UNC | SCHOOL OF GOVERNMENT

Intensive Juvenile Defender Training

Thursday, March 7 – Friday, March 8, 2024
Co-sponsored by the UNC School of Government &
Office of Indigent Defense Services

DAY 1

9:50 to 10:00 am	**Welcome** *Timothy Heinle, Teaching Assistant Professor* UNC School of Government, Chapel Hill, NC
10:00 to 11:00 am	**Pressure Killers** (60 min) *Dr. Steven R. Cureton, Professor and Department Head of Sociology,* Criminology and Justice Studies, UNC Greensboro
11:00 to 12:00 pm	**Trauma-Informed Lawyering: The Four R's** (Mental Health CLE – 60 min) *Carla Huff, Training Coordinator* Office of Indigent Defense Services, Durham, NC
12:00 to 1:15 pm	*Lunch* – offsite, on own
1:15 to 2:15 pm	**Secured Custody** (60 min) *Woodrena Baker-Harrell, Chief Public Defender* Orange and Chatham Counties
2:15 to 2:30 pm	*Break*
2:30 to 3:30 pm	**Juvenile Defense and E-Courts** (Technology CLE – 60 min) *Burcu Hensley, Assistant Juvenile Defender* North Carolina Office of the Juvenile Defender, Raleigh, NC *Kevin Boxberger, Regional Defender* Office of Indigent Defense Services, Durham, NC

DAY 2

9:00 to 10:00 am	**Juvenile Interrogations** (60 min) *Jacqui Greene, Associate Professor of Public Law & Government* UNC School of Government, Chapel Hill, NC
10:00 to 11:00 am	**Probable Cause** (60 min) *Lyana Hunter, Assistant Public Defender* District 5, New Hanover County
11:00 to 11:30 am	*Travel*
11:30 to 12:30 pm	**Juvenile Detention Center: What Juveniles Need (and site tour)** (60 min) *Doug Logan, Director and Teresa Cuthbertson, Program Manager* Guilford County Juvenile Detention Center
12:30 pm	*End of Program*

CLE HOURS: 7.00
*Includes 1.0 hour of mental health/substance abuse and 1.0 hour of technology

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PUBLIC DEFENSE EDUCATION INFORMATION & UPDATES

If your e-mail address is *not* included on an IDS listserv and you would like to receive information and updates about Public Defense Education trainings, manuals, and other resources, please visit the School of Government's Public Defense Education site at:

www.sog.unc.edu/resources/microsites/public-defense-education

(Click *Sign Up for Program Information and Updates*)

Your e-mail address will not be provided to entities outside of the School of Government.

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(Public Defense Education)

&

follow us on twitter

(twitter.com/NCIDE)

PUBLIC DEFENSE EDUCATION COURSE OFFERINGS

Overview

In August 2000, the North Carolina General Assembly enacted the Indigent Defense Services Act, which created the Office of Indigent Defense Services (IDS) and charged it with overseeing and enhancing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. On behalf of the School of Government, the Public Defense Education (PDE) Initiative collaborates with the Office of Indigent Defense Services to meet the requirements of the Indigent Defense Services Act.

January Offerings

- **Child Support Enforcement** (Biennial Even Years): This course provides training for attorneys representing alleged contemnors in child support enforcement proceedings. Past session topics have included civil and criminal contempt, trial skills, and the intersection of IV-D child support collections and foster care. The program is comprised of plenary sessions.

  Lead Faculty: Timothy Heinle, Teaching Assistant Professor

  Duration: Up to 6.0 hours of CLE, including ethics/professional responsibility

- **Civil Commitment** (Biennial Odd Years): This course provides training for public defenders, appellate defenders, and private attorneys who represent respondents in civil commitment proceedings. Past session topics have included evidence needed to show dangerousness, firearms, the National Instant Criminal Background Check System (NICS), commitment hearing advocacy, appellate case updates, and special issues for juveniles in DSS custody. The program is comprised of plenary sessions.

  Lead Faculty: Timothy Heinle, Teaching Assistant Professor

  Duration: Up to 6.0 hours of General CLE

- **Guardianship Proceedings for Appointed Counsel** (Biennial Odd Years): This course provides training for public defenders, appellate defenders, and private attorneys who serve as appointed

guardian ad litem attorneys for respondents in incompetency and guardianship proceedings. Past session topics have included advocating for services and treatment in mental health and substance abuse cases, alternatives to guardianship, pushing back on common assumptions, a lawyer's guide to understanding addiction, and navigating the dual role of the guardian ad litem. The program is comprised of plenary sessions.

Lead Faculty: Timothy Heinle, Teaching Assistant Professor

Duration: Up to 6.0 hours of General CLE

February Offerings

- **Current Developments in Criminal Law** (Annual): This online course provides training to public defenders, private attorneys who do indigent criminal defense work, and any others who are interested in criminal law. Various School of Government faculty discuss recent developments in criminal law. The webinar includes a dynamic visual presentation, live audio, and interactive Q&A session.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Duration: 1.5 hours of General CLE and qualifies for the NC State Bar criminal law specialization credit.

- **Felony Defender** (Annual): This course provides training for public defenders and private attorneys who perform a significant amount of appointed work and who are new to representing defendants charged with felonies in superior court. Past session topics have included discovery and investigation, suppression and other superior court motions, preserving the record, jury instructions, sentencing, and trial skills—including conducting voir dire—necessary to handle felony cases from start to finish. The program is comprised of plenary sessions and intensive small group workshops.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Duration: Up to 16 hours of CLE, including substance abuse/mental health awareness, ethics/professional responsibility, and qualifies for the NC State Bar criminal law specialization credit.

March Offerings

- **Intensive Juvenile Defender** (Biennial Even Years): The course provides training for public defenders and private attorneys who represent juveniles in delinquency proceedings. Past topics include crafting individualized dispositions, identifying new arguments for cases involving juveniles,

disproportionate minority contact, telling your client's story, and cultural competencies. The program is comprised of plenary sessions and intensive small group workshops.

Lead Faculty: Timothy Heinle, Teaching Assistant Professor

Duration: Up to 6.0 hours of General CLE

- **Intensive Parent Defender** (Biennial Odd Years): This course focuses on parent representation at each stage of juvenile abuse, neglect, and dependency proceedings, including reviewing and challenging pleadings, contested adjudications, and parent advocacy through permanency. The program is comprised of plenary sessions and intensive small group workshops.

  Lead Faculty: Timothy Heinle, Teaching Assistant Professor

  Duration: Up to 6.0 hours of General CLE

April Offerings

- **Special Topic Seminar** (Annual): The 2024 seminar is on Navigating the Capacity and Commitment Process.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Duration: Up to 6.0 hours of General CLE depending on topic

May Offerings

- **Spring Public Defender and Investigator Conference** (Annual)**:** This conference includes various topics and tracks for misdemeanor attorneys, felony attorneys, juvenile attorneys, and investigators. Past attorney track sessions have focused on emerging issues in Fourth Amendment law, expert witnesses, and capacity. Past investigator track sessions have included strategies for working with counsel, testifying in jury and non-jury trials, and ethical considerations for investigators.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Timothy Heinle, Teaching Assistant Professor

  Duration: Up to 13.25 hours of CLE, including ethics/professional responsibility, technology, and substance abuse/mental health awareness.

June Offerings

- **Summer Criminal Law Webinar** (Annual): This online course covers recent criminal law decisions issued by the North Carolina appellate courts and the United States Supreme Court and highlights significant criminal law legislation enacted by the North Carolina General Assembly.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Duration: 1.5 hours of General CLE and qualifies for the NC State Bar criminal law specialization credit.

- **Civil Law Webinar** (Annual): Topics vary. In 2024, this new online course will cover issues related to expert testimony in proceedings involving children. Attorneys will learn foundational concepts for offering, challenging, and distinguishing between expert and lay testimony.

  Lead Faculty: Timothy Heinle, Teaching Assistant Professor

  Duration: 1.5 hours of General CLE

July Offerings

- **Defender Trial School** (Annual): Participants will use their own cases to develop a cohesive theory of defense at trial and apply that theory through all stages of a criminal trial, including voir dire, opening, and closing arguments, and direct and cross-examination. The program is comprised of plenary sessions and intensive small group workshops.

  Lead Faculty: John Rubin, Albert Coates Professor, and Bob Burke, Contract Educator

  Duration: Up to 28 hours of CLE and qualifies for the NC State Bar criminal law specialization credit.

August Offerings

- **Juvenile Defender** (Annual): Provides training for attorneys who represent youth in delinquency proceedings. Past topics have included legislative updates, post-disposition advocacy, issues surrounding recidivism, and more. The program is comprised of plenary sessions.

  Lead Faculty: Timothy Heinle, Teaching Assistant Professor

  Duration: Up to 6.0 hours of CLE, including substance abuse/mental health awareness

- **Parent Attorney** (Annual): This course is for attorneys who represent respondents in abuse, neglect, dependency, and termination of parental rights proceedings. Past topics have included legislative and case updates, substance use and testing, and representing parents with disabilities, and self-care for attorneys working in this often traumatic field. The program is comprised of plenary sessions.

  Lead Faculty: Timothy Heinle, Teaching Assistant Professor

  Duration: Up to 6.25 hours of CLE, including substance abuse/mental health awareness, and qualifies for NC State Bar Child Welfare specialization and Family Law specialization credit.

September Offerings

- **Higher Level Felony** (Annual): This program is for attorneys interested in handling higher-level felony cases at the trial level. Past topics have included preparing for serious felony cases, eyewitness identifications, habitual felons, self-defense, client relations and rapport, sentencing law and advocacy, and mitigation investigation. The program consists of plenary sessions and intensive small group workshops.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Duration: Up to 12.25 hours of CLE, including ethics/professional responsibility, and qualifies for the NC State Bar Criminal Law specialization credit.

October Offerings

- **Appellate Advocacy** (Annual or biennial depending on demand): Using their own cases, participants will learn to develop a cohesive theory of defense on appeal and use that theory in writing a persuasive statement of facts and legal argument. The program consists of plenary sessions and intensive small group workshops.

  Lead Faculty: John Rubin, Albert Coates Professor, and Bob Burke, Contract Educator

  Duration: Up to 18.0 hours of General CLE

November Offerings

- **Misdemeanor Defender** (Annual): This course is an introductory program for attorneys new to misdemeanor cases. Past sessions have included stops and searches, impaired driving, ethical

issues in district court, sentencing and jail credit, probation violations, and other matters in misdemeanor cases. The program also provides instruction on client interviewing, negotiation, and trial skills, including a small group workshop on trial skills. The program is comprised of plenary sessions and intensive small group workshops.

Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

Duration: Up to 20.0 hours of CLE, including ethics/professional responsibility, and qualifies for the NC State Bar criminal law specialization credit.

December Offerings

- **Winter Criminal Law Webinar** (Annual): This online course covers recent criminal law decisions issued by the North Carolina appellate courts and the United States Supreme Court and highlights significant criminal law legislation enacted by the North Carolina General Assembly.

  Lead Faculty: Phil Dixon, Jr., Director, Public Defense Education; Teaching Assistant Professor

  Duration: 1.5 hours of General CLE and qualifies for the NC State Bar criminal law specialization credit.

Educational Resources

- Indigent Defense Manual Series (Seven Volumes)
- Collateral Consequences Assessment Tool
- Guide to Relief from a Criminal Conviction
- Practice Guides (Defense Motions and Notices in Superior Court; The First Seven Days Series for GALs and Parent Defenders)
- Racial Equity Network Resources (Training Materials)
- On-Demand Defender CLE Library
- NC Criminal Debrief Podcast
- Covid-19 Tool Kit for Defenders
- SOG Criminal Law Blog
- SOG On the Civil Side Blog
- Case Summaries (via listservs) Evidence Chapter in Abuse, Neglect, and Dependency Manual

Pressure Killers

Killing ain't fair, but somebody gotta do it

Hit Em Up, Tupac Shakur (1996)

Dr. Steven R. Cureton, Professor
The University of North Carolina, Greensboro
Email:srcureto@uncg.edu

1

Social Science

- Sociologists are social scientific story tellers/narrators whereby the unit of analysis (data points) would be the nuances of humanity.
  - Sociologists apply quantitative and/or qualitative methods to examine the nature of human behavior on a societal and individual level.
- Criminology is a subfield of Sociology that focuses on the context, and causal connections to crime. Moreover, Criminologists examine the nature, extent, and processing of deviant, criminal and violent behavior.
- African American Criminology factors in race as a considerable ingredient to explain crime as a society, cultural, community and/or individual level problem.

2

I ain't a Killer But Don't Push Me
Makaveli's Hail Mary by Tupac Shakur (1996)

- My Job: To provide a granular method of decoding choices and actions.
  - E. Franklin Fraizier contends that the job of the black researcher is to massage the alphabet to get every meaning possible when dealing with the lived experiences of black people.
  - Methodology: Application of a qualitative method whereby ethnography, auto-ethnography and face-to-face interviews are used to construct a social narrative.

3

Murder is Being Free of Someone Else's Existence

Criminology Mainstream Theories of Murder

- Gilligan's (1996) Culture of Honor: I have yet to see a serious act of violence that was not provoked by the experience of feeling shamed and humiliated, disrespected and ridiculed and that did not represent the attempt to prevent or undo this loss of face…Violence toward others, such as homicide is an attempt to replace shame with pride (Gilligan1997:96,110-111).
- Katz's (1988) Righteous Slaughter Theory explains the following: (1) killing motivations; (2) relationship with the victim(s); (3) how murder resolves the problem; and (4) the social facts that make the scene an appropriate place for a killing. Essentially murder is a righteous maneuver for standing on the business of protection!

4

Elemental Contact: Hit or Miss

- *There is a socially constructed and conditioned killing breed of murderers. If it is in the air they breathe, smelling death becomes an obsession. On one hand there is a panic over becoming a victim. On the other hand, the right to life mandates seizing control of killers by initiating murder. In many respects they have become* ***"Pressure Killers."***
- *There is an element of matrix surrealism when entering a cold interview room to interact with an alleged killer for the first time. An advisory is mandatory. If you have virgin lungs, fidgety eyes, and a weak disposition, then you will miss the opportunity to seize upon the rapport necessary to advance the case.*

5

Shattered Mirrors: Eyes Made Ugly

- My ethnographic research has placed me in the company of gang bangers and killing campaigns. As a criminologist hired by law firms to produce sociological narratives concerning mitigating circumstances related to murder, I have visited persons charged with murder. I've seen that look, whether it is a thousand-yard stare or evidence of soul departure. Is it a reflection of primordial evil?
- Pressure Killers have in common a susceptibility and vulnerability to succumb to crushing social forces. The pressure was too great a foe and had succeeded in forcing an ultimate decision to kill. Hence, in every eye, there was evidence of pressure! I saw pressure.
- Killing is critical to protecting some real or imagined sense of identity, status, or reputation. Oftentimes, the kill is the cover up for fatal flaws in a person's impression management.

6

Shameful is not Shameless in the Age of The Social Media Virus

- Manhood becomes a spectacle with a wide range of anonymous eyes, vying to be vultures over dead corpses.
- Social media platforms permit an environment to easily liquidate perceptions of manhood by offering rarely proven bravery outside of a willingness to randomly shoot at declared enemies.
- Troublesome challenges are in the analysis of announcing intentions. Hyped-up bravado is the virus that has violated value of life.

