

# LEGISLATIVE AND CASELAW UPDATE

JUVENILE DEFENDER CONFERENCE  
AUGUST 20, 2021

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- Juvenile interrogation
- Referrals to the LME for interdisciplinary evaluation
- Accepting admissions
- Protecting against self-incrimination
- Sufficiency of petition alleging controlled substance offense
- Second-degree sexual offense, first-degree forcible sexual offense, and attempted larceny

**AGENDA**

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## CASE UPDATE

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Juvenile interrogation

Referrals to the LME for interdisciplinary evaluation

Accepting admissions

Protecting against self-incrimination

Sufficiency of petition alleging controlled substance offense

Second-degree sexual offense, first-degree forcible sexual offense, and attempted larceny

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**AGENDA**

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**IN THE MATTER OF D.A.H., 2021-NCCOA-135 (2021)**

**Did the questioning of the juvenile at school constitute a custodial interrogation?**

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**THE CIRCUMSTANCES**

- Principal and SRO (in uniform) are seated together on one side of the table
- Principal questions Deacon
- Deacon says he sold the marijuana
- Principal calls Deacon's guardian
- Guardian arrives
- Principal tells Deacon to tell guardian and Deacon repeats confession
- Motion to suppress confession filed

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**Was Deacon subjected to a custodial interrogation?**

Yes

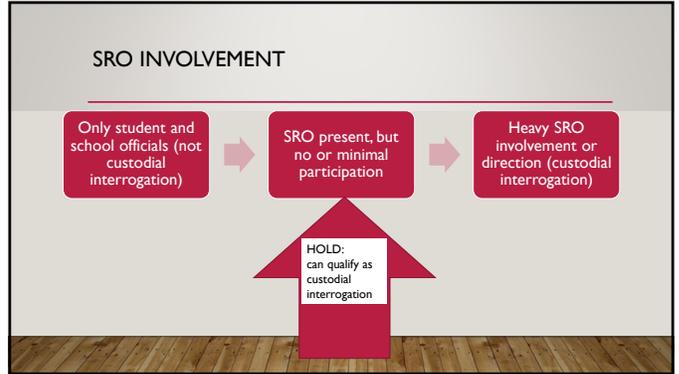
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“As the United States Supreme Court recognized in *J.D.B.*, the Fifth Amendment requires that minors under criminal investigation be protected against making coerced, inculpatory statements, even when—and perhaps, in some cases, particularly because—they are on school property. *J.D.B.*, 564 U.S. at 275. Increased cooperation between educators and law enforcement cannot allow the creation of situations where no *Miranda* warnings are required just because a student is on school property.” (¶ 35)

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- ### FACTORS MOST RELEVANT IN DETERMINING CUSTODY IN CONTEXT OF SCHOOLHOUSE INTERVIEW
- (1) traditional indicia of arrest;
  - (2) the location of the interview;
  - (3) the length of the interview;
  - (4) the student's age;
  - (5) what the student is told about the interview;
  - (6) the people present during the interview; and,
  - (7) the purposes of the questioning.

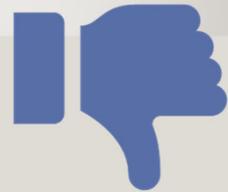
12

FACTORS MOST RELEVANT IN DETERMINING INTERROGATION  
IN CONTEXT OF SCHOOLHOUSE INTERVIEW

- (1) the nature of the questions asked (interrogative or mandatory);
- (2) the willingness of the juvenile's responses;
- (3) the extent of the SRO's involvement;

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WOULD A  
REASONABLE 13-  
YEAR-OLD HAVE  
FELT FREE TO LEAVE?



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WAS THE QUESTIONING OF A  
NATURE THAT THE TWO  
AUTHORITY FIGURES  
SHOULD HAVE KNOWN WAS  
LIKELY TO ELICIT AN  
INCRIMINATING RESPONSE?



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**Deacon's confession was the product of a  
custodial interrogation**

**Court erred in denying the motion to suppress**

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BUT...

