

**Juvenile Law Updates**  
2024 Juvenile Defender  
Conference



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- Session Law 2024-17
- New capacity to proceed law
- Case update

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**S.L. 2024-17**



- Change to original juvenile jurisdiction
- Transfer changes
- Other delinquency changes
- Solicitation of minors to commit offenses

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Effective Date for Changes

Offenses committed on or after December 1, 2024

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Original Jurisdiction

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Offenses Committed at 16/17

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|--|---|
| <p><b>Original Juvenile Jurisdiction</b></p> <ul style="list-style-type: none"><li>• F – I felonies that are not in Chapter 20</li><li>• All misdemeanors that are not in Chapter 20</li></ul> | <p><b>Original Criminal Jurisdiction</b></p> <ul style="list-style-type: none"><li>• A – E felonies</li><li>• All Chapter 20 offenses</li></ul> |
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## Place of Confinement

| Criminal jurisdiction and under 18 | Criminal jurisdiction and 18 or older | Juvenile Jurisdiction |
|------------------------------------|---------------------------------------|-----------------------|
| • Juvenile detention               | • Jail                                | • Juvenile detention* |

\* with exceptions for rare cases that did not begin before aging out and the person is 18 or older

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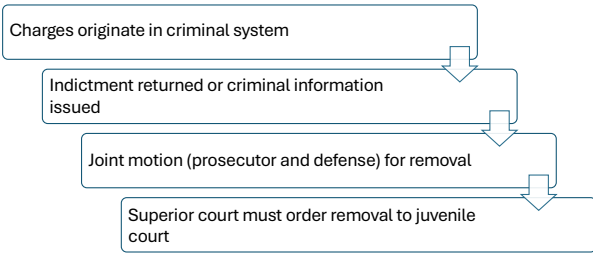
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## Removal



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## When Removal is Ordered

Order must be in writing and require DJJ to file a juvenile petition within 10 calendar days

Superior court record must be expunged (per G.S. 15A-145.8)

Superior court may issue a secure custody order if criteria in G.S. 7B-1903 are met

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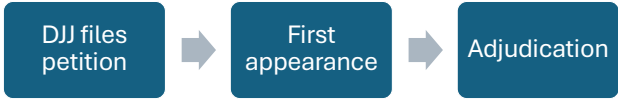
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### Juvenile Procedure Following Removal



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### S.L. 2024-17



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### Cases Subject to Transfer

#### Mandatory Transfer

Class F, G felony at age 16/17  
Class A felony at age 13/14/15

#### Discretionary Transfer

Class H, I felony at age 16/17  
Class B1 – I felony at age 13/14/15

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|---|---|
| <p>Indictment<br/>Return<br/>Appearance<br/><br/>(Mandatory<br/>Transfer<br/>Cases)</p> | <ul style="list-style-type: none"><li>• Prosecutor must give immediate notice of return of true bill of indictment to district court</li><li>• District court must calendar for an appearance within 5 business days of date indictment is returned</li><li>• Court determines if notice was provided on returned indictment for mandatory transfer offense</li><li>• If notice was provided, court must order transfer to superior court</li></ul> |
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No Interlocutory Appeal of  
Mandatory Transfer Orders

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**S.L. 2024-17**



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**Ongoing Secure Custody Hearings**

-  Every **30** days in all cases
-  Parties can request and court can order an earlier hearing
-  Any earlier hearing must be scheduled within **10** calendar days of the date the request is made

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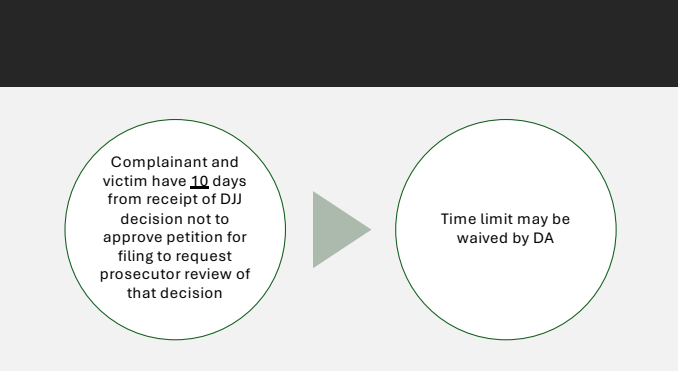
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Complainant and victim have **10** days from receipt of DJJ decision not to approve petition for filing to request prosecutor review of that decision