7

Pulpits or Bullshit: Down by the Altar

- African American Criminology forces an examination of the black church. Such an institution was a fundamental socialization agent helping black people adjust to unfavorable life course conditions. Did the black church fall asleep at the wheel?
- Is the gang a manifestation of vulnerable black youth seeking validation and an earnest attempt to survive?
- Ganglands dominate and are the strongest socialization agent in permanent underclass communities. The churches in those communities have been reduced to an open call for funerals and simultaneously the meeting place for soldiers who swear celerity in retaliation.

8

Assisting Resistance Requires Freedom to Understand the Defendant

- After 16 years of being a gang consultant and/or expert witness for death penalty and RICO cases, I understand clearly that there is a battle over the exposure to the science of culture. I have learned that the law is one quarter of a legal outcome. Forensic evidence is one quarter of a legal outcome and the process of introducing social narratives by way of character references and sociological analysis consumes the remaining ingredients of legal outcomes.
- What does all this mean for you? The answers are in the details of the following:
  - Have you ever examined the impact of your professional ego?
  - Have you ever sat in judgment or been afraid to discover that the killer in them could be the killer in you? This is straight from Gottfredson and Hirschi's (1990) Social Control Theory reflecting on the potential of all people.
  - Are you working or representing? There is a difference between doing your job as a justice agent or conducting the business of being a change agent.

9

Who Am I in this Equation?

- As it stands for now. Am I the one who got away?
- My obligation is to meet the challenge of declaring "the look away from crowd," human!
- *"When you take the stand on our behalf with stories told, deliver them in such a way that we see it, which will likely be the last example of what freedom will look for a very long time."*

10

References

- Cureton, S. (manuscript in progress). *The Killing Kind: Breeding a Creed of Murderers.*
- Cureton, S. (2019). *The Social Construction of Black Masculinity: An Ethnographic Study*. New York: Peter Lang.
- Gilligan, J. (1997). *Violence: Reflections on A National Epidemic.* New York: Vintage Books.
- Gottfredson, M. & Hirschi, T. (1990). *A General Theory of Crime*. California: Stanford University Press.
- Katz, J. (1988). *Seductions of Crime: Moral and Sensual Attractions in Doing Evil*. New York Basic Books.

11

The 4 Rs of Being Trauma-Informed and Trauma-Responsive

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Recruitment & Training Coordinator, IDS
Carla.Huff@nccourts.org

1

Trauma

An event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being

samhsa.gov

2

T Threat

R Reactive Response

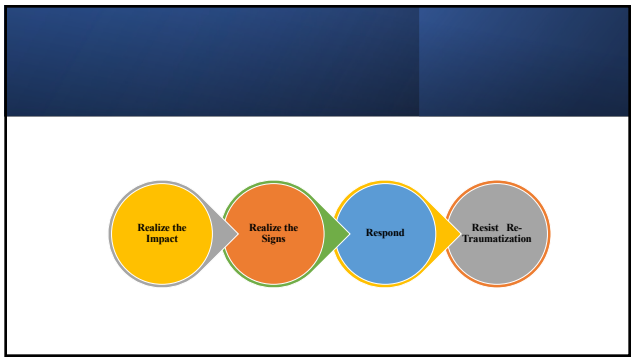
A Alienation/Isolation

U Unsafe

M Memory Distortion

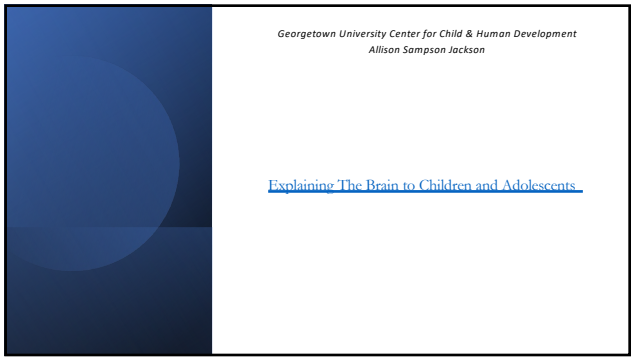
A ANS Dysregulation

3


Realize the Impact
Realize the Signs
Respond
Resist Re-Traumatization

4

5


Georgetown University Center for Child & Human Development
Allison Sampson Jackson
Explaining The Brain to Children and Adolescents

6

What Does The Data Tell Us?

- cardiovascular disease
- various forms of cancer
- obesity
- autoimmune disorders
- dementia
- respiratory illnesses
- liver disease
- diabetes
- kidney disease
- clinical diagnoses
- substance use
- violence
- victim of violence
- incarceration
- suicide

7

Amygdala

fight
flight
freeze
fawn
flop

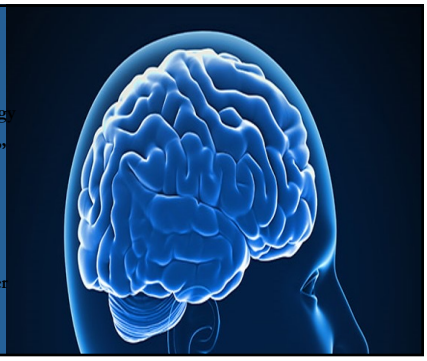
Prefrontal/Cerebral Cortex

logic
reasoning

8

Adrenaline
Metabolism
Attention
Focus
Raises blood sugar→ energy
Increases blood pressure
Prepare for "fight or flight"

Cortisol
Blood pressure
Regulates metabolism
Suppresses inflammation
Releases glucose from liver
Regulates blood sugar
Sleep cycle



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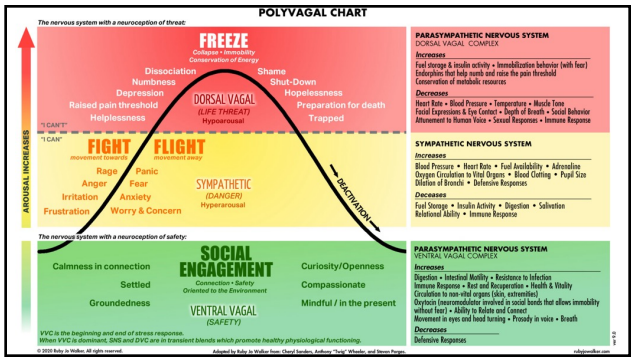
POLYVAGAL CHART
The nervous system with a neuroception of threat:
FREEZE
Collapse • Immobility
Conservation of Energy
Dissociation
Numbness
Depression
Raised pain threshold
Helplessness
Shame
Shut-Down
Hopelessness
Preparation for death
Trapped
DORSAL VAGAL
(LIFE THREAT)
Hyporarousal
"I CAN'T"
"I CAN"
FIGHT
movement towards
Rage
Anger
Irritation
Frustration
FLIGHT
movement away
Panic
Fear
Anxiety
Worry & Concern
SYMPATHETIC
(DANGER)
Hyperarousal
REACTIVATION
AROUSAL INCREASES
The nervous system with a neuroception of safety:
SOCIAL ENGAGEMENT
Connection • Safety
Oriented to the Environment
Calmness in connection
Settled
Groundedness
Curiosity/Openness
Compassionate
Mindful / in the present
VENTRAL VAGAL
(SAFETY)
VVC is the beginning and end of stress response.
When VVC is dominant, SNS and DVC are in transient blends which promote healthy physiological functioning.
PARASYMPATHETIC NERVOUS SYSTEM
DORSAL VAGAL COMPLEX
Increases
Fuel storage & insulin activity • Immobilization behavior (with fear)
Endorphins that help numb and raise the pain threshold
Conservation of metabolic resources
Decreases
Heart Rate • Blood Pressure • Temperature • Muscle Tone
Facial Expressions & Eye Contact • Depth of Breath • Social Behavior
Attunement to Human Voice • Sexual Responses • Immune Response
SYMPATHETIC NERVOUS SYSTEM
Increases
Blood Pressure • Heart Rate • Fuel Availability • Adrenaline
Oxygen Circulation to Vital Organs • Blood Clotting • Pupil Size
Dilation of Bronchi • Defensive Responses
Decreases
Fuel Storage • Insulin Activity • Digestion • Salivation
Relational Ability • Immune Response
PARASYMPATHETIC NERVOUS SYSTEM
VENTRAL VAGAL COMPLEX
Increases
Digestion • Intestinal Motility • Resistance to Infection
Immune Response • Rest and Recuperation • Health & Vitality
Circulation to non-vital organs (skin, extremities)
Oxytocin (neuromodulator involved in social bonds that allows immobility without fear) • Ability to Relate and Connect
Movement in eyes and head turning • Prosody in voice • Breath
Decreases
Defensive Responses
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Adapted by Ruby Jo Walker from: Cheryl Sanders, Anthony "Tarig" Wheeler, and Steven Porges.
rubyjowalker.com

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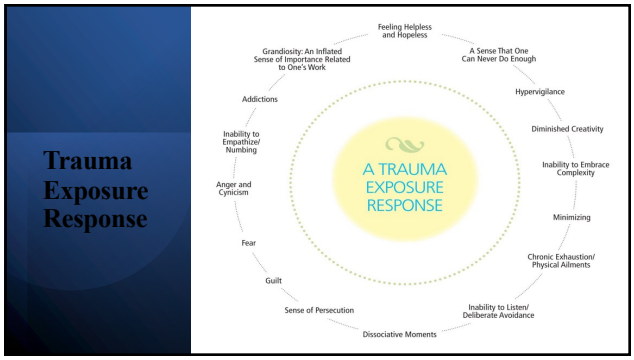
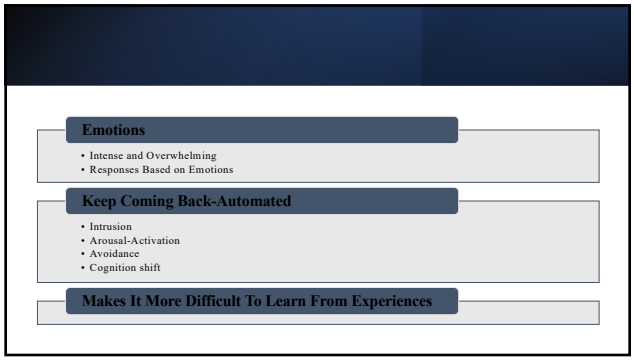

Trauma Exposure Response
Feeling Helpless and Hopeless
A Sense That One Can Never Do Enough
Hypervigilance
Diminished Creativity
Inability to Embrace Complexity
Minimizing
Chronic Exhaustion/ Physical Ailments
Inability to Listen/ Deliberate Avoidance
Dissociative Moments
Sense of Persecution
Guilt
Fear
Anger and Cynicism
Inability to Empathize/ Numbing
Addictions
Grandiosity: An Inflated Sense of Importance Related to One's Work
A TRAUMA EXPOSURE RESPONSE

11


Emotions
• Intense and Overwhelming
• Responses Based on Emotions
Keep Coming Back-Automated
• Intrusion
• Arousal-Activation
• Avoidance
• Cognition shift
Makes It More Difficult To Learn From Experiences

12

Trauma-Informed Principles

13

14

The body actually ***does*** keep the score

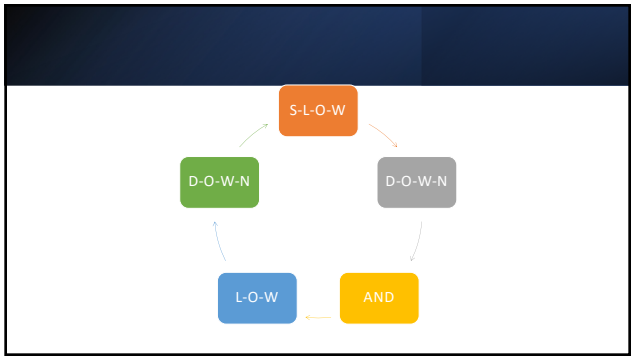
The way we interact with someone impacts the nervous system

15

Who Wants To Re-Call and Talk About Their Own Trauma?

- Re-Telling vs. Re-Living
  Safety First

16



17

Our Five Senses

- Sight
- Smell
- Touch
- Taste
- Hear

Physical Muscles and Suppression

18

Let us go from here…	To here
Why	**What were your thoughts** **What were you feeling** **What else do you remember**
Chronological	**Where would you like to start**

19

Who is a safe adult for you?

What is your favorite memory?

When you are anxious, sad, stressed, how do you cope?

What were the types of things that make you anxious, sad, stressed?

20

What is important for me to know about you?

Always my last questions…

Do you have hope for your future?

What can you imagine it can be?

*This is an extremely reparative experience if someone is able to see a glimmer of a possibility…for someone that has difficulty, the idea that it is a possibility may be all one needs to make a different turn at the fork in the road

21

Acknowledge the reality of the work that we do

The problems we are trying to treat or fix are, for some, solutions

Things cover other things

How does someone see the world?

People who are traumatized process via emotion
- Aggression, violence, self-harm and other coping strategies

22

THREE ACTION STEPS:

- Notice What You Are Already Doing
- What Are Your Biggest Needle Movers?
- Identify Where You Can Make 1-2 Shifts

23

24

Resources

Dernoot, L. L. van, & Burk, C. (2009). *Trauma stewardship: An everyday guide to caring for self while caring for others*. Berrett-Koehler Publishers.

Giacomucci, S. (2023). *Trauma-informed principles in group therapy, psychodrama, and organizations.*

Research and Evaluation Group. "Findings from the Philadelphia ACE Survey." *Public Health Management Corporation* . pmf0f07836.pdf

Van der Kolk, Bessel A. "The body keeps the score: brain, mind and body in the healing of trauma." New York: New York: Viking, 2015.

Walker, Ruby Jo. *Polyvagal Theory Chart Trauma Response. Southwest Trauma Training.* www.SwTraumaTraining.com

Additional Resources:
https://pacesconnection.libguides.com/resourcecenter/pacessciencesurveys/aces_surveys

Adverse Childhood Experiences (ACES) - The Burke Foundation

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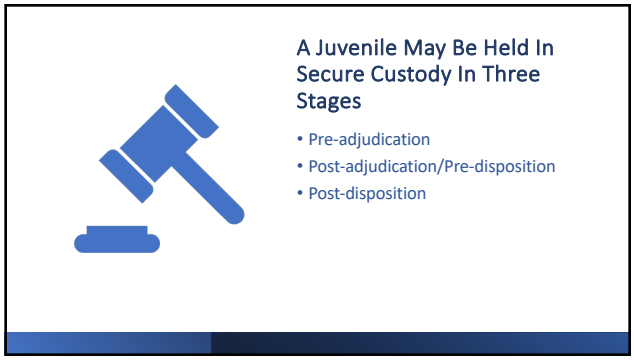
SECURED CUSTODY
Woodrena Baker-Harrell, J.D.
18th District Chief Public Defender
March 7, 2024

1


A Juvenile May Be Held In Secure Custody In Three Stages
• Pre-adjudication
• Post-adjudication/Pre-disposition
• Post-disposition

2


Pre-adjudication
A petition has been filed and the juvenile court counselor has asked the court for a secure custody order

3

4

When may the court enter an order for secure custody?

