3

"[F]airly viewed, pretrial detention of a juvenile gives rise to injuries comparable to those associated with the imprisonment of an adult. In both situations, the detainee suffers stigmatization and severe limitation of his freedom of movement. Indeed, the impressionability of juveniles may make the experience of incarceration more injurious to them than to adults[.] "

—Justice Marshall for the minority in *Schall v. Martin*, 1984.

4

U.S. Supreme Court

- **Majority:** Pretrial detention of youth does not violate the Due Process Clause of the 14th Amendment because:

1. It serves the legitimate state objective of **protecting** both the juvenile and society from the hazards of pretrial crime; and
2. The procedural safeguards afforded to detained juveniles (e.g., notice, a hearing, and a statement of facts and reasons given to the juvenile prior to the detention) provide sufficient protection against erroneous and unnecessary deprivations of liberty.

Schall v. Martin, 467 U.S. 253 (1984)

5

N.C. Supreme Court

- "[P]rotective custody of juveniles differs from the imprisonment of criminals."
- "In confining delinquent juveniles, the State acts more as a caregiver than a jailer."

In the Matter of D.L.H., 364 N.C. 214 (2010)

6

The Reality of Detention

- Higher recidivism
 - *Incarceration is a greater predictor of recidivism than carrying a weapon, gang membership, or poor parental relationship.*
- Greater mental illness
 - *Incarcerated youth experience double to 4 times the suicide rate of youth in the community.*
- Lower Academic Achievement
 - *Incarcerated youth are more likely to drop out of school.*
- Disparate impact
 - *In NC, black youth are 1.5 times more likely to be placed in secure custody.*

Source: *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities.*
A Justice Policy Institute Report.

7

NC Detention Center Admissions

62% decline in the number of youth admitted to detention

Detention Center Admissions 2010-2018



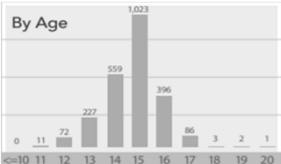
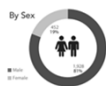
Source: 2018 Juvenile Justice Annual Report

8

Detention Population Quick Facts

- 81% are male
- 63% are African-American
- 83% are ages 14, 15, and 16
- Average length of stay is 21 days

Source: 2018 Juvenile Justice Annual Report



9

Pre-Adjudication Secure Custody

- Can be ordered only by a district court judge
 - or a juvenile court counselor, if chief district court judge signs administrative order
- First order is "ex parte"
- Juvenile Petition must be filed first
- Judge must find:
 - Reasonable factual basis to believe the juvenile committed the offense; and
 - Juvenile meets at least one of the criteria in G.S. 7B-1903(b).
- No right to bond/pre-trial release
- But, frequent custody review hearings are required

G.S. 7B-1902, -1903(c)

10

Post-Adjudication Secure Custody

- After an adjudication of delinquency, secure custody may be ordered:
 1. Pending the dispositional hearing
 2. Pending placement of the juvenile pursuant to G.S. 7B-2506
 3. Following a violation of probation or post-release supervision, but only if the alleged acts involve property damage or personal injury
- Custody review hearings are required every 10 days
- But, can be waived by juvenile for no more than 30 calendar days

G.S. 7B-1903(c), (d)

11

Custody Review Hearings

- Initial hearing must be held within 5 calendar days
 - or, next session of district court if order was entered by JCC
- Subsequent hearings are held:
 - Every 10 days, if juvenile is under 16
 - Every 30 days, if juvenile is 16 or 17
 - Unless juvenile requests 10-day hearing and court finds "good cause"
- Juvenile can waive subsequent hearings

G.S. 7B-1906

12



Evidence

- The court shall receive testimony
 - *Is a prosecutor's unsworn statement sufficient?*
- Juvenile and juvenile's parents have the right to:
 - Introduce evidence
 - Be heard
 - Examine witnesses
- Traditional Rules of Evidence do not apply
- **But, State must prove by clear & convincing evidence that:**
 1. A statutory ground exists
 2. Restraints on juvenile's liberty are necessary
 3. No less intrusive alternative will be sufficient

13

Conditional Release from Secure Custody

- Under G.S. 7B-1906(f), the court may:
 - Release on the written promise of parent, guardian, or custodian to produce juvenile in court;
 - Release into the care of a responsible person or organization;
 - Release with restrictions on activities, associations, residence, or travel, if reasonably related to securing juvenile's presence in court; or
 - Impose any other conditions reasonably related to securing the juvenile's presence in court.

14

Secure Custody Order

- Must be in writing
- With appropriate findings of fact
- Must include:
 - Evidence relied upon
 - Purposes to be achieved by continued custody

G.S. 7B-1906(g)

15

Secure Custody: Tips, Tricks and Traps

16

Where Is My Detention Center?

- Alexander
- Cabarrus
- Cumberland
- Dillon
- New Hanover
- Pitt
- Wake
- Bladen
- Durham
- Guilford
- Madison
- Mecklenburg

OJD
QID

17

Know the Different Rules at Different Stages

- Pre-adjudication (new offense, probation or Post-release violation)
- Post-adjudication/pre-disposition
- Intermittent confinement as part of disposition
- Post-disposition pending placement

OJD
QID

18

General Thoughts on the Rules

- No bail
- Statutory regulations are exclusive
- No “catch-all” exception
- Remember it’s the STATE’s burden to prove to the court, by clear and convincing evidence, that the juvenile should remain in custody AND no less intrusive alternative will suffice (NCGS 7B-1906(d)). *That means it’s not the court counselor’s role!*



19

Tricks

- Initial hearings are heard:
 - Every 5 days if signed by a judge/magistrate
 - The day of the next regularly scheduled session of district court if signed by the chief court counselor
- Make sure that both the parent and juvenile have been served, advocate that the juvenile not be found to be responsible for failing to appear in court
- Remind the court of NCGS 7B-1906(f) and the appropriate restrictions on the liberty of the juvenile



20

Traps

- If your client has a pending motion for review (MFR) for allegedly running away from home, secure custody can only issue if the state has also filed an undisciplined petition for being a runaway. Secure custody may only issue for a probation violation if the juvenile has willfully failed to appear on a MFR (7B-1903((b)(3)) or if the MFR alleges damage to property or injuries to persons (7B-1903(d)).
- Charged with a felony and *has demonstrated* danger to persons/property
- Don’t telegraph!



21

Shackles

- Ask that the hearing occur prior to the juvenile entering the courtroom
- Request that both the hand and leg shackles be removed
- Hold the court to the three reasons to shackle: maintain order, prevent escape, provide for the safety of the courtroom
- Enforce that evidence for any of these reasons should be current behavior, not prior behavior or acts
- Argue that "whenever practical" to be heard on the issue is anytime!



OJD

22

Wrap Up



- Locate and visit your detention center
- Know the secure custody rules inside out
- Find short term alternatives
- Argue like crazy! Harder to get release once detained
- VISIT YOUR CLIENT

OJD

23

OJD Team



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OJD

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Where to Find OJD?