Time limit may be waived by DA

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## Restitution

Joint and several responsibility no longer required; still allowed

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Notification only when petition alleges Class A-E felony

Automatic suspension based on notification (G.S. 7B-3101) or local information sharing (G.S.7B-3100) prohibited

Principal must make individualized decision on student's status

## School Notification of Filing of Delinquency Petition

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### S.L. 2024-17



- Change to original juvenile jurisdiction
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Solicitation of a minor by another minor to commit a felony or misdemeanor

| Offense minor solicited to commit | Punishment for minor who engaged in the solicitation |
|-----------------------------------|--|
| Class A or B1 felony              | Class C felony                                       |
| Class B2 felony                   | Class D felony                                       |
| Class H felony                    | Class 1 misdemeanor                                  |
| Class I felony                    | Class 2 misdemeanor                                  |
| Any other felony                  | Felony 2 classes below solicited felony              |
| Any misdemeanor                   | Class 3 misdemeanor                                  |

G.S. 14-2.6(c)

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Solicitation of a minor by an adult to commit a felony or misdemeanor



Same class felony or misdemeanor as the offense the adult solicited the minor to commit

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# Advocacy Tips

S.L.-2024-17

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## Removal To Juvenile Court

- Requires joint motion of the prosecutor and defense attorney.
- There is no time period specified in statute, so can remove any time before the adult case is handed.
  - Investigate, Investigate!
  - If client not in custody, have client participate in services/activates to help their case.
- Utilize experts to gather information about your client and the case to convince the prosecutor to agree to removal

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## 16 and 17 year olds F-I felonies

- Remember nothing practically changes for 16 and 17 year olds charged with F-I felonies.
  - F-G still subject to mandatory transfer
  - H-I still subject to discretionary transfer
- Prosecutors still have discretion in these cases.
- Utilize your case investigation, expert assistance, and client's progress to keep the case in juvenile court when possible.

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## Remand for 13, 14, 15 Year Olds

- Remand is now extended to 13-15 year olds transferred to adult court.
- Just as with remand in the past and removal now, there is no time frame/limits placed on remand.
- Utilize experts, investigation, client's progress to convince prosecutor to agree to remand.

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## Secure Custody Hearings

Will now be held within 30 days of the initial hearing UNLESS, you or another party requests it be heard earlier.

The hearing **SHALL** be held within 10 day of the request

The statute does not mention anything about **virtual vs in person hearings** to meet the 10 day window. Nothing changes in making the decision to hold a virtual vs. in person secure hearing.

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## Right to Appeal to Transfer Decision

- Right to appeal **mandatory** transfer cases has been eliminated.
- However, right to appeal **discretionary** transfer cases still exists.
- Don't forget to appeal and preserve the record for discretionary transfer cases.

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## Solicitation (Minor to Minor)

- Make sure you check the charging instrument to ensure your client is charged with the correct offense level
- If charging instrument is incorrect be prepared to argue.

| Offense minor solicited to commit | Punishment for minor who engaged in the solicitation |
|-----------------------------------|--|
| Class A or B1 felony              | Class C felony                                       |
| Class B2 felony                   | Class D felony                                       |
| Class H felony                    | Class 1 misdemeanor                                  |
| Class I felony                    | Class 2 misdemeanor                                  |
| Any other felony                  | Felony 2 classes below solicited felony              |
| Any misdemeanor                   | Class 3 misdemeanor                                  |

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## Restitution

May be joint and severable instead of shall be.

Determine which path is best for your client

Be prepared to argue why it should or shouldn't be joint and severable for your client.

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- Session Law 2024-17
- New capacity to proceed law
- Case update

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## Juvenile Capacity Law

G.S. 7B-2401.1 – 2401.5

Applies to offenses committed on or after January 1, 2025

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# No Capacity When

unable to understand the nature and object of the proceedings against the juvenile,

to comprehend the juvenile's own situation in reference to the proceedings, *or*

to assist in the juvenile's own defense in a rational or reasonable manner because of...

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\_\_\_\_\_  
mental disorder,  
\_\_\_\_\_  
intellectual disability,  
\_\_\_\_\_  
neurological disorder,  
\_\_\_\_\_  
traumatic or acquired brain injury, or  
\_\_\_\_\_  
developmental immaturity.