Pre-adjudication

5

Criteria For Secure Custody Pending Pre-Adjudication

- The court **may** order secure custody **only** where the court finds there is a reasonable factual basis that the juvenile committed the offense as alleged in the petition **and** one of the following exists:

6

Criteria for Secure Custody*

- Is charged with a felony and is a danger to property or persons
- Is a danger to others or property, and is charged with either a misdemeanor in which either assault on a person or the possession, use, display, or threatened use of a firearm or deadly weapon is an element
- The juvenile has demonstrated that the juvenile is a danger to persons and is charged with a violation of impaired driving or driving by a person less than 21 years old after consuming alcohol or drugs
- The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified

*N.C.G.S. 7B-1903(b)(1-4)

7

Criteria for Secure Custody* cont'd

- A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court
- The juvenile is an absconder from any residential facility operated by the division or comparable facility in another state or any detention facility in this state
- There is reasonable cause to believe the juvenile should be detained for the juvenile's own protections because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.

*N.C.G.S. 7B-1903(b)(1-4)

8

Initial Order for Secure Custody

- The order must be in writing
- The order must be given to a parent, guardian, or custodian
- Copies of the order shall accompany the juvenile to the facility no later than 72 hours after the initial detention of the juvenile

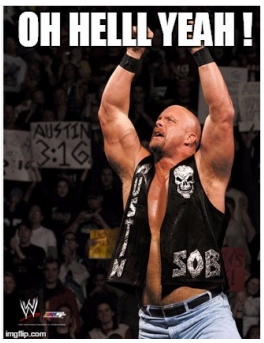
9

Where will the juvenile be held?

- An approved detention facility
- A juvenile who has allegedly committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody in a holdover facility up to 72 hours, if the court, based on information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires the juvenile be housed in a holdover facility
- If person is 18 years old or older, but falls within the jurisdiction of juvenile court, the person may be detained in the county jail where the charge arose

10

Should the juvenile be represented at the initial secure custody hearing?



11

Time Limits For Initial Secure Custody Hearings

If the judge signed the order:

*A juvenile may not be held under a secure custody order for more than **5 days** without a hearing*

If the juvenile court counselor signed the order:

*The hearing **must be** heard at the next regularly scheduled court session if it precedes the 5 day limit*

12

13

MAY THE HEARING BE WAIVED?

14

MAY THE HEARING BE CONTINUED?

15

MAY THE ADA RECITE ALLEGATIONS FROM A PETITION AND/OR POLICE REPORT?

16

At an initial hearing to determine the need for continued custody, the court shall:

01	02	03	04
Receive testimony	Allow the juvenile, parents, guardian or custodian an opportunity to introduce evidence and examine witnesses	Be bound by the criteria in 7B-1903 in determining if continued custody is warranted	Not be bound by the Rules of Evidence

N.C.G.S. 7B-1906(d)

17

THE USE OF SHACKLES IN COURT

- Always ask to remove handcuffs and shackles
  - Request at the start of the hearing
  - At bare minimum ask for handcuffs to be removed
  - Use the security in the courtroom to your advantage
- Judge needs to find restraints reasonably necessary to maintain order, prevent escape, or provide for the safety of the courtroom

N.C.G.S. 7B-2402.1

18

Alternatives To Detention

- Placement with parents, relatives, or an adult who will assume responsibility for the juvenile
- Present court with a schedule for the juvenile
- Outside support for the juvenile
- Services for the juvenile
- EHA/ATD where available

19

The judge must issue a written order with findings of fact which includes the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve

20

21

Subsequent Secure Custody Hearings

15 y.o. and below

As long as the juvenile remains in secure custody subsequent hearings must be held at intervals of no more than 10 days

Raise the age juveniles (16-17 y.o.)

If the juvenile is charged with a Class A – G felony, then they are entitled to a secure custody hearing every 30 days, unless the court determines the standard 10 day interval should be used

22

Post-adjudication / Pre-disposition

After an adjudication hearing the court may continue the dispositional hearing pursuant to 7B-2406

23

Post-adjudication / Pre-disposition Secure Custody Hearings

- After an adjudication of delinquency, the court may continue the disposition hearing pursuant to 7B-2406
- The juvenile may be held in secure custody pending the dispositional hearing
- Secure custody orders issued after an adjudication of delinquency are governed by a less stringent standard than secure custody orders issued after the initial accusation
- The court of appeals has held that G.S. 7B-1906(g), which requires the court to specify the evidence on which it bases an order of secure custody after the initial accusation, does not apply to secure custody orders issued after the juvenile has been adjudicated delinquent
- Review hearings are to occur at intervals no more than 10 calendar days, but with the consent of the juvenile, counsel may waive them for no more than 30 days

24

Post-disposition

After sentencing and prior to placement

25

Post-disposition Secure Custody Hearing

If there is significant time between the disposition hearing and the juvenile's placement, the court may order that the juvenile remain in secure custody

Review hearings are to occur at intervals no more than 10 calendar days, but with the consent of the juvenile, counsel may waive them for no more than 30 days

26

THANK YOU!!

and remember……

"CHOOSE VIOLENCE"

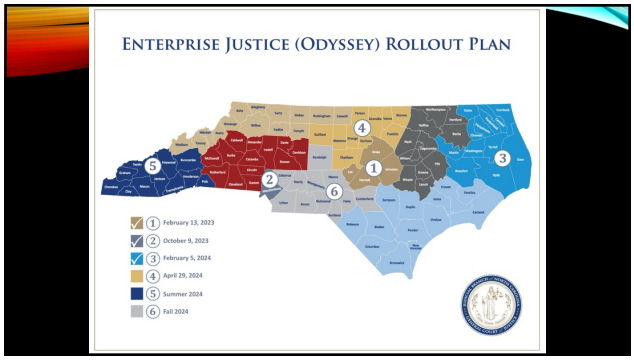
- Woodrena

27

JUVENILE DEFENSE & ECOURTS

Burcu Hensley, Assistant Juvenile Defender, Office of the Juvenile Defender
Kevin Boxberger, Regional Defender, Indigent Defense Services

1



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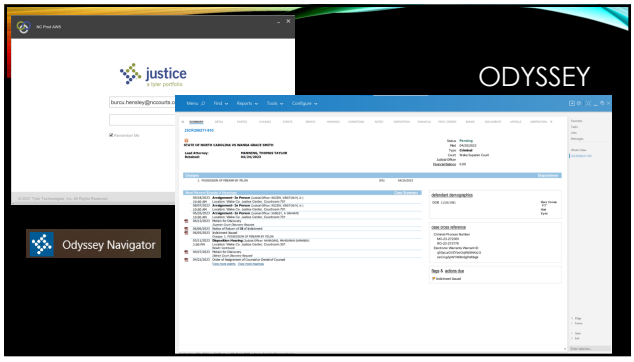


3

PORTAL VS EFILE

Portal

- View cases (like looking through the shuck)
- Registration not required
- But recommended for attorneys
  - Save cases
- Required for elevated access cases

https://portal-nc.tylertech.cloud/Portal/

eFile

- File into cases (like handing the clerk the motion to file)
- Registration required
- Firm accounts for lawyers & staff
- Individual accounts for non-lawyers

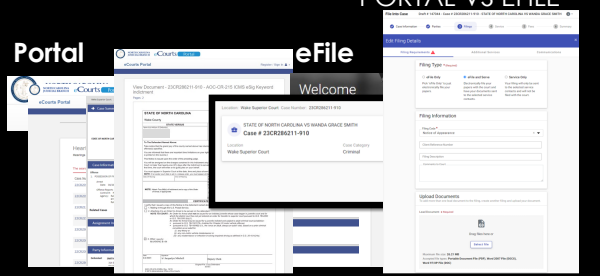
efilenc.tylertech.cloud

4

PORTAL VS EFILE

Portal

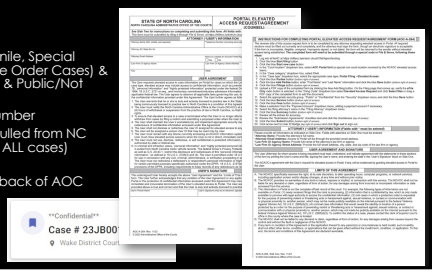
eFile



5

ELEVATED ACCESS

- AOC-A-264
- Confidential files (Juvenile, Special Proceedings, Protective Order Cases) & Adult Criminal Case PII & Public/Not Portal
- Associated with bar number
- Attorney Information pulled from NC State Bar directory (for ALL cases)
  - NCGS §84-39
- Instructions to eFile on back of AOC form
- Not helpful with eFile



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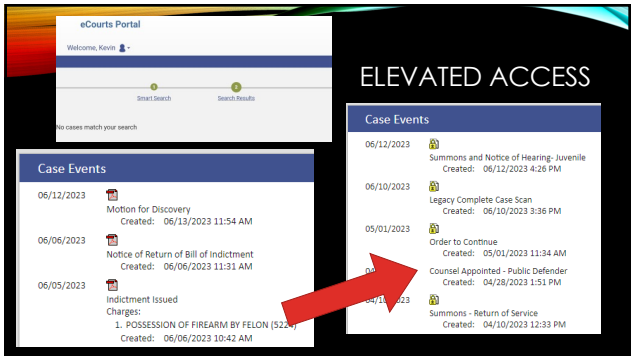
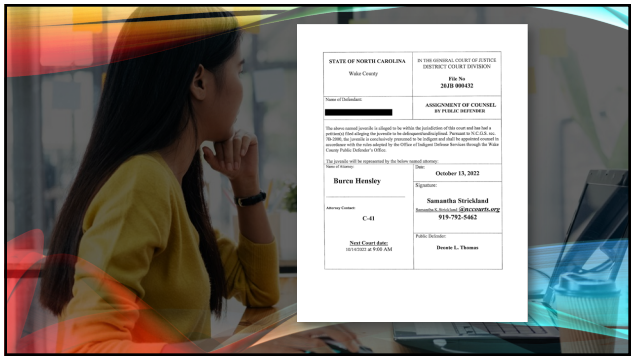

eCourts Portal
Welcome, Kevin
Smart Search
Search Results
No cases match your search
Case Events
06/12/2023
Motion for Discovery
Created: 06/13/2023 11:54 AM
06/06/2023
Notice of Return of Bill of Indictment
Created: 06/06/2023 11:31 AM
06/05/2023
Indictment Issued
Charges:
1. POSSESSION OF FIREARM BY FELON (522
Created: 06/06/2023 10:42 AM
ELEVATED ACCESS
Case Events
06/12/2023
Summons and Notice of Hearing- Juvenile
Created: 06/12/2023 4:26 PM
06/10/2023
Legacy Complete Case Scan
Created: 06/10/2023 3:36 PM
05/01/2023
Order to Continue
Created: 05/01/2023 11:34 AM
Counsel Appointed - Public Defender
Created: 04/28/2023 1:51 PM
Summons - Return of Service
Created: 04/10/2023 12:33 PM

7

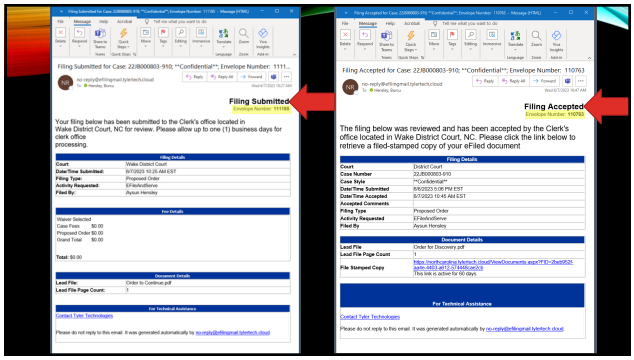

STATE OF NORTH CAROLINA
Wake County
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
File No
20JI 000432
ASSIGNMENT OF COUNSEL
BY PUBLIC DEFENDER
October 13, 2022
Burcu Hensley
C-41
Samantha Strickland
919-792-5462
Public Defender:
Dennie L. Thomas

8


DEMONSTRATION
OF EFILE

9

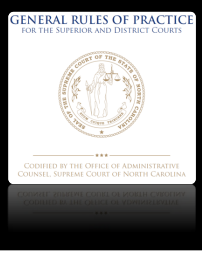
10



11

SERVICE RULES

- Rules 5 & 5.1
- Odyssey counties *must* file electronically
- Relief from requirement if emergency
- Private information must be redacted
- **(d) Service.** Service of pleadings and other documents must be made as provided by the General Statutes. A Notification of Service generated by the court's electronic-filing system is an "automated certificate of service" under Rule 5(b1) of the Rules of Civil Procedure.



12

SERVICE RULES

NCGS §15A-951. Motions in general; definition, service, and filing.

(b) Each written motion must be served upon the attorney of record for the opposing party or upon the defendant if he is not represented by counsel. Service upon the attorney or upon a party shall be made as provided in G.S. 1A-1, Rule 5.

(c) All written motions must be filed with the court. Proof of service must be made by filing with the court a certificate of service as provided in G.S. 1A-1, Rule 5(b1).

13

SERVICE RULES

Rule 5. Service and filing of pleadings and other papers. (b) Service – How made.

Service is made under this subsection if performed through the court's electronic filing system. When service through the court's electronic filing system is not available, or the party is not registered to receive service through the court's electronic filing system, service may be made as follows…

[email is allowed upon attorney of record to email address of record]

(b1) Service – Certificate of Service.

. . . With respect to persons served through the court's electronic filing systems, an automated certificate of service generated by that system satisfies the requirements of this rule.

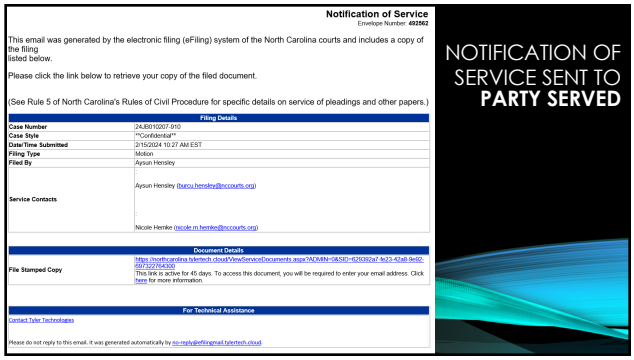
14

"Historically, a document served pursuant to Rule 5 has a certificate of service attached and both are filed with the court. The change to Rule 5(b1) does not prohibit a party or attorney from drafting their own certificate of service to attach and file with the document.

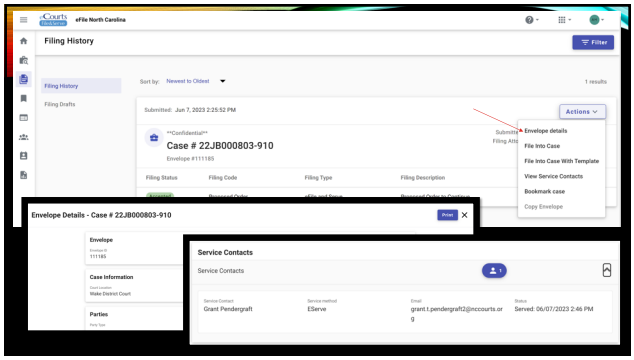
However, if the party wants to use the automated notification of service as their certificate of service, the notification of service must be filed with the court. For a party serving through Odyssey File & Serve, the automated notification of service received is not automatically sent to the court case file and, thus, requires filing with the court.

