

2016-2017 JUVENILE DELINQUENCY UPDATE
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Part 1: Recently Enacted Legislation

S.L. 2017-57 (S 257) – 2017 State Budget / Juvenile Justice Reinvestment Act

The Juvenile Justice Reinvestment Act, included in the 2017 state budget, increases the age of juvenile court jurisdiction to include crimes committed by 16 and 17-year-olds, except for motor vehicle offenses, and expedites transfer to adult court for 16 and 17-year-olds who commit Class A-G felonies. The Act also makes several other changes to the Juvenile Code, which are summarized below.

Definitions

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Delinquent Juvenile** – As defined by amended G.S. 7B-1501(7) and amended G.S. 143B-805(6), the term “delinquent juvenile” includes 16 and 17-year-olds who commit crimes or infractions, excluding motor vehicle offenses, or indirect contempt by a juvenile as defined by G.S. 5A-31. Amended G.S. 143B-805(6) also includes indirect contempt by a juvenile as a delinquent offense for juveniles who are under 16, consistent with G.S. 7B-1501(7).
- **Victim** – New G.S. 7B-1501(27a) defines a “victim” as an individual or entity against whom a crime or infraction has been committed by a juvenile when there are reasonable grounds that the allegations are true. For purposes of Article 17 (screening of complaints), a “victim” also includes the parent, guardian, or custodian of a victim who is under 18.

Juvenile Court Jurisdiction

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Offenses committed before age 16** – Under amended G.S. 7B-1601(b) and (c), jurisdiction continues until age 18, unless terminated earlier by the court or the Juvenile Code provides otherwise. If a disposition cannot be entered before the juvenile turns 18, the court retains jurisdiction to conduct probable cause and transfer hearings and either transfer the case to superior court or dismiss the petition.
- **Offenses committed at age 16** – Under new G.S. 7B-1601(b1) and (c1), jurisdiction continues until age 19, unless terminated earlier by the court or the Juvenile Code provides otherwise. If a disposition cannot be entered before the juvenile turns 19, the court retains jurisdiction to conduct probable cause and transfer hearings and either transfer the case to superior court or dismiss the petition.
- **Offenses committed at age 17** – Under new G.S. 7B-1601(b1) and (c1), jurisdiction continues until age 20, unless terminated earlier by the court or the Juvenile Code provides otherwise. If a disposition cannot be entered before the juvenile turns 20, the court retains jurisdiction to conduct probable cause and transfer hearings and either transfer the case to superior court or dismiss the petition.
- **Continuing jurisdiction over felonies and related misdemeanors** – Under new G.S. 7B-1601(d1), after a juvenile reaches age 19 (for offenses committed at age 16) or age 20 (for offenses committed at age 17), the juvenile court’s original jurisdiction over felonies and related misdemeanors continues indefinitely for the sole purpose of conducting probable cause and transfer hearings and either transferring the case to superior court or dismissing the petition.
- **Adult Prosecution** – Under amended G.S. 7B-1604, a juvenile must be prosecuted as an adult for all offenses committed (1) on or after the juvenile’s 18th birthday, (2) after the juvenile has been transferred to and convicted in superior court for a prior offense, and (3) after the juvenile has been convicted of a felony or misdemeanor, including motor vehicle offenses, in district or superior court.

Probable Cause and Transfer to Superior Court

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Probable Cause Hearing** – Amended G.S. 7B-2202 provides that a probable cause hearing is required for all felonies committed by a juvenile at age 13 or older, except for cases subject to mandatory transfer by indictment under new G.S. 7B-2200.5. When transfer is not mandatory, the court may proceed to a transfer hearing or set a date for that hearing after a finding of probable cause. The juvenile is entitled to at least 5 days notice of the transfer hearing.
- **Transfer of 13, 14, and 15-year-olds** – Amended G.S. 7B-2200 provides that a transfer hearing is required to transfer jurisdiction to superior court for a felony committed by a juvenile at age 13, 14, or 15, except for Class A felonies which are subject to mandatory transfer upon a finding of probable cause.
- **Transfer of 16 and 17-year-olds** – New G.S. 7B-2200.5 creates an expedited process to transfer jurisdiction to superior court for certain felonies committed by 16 and 17-year-olds.

