

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 815
HOUSE BILL 474

AN ACT TO PROVIDE A UNIFIED JUVENILE CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-277 through G.S. 7A-289, and G.S. 7A-289.7 are repealed and the following new Articles are added to Chapter 7A:

"NORTH CAROLINA JUVENILE CODE.

"ARTICLE 41.

"Purpose; Definitions.

"§ 7A-506. Purpose. — This Article shall be interpreted and construed so as to implement the following purposes and policies:

- (1) to divert juvenile offenders from the juvenile system through the intake services authorized herein so that juveniles may remain in their own homes and may be treated through community-based services when this approach is consistent with the protection of the public safety;
- (2) to provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents; and
- (3) to develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public safety.

"§ 7A-507. Definitions. — Unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juvenile. Any juvenile less than 18 years of age whose parent or other person responsible for his care:
 - (a) inflicts or allows to be inflicted upon the juvenile a physical injury by other than accidental means which causes or creates a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of function of any bodily organ; or
 - (b) creates or allows to be created a substantial risk of physical injury to the juvenile by other than accidental means which would be likely to cause death, disfigurement, impairment of physical health, or loss or impairment of the function of any bodily organ; or
 - (c) commits or allows the commission of any sexual act upon a juvenile in violation of law; or
 - (d) creates or allows to be created serious emotional damage to the juvenile and refuses to permit, provide for, or participate in treatment. Severe emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or
 - (e) encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

- (2) Aftercare. The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.
- (3) Administrator for Juvenile Services. The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.
- (4) Director of the Division of Youth Services. The person responsible for the supervision of the administration of institutional and detention services.
- (5) Caretaker. Any person, other than a parent, who is acting in loco parentis to a juvenile, including any blood relative; stepparent; foster parent; or house parent, cottage parent or other person supervising a juvenile in a child-care facility.
- (6) Chief court counselor. The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.
- (7) Clerk. Any clerk of superior court, acting clerk, or assistant or deputy clerk.
- (8) Community-based program. A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.
- (9) Court. The District Court Division of the General Court of Justice.
- (10) Court counselor. A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.
- (11) Custodian. The person or agency that has been awarded legal custody of a juvenile by a court.
- (12) Delinquent juvenile. Any juvenile less than 16 years of age who has committed a criminal offense under State law or under an ordinance of local government, including violation of the motor vehicle laws.
- (13) Dependent juvenile. A juvenile in need of assistance or placement because he has no parent, guardian or custodian responsible for his care or supervision or whose parent, guardian, or custodian is unable to provide for his care or supervision.
- (14) Detention. The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.
- (15) Detention home. An authorized facility providing secure custody for juveniles.
- (16) Holdover facility. A place in a jail which has been approved by the Department of Human Resources as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.
- (17) Intake counselor. A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.
- (18) Interstate Compact on Juveniles. An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.
- (19) Judge. The district judge assigned by the chief district judge to hear juvenile cases.

- (20) Juvenile. Any person who has not reached his 18th birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subsections (12) and (28) of this section, a juvenile is any person who has not reached his 16th birthday. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.
- (21) Neglected juvenile. A juvenile who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.
- (22) Petitioner. The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.
- (23) Probation. The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.
- (24) Prosecutor. The assistant district attorney assigned by the district attorney to juvenile proceedings.
- (25) Protective supervision. The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.
- (26) Regional detention home. A State-supported and administered regional facility providing detention care.
- (27) Shelter care. The temporary care of a juvenile in a physically unrestricting facility pending court disposition.
- (28) Undisciplined juvenile. A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

"ARTICLE 42.

"Jurisdiction.

"§ 7A-508. **Jurisdiction.** — The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent, undisciplined, abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect. For purposes of determining jurisdiction, the age of the juvenile either at the time of the alleged offense or when the conditions causing the juvenile to be abused, neglected, or dependent arose, governs. There is no minimum age for juveniles alleged to be abused, dependent or neglected. For juveniles alleged to be delinquent or undisciplined, the minimum age is 6 years of age.

The court also has exclusive original jurisdiction of the following proceedings:

- (1) proceedings under the Interstate Compact on Juveniles and the Interstate Parole and Probation Hearing Procedures for Juveniles;
- (2) proceedings to determine whether a juvenile who is on conditional release and under the aftercare supervision of a court counselor has violated the terms of his conditional release established by the Division of Youth Services;

- (3) proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when his parent, guardian, legal custodian, or other person standing in loco parentis refuses to consent for treatment to be rendered;
- (4) proceedings to determine whether a juvenile should be emancipated;
- (5) proceedings to terminate parental rights.

"§ 7A-509. Retention of jurisdiction. — When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until he reaches his 18th birthday. Any juvenile who is under the jurisdiction of the court and commits a criminal offense after his 16th birthday is subject to prosecution as an adult. Any juvenile who is transferred to and sentenced by the superior court for a felony offense is subject to prosecution as an adult for all other crimes alleged to have been committed by him while he is under the active supervision of the superior court. Nothing herein shall be construed to divest the court of jurisdiction in abuse, neglect, or dependency proceedings.