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Developmental immaturity = “[i]ncomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional, and social development.”

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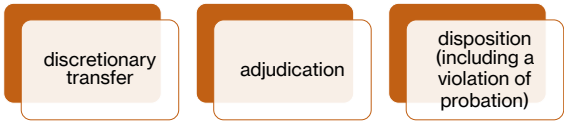
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**If No Capacity to Proceed, NO**



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Capacity cannot be raised in mandatory transfer cases until  
**AFTER** transfer



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**Mandate for Judicial Inquiry Regarding Capacity to Proceed**

✓ In every case in which the juvenile is younger than 12

✓ First time the juvenile appears in court



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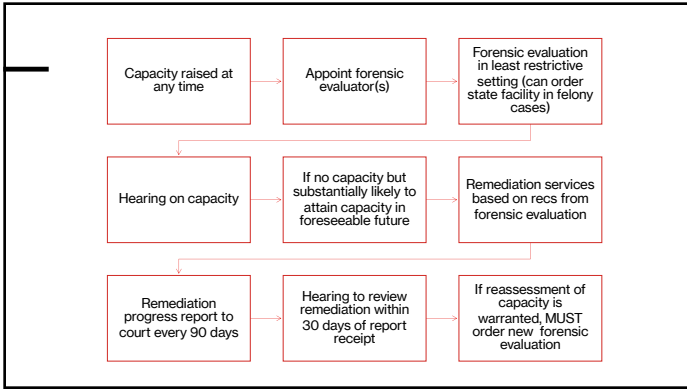
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### Juvenile Forensic Evaluators

DHHS charged with setting new standards

Current evaluators grandfathered in; will have 12 months to satisfy new standards

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### Forensic Evaluation Must Include

Capacity to

- Appreciate allegations
- Appreciate range and nature of allowable dispositions
- Understand participant roles and adversarial nature of process
- Disclose pertinent facts to counsel
- Display appropriate courtroom behavior
- Testify regarding relevant issues
- Make reasonable and rational decisions
- Assist in defense in rational manner
- Any other factors evaluator deems relevant

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## Forensic Evaluation Must Include

Whether capable, incapable, or incapable with ability to attain capacity in foreseeable future with remediation

Basis of incapacity

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## Remediation

“[s]ervices directed only at facilitating the attainment of capacity to proceed for a juvenile who the court finds is incapable to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.”

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## REMEDICATION TIME LIMITS

| Most serious offense alleged   | Remediation time limit   |
|--|--|
| First-degree murder, forcible rape, statutory rape, forcible sexual offense, or statutory sexual offense | The sooner of 36 months from the finding of incapacity or the maximum jurisdiction of the juvenile court   |
| Any other Class B1 – E felony  | The sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 12 months can be granted for good cause. Remediation can never extend beyond the sooner of 24 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. |
| Class F – I felony or misdemeanor  | The sooner of 6 months from the finding of incapacity or the maximum jurisdiction of the juvenile court. An extension of 6 months can be granted. Remediation can never extend beyond the sooner of 12 months from the finding of incapacity or the maximum jurisdiction of the juvenile court.                  |

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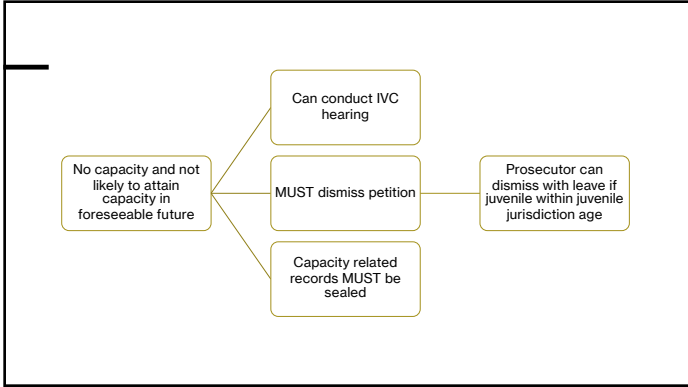
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# Advocacy Tips

Capacity

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- Show up for the youth's evaluation or request to be present
- DHHS facilities and evaluators often will give attorneys date/time of the location.
- Sometimes being there is also a comfort to your client
- Also helps you practically understand and observe the evaluation process first hand

Forensic  
Evaluation  
Tips

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## Forensic Evaluation Tips

- Take time to read the entire evaluation to ensure it includes all required elements.
- If it doesn't, bring it up to the judge
- If needed, have your own expert review the evaluation and findings if necessary



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## Defense Experts

This new procedure and process **DOES NOT** preclude defense counsel from seeking their own experts.

