



UNC  
SCHOOL OF GOVERNMENT

## **2019 Juvenile Defender Conference**

August 9, 2019 / Chapel Hill, NC

Sponsored by the

The University of North Carolina School of Government and  
Office of Indigent Defense Services

# **ELECTRONIC COURSE MATERIALS**



## 2019 Juvenile Defender Conference Capacity

August 9, 2019/ Chapel Hill, NC

*Cosponsored by the UNC-Chapel Hill School of Government  
& Office of Indigent Defense Services*

### AGENDA

- |                |  |
|----------------|--|
| 8:00 to 8:45am | Check-in   |
| 8:45 to 9:00   | <b>Welcome</b><br><i>John Rubin, Albert Coates Professor</i><br>UNC School of Government, Chapel Hill, NC  |
| 9:00 to 10:00  | <b>Digital Evidence (<i>satisfies technology requirement</i>) [60 min]</b><br><i>Jonathan Holbrook, Prosecutor Educator</i><br>UNC School of Government, Chapel Hill, NC   |
| 10:00 to 11:00 | <b>Juvenile Capacity [60 min]</b><br><i>Lyana Hunter, Assistant Public Defender, Wilmington, NC</i><br><i>Alexis Perkins, Assistant Public Defender, Wilmington, NC</i>  |
| 11:00 to 11:15 | Break  |
| 11:15 to 12:15 | <b>Raise the Age Nuts and Bolts [60 min]</b><br><i>Jacquelyn Greene, Assistant Professor</i><br>UNC School of Government, Chapel Hill, NC<br><i>Eric Zogry, Juvenile Defender</i><br>Office of the Juvenile Defender, Raleigh, NC            |
| 12:15 to 1:00  | Lunch ( <i>provided in building</i> ) *  |
| 1:00 to 2:15   | <b>Capacity Evaluation [60 min]</b><br><i>Maureen L. Reardon, Ph.D., Clinical and Forensic Psychologist</i><br>Raleigh, NC   |
| 2:15 to 3:15   | <b>Case Law &amp; Legislative Update [60 min]</b><br><i>Jacquelyn Greene, Assistant Professor</i><br>UNC School of Government, Chapel Hill, NC   |
| 3:15 to 3:30   | Break ( <i>light snack provided</i> )  |
| 3:30 to 4:30   | <b>My Client is Not Capable of Proceeding: Now What? [60 min]</b><br><i>Kristen Todd, Special Counsel</i><br>Office of Special Counsel, Raleigh, NC<br><i>Laura Anderson, Staff Attorney</i><br>Council for Children's Rights, Charlotte, NC |

**CLE HOURS: 6** (Includes 1 hour of technology)

\* IDS employees may not claim reimbursement for lunch

# Demystifying Digital Evidence

Jonathan Holbrook  
UNC School of Government  
August 9, 2019

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## So Useful...



**Warrant: Suspects called Lyft to leave Raleigh homicide scene**  
Posted: 9:57 am yesterday

RALEIGH, N.C. - Two men charged in a recent Raleigh homicide called a ride-share service to leave the scene of the crime, according to a new search warrant in the case.

Messages (214) 513-3764  
Sep 30, 2015, 11:22 AM

Hey ugly slut  
Ur so fugly kill urself  
You think u can find out who I am because that's pathetic. I am many because we are a group and a union of people who dislike u. U r pathetic  
I'm pretty sure ur going to hell. God doesn't like sluts. U need to be cleaned

Sep 30, 2015, 11:47 AM

Jacob Cox-Brown  
2 hours ago · 48

Drivin drunk... classic ;) but to whoever's vehicle I hit I am sorry. :P

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## Don't Complicate It!



How would you approach this evidence if it wasn't digital?

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### Vague Objections "or whatever..."

"...I don't know if there has been, um, what would need to be done to trace this back to a particular IP address or whatever at this time. So, I think authentication would certainly be an issue that we would raise..."

- *State v. Ford*, 245 N.C. App. 510 (2016)

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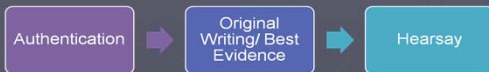
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### Objections: What the Other Side is *Trying* to Say

1) Issues with getting the evidence admitted:



2) And in some cases: *Expert or Lay Opinion?*

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### Issue #1: Authentication

- ▶ Authentication is identification
  - N.C. R. Evid. 901(a) ("The requirement of authentication or identification . . . is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.")
- ▶ Authentication is "a special aspect of relevancy"
  - Adv. Comm. Note, N.C. R. Evid. 901(a)
- ▶ Authentication is a low hurdle
  - *State v. Ford*, 245 N.C. App. 510 (2016)
  - "burden to authenticate . . . is not high – only a prima facie showing is required"

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## How Do You Authenticate?

► Rule 901(b) gives examples:

(1) Testimony of a witness with knowledge:  
*Testimony that a matter is what it is claimed to be.*

(4) Distinctive characteristics and the like:  
*Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.*

(9) Process or system: *evidence describing process/system used to produce a result, and evidence that the results are accurate.*

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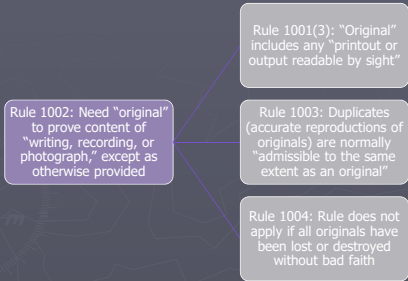
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## Issue #2: Original Writing/Best Evidence



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## Issue #3: Hearsay

► Common ways of avoiding hearsay bar

- Admission of a party opponent
- Business records
- Non-hearsay
- Co-conspirator statement
- Adopted statement



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### Issue #4: Expert Testimony

► Lay Witness

- Rule 701: for non-experts, testimony "in the form of opinions or inferences is limited to those opinions which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding" of testimony/fact in issue.

► Expert Witness

- Rule 702(a): "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue..." qualified witness may testify by opinion

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### 3 Basic Types:

► On a Server

- *Phone records, transaction logs*

► In your Hands

- *Hard drive from the house, emails on a phone*

► In the Wild

- *Social media posts, incoming texts*

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### Example #1 - On a Server



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## #1A - Cell Phone Records

- ▶ Authentication?
  - Testimony from records custodian/service provider
  - With an affidavit from the provider [Rule 803(6)]
  - Without an affidavit, based on characteristics (?)
- ▶ Original Writing?
  - Printout is an original [Rule 1001(3)]
- ▶ Hearsay?
  - Exception for business records
  - Just make sure affidavit meets requirements of "testimony from the custodian or other qualified witness"




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## Illustrative Cases

- ▶ *State v. Crawley*, 217 N.C. App. 509 (2011)
  - Cell phone records authenticated by Sprint/Nextel employee, said they were generally accurate, made at/near the time, etc., even though he had only limited knowledge of details and process of recording
  - Court: good enough, together with the circumstances it satisfies the business records exception "and any question of credibility is left to the jury"
- ▶ *State v. Wilkerson*, 363 N.C. 382 (2009)
  - Trial court allowed police report into evidence, containing phone number provided by another arrestee – used that as evidence to link defendant to arrestee's phone records
  - Court: error because that phone number was inadmissible hearsay (but harmless error, since number was also established other ways such as records and live witnesses)

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## Lay Witness Testimony About Phone Location?

- ▶ *State v. Perry*, 243 N.C. App. 156 (2015)
  - Officer permitted to testify about using historical phone location data to track/surveil defendant
- ▶ *State v. Barnes*, 183 N.C. App. 300 (2007)
  - Engineer (but not an expert) from phone company permitted to testify about time and location of calls defendant made to victim, based on records




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### #1B - GPS Tracker Data

- ▶ Authentication?
  - Testimony from user about how the system works
  - Affidavit/testimony from provider/records custodian
- ▶ Original Writing?
  - Arguably not a writing
  - If a writing, printout is an original [Rule 1001(3)]
- ▶ Hearsay?
  - Business records
  - Raw data = not hearsay




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### Illustrative Cases

- ▶ *State v. Jackson*, 229 N.C. App. 644 (2013)
  - Ankle bracelet, tracked D's movements, movement and data points plotted out as a video, which was admitted in court
  - Admissible as business record, officer permitted to testify as lay witness based on his knowledge of system, collection of data, and perception of the tracking data
- ▶ *State v. Brown*, 818 S.E.2d 735 (S.C. 2018)
  - Probation officer testified that GPS records were accurate because "we use it in court all the time"
  - Not good enough - failed to lay sufficient foundation to admit evidence

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### #2 – In your hand




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## #2A - Hard Drive: Incriminating Photos

- ▶ Authentication?
  - Testimony about how evidence was obtained
  - Testimony about how evidence was preserved
- ▶ Original Writing?
  - USB-drive copy = duplicate [Rule 1003]
  - Printout = an original [Rule 1001(3)]
- ▶ Hearsay?
  - Pictures aren't "statements" so they aren't hearsay



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## Illustrative Case

- ▶ *State v. Riffe*, 191 N.C. App. 86 (2008)
  - Serving an unrelated search warrant, cops seize computer, find child porn on it – issues are:
    - ▶ (a) how do we know this was the defendant's computer; and even if it is,
    - ▶ (b) how do we know he was aware of contents?

### Court:

- (a) Found at his office, registered to him, papers and receipts with his name/signature found at same desk where the computer was;
- (b) File names such as "child porn – very illegal," pretty good indicator of the content...