**IN THE MATTER OF  
J.D.F.,  
2021-NCCOA-300  
(JULY 6, 2021)**

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**FACTS**

- 9-year-old (Mason) and 13-year-old (James) live together with Mason's mom (Ms. Elliott) who is James's aunt and the mom's partner (Mr. Mitchell)
- Ms. Elliott reports to police that Mason was the victim of sexual assault
- Mason tells police that James asked Mason to perform oral sex on him
- 12 days later, Mr. Mitchell brings James to the Iredell County Sheriff's Department to speak with a detective

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**THE INTERVIEW**

- In an interview room at the Sheriff's Department
  - Has a window to allow for observation
  - Is outfitted with video equipment and the interview was recorded
- Interview conducted by an armed detective
- Mr. Mitchell was present in the room
- Lasted about 50 minutes
- No use of restraints and James was not searched
- No *Miranda* warnings were given
- James was repeatedly told he would leave with Mr. Mitchell no matter what he said

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**THE CONFESSION**

- After being told that he was being given his last opportunity to tell the truth, James admitted to sexual contact with Mason, including that Mason kept bringing it up and that the contact lasted about 20 seconds
- James wrote and signed a statement, including that the statement was voluntary
- James files motion to suppress the statement because:
  - His statements were the product of a custodial interrogation and he did not receive *Miranda* warnings or the added protections of G.S. 7B-2101
  - His statements were not voluntary

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**CUSTODY ANALYSIS**

- The trial court's determination that James was not in custody was likely proper, given that
  - he was not restrained during the interview,
  - was not searched,
  - the interview lasted approximately 50 minutes,
  - he was not transported in a law enforcement vehicle, and
  - he was told multiple times he would be going home at the end of the interview

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**EXCEPT THAT**

- totality of the circumstances test for a juvenile must include consideration of the juvenile's age
- the passing mention of James's age was not sufficient to say that the trial court properly considered James's age
- trial court erred in concluding that James was not in custody
- remanded for a new suppression hearing with instructions to consider James's age.

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**VOLUNTARINESS**

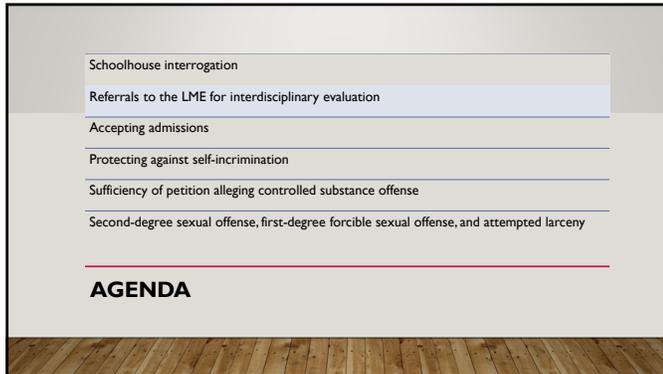
- James knew and understood the action he was taking despite his inexperience because he indicated on his signed confession that his statement was given voluntarily
- statements that "I just believe you're not telling me the whole truth, and I think you're holding back . . ." and "I'm giving you an opportunity, and it's your last opportunity, and I'm telling you that this is your last opportunity to be truthful" do not rise to the level of coercion and do not render the subsequent confession involuntary
- No error in finding the confession voluntary

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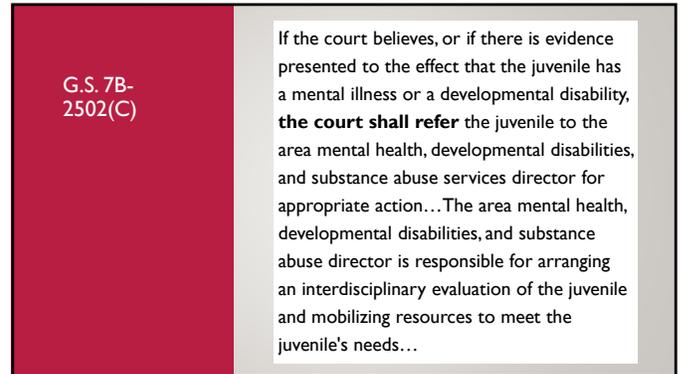


**HOW DO YOU RECONCILE J.D.F. WITH D.A.H.?**

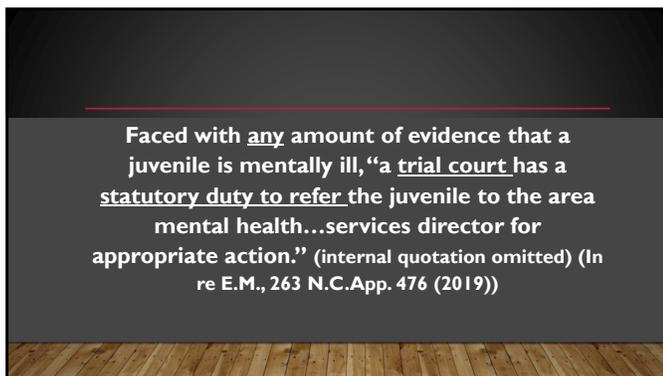
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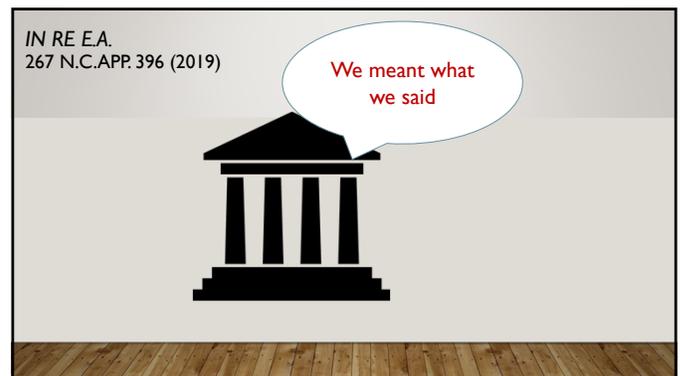
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**PLUS...**