We still encourage you to seek whatever expert you think is best for your case and client's situation.

However, the court will follow this new procedure utilizing a forensic evaluator when capacity is at question

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## Remediation Tips

### Track

- Track your client's time and progress in remediation

### File

- If you client has reached the maximum possible time for their offense type, file a motion to dismiss.

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- Session Law 2024-17
- New capacity to proceed law
- Case update

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*In re B.W.C.*, 2022-NCCOA 590 (Sept. 6, 2022)

|                               |   |
|-------------------------------|---|
| Adjudicated undisciplined     | • Contempt warning for violation of conditions                      |
| Violation                     | • Motion for review<br>• Delinquency petition for indirect contempt |
| Admitted to indirect contempt | • Placed on probation for 6 months                                  |

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### Argument on Appeal

Delinquency adjudication for contempt resulting from noncompliance with a protective supervision order was not intended by the General Assembly, given the dispositional alternatives in an undisciplined case

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# Holding

Undisciplined dispositional alternatives in the Juvenile Code ceased to control the dispositional alternatives once Brian was held in indirect contempt

Under the plain language of the indirect contempt statute (G.S. 5A-31) and the definition of delinquent juvenile (G.S. 7B-1501(7)), it was proper to adjudicate the juvenile delinquent as the result of a finding of indirect contempt based on his willful disobedience of the protective supervision order

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# Notable Implications

- Indirect contempt is a minor offense (G.S. 7B-2508)
  - Assuming no delinquency history, will always be a Level 1 disposition
- No delinquency history points for an adjudication based on contempt (G.S. 7B-2507(b))
- Right to counsel attaches when juvenile is alleged to be in contempt of court when alleged or adjudicated undisciplined (G.S. 7B-2000)

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Figure 4.20  
Recidivism Rates by Length of Juvenile Justice Involvement: Two-Year Follow-Up



# RECIDIVISM



# PRO BONO

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## Pleading Sexual Battery

In the Matter of J.U., 887 S.E.2d 859 (2023)

| Elements  | Petition  |
|---|---|
| <ul style="list-style-type: none"> <li>■ For the purpose of sexual arousal, sexual gratification, or sexual abuse</li> <li>■ Engages in sexual contact with another person</li> <li>■ <b>By force</b> and against the will of the other person</li> </ul> | <ul style="list-style-type: none"> <li>■ Unlawfully, willfully engage in sexual contact with B.A. by touching her vaginal area</li> <li>■ Against the victim's will</li> <li>■ For the purpose of sexual gratification</li> </ul> |

Force "clearly inferable" from allegation of touch against consent

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## Indictment Raises Jurisdictional Concerns Only When it Wholly Fails to Charge a Crime

- State v. Singleton, 900 S.E.2d 802 (May 23, 2024)
- Indictment with non-jurisdictional defects will not be quashed or cast aside when they provide notice sufficient to prepare a defense and protect against double jeopardy

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## Indictment Raises Jurisdictional Concerns Only When it Wholly Fails to Charge a Crime

- Issues related to indictment defects remain automatically preserved, even if not raised at trial... better practice raise non-jurisdictional defects at trial
- Must also show that error resulted in **prejudice** to the defendant
- Difference between what must be proved a trial and what must be alleged in indictment (here – defendant knew or reasonably should have known the victim was physically helpless)

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## Protected Speech or True Threat?