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## #2B - Texts on a Phone

- ▶ Authentication?
  - Testimony/evidence showing it is his/her phone
  - Testimony/evidence confirming the texts came from that phone
  - Witness who can confirm/corroborate the texts
- ▶ Original Writing?
  - Printout is an original [Rule 1001(3)]
  - Duplicate, no reason to doubt accuracy [Rule 1003]
- ▶ Hearsay?
  - Statement of party opponent
  - Coconspirator's statement
  - Adopted statements



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### Illustrative Cases

► *State v. Gray*, 234 N.C. App. 197 (2014)

- Texts authenticated by testimony from officer who “took pictures of text messages on [the defendant’s] phone while searching it incident to [the defendant’s] arrest” and testimony from the co-defendant who was involved in the text message exchange.
- Court of Appeals rejected the defendant’s argument that a cell phone company “employee’s testimony” was necessary for authentication

► *State v. Lukowitsch*, 230 N.C. App. 145 (2013) (unpublished)

- Trial court excluded a “printout” of text messages, no records custodian affidavit or other authenticating testimony
- “[T]rial court properly excluded the content of the text messages because defendant failed to present any evidence to authenticate the text messages as having been sent by Longoria.”

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### #3 – In the wild




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### How Can the Party Authenticate It?

“[T]he novel question regarding the admissibility of web-based evidence . . . is going to be authentication. . . . [M]ost of the rest of the evidentiary problems are the common problems lawyers face all the time.”

- G. Michael Fenner, [The Admissibility of Web-Based Evidence](#), 47 Creighton L. Rev. 63 (2013)

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## It May Not Be What It Seems

"[B]ecause anyone can create a fictitious account and masquerade under another person's name or can gain access to another's account by obtaining the user's username and password," authenticating social media postings presents "significant challenges" and requires "greater scrutiny."

- *Griffin v. State*, 19 A.3d 415 (Md. Ct. App. 2011)

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## Authenticating Digital Content Was Becoming Burdensome...



- ▶ *State v. Taylor*, 178 N.C. App. 395 (2006)
- ▶ Transcripts of text messages properly authenticated through Nextel employees

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## But It Shouldn't Be That Hard!

### Means not available with electronic evidence

- ▶ Witness identifies handwriting as the author's
  - N.C. R. Evid. 901(b)(2)
- ▶ Witness identifies signature as the author's
  - *State v. Alston*, 341 N.C. 198 (1995)

### Means still available with electronic evidence

- ▶ Author admits writing letter
  - *U.S. v. Landron*, 696 F.3d 62 (1st Cir. 2012)
- ▶ Witness saw author write letter
  - *Id.*
- ▶ Evidence about contents, terms and nicknames used, and originating/return address
  - *State v. Young*, 186 N.C. App. 343 (2007)
- ▶ Evidence that letter was in reply to a communication from witness
  - *Bradley v. Pope*, 42 N.C. App. 285 (1979)

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### Other Ways to Authenticate Texts/Posts/Communications

- ▶ Purported author acknowledges authorship of communication
- ▶ Witness testifies that purported author is the author of the communication
- ▶ Purported author acknowledges ownership of originating account
- ▶ Account name contains purported author's name
- ▶ Account profile contains picture of purported author
- ▶ Account profile contains identifying data associated with purported author (DOB, physical address, etc.)
- ▶ Account has been used by purported author in the past
- ▶ Purported author has had exclusive control of account in the past
- ▶ Account was created on purported author's device or from purported author's home
- ▶ Account has been accessed on purported author's device or from purported author's home
- ▶ When the communication was sent, account was accessed on purported author's device or from purported author's home
- ▶ Communication contains words, phrases, or signature characteristic of purported author
- ▶ Communication concerns events only known to, or of special interest to, purported author
- ▶ Communication is connected in time or content to other communications clearly written by purported author
- ▶ Timing of communication connects to events in life of purported author

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### Top Methods of Authenticating Posts/Texts/Emails/Etc.

- ▶ **Testimony of a witness with knowledge [901(b)(1)]**
  - ▶ Author admits writing the communication
  - ▶ Witness testifies to seeing the author write the communication
- ▶ **Distinctive characteristics [901(b)(4)]**
  - ▶ Name or "signature" alone probably not enough to authenticate
  - ▶ Ownership of originating account is significant support for authentication
  - ▶ Combining account/phone number ownership with other circumstantial evidence

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### #3A - Facebook Post: "And they say crime doesn't pay..."

- ▶ Authentication?
  - Name on account
  - Content of pictures and updates on account
  - Timing and content of post in relation to crime
- ▶ Original Writing?
  - Printout is an original [Rule 1001(3)]
- ▶ Hearsay?
  - Party opponent
  - Other exceptions?




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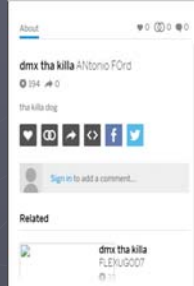
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### It Works!

*State v. Ford*, 245 N.C. App. 510 (2016)

Screenshots of social media postings were authenticated based on the fact that the account contained "content unique to [the] defendant" including pictures of the defendant, pictures of the defendant's dog, and the defendant's nickname.



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### Illustrative Case

► *State v. Fulghum*, \_\_\_ N.C. App. \_\_\_, 812 S.E.2d 415 (2018) (unpublished)

- Videos of intentional car wrecks posted online, other crash videos found on Def's car camera and computer
- Detective trained in digital forensics matched some videos, but also recognized defendant's voice in other posted videos, and online profile is under Def's name
- Court: cites *Ford*, "We conclude that this testimony established a sufficient foundation for the admission of the videos and photographs depicting other collisions in which defendant was involved."

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### #3B - Screenshot of a Text/Email: "this is ur fault – u are so ded"

- Authentication?
  - Originating phone number/account
  - Timing of the message
  - Content of the message re: prior confrontation
- Original Writing?
  - Duplicate, no reason to doubt accuracy [Rule 1003]
- Hearsay?
  - Statement of party opponent
  - Verbal act (threat)?



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### Illustrative Cases

- ▶ *State v. Wilkerson*, 223 N.C. App. 1195 (2012):
  - Circumstantial evidence showed Def. sent the texts
  - Authenticated by witness who saw him driving and texting in area at the time of crime, got tag number, Def. had phone on him when arrested, messages referenced stolen items
- ▶ *State v. Allen*, \_\_\_ N.C. App. \_\_\_, 793 S.E.2d 294 (2016) (unpublished):
  - Def. stole from her ex-boyfriend's parents, ex texted her about it, Def. admitted crime in texts, ex was only witness who authenticated texts at trial
  - Court: (i) messages came off ex-boyfriend's phone; (ii) they've texted each other many times; (iii) at this same phone number; (iv) never been anyone else on that number; and (v) distinctive text characteristics, such as references to gifts and family members = authenticated and admitted.

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### Key Point to Remember:

The main challenge is authentication... which doesn't have to be challenging.

On a <u>S</u> erver?	Show <u>S</u> ource
In your <u>H</u> ands?	Show <u>H</u> ow
In the <u>W</u> ild?	Show <u>W</u> ho

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### Demystifying Digital Evidence

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 (919) 962-0942

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# JUVENILE CAPACITY

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Lyana G. Hunter, Esq.  
Assistant Public Defenders, New Hanover County

## DEFINITIONS CAPACITY VS COMPETENCY

- Competency is a legal finding. A court determines whether a juvenile is competent based on capacity as well as any number of additional factors presented by counsel, the child, the parent, court counselors, service providers or on his own evaluation.
- Capacity refers to the inability of a child to understand the effect of their actions.
  - Under G.S. 15A-1001(a), a defendant lacks capacity to proceed if, by reason of mental illness or defect, he or she is unable to: understand the nature and object of the proceedings; comprehend his or her situation in reference to the proceedings; or assist in his or her defense in a rational or reasonable manner.

## SO YOU HAVE A CONCERN?

- Client may seem glazed over, non responsive to your introductions/explanations
- Client admits to not understanding purpose for being brought to court, doesn't understand charges, doesn't understand consequences
- Client doesn't seem to track what you're saying
- Client seems to nod in agreement with everything you say, but parents assure you that he/she does not understand
- Prior evaluations for capacity
- Prior finding of lack of competence

## YOUR DUTY

- Concern for capacity may arise at any time...not limited to pre-adjudication stage
- Inform client and parent of your concerns about the client's capacity
- Report to the Court that you believe your client lacks capacity
- Request leave of the Court to have your client evaluated by a local forensic evaluator or by forensic evaluators at Central Regional Hospital whichever you deem more appropriate for your case



## YOUR DUTY

- What if client is not in support of being evaluated?
  - Try to consult client before bringing concern before the court. See if client will consent to request.
    - N.C. STATE BAR REV'D RULES OF PROF'L CONDUCT R. 1.14(a) state "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."
  - 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) states 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?

## 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?

## WHAT'S THE PROCESS?

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

STATE OF NORTH CAROLINA  
In The Superior Court of Justice  
County: \_\_\_\_\_  
WRITING AND CHECKING APPOINTMENT, LOCAL FORENSIC EVALUATOR, FORENSIC EVALUATOR, #16-000001-1 (Revised 01-15-2016), #16-000001-1 (Revised 01-15-2016)

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SECTION 10: WRITING AND CHECKING APPOINTMENT, CENTRAL REGIONAL HOSPITAL, CENTRAL REGIONAL HOSPITAL, #16-000001-1 (Revised 01-15-2016), #16-000001-1 (Revised 01-15-2016)

## WHAT'S THE PROCESS?

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

Sample – New Hanover County

## WHAT'S THE PROCESS?

Preparation of Court Order to Present for Pretrial

**MOTION & ORDER**

1. Use Form AOC-CR-200B.
2. Make sure that form is filled out completely.
  - a. Under findings, items 1, 2, and 4 should be checked.
  - b. Under order, items 1 and 2 should be checked.
3. Order signed by judge.
4. Order signed by DA.
5. Order checked in and certified copies made.
6. A certified copy is given to the entity providing transportation.