There is a feature in Odyssey File & Serve that can be used to cut down on the number of filings. If a party or attorney were to serve a document first through the serve only feature first, the automated notification of service would be generated. Thereafter, the party or attorney could attach a certificate of service or the automated notification of service to the document and then electronically file them together through the file only feature or file & serve feature in Odyssey File & Serve."

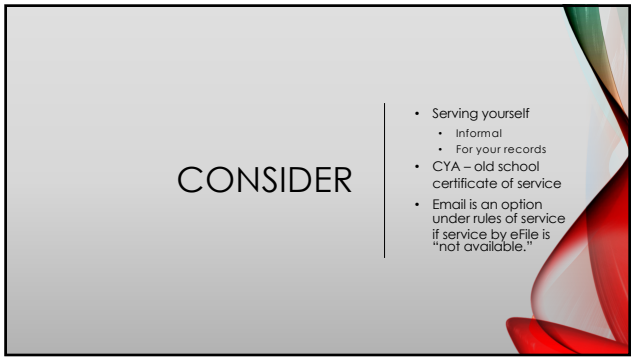
15


Notification of Service
Envelope Number: 492062
This email was generated by the electronic filing (eFiling) system of the North Carolina courts and includes a copy of the filing listed below.
Please click the link below to retrieve your copy of the filed document.
(See Rule 5 of North Carolina's Rules of Civil Procedure for specific details on service of pleadings and other papers.)
Filing Details
Case Number 24JB010207-910
Case Style **Confidential**
Date/Time Submitted 2/15/2024 10:27 AM EST
Filing Type Motion
Filed By Aysun Hensley
Service Contacts
Aysun Hensley (aycu.hensley@nccourts.org)
Nicole Henke (nicole.m.henke@nccourts.org)
Document Details
File Stamped Copy
This link is active for 45 days. To access this document, you will be required to enter your email address. Click here for more information.
For Technical Assistance
Contact Tyler Technologies
Please do not reply to this email. It was generated automatically by
NOTIFICATION OF SERVICE SENT TO
PARTY SERVED

16


eFile North Carolina
Filing History
Filter
Filing History
Filing Drafts
Sort by: Newest to Oldest
1 results
Submitted: Jun 7, 2023 2:25:52 PM
Actions
Envelope details
File Into Case
File Into Case With Template
View Service Contacts
Bookmark case
Copy Envelope
Confidential
Case # 22JB000803-910
Envelope #111185
Filing Status
Filing Code
Filing Type
Filing Description
Envelope Details - Case # 22JB000803-910
Print
Envelope
Case Information
Wake District Court
Parties
Service Contacts
Service Contacts
Grant Pendergraft
EServe
grant.t.pendergraft2@nccourts.org
Served: 06/07/2023 2:46 PM

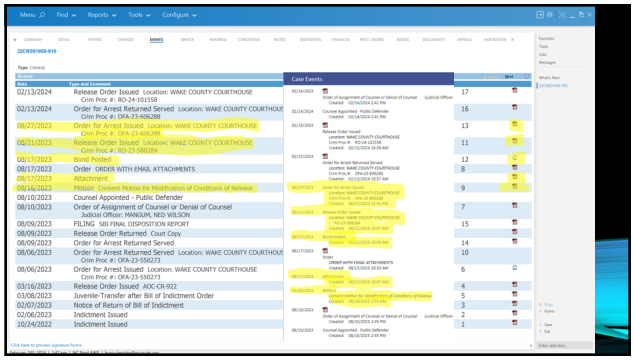
17


CONSIDER
Serving yourself
Informal
For your records
CYA – old school certificate of service
Email is an option under rules of service if service by eFile is "not available."

18


ADDITIONAL THOUGHTS
Notice of appointment
Notice of filing
Ex Parte requests
Filing Codes
New local rules for each county
FAQ's

19



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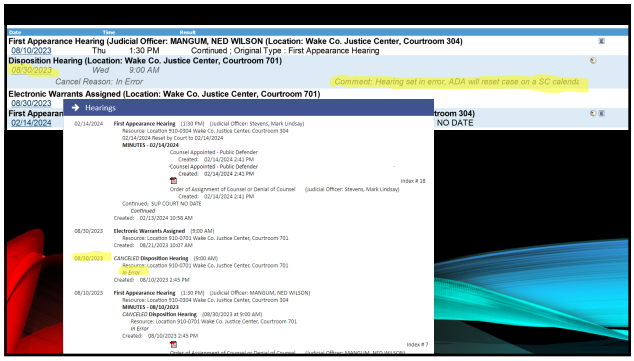
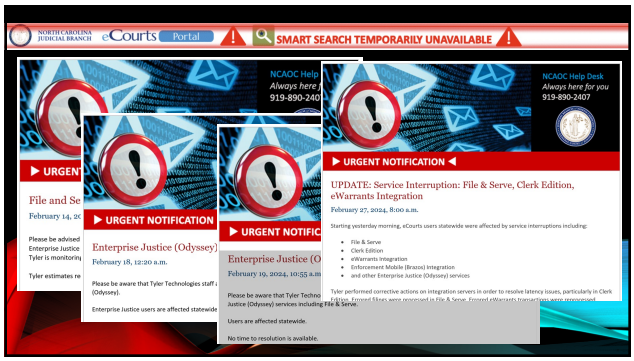

First Appearance Hearing (Judicial Officer: MANGUM, NED WILSON (Location: Wake Co. Justice Center, Courtroom 304)
08/10/2023 Thu 1:30 PM Continued ; Original Type : First Appearance Hearing
Disposition Hearing (Location: Wake Co. Justice Center, Courtroom 701)
09/20/2023 Wed 9:00 AM
Cancel Reason: In Error
Comment: Hearing set in error, ADA will reset case on a SC calendr
Electronic Warrants Assigned (Location: Wake Co. Justice Center, Courtroom 701)
09/20/2023
Hearings
02/14/2024

21


NORTH CAROLINA JUDICIAL BRANCH
eCourts Portal
SMART SEARCH TEMPORARILY UNAVAILABLE
NCAOC Help Desk
Always here for you
919-890-2407
URGENT NOTIFICATION
UPDATE: Service Interruption: File & Serve, Clerk Edition, eWarrants Integration
February 27, 2024, 8:00 a.m.
Starting yesterday morning, eCourts users statewide were affected by service interruptions including:
File & Serve
Clerk Edition
eWarrants Integration
Enforcement Mobile (Brazos) Integration
and other Enforcement Justice (Odyssey) services
Enterprise Justice (Odyssey)
February 18, 12:20 a.m.
Please be aware that Tyler Technologies staff
(Odyssey).
Enterprise Justice users are affected statewide
Enterprise Justice (O
February 19, 2024, 10:55 a.m
Please be aware that Tyler Techno
Justice (Odyssey) services including File & Serve.
Users are affected statewide.
No time to resolution is available.

22

JUVENILE INTERROGATION

INTENSIVE JUVENILE DEFENDER TRAINING

MARCH 8, 2024

1

Juvenile rights

What constitutes custodial interrogation

Invocation and waiver of rights

2

Constitutional privilege against self-incrimination (*Miranda*)

Enhanced statutory rights

3

Everyone under age 18

State v. Fincher, 309 N.C. 1 (1983)

4

G.S. 7B-2101(A) PROCEDURES FOR YOUTH UNDER AGE 16

Right to have a parent, guardian, or custodian present during questioning

5

G.S. 7B-2101(A1) PROCEDURES FOR YOUTH AGE 16/17

Right to have a parent, guardian, custodian, or caretaker present during questioning

6

CARETAKER

"ANY PERSON OTHER THAN A PARENT, GUARDIAN, OR CUSTODIAN WHO HAS **RESPONSIBILITY FOR THE HEALTH AND WELFARE OF A JUVENILE IN A RESIDENTIAL SETTING**…

- stepparent,
- foster parent,
- adult member of the juvenile's household,
- adult entrusted with the juvenile's care,
- potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department,
- any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or
- any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."

G.S. 7B-2101(e)

7

G.S. 7B-2101(a2)

8

GUARDIAN OR CUSTODIAN

Must have established a legal relationship with the child through a legal process

State v. Oglesby, 361 N.C. 550 (2007)

State v. Benitez (Benitez I), 258 N.C. App. 491 (2018).

9

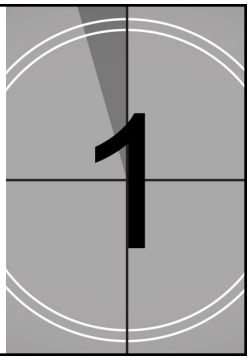
Juvenile rights

What constitutes custodial interrogation

Invocation and waiver of rights

10

In Custody?



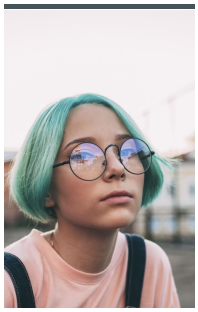
11

Objective assessment, given totality of circumstances

12

Was there a formal arrest or a restraint on the juvenile's freedom of movement to the degree associated with a formal arrest?

13



Child's age (if known or objectively apparent to reasonable officer) must be included in objective analysis. How would a reasonable child have felt in that situation?

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

14

FACTORS TO CONSIDER

- whether the juvenile is told they are under arrest or free to leave
- the location of the questioning
- the voluntary nature of the juvenile's participation in questioning
- the length of questioning
- whether the juvenile is offered breaks
- the presence of uniformed officers and their weapons

15

NOT CUSTODY

In re D.A.C., 225 N.C. App. 547 (2013)

- 14-year-old questioned by 2 armed officers (1 in uniform)
- In yard, in daylight
- Parents were home and told him to cooperate
- No formal restraint
- Stood at arm's length
- 5 minutes

16

NOT CUSTODY

State v. Yancey, 221 N.C. App. 397 (2012)

- 17 years and 10 months old
- Voluntarily rode with 2 plain-clothes officers in unmarked car
- Rode in front seat
- Told was free to leave any time
- Lasted under 2 hours

17

COMMON FACTORS NOT CUSTODY

- Told free to leave
- Nonsecure locations
- Voluntariness of juvenile participation
- Offered breaks
- Absence of uniforms/weapons

18

IN CUSTODY

In re M.L.T.H., 200 N.C. App. 476 (2009)

- 15-year-old
- Interview room at sheriff's department
- Family came to sheriff's department at request of law enforcement

19

IN CUSTODY

State v. Watson, 250 N.C. App. 173 (2016)

- 16-year-old
- Arrested on city bus
- Transported to police station
- Handcuffed and shackled to the floor

20

IN CUSTODY

In re L.I., 205 N.C. App. (2010)

- Juvenile in backseat of car initially stopped for driver not wearing seatbelt
- Officer asked her to produce marijuana he "knew she had"
- Juvenile refused and appeared to reach into her pants
- Placed juvenile in investigative detention, placed handcuffs
- Placed in backseat of patrol car

21

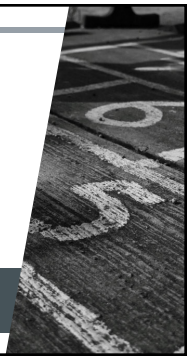
COMMON FACTORS CUSTODY

Law enforcement interview room

Formally taken into custody

22

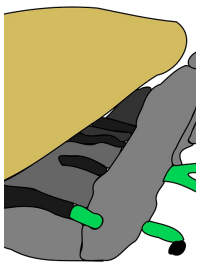
SCHOOLHOUSE CUSTODY



23

IN RE D.A.H., 277 N.C. APP. 16, 28 (2021)

- 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

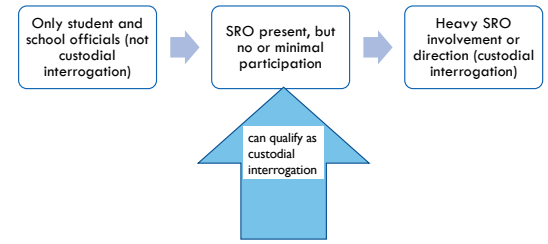


24

"…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… 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)

25

SRO INVOLVEMENT



26

SRO INVOLVEMENT NOT BY ITSELF DISPOSITIVE

27

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.

28

Interrogation?

29

- Express questioning
- Functional equivalent of express questioning

30

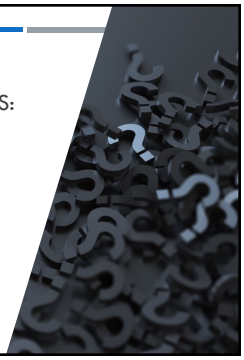
FUNCTIONAL EQUIVALENT OF EXPRESS QUESTIONING

Words or actions by law enforcement that they should have known were reasonably likely to elicit an incriminating response

31

FUNCTIONAL EQUIVALENT OF EXPRESS QUESTIONING FACTORS:

1. Officer intent
2. Practice designed to elicit incriminating response
3. Officer knowledge about juvenile's unusual susceptibility to a specific form of persuasion



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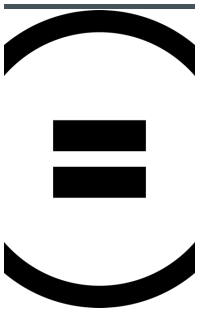
INTERROGATION

In re L.I., 205 N.C. App. (2010)

- Officer statement that taking drugs into the jail is an additional charge

33



State v. Smith, 317 N.C. 100 (1986)

- 16-year-old brought to PD for questioning
- Read *Miranda* rights and requested mom
- While looking for mom, officers told Smith not to speak and they had things to tell him
- Shared that another suspect implicated Smith, charges could be murder, and a confession could be mitigating to court
- Functional equivalent of questioning

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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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Juvenile rights

What constitutes custodial interrogation

Invocation and waiver of rights

36

No waiver of parent, guardian, custodian, or attorney when juvenile is under age 16

(G.S. 7B-2101(b))

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INVOCATION OF RIGHTS

Must be unambiguous

"Um, can I call my mom?" – ambiguous

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

38

ONLY THE JUVENILE CAN WAIVE THEIR RIGHTS

Mom couldn't waive privilege against self-incrimination that belonged to her 10-year-old child (In re Ewing, 83 N.C. App. 535 (1986))

Parental refusal to be present does not constitute waiver by juvenile (In re Butts, 157 N.C. App. 609 (2003), State v. Branham, 153 N.C. App. 91(2002))

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WAIVER MUST BE:

- Knowing
- Willing
- Understanding

G.S. 78-2101(d)

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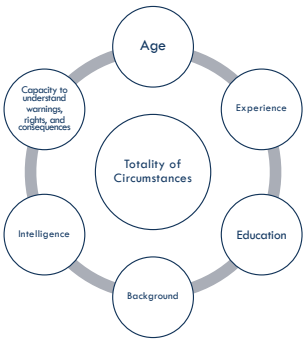

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- Expert testimony not required to establish that juvenile understood their rights
- Question of law to be decided by trial court based on evidence provided

(State v. Benitez (*Benitez II*), ___ N.C. App. ___, ___, 2022-NCCOA-261, § 15)

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EXPRESS WRITTEN WAIVER

Strong proof of valid waiver

Not dispositive:

- Not fully informed of rights
- Wrongly informed of rights (i.e. waiver stating can have a parent, guardian, custodian, or any other person present - In re M.L.T.H., 200 N.C. App. 476 (2009).)