- Transfer to superior court is mandatory for a Class A-G felony committed by a juvenile at the age of 16 or 17 after (1) notice that an indictment has been filed, or (2) the court enters a finding of probable cause after notice and a hearing.
- Transfer to superior court for a Class H or I felony committed by a juvenile at the age of 16 or 17 requires notice, a finding of probable cause, and a transfer hearing.
- **Pre-Trial Release** – Amended G.S. 7B-2603(b) removes language regarding procedures for the pre-trial release and detention of juveniles who appeal from an order transferring jurisdiction to superior court. The statute now provides that any detention of the juvenile pending release shall be in accordance with G.S. 7B-2204.
- **Sex Offender Registration** – Amended G.S. 14-208.6B provides that registration requirements for juveniles who are transferred to superior court and convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 are applicable when transfer occurs pursuant to either G.S. 7B-2200 or new G.S. 7B-2200.5.

Disposition

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Dispositional Alternatives** – Amended G.S. 7B-2506 sets new age limits for certain dispositional alternatives.
 - G.S. 7B-2506(1), which authorizes out of home placement options for juveniles, including placement of the juvenile in the custody of a county department of social services, is now applicable to any juvenile who is under the age of 18.
 - G.S. 7B-2506(2), which authorizes a court to excuse a juvenile from compliance with the compulsory school attendance law, is applicable only to juveniles who are under the age of 16.
- **Delinquency History Level** – Amended G.S. 7B-2507 provides for including prior criminal convictions in determining a juvenile’s delinquency history level. Prior misdemeanor and felony convictions are assigned the same number of points as prior delinquency adjudications of the same class of offense. Other conforming changes provide that the rules regarding multiple prior delinquency adjudications obtained in one court session, classification of prior adjudications from other jurisdictions, and proof of prior adjudications also apply to prior convictions.
- **Commitment to YDC**
 - **Offenses committed before age 16** – Under new G.S. 7B-2513(a1), the previous age limits for a juvenile’s maximum commitment term are applicable to offenses committed by a juvenile prior to age 16.
 - **Offenses committed at age 16** – New G.S. 7B-2513(a2) provides that a commitment term for an offense committed at age 16 may not exceed the juvenile’s 19th birthday.
 - **Offenses committed at age 17** – New G.S. 7B-2513(a3) provides that a commitment term for an offense committed at age 17 may not exceed the juvenile’s 20th birthday.
 - **Maximum Commitment** – New G.S. 7B-2513(a4) sets forth the existing rule that a juvenile’s maximum commitment term may not exceed the maximum adult sentence for the same offense unless the Division determines that the commitment

should be extended to continue a plan of care or treatment, as provided by G.S. 7B-2515.

- **Notification of Extended Commitment**
 - **Offenses committed before age 16** – G.S. 7B-2515(a) was amended to make the existing rules requiring written notice of an extended commitment applicable only to offenses committed by a juvenile prior to age 16.
 - **Offenses committed at age 16** – New G.S. 7B-2515(a1) requires that written notice of an extended commitment must be provided to the juvenile and the juvenile’s parent, guardian, or custodian at least 30 days before the end of the maximum commitment period or 30 days before the juvenile’s 19th birthday. The notice must include the proposed additional commitment period, the basis for the proposed extended commitment, and the plan for future care or treatment.
 - **Offenses committed at age 17** – New G.S. 7B-2515(a2) requires that written notice of an extended commitment must be provided to the juvenile and the juvenile’s parent, guardian, or custodian at least 30 days before the end of the maximum commitment period or 30 days before the juvenile’s 20th birthday. The notice must include the proposed additional commitment period, the basis for the proposed extended commitment, and the plan for future care or treatment.
 - **Right to Review Hearing** – Upon notice of a proposed extended commitment pursuant this section, the juvenile and the juvenile’s parent, guardian, or custodian may request review by the court.