**NOTICE**

- 1.) Notice to Central Regional. Fax cover sheet and signed order, front and back to, ATT: Cheri Terry (Fax: 919-764-5012, Phone: 919-764-5009.)
- 2.) Fax cover sheet must have attorney's name and number.
- 3.) Fax cover sheet must have appropriate transportation contact information.
- 4.) Fax cover sheet should have juvenile's DOB and SSN if available.
- 2.) Notice District Attorney's Office.
- 3.) If you have not been contacted within 5 business days for the time and date of the appointment (call: 919-764-5009) and ask for the Forensic Evaluation Coordinator to inquire.

**TRANSPORTATION**

- 1.) If child is out of custody, guardian should transport child to Central Regional.
  - a.) If guardian is unable to transport, contact the court counselor at 910-341-7400. They will be able to transport the child on a case by case basis.
  - b.) If court counselor is unable to transport, the following steps will need to be taken for the jail to transport. Please note, parent or guardian cannot ride with child if using the jail for transport.
    - i. Fax Order to Home with instructions that the jail will transport.
    - ii. Fax order to: At: Cpl Taylor (Fax: 919-768-4254). Let him know on the fax cover sheet, or by calling transportation, that the juvenile is not in custody, and does not have a ride.
    - iii. Give the jail the time and date of the appointment when it is made available.
    - iv. Parent or guardian must bring the juvenile to the front desk of

i. the jail the day of the appointment at least 2 and a half hours in advance.

- 1.) If child is in custody, fax order to court services, ATT: Stephanie Moore (Fax: 919-341-7494.) Court services will be given the appointment time and notify Juvenile Detention when they are going to pick up the juvenile for transportation to Home.

**\*\*Important note- An adult may need to be present in addition to the evaluator at the evaluation. This remark is a case by case basis. You can call Home at: (919-764-5009) to inquire.\*\***

## WHO, WHAT, WHEN, WHERE, AND HOW?

- *Prepping the Evaluator*
  - Specify your concerns
    - What did you observe?
    - What is the Judge/ADA looking for?
  - Provide supporting documentation
    - School records (IEP, Special Accommodations, etc.)
    - Medical records
    - Prior Assessments
    - IQ assessment
    - Family contact/history

## WHO, WHAT, WHEN, WHERE, AND HOW?

- *Preparing the child and family*
  - Confidentiality
    - Evaluations are generally shared with Judge, ADA, and Court Counselors
    - Be truthful
  - Explain potential outcomes
    - Possibility of IVC
  - 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?

## POTENTIAL OUTCOMES

- *CAPABLE – Per Evaluation*
  - Challenge – Defense believes that child is not capable/disagrees with eval
    - Ask to reevaluate, use different evaluator
    - Request hearing – call expert, family, providers, court counselor, school witnesses to make argument that child lacks capacity.
  - No challenge – Defense and family agree with evaluation or choose not to challenge
    - Proceed with admission or adjudication hearing
- *NOT CAPABLE – Per Evaluation*
  - ADA/Court may challenge
    - Prepare to defend evaluation
    - Bring in expert, other witnesses to assist

## POTENTIAL OUTCOMES

- *FINAL RESULT – NOT CAPABLE PER COURT*
  - VIOLENT VS NON VIOLENT OFFENSE
    - Non-violent offense—may result in dismissal of charges
      - Status of the child/home life may be a factor
    - Violent offense – Court may order IVC for rehabilitation
      - Offer court alternative to IVC
        - Local treatment options
        - Current providers
      - Be sure to set a review
        - Don't let child remain indefinitely
      - Communicate with treatment team
        - Explain that child is there for rehabilitation...is that likely?
        - Provide requested information promptly to ensure timely process

## 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

## CONTACT US

- Alexis C. Perkins
- New Hanover County Office of the Public Defender
- 910.343.5415
- [Alexis.C.Perkins@nccourts.org](mailto:Alexis.C.Perkins@nccourts.org)
- Lyana G. Hunter
- New Hanover County Office of the Public Defender
- 910.343.5423
- [Lyana.G.Hunter@nccourts.org](mailto:Lyana.G.Hunter@nccourts.org)

## SAMPLE

### Procedure for Examination on Capacity to Proceed for Juveniles

#### MOTION & ORDER

1. Use Form: AOC-CR-208B.
2. Make sure that form is filled out completely.
  - a. Under findings: boxes 1, 2, and 4 should be checked.
  - b. Under order: boxes 1 and 2 should be checked.
3. Order signed by judge.
4. Order signed by DA.
5. Order clocked in and certified copies made.
6. A certified copy is given to the entity providing transportation.

#### NOTICE

- 1.) Notice to Central Regional. Fax coversheet and signed order, front and back to, ATT: Chris Terry (Fax: 919-764-5012, Phone: 919-764-5009.)
  - a.) Fax coversheet must have attorney's name and number.
  - b.) Fax coversheet must have appropriate transportation contact information.
  - c.) Fax coversheet should have juvenile's DOB and SSN if available.
- 2.) Notice District Attorney's Office.
- 3.) If you have not been contacted within 5 business days for the time and date of the appointment (call: 919-764-5009) and ask for the Forensic Evaluation Coordinator to enquire.

#### TRANSPORTATION

- 1.) If child is out of custody, guardian should transport child to Central Regional-Butner.
  - a.) If guardian is unable to transport, contact the court counselor at: [REDACTED]  
[REDACTED] They will be able to transport the child on a case by case basis.
  - b.) If court counselor is unable to transport, the following steps will need to be taken for the jail to transport. **Please note, parent or guardian cannot ride with child if using the jail to transport.**
    - i. Fax Order to Butner with instructions that the jail will transport.
    - ii. Fax order to: Att. Cpl Taylor [REDACTED] Let him know on the fax coversheet, or by calling transportation, that

the juvenile is not in custody, and does not have a ride.

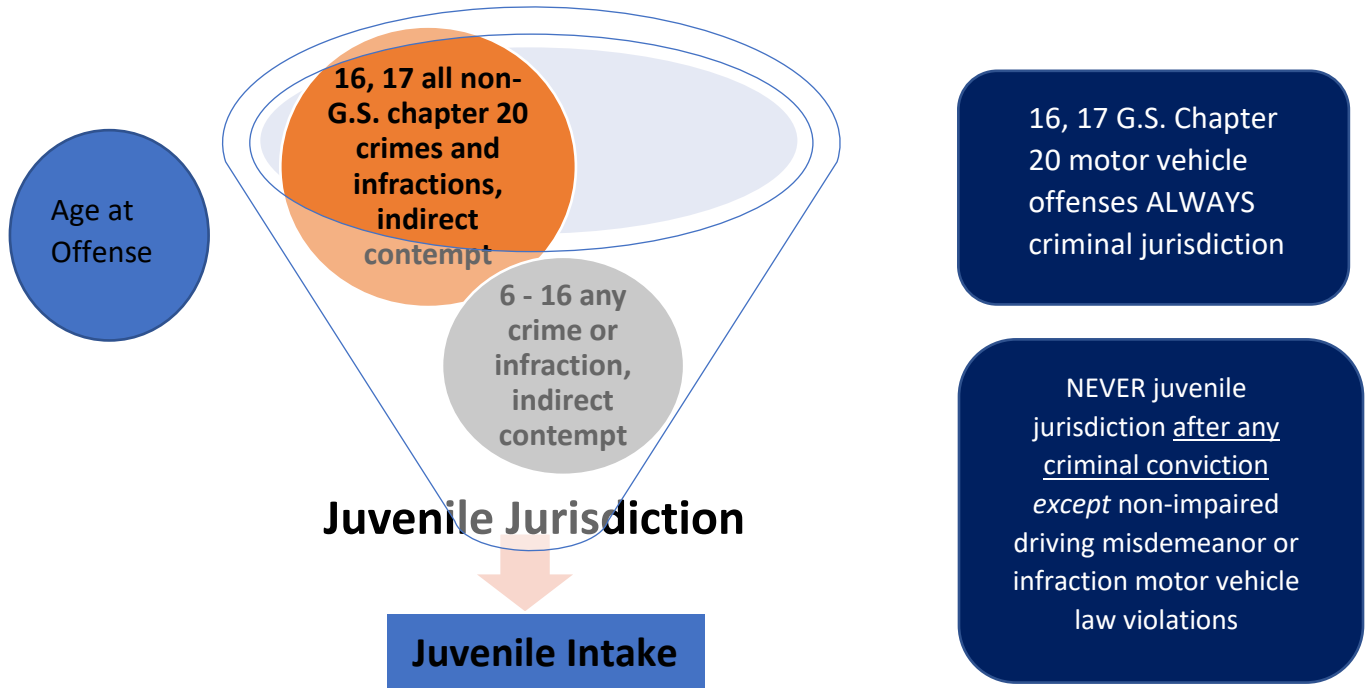
- iii. Give the jail the time and date of the appointment when it is made available.
- iv. Parent or guardian must bring the juvenile to the front desk of the jail the day of the appointment at least 2 and a half hours in advance.

2.) If child is in custody, fax order to court services: ATT: Stephanie Moore [REDACTED]  
[REDACTED] Court services will be given the appointment time and notify Juvenile Detention when they are going to pick up the juvenile for transportation to Butner.