- 1 Ncjuveniledefender.com
- 2 Twitter: @NCOJD
- 3 Facebook: NC Office of the Juvenile Defender



70%



25

Additional Facts for Breakouts

- Fact 1: Juvenile had a bad detention report, indicating a lack of compliance with rules (failing to follow directives, minor scuffles with other youth, etc.)
- Fact 2: Juvenile wants to be on electronic monitoring but has previously be on it and has violated
- Fact 3: Juvenile believes she has a relative who can oversee her pending adjudication, but the relative is not currently in court and lives in an adjacent county

26


Transfer Hearings

Dorothy Hairston Mitchell
Clinical Assistant Professor & Supervising Attorney
Juvenile Law Clinic
North Carolina Central University School of Law

1

First Appearance


- Required for any felony
- Must occur within 10 days of the filing of the petition
- Must occur sooner (*and along with*) a secure custody hearing if the youth is in custody
- Probable Cause date must be set



2

Probable Cause

- Must occur for any youth 13 or older charged with felony
- Must occur
 - Within 15 days for Class H and I felonies
 - Within 90 days for Class A-G felonies
- Showing that it is more probable that:
 - Crime was committed
 - Your client committed it



3

Indictment

- Indictment cannot be sought on youth younger than 16 years old
 - A petition must be filed first
 - Youth must be given notice of return of indictment
 - District Court finding of the return

4

Mandatory Transfer

§7B-2200 & 7B-2200.5

1. 1st Degree Murder
 - Youth age 13 or older
 - After a finding of probable cause
2. A-G Felonies
 - Youth age 16 and 17
 - After a finding of probable cause OR indictment

- No hearing is required

MUST Go

5

Discretionary Transfer

§7B-2200 & 7B-2200.5

- Judge must make a finding of Probable Cause before transfer of:
 1. Class B1-I felonies
 - Youth age 13 and older
 2. Class H or I felonies
 - Youth age 16 and 17
- Youth must have at least 5 days notice of intent to seek transfer
 - 7B-2202(d)
- Judge must have a separate hearing on transfer

MAY Go

6

Motion/Notice of Transfer

- Motion can be made by prosecutor, defense counsel, or the judge
- Defense Counsel should:
 - File an ex-parte motion for funds to hire an expert to evaluate your client!
 - Make sure your expert has experience with evaluating juveniles
 - Obtain client's school and medical/mental health records
 - Speak with teachers, therapists, etc. for potential testimony
 - Obtain Department of Juvenile Justice records

7

Expert Assessment

- Have them keep in mind the factors the judge must consider per 7B-2203
 - Age & maturity
 - Intellectual functioning
 - Prior record
 - Prior or current attempts to rehabilitate
 - Facility/programs appropriate for treatment & rehabilitation

8

Factors the Judge Must Consider §7B-2203

• Age of the juvenile	• Whether the offense was committed in an aggressive, violent, premeditated, or willful manner
• Maturity	
• Intellectual functioning	• Seriousness of the offense & whether the protection of the public requires that the juvenile be prosecuted as an adult
• Prior record level	
• Prior attempts to rehabilitate	
• Facilities/programs available & likelihood the juvenile would benefit	

9

Hearing Advocacy

- Prepare witnesses in advance to testify about youth as a whole person
 - Teachers/Therapists/ Parents/Coach . . .
- Put on evidence to show youth is better off being supervised in juvenile court
- Prepare for the prosecutor to argue that your client is a danger and the community needs protection from them
 - i.e. they committed the crime in an aggressive, violent, premeditated or willful manner
- Remind the judge of the effect the adult system is likely to have on the youth

10

After Transfer

- Your client is entitled to pretrial release (§7B-2204)
 - Have your client interviewed by the pre-trial release program
 - Speak to the prosecutor to seek an agreement on bond
 - Argue for low bond in a hearing, if necessary
- Consider appealing a mandatory transfer based on constitutional arguments of due process and equal protection

11

Reverse Waiver

- For youth who are 16 and 17 years old §7B-2200.5(d)
 - Their case can be “waived” back to juvenile court upon agreement between defense counsel and the prosecutor
 - Actual language: In any case that has been transferred to Superior Court, upon joint motion of the prosecutor and the juvenile’s attorney, the court *shall* remand the case to district court & *shall* expunge the superior court record.



12

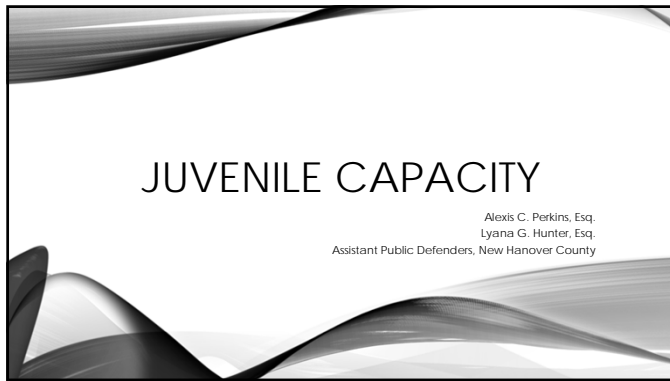
Notes

- OJD has many motions and templates for your use including:
 - A draft Memorandum arguing for discretionary transfer for 13-15 year olds charged with 1st degree murder
 - OJD has a draft Memorandum of Law and a Motion to Dismiss/Remand for 16-17 year olds charged/indicted for A-G felonies
- If your client accepts a plea in Superior Court, any appeal of transfer is waived

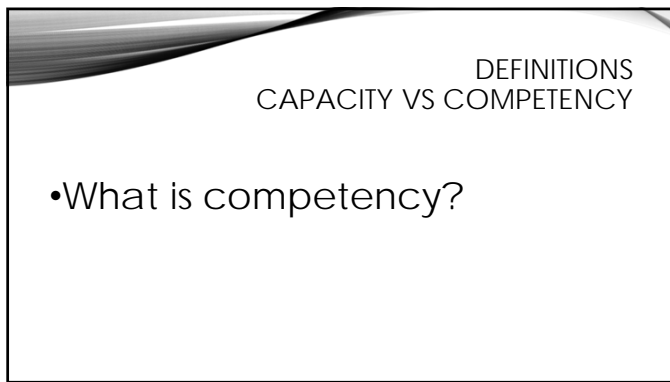
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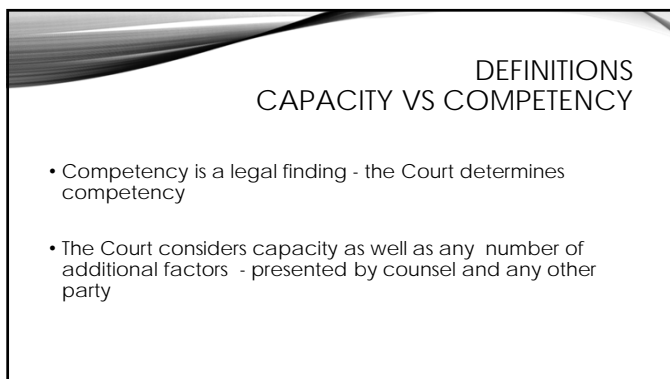
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1



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3

DEFINITIONS CAPACITY STATUTES

- What is capacity?
 - the ability of a child to understand the effect of their actions.
- Relevant statutes:
 - NCGS 7B – 2401
 - NCGS 15A – 1001, 1002, 1003

4

DEFINITIONS CAPACITY STATUTES

- **NCGS 7B – 2401 Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**
 - The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent
 - No juvenile committed under this section may be placed in a situation where the juvenile will come in contact with adults committed for any purpose.

5

DEFINITIONS CAPACITY STATUTES

- **NCGS 15A-1001 No proceedings when defendant mentally incapacitated; exception.**
 - (a) No person may be tried, convicted, sentenced, or punished for a crime when
 - by reason of mental illness or defect
 - he is unable to understand the nature and object of the proceedings against him
 - to comprehend his own situation in reference to the proceedings
 - or to assist in his defense in a rational or reasonable manner.
- This condition is hereinafter referred to as "incapacity to proceed."

6

DEFINITIONS CAPACITY STATUTES

NCGS 15A-1002 Determination of incapacity to proceed; evidence; temporary commitment; temporary orders (Key parts)

- Question of capacity can be raised at any time
- The court shall hold a hearing to determine capacity to proceed
- For misdemeanor or felony, court may appoint one or more impartial experts/evaluators
- Said evaluators will examine the defendant and write a report
- Court (or others) may call evaluator to testify
- Felony → court may order defendant to a State facility (not to exceed 60 days)
- Court shall order release of relevant confidential info

7

DEFINITIONS CAPACITY STATUTES

• **NCGS 15A-1002 (continued)**

- Court order shall contain FOF to support determinations of defendant's capacity to proceed
- Parties can stip that defendant is capable to proceed
- Parties can't stip that defendant lacks capacity
- There are specific time frames when the report is due to the Court
 - that time can be extended for good cause

8

DEFINITIONS CAPACITY STATUTES

• **NCGS 15A-1003 Referral of incapable defendant for civil commitment proceedings**

- The Court can hold an additional hearing → reasonable grounds → for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes.
- If the presiding judge finds reasonable grounds → make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261.
- Part 7 of Article 5 of Chapter 122C governs any further proceedings

9

SO YOU HAVE A CONCERN?