Juvenile Gang Suppression

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Gang Assessment** – Amended G.S. 7B-1702 requires a juvenile court counselor to conduct a gang assessment during the evaluation of a complaint to determine whether it should be filed as a juvenile petition. Section 16D.4.(ff), which became effective on July 1, 2017, directs the Division of Adult Correction and Justice to develop a gang assessment instrument in consultation with the administrator of the GangNET database maintained by the NC State Highway Patrol, and with other entities, if deemed necessary.
- **Gang Assessment Results** – Amended G.S. 7B-3001(a) provides that the juvenile court counselor’s record must contain the results of the gang assessment.
- **Enhancement of Disposition Level** – New G.S. 7B-2508(g1) creates an exception to the disposition chart set out in G.S. 7B-2508(f) which requires that a juvenile’s disposition level be increased one level higher than provided for by the chart when the court finds that the adjudicated offense was committed as part of criminal gang activity, as defined by new G.S. 7B-2508.1.
- **Criminal Gang Activity Definitions** – New G.S. 7B-2508.1 creates the following definitions which apply to Article 25 of the Juvenile Code:
 - **Criminal gang** – New G.S. 7B-2508.1(1) defines the term “criminal gang” as any ongoing association of three or more persons, whether formal or informal, that (1) engages in criminal or delinquent acts as one of its primary activities and (2) shares a common name, identification, or other distinguishing characteristics such as signs, symbols, tattoos, graffiti, or attire. The term does not include an association of three or more persons who are not engaged in criminal gang activity.

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- **Criminal gang activity** – New G.S. 7B-2508.1(2) defines the term “criminal gang activity” to include the commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (1) any NC Controlled Substances Act offense or (2) any criminal offense under Chapter 14 of the General Statutes, excluding certain enumerated offenses, when either of the following conditions is met:
 - The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or increase a person’s own standing within a criminal gang.
 - The participants in the offense are identified as criminal gang members acting individually or collectively to further any purpose of a criminal gang.
 - **Criminal gang member** – New G.S. 7B-2508.1(3) defines the term “criminal gang member” as any person who meets three or more of the nine criteria set forth in the statute.

Transportation of Juveniles

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Transportation to Juvenile Facilities** – New G.S. 143B-806(b)(20) grants authority to the Secretary of the Division of Adult Correction and Juvenile Justice to provide for the transportation to and from State or local juvenile facilities of any person under the jurisdiction of juvenile court.

Felony Notification of Schools

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Notification of Transfer to Superior Court** – Amended G.S. 7B-3101(a)(2) provides that a juvenile court counselor must provide verbal and written notification to the principal of the juvenile’s school if the juvenile’s case is transferred to superior court under new G.S. 7B-2200.5.
- **Destruction of Records** – Amended G.S. 115C-404(a) requires a principal who receives confidential juvenile records under G.S. 7B-3100 to destroy them upon notification that the student’s case has been transferred to superior court under G.S. 7B-2200 or new G.S. 7B-2200.5 (previously under G.S. 7B-2200).

Contempt by a Juvenile

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Definition** – Amended G.S. 5A-31(a) provides that contempt by a juvenile may be committed by any juvenile who is at least 6, not yet 18 (previously 16), and has not been convicted of any crime in superior court.
- **Criminal or Civil Contempt by Adults** – Amended G.S. 5A-34(b) provides that criminal and civil contempt procedures set forth in Articles 1 and 2 of Chapter 5A apply to minors who (1) are married or otherwise emancipated or (2) have been previously convicted in superior court of any offense. The amendment removed language which previously made criminal and civil contempt procedures applicable to minors who are 16 or older.

Contributing to the Delinquency, Abuse, or Neglect of a Minor

(effective December 1, 2019, and applicable to offenses committed on or after that date)

- **Applicability** – Amended G.S. 14-316.1 makes the offense applicable to persons who are at least 18 (previously 16).