"ARTICLE 43.

"Screening of Delinquency and Undisciplined Petitions.

"§ 7A-510. Intake. — The Chief Court Counselor, under the direction of the Administrator of Juvenile Services, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action and to obtain assistance from community resources when court referral is not necessary. The intake counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes.

"§ 7A-511. Preliminary inquiry. — When a complaint is received, the intake counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the intake counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, he shall, without further inquiry, refuse authorization to file the complaint.

When requested by the intake counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

If the intake counselor finds reasonable grounds to believe that the juvenile has committed one of the following offenses, he shall, without further inquiry, authorize the complaint to be filed as a petition: murder; rape; arson; any violation of Article 5, Chapter 90 of the North Carolina General Statutes which would constitute a felony if committed by an adult; first degree burglary; crime against nature; or any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon.

"§ 7A-512. Evaluation. — Upon a finding of legal sufficiency, except in the nondivertible offenses set out in G.S. 7A-511, the intake counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted to a community resource, or the case resolved without further action. He shall consider criteria which shall be provided by the Administrator of Juvenile Services in making his decision. The intake process shall include the following steps:

- (1) interviews with the complainant and the victim if someone other than the complainant;
- (2) interviews with the juvenile, his parent, guardian, or custodian;

- (3) interviews with persons known to have information about the juvenile or family which information is pertinent to the case.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone.

"§ 7A-513. Evaluation decision. — The evaluation of a particular complaint shall be completed within 15 days, with an extension for a maximum of 15 additional days at the discretion of the Chief Court Counselor. The intake counselor must decide within this time period whether or not a complaint will be filed as a juvenile petition. If the intake counselor determines that a complaint should be filed as a petition, he shall assist the complainant when necessary with the preparation and filing of the petition, or help with the preparation and filing of the petition, shall endorse on it the date and the words 'Approved for filing', shall sign it beneath such words, and shall transmit it to the Clerk of Superior Court. If the intake counselor determines that a petition should not be filed, he shall immediately notify the complainant in writing with reasons for his decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The intake counselor shall then sign his name on the complaint beneath the words 'Not approved'.

Any complaint not approved for filing as a juvenile petition shall be destroyed by the intake counselor after holding the complaint for a temporary period to allow follow-up and review as provided in G.S. 7A-514 and G.S. 7A-516.

"§ 7A-514. Referral and follow-up. — The intake counselor may refer any case to an appropriate public or private resource unless the offense is one in which a petition is required as set out in G.S. 7A-511. After making a referral, the intake counselor shall ascertain that the juvenile actually contacted or was seen by the resource to which he was referred. In the event that the juvenile does not contact or visit the community resource, the intake counselor may reconsider his decision to divert and may authorize the filing of a complaint as a petition within 60 days from the date of the referral. If the juvenile contacts or is seen by the resource, the intake counselor shall close the file.

"§ 7A-515. Request for review. — The complainant has five calendar days, from receipt of the intake counselor's decision not to approve the filing of a complaint, to request review by the prosecutor. The intake counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant and the intake counselor of the time and place for the review.

"§ 7A-516. Review of determination that a petition should not be filed. — The prosecutor shall review the intake counselor's determination, that a juvenile petition should not be filed, no later than 20 days after the complainant is notified. Review shall include conferences with the complainant and the intake counselor. At the conclusion of the review, the prosecutor may either affirm the decision of the intake counselor or may direct the filing of a petition.

"ARTICLE 44.

"Screening of Abuse and Neglect Complaints.

"§ 7A-517. Protective services. — The Director of the Department of Social Services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the investigation and screening of complaints, casework or other counseling services to parents or other caretakers as provided by the director to help the parents or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life.

"§ 7A-518. Duty to report child abuse or neglect. — Any person or institution who has cause to suspect that any juvenile is abused or neglected shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile;

the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse or neglect and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give his name, address, and telephone number. Refusal of the person making the report to give his name shall not preclude the Department's investigation of the alleged abuse or neglect.

In the case of any report of abuse, the Director of Social Services, upon receipt of the report, may immediately provide the appropriate local law enforcement agency with information on the nature of the report. The law enforcement agency may investigate the report, and upon request of the Director of the Department of Social Services, the law enforcement agency shall provide assistance with the investigation.

"§ 7A-519. Investigation by director; notification of person making the report. — When a report of abuse or neglect is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services shall be held in strictest confidence by the Department.

If the investigation reveals abuse or neglect, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this act.

In performing any of these duties, the Director may utilize the staff of the county Department of Social Services or any other public or private community agencies that may be available. The Director may also consult with the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse or neglect when requested by the Director.

Unless a petition is filed within five working days after