- Glazed over, non responsive
- Admits to not understanding why he/she is in court
- Doesn't understand charges
- Doesn't understand consequences
- Not tracking what you're saying
- Nods in agreement with everything
- Parents say he/she does not understand
- Prior evaluations for capacity
- Prior finding of lack of capacity

10

YOUR DUTY

- We can bring up capacity at any time
- Inform client and parent of your concerns
- Report your concerns to the Court
- Request leave of the Court to have your client evaluated
 - local forensic evaluator or
 - forensic evaluators at Central Regional Hospital

11

YOUR DUTY

- **Does client want to be evaluated?**
 - Try to consult with client before bringing concern before the court
 - Will client consent to request?
- **N.C. STATE BAR REV'D RULES OF PROF'L CONDUCT R. 1.14(a)**
 - "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."
 - *What does this mean?*
 - *Does this prevent you from requesting an evaluation?*

12

YOUR DUTY

- If client lacks capacity to have a meaningful conversation about capacity, counsel may proceed to request evaluation over the objection of the client.
 - N.C. STATE BAR REV'D RULES OF PROF'L CONDUCT R. 1.14(b)
 - that a lawyer may take action to protect a client "[w]hen the lawyer reasonably believes that the client . . . cannot adequately act in the client's own interest"
- What if parents are not in support of having the child evaluated?
- Where does our ethical responsibility lie?

13

WHAT'S THE PROCESS?

- *Choose an evaluator*
 - Local Forensic Evaluator
 - Central Regional Hospital at Butner
- Consider the credibility of the evaluator – Local vs Central
 - Have they evaluated children before?
 - Does the evaluator have a good rapport with your Court/Judge?
 - Is your client in custody?
 - Does your client have transportation?
 - Is insurance a factor/will insurance approve local evaluator?

14

WHAT'S THE PROCESS?

- Misdemeanors:
 - Juveniles cannot be committed to a state facility for purposes of evaluation
 - Typically local exams only (can still request exam at a state facility)
 - Felonies:
 - Juveniles can potentially be committed for up to 60 days in felony cases for purposes of evaluation
 - Local exams can be done as well
- *New Hanover developed policy due to lack of qualified local evaluators

15

WHAT'S THE PROCESS?

- Complete AOC Forms
 - Local Forensic Evaluator (AOC-CR-207B)
 - Central Regional Hospital (AOC-CR-208B)

16

WHAT'S THE PROCESS?

- Central Regional Hospital (AOC-CR-208B)

STATE OF NORTH CAROLINA

County

Name Of Defendant

FILE NO.

In The General Court Of Justice
☐ District ☐ Superior Court Division

**MOTION AND ORDER
 COMMITTING DEFENDANT
 TO CENTRAL REGIONAL HOSPITAL -
 BUTNER CAMPUS FOR EXAMINATION
 ON CAPACITY TO PROCEED**
 (For Offenses Committed On Or After Dec. 1, 2013)

G.S. 15A-1002

Offense copy of charging document(s) attached

NOTE: In felony cases, a local examination must be ordered before an examination at Central Regional Hospital - Butner campus if the court finds that a local impartial medical expert or forensic evaluator certified under the rules of the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services is available and appropriate. To order a local examination for an offense committed on or before November 30, 2013, use form AOC-CR-207A. To order a local examination for an offense committed on or after December 1, 2013, use AOC-CR-207B.

NOTE: The address for Central Regional Hospital - Butner Campus is Forensics Services Unit, Central Regional Hospital - Butner Campus, 300 Vasey Road, Butner, NC 27509. The telephone number is 919-764-5009 and the fax number is 919-764-5012.

17

WHAT'S THE PROCESS?

- Central Regional Hospital (AOC-CR-208B)

FINDINGS

This cause was heard before the undersigned judge upon the motion of the person named on the reverse questioning the defendant's capacity to proceed. Having considered the motion, and after hearing evidence, the Court finds that:

☐ 1. The defendant's capacity to proceed ☐ is in question. ☐ is not in question.

☐ 2. The defendant is charged with a felony.

(NOTE: An examination at a state facility may not be ordered for a person charged with misdemeanor(s) only.)

☐ 3. The defendant has been examined in connection with the current charges by one or more local impartial medical experts or forensic evaluators certified under the rules of the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services.

☐ 4. An examination of the defendant at Central Regional Hospital - Butner Campus to determine the defendant's capacity would be more appropriate under the provisions of G.S. 15A-1002(b)(2) than a local evaluation.

18

WHAT'S THE PROCESS?

- Obtain copy of petition to attach and submit with AOC Form
- Schedule Day and Time
- Inform Family
- Coordinate Transportation

19

WHAT'S THE PROCESS?

CAPTURE THE PROCESS IN A WRITTEN DOCUMENT

20

WHO, WHAT, WHEN, WHERE,
AND HOW?

Step One:

PREP THE EVALUATOR

21

WHO, WHAT, WHEN, WHERE,
AND HOW?

Specify your concerns

- What did you observe?
- What is the Judge/ADA looking for?

22

WHO, WHAT, WHEN, WHERE,
AND HOW?

Provide supporting documentation

- School records
 - (IEP, Special Accommodations, etc.)
- Medical records
- Prior Assessments
- IQ assessment
- Family contact/history

23

WHO, WHAT, WHEN, WHERE,
AND HOW?

Step Two:

Prepare the child and family

24

WHO, WHAT, WHEN, WHERE,
AND HOW?

Confidentiality

- Evaluations are generally shared with Judge, ADA, and Court Counselors
- Information can be used at IVC hearing (15A-1003 (c))
- Be truthful

25

WHO, WHAT, WHEN, WHERE,
AND HOW?

Explain potential outcomes

- What happens if found capable? (15A-1003)
- What happens if found incapable?
- Possibility of IVC

26

WHO, WHAT, WHEN, WHERE,
AND HOW?

Transportation

- Parent or guardian will likely need to be present for evaluation.
- Does family have transportation?
- Will Court Counselor or County Jail assist with transportation?

27

POTENTIAL OUTCOMES

Evaluation Complete ✓

RESULT: CAPABLE

28

POTENTIAL OUTCOMES

Does my client disagree?

Yes	No
⇓	⇓
Challenge	Allow Results
⇓	⇓
Ask to reevaluate or request a hearing	Proceed to admission or adjudication hearing

29

POTENTIAL OUTCOMES

EVALUATION RESULT: NOT CAPABLE


ADA/Court may challenge

- Prepare to defend evaluation
- Bring in expert, other witnesses to assist

30

POTENTIAL OUTCOMES

AND THE COURT SAYS...

NOT CAPABLE 

31

POTENTIAL OUTCOMES

VIOLENT OFFENSE

- Violent offense – Court may order IVC for rehabilitation
- Offer court alternative to IVC (15A-1003)
- Be sure to set a review
- Communicate with treatment team

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POTENTIAL OUTCOMES

NON VIOLENT OFFENSE

- Non-violent offense—may result in dismissal of charges
 - Status of the child/home life may be a factor

33

APPEAL, APPEAL, APPEAL!