Victim's Rights

(effective October 1, 2017, and applicable to complaints filed on or after that date)

- **Notification of Filing Decision** – Amended G.S. 7B-1703(c) requires a juvenile court counselor to provide written notification to both complainants and victims (previously only complainants) of a decision not to file a complaint as a juvenile petition. The notification must include specific reasons for the decision, whether or not legal sufficiency was found, and whether the matter was closed or diverted and retained. The notification also must inform the complainant and victim of the right to have the decision reviewed by a prosecutor.
- **Request for Review by Prosecutor** – Amended G.S. 7B-1704 makes conforming changes to provide that the procedure for requesting review of a juvenile court's filing decision applies to both complainants and victims (previously complainants only).
- **Prosecutor's Review and Decision** – Amended G.S. 7B-1705 makes conforming changes to provide that a prosecutor's review of a court counselor's filing decision must include conferences with the complainant, victim, and juvenile court counselor (previously complainant and juvenile court counselor only). A prosecutor also must notify both the complainant and the victim of his or her decision at the conclusion of the review.
- **Victim's Access to Information** – New G.S. 143B-806(b)(14a) grants authority to the Secretary of the Division of Adult Correction and Juvenile Justice to develop and administer a system to inform victims and complainants about the status of pending complaints and the right to request review under G.S. 7B-1704 of a juvenile court counselor's decision not to file a complaint.

Law Enforcement Access to Information

(effective October 1, 2017)

- **Consultations with Law Enforcement** – Amended G.S. 7B-3001(a) provides that the juvenile court counselor's record must include the juvenile's delinquency record and consultations with law enforcement that do not result in the filing of a juvenile petition. **A separate amendment to G.S. 7B-3001(a) also requires the inclusion of a gang assessment as part of this record.
- **Disclosure of Information to Law Enforcement** – New G.S. 7B-3001(a1) authorizes juvenile court counselors to share with law enforcement officers, upon request, information related to a juvenile's delinquency record or prior consultations with law enforcement for the purpose of assisting officers during the investigation of an incident that could lead to the filing of a complaint. Law enforcement officers may not obtain copies of juvenile records and must maintain the confidentiality of information shared and keep it separately from other law enforcement records, as required by G.S. 7B-3001(b).

Electronic Records

(effective July 1, 2017)

- **JWise Access** – Section 16D.4.(y) of the Act requires that by July 1, 2018, the Administrative Office of the Courts (AOC) must expand access to JWise, the automatic electronic information management system for juvenile courts, to include prosecutors and juvenile defense attorneys. Such access must be limited to examining electronic records related to juvenile delinquency proceedings and does not include records related to abuse, neglect, and dependency or termination of parental rights cases. Section 16D.4.(z) requires that by July 1, 2018, the AOC must also develop statewide inquiry access for JWise users that corresponds to the access to juvenile court records authorized by Chapter 7B.

School-Justice Partnerships

(effective July 1, 2017)

- **Statewide Implementation** – New G.S. 7A-343(9g) authorizes the Director of the AOC to prescribe policies and procedures for chief district court judges to establish school-justice partnerships in collaboration with local law enforcement agencies, local boards of education, and local school administrative units for the purpose of reducing in-school arrests, out-of-school suspensions, and expulsions.

Juvenile Justice Training for Law Enforcement Officers and Sheriffs

(effective July 1, 2017)

- **Entry-level Training** – New G.S. 17C-6(a)(2)(b) and new G.S. 17E-4(a)(2)(b) provide that the minimum standards for entry-level employment established by the NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs' Education and Training Standards Commission must include education and training on juvenile justice issues. The minimum standards must include education and training regarding (1) the handling and processing of juvenile matters for referrals, diversion, arrests, and detention; (2) best practices for handling incidents involving juveniles; (3) adolescent development and psychology; and (4) promoting relationship building with youth as a key to delinquency prevention.
- **In-Service Training** – New G.S. 17C-6(a)(14)(b) and new G.S. 17E-4(a)(11)(b) provide that the minimum standards for in-service training established by both Commissions must include training on juvenile justice issues that includes the same information required for entry-level employment.
- **Instructor Certification** – Amended G.S. 17C-6(a)(15) and amended G.S. 17E-4(a)(12) authorize both Commissions to establish minimum standards for certification of instructors for the entry-level and in-service juvenile justice training for criminal justice officers and sheriffs.
- **Consultation with Juvenile Justice** – Section 16D.4.(dd) directs both Commissions to work with the Division of Adult Correction and Juvenile Justice to establish juvenile justice training.