**\*\*\*Important note- An adult may need to be present in addition to the evaluator at the evaluation. This scenario is a case by case basis. You can call Butner at: (919-764-5009) to enquire.\*\*\***



# Juvenile Justice Reinvestment Act (a.k.a. Raise the Age)



Mandatory Transfer 6-15	Mandatory Transfer 16, 17	Discretionary Transfer 6-15	Discretionary Transfer 16, 17
Class A felonies	Class A - G felonies	Class B1 - I felonies	Class H & I felonies
Following finding of probable cause in district court	Following finding of probable cause in district court OR grand jury indictment	Following finding of probable cause and transfer hearing in district court	Following finding of probable cause and transfer hearing in district court

## Key JJRA Changes

### Juvenile Jurisdiction Age Limits

- Acts of delinquency committed at age 16, juvenile jurisdiction until reaching age 19
- Acts of delinquency committed at age 17, juvenile jurisdiction until reaching age 20 (G.S. 7B-1601(b1)).

### Victim Right to Request Prosecutorial Review of Decision Not to File a Petition

- The juvenile court counselor must notify the victim, as well as the complainant, of any decision not to file a petition. The victim has five days from receipt of that notification to request that the prosecutor review the decision. The prosecutor must conference with the victim in reviewing the decision and must notify the victim of his or her decision following the review process. (G.S. 7B-1703(c), -1704, -1705).

### Probable Cause Hearings

- Probable cause hearings for juveniles accused of committing Class A – G felonies at ages 16 and 17 must be conducted within 90 days of the juvenile’s first appearance. The hearing may be continued for good cause. (G.S. 7B-2200.5(c)).

### Reverse Waiver

- Cases that are transferred to superior court, and in which the juvenile is alleged to have committed the offense at age 16 or 17, must be remanded to district court upon a joint motion of the prosecutor and the juvenile’s attorney. The superior court record must be expunged on remand of the matter to district court. (G.S. 7B-2200.5(d)).

### Secure Custody Hearings

- For juveniles accused of committing Class A – G felonies at ages 16 and 17, ongoing secure custody hearings (following the initial secure custody hearing) are required every 30 days and can be waived by the juvenile. Upon request of the juvenile, ongoing secure custody hearings can be required every 10 days on a finding of good cause. (G.S. 7B-1906(b1)).

### Pre-Trial Confinement in Transfer Cases

- Any juvenile who has a case transferred to superior court for criminal processing and who is not released pretrial must be housed in a juvenile detention setting until age 18. Once the juvenile turns 18, he or she must be transported to the custody of the sheriff of the county where the charges arose and then housed in that jail. (G.S. 7B-2204(c)).

### Pre-Adjudication Confinement in Delinquency Cases

- All juveniles who are detained pending adjudication of alleged acts of delinquency, for whom juvenile jurisdiction was obtained prior to the juvenile aging out of juvenile court jurisdiction, must be housed in a juvenile nonsecure or secure setting for as long as they are held in custody. (G.S. 7B-1905)

### Dispositional Alternatives

- Courts can order the following dispositions only for juveniles under the age of 18:
  - Supervision in the juvenile’s home by DSS, a juvenile court counselor, or other personnel;
  - Placement in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or other suitable person;
  - Placement in DSS custody. (G.S. 7B-2506(1)).

### Maximum Age for YDC Commitments

- For offenses committed at age 16, until the juvenile reaches age 19 (G.S. 7B-2513(a2)).
- For offenses committed at age 17, until the juvenile reaches age 20 (G.S. 7B-2513(a3)).

### Criminal Gang Disposition Level Enhancement

- Upon a judicial finding that the juvenile was adjudicated for an offense that was committed as part of the statutorily defined “criminal gang activity,” the juvenile must receive a disposition one level higher than the disposition level for which the juvenile otherwise qualifies. (G.S. 7B-2508(g1)).

# Juvenile Capacity Evaluations

Maureen L. Reardon, Ph.D., ABPP  
Clinical and Forensic Psychologist  
Raleigh, NC 27613

2019 Juvenile Defender Conference  
Co-Sponsored by the UNC Chapel Hill School of Government  
and the Office of Indigent Defense Services

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## Objectives

- ▶ Describe a well-supported, conceptual model for conducting developmentally appropriate juvenile capacity evaluations
- ▶ Describe how cognitive, emotional, and psychosocial developments during adolescence can impact requisite functional capacities in both "normal" and mentally compromised justice-involved youth
- ▶ Identify several ways attorneys and mental health experts can work together to facilitate the evaluation process

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## Juvenile Capacity to Proceed in NC

- ▶ NCGS §7B-2401 specifies the provisions of §15A-1001 as the applicable standard for determining the capacity to proceed of a juvenile alleged to be delinquent.
  - ▶ If by reason of mental illness or defect, s/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."
    - ▶ mental defect - "extreme immaturity" (see NC Juvenile Defender Manual)
- ▶ Why/when to request capacity evaluation?
  - ▶ NOT if "only" for mental health defense or disposition purposes
  - ▶ Transfer to Superior Court (viz. Juvenile Justice Reinvestment Act)

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## The Referral for Psychological Assessment

- the historical factors, if any, that prompted request for capacity assessment
- your observations of JUV and how they detract from attorney-client relationship / development of defense strategy
- any other psycholegal questions (mental state, transfer issues) should be openly discussed in advance

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"I know nothing about the subject, but I'm happy to give you my expert opinion."

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- **Search** Indigent Defense Services list of forensic experts ([www.ncids.com/forensic/Experts/experts.shtml](http://www.ncids.com/forensic/Experts/experts.shtml)) and/or the member directories for :
  - ABFP (<http://members.aafpforensic.org>)
  - AAPL (<http://www.aapl.org/memberlist.php>)
- **Ask** about areas of **forensic & developmental** expertise
- **Ask** about prior experience with similar cases
- **Ask** about any potential conflicts of interest
- **Ask** about any "skeletons" (adverse malpractice judgments, loss of privileges / license, ethics complaints, problems with legal system)
- **Address** issues of testing, note-taking, privilege
- **Check** availability (geographic or time constraints)
- **Discuss** fees / payment requirements
- **Obtain** proper authorization

*Selecting your mental health expert*

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**NCGS Chapter 8C, Article 7**  
*knowledge, skill, experience, training, or education*

**The Specialist VS The Generalist**

reasonable working knowledge of legal standards, laws, rules, and precedents

familiar with landmark cases in mental health case law

experience in adversarial contexts

adhere to specialty practice guidelines

**Forensic Psychiatrists**

- board-certified in general & forensic psychiatry (see [www.aapl.org](http://www.aapl.org))
- Specialty (Ethics) Guidelines ([www.aapl.org/ethics.htm](http://www.aapl.org/ethics.htm))

**Forensic Psychologists**

- certified by American Board of Professional Psychology (ABPP) (see [www.abpp.com](http://www.abpp.com))
- Specialty (Ethics) Guidelines ([www.apa.org/practice/guidelines/forensic-psychology.aspx](http://www.apa.org/practice/guidelines/forensic-psychology.aspx))

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Juvenile Competence Assessment Model (viz. Grisso)

**FUNCTIONAL**  
 an assessment of what the Youth actually knows, understands, believes, or can do that is relevant for competent participation this case

**CAUSAL**  
 an analysis of the IMPACT on functional capacities by disease, defect, and/or age/immaturity

**INTERACTIVE**  
 considers the demands of the case and abilities required to meet those demands  
 considers the context in which the case occurs (e.g. stressors, caretaker, consequences)

**CONCLUSORY**  
 offers opinion(s) regarding functional impairments and causes thereof for this Youth as it relates to the unique circumstances of this case

**PRESCRIPTIVE**  
 provides recommendations for remediation of functional impairments given time and resources available

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**Facilitating the Evaluation Process**

- provide collateral materials (ideally in advance)
  - In general, everything you have about the case ("moving target")
  - assist mental health expert in obtaining needed records (e.g., school records, medical records, mental health records, prior assessments, DSS records)
  - Rule 703 "... facts or data on which opinion is based need not be admissible"
- discuss nature of charges AND possible dispositions, given JUV's past record
- likelihood of various demands in this particular case
- collateral consequences (e.g., DSS involvement) or any added stressors to consider when interacting with the JUV (i.e., context)
- contact information for *legal* guardian and your impression of their investment in case

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- increased myelination and synaptic pruning in prefrontal cortex responsible for executive processes and communication with other brain regions
- limbic system (emotion center) becomes overly active



Age 5                      Adolescence                      Age 20

Neurological changes in adolescence influence:  
→Cognition  
→Emotional/behavioral control  
→Perceived autonomy  
→Perception of risk  
→Perspective taking (interpersonal, temporal)

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**Immaturity =**  
incomplete development of abilities (independent of disease/defect) that results in significant deficits in functional capacities

- 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
- Research by Grisso and others suggests that one can expect deficits comparable to IST adults in about
  - 33% of youth ages 11 to 13
  - 20% of youth age 14 to 15
  - <12 years old are highly likely to be functioning like IST adults

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### Capacity Evaluation Essentials

- ▶ Developmental and clinical history
  - ▶ from juvenile, caretakers, and other sources
- ▶ Developmental and clinical status
  - ▶ observations of caretaker/knowledgeable collaterals, direct behavioral observations, psychological testing
- ▶ Structured assessment of competence related abilities (e.g., Grisso's Juvenile Adjudicative Competence Instruments)