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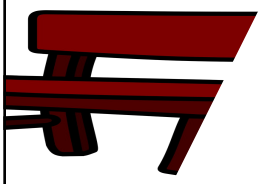

VALID WAIVER

State v. Miller, 344 N.C. 658 (1996)

- 17-year-old
- Signed adult waiver form with handwritten question about parental presence
- Invoked right to presence and stated she should step out during interrogation
- Mom sat on bench outside room and door was left open
- Held juvenile understood rights, knew what he was doing, and knew where mom was if he wanted her to return

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VALID WAIVER

Saldierna II, 371 N.C. 407 (2018)

- 16-year-old
- Provided juvenile rights waiver forms in English and Spanish
- Verbally advised of rights in English
- Signed English waiver form
- Transcript indicated that juvenile responded that he understood each right all but two times; remaining two responses were not audible
- No evidence juvenile sought to invoke rights
- No evidence of coercive police conduct or improper interrogation techniques

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UNC SCHOOL OF GOVERNMENT

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Juvenile Interrogation

Jacquelyn Greene

CONTENTS

The law that governs custodial interrogation of juveniles encompasses the Fifth Amendment privilege against self-incrimination as well as enhanced statutory protections contained in North Carolina's Juvenile Code. This bulletin describes these rights, including their meaning, scope, and application in North Carolina appellate caselaw.

Part I: Juvenile Rights Related to Custodial Interrogation

Miranda Rights

The constitutional privilege against self-incrimination applies to juveniles.[1] Therefore, the legal framework that attaches to the custodial interrogation of adults under *Miranda v. Arizona*[2] also applies to the custodial interrogation of juveniles. In order to assess whether a juvenile

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1. *In re* Gault, 387 U.S. 1, 55 (1967); *see also In re* K.D.L., 207 N.C. App. 453, 458 (2010).
2. 384 U.S. 436 (1966).

was subjected to a custodial interrogation under the *Miranda* framework, one must determine whether the juvenile was (1) in custody and (2) subject to an interrogation. The meaning and application of these terms to juveniles are explored in Part II of this bulletin.

Additional Statutory Right to Parent, Guardian, or Custodian Presence

Section 2101(a) of Chapter 7B of the North Carolina General Statutes (hereinafter G.S.) codifies these constitutional protections and adds the right for a juvenile to have a parent, guardian, or custodian present during questioning. G.S. 7B-2101(a) states that any juvenile in custody must be advised of the following rights prior to questioning:

1. that the juvenile has a right to remain silent;
2. that any statement the juvenile does make may be used against the juvenile;
3. that the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
4. that the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

Rights Apply to Everyone under Age 18

The rights afforded to juveniles under G.S. 7B-2101 are part of Subchapter II of Chapter 7B of the General Statutes. Generally, the statutes in that section of the Juvenile Code apply only to undisciplined and delinquency matters. However, the North Carolina Supreme Court held that the rights contained in G.S. 7B-2101 apply to all youth under the age of 18, regardless of whether the matter falls under the original jurisdiction of the juvenile court or the criminal court.[3] This was a significant ruling when it was issued, since at that time all offenses committed at ages 16 and 17 were under the original jurisdiction of the criminal court.

Beginning on December 1, 2019, nearly all offenses alleged to have been committed at ages 16 and 17 were shifted to the original jurisdiction of the juvenile court.[4] However, original criminal jurisdiction remains in place for G.S. Chapter 20 offenses (motor vehicle offenses) committed at ages 16 and 17 and for any juvenile who has a previous qualifying conviction in criminal court and who subsequently commits any new offense after that conviction. All prior criminal convictions are considered qualifying convictions for purposes of preventing original juvenile jurisdiction, except misdemeanors or infractions under G.S. Chapter 20 that do not involve impaired driving.[5] The enhanced interrogation rights for juveniles found in G.S. 7B-2101 continue to apply in these matters even though they are not subject to juvenile jurisdiction.

Obligation to Electronically Record Interrogations in Places of Detention

The North Carolina Criminal Procedure Act contains a provision that mandates electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any *place of detention*.[6]

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3. State v. Fincher, 309 N.C. 1 (1983).
4. S.L. 2017-57, §§ 16D.4.(a)–(tt).
5. G.S. 7B-1501(7)b., -1604(b).
6. G.S. 15A-211(b); *see also id.* § 15A-211(c)(3) (defining "place of detention" as "a jail, police . . . station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges").

A plain reading of the statute indicates that (1) custodial interrogations of juveniles who are subject to criminal prosecution (2) that take place in criminal detention settings (3) must be electronically recorded.

A question remains regarding whether the mandatory electronic recording requirement in the Criminal Procedure Act applies to interrogations occurring during investigations of all offenses involving juvenile suspects or only those offenses that can result in criminal prosecution. Some have suggested that the statute likely means that custodial interrogation of all juveniles—including those subject to juvenile jurisdiction for allegations of delinquency who are interrogated in places of detention—must be electronically recorded.[7] This question has never been addressed by the North Carolina appellate courts.

Because the statute states that it applies "to all custodial interrogations of juveniles in criminal investigations conducted at any place of detention,"[8] it appears clear that the mandate applies at least to juvenile cases that could result in criminal prosecution. This includes any felony offenses committed by a juvenile at age 13 or older as well as any G.S. Chapter 20 offenses committed by a 16- or 17-year-old youth.[9]

Whether or not the obligation to electronically record all custodial interrogations applies to juveniles when their cases could not result in transfer to criminal court also remains an open question. However, the exact charges in a matter may not be clear to law enforcement prior to the custodial interrogation of a juvenile. A case that appears to involve only lower-level misdemeanor charges may not remain that way following a more complete investigation. Given the evolving nature of charges during the investigatory stage, the most prudent practice would be to electronically record all custodial interrogations of youth under 18 in places of detention.

Part II: What Constitutes a Custodial Interrogation of a Juvenile?

The rights contained in G.S. 7B-2101 apply only when a juvenile is subjected to a custodial interrogation.[10] The analysis of whether a juvenile is being questioned as part of a custodial interrogation requires an assessment of whether the juvenile is in custody and, if so, whether the questioning amounted to an interrogation.

7. *See generally* Janet Mason, *2011 Legislation Enacted: Juvenile Law*, "Abuse, Neglect, Dependency, and Termination of Parental Rights" 5 (UNC School of Government, Oct. 2011), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Mason%20Juvenile%20Legislation_0.pdf (noting that most other statutes in G.S. Chapter 15A do not use the term "juvenile" but instead refer to a defendant's age range, making it "possible, if not likely, that the intent was to make the recording of custodial interrogations mandatory when an investigation involves an offense committed before a juvenile reaches age 16—that is, to delinquency cases, not criminal cases involving young people").

8. G.S. 15A-211(b).

9. *See* G.S. 7B-1501(7), -2200, -2200.5.

10. State v. Gaines, 345 N.C. 647, 661, *cert. denied*, 522 U.S. 900 (1997).

Custody

The first question to ask is whether the juvenile is in custody.[11] That determination is based on an objective assessment of whether, given the totality of the circumstances, there was a formal arrest or a restraint on the juvenile's freedom of movement to the degree associated with a formal arrest.[12] This is the same standard used for the determination of whether an adult is in custody.

However, the custody analysis for a juvenile differs from the custody analysis for an adult in one significant way. The adult analysis requires an objective assessment of how a reasonable person in the suspect's situation would assess their freedom to terminate the encounter.[13] The juvenile analysis requires the child's age, if it was known or would have been objectively apparent to a reasonable officer, to be included in the objective custody analysis.[14] The analysis is based on how a reasonable child who is the age of the juvenile would feel in the situation and not how a reasonable adult would feel.[15]

North Carolina's appellate courts have held that there are many factors to consider when determining whether a juvenile is in custody during questioning. Those factors include

- whether the juvenile is told they are under arrest or free to leave,
- the location of the questioning,
- the voluntary nature of the juvenile's participation in questioning,
- the length of questioning,
- whether the juvenile is offered breaks, and
- the presence of uniformed officers and their weapons.

The following circumstances were found not to have been custodial:

- Questioning by a detective in the juvenile's home and in the presence of his mother and brother. The detective prefaced the interview by telling the juvenile that he did not have to talk with her and that she was not going to arrest him or take him with her. Proceedings had not been initiated, and the purpose of the visit was solely to investigate allegations.[16]
- Questioning of a 16-year-old by two unarmed, plain-clothes officers in a comfortably furnished office. The juvenile voluntarily went with the investigators for questioning and was told that he was not under arrest, did not have to talk to the investigators, and was free

11. *In re* Butts, 157 N.C. App. 609, 612 (2003).
12. *Gaines*, 345 N.C. at 662.
13. Yarborough v. Alvarado, 541 U.S. 652, 662 (2004).
14. J.D.B. v. North Carolina, 564 U.S. 261 (2011).
15. The court noted in *J.D.B.* that "[t]his is not to say that a child's age will be a determinative, or even a significant factor in every case. . . . It is, however, a reality that courts cannot simply ignore." 564 U.S. at 277 (citations omitted). For more analysis of the *J.D.B.* decision, see LaToya B. Powell, *Applying the Reasonable Child Standard to Juvenile Interrogations After J.D.B. v. North Carolina*, Juv. L. Bull. No. 2016/01 (UNC School of Government, Feb. 2016), https://www.sog.unc.edu/sites/default/files/reports/2016-02-24_20160045_Reasonable%20Child%20Standard.pdf.
16. *In re* Hodge, 153 N.C. App. 102 (2002). This case was decided before *J.D.B.* was decided. Therefore, the objective standard applied was a reasonable person standard and not a reasonable child standard.

to leave at any time. The juvenile was offered bathroom breaks, was left unattended in the office when the interviewing officers took a break, and was not shackled or handcuffed. No threats or promises were made, and no pressure was exerted during the interview.[17]

- Questioning of a 17-year-old who confessed to two plain-clothes detectives in their unmarked car after voluntarily agreeing to ride with them to discuss several breaking and entering cases. The juvenile voluntarily spoke with the detectives, was told that he was free to leave the vehicle at any time, sat in the front seat, and the encounter lasted under two hours. The juvenile was 17 years and 10 months old, and his proximity to age 18 was taken into consideration as part of the custody analysis.[18]
- Questioning of a 13-year-old found walking briskly away from the scene of a car crash. A responding officer questioned the juvenile at the scene. There was no evidence that the juvenile was subjected to even a minimal amount of restraint on his freedom of movement or ability to act as he chose. The court noted that an officer may ask a moderate number of questions during a routine traffic stop to determine identity and obtain information confirming or dispelling the officer's suspicions without requiring *Miranda* warnings.[19]
- Questioning of a 14-year-old, by two armed officers, 10 feet outside of the juvenile's home after the juvenile's parents told him to cooperate with the officers. The juvenile was asked to step outside and was not subjected to formal restraint. All three people stood at arm's length and one of the officers wore plain clothes. The conversation took place in the juvenile's yard during daylight and his parents were nearby. Questioning lasted about five minutes. There was no indication of any coercion, no indicia of formal arrest, and the parents were not acting as agents of law enforcement.[20]

The North Carolina Court of Appeals has tended to find that juveniles are in custody when questioning occurs in an interview room of a law enforcement office and when the juvenile has been formally taken into custody. For example, juveniles were found to have been in custody in the following circumstances:

- Questioning of a 17-year-old in an interview room at a jail when the juvenile was incarcerated at the jail on other charges.[21]
- Questioning of a 15-year-old in an interview room at a sheriff's department after law enforcement called to request that the juvenile's family come to the sheriff's office and the family complied.[22]
- Questioning of a 16-year-old at a sheriff's department after he was taken into custody at his home, handcuffed by an officer, and transported to the sheriff's department by the officer.[23]

17. State v. Jones, 153 N.C. App. 358 (2002). This case was decided before *J.D.B.* was decided. Therefore, the objective standard applied was a reasonable person standard and not a reasonable child standard.

18. State v. Yancey, 221 N.C. App. 397 (2012).

19. *In re* A.N.C., Jr., 225 N.C. App. 315 (2013).

20. *In re* D.A.C., 225 N.C. App. 547 (2013).

21. State v. Williams, 209 N.C. App. 441 (2011). The parties in this case agreed, and the court noted that the evidence supported, that the juvenile was already in custody at the jail when he was brought into the interview room. *But see* Howes v. Fields, 565 U.S. 499 (2012) (holding that there is no categorical rule that a person is in custody when that person is a prisoner who has been removed from the prison's general population and questioned about events that occurred outside of the prison).

22. *In re* M.L.T.H., 200 N.C. App. 476 (2009).

23. State v. Branham, 153 N.C. App. 91 (2002).

- Questioning of a 16-year-old at a police station after he was arrested on a city bus, taken to the station, handcuffed, and shackled to the floor.[24]
- Placing a juvenile in the back seat of a patrol car after putting her in investigative detention and handcuffing her.[25]

Schoolhouse Custody Analysis

The custody analysis regarding questioning that occurs at school can become complicated, especially when questioning occurs in the presence of school administrators as well as law enforcement officers. It is clear that questioning done only in the presence of a school administrator who is not acting as an agent of law enforcement is never custodial.[26] However, when law enforcement and school administrators are both involved in questioning, the circumstances may rise to the level of custody. This is true even when the officer does not participate in asking the questions.[27]

The North Carolina Court of Appeals provided the following seven factors that are most relevant in determining whether a juvenile is in custody during an interview that occurs at school:[28]

1. Traditional indicia of arrest. Use of handcuffs, transport in a police car, search of a student or their belongings, and use of other bodily restraints are strong indications that the student was in custody.
2. Location of the interview. A location that a reasonable child might consider confining tends to show that the student was in custody. The size of the room, whether the door was closed or locked, and the student's familiarity with the location are also relevant considerations.
3. Interview length. Long, drawn-out questioning tends to show that a student was in custody, while very brief questioning does not. Whether the student was offered a place to sit and common courtesies like bathroom breaks, food, and water is also relevant.
4. Age. The younger the student, the more sensitive they will be to circumstances that could be coercive.
5. What a student is told about the interview. Telling the student that they are free to leave and are not required to answer questions or offering them the opportunity to call a parent or guardian tends to reflect that the student is not in custody. Failing to tell the student about the nature of the interview or whether they must stay or are free to leave weighs in favor of the student being in custody. Expressly telling a student that they cannot leave renders the encounter custodial.
6. People present during the interview. Custody tends to be shown when questioning occurs in the presence of multiple law enforcement officers, or even by numerous school officials. The presence of a parent, guardian, or other advocate for a student weighs against custody.
7. Purpose of questioning. Questioning that is the result of and is conducted in the investigation of specific criminal suspicion toward a student tends to show custody. Questioning done with a school disciplinary purpose and that is unlikely to involve the

24. State v. Watson, 250 N.C .App. 173 (2016).
25. *In re* L.I., 205 N.C. App. 155 (2010).
26. *In re* Phillips, 128 N.C. App. 732 (1998), *In re* D.A.H., 277 N.C. App. 16, 28 (2021).
27. *D.A.H.*, 277 N.C. App. at 29.
28. *Id.* at 30.

justice system is not considered custody. Purpose can be revealed by the degree and nature of cooperation between school officials and law enforcement (including school resource officers).