*In re A.L.B., 849 S.E.2d 352 (2020)*

- LME testified at hearing, but did not have a recent clinical assessment
- Trial court failed to abide by mandate in 7B-2502(c)
- Trial court did not have opportunity to weigh a mental health clinician's reasoning behind a Level Five PRTF recommendation against the YDC recommendation
- An assessment that is 1 year old is too old – "a year is not insignificant in the mental development of an adolescent."

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**Is it sufficient to provide the court with an assessment completed six days prior to disposition by a provider that contracts with the LME?**

Yes

No

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**IN RE K.M., 854 S.E.2D 453 (2021)**

- Adjudicated for first-degree statutory sex offense and second-degree forcible sex offense
- Placed at a YDC until group home placement available and then moved to group home
- Motion to "review community commitment status"
- Review hearing
- JCC recommended return to YDC
- Revoked community commitment and returned to YDC

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**TRIAL COURT RECORD OF MENTAL HEALTH ISSUES**

- Risk and needs assessment
- Level III placement provider report with an addendum from a therapist
- Report from Rehabilitative Support Services (provider for the LME)
- Testimony from social worker, staff member from Level III group home, and juvenile's mom

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- Trial court erred by entering a new dispositional order without first referring the juvenile to the LME
- Referral is required regardless of whether the juvenile received mental health services prior to disposition

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**Is it sufficient if there is a recent CCA and the court did not make a referral to the LME?**

Yes

No

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**IN RE S.M., JR.**  
**2021-NCCOA-156**  
**(2021)**  
**(UNPUBLISHED)**

- CCA by Thompson Juvenile Court Assessment Program
  - Unspecified disruptive, impulse-control, and conduct disorder
  - Other specified trauma and stressor-related disorder
  - mild cannabis use disorder
- Subsequent predisposition report stating need for substance abuse treatment and mental health assessment
- Court had a statutory duty to refer to the LME
- Juvenile in this case did not receive the benefit of the area director's recommendation and involvement in the disposition
- Trial court erred in failing to refer the juvenile to the area mental health services director after it was presented with evidence of the juvenile's mental illness.

\* Temporary stay has been issued by the Supreme Court

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**AGENDA**

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**G.S. 7B-2407**

(a) The court may accept an admission from a juvenile *only after first addressing the juvenile personally* and:

- (1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile;
- (2) Determining that the juvenile understands the nature of the charge;
- (3) Informing the juvenile that the juvenile has a right to deny the allegations;
- (4) Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;
- (5) Determining that the juvenile is satisfied with the juvenile's representation; and
- (6) Informing the juvenile of the most restrictive disposition on the charge.

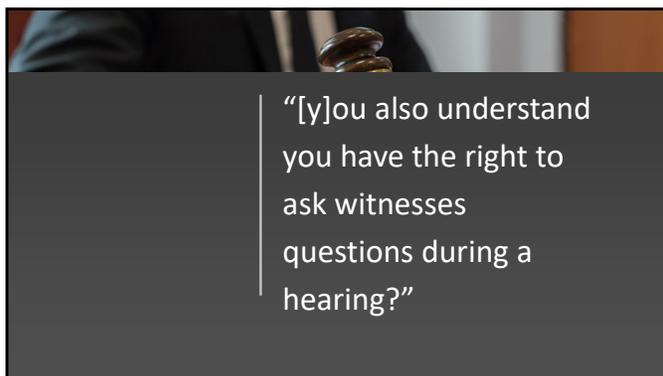
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**AOC-J-410**

The above-named juvenile, having offered an  admission  admission pursuant to Alford decision, and being first duly sworn, gives the following answers:

	Answers
1. Are you able to hear and understand me?	(1) _____
2. Do you understand that in a hearing you have the right to not say anything about your charge(s) and that any statement you make may be used as evidence against you?	(2) _____
3. What is the last grade you completed in school?	(3) _____
4. (a) Are you now using or consuming alcohol, drugs, medications, or any other substances?	(4a) _____
(b) When was the last time you used any alcohol, drugs or medicine?	(4b) _____
(c) Do you believe your mind is clear and do you understand what you are doing in this hearing?	(4c) _____
5. (a) Have the charges been explained to you by your lawyer?	(5a) _____
(b) Do you understand what the charge(s) are?	(5b) _____
(c) Do you understand every part of each charge?	(5c) _____
6. (a) Have you and your lawyer discussed the possible reasons why you might not be responsible for the charges?	(6a) _____
(b) Are you satisfied with your lawyer's help in your case?	(6b) _____
7. (a) Do you understand that you have the right to deny the charges?	(7a) _____
(b) Do you understand that you have the right to have your case heard by a judge in Juvenile Court?	(7b) _____
(c) Do you understand that if your case is heard by a judge, you have the right to ask witnesses questions during the hearing?	(7c) _____
(d) Do you understand that if you sign this admission, you give up these rights and other important constitutional rights related to a hearing in this court?	(7d) _____
8. Do you understand that you are admitting the following charge(s)?	(8) _____

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“[y]ou also understand you have the right to ask witnesses questions during a hearing?”

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“The statute does not require the exact statutory language to be used during the colloquy, but rather requires the court to orally and clearly inform the juvenile of his rights”

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In the Matter of N.L.G., 2021-NCCOA  
247 (June 1, 2021) (UNPUBLISHED)

BUT SEE ALSO...

The court's acceptance of the juvenile's admission without making any of the inquiries and statements required by G.S. 7B-2407 is reversible error.

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### ADDITIONAL ISSUES IN W.M.C.M.

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Adjudication Order

"BASED UPON THE JUVENILE'S ADMISSION AND THE EVIDENCE PRESENTED BY THE DA, THE COURT FINDS BEYOND A REASONABLE DOUBT THAT THE JUVENILE[] IS ADJUDICATED DELINQUENT."

- ✓ written
- ✓ indicated the date of the offenses.
- ✓ the felony classification of the offenses.
- ✓ date of adjudication
- ✓ contained factual findings
- ✓ affirmative admission of responsibility to the charges

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### ADDITIONAL ISSUES IN W.M.C.M.

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Disposition Order

- ✓ overwhelming evidence in written findings
- ✓ appropriate findings of fact which illustrate the failures of the less restrictive placements and methods
- ✓ Walter's need for commitment

G.S. 7B-2501(c) – five factors were addressed

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### AGENDA

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## THE COURT'S OBLIGATION

G.S. 7B-2405(4) :

In the adjudicatory hearing, the court **shall** protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law:

- (1) The right to written notice of the facts alleged in the petition;
- (2) The right to counsel;
- (3) The right to confront and cross-examine witnesses;
- (4) **The privilege against self-incrimination;**
- (5) The right of discovery; and
- (6) All rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.

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IN THE MATTER OF  
A.L.P.,  
2021-NCCOA-244  
(JUNE 1, 2021)  
(UNPUBLISHED)

The court's failure to engage in a colloquy with the juvenile to ensure that the juvenile understands this constitutional right is error.

His testimony formed the basis of and corroborated the assault charge – was prejudicial

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**AGENDA**

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Does a petition alleging a juvenile delivered "1 orange pill believed/told to be Adderall" adequately allege a controlled substance offense?

Yes

No

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## JUVENILE PETITIONS

In the Matter of J.S.G., 2021-NCCOA-40

- serve essentially the same function as criminal indictments
- are subject to the same requirement that they aver every element of a criminal offense, with sufficient specificity that clearly apprises the juvenile of the charged conduct
- a fatally deficient petition fails to evoke the jurisdiction of the court



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## POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE, SELL, OR DELIVER

Three elements:

- (1) possession of a substance;
- (2) the substance **must be a controlled substance**; and
- (3) there must be intent to sell or distribute the controlled substance

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“Ultimately, this indictment fails to “set forth a plain and concise factual statement . . . with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation” as it is unclear whether a controlled substance was involved at all.”