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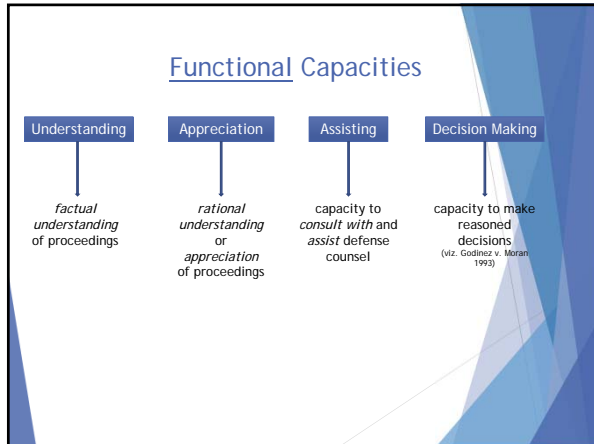
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### Understanding

factual understanding of legal concepts and proceedings  
 \* must differentiate knowledge deficits due to inexperience from incapacity to learn

RESEARCH

60% of youth ages 11 to 13 mild to significant impairments  
 53% of youth ages 14 to 15 mild to significant impairments  
 \*most weak were complex concepts like role of defense counsel, presumption of innocence, process of plea bargain, and protective rights

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### Appreciation

Rational understanding and appreciation of proceedings; the ability to apply what is factually understood to own situation

Juveniles vulnerable due to normal developmental limitations, e.g. concrete thinking, immature assumptions, confusion, or erroneous beliefs

*"defense attorneys can help, but only if you didn't do the crime"*  
*"you can't plead not guilty if you actually did the crime because it's lying and you can never lie in court"*  
*"I can be put in juvenile detention a long time .... like when my mom sends me to my room for the whole weekend"*

RESEARCH

40% of youth ages 10 to 13 mild to major impairments in this area  
 \*most vulnerable are youth with borderline or poorer IQ scores

*Tell me a crime that would be more (or less) serious than the one you are accused of. Why is that?*

*Imagine a defendant just didn't want to talk to the lawyer. Why could that be a problem?*

*How is turning down a plea bargain like gambling or taking a chance?*

*What do you think the worst thing the Court could do if you are found guilty. Why is that the worst thing? How is it different than parent/school punishments?*

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### Assisting

ability to consult and assist counsel in defense

- ▶ PSYCHOSOCIAL
  - ▶ provide distorted information when under perceived pressure
  - ▶ withhold information from counsel for fear it will be used against them
  - ▶ view their own role as to show up and behave well
  - ▶ rapport building with adults/strangers
- ▶ COGNITIVE
  - ▶ verbal expression / receptive language (especially for lexicon of legal context)
  - ▶ attention, tracking, memory skills are in development
- ▶ EMOTIONAL
  - ▶ temperance

RESEARCH

- 50% of youth ages 11 to 13 mild to significant impairments
- 25% of youth ages 14 to 15 mild to significant impairments

\*evidence is mixed, but youth with mental conditions characterized by hostility, excitation (e.g., ADHD, DMDD) as well as social withdrawal or anxiety (e.g., depression) may be especially vulnerable to deficits in this area

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### Decision Making

Youth may have difficulties:

- considering the relative strength of evidence when contemplating decisions to waive rights, accept/reject pleas, consult
- weighing long-term consequences against short-term gains (due to overactive limbic system, underactive regulatory system)
- imagining consequences the youth has not yet experienced (perception of risk, time, etc.)
- poor sense of autonomy, manifesting by inattention, passivity, blind acquiescence to authority or suggestion by peers/important adults

Assessed by:

Caretaker's perception of how Youth makes important decisions, seeks advice

Youth's description of how a recent important decision was made

Hypothetical scenarios requiring decision and asking Youth to explain decision (e.g., plea bargain)

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### Causal Factors

*IQ \* Immaturity*  
nearly 2/3 thirds of youth with IQ < 89 are incapable and if under 13 years old, over 80%

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### Contextual Considerations

- ▶ functional abilities required to meet specific case demands  
(e.g., plea agreement, evidence unclear and client must provide most of the information, many witnesses involved, client will need to testify, length of proceedings, complexity of proceedings)
- ▶ added stressors or consequences
- ▶ Integration of caretakers/legal guardian

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### Conclusory Opinions & Recommendations

- ▶ Youth may be incapable due to a wider array of mental disorders as compared to adults
- ▶ Necessary interventions may not be available
  - ▶ Most youth disorders do not rise to the level requiring inpatient psychiatric hospitalizations
  - ▶ Some youth disorders may be responsive to medication (e.g., ADHD) but many are not (e.g., communication disorders)
  - ▶ Therapeutic interventions for some youth disorders require integration of family, school, and other systems
  - ▶ Outpatient restoration services are essentially non-existent
- ▶ Youth who are incapable primarily due to immaturity require further development, not treatment, which could take years

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### Let's talk!



- ▶ discuss preliminary findings
- ▶ (if applicable) discuss similarities / differences in your expert's findings relative to the opposing expert
  - ▶ differing opinions can be good for your case
- ▶ to put or not to put in writing
  - ▶ In general, if expert testimony will be needed, so should a written report
  - ▶ request revision of errors in fact or unclear statements ...  
... NOT opinions
  - ▶ attempt to minimize clinical jargon or opinions that could confuse the fact-finder on the legal issue in question (e.g., do you *really* want a diagnosis?)
- ▶ actively prepare for testimony

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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](http://www.reardonphd.com)  
E-mail: [forensicspsych@reardonphd.com](mailto:forensicspsych@reardonphd.com)  
(919) 800 -1174

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Grisso, T., & Romaine, C. R. (2013). Forensic evaluation in delinquency cases. I. B. Weiner (Editor-in-Chief). *Handbook of psychology* (2<sup>nd</sup> Ed.). Hoboken, NJ: John Wiley & Sons.

Kruh, I. & Grisso, T. (2009). *Evaluation of Juveniles' Competence to Stand Trial*. Oxford University Press: New York

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.

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## **2019 Delinquency and Related Legislation**

Jacqui Greene  
UNC School of Government  
July 26, 2019  
[greene@sog.unc.edu](mailto:greene@sog.unc.edu)

### S.L. 2019 - . S.413 Raise the Age Modifications (currently “presented to the Governor”)

- The definition of a delinquent juvenile is amended to exclude all violations of the motor vehicle laws under Chapter 20 of the General Statutes from juvenile jurisdiction for juvenile who are 16- and 17-years-old. G.S. 7B-1501(7)b. and G.S. 143B-805(6)b.
- Excludes violations of the motor vehicle laws punishable as misdemeanors or infractions, other than those involving impaired driving, from the bar on future juvenile court jurisdiction following a conviction in district or superior court. G.S. 7B-1604(b).
- Limits the gang assessment required as part of the juvenile intake process to juveniles who are 12 years of age or older. G.S. 7B-1702.
- Requires that any individual age 21 or older who is taken into custody for an offense committed when the person would have been under juvenile jurisdiction and who is detained to be detained in the county jail where the charges arose. G.S. 7B-1901(d).
- Allows an individual between the ages of 18 and 21 who (1) is no longer age-eligible for juvenile jurisdiction, (2) has been taken into custody for an offense committed when the person would have been under juvenile jurisdiction, and (3) is detained, to be detained in the county jail where the charges arose. G.S. 7B-1903(e).
- Requires that any juvenile detention facility operated by a sheriff or any unit of government meet the standards and rules adopted by the Department of Public Safety and receive approval from the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice for operation as a juvenile detention facility. G.S. 7B-1905(b).
- Requires ongoing secure custody hearings for juveniles alleged to have committed offenses that would be Class A – Class G felony offenses at age 16 or 17 every 30 days. Hearings may be waived only with the consent of the juvenile through his or her attorney. Hearings can be required every 10 days upon request of the juvenile and a judicial finding of good cause. G.S. 7B-1906.
- Extends the timeframe in which a probable cause hearing must be held, for juveniles alleged to have committed Class A – Class G felony offenses at ages 16 and 17, to within 90 days of the juvenile’s first appearance. The hearing may be continued by the court for good cause. G.S. 7B-2200.5(c).
- Requires the court to remand a case--(1) in which the offense was alleged to have been committed by the juvenile at age 16 or 17 and (2) that was transferred to superior court--back to district court upon joint motion of the prosecutor and the juvenile’s attorney. Superior court records must be expunged on remand. G.S. 7B-2200.5(d).
- Requires personnel of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice, or personnel approved by the Juvenile Justice Section, to transport youth who are being held in juvenile detention following transfer of their case to superior court between detention, court, and any holdover facility (if used). G.S. 7B-2204.

- Requires any youth being held in juvenile detention following transfer of his or her case to superior court to be transported by the Juvenile Justice Section of DACJJ to the sheriff from the county in which the charges arose for pre-trial confinement in the local jail when the juvenile turns 18. G.S. 7B-2204(c).
- Allows for the detention of youth in a juvenile detention facility approved by DACJJ and operated by a sheriff or unit of government following conviction in a case transferred to superior court pending transfer to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. G.S. 7B-2204(d).
- Requires the judicial finding that the offense for which the juvenile was adjudicated was committed as part of criminal gang activity be found beyond a reasonable doubt in order to increase the juvenile's disposition level by one level. G.S. 7B-2508(g1).
- Creates a new expunction statute for cases that are transferred to superior court and then remanded back to district court on joint motion of the prosecutor and juvenile defense attorney. The court must order expunction on remand. Expunction must include any DNA records and samples associated with the remanded charges as well as clerk notification to various state and local agencies. G.S. 15A-145.8.
- Effective date: December 1, 2019 and applies to offenses committed on or after that date.