The court used these factors to hold that the juvenile in *In re D.A.H.* was in custody when he was questioned at school. The court emphasized that the juvenile came to school knowing that his peer had been caught with marijuana sold to him by the juvenile, that the juvenile had been so worried about it that he had not attended school for the previous two days, and that he knew he was in trouble.[29] The court also noted that the two authority figures involved in this case (the school principal and a school resource officer) sat next to one another and opposite the juvenile, that the officer was in uniform, and that the interview appeared to be for the purpose of a criminal investigation and not a mere school disciplinary matter.[30] Finally, the court emphasized that the juvenile was not told that he was free to leave, that he did not have to answer questions, or that he could call his guardian.[31]

Interrogation

If a juvenile is in custody, then it is essential to determine if the questioning of that juvenile amounts to interrogation. The law that governs whether questioning of an adult constitutes interrogation applies in the same way to juveniles. Interrogation includes express questioning as well as words or actions by law enforcement that they should have known were reasonably likely to elicit an incriminating response—known as the *functional equivalent* of express questioning.[32]

The Functional Equivalent of Express Questioning

Several factors are relevant to the determination of whether a law enforcement officer should have known that their words or actions were reasonably likely to elicit an incriminating response, including

1. the intent of the officer,
2. whether the practice was designed to elicit an incriminating response, and
3. knowledge that the officer may have had regarding the juvenile's unusual susceptibility to a specific form of persuasion.[33]

The Supreme Court of North Carolina held in *State v. Smith* that a juvenile can be subjected to the functional equivalent of questioning even when few express questions are asked of the juvenile.[34] The 16-year-old juvenile in this case was picked up by law enforcement at his home, brought to the police station, and placed in the police chief's office for questioning. The juvenile was read his *Miranda* rights on the way to the police station and again in the police chief's office. He requested his mother's presence after he was read his rights the second time. Officers then began to look for his mother. After about fifteen or twenty minutes, an officer returned to the room, asked the juvenile not to speak, and told him he wanted to tell him some things about the statement of another suspect. The police chief also entered the room and asked the

29. *Id*. at 36.
30. *Id.*
31. *Id*.
32. *In re* L.I., 205 N.C. App. 155, 160 (2010).
33. *Id.* at 160–61.
34. 317 N.C. 100, 108 (1986), *abrogated on other grounds by* State v. Buchanan, 353 N.C. 332 (2001).

juvenile if he wanted to straighten it out. The officer informed the juvenile that (1) another suspect stated that the juvenile was primarily responsible for the injuries to the victim and that he would testify against the juvenile at trial, (2) the alleged crimes were serious and could result in murder charges if the victim died, and (3) the trial court could consider a confession a mitigating circumstance. The court held that these statements, while not direct questions posed to the juvenile, constituted behavior that the officer should have known was likely to elicit a response from the juvenile. The court emphasized that the conversation focused on the juvenile's participation in, and the serious nature of, the crimes.

The North Carolina Court of Appeals held that a juvenile was subjected to the functional equivalent of questioning when an officer placed a juvenile in his car in investigative detention following a roadside stop, asked her where the marijuana was that he knew she had, and told the juvenile that he was taking her downtown and that if she took drugs into the jail, it would be an additional charge.[35] In holding that these circumstance constituted interrogation, the court relied on the officer's testimony that his objective purpose was to obtain the juvenile's admission that she possessed marijuana. The court concluded that the officer knew or should have known that his statement to the juvenile was reasonably likely to elicit an incriminating response.

Spontaneous Statements

Spontaneous statements made by a juvenile are not protected by the Fifth Amendment and are therefore admissible when *Miranda* warnings are not provided and when the statements are made without a parent, guardian, custodian, or attorney being present. The North Carolina Court of Appeals applied this rule in *In re D.L.D.*[36] There, an officer saw the juvenile put something in his pants in a school bathroom, frisked him, and found individually wrapped bags of a green leafy material in a container on his person. After the officer handcuffed the juvenile and escorted him to a conference room, the school's assistant principal, who had accompanied the officer to the bathroom, spoke with the juvenile. No one informed the juvenile of his rights. The officer did not ask any questions and more fully searched the juvenile, finding $59 in his pocket. The juvenile immediately stated that the money "was not from selling drugs."[37] Although the totality of the circumstances suggested that the juvenile was in custody, the juvenile's statement was not provoked by questioning or the functional equivalent of questioning. The court therefore held that this statement was admissible because it was unsolicited and spontaneous.

Schoolhouse Interrogation Analysis

Much like the custody analysis, the interrogation analysis in the context of the schoolhouse can be complicated. Questioning at school often involves both school personnel and law enforcement (who may or may not be a school resource officer). When law enforcement officers are present and the juvenile is in custody, it is possible that questioning by administrators can rise to the level of interrogation, even when the law enforcement officer does not ask any questions.

35. *L.I.*, 205 N.C. App. 155.
36. 203 N.C. App. 434 (2010).
37. *Id*. at 443.

The North Carolina Court of Appeals highlighted the following factors as most relevant to the analysis of whether questioning at school constitutes an interrogation:[38]

1. The nature of the questions asked. Mostly open-ended questioning is less likely to constitute interrogation than is questioning presented in the context of imperative statements that suggest mandatory compliance. The tone of voice, volume, and body language of the person asking the questions is also relevant. The court cited a case holding that questioning did not constitute custodial interrogation when the conversation was calm and cordial in tone and the detectives involved offered the suspect food or drink.[39]
2. The willingness of the juvenile's responses. As discussed above, a wholly unsolicited or spontaneous statement does not constitute interrogation. Situations in which a juvenile is reluctant or hesitant to answer, claims ignorance, or must be coaxed into answering are more likely to be considered interrogation.
3. The extent of school resource officer involvement. Situations in which both a school resource officer and a school official are present can rise to the level of interrogation, even when the officer does not ask any questions. An officer's absence during parts of the questioning can weigh against the questioning being an interrogation. Law enforcement direction of or heavy participation in the questioning weighs in support of the questioning being an interrogation.

The court applied these factors in *In re D.A.H.* to determine that the questioning of a 13-year-old by a school principal, while the school's resource officer sat beside the principal and observed, constituted an interrogation. The court emphasized that the juvenile was asked multiple questions before his guardian was notified and that the questions were intended to elicit a confession.[40] The court also pointed to the differential treatment that the juvenile received compared to a peer who was found in possession of the marijuana that the questioned juvenile was suspected of providing. The father of this peer was contacted immediately. The peer asked if he could speak freely, and the resource officer told him to wait until his father arrived. In contrast, the juvenile's guardian was not called until after he confessed, and he was never advised not to answer questions. The court found that these facts weighed heavily toward the criminal purpose of the interview.[41] The court also discussed how the resource officer's intimate involvement in the investigation from its outset made him an officer investigating a crime while he was present for the questioning, rather than a mere observer of a school disciplinary conversation.[42]

If, given the totality of the circumstances, questioning rises to the level of a custodial interrogation, then all the rights set out in G.S. 7B-2101 apply to everyone under the age of 18.

38. *In re* D.A.H., 277 N.C. App. 16 (2021).
39. *Id*. at 34 (citing State v. Hammonds, 370 N.C. 158, 164 (2017)).
40. *Id*. at 37.
41. *Id*. at 38.
42. *Id*.

Part III: Who Counts as a Guardian or Custodian?

Because G.S. 7B-2101(a) gives all minors the right to have a parent, guardian, or custodian present during a custodial interrogation, it is essential to understand who qualifies as a guardian or custodian under this statute. Only people who have established a legal relationship with the child are considered guardians and custodians for purposes of this statute.[43] North Carolina's appellate courts have held that adults who have a relationship with the juvenile, and who may even have enrolled the child in school, do not count as a guardian or custodian for purposes of this statute if they have not established a relationship with the child through a legal process. Consider the following examples:

- A 16-year-old asked to call his aunt before making a statement. The juvenile occasionally stayed with the aunt, and she testified that she was a mother figure to him. The court held that the juvenile did not have a right to the aunt's presence during custodial interrogation because she had no legal relationship to the juvenile and therefore did not qualify as a guardian or custodian under the statute.[44]
- An uncle, who had been housing his 13-year-old nephew for a year and a half, was the child's sole support, had enrolled the child in school, and was considered by the Department of Health to be the child's guardian, was found not to be the child's guardian or custodian under the statute because he and the child never had any legal relationship established through a court proceeding.[45] The juvenile in this case had no parent, guardian, or custodian who lived in the United States.

Because a sibling is not a parent, guardian, or custodian, juveniles do not have a right to have a sibling present during interrogation. In addition, the presence of a sibling will not fulfill the statutory requirement of the presence of a parent, guardian, custodian, or attorney.[46]

Part IV: Juvenile Invocation and Waiver of Rights

Juveniles must be advised of their rights under G.S. 7B-2101 prior to any custodial interrogation. In most circumstances, it is then up to the juvenile to determine whether they want to invoke or waive their rights. For instance, juveniles always have the discretion to waive their right to remain silent. However, as described below, the right to the presence of a parent, guardian, custodian, or attorney cannot be waived by juveniles under the age of 16.

Rights That Cannot Be Waived by Youth under Age 16

The Juvenile Code provides that in-custody admissions or confessions made by juveniles who are under the age of 16 are never admissible into evidence unless the juvenile's parent, guardian, or custodian or an attorney is present at the time the admission or confession is made.[47] A juvenile under the age of 16 therefore cannot waive their right to have either (1) a parent, guardian, custodian or (2) an attorney present during a custodial interrogation. Because the relevant

43. State v. Oglesby, 361 N.C. 550 (2007).
44. *Id*.
45. State v. Benitez (*Benitez I*), 258 N.C. App. 491 (2018).
46. *In re* M.L.T.H., 200 N.C. App. 476 (2009).
47. G.S. 7B-2101(b).

statute refers to either a parent, guardian, or custodian or an attorney, otherwise admissible statements made by juveniles under 16 are admissible when their attorney is present and the parent, guardian, or custodian is not and when the parent, guardian, or custodian is present and an attorney is not.

Practical barriers sometimes arise when a parent, guardian, or custodian cannot possibly be present for a custodial interrogation of a juvenile, as occurred in *State v. Benitez*, referenced in the last bulleted item in Part III, above. In that case, the juvenile's parents did not live in the United States and no legal guardian or custodian had been established by court order. There are two potential ways that a custodial interrogation could be lawfully conducted under these circumstances, depending on the age of the juvenile.

1. A juvenile who is age 16 or 17 can execute a valid waiver of the right to have a parent present.
2. A juvenile under the age of 16 can execute a valid waiver of the right to have a parent present and the custodial interrogation can continue only if an attorney is present.

There is no legal path to continue with a custodial interrogation of a juvenile if the juvenile does not waive their right to the presence of a parent, guardian, or custodian and if the parent, guardian, or custodian cannot be present.

Invocation of Rights

Unambiguous Invocation Required

If a juvenile is fully advised of their rights and subsequently answers questions without clearly invoking their rights, that will be deemed a waiver of the juvenile's rights.[48] The issue of the invocation of the right to parental presence during a custodial interrogation of a 16-year-old was central to the ruling in *State v. Saldierna* (*Saldierna I*).[49] The juvenile in this case was interrogated at a police station. A law enforcement officer provided him English and Spanish versions of a juvenile waiver-of-rights form, read the rights on the form to him, and paused after each right was read aloud to ask if he understood. The juvenile initialed each right on the English form. Next to the waiver of the right to have a parent present, the words "I do wish to answer questions now" was circled and the juvenile signed the form. The officer noted the time and date for the audio recording and then the juvenile asked to call his mother. He was allowed to place the call and reached someone other than his mother. Questioning resumed when he returned from placing his call and he confessed.

To answer the question of whether the juvenile in this case invoked his right to have a parent present, the court applied the objective test for a defendant's invocation of the right to counsel—whether a reasonable officer under the circumstances would have understood the defendant's statement to be an invocation of their right to have an attorney present.[50] The court held that the juvenile did not clearly and unambiguously invoke his right to have a parent present because

- he never gave any indication that he wanted his mother present;
- he did not condition his interview on first speaking with his mother;

48. The need for a juvenile to invoke their rights applies only to rights that the juvenile can waive. Because a juvenile under the age of 16 must have a parent, guardian, or custodian or an attorney present during a custodial interrogation, this right does not need to be invoked.

49. 369 N.C. 401 (2016).

50. *Id.* at 407 (citing Davis v. United States, 512 U.S. 452, 459 (1994)).

- his purpose for making the telephone call was never established; and
- he did not articulate his desire to have a parent present sufficiently clearly that a reasonable officer in the circumstances would understand the statement to be a request for a parent, especially given that he had just signed a waiver-of-rights form.[51]

The court also held that law enforcement did not have a duty to ask clarifying questions or to stop questioning, given the ambiguous nature of the youth's request to call his mother.[52]

In addition, mistakenly indicating on a juvenile rights waiver form that a parent is present does not constitute invocation of the right to have a parent present when the juvenile being questioned never made a statement invoking this right.[53]

Questioning Must Stop if Juvenile Invokes Rights After Interrogation Begins

According to G.S. 7B-2101(c), questioning of a juvenile must stop if the juvenile indicates in any manner and at any stage of the interrogation that they do not want to be questioned further. This includes any statement made by a juvenile, after interrogation begins, that they would like to have a parent, guardian, or custodian present. Once the juvenile requests the presence of their parent, questioning must stop and cannot resume until the parent is present or the juvenile initiates further communication.[54]

Waiver of Rights

Only the Juvenile Can Waive Their Rights

G.S. 7B-2101(b) states that "a parent, guardian, or custodian may not waive any right on behalf of the juvenile." Therefore, none of the rights that a juvenile has during a custodial interrogation can be waived by anyone other than the juvenile.

This is true even when the juvenile is very young. The first appellate court decision upholding this statute involved a 10-year-old who was adjudicated delinquent for unlawfully and willfully taking and carrying away toys from a department store.[55] The court held that the juvenile's mother could not waive any of the rights that the juvenile had during the interrogation, including the right against self-incrimination.[56]

A parent's refusal to be present after a juvenile invokes their right to have their parent present during interrogation does not constitute waiver of parental presence on the part of the juvenile. This is true when a parent refuses to enter the interrogation room[57] and when a parent leaves the interrogation room before the interrogation is over.[58] The juvenile is the only person who can waive their right to have a parent present, regardless of the parent's willingness to be part of the interrogation.

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51. *Id*. at 408–09.
52. *Id*. at 409.
53. State v. Watson, 250 N.C. App. 173 (2016).
54. State v. Hunt, 64 N.C. App. 81 (1983), State v. Smith, 317 N.C. 100 (1986). *See also* State v. Branham, 153 N.C. App. 91 (2002) (holding that the juvenile did not initiate further communication after he requested his mother's presence). *But see* State v. Williams, 209 N.C. App. 441 (2011) (holding that the juvenile did initiate the resumption of questioning without any further interrogation by law enforcement).
55. *In re* Ewing, 83 N.C. App. 535 (1986).
56. *Id*.
57. *Branham*, 153 N.C. App. 91.
58. *In re* Butts, 157 N.C. App. 609 (2003).