Juvenile Jurisdiction Advisory Committee
(effective July 1, 2017)

- Sections 16D.4.(kk) through 16D.4.(ss) provide for the establishment of a 21-member Juvenile Jurisdiction Advisory Committee within the Division of Adult Correction and Juvenile Justice to plan for the implementation of these changes. Appointments to the Advisory Committee must be made no later than October 1, 2017. The Advisory Committee must submit an interim report to the General Assembly by March 1, 2018, and must submit a final report by January 15, 2023.

S.L. 2017-158 (H 236) – NC AOC Omnibus Bill

(effective July 21, 2017)

- The Act amends G.S. 7B-3000(d) to authorize the destruction of electronic and mechanical recordings of juvenile hearings pursuant to a court order entered after the time for appeal has expired with no appeal having been taken or pursuant to a retention schedule approved by the Director of the Administrative Office of the Courts and the Department and Natural and Cultural Resources.

S.L. 2017-186 (S 344) – Consolidation of Divisions of Adult Correction and Juvenile Justice

(effective December 1, 2017)

- New G.S. 143B-630 establishes the Division of Adult Correction and Juvenile Justice within the Department of Public Safety, and new G.S. 143B-800 establishes the Juvenile Justice Section within that division to exercise the powers and duties previously performed by the Division of Juvenile Justice. The act makes conforming changes to numerous statutes to reflect the organizational structure.

Part 2: Recent Published North Carolina Appellate Court Decisions

State v. Saldierna, 369 N.C. 401 (Dec. 21, 2016).

Held: Reversed.

The Supreme Court reversed the decision of the Court of Appeals in *State v. Saldierna*, 242 N.C. App. 347 (2015), which held that the trial court erred by denying the juvenile's motion to suppress his incriminating statement.

- **Invocation of Juvenile Rights.** The 16-year-old defendant's request to call his mother at the beginning of the police interrogation was not a clear invocation of his right to consult a parent or guardian before being questioned. After the interrogating officer read defendant his *Miranda* and juvenile warnings, defendant initialed and signed a Juvenile Waiver of Rights form indicating that he desired to answer questions without a lawyer, parent, or guardian present. He then asked, "Um, can I call my mom," and the interrogating officer allowed defendant to use her cell phone to make the call. Defendant did not reach his mother but spoke to someone else and then returned to the booking area where the interrogation resumed. During the interrogation, defendant confessed. The trial court denied defendant's motion to suppress his statement on grounds that it was obtained in violation of his *Miranda* rights and his juvenile rights under G.S. 7B-2101. The Court of Appeals reversed the trial court's order, concluding that although the defendant's request to call his mother was ambiguous, interrogating officers had a duty to clarify whether the juvenile was invoking his statutory rights before proceeding with the interrogation. Reversing the Court of Appeals, the Supreme Court noted that a juvenile's statutory right to parental presence during a custodial interrogation is analogous to the constitutional right to counsel. In *Davis v. United States*, 512 U.S. 452 (1994), the U.S. Supreme Court held that in order to invoke the right to counsel during an interrogation, the defendant must do so unambiguously and officers have no duty to clarify ambiguous statements. The N.C. Supreme Court has previously applied *Davis* to an interrogation involving a juvenile defendant and concluded that law enforcement officers were not required to cease questioning when the defendant made an ambiguous statement implicating his right to remain silent. See *State v. Golphin*, 352 N.C. 364 (2000). Thus, the *Davis* analysis applies to juvenile interrogations, and without an unambiguous, unequivocal invocation of the juvenile's statutory rights, officers have no duty to ask clarifying questions or cease questioning. Here, the defendant simply asked to call his mother and gave no indication that he wanted her present for his interrogation. Therefore, defendant's statutory rights were not violated. Because the Court of Appeals erroneously determined that defendant's rights were violated, it did not consider whether defendant knowingly, willingly, and understandingly waived his rights, as required by G.S. 7B-2101(d) for defendant's confession to be admissible. Therefore, the case was remanded to the Court of Appeals to consider the validity of defendant's waiver.
- **Dissent.** In her dissent, Justice Beasley found that the juvenile's request to call his mother was an unambiguous invocation of his statutory right to have a parent present during custodial interrogation. Assuming the request was ambiguous, she agreed with the conclusion of the Court of Appeals that officers must ask clarifying questions when a juvenile is attempting to invoke his or her rights, noting that children are more vulnerable during interactions with the police due to their immaturity and inability to fully