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## True Threat

*State v. Taylor*, 379 N.C. 589 (2021)

- Objectively threatening statement
- Made by person with subjective intent to threaten a listener or identifiable group

*Counterman v. Colorado*, 600 U.S. 66 (2023)

- Must have proof of some subjective understanding of threatening nature of statement
- Mental state of recklessness is sufficient (conscious disregard of a substantial risk that communications would be viewed as threatening violence)

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## True Threat Considerations

- (1) the context in which the statement was made
- (2) the nature of the language used
- (3) the reaction of the listeners upon hearing the statement

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## True Threat Analysis

### Objectively threatening

- Three student witnesses took statement seriously and were scared
- Daniel's tone was serious
- No one laughed in response; response was an offer to bring the guns



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## True Threat Analysis

### Subjective understanding

- Made statement to group of 15-17 students during school hours
- Statement was in a serious tone that could be overheard by two students
- Daniel made previous text threat against one of these students and made a video about blowing the student's brains out



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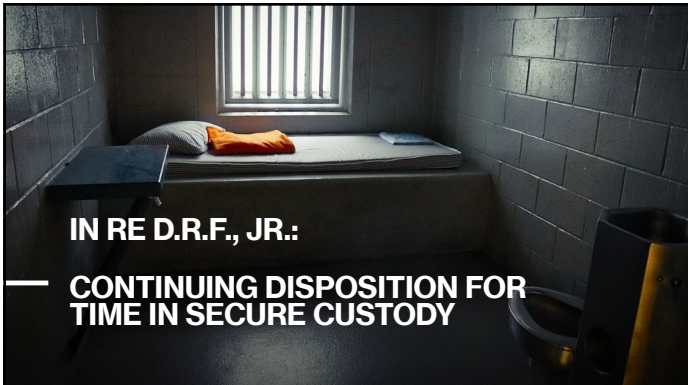
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## G.S. 7B-2406 Continuances



For good cause to

receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile, or allow for a reasonable time for the parties to conduct expeditious discovery



Extraordinary circumstances

when necessary for the proper administration of justice, or in the best interests of the juvenile

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“He has been adjudicated delinquent on three prior communicating threats. One being another count of disorderly conduct at school. He was on probation for communicating threats when this happened. Obviously, if it was alluded to, I didn’t want to allude to it since we are now in a disposition or prior to disposition. Obviously, if there is any time to take this serious it is now. Unlike other ones, there is no history, but this there is history. I will show you the proof. He is a level II with four points. I will show you the approved complaints. Again, this is a pattern of conduct that needs to be stipend [sic], so I will ask Your Honor to waive disposition for seven days in order for the juvenile to be held in secure custody.”

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**MOOTNESS**

**“Capable of repetition, yet evading review”**

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**Absence of Signature Not Cured by:**

- JCC signature in verification section of petition
- Completion of YASI and gang assessment and provision of predisposition report



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"It is well-established that the issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal.

The sufficiency of a juvenile petition is a jurisdictional issue that an appellate court reviews de novo."

Date of Offense: 16 May 2023  
Petition Filed: 1 June 2023  
Adjud/Dispo: 30 August 2023  
Probation Until: ~ March 2024  
Heard in CoA: 3 April 2024  
Opinion Filed: 7 May 2024



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## Jury Instruction on Adolescent Brain Properly Denied

State v. Smith, 289 N.C.App. 233 (2023)

"In this case, you may examine the defendant's actions and words, and all the circumstances surrounding the offense, to determine what the defendant's state of mind was at the time of the offense. However, the law recognizes that juveniles are not the same as adults. An adult is presumed to be in full possession of his senses and knowledgeable of the consequences of his actions. By contrast, the brains of adolescents are not fully developed in the areas that control impulses, foresee consequences, and temper emotions. Additionally, adolescents often lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.

You should consider all the circumstances in the case, any reasonable inference you draw from the evidence, and differences between the way that adult and adolescent brains functions in determining whether the State has proved beyond a reasonable doubt that defendant intentionally killed the victim after premeditation and deliberation."

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Line of Supreme Court decisions on adolescent brain development related to sentencing and not determinations of guilt

Potential to mislead jury because age at offense is not an element of the offense – "age is not considered nor contemplated in the analysis of premeditation and deliberation."

No evidence was presented on adolescent brain function; would that change the analysis?