- *PRESERVE THE RECORD*
 - Call witnesses/make appropriate objections/lay out alternatives
- File appropriate documents to ensure that they are part of the court record/file
- Make sure that all parts of the hearing are recorded
 - Put any "in chambers" or "at the bench" conversations/decisions on the record
- Utilize the Office of the Juvenile Defender and appellate attorneys to ensure that appeal is proper

34

CONTACT US

- | | |
|--|--|
| • Alexis C. Perkins | • Lyana G. Hunter |
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| • 910.343.5415 | • 910.343.5423 |
| • Alexis.C.Perkins@nccourts.org | • Lyana.G.Hunter@nccourts.org |

35

POST DISPOSITION AND PROBATION

Sharif A. Deveaux,
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10th Judicial District-Wake County
919-792-5443
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1

DISPOSITION
PREPARE FOR A VIOLATION

A. Pre-Disposition Report
B. Purpose of Disposition
C. Dispositional Hearing
D. Dispositional Alternatives

2

CONDITIONS OF PROBATION

A. Standard conditions
B. Conditions tailored for this client

3

MOTION FOR REVIEW: 7B-2510(C)

- A. Limits to what Judge can do
- B. May only extend probation
- C. Protect community OR Safeguard welfare of juvenile
- D. Consider defects in notice requirements

4

PROBATION VIOLATION A. THE PETITION

- | | |
|---|--|
| <ul style="list-style-type: none">A. Jurisdictional/Due Process Issues<ul style="list-style-type: none">1. Date of filing2. Who filed the motion3. Clarity of allegation4. Was juvenile aware of conditions of probationB. Disposition Order<ul style="list-style-type: none">1. Conditions of probation2. Requirements of parents3. Requirements of other adults | <ul style="list-style-type: none">C. Substance of allegation<ul style="list-style-type: none">1. Does it allege willfulness2. Does it allege a violation of a court ordered condition |
|---|--|

5

PROBATION VIOLATION B. PREPARING FOR HEARING

- A. Investigate like an adjudicatory hearing
 - 1. Identify witnesses
 - 2. Talk to witnesses (be careful of parents and professionals)
- B. Obtain records
 - 1. School records
 - 2. DJJ records
 - 3. MH/Treatment records
 - 4. Police records
- C. Only limited by our imagination

6

PROBATION VIOLATION
C. HEARING PROCEDURES

- A. Standard of Proof: Preponderance of the evidence that juvenile violated condition of probation without lawful excuse.
 - 1. State has burden of proving violation.
 - 2. Juvenile has burden of proving lawful excuse.
- B. Evidentiary Issues: The rules don't apply (object anyway).
 - 1. Lacks personal knowledge
 - 2. Irrelevant evidence (not relevant to specific allegation of violation)
 - 3. Due process violation (lack of notice for non-alleged/noticed violative conduct)
- C. Ultimate strategy: Adults on trial

7

PROBATION VIOLATION
D. DISPOSITION STRATEGIES

- A. Delay is a strategy
- B. Negotiate with court counselor
- C. MFR instead of PV
- D. Know your community
- E. Know your Judge

8

WAKE County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

JOHN DOE
300 S. SALISBURY ST
RALEIGH, NC 27601

Juvenile's Date Of Birth

Age

Juvenile's Attorney

SHARIF DEVEAUX

Name Of Movant

COURT COUNSELOR

Name And Address

JANE DOE
300 S. SALISBURY ST
RALEIGH, NC 27601☒ Parent ☐ Guardian ☐ Custodian

Name And Address

☐ Parent ☐ Guardian ☐ CustodianMOTION FOR REVIEW
(UNDISCIPLINED/DELINQUENT)

- ☐ PROTECTIVE SUPERVISION
☒ PROBATION VIOLATION
☐ EXTENDED COMMITMENT
☐ VIOLATION OF POST-RELEASE SUPERVISION
☐ EXTENSION OF PROBATION
☐ OTHER

G.S. 7B-2505, -2510, -2515, -2516, -2600

I request the Court to hear and further consider the case of the juvenile named above, as to whom the Court is exercising continuing jurisdiction, ☐ and to (specify other requests) _____

Protective supervision/probation/commitment/post-release supervision is scheduled to end on 03/03/2020.

FACTS AND CIRCUMSTANCES INDICATING NEED FOR REVIEW

Juvenile was adjudicated delinquent on March 4, 2019, was given a level 1 disposition and placed on probation for up to 6 months subject to conditions imposed by the Court. On June 3, 2019 the Court found the juvenile to be in violation of probation and extended his probation for an additional 6 months and imposed a level 2 disposition.

In the county named above and on or about February 1, 2019 the juvenile was suspended from school. This conduct violates the conditions of the judgment imposed by the court on March 4, 2019, which are to: "...abide by all school rules & regulations, not engage in disruptive behavior at school that interfere with the education of others resulting in school suspensions or expulsion..."

(Use reverse side for additional Facts and Circumstances.)

Being first duly sworn, I say that I have read the foregoing motion and know the content thereof and that the same is true of my own knowledge, except as to those matters alleged upon information and belief, and as to these matters, I believe the same to be true.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Movant

Date

Signature Of Person Authorized To Administer Oaths

Name And Address Of Movant

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ Notary

Date My Commission Expires

Title (if applicable)

Court Counselor

SEAL

County Where Notarized

Agency (if applicable)

(Over)

	ADDITIONAL FACTS AND CIRCUMSTANCES	
--	------------------------------------	--

Kids are Different: Adolescent Brain Development and Behavior

Maureen L. Reardon, Ph.D., ABPP

Clinical & Forensic Psychologist

Raleigh, North Carolina

1

Objective

- ▶ A brief overview of adolescent brain development
- ▶ Influence of physiological changes on cognitive, emotional, and psychosocial development in both “normal” and mentally compromised youth
- ▶ Discuss implications for defense attorneys working with justice-involved youth and issues that may call for mental health expert consultation

2

SCOTUS Decisions and the Adolescent Brain

- ▶ Stanford v. Kentucky 1989
- ▶ Roper v. Simmons 2004
 - ▶ Roper Amicus Brief
- ▶ Yarborough v. Alvarado 2004
- ▶ J.D.B. v. North Carolina 2011
- ▶ Graham v. Florida 2010
- ▶ Miller v. Alabama 2012
- ▶ Montgomery v. Louisiana 2016
 - ▶ Resentencing considerations
- ▶ Kansas v. Dull 2016

“Kids” are ...
Less Mature
More Vulnerable
More Changeable

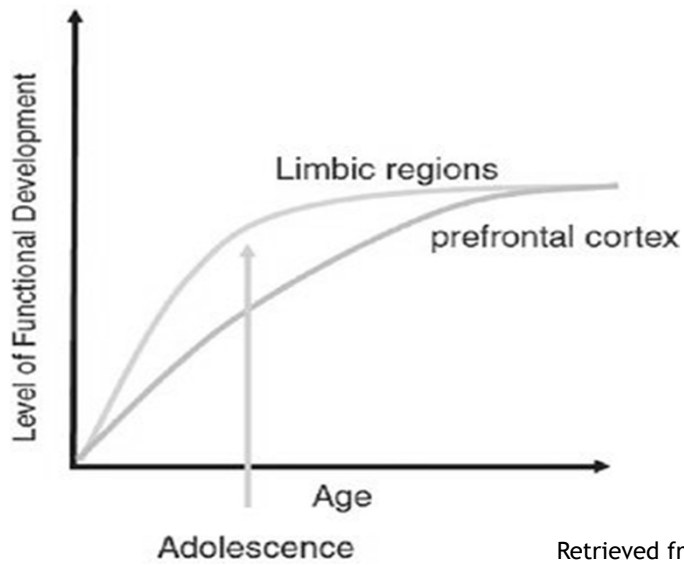
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Neurological Changes in Adolescence



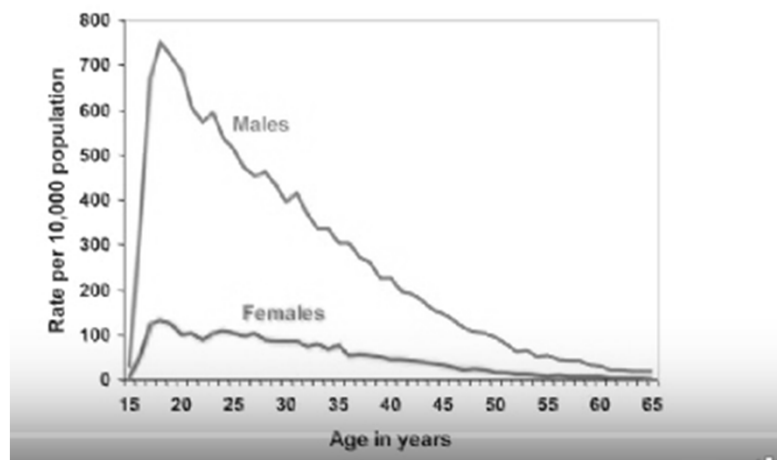
- limbic system (emotion center) becomes overly active at or around puberty
- gradual increase in myelination and synaptic pruning in prefrontal cortex responsible for executive processes and communication with other brain regions
- gradual increase in neural connections between cortical (logical) and subcortical (social/emotional) regions of brain (more white matter, less gray matter)