understand their rights. Her dissent also emphasized that the legislature attempted to afford juveniles greater protection in G.S. 7B-2101(a)(3) than the rights afforded by *Miranda*, and thus, *Miranda* precedent should not control the analysis related to a juvenile's right to have a parent present.

State v. Saldierna, __ N.C. App. __, 803 S.E.2d 33 (July 18, 2017).

Held: Vacated, Reversed, and Remanded.

The juvenile, age 16, was arrested for his alleged involvement in recent burglaries of Charlotte area homes. The arresting officers took him to a police station where a detective provided him with copies of a Juvenile Waiver of Rights Form in both English and Spanish and read the English version to him. The juvenile initialed the waiver on the English version of the form but then immediately asked, "Um, can I call my mom," and the interrogating officer allowed the juvenile to use her cell phone. The juvenile was unable to reach his mother and returned to the booking area where the interrogation resumed. During the interrogation, he confessed. The juvenile moved to suppress his confession on the ground that it was obtained in violation of his rights under *Miranda* and G.S. 7B-2101, which the trial court denied.

- **Waiver of Rights.** On remand from the NC Supreme Court's decision in *State v. Saldierna*, __ N.C. __, 794 S.E.2d 474 (2016), the Court of Appeals reversed the trial court's order denying the juvenile's motion to suppress and vacated his convictions because the waiver of his statutory and constitutional rights during a custodial interrogation was involuntary. Because the juvenile's waiver of rights was not made knowingly, willingly, and understandingly, the trial court erred by denying the juvenile's motion to suppress. Emphasizing that "the totality of the circumstances must be carefully scrutinized" when evaluating waivers by juveniles, the court concluded that the trial court's findings lacked such scrutiny. Also, the trial court's findings that the juvenile understood the interrogating officer's questions and statements regarding his rights were not supported by the evidence. The juvenile was 16-years-old with an 8th grade education and his primary language was Spanish. Although he could write in English, he had difficulty reading it and understanding it as spoken. The interrogation occurred in the booking area of the Justice Center in the presence of three officers, and there was no evidence the juvenile had any prior experience with law enforcement officers or understood the consequences of speaking with them. Also, the transcript of the recorded interrogation contains several "unintelligible remarks or non-responses by defendant" which do not confirm that he understood what was being asked. Despite the "express written waiver" form executed by the juvenile, the court declined to "give any weight to recitals, like the juvenile rights waiver form signed by defendant, which merely formalized constitutional requirements." The court explained,

[t]o be valid, a waiver should be voluntary, not just on its face, i.e., the paper it is written on, but *in fact*. It should be unequivocal and unassailable when the subject is a juvenile. The fact that the North Carolina legislature recently raised the age that juveniles can be questioned without the presence of a parent from age fourteen to age sixteen is evidence the legislature acknowledges juveniles' inability to fully and voluntarily waive essential constitutional and statutory rights.

Furthermore, the juvenile's request to call his mother immediately after signing the waiver stating that he was giving up his rights "shows enough uncertainty, enough

anxiety on the juvenile’s behalf, so as to call into question whether, under all the circumstances present in this case, the waiver was (unequivocally) valid.”

State v. Watson, __ N.C. App. __, 792 S.E.2d 171 (Oct. 18, 2016).

Held: Affirmed.

In an attempted robbery case, the trial court did not err by denying the 16-year-old defendant’s motion to suppress statements he made to a police officer outside the presence of his parent.