*S.L. 2019-41 An Act to Eliminate the Prohibition on Referring A Juvenile to A Teen Court Program If the Juvenile Has Been Referred to A Teen Court Program Previously. (H.B. 617)*

- Allows for multiple teen court program referrals for the same juvenile. G.S. 7B-1706(c).
- Effective date: when it becomes law (June 21, 2019).

*S.L. 2019-47 An Act to Clarify the Requirement to Take A Photograph of A Suspect at the Time Of A Show-Up Where the Suspect is A Juvenile. (H.B. 415)*

- All changes below contained in G.S. 15A-284.52(c1).
- Juveniles age 10 or older who are reported to have committed a nondivertible offense or common law robbery must be photographed by an investigator at the time and place of any show-up.
- Photographs must be retained or disposed as required by G.S. 7B-2108 (destruction of records resulting from nontestimonial identification procedures) except that written certification of destruction to the court is only required if a petition was filed.
- Juvenile photographs taken pursuant to a show-up are not public records under Chapter 132 of the General Statutes
- Juvenile photographs taken pursuant to a show-up must be kept separate from adult records, withheld from public inspection, and examined only by order of the court. A court order is not required for examination by the juvenile or the juvenile's attorney, the juvenile's parent or guardian, the prosecutor, and court counselors.
- Effective date: when it becomes law (June 26, 2019)

*S.L. 2019-33 An Act to Make Revisions to the Juvenile Code Pursuant to Recommendations By the Court Improvement Program (CIP). (H.B. 301)*

- Provides entitlement to court-appointed counsel for parents in review and permanency hearings held for juveniles who are placed in DSS custody pursuant to orders of disposition following undisciplined and delinquency adjudications. Parents can make a knowing and voluntary waiver of this right to counsel. G.S. 7B-2503(1)c., G.S. 7B-2506(1)c.
- Allows a guardian ad litem attorney advocate appointed for a juvenile in an abuse, neglect, or dependency matter to share confidential information about the juvenile with the juvenile's attorney appointed in a delinquency or undisciplined matter. G.S. 7B-3100(c).
- The legislation includes many other provisions that relate only to abuse, neglect, and dependency proceedings.
- Effect date: October 1, 2019.

*S.L. 2019-158 An Act to Implement Recommendations Made By the North Carolina Human Trafficking Commission. (H.B. 198)*

- All amendments below are contained in G.S. 7B-3200.
- Requires that the person has been released from juvenile court jurisdiction in order to file a petition for expunction of delinquent and undisciplined adjudication records.
- Exempts people whose participation in their adjudicated offense was a result of having been a victim of human trafficking or a victim of a severe form of human trafficking from the requirements that at least 18 months have passed since release from juvenile court jurisdiction and that the person not be adjudicated or convicted of any felony or misdemeanor offense since adjudication, other than a traffic violation, in order to file a petition for expunction of juvenile records.
- Requires the petitioner for juvenile record expunction to include the following new information in an affidavit:
  - That he or she has been released from juvenile court jurisdiction, and
  - If the petitioner is not subject to the 18-month waiting period following release from juvenile jurisdiction and the requirement to remain free from further adjudications or convictions, that the petition was adjudicated delinquent for an offense the petitioner participated in as a result of having been a victim of human trafficking or of a severe form of human trafficking.
- This legislation contains many other provisions that apply to criminal cases related to human trafficking and a civil cause of action for human trafficking victims.
- Effective date: July 1, 2019.

*S.B. 5 School Safety Omnibus - \*on Senate calendar for concurrence as of the writing of this summary*

- The bullets below are selected portions of a much larger bill that contains many additional provisions. The provisions highlighted below are the provisions that are most closely related to the juvenile justice system.
- Creates a statutory definition of a school resource officer. G.S. 115C-105.70(a).

- Requires the creation of new training standards for school resource officers that includes, at least, training on mental health, students with disabilities, racial equity, and crisis intervention and de-escalation. G.S. 115C-105.70(c).
- Requires public school governing bodies to adopt policies for the establishment of threat assessment teams, including the conduct of threat assessments and intervention with students whose behavior may pose a risk to the safety of school staff or students. G.S. 115C-105.60.
- Each school in the public-school unit must have a threat assessment team. Each team is required to:
  - Provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may pose a risk;
  - Conduct threat assessments when a threat has been communicated to determine appropriate action and intervention based on the level of risk.;
  - Determine the level of risk posed by the student (low, moderate, high, or imminent);
  - Identify members of the school community to whom threats should be reported; and
  - Utilize anonymous reporting applications for students to receive information about school safety concerns requiring investigation. G.S. 115C-105.60(d).
- Local law enforcement and the State Bureau of Investigation must be immediately notified of an imminent-risk threat. G.S. 115C-105.60(e)(3).
- Local law enforcement must be notified of a high-risk threat when recommended by the threat assessment team. G.S. 115C-105.60(e)(3).
- Threat assessment teams are allowed to access school notifications of juvenile court actions as provided in G.S. 7B-3101 and information gained pursuant to allowable interagency information sharing pursuant to G.S. 7B-3100 upon a determination that a student poses imminent risk. These records remain confidential and are not public records. G.S. 115C-105.60(g).
- Effective date: when it becomes law.

# Juvenile Delinquency Case Update

December 19, 2017 – June 4, 2019

To view these and other summaries of opinions published by the NC Appellate Courts beginning in 2007, go to the [Juvenile Justice Case Compendium](#) on the School of Government’s website.

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## Juvenile Interrogation – Waiver of Rights

### **State v. Saldierna, 817 S.E.2d 174 (August 17, 2018)**

On discretionary review of a unanimous decision of the Court of Appeals in *State v. Saldierna*, \_\_\_ N.C. App. \_\_\_, 803 S.E.2d 33 (2017), the Supreme Court held that the findings of fact in the trial court had adequate evidentiary support and that those findings of fact supported the trial court’s conclusion that the ***defendant knowingly and voluntarily waived his juvenile rights to have a parent, guardian, or custodian present during questioning***. The Supreme Court therefore reversed the Court of Appeals, finding that the trial court appropriately denied the defendant’s motion to suppress his confession.

- ***Facts:*** The defendant, age 16, was arrested for his alleged involvement in 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 and signed the form indicating that he was waiving his right to have a parent or guardian present during questioning, but then immediately asked, “Um, can I call my mom,” and was allowed to place the call. After being unable to reach his mother, the interrogation resumed and he confessed. The defendant filed a motion to suppress his confession on the basis that the interrogation violated his juvenile rights provided under N.C.G.S. § 7B-2101 and his federal constitutional right not to be deprived of liberty without due process of law. The trial court denied that motion.
- ***Procedural History:*** This case was initially heard by the Supreme Court in *Saldierna I*, 369 N.C. 401 (2016). The Court held that the defendant’s request to call his mother during custodial questioning by police was not a clear invocation of his juvenile right to consult a parent or guardian before proceeding with questioning. The Court remanded the case back to the Court of Appeals, which had reversed the trial court’s denial of the motion to suppress. The Court of Appeals was directed to determine whether the defendant knowingly, willingly, and understandingly waived his right to have a parent or guardian present during questioning. On remand the Court of Appeals determined that, given the totality of the circumstances, the trial court erred in determining that the defendant knowingly, willingly, and understandingly waived his rights. The decision of the trial court to deny the motion to suppress the confession was reversed, the judgments entered upon the guilty plea were vacated, and the case was remanded to the trial court. The decision summarized here results from an appeal of this order.
- ***Waiver of rights:*** The burden is on the State to show by a preponderance of evidence that the waiver was knowingly and intelligently made. The trial court is required to assess the totality of the circumstances in determining whether the State met its burden of proof, including evaluation of the juvenile’s age, experience, education, background, intelligence, and capacity to understand the warnings given to him along with his rights and the consequences of waiving those rights.

The trial court’s finding of facts that the defendant knowingly, willingly, and understandingly waived his rights was supported by adequate evidence. That evidentiary support included (1) the detective

advised the defendant of his juvenile rights in spoken English and written Spanish and English, (2) the defendant initialed each of the rights on the juvenile rights waiver form, (3) the defendant signed the juvenile rights waiver form to indicate that he had decided to waive his rights, and (4) the defendant answered affirmatively when asked if he understood what the detective was saying. While some of the evidence presented at trial could support a different finding of fact, resolution of these kinds of evidentiary conflicts are matters for trial court resolution. Given the sufficient evidentiary support for the trial court's finding of facts in this matter, the decision by the Court of Appeals was reversed and the trial court's finding that the defendant knowingly, willingly, and understandingly waived his juvenile rights was upheld.

## Advising Juvenile of Right against Self-Incrimination

### **In the Matter of J.B., 820 S.E.2d 369 (September 18, 2018)**

*Held: Reversed and remanded for new trial*

The trial court erred in ***failing to advise the juvenile of his right against self-incrimination before he testified and incriminated himself during an adjudication hearing***. The juvenile was charged with assault on a government employee after allegedly throwing a milk carton at a teacher and hitting her in the face with it. Defense counsel called the juvenile as a witness and, on direct examination, the juvenile admitted to throwing the milk carton at the teacher out of frustration and intending to hit her with it. After closing arguments, the trial judge informed the juvenile that he had forgotten to advise him of his right against self-incrimination prior to his testimony and asked if the juvenile understood that right. Pursuant to the plain language of G.S. 7B-2405, there is an affirmative duty on the trial court to protect the enumerated rights set forth in that statute, including the privilege against self-incrimination. *In re J.R.V.*, 212 N.C. App. 205 (2011). This includes at least some colloquy between the trial court and the juvenile to ensure that the juvenile understands his right against self-incrimination before choosing to testify. The trial court committed error in asking whether the juvenile understood his right against self-incrimination after he had already testified. This was not harmless error because his testimony was incriminating and prejudicial.