4



5

A typical age-crime curve (McVie 2009)



6

Changes in Cognitive Abilities

- ▶ Increased knowledge / vocabulary
- ▶ Increased attention & working memory skills
- ▶ Improved efficiency of information processing
- ▶ Concrete → Abstract reasoning
 - ▶ Consider hypotheticals, symbols, metaphors
 - ▶ Perspective taking (interpersonal/time)
 - ▶ Cause & Effect Relations
 - ▶ Part vs. Whole
 - ▶ Multiple Aspects of a Situation
 - ▶ Single → Multiple Goals (alternatives)
- ▶ Improved Self-Regulation

7

Perception of Risk & Decision Making

- ▶ Emphasis is on the “here and now”
 - ▶ Developing ability to foresee and anticipate consequences not yet experienced
 - ▶ Long-term outcomes are discounted in estimating risk (even up to age 17)
 - ▶ Developing ability to consider perspective of others (e.g., empathy, fairness)
- ▶ Reward systems are overactive
 - ▶ Gambling Study
 - ▶ *Immediate* rewards are primary consideration
- ▶ Self-Regulation systems are underdeveloped

TAKE HOME POINT:

it is perception of reward - not risk - that predicts antisocial behaviors

9

Vulnerability to External Influences

- ▶ What is rewarding depends, in part, on external feedback
 - ▶ Having fun? Gaining Acceptance? Avoiding Rejection?
- ▶ Developing sense of Identity / Autonomy
 - ▶ Statistically, kids are much more likely to commit crimes in groups
- ▶ Peer Pressure (specifically, negative peer pressure)
 - ▶ Influence peaks at 14 then slowly decrease by age 18
 - ▶ Salience of peers heightens perceived importance (reward) of approval
 - ▶ fMRI study



TAKE HOME POINT:

Delinquent behaviors in youth often occur on a “social stage” of negative peer influence where immediate social approval is the real reward and lack the capacity to weigh risk and long-term outcomes necessary for self-restraint
...and these are the result of normative developments

10

Unpredictable Change is the Norm

- Development is non-linear
 - spurts, delays, temporary regressions are normative
 - sensitive to contextual influences
- Development is idiosyncratic
 - development in one domain (e.g., cognitive) does not necessarily mean comparable development in other domains (e.g., emotional)
 - youth at any given age may demonstrate variable functioning across domains
 - youth vary in rates at which they develop
- Development interacts with childhood psychopathology

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Immaturity

- ▶ **Incomplete development** - functioning in a particular domain (cognitive, emotional, psychosocial) is not yet at an adult level
- ▶ **Delayed development** - functioning in a particular domain (cognitive, emotional, psychosocial) is not at a level expected or child's age
 - ▶ What is "typical" for the age is based on aggregate stats

12

Justice-involved youth are not "little adult" defendants ...

- ▶ All youth have immature brains
- ▶ All youth will develop cognitively, emotionally, and socially thru at least their early 20's
- ▶ Youth of the same age may not be at the same level in every domains, at all times, or in every context ... yet still be "normal"
- ▶ Youth are not necessarily equally mature in all domains, either within or between contexts, and may regress ... yet still be "normal"
- ▶ Delinquent behaviors in youth are context-specific and generally do not reflect the an "irreparable corruption" of personality
- ▶ Prediction of adult antisocial personality is tenuous
- ▶ Critical window of opportunity for change

... they are less culpable & more fixable

14

Working with Justice Involved Youth

- ▶ Gather lots of historical information
- ▶ Consider context of delinquent acts
- ▶ Consider social / familial influences
- ▶ Adjust communication style to the youth's level of development
- ▶ To extent feasible, disposition tailored to youth's specific needs

15

Need a Mental Health expert?

- ▶ Capacity Issues
 - ▶ 9 out of 10 youth ages 11-13 are lacking in requisite functional abilities to proceed
 - ▶ Learning / Attention problems
 - ▶ Any evidence of mental health problems
- ▶ Disposition
 - ▶ Community and Juvenile Justice Factors
 - ▶ Amenability characteristics
 - ▶ Chronicity
 - ▶ Motivation
 - ▶ "Maturity"
 - ▶ Social Discomfort / Attachment Issues
 - ▶ Clinical/Cognitive Conditions
- ▶ Transfer

REQUIRES EXPERTISE IN:
(a) clinical/developmental psychology
(b) forensic psychology

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THANK YOU!

for Additional Questions/Comments/More Information

Maureen L. Reardon, Ph.D., ABPP
 Clinical and Forensic Psychologist
 Raleigh, NC
www.reardonphd.com
 E-mail: forensicpsych@reardonphd.com
 (919) 800 -1174

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Selected References

- ▶ American Psychological Association (APA) , Amicus Brief submitted to Supreme Court of the United States in the cases of Miller v. Alabama & Jackson v. Hobbs, retrieved from APA.org
- ▶ Baeder, D. (2019). Developmental considerations in juvenile forensic evaluations, continuing education workshop for American Academy of Forensic Psychology (AAFP) in Burlington, Vermont
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- ▶ Otto, R.K., & Goldstein, A.M. (2005). Juveniles' competence to confess and competence to participate in the juvenile justice process. In K. Heilbrun, N.E.S. Goldstein, & R.E. Redding (Eds.), *Juvenile delinquency: Prevention, assessment, and intervention* (pp. 179-208). New York: Oxford University Press.

18

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ CR _____

STATE OF NORTH CAROLINA

v.

)
) MOTION TO DISMISS
) LACK OF JURISDICTION
)
)
)
)

NOW COMES the Defendant, by and through the undersigned attorney, and requests this Honorable Court to dismiss certain offenses charged in violation of law. Pursuant to the North Carolina Juvenile Code NCGS 7B-1501(7)(b) and 7B-1601, this Court did not have jurisdiction over the subject matter or the person of the defendant for certain charges because the defendant was under 18 years of age at the time of these offenses and these non-motor vehicle offenses should have originated in juvenile court.

1. On the ____ day of _____, 20____, the defendant was charged with the non-motor vehicle offenses of _____

_____ on ____ CR _____.

2. The defendant's date of birth is _____.

3. Pursuant to the Juvenile Justice Reinvestment Act, as of December 1, 2019, _____ County Juvenile Delinquency Court is the court of original jurisdiction for all offenses against a person under the age of 18 at the

time of the alleged offense, except Chapter 20 motor vehicle offenses.

4. Therefore, this court does not have jurisdiction over these non-motor vehicle offenses.

5. On the offenses listed in number 1 above, the defendant was, and still is, a juvenile as defined by law and therefore should not have been charged in the adult criminal system.

6. All of the offenses listed in number 1 above should be dismissed.

THEREFORE, the defendant prays this Court to dismiss these non-motor vehicle offenses pursuant to the North Carolina Juvenile Justice Reinvestment Act.

This the ____ day of _____, 20__.

Attorney for Defendant

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the _____ Judicial District by deposit of said copy with _____, Assistant District Attorney.

This the ____ day of _____, 20__.

Attorney for Defendant

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____ CR _____

STATE OF NORTH CAROLINA

v.

ORDER

This matter being heard before the undersigned District Court Judge. The juvenile was represented by _____.
The State was represented by ADA _____.
The court makes the following:

FINDINGS OF FACT

1. The listed defendant is _____ years old, with a date of birth: _____.

CONCLUSIONS OF LAW

1. Pursuant to N.C.G.S. sec. 7B-1501, _____ County District Court does not have subject matter jurisdiction over these non-motor vehicle offense(s) of _____.