- **Invocation of Juvenile Rights.** After executing an arrest warrant, officers placed defendant in custody and transported him to a local precinct where he was interrogated by a police detective. Prior to interrogating defendant, the detective read defendant his *Miranda* and juvenile rights from a “Juvenile Waiver of Rights” form. The bottom of the form contained two separate checkboxes specifying either that the juvenile elected to answer questions: (1) in the presence of a lawyer, parent, guardian, or custodian, or (2) without a lawyer, parent, guardian, or custodian present. In the first checkbox, the detective filled in the name of defendant’s mother as the person who was present with defendant during the questioning. No blank spaces were filled in the second checkbox which contained the waiver of rights. The juvenile placed his initials beside each right listed on the form and next to the first checkbox, erroneously indicating that his mother was present. The appellate court found there was evidence to support the trial court’s findings of fact that defendant did not request the presence of his mother and that his initial beside the first checkbox was merely an error. These findings support the trial court’s conclusion that defendant did not invoke his right to have his mother present during questioning. The court also rejected defendant’s argument that the trial court erred by denying his motion to suppress because the detective failed to clarify an ambiguous invocation of his statutory right to have a parent present, as required by *State v. Saldierna*, __ N.C. App. __, 775 S.E.2d 326, *disc. review allowed*, 368 N.C. 356 (2015). Because the Court of Appeals’ decision in *Saldierna* was currently pending review by the N.C. Supreme Court pursuant to the state’s petition for discretionary review, the issue is still unsettled. Moreover, the court found that *Saldierna* is inapplicable because defendant did not make a statement, ambiguous or otherwise, invoking his right to have a parent present in this case.

In re T.K., __ N.C. App. __, 800 S.E.2d 463 (May 16, 2017).

Held: Vacated and Dismissed.

In a disorderly conduct case, the adjudication was reversed where the petition was not signed by a juvenile court counselor nor marked as “Approved for filing.”

- **Subject Matter Jurisdiction.** A petition alleging delinquency that does not include the signature of a juvenile court counselor (or other appropriate State representative) and the language “Approved for Filing” fails to invoke the trial court’s subject matter jurisdiction. The legislature, by enacting the Juvenile Code, imposed specific requirements that must be satisfied before a district court obtains jurisdiction in juvenile cases. G.S. 7B-1703(b) provides that before a juvenile petition alleging delinquency may be filed, it must contain the signature of a juvenile court counselor, the date, and the words “Approved for Filing.” No prior cases have addressed whether the signature and “Approved for Filing” language are prerequisites to jurisdiction in a delinquency case. However, the court held in *In re Green*, 67 N.C. App. 501 (1984), that the trial court

lacked subject matter jurisdiction over a petition alleging abuse and neglect where the petition was not signed and verified by the petitioner, as required by the Juvenile Code. Based upon this precedent, the petition in this case was fatally defective and failed to invoke subject matter jurisdiction. The court declined to extend the holding of *In re D.S.*, 364 N.C. 184 (2010), to recognize the noncompliance with the signature and “Approved for Filing” language as non-jurisdictional errors. *D.S.* held that the timelines imposed by G.S. 7B-1703(b) for filing a juvenile petition are not prerequisites to subject matter jurisdiction. However, extending *D.S.* in this context would conflict with a statutory purpose of the Juvenile Code – “to provide an effective system of intake services for the screening and evaluation of complaints.” G.S. 7B-1500. The court counselor’s signature and approval of the petition is the only indication on the face of a petition that a complaint was properly screened and evaluated.

- **Concurring Opinion.** The concurring opinion found that even if the petition was not fatally defective, the adjudication and disposition orders would need to be reversed because there was no evidence of disorderly conduct. The juvenile was the victim of an assault by another student who walked up to him and punched him the face as he stood in the hallway waiting for school to begin. The juvenile fell to the floor and unsuccessfully tried to stand as the other student kept punching him but threw one or two punches at his attacker before school officials broke up the fight. A behavioral specialist, who witnessed the entire incident, escorted the juvenile to his office and heard him utter “profanity” as they walked down the hallway. When he instructed the juvenile to stop “cursing,” he stopped. The adjudication of delinquency was based entirely on this use of “profanity.” However, there is no evidence that anyone other than the behavioral specialist heard the profanity or of the particular words the juvenile used. Disorderly conduct at school under G.S. 14-288.4(a)(6) requires both an intent to cause a disturbance and an actual disturbance of school instruction. Here, the juvenile’s “profanity” was a response to an attack by another student, not an intent to disturb the educational process, and no actual disturbance occurred. Moreover, both the adjudication and disposition orders failed to contain the necessary findings required by the Juvenile Code.