Waiver Must Be Knowing, Willing, and Understanding

Juveniles can waive any of their rights that attach during an interrogation, with the exception of the requirement that any juvenile age 15 or younger must have a parent, guardian, or custodian or an attorney present during any custodial interrogation.[59] In order for a waiver to be valid, it must be made knowingly, willingly, and understandingly.[60]

The U.S. Supreme Court held that the analysis of whether a juvenile's waiver is knowing and voluntary requires consideration of the totality of the circumstances, including

- the juvenile's age, experience, education, background, and intelligence and
- whether the juvenile has the capacity to understand
  - the warnings given,
  - the nature of the juvenile's Fifth Amendment rights, and
  - the consequences of waiving those rights.[61]

The Court applied those factors to its analysis of the interrogation of a 16-year-old who requested the presence of his probation officer. The Court held that the request for the probation officer was not tantamount to a request for an attorney and that the juvenile executed a knowing and voluntary waiver of his Fifth Amendment rights.[62] The Court emphasized that police took care to ensure that the juvenile understood his rights, that they fully explained to him that he was being questioned in connection with a murder, and that there was no indication that he did not understand what was said to him. The Court also emphasized that the juvenile clearly expressed his willingness to waive his Fifth Amendment rights and continue with the interrogation after he requested the presence of his probation officer and that there were no special factors to indicate that he was unable to understand the nature of his actions. Finally, the Court pointed to the juvenile's considerable experience with the justice system; that there was no indication he was of insufficient intelligence to understand his rights or the consequences of waiver; and that the questioning did not involve improper tactics that wore him down, lengthy questioning, or trickery or deceit.[63]

When the validity of a juvenile waiver is challenged, the State is required to show by a preponderance of the evidence that the waiver was knowingly and intelligently made, given the totality of the circumstances.[64] Expert testimony is not required to establish that the juvenile understood their rights.[65] Instead, the juvenile's understanding is a question of law to be decided by the trial court based on the evidence presented by both sides.[66]

An express written waiver of rights is strong proof that the waiver was valid. However, it is not necessarily sufficient evidence of a valid waiver on its own.[67] It is not possible for a juvenile to execute a valid waiver when the juvenile has not been fully informed of all of their rights, including the right to have a parent, guardian, or custodian present.[68] It is also not possible for

59. *See* discussion *supra* "Rights That Cannot Be Waived by Youth under Age 16."
60. G.S. 7B-2101(d).
61. Fare v. Michael C., 442 U.S. 707, 725 (1979).
62. *Id*. at 727.
63. *Id.* at 726–27.
64. State v. Saldierna (*Saldierna II*), 371 N.C. 407, 422 (2018).
65. State v. Benitez (*Benitez II*), ___ N.C. App. ___, ___, 2022-NCCOA-261, § 15.
66. *Id*.
67. *Saldierna II*, 371 N.C. at 422.
68. State v. Fincher, 309 N.C. 1, 11 (1983).

a juvenile to execute a valid waiver when they have been erroneously informed of their rights. For example, signing a juvenile rights form that erroneously states that the juvenile could have a parent, guardian, custodian, or any other person present during questioning does not constitute a knowing, willing, and understanding waiver.[69]

North Carolina appellate courts have found knowing, willing, and understanding waivers in the following circumstances.

- A 17-year-old signed a form with the adult *Miranda* warnings on it. A law enforcement officer handwrote "do you wish to answer questions without your parents/parent present" on the form. The juvenile stated that he wanted his mother present, and questioning stopped until the mother arrived. After again being advised of his rights, again stating that he wanted his mother there, and acknowledging that she was now present, the juvenile signed the form. During the ensuing questioning, the officer told the juvenile that he knew he was lying because his mother told officers something different about where he had been. The juvenile began to look uncomfortable, and the officer asked him if he wanted his mother to step out of the room. The juvenile said that his mother might as well leave, and she moved to a bench outside the door of the interrogation room. The door remained open, the juvenile could see his mother if he leaned forward, and he heard officers tell his mother that she could come back into the room whenever she wanted. The juvenile then confessed. The court held that this was a knowing and intelligent waiver of the juvenile's right to have his mother present because (1) he understood his rights, (2) he knew what he was doing when he said she could leave, and (3) he knew where she was if he wanted her to return to the room.[70]
- A 16-year-old with a low IQ was interrogated by investigators in an office at the police department. The central holding in this case was that the juvenile was not in custody.[71] However, the court continued to discuss the validity of a waiver of rights by the juvenile, assuming, arguendo, that the juvenile was in custody. The juvenile was read his rights and indicated verbally and by writing his initials on a form that he understood them. The officer read the waiver portion of the form to the juvenile, who then stated that he understood and wanted to talk with officers. He then signed the waiver. After a two-hour interview he confessed. The court found that the circumstances did not result in the juvenile's will being overborne or in critical impairment of his capacity for self-determination. While there was conflicting evidence regarding the juvenile's true mental capacity, the defendant's own expert testified that the juvenile's verbal and performance IQ scores placed him two points above the threshold for mental retardation and that his full-scale IQ was one point below that threshold. The court found that there was ample evidence that the juvenile knowingly and intelligently waived his rights. There was also no evidence that the juvenile was mistreated or coerced by the police in any way.[72]
- A 16-year-old was provided a juvenile rights waiver form in English and in Spanish, was advised of his rights in English, and signed the English waiver form. The transcript from the juvenile's trial on charges related to breaking or entering indicated that, in all but two instances, the juvenile affirmatively responded when asked that he understood each right

69. *In re* M.L.T.H., 200 N.C. App. 476 (2009).
70. State v. Miller, 344 N.C. 658 (1996).
71. See *State v. Jones*, 153 N.C. App. 358 (2002), discussed in Part II of this bulletin, *supra* note 17.
72. *Jones*, 153 N.C. App. 358.

of which he was advised. The remaining two responses were not audible. The detective who explained the rights to the juvenile testified that the juvenile understood English and that he understood his rights. There was no evidence that the juvenile ever expressed a lack of willingness to speak, that he was unable to communicate with officers, or that he sought to invoke his rights. There were also no allegations of coercive police conduct or improper interrogation techniques.[73]

73. *Saldierna II*, 371 N.C. 407.

North Carolina Criminal Law Blog

Statutory Changes Related to Juvenile Interrogation and Secure Custody Orders

October 24, 2023 by **Jacquelyn Greene**

<https://nccriminallaw.sog.unc.edu/author/greene/>

This post covers recent statutory changes related to the custodial interrogation of youth who are 16 and 17 years of age and to the issuance and execution of secure custody orders in delinquency cases. All of these changes are contained in **Session law 2023-114** <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2023-114.pdf> and will apply to offenses committed on or after December 1, 2023.

Custodial Interrogation of 16- and 17-Year-Old Juveniles

Under current law, anyone under the age of 18 must be provided the following warnings before being questioned during a custodial interrogation:

- That the juvenile has a right to remain silent;
- That any statement the juvenile does make can be and may be used against the juvenile;
- That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation. **S. 7B-2101(a)**

<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2101.pdf> .

These warnings are required to protect the juvenile's Fifth Amendment privilege against self-incrimination under *Miranda v. Arizona*, 384 U.S. 436 (1966), and they include an additional statutory right for juveniles to have a parent, guardian, or custodian present. For a full discussion of what constitutes custodial interrogation in the juvenile context and how courts have applied the rights contained in G.S. 7B-2101(a), see my Juvenile Law Bulletin on **Juvenile Interrogation** <https://www.sog.unc.edu/sites/default/files/reports/2022-09-22%2020220187%20JLB2022-02%20Interrogation_Greene.pdf> .

S.L. 2023-114 makes a change to the right to have a parent, guardian, or custodian present. The change applies only to the custodial interrogation of juveniles who are 16- and 17-years-old (juveniles under the age of 16 cannot waive their right to have a parent, guardian, custodian, or attorney present under G.S. 7B-2101(b) and S.L. 2023-114 does not make any changes to this law). Part III of S.L. 2023-114 adds "caretaker" to the list of people to whom a 16- or 17-year-old has a right to have present during a custodial interrogation.

Who is a Caretaker?

S.L. 2023-114 adds a new G.S. 7B-2101(e) to define who qualifies as a caretaker for this purpose. The definition is the same definition of caretaker contained in **G.S. 7B-101(3)** <https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-101.pdf> , the law that pertains to cases of abuse, neglect, and dependency. Under this definition, a caretaker

> *"means any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, a foster parent, an adult member of the juvenile's household, an adult entrusted with the juvenile's care, a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."*

When a Caretaker Can be Present

The role of the caretaker in the custodial interrogation of a 16- or 17-year-old juvenile is addressed in two places under the revised statute. First, a caretaker is added to the list of people that the juvenile has the right to have present during questioning. Once the new law takes effect, juveniles who are 16- or 17-years-old will have the right to have a "parent, guardian, custodian, or caretaker present during questioning." G.S. 7B-2101(a1)(3).

Second, a new G.S. 7B-2101(a2) addresses situations in which the parent, guardian, or custodian is unavailable. Under this new provision, if a juvenile aged 16 or older invokes the right to have a parent, guardian, or custodian present during questioning, law enforcement must make a reasonable effort to contact that person. The new statute goes on to state that "[i]f the parent, guardian, or custodian is not available, a caretaker can be present during questioning."

Secure Custody Order Changes

Issuance and Execution of Secure Custody Orders Before Service of the Petition

The procedure to issue an initial secure custody order usually involves the filing of the juvenile petition and the issuance of a secure custody order at the same time. Questions sometimes arise regarding whether law enforcement can take a juvenile into custody based on the issuance of that initial secure custody order when the juvenile has not been served with the petition.

Part VI of S.L. 2023-114 amends G.S. 7B-1904 to provide clear authority for the issuance of a secure custody order after the filing of the petition and before the juvenile has been served with the petition. In addition, the new language provides that the juvenile must be served with the petition within 72 hours after the juvenile is detained. This new language clearly authorizes both the issuance of a secure custody order, and detention of the juvenile based on that order, before the juvenile is served.

In addition, Part IV of S.L. 2023-114 also amends G.S. 7B-1806 to add explicit authority for a juvenile court counselor to effectuate service. This authority is not new. **G.S. 143B-831(11)** <https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-831.pdf> provides authority for juvenile court counselors to "[s]erve necessary court documents pertaining to delinquent and undisciplined juvenile matters." Adding this existing authority into the Juvenile Code places the law related to service in delinquency and undisciplined cases into one place. It will now be easier to understand that a juvenile court counselor or a law enforcement officer can effectuate service for a juvenile, including a juvenile who is detained under a secure custody order before being served.

The amendments to G.S. 7B-1806 also codify existing case law regarding waiver of defects in service. The statute will now provide that "[a] defense of lack of personal jurisdiction or insufficiency of service of process is waived if a parent, guardian, or custodian and juvenile avail themselves to the court and an objection is not raised at the initial court appearance."

Finally, the amendments to G.S. 7B-1904 also provide express authority for a juvenile court counselor to assume custody of a juvenile as the result of the issuance of a secure custody order. Both law enforcement and juvenile court counselors will therefore be able to assume custody of a juvenile pursuant to a secure custody order.

Entering a Premises or Vehicle to Take a Juvenile Into Custody

S.L. 2023-114 also contains a new G.S. 7B-1904.5 called "Execution of secure custody order by law enforcement officer." This section contains exemption from liability language related to execution of a secure custody order that is complete and regular on its face. This language is part of the current Juvenile Code and was simply shifted into this new section in S.L. 2023-114.

The new language in G.S. 7B-1904.5 relates to law enforcement authority to enter private premises or vehicles to execute a secure custody order, and to use force during any such entry. The language matches the existing language in G.S. 15A-401(e) that governs entry on private premises or vehicles, and use of force during such entry, to effectuate the arrest of a person subject to criminal jurisdiction. The language provides authority for a law enforcement officer to enter a private premises or vehicle to take a juvenile into custody when:

- The law enforcement officer has a secure custody order in their possession. Possession of a copy of a secure custody order will suffice when the original order is in the possession of a member of a law enforcement agency in the same county where the officer is employed and the officer verifies with the agency that the order is current and valid; and
- The officer has reasonable cause to believe that the juvenile is present in the premises or vehicle; and
- The officer has given, or made a reasonable effort to give, notice of their authority and purpose to an occupant of the premises or vehicle. This notice is not required if there is reasonable cause to believe that giving notice would present a danger to the life or safety of any person.

Use of force to enter the premises or vehicle is authorized if (1) the officer believes that admittance is being denied or unreasonably delayed or if (2) notice is not required because there is reasonable cause to believe that giving notice would present a danger to the life or safety of any person.

It is important to note that the U.S. Supreme Court held that an arrest warrant is sufficient to enter the home of the person named in the warrant, but it does not justify entry into the home of a third party. ***Steagald v. U.S.*, 451 U.S. 204 (1981)** <https://supreme.justia.com/cases/federal/us/451/204/> . That holding was based on the third-party homeowner's constitutional protection against unreasonable search and seizure and presumably applies in the same way to the search of a third party's home based on a secure custody order issued for a juvenile. Exigent circumstances, consent, or a search warrant for the home of the third party is likely required to take a juvenile into custody in a home where the juvenile does not reside in order to follow the holding in *Steagald*.

Coming in November

My November blog will cover the final component of S.L. 2023-114 that applies to offenses committed on or after December 1, 2023— new law related to juvenile confidentiality called "Lyric and Devin's Law." S.L. 2023-114 also contains a significant revision to the law that governs juvenile capacity to proceed. These provisions do not take effect until January 1, 2025. I will write and teach about them in the fall of 2024. In the meantime, please feel free to reach out to me with any questions or feedback. You can always contact me at **greene@sog.unc.edu**.

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Probable Cause

Lyana Hunter, Assistant Public Defender
New Hanover County
District 6

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What is probable cause?

a finding by the court that a **juvenile 13 years old or older** is alleged to have committed an offense that would be a **felony** if committed by an adult and

there is "probable cause" to believe that the **offense was committed** AND	There is "probable cause" to believe that the **accused juvenile committed it**

Nutshell:			
13 years old +	Felony	Hearing establishes that offense happened	Juvenile did it

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NC Statutes/forms related to juvenile PC hearings

- NCGS §7B-2202
- NCGS §7B-2200.5
- AOC-J-343 (Probable Cause Hearing)
- NC Rules of Evidence 8C
  - Rule 1101

3

3

NCGS §7B-2202

- § 7B-2202. Probable cause hearing.
- (a) Except as otherwise provided in G.S. 7B-2200 and G.S. 7B-2200.5(a)(1), the court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age or older when the offense was allegedly committed. Except as otherwise provided in G.S. 7B-2200.5(c), the hearing shall be conducted within 15 days of the date of the juvenile's first appearance. The court may continue the hearing for good cause.
- (b) At the probable cause hearing:
  - (1) A prosecutor shall represent the State;
  - (2) The juvenile shall be represented by counsel;
  - (3) The juvenile may testify, call, and examine witnesses, and present evidence; and
  - (4) Each witness shall testify under oath or affirmation and be subject to cross-examination.