## Disorderly Conduct

### **In the Matter of T.T.E., 818 S.E.2d 324 (July 17, 2018)**

*Held: Vacated*

- ***Facts:*** The incident occurred at school and began with the juvenile throwing a chair in the cafeteria. The School Resource Officer (SRO) testified that no one was hit by the chair, nor did he see anyone who could have been hit by the chair. After throwing the chair the juvenile ran from the cafeteria and the SRO followed him. The SRO came up quietly behind the juvenile and grabbed him. The juvenile yelled "no" and cursed, and subsequently explained that he had been playing with his brother in the cafeteria. He was adjudicated delinquent for disorderly conduct and resisting a public officer.

- ***Opinion: The evidence, even when considered in the light most favorable to the State as required on appeal, did not support adjudication on either charge.*** Disorderly conduct requires evidence of a public disturbance in which the juvenile engaged in 1) fighting; 2) other violent conduct; or 3) conduct creating the threat of imminent fighting or other violence. G.S. 14-288.4(a)(1). The evidence was not sufficient to establish fighting, violence, or the imminent threat thereof. “Throwing a single chair with no other person nearby and without attempting to hit another person and without hitting even any other item in the cafeteria is not disorderly conduct as defined by North Carolina General Statute § 14-288.4(a)(1).” Slip. Op. at 7.

Adjudication for resisting a public officer requires: “(1) that the victim was a public officer; (2) that the defendant knew or had reasonable grounds to believe that the victim was a public officer; (3) that the victim was discharging or attempting to discharge a duty of his office; (4) that the defendant resisted, delayed, or obstructed the victim in discharging or attempting to discharge a duty of his office; and (5) that the defendant acted willfully and unlawfully, that is intentionally and without justification or excuse.” Slip Op. at 8. Evidence did not show that the juvenile knew or had reasonable grounds to know that the person grabbing him was a public officer, that the juvenile resisted, delayed, or obstructed the SRO, nor that the juvenile acted willfully and unlawfully, as testimony established that the SRO intentionally snuck up behind the juvenile and the juvenile merely cursed and quickly returned to calm.

- ***Concurrence in Part and Dissent in Part:*** The evidence was not sufficient to support an adjudication for resisting a public officer. However, the act of throwing a chair at his brother amounted to violent conduct and therefore the adjudication for disorderly conduct should have been upheld.

**Author’s Note:** The North Carolina Supreme Court heard oral arguments on May 28, 2019 related to the adjudication for disorderly conduct.

## Dispositional Factors

### In the Matter of I.W.P., 815 S.E.2d 696 (May 1, 2018)

*Held: Dismissed in Part, Affirmed in Part, Remanded in Part*

- ***Facts:*** The juvenile, who was already on probation, encouraged another youth to pull the fire alarm of a middle school on the last day of school. Evidence presented during adjudication included that the juvenile asked the other youth to pull the alarm four different times during at least two classes before the other youth pulled the alarm. Chaos followed as students attempted to exit the school. The juvenile was adjudicated delinquent for disorderly conduct.
- ***Dispositional Considerations: The trial court must consider each of the five factors listed in G.S. 7B-2501(c) when crafting a disposition.*** This holding resolves the conflict created by *In re D.E.P.* \_\_\_ N.C. App. \_\_\_ (February 7, 2017) which diverged from a previous line of cases in holding that there is not a need for finding of facts regarding all five factors listed in G.S. 7B-2501(c), including factors which are irrelevant to the case or regarding which no evidence was presented. When two lines of

cases conflict, the older line of cases is controlling. *Respass v. Respass*, 232 N.C. App. 611 (2014). The older line of cases on this issue (*In re Ferrell*, 162 N.C. App. 175 (2004); *In re V.M.*, 211 N.C. App. 389 (2011); *In re K.C.*, 226 N.C. App. 452 (2013); and *In re G.C.*, 230 N.C. App. 511 (2013)) hold that all five factors enumerated in the statute must be considered when developing a disposition and that is therefore the controlling law. Two required factors, the seriousness of the offense and the degree of culpability of the juvenile, were not addressed in this dispositional order. Remanded for further findings of fact to address these two factors.

- **Sufficiency of the Evidence:** While counsel for the juvenile made a motion to dismiss at the close of the State's evidence, counsel proceeded to present evidence on behalf of the juvenile after that motion was denied. Counsel did not renew the motion at the close of all evidence, failing to preserve the issue for appeal. The Court declined to review this argument pursuant to Rule 2 because there was sufficient evidence for each element of the criminal offense. Manifest injustice cannot exist and suspension of appellate rules pursuant to Rule 2 is not justified when there is sufficient evidence of each element of the offense. This issue is dismissed.
- **Sufficiency of Adjudication Order:** The adjudication order was sufficient to comply with G.S. 7B-2411. It included: identification of disorderly conduct as the type of offense; offense date; and date the petition was filed. It also included: delinquency hearing as the type of proceeding; judge's signature; date; proof of filing; a description of the specific conduct; and the conclusion of law indicating delinquency.
- **Improper Delegation of Authority:** The trial court properly selected community dispositions that are allowable under G.S. 7B-2506, appropriately leaving day-to-day implementation to the court counselor. An error in the date listed in the supplemental order that was incorporated by reference was clerical error. Remanded for correction of the clerical error.
- **Clerical Error:** Failure to check the appropriate box in the conclusions of law section on the pre-printed adjudication order form was clerical error. An error in the supplemental order regarding the date that twelve months of probation would terminate was clerical error. Remanded for correction of both clerical errors.

## Mental Health Evaluation Prior to Disposition

### In the Matter of E.M., 823 S.E.2d 674 (January 15, 2019)

*Held: Vacated and Remanded*

- **Facts:** The juvenile was initially placed on probation as a Level 2 disposition following an admission to conspiracy to criminal common law robbery. He subsequently admitted to violating his probation by being suspended from school and leaving home without permission for three days. Substantial evidence was provided at the hearing on the motion for review regarding the juvenile's long history of mental health issues, including inpatient, outpatient, and intensive in-home services. Additionally, several risk and needs assessments documented mental health treatment needs. The trial court

entered a Level 3 disposition and committed the juvenile to a YDC while also ordering custody of the juvenile to the Department of Social Services. The juvenile appealed on the following three issues: 1) entering a disposition without referral to the area mental health services director, 2) finding that the juvenile had been involved in criminal activity while on probation when no competent evidence supported that finding and 3) transferring legal custody to the Department of Social Services.

- *Opinion:* 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. G.S. 7B-2502(c). "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). While a substantial amount of evidence regarding the juvenile's mental illness was presented here, any amount of evidence that a juvenile is mentally ill triggers the statutory duty of the trial court to refer the juvenile to the area mental health services director per G.S. 7B-2502(c). This requirement was not rendered unnecessary by a significant history of mental health services prior to disposition or the ability of the trial court to order mental health services during commitment. Instead, the statute envisions involvement of the area mental health services director in the disposition and tasks the area mental health services director with arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. The disposition is vacated because the trial court did not follow this procedure. The court did not therefore consider the second and third grounds for appeal. However, the decision does note that the juvenile's custody shall remain with the Department of Social Services.

## Disposition – Adhering to Statutory Requirements

### In the Matter of J.B., 809 S.E.2d 353 (January 2, 2018)

*Held: Affirmed in Part, Remanded in Part*

- *Facts:* The juvenile pushed a printer and computer off his teacher's desk, causing damage to the printer. He made a motion to dismiss at the close of the State's evidence, asserting that there was no evidence that the owner of the property was the Charlotte-Mecklenburg Board of Education. The motion was denied and the juvenile was adjudicated delinquent for injury to personal property. He was classified as a Level 2 offender and given a disposition of 10 days in detention, which was handwritten on the order next to the statutory reference that applies to intermittent detention for Level 1 dispositions.
- *Opinion:* During the motion to dismiss at trial, counsel for the juvenile twice acknowledged that the Board of Education was properly identified as a corporate body that can own property. The issue was also not raised by the juvenile at trial and, therefore, cannot be raised on appeal. The argument regarding whether the Board of Education was an entity capable of owning property was therefore not properly before the court. The evidence clearly showed that the school supplied computers and printers to teachers and they were therefore the property of the school. The trial court did not err in denying the motion to dismiss on these grounds. An outdated preprinted disposition form was used

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by the court. While the court could have properly ordered the juvenile, as a Level 2 offender, to up to 14 days of intermittent confinement under G.S. 7B-2506(20), the old version of the form did not contain that option. Instead, the only intermittent confinement option on the form allowed for only up to five days of confinement pursuant to G.S. 7B-2506(12). The box next to this option was checked with a handwritten notation of "10 days detention." ***The trial court was required to impose at least one Level 2 disposition found in G.S. 7B-2506 (13)–(23). G.S. 7B-2508(d). Failure to do so was reversible error.*** Remanded for resentencing at which time the court may order up to five days of detention pursuant to G.S. 7B-2506(12) and must impose at least one of the mandatory dispositional alternatives in G.S. 7B-2506(13)-(23).