2. Pursuant to N.C.G.S. sec. 7B-1601, _____ County Juvenile Court does have exclusive, original jurisdiction over the person of this defendant for these offenses.

IT IS HEREBY ORDERED that these offenses are dismissed.

This the _____ day of _____, 20____.

District Court Judge

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ CR _____

STATE OF NORTH CAROLINA

v.

)
) MOTION FOR APPROPRIATE
) RELIEF TO REMOVE FROM ADULT
) CRIMINAL HISTORY RECORDS OF
) NON-CHAPTER 20 OFFENSE(S)
)
)
)

NOW COMES the Defendant, by and through the undersigned attorney, and requests this Honorable Court to remove any record of the described charges from the adult criminal computer systems. Pursuant to N.C.G.S. 15A-1415(b)(2), this Court did not have jurisdiction over the subject matter or the person of the defendant for certain charges because the defendant was under 18 years of age at the time of these offenses and these charges should have originated in juvenile court.

1. On ____ day of _____, 20____, the defendant was charged with the offenses of _____

_____ charged in ____ CR _____.

2. The defendant's date of birth is _____.

3. Pursuant to the Juvenile Justice Reinvestment Act, as of December 1, 2019, _____ County Juvenile Delinquency Court is the court of original jurisdiction for all offenses against a person under the age of 18 at the

time of the alleged offense, except Chapter 20 motor vehicle offenses.

4. Therefore, this court does not have jurisdiction over these non-motor vehicle offenses.

5. On the offenses listed in number 1 above, the defendant was, and still is, a juvenile as defined by law and therefore should not have been charged in the adult criminal system.

6. All of the offenses listed in number 1 above are dismissed and therefore, record of these offenses should be removed from all public computerized information systems.

THEREFORE, the defendant prays this Court to order the _____ County Clerk of Court to remove these non-motor vehicle offenses and all records of them are to be erased from the ACIS system, NCAWARE system, CJLEADS and all other adult computerized criminal information systems.

This the ____ day of _____, 20__.

Attorney for Defendant

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the _____ Judicial District by deposit of said copy with _____, Assistant District Attorney.

This the ____ day of _____, 20__.

Attorney for Defendant

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ____ CR _____

STATE OF NORTH CAROLINA

v.

ORDER

This matter being heard before the undersigned District Court Judge. The juvenile was represented by _____.
The State was represented by ADA _____.
The court makes the following:

FINDINGS OF FACT

1. The listed defendant is ____ years old, date of birth: _____.

CONCLUSIONS OF LAW

1. Pursuant to N.C.G.S. sec. 7B-1501, _____ County District Court does not have subject matter jurisdiction over these non-motor vehicle offense(s).

2. Pursuant to N.C.G.S. sec. 7B-1601, _____ County Juvenile Court does have exclusive, original jurisdiction over the person of this defendant for these offenses.

IT IS HEREBY ORDERED that the _____ County Clerk of Court is to remove these offenses and all identifying information from the ACIS system, NCAWARE system, CJLEADS and all other adult criminal information systems.

This the _____ day of _____, 20____.

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 ORDER -
TRANSFER AFTER BILL OF INDICTMENT**

G.S. 7B-2200.5(a)(1)

Juvenile's Date Of Birth

Age

Race

Sex

Name Of Petitioner

Attorney For Juvenile

Department (if applicable)

Telephone No.

Pursuant to the requirements of G.S. 7B-2200.5(a)(1), the Court considered whether the juvenile's case must be transferred to Superior Court for trial as in the case of an adult for the following offense(s).

Indicted Offense

Date Of Offense

G.S. No.

F/M

FINDINGS

Having considered all relevant evidence in the juvenile's record maintained by the Clerk of Superior Court of this county, the Court finds the following:

- ☐ A true bill of indictment has been returned against the juvenile, charging the juvenile with the commission of the offense(s) listed above, at least one of which was allegedly committed when the juvenile was 16 years of age or older and which would be a Class A, B1, B2, C, D, E, F, or G felony, if committed by an adult.
- ☐ Other:

CONCLUSION OF LAW

Based on the foregoing findings of fact, the Court concludes as a matter of law that the Court shall exercise its jurisdiction to transfer the juvenile's case to Superior Court for trial as in the case of an adult or retain the case in juvenile court.

Original-Criminal Superior File Copy-Juvenile File Copy-District Attorney
(Over)

ORDER

It is ORDERED that:

- ☐ 1. This case be transferred to Superior Court for trial as in the case of an adult for the offense(s) listed on the reverse.
- ☐ a. The juvenile be fingerprinted by _____ and that the fingerprints be sent to the State Bureau of Investigation.
- ☐ b. The existing fingerprints of the juvenile be sent by _____ to the State Bureau of Investigation.
- ☐ c. A DNA sample be taken from the juvenile. *(required if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A)*
- ☐ 2. This case be retained in juvenile court, pending proper notice to the juvenile.
- ☐ 3. Other:

Date Order Entered	Date Signed	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
--------------------	-------------	---	------------------------------

NOTE: Once transfer is ordered, the juvenile has the right to pretrial release as provided in G.S. 7B-2204. See form AOC-CR-922, "Release Order For Juvenile Transferred To Superior Court For Trial."

NOTE TO CLERK: If the Court elected to hold a hearing on transfer to superior court, and the Transfer Order is appealed, use form AOC-G-115 to order a transcript of the juvenile proceeding transferred to superior court.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant

NOTICE OF RETURN OF BILL OF INDICTMENT

G.S. 15A-630, 15A-941(d)

To The Defendant Named Above:

Take notice that the grand jury of the county named above has returned the attached True Bill(s) of Indictment charging you with the offense(s) specified.

You are informed that there are important time limitations on your right to discovery of the evidence against you. (See G.S. 15A-902, which is printed on the reverse.)

This Notice is issued upon the order of the presiding judge.

You will be arraigned on the charges contained in this Indictment only if you file a written request for arraignment with the Clerk of Superior Court not later than twenty-one (21) days after the Indictment is served on you. If you do not file a written request for arraignment within that time, the court will enter a not guilty plea on your behalf.

You must appear in Superior Court at the date, time and place shown below to answer the charges in this Indictment.

NOTE: If an earlier court date is set in a release order, you must appear at that time also.

Date Of Hearing	Time Of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Place Of Hearing
NOTE: Attach True Bill(s) of Indictment and a copy of the Order of Arrest, if appropriate.		Date Issued
		Signature
		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

CERTIFICATE OF NOTICE

I certify that I issued a copy of this Notice to the defendant named above at the address shown by:

- ☐ 1. Mailing it through the U.S. Postal Service.
- ☐ 2. Attaching it to an Order for Arrest to be served on the defendant.

NOTE TO COURT: An Order for Arrest shall **not** be issued for an indicted juvenile whose case began in juvenile court and for which the district court has not yet entered an order for transfer to superior court pursuant to G.S. 7B-2200 or G.S. 7B-2200.5(a)(1).

An Order for Arrest may be issued for a juvenile indicted and subject to adult criminal court jurisdiction:

- pursuant to G.S. 7B-1501(7)b. (indicted for Chapter 20 motor vehicle offense).
- pursuant to G.S. 7B-1604(b) (i.e., the 'once an adult, always an adult' rule), based on a prior criminal conviction as an adult for
 - (i) any felony or
 - (ii) any non-motor vehicle misdemeanor or
 - (iii) any misdemeanor or infraction involving impaired driving as defined in G.S. 20-4.01(24a).