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- Schoolhouse interrogation
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**AGENDA**

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### IN THE MATTER OF J.D., 376 N.C. 148 (2020)

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#### Second-degree sexual exploitation of a minor

- Based on acting in concert
- Requires common plan or purpose
- Insufficient evidence: evidence tended to show that J.D. did not want to be recorded, as he told Dan he didn't want it recorded. If the hand gesture at the end of the video was a thumbs up, evidence of acting in concert requires more than mere approval

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### IN THE MATTER OF J.D., 376 N.C. 148 (2020)

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#### First-degree forcible sexual offense

- requires penetration, however slight
- victim unambiguously testified that penetration did not occur
- statements of the other children who were present and the video footage only suggest that penetration could have occurred.
- not enough to overcome the victim's testimony regarding lack of penetration

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### IN THE MATTER OF J.D., 376 N.C. 148 (2020)

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#### Attempted larceny

- presence at the crime scene coupled with the juvenile's possession of tools used to commit the crime was sufficient evidence for the trial court to accept his transcript of admission
- initial disposition was based on the adjudications that are now vacated
- cannot be remanded for a new disposition based on adjudication of this offenses because the juvenile turned 18 and there is therefore no longer juvenile jurisdiction in the matter

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## LEGISLATIVE UPDATE

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**S.L. 2021-47 (S. 255) G.S. 7A-49.6. PROCEEDINGS CONDUCTED BY AUDIO AND VIDEO TRANSMISSION**

Authorizes proceedings by audio and video transmission when parties, the presiding official, and any other participants can see and hear each other

Must safeguard constitutional rights and preserve the integrity of the judicial process

Full and confidential communication between parties and their attorneys

Civil proceedings: parties must show **good cause** not to proceed by audio and video transmission

When the right to confront witnesses or be present is implicated, the juvenile must provide a **knowing, intelligent, and voluntary waiver** of rights to proceed remotely

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**PENDING LEGISLATION**

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**S. 207**

Juvenile Jurisdiction  
Advisory  
Committee  
Recommendations

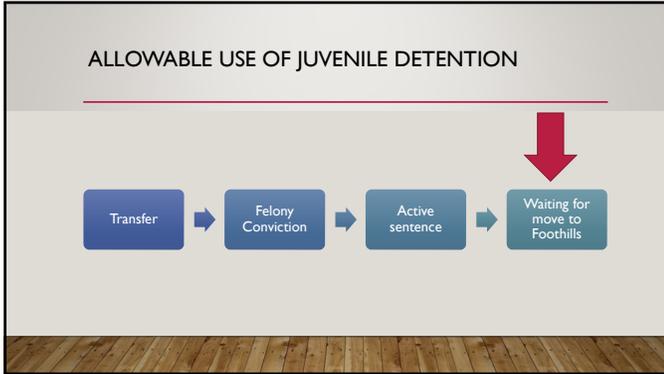
*E.M.* changes

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**EXTENDED COMMITMENTS**

Age at offense	Offense type	Commitment to age
Any	first degree murder, first-degree forcible rape, first-degree statutory rape pursuant, first-degree forcible sexual offense, or first-degree statutory sexual offense	21
Under 16	Other B1 - E	19
16	Other B1 - E	20
17	Other B1 - E	21

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### PROSECUTORIAL DISCRETION ON MANDATORY TRANSFER OF CLASS D – G FELONIES

- Can decline to transfer
- Can change mind any time before adjudication

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### MINIMUM AGE

Age at Offense	Delinquency Jurisdiction	Undisciplined Jurisdiction
Under 8	No	No
8 or 9	A – G felonies, previous delinquency adjudication	No
10 - 15	All crimes or infractions, indirect contempt by a juvenile	Yes
16 or 17	All crimes or infractions other than Chapter 20 offenses, indirect contempt by a juvenile	Yes – other than unlawful absence from school

NOTE: once an adult, always an adult. provisions in G.S. 7B-1604(b) apply in all instances

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**VULNERABLE JUVENILE: 6, 7, 8, OR 9 WHO COMMITS A CRIME OR INFRACTION AND IS NOT A DELINQUENT JUVENILE**

- Juvenile consultation for a vulnerable juvenile:
  - up to 6 months, with possible 3-month extension;
  - juvenile court counselor provides case management (screenings, assessments, community resources, and programming to the juvenile and the parent, legal guardian, or custodian)
  - court counselor must work with the juvenile and family team – Parent, guardian or custodian, DSS, LME or managed care organization, LEA, and all other community stakeholders involved with the juvenile and family
  - refusal to follow recommendations of the juvenile and family team added as a ground for neglect

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**G.S. 7B-2502...E.M.**

- If suspected mental illness or developmental or intellectual disability
- Must order CCA or equivalent unless one was done within 45 days of adjudication hearing
- If severe emotional disturbance, developmental or intellectual disability, must order JJ to convene a care review team
- Care review team must submit a recommendation to the court within 30 days

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**Contact Information**

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