## Dispositional Order on Probation Violation

**In the Matter of R.S.M., 809 S.E.2d 134 (December 19, 2017)**

*Held: Vacated and Remanded*

- ***Facts:*** The juvenile was on probation for a variety of charges related to breaking and/or entering, robbery, larceny, and intimidating a witness. The judge announced orally that she was ordering commitment to a Youth Development Center (YDC) at a dispositional hearing on probation violations that was held on October 17, 2016. That same day a written dispositional order continuing the juvenile on probation was signed by the judge. On November 2, 2016 a subsequent disposition order committing the juvenile to a YDC for probation violations was entered. No new violation of probation motions were pending at the time.
- ***Opinion:*** the ***trial court lacked subject matter jurisdiction to enter a second written order on probation violations when a first written order had already been entered.*** The written disposition entered on October 17, 2016 controls over the earlier oral judgment that same day. Conflict between an oral announcement of judgment and a written order is resolved in favor of the written order. *State v. Buchanan*, 108 N.C. App. 338 (1992). There were no new motions, notice, or hearings following the October 17, 2016 hearing. The court therefore had no subject matter jurisdiction to enter a new dispositional order following the October 17, 2016 order. A discrepancy in the October 17, 2016 Order for Motion for Review regarding the date of entry of the initial order placing the juvenile on probation was clerical error. The second dispositional order, entered November 2, 2016, is vacated and the October 17, 2016 order is remanded for correction of the clerical error.

## Mootness

**In the Matter of B.B., 824 S.E.2d 203 (February 5, 2019)**

*Held: Dismissed as moot*

- ***Facts:*** The juvenile was committed to a Youth Development Center under a Level 3 disposition that resulted from a violation of his probation. This appeal was based on the district court's denial of a request for a continuance made by the juvenile's attorney at the review hearing. The attorney

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requested a continuance because he had just met his client that afternoon and a potential witness was not available to testify. The court denied that request and ordered the Level 3 disposition.

- *Opinion:* The appeal is dismissed as moot because the juvenile reached the age of 18 and was discharged from the Youth Development Center while the appeal was pending. As a result, the subject matter of the appeal ceased to exist. While the briefing period for the appeal concluded prior to the juvenile's eighteenth birthday, the ***juvenile did not file a supplemental brief addressing mootness or presenting any collateral consequences of the disposition order.***

**COMMITMENTS/ADMISSIONS OF CHILDREN**

Presented by Kristen Todd  
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RESOURCES:

N.C.G.S. Chapter 122C

[WWW.NCIDS.ORG](http://WWW.NCIDS.ORG)

NORTH CAROLINA CIVIL COMMITMENT  
MANUAL, 2<sup>ND</sup> EDITION, 2011

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**TWO MAIN WAYS FOR A MINOR TO BE ADMITTED TO A LOCKED FACILITY**

- Voluntary Admission of a Minor
  - application for admission by the minor's "legally responsible person" (LRP)
- Involuntary Commitment (IVC)

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**"VOLUNTARY" MENTAL HEALTH**

- Provisions governing the voluntary admission of an competent adult apply to the voluntary admission of minors (122C-221(a));
- LRP seeks to admit a minor by appearing at the 24-hour facility with minor and signing a written application for admission;
- Minor is evaluated to determine if the minor is in need of treatment for mental illness (MI) or substance abuse (SA).

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**LEGALLY RESPONSIBLE PERSON**

- 122C-3(20)(ii): The LRP is "...when applied to a minor:
  - a parent,
  - guardian,
  - a person standing in loco parentis, or
  - a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment...."

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**RESPONSIBLE PROFESSIONAL**

- 122C-3(32): The RP is the "...individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation..." of the minor.

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**NOTICE TO BE GIVEN BY THE FACILITY**

- The facility must notify the LRP and the minor of:
  - Procedures for judicial review;
  - The LRP's right to request, in writing, discharge within 72 hours; and
  - The facility's ability to file IVC proceedings within the 72 hours, should the facility disagree with discharging the minor (122C-224(b)).
- The facility must notify the Clerk of Superior Court of:
  - The admission of the minor within 24 hours;
  - The notice must request that a judicial hearing be scheduled; and
  - The notice must supply the names and addresses of the LRP and the RP (122C-224(c)).

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**DUTIES OF CLERK OF COURT (COC)**

- The COC must schedule the hearing for judicial review within 15 days of the minor’s date of admission (122C-224.1(b));
- The COC must appoint counsel within 48 hours of receipt of the notice of admission (122C-224.1(a)); and
- Not later than 72 hours before the hearing, the COC shall calendar the hearing and give notice of the time and place of the hearing to the minor’s attorney, to the LRP and to the RP (122C-224.1(b)).

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**DEADLINE TO MEET WITH MINOR CLIENT**

- 122C-224.2(a) provides that: “The attorney shall meet with the minor within 10 days of his appointment but not later than 48 hours before the hearing...”

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**DISTRICT COURT HEARING ON VOLUNTARY ADMISSION**

- The District Court Judge (DCJ) must consider these criteria:
  - Is the minor mentally ill or a substance abuser?
  - Is the minor in need of further treatment; and
  - Is the facility the least restrictive mode of treatment available?
- If the DCJ finds that the criteria were proven by clear, cogent and convincing evidence, he/she will “concur in continued treatment.” 122C-224.4

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### MENTAL ILLNESS

- 122C-3(21): "...when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment."

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### DISPOSITION (Initial Hearing)

- **Inpatient:** up to 90 days on initial admission;
- **One-Time Authorization:** up to an additional 15 days if the DCJ finds there are "reasonable grounds to believe" that the admission criteria exist, but additional evaluation and diagnosis are needed;
- **Discharge**

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### REHEARINGS

- Rehearings are conducted pursuant to the same statutory provisions relating to the initial hearing;
- RP must notify COC at least 15 days before the end of the approved stay if the facility is requesting an extension of the admission;
- COC must schedule a rehearing prior to the expiration of the current admission; and
- DCJ may authorize up to an additional 180 days stay at each rehearing (no 365 day admission allowed). 122C-224.4

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**INVOLUNTARY MENTAL HEALTH**

- AFFIDAVIT AND PETITION (122C-261)
  - Before Magistrate or Clerk
  - In County of residence or of location
  - Sworn, signed by Petitioner
  - Allegations: “mentally ill” and “dangerous to self or others”
    - Based upon personal knowledge or hearsay
    - May allege Mental Retardation

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**MAGISTRATE’S HEARING**

- The hearing is ex parte;
- Respondent has no right to counsel;
- Not subject to the Rules of Evidence;
- May be based upon hearsay;
- Procedural defenses to Affidavit:
  - Unsigned;
  - Unsworn;
  - failure of personal appearance by petitioner;
  - Admitted fabrication;
  - Conclusions alleged without supporting facts.

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**CUSTODY ORDER**

- Magistrate finds “reasonable grounds to believe facts alleged are true.”
- Allows LEO to take respondent into custody for first examination
- Order must be served within 24 hours or new order required
- Allows LEO to use reasonable force necessary to take custody (122C-261(b))

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**FIRST EXAMINATION**

- Performed by physician or psychologist;
- Performed within 24 hours after arrival at local facility;
- Must be a personal examination;
- Examiner determines if Criteria are met: MI/SA, Dangerous;
- Also considers Survivability, Resources, Capacity (122C-263(c))

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**Second Examination**

- Transport to 24 hour Facility for Admission
- A physician must perform a second exam;
- Physician cannot be first examiner nor psychologist;
- Failure to perform is fatal procedural error, vacating commitment;
- Admission as involuntary inpatient subjects respondent to Restraints and Seclusion (122C-60);

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**DISTRICT COURT HEARING**

- Must be held within 10 days of custody on involuntary admission;
- Closed to Public;
- Criteria: Mentally Ill and Dangerous;
- May be continued;
- Release pending hearing results in dismissal of action;
- Initial commitment is up to 90 days; then up to 180 days for all subsequent hearings for minors;
- Split commitment possible.

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**MENTAL ILLNESS**

- 122C-3(21): "...when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment."

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**DANGEROUS TO OTHERS**

**G.S. 122C-3(11)b**

- Within the Relevant Past;
- Inflict or Attempt to inflict Serious Bodily Harm (SBH) on another;
- Threatened to inflict SBH on another;
- Creates a substantial risk of SBH;
- Engages in extreme destruction of property;
- There is a reasonable probability that this conduct will be repeated;
- Homicide is prima facie evidence

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**DANGEROUS TO SELF**

**G.S. 122C-3(11)a**

- Suicide, Mutilation;
- Needs supervision or assistance in conduct of daily affairs and social relations; **or**
- Needs assistance in feeding, clothing, securing medical care, shelter, self protection, safety; **and**
- Reasonable probability of suffering serious physical debilitation without treatment

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**DANGEROUS TO SELF (Cont.)**

- Prima Facie Inference of Inability to Care for Self:
  - Grossly irrational behavior;
  - Uncontrollable behavior;
  - Grossly inappropriate behavior;
  - Severely impaired insight.

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**DISPOSITION**

- **Inpatient:** up to 90 days on initial commitment;
- **Outpatient:** up to 90 days on initial commitment;
- **Split Commitment:** combination inpatient and outpatient equal to 90 days (e.g. “30/60” split)
- **Outpatient/Release Pending Hearing:** Court must find criteria by “clr/cog/con evidence.”
- **Discharge**

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**COLLATERAL CONSEQUENCES**

- Firearm Ownership and Possession;
  - Federal Law
    - National Instant Criminal Background Check System
    - Established as part of Brady Handgun Violence Prevention Act 1998
    - Maintained by FBI
- Expunction of Minor’s Record of IVC;

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