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NCGS §7B-2202 continued

- (c) The State shall by nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the juvenile committed it, except:
  - (1) A report or copy of a report made by a physicist, chemist, firearms identification expert, fingerprint technician, or an expert or technician in some other scientific, professional, or medical field, concerning the results of an examination, comparison, or test performed in connection with the case in issue, when stated in a report by that person, is admissible in evidence;
  - (2) If there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in a person other than the juvenile, lack of consent of the owner, possessor, or custodian of property to the breaking or entering of premises, chain of custody, and authenticity of signatures.
- (d) Counsel for the juvenile may waive in writing the right to the hearing and stipulate to a finding of probable cause.

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NCGS §7B-2202 continued

- (e) If probable cause is found and transfer to superior court is not required by G.S. 7B-2200 or G.S. 7B-2200.5, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, the court shall either proceed to a transfer hearing or set a date for that hearing. If the juvenile has not received notice of the intention to seek transfer at least five days prior to the probable cause hearing, the court, at the request of the juvenile, shall continue the transfer hearing.
- (f) If the court does not find probable cause for a felony offense, the court shall:
  - 1) Dismiss the proceeding, or
  - (2) If the court finds probable cause to believe that the juvenile committed a lesser included offense that would constitute a misdemeanor if committed by an adult, either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause. (1979, c. 815, s. 1; 1981, c. 469, ss. 15, 16; 1994, Ex. Sess., c. 22, s. 26; 1998-202, s. 6; 2015-58, s. 1.2; 2017-57, s. 16D.4(f); 2018-142, s. 23(b); 2019-186, s. 8(b); 2023-114, s. 1(c).)

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NCGS §7B-2200.5

- § 7B-2200.5. Transfer of jurisdiction of a juvenile at least 16 years of age to superior court.
- (a) If a juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, the court shall transfer jurisdiction over the juvenile to superior court for trial as in the case of adults unless the prosecutor declines to prosecute in superior court as provided in subsection (a1) of this section after either of the following:
  - (1) Notice to the juvenile of the return of a true bill of indictment as provided in G.S. 15A-630.
  - (2) **Notice, hearing, and a finding of probable cause that the juvenile committed an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.**

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- (a1) The prosecutor may decline to prosecute in superior court a matter that would otherwise be subject to mandatory transfer pursuant to subsection (a) of this section if the juvenile has allegedly committed an offense that would be a Class D, E, F, or G felony if committed by an adult. **If the prosecutor declines to prosecute the matter in superior court, jurisdiction over the juvenile shall remain in juvenile court following a finding of probable cause pursuant to G.S. 7B-2202.** Prior to adjudication, the prosecutor may choose to transfer the matter pursuant to subsection (a) of this section if the juvenile has allegedly committed an offense that would be a Class D, E, F, or G felony if committed by an adult.

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NCGS §7B-2200.5

- (b) If the juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class H or I felony if committed by an adult, **after notice, hearing, and a finding of probable cause, the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court pursuant to G.S. 7B-2203.** NC General Statutes - Chapter 7B Article 22 2
- (c) **A probable cause hearing conducted pursuant to subdivision (2) of subsection (a) of this section shall be conducted within 90 days of the date of the juvenile's first appearance. The court may continue the hearing for good cause.**

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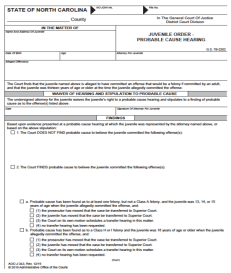
AOC-J-343 (Probable Cause Hearing)



STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

JUVENILE ORDER:
PROBABLE CAUSE HEARING

G.S. 7B-1301

Date of Birth | Age

Alleged Offense(s)

The Court finds that the juvenile named above is alleged to have committed an offense that would be a felony if committed by an adult, and that the juvenile was thirteen years of age or older at the time the juvenile allegedly committed the offense.

WAIVER OF HEARING AND STIPULATION TO PROBABLE CAUSE

The undersigned attorney for the juvenile waives the juvenile's right to a probable cause hearing and stipulates to a finding of probable cause as to the offense(s) listed above.

Date | Signature of Attorney for Juvenile

FINDINGS

Based upon evidence presented at a probable cause hearing at which the juvenile was represented by the attorney named above, or based on the above stipulation:

☐ 1. The Court DOES NOT FIND probable cause to believe the juvenile committed the following offense(s):

☐ 2. The Court FINDS probable cause to believe the juvenile committed the following offense(s):

☐ a. Probable cause has been found as to at least one felony, but not a Class A felony, and the juvenile was 13, 14, or 15 years of age when the juvenile allegedly committed the offense, and
☐ (1) the prosecutor has moved that the case be transferred to Superior Court.
☐ (2) the juvenile has moved that the case be transferred to Superior Court.
☐ (3) the Court on its own motion schedules a transfer hearing in this matter.
☐ (4) no transfer hearing has been requested.

☐ b. Probable cause has been found as to a Class H or I felony and the juvenile was 16 years of age or older when the juvenile allegedly committed the offense, and
☐ (1) the prosecutor has moved that the case be transferred to Superior Court.
☐ (2) the juvenile has moved that the case be transferred to Superior Court.
☐ (3) the Court on its own motion schedules a transfer hearing in this matter.
☐ (4) no transfer hearing has been requested.

(more)

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NC Rules of Evidence 8C

Rule 1101. Applicability of rules.

- (a) Proceedings generally. – Except as otherwise provided in subdivision (b) or by statute, these rules apply to all actions and proceedings in the courts of this State.
- (b) **Rules inapplicable. – The rules other than those with respect to privileges do not apply in the following situations:**
  - (1) Preliminary Questions of Fact. – The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).
  - (2) Grand Jury. – Proceedings before grand juries.
  - (3) Miscellaneous Proceedings. – Proceedings for extradition or rendition; first appearance before district court judge **or probable cause hearing in criminal cases**; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise.
  - (4) Contempt Proceedings. – Contempt proceedings in which the court is authorized by law to act summarily.

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The basic who, what, where and when of PC hearings…

Who	• Prosecutor represents the State • Juvenile is entitled to counsel and SHALL be represented by counsel • Witnesses • Judge
What	• State must present evidence – testimony, evidence • Witnesses testify under oath/affirmation; subject to cross examination
Where	• Juvenile court setting – District Court
When	• First discussed at first appearance for a felony – get a PC hearing date

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Time requirements of a PC hearing

Must be held within 15 days of the first appearance unless…

- The juvenile is 16 years old or older at the time of offense, and the offense is A – G felony if committed by an adult
- If that's the case the hearing requirement expands to within 90 days of the first appearance.

In both instances the PC hearing can be extended past the statutory deadlines for good cause

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How is PC different in juvenile court vs adult court?

- NCGS 8C-1, Rule 1101
  - Discusses the applicability of this Chapter
    - Generally, these rules do not apply in PC hearings in criminal court
  - The rules of evidence do apply in juvenile PC hearings
  - If adults are charged with an offense within the original jurisdiction of superior court (aka felonies) the court MUST schedule a PC hearing unless the defendant waives in writing their right to such hearing.
    - If a defendant is represented by counsel – can only waive with written consent of defendant and attorney
    - An indigent defendant is entitled to court appointed counsel – including PC hearings
    - A judge is required to inform a non-indigent defendant (who has indicated a desire to have an attorney) that he/she can appear at a PC hearing without counsel or he/she needs to secure counsel prior to that hearing
      - Also need to inform defendant that a presiding judge will not continue the PC hearing because they don't have an attorney present except for extraordinary circumstances
  - Juveniles shall be represented by counsel – adults don't have to be – they can waive

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Similarities between juvenile and adult PC hearings	Differences between juvenile and adult PC hearings
Both have a 15-day hearing requirement from 1st app (few exceptions)	In cases involving 16+ charged with A-G – the time frame is 90 days; in adult court – can go beyond 15 days if there's no scheduled district court session – must be scheduled for next available session
Entitled to court appointed counsel	Adults can waive counsel; juveniles cannot (juveniles shall be represented by counsel); defendant may be represented by counsel
Waivers must be in writing	Juveniles need attorney to sign waiver; defendants can sign waiver without attorney
Rules of evidence are applicable in juvenile PC hearings (few exceptions)	Rules of evidence not applicable in adult PC hearings
Language of both says – state must by non hearsay evidence, or evidence that satisfies a hearsay exception, show that there is probable cause to believe that the specific crime occurred, and that juvenile (or defendant) is the one who did it	
No PC – dismiss; if PC but for lesser charge – set for trial (adjudication)	What happens afterwards – different process overall PC – for charge – adult must go to Superior Court; A few different options for juvenile depending on the class of offense

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To waive or not to waive…

- Juveniles have the right (through counsel) to waive PC
- Consider the specific facts/circumstances of your case
- Discuss options with your client
- Forces the state to present evidence they have
- If your client takes a plea you need to complete the PC waiver – AOC-J-343 form
- Circumstances where you may want to waive? Or not?

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Benefits of having a PC hearing

- It's a preview of the State's case – good or bad
- Case could be dismissed, or the charges could be reduced to a misdemeanor (prevent transfer in certain cases)
- Assess witnesses
- Develop impeachment material
- Give both parties a more realistic view of the case
- Encourage plea negotiations

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Drawbacks of having a PC hearing

ADA may be willing to give an advantageous plea in exchange for waiving a PC hearing

Even if you and the ADA are in agreement to keep the case in juvenile court if PC is found, the Court can (on it's own motion) transfer the juvenile to Superior Court (particularly terrible facts, etc.)

The ADA could possibly add additional charges if testimony comes out of additional/different criminal behavior

If a witness from a PC hearing is unavailable at the adjudication, testimony could still perhaps come in – argument from ADA would be that Confrontation Clause does not bar the ADA from introducing that testimony – had opportunity to cross examine during PC

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PC Hearing process
Burden of proof – Inc courts have not defined standard of proof
• Argument that SOP for PC hearings in adult cases is higher than for a lawful arrest
• Bar is low – certainly not BARD or Clear, Cogent, Convincing
Application of Confrontation Clause
• May not apply – the use of out of court statements that don't fit Rules of evidence are restricted
• Some statements could come in that wouldn't necessarily be admissible at trial – (Juvenile Defender Manual provides different out of state examples/argument that overall suggest that at a preliminary hearing the Confrontation Clause does not apply)
Hearing prep
• What is your strategy?
• Could expose weaknesses → could lead to a plea → could also tip your hand
• You don't want to fill in all the gaps (I liked to know the full story → not the purpose → don't do the ADA's job)
• Sometimes less is more
• May want to get as much as you can on the record with a wishy-washy witness – can use later to impeach if story changes
• Juvenile could testify – limited circumstances when that could be helpful
• Be careful about having defense witnesses in the courtroom unless you know you want to call them – they could be called by ADA
• Make sure hearing is recorded
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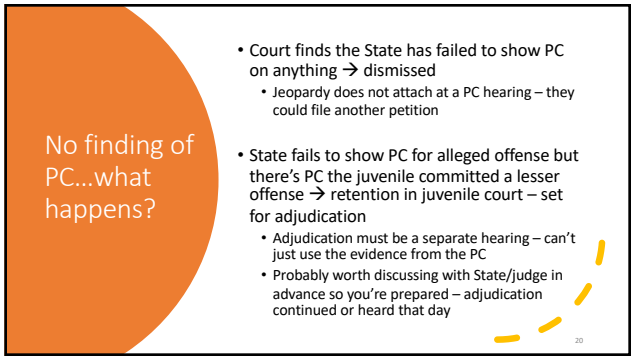
No finding of PC…what happens?
• Court finds the State has failed to show PC on anything → dismissed
• Jeopardy does not attach at a PC hearing – they could file another petition
• State fails to show PC for alleged offense but there's PC the juvenile committed a lesser offense → retention in juvenile court – set for adjudication
• Adjudication must be a separate hearing – can't just use the evidence from the PC
• Probably worth discussing with State/judge in advance so you're prepared – adjudication continued or heard that day
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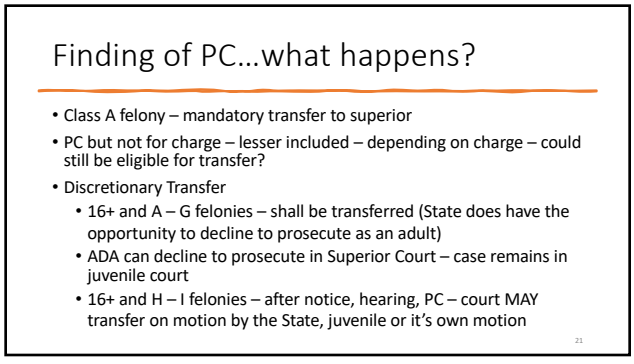
Finding of PC…what happens?
• Class A felony – mandatory transfer to superior
• PC but not for charge – lesser included – depending on charge – could still be eligible for transfer?
• Discretionary Transfer
• 16+ and A – G felonies – shall be transferred (State does have the opportunity to decline to prosecute as an adult)
• ADA can decline to prosecute in Superior Court – case remains in juvenile court
• 16+ and H – I felonies – after notice, hearing, PC – court MAY transfer on motion by the State, juvenile or it's own motion
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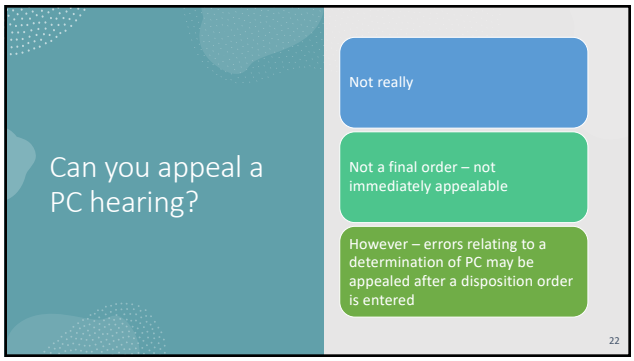

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Practical next steps after a PC hearing…

- No PC – easy – case is done – warn clients the case could come back if the State gathers additional evidence
- PC for charge as alleged
  - Transfer - file appeal on transfer – maybe challenge court findings of PC (yes I know it's not a final order but it led to transfer)
    - Possible transfer hearing – prepare for that
  - Case could come back with ADA agreement
  - No transfer – discuss plea options; prepare for separate adjudicatory hearing
- PC for lesser included
  - Work out plea? Discuss options
  - Prepare for adjudication –make sure judge has separate adjudicatory hearing

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Questions…final thoughts

Do you have PC hearings?

What do those hearings look like?

What challenges do you face in preparing for hearings?

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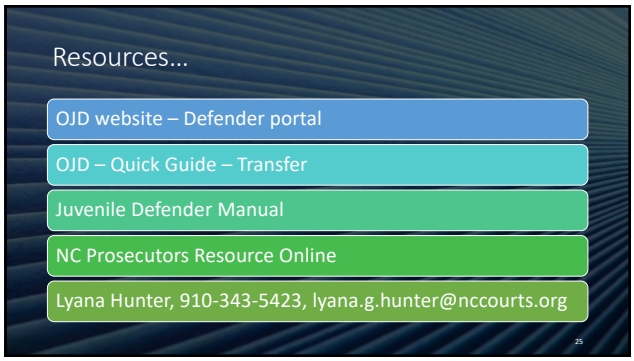
Resources…
OJD website – Defender portal
OJD – Quick Guide – Transfer
Juvenile Defender Manual
NC Prosecutors Resource Online
Lyana Hunter, 910-343-5423, lyana.g.hunter@nccourts.org
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