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"Juvenile offenders are presumed to have the capacity to change" and an express finding of fact as to a juvenile's permanent incorrigibility is required before a juvenile can be sentenced to life imprisonment without the possibility of parole. ("Thus, unless the [sentencing] court expressly finds that a juvenile homicide offender is one of those 'exceedingly rare' juveniles who cannot be rehabilitated, he or she cannot be sentenced to life without parole.") (internal citations omitted)

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North Carolina Criminal Law  
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### An Update on Life with and without Parole for Young Defendants

September 12, 2018 [Jamie Markham](#)

45 JLWOP cases pending resentencing  
28 felony murder (ineligible for LWOP), 17 eligible for LWOP  
6 of those cases were resentenced (again) to LWOP

**35%**

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### In re J.M., 894 S.E.2d 521 (2023)

- + Level 2 disposition
- + Ordered into DSS custody
- + Two months later the court entered a permanency planning order that removed DSS as custodian and placed juvenile in the temporary custody of grandma pending the DSS appeal of the dispositional order

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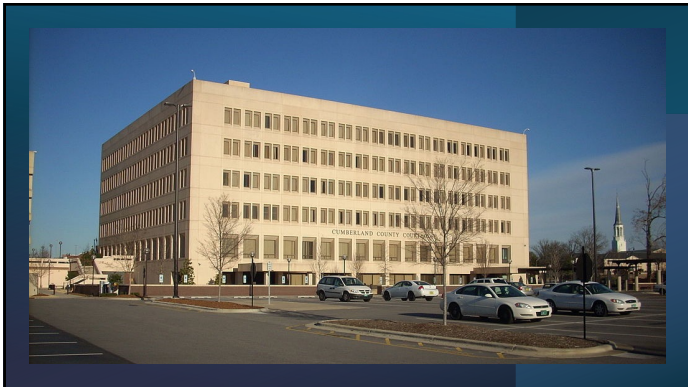
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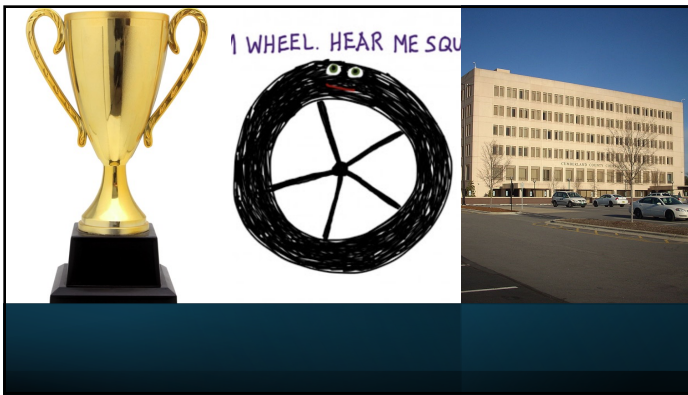
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**In re A.G.J.**, 291 N.C.App. 322

- + Written findings in dispositional order failed to demonstrate that court considered all factors in G.S. 7B-2501(c)

Related only to juvenile's living conditions and not the offense

Did not address culpability

Stating was a Class 1 MDM does not address seriousness of offense

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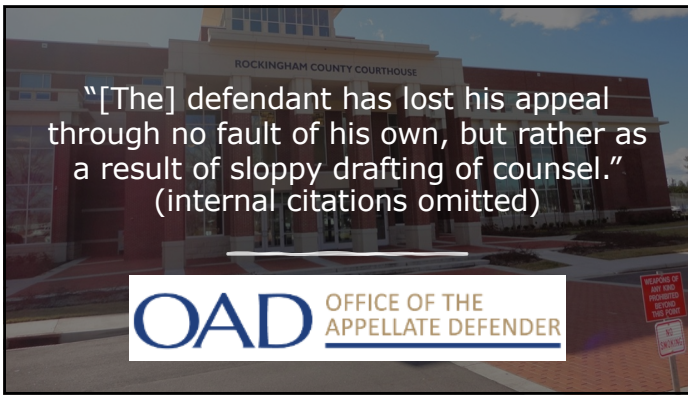
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**In re: S.C.**, 290 N.C. App. 312, 892 S.E.2d 106 (2023)

- Onslow County
- Youth must be advised of their rights before testifying

**In re: N.M.**, 290 N.C. App. 482, 892 S.E.2d 643 (2023)


- Surry County
- At disposition, "the Court should make independent findings from the documents and indicate that each prong of NCGS §7B-2501(c) was thus considered."

**State v. Borlase**, 292 N.C. App. 54, 896 S.E.2d 742 (2024)

- Watauga County
- Court imposed LWOP by considering evidence of "irreparable corruption" through the crime itself (double homicide)

**State v. Kelliher**, 900 S.E.2d 239 (N.C. Ct. App. 2024)

- Cumberland County
- The trial court got it wrong again (vacated and remanded) (can't resentence on other matters that weren't remanded)




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