- ☐ 3. Other: (specify)

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	-----------	---

Original-File Copy-Defendant
(Over)

G.S. 15A-902 Discovery Procedure

- "(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.
- (b) To the extent that discovery authorized in this Article is voluntarily made in response to a request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.
- (c) A motion for discovery under this Article must be heard before a superior court judge.
- (d) If a defendant is represented by counsel, the defendant may as a matter of right request voluntary discovery from the State under subsection (a) of this section not later than the tenth working day after either the probable-cause hearing or the date the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before the defendant has been afforded or waived a probable-cause hearing, the defendant may as a matter of right request voluntary discovery from the State under subsection (a) of this section not later than the tenth working day after the later of:
 - (1) The defendant's consent to be tried upon a bill of information, or the service of notice upon the defendant that a true bill of indictment has been found by the grand jury, or
 - (2) The appointment of counsel.For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for the defendant prior to or during a probable-cause hearing or prior to execution by the defendant of a waiver of a probable-cause hearing.
- (e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.
- (f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part."

G.S. 15A-941(d) Arraignment Before Judge Only Upon Written Request

- "(d) A defendant will be arraigned in accordance with this section only if the defendant files a written request with the clerk of superior court for an arraignment not later than 21 days after service of the bill of indictment. If a bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request for arraignment must be filed not later than 21 days from the date of the return of the indictment as a true bill. Upon the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit within which the defendant may request an arraignment to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant."

Felony Offenses Committed on or after **October 1, 2013**

MINIMUM SENTENCES AND DISPOSITIONAL OPTIONS

OFFENSE CLASS	PRIOR RECORD LEVEL						DISPOSITION
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
A Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
B1 Max. Life w/o Parole	A 240-300 192-240 144-192	A 276-345 221-276 166-221	A 317-397 254-317 190-254	A 365-456 292-365 219-292	A Life w/o Parole 336-420 252-336	A Life w/o Parole 386-483 290-386	Aggravated PRESUMPTIVE Mitigated
B2 Max. 484 (532)	A ^{EM} 157-196 125-157 94-125	A ^{EM} 180-225 144-180 108-144	A 207-258 165-207 124-165	A 238-297 190-238 143-190	A 273-342 219-273 164-219	A 314-393 251-314 189-251	
C Max. 231 (279)	A ^{EM} 73-92 58-73 44-58	A ^{EM} 83-104 67-83 50-67	A 96-120 77-96 58-77	A 110-138 88-110 66-88	A 127-159 101-127 76-101	A 146-182 117-146 87-117	
D Max. 204 (252)	A ^{EM} 64-80 51-64 38-51	A ^{EM} 73-92 59-73 44-59	A 84-105 67-84 51-67	A 97-121 78-97 58-78	A 111-139 89-111 67-89	A 128-160 103-128 77-103	
E Max. 88 (136)	I/A ^{ASR} 25-31 20-25 15-20	I/A ^{ASR} 29-36 23-29 17-23	A ^{ASR} 33-41 26-33 20-26	A ^{ASR} 38-48 30-38 23-30	A 44-55 35-44 26-35	A 50-63 40-50 30-40	
F Max. 59	I/A ^{ASR} 16-20 13-16 10-13	I/A ^{ASR} 19-23 15-19 11-15	I/A ^{ASR} 21-27 17-21 13-17	A ^{ASR} 25-31 20-25 15-20	A ^{ASR} 28-36 23-28 17-23	A 33-41 26-33 20-26	
G Max. 47	I/A ^{ASR} 13-16 10-13 8-10	I/A ^{ASR} 14-18 12-14 9-12	I/A ^{ASR} 17-21 13-17 10-13	I/A ^{ASR} 19-24 15-19 11-15	A ^{ASR} 22-27 17-22 13-17	A ^{ASR} 25-31 20-25 15-20	
H Max. 39	C/I/A ^{ASR} 6-8 5-6 4-5	I/A ^{ASR} 8-10 6-8 4-6	I/A ^{ASR} 10-12 8-10 6-8	I/A ^{ASR} 11-14 9-11 7-9	I/A ^{ASR} 15-19 12-15 9-12	A ^{ASR} 20-25 16-20 12-16	
I Max. 24	C 6-8 4-6 3-4	C/I 6-8 4-6 3-4	I 6-8 5-6 4-5	I/A 8-10 6-8 4-6	I/A 9-11 7-9 5-7	I/A 10-12 8-10 6-8	

Note: Numbers shown are in months. The number shown below each offense class reflects the maximum possible sentence for that class of offense (the highest maximum sentence from the aggravated range in prior record level VI). The maximum sentence for a defendant convicted of a reportable Class B1 through E sex crime is indicated in parentheses.

A— Active Punishment
I— Intermediate Punishment
C— Community Punishment

^{EM} Extraordinary Mitigation (possible eligibility) See page 10.

^{ASR} Advanced Supervised Release (possible eligibility) See page 10.

CLASS OF OFFENSE	SUGGESTED SECURED BOND
Misdemeanor Class 3	Up to \$ 750.00
Misdemeanor Class 2	Up to \$1000
Misdemeanor Class 1	Up to \$2,000
Misdemeanor Class A1	\$1,000 - \$5,000
Driving while Impaired	\$500-\$10,000
Felony Class I	\$2,000 - \$10,000
Felony Class H	\$3,000 - \$15,000
Felony Class G	\$15,000 - \$50,000
Felony Class F	\$15,000 - \$50,000
Felony Class E	\$30,000 - \$75,000
Felony Class D	\$50,000 - \$200,000
Felony Class C	\$50,000 - \$250,000
Felony Class B2	\$200,000 - \$500,000
Felony Class B1	\$500,000 - \$1,500,000
Felony Class A	No Bond (unless set by a Superior Court judge)
Fugitive Warrant	Set amount appropriate for the underlying offense, but at least \$25,000
Governor's Warrant	No Bond
Parole Warrant	No Bond
Habitual Felon	at least \$25,000 secured

When a defendant who has failed to appear on a charge is taken into custody for that failure to appear and is brought before a judicial official, the judicial official should set bond in accordance with G.S. 15A-534(d1).

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE:

In the Matter of

Juvenile

)
)
)
)
)

MOTION FOR SECURE
CUSTODY REVIEW

NOW COMES the Juvenile, by and through the undersigned attorney,
and requests this Honorable Court to schedule a secure custody
review hearing for a youthful offender pursuant to N.C.G.S. 7B-
2200.5 and N.C.G.S. 7B-1906(b1).

In support of this motion, the Juvenile states the
following:

1. That petition(s) were filed on DATE, alleging the
juvenile committed OFFENSE(S), Class ____ felonies.
2. That a first appearance and secure custody review
were held on DATE.
3. That, pursuant to N.C.G.S. 7B-1906(b1), the
juvenile was ordered to remain in secured custody
until further review on DATE, with leave to file
for a secure custody review at a sooner date for
good cause.
4. The juvenile now shows good cause to review the
continued detention prior to the statutory 30 day

review because: (allege your facts for release to
supervision plan)

THEREFORE the juvenile respectfully requests this court to
calendar a review hearing in this matter for a date during the
week of DATE, to review the juvenile's continued detention and
the new supervision plan.

This the _____ of _____, 20____.

Attorney for the juvenile

Certificate of Service

I hereby certify that a copy of the foregoing motion was
served on the District Attorney for the Juvenile, 10th Judicial
District by deposit of said copy with _____
Assistant District Attorney.

This the _____ day of _____, 20____.

Attorney for the juvenile

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant (type or print full name)

MOTION AND ORDER TO REMAND CASE FROM SUPERIOR COURT TO DISTRICT COURT AND ORDER OF EXPUNCTION UNDER G.S. 15A-145.8(a) (CHARGES REMANDED TO DISTRICT COURT FOR JUVENILE ADJUDICATION)

Drivers License No.

State

Race

Sex

Date Of Birth

Full Social Security No.

Age At Time Of Offense

G.S. 7B-2200.5(d), 15A-145.8

File Number	Count No.(s)	Offense(s)	Offense Date(s)

NOTE TO COURT: This form is used to remand a case to juvenile court upon the joint motion of the prosecutor and the juvenile's attorney and to expunge the superior court record pursuant to G.S. 15A-145.8(a). To order the expunction of DNA records pursuant to G.S. 15A-145.8(b), use form AOC-CR-292.