In re D.E.P., ___ N.C. App. ___, 796 S.E.2d 509 (Feb. 7, 2017).

The trial court was not required by G.S. 7B-2512 to make findings of fact that addressed each of the G.S. 7B-2501(c) factors and did not abuse its discretion in ordering a Level 3 commitment based on the juvenile’s repeated violations of probation.

Held: Affirmed.

- **Disposition Order Findings.** The court held that prior appellate decisions finding reversible error based on a trial court’s failure to make written findings on the G.S. 7B-2501(c) factors resulted from a mischaracterization of the holding in *In re Ferrell*, 162 N.C. App. 175 (2004), and subsequent repetition of this error. In *Ferrell*, the court set aside the portion of a disposition order that transferred custody of the juvenile from his mother to his father. The opinion in *Ferrell* cited the requirements of G.S. 7B-2501(c) and G.S. 7B-2512 in finding that the disposition order contained insufficient findings to support the transfer of custody. However, *Ferrell* did not involve any consideration of the court’s determination of the appropriate disposition level nor did it discuss the extent to which a disposition order must reference the factors set out in G.S. 7B-2501(c). Nonetheless, in a later published opinion, *In re V.M.*, 211 N.C. App. 389, 391-92 (2011),

the court reversed a disposition order, stating “we have previously held that the trial court is required to make findings demonstrating that it considered the [G.S.] 7B-2501(c) factors in a dispositional order[,]” and cited *Ferrell* as the relevant authority. The court noted that although this mischaracterization of *Ferrell* has been repeated in several cases, *Ferrell* did not actually decide the issue of the trial court’s duty to make findings referencing the G.S. 7B-2501(c) factors, nor did *V.M.* As a result, the court concluded that its decision does not overrule any decision of a prior panel of the Court of Appeals. Finally, although the trial court was not required to make written findings that referenced all of the factors in G.S. 7B-2501(c), the trial court’s findings indicated that it did in fact consider these factors.

- **Level 3 Commitment Order.** The trial court did not abuse its discretion in entering a Level 3 Disposition and Commitment Order where the evidence showed the juvenile had multiple probation violations, the trial court continued him on probation several times, and the trial court had warned the juvenile at his last probation violation hearing that if he failed to comply with probation again, he would be sent to training school.

In re S.A.A., __ N.C. App. __, 795 S.E.2d 602 (Dec. 20, 2016).

Held: Vacated in part and remanded.

In a simple assault and sexual battery case, the trial court erred by denying the juvenile’s motion to dismiss the sexual battery petitions for insufficient evidence of a sexual purpose. The 13-year-old juvenile was adjudicated delinquent for two counts each of simple assault and sexual battery for approaching two girls on Halloween night and draping his arms around their shoulders in order to rub a glowing liquid on their shirts. One of the girls testified the juvenile touched her “boobs” over her sweatshirt.

- **Issue Preservation.** The juvenile’s argument regarding the insufficiency of the evidence was not properly preserved because his attorney did not move to dismiss at the close of all the evidence. However, because the court concluded there was insufficient evidence to support the sexual battery adjudication, it invoked Rule 2 to review the merits of the appeal to prevent manifest injustice.
- **Sufficiency of the Evidence.** The state presented insufficient evidence that the juvenile touched the girls’ breasts for a sexual purpose. When children are involved, the purpose cannot be inferred from the act itself. There must be “evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting.” In this case, the juvenile was 13-years old, the girls were both 11, and all three attended the same middle school. The juvenile denied ever touching the girls’ breasts, which was corroborated by a witness. The incident occurred on a public street around numerous other juveniles who were trick or treating and acting “crazy,” as kids might be expected to do on Halloween night. Also, no evidence suggested that the juvenile made any remarks to the girls on that night or on previous occasions to suggest that he had a sexual motivation for touching them.