NOTE TO DEFENDANT: Inform the Court of any State or local government agency that has a record of your superior court case that you want expunged. The clerk of superior court will send you a certified copy of the final order for your records at the address listed above. If you move, you must notify the clerk in writing of your change of address in order to receive a certified copy. After the case is expunged, the clerk of superior court will have no record of the case, other than those records maintained pursuant to G.S. 7B-3000 as confidential records as part of the juvenile proceedings, and will be unable to provide you with any documentation of the superior court case. This includes the expunction order; it will be destroyed with the case file.

MOTION

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
Date	Name Of Juvenile's Attorney (type or print)	Signature Of Juvenile's Attorney

FINDINGS OF FACT

The Court makes the following findings of fact:

- ☐ 1. There is a joint motion of the prosecutor and the juvenile's attorney to remand this case to district court for juvenile adjudication.
- ☐ 2. Other:

ORDER

Therefore, the Court hereby **ORDERS**:

- ☐ The above-captioned case is remanded from the Superior Court Division to the District Court Division and the superior court record of the remanded charge(s) is expunged. The purpose of this expunction is to remove from all public records any information regarding this case but to preserve any information related to the juvenile petition as a confidential juvenile record.
- a. Any and all entries relating to the defendant's **superior court** charges shall be expunged from all official records of the court.
- b. All law enforcement agencies, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agency identified on Side Two and on any AOC-CR-285 form that is attached are hereby directed to expunge from all official records any public records made as a result of the **superior court** charges ordered expunged. **Any records made as a result of the juvenile petition shall not be expunged, but shall be maintained as confidential records pursuant to Article 30 of Chapter 7B of the North Carolina General Statutes.**

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
------	---	------------------------------

NOTE TO RECIPIENT AGENCY: See Side Two for more information about the types of records to expunge and the types of records to maintain.

(Over)

AGENCY INFORMATION

NOTE TO COURT: List the arresting agency and any State or local government agency that has a record of the defendant's superior court case. The clerk of superior court will send a copy of this order, if granted, to the agency name(s) and address(es) provided below. Do not list the courts, the State Bureau of Investigation, the Department of Public Safety, or the Division of Motor Vehicles; if the order is granted, those agencies will be notified automatically. Do not list any private entity, like a company that provides criminal background checks. The clerk will not send a copy of this order to any entity that is not an agency of the State of North Carolina or one of its local governments. A private entity required to expunge records will be notified directly by the State or local agencies that distribute criminal justice information to that entity.

Name of Agency

Address of Agency

NOTE TO RECIPIENT AGENCY: *Records to be expunged.* Upon receipt of this order, purge any public records made as a result of the superior court charges, which have been expunged. Public records made as a result of the superior court charges include, but are not limited to, the bill of indictment, information, or other criminal process; an order for arrest, release order, appearance bond, and order of commitment; other motions and orders filed in the superior court proceeding; and any and all entries, paper records, or files associated with these documents.

Records to be maintained. Any records related to the juvenile petition, which has been remanded to district court, must be maintained as confidential juvenile records pursuant to Article 30 of Chapter 7B of the North Carolina General Statutes. Confidential juvenile records include, but are not limited to, any entries related to the filing of the juvenile petition; an order of secure or nonsecure custody; a juvenile probable cause or transfer order; other motions and orders filed in the juvenile court proceeding; and any and all entries, paper records, or files associated with these documents.

CERTIFICATION BY CLERK

I hereby certify that this form is a true and complete copy of the original in this case. A certified copy of this Order was sent on the date shown below to the defendant, the State Bureau of Investigation, the Department of Public Safety, the Division of Motor Vehicles, and to the arresting agency and any other State or local government agency identified on Side Two and on any attachment to this Order.

Date	Name (type or print)	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court	SEAL
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NOTE TO CLERK: If granted, **always** send a certified copy of this Order under seal to the defendant, to **all** the agencies listed in Certification By Clerk above, and to the NCAOC. Send copies for the arresting agency and additional agencies to the addresses provided by the Court. Send SBI, DPS, DMV, and NCAOC copies to:

State Bureau of Investigation	NC Department of Public Safety,	NC Division of Motor Vehicles, Driver and	NC Administrative Office of the Courts
Attn: Expunction Unit	Attn: Combined Records Section	Vehicle Services, Driver Assistance Branch	Court Services
PO Box 29500	4226 Mail Service Center	Attn: Hearings/Adjudication Unit	Attn: Records Officer
Raleigh, NC 27626	Raleigh, NC 27699-4226	3118 Mail Service Center	PO Box 2448
		Raleigh, NC 27699-3118	Raleigh, NC 27602

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Juvenile

WORKSHEET
DELINQUENCY HISTORY LEVEL

G.S. 7B-2507

The most serious offense before the court today for disposition is _____,
a class _____, adjudicated on (date) _____, which provides the basis for disposition.

NOTE: Calculations are to be based on actual adjudications and convictions.

If a juvenile is adjudicated delinquent or convicted for more than one offense in a single session of district court, or more than one offense in a single superior court during one calendar week, only the adjudication or conviction for the offense with the highest point total is used.
[G.S. 7B-2507(d)]

I. SCORING PRIOR RECORD/FELONY DISPOSITION

Count	Prior Adjudicated Offenses	Factors	Points
	Prior Felony Class A-E	X 4 points	
	Prior Felony Class F-I, Class A1 Misdemeanor	X 2 points	
	Prior Class 1, 2, or 3 Misdemeanor	X 1 point	
SUBTOTAL			
	Prior Convicted Offenses		
	Prior Felony Class A-E	X 4 points	
	Prior Felony Class F-I, Class A1 Misdemeanor (excluding motor vehicle law convictions)	X 2 points	
	Prior Misdemeanor Impaired Driving (G.S. 20-138.1), Misdemeanor Impaired Driving in a Commercial Vehicle (G.S. 20-138.2), or Misdemeanor Death by Vehicle (G.S. 20-141.4(a2))	X 2 points	
	Prior Class 1, 2, or 3 Misdemeanor (excluding motor vehicle law convictions)	X 1 point	
SUBTOTAL			
If the offense for which disposition is being entered was committed while on probation		2 points	
SUBTOTAL			
TOTAL			

OFFENSE	DELINQUENCY HISTORY		
	LOW (0-1 points)	MEDIUM (2-3 points)	HIGH (4+ points)
VIOLENT (A-E Felony)	Level 2 or 3	Level 3	Level 3
SERIOUS (F-I Felony; A1 Misdemeanor)	Level 1 or 2	Level 2	Level 2 or 3
MINOR (1-3 Misdemeanor)	Level 1	Level 1 or 2	Level 2

- ☐ The Court has determined the prior delinquency history points to be _____ and the level(s) to be as shown above.
- ☐ In making this determination, the Court has relied upon the State's evidence and the juvenile's prior adjudications and convictions from original or copied court records or a copy of the records maintained by the Department of Public Safety or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice.
- ☐ The Court finds that the State and the juvenile have stipulated in open court to the prior delinquency history points and level.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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(See Side Two for adjudication and conviction information.)

(Over)

[illegible][illegible]

Date Prepared: _____

Prepared By: _____

	IV. STIPULATION	
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<i>Date</i>	<i>Signature Of Prosecutor</i>	<i>Date</i>	<i>Signature Of Defense Counsel</i>
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<i>Name</i>	<i>File No.</i>	<i>DOB</i>

SCORING PRIOR RECORD			
NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A - E Adjudication	X4	
	Prior Felony Class F - I or (m) Class A1 Adjudication	X2	
	Misdemeanor death by MV (20-141.4(a2)) (non-alcohol involved)	X2	
	Prior Misdemeanor Class 1 - 3 (excluding misd. or infraction Chapter 20 MV offense -unless involving DWI per 20-4.01(24a))	X1	
		SUBTOTAL	
	If this offense was committed while on probation	+2	
		TOTAL	

CLASSIFYING PRIOR RECORD LEVEL		
POINTS	LEVEL	PRIOR RECORD LEVEL
0-1	I	
2-3	II	
4 +	III	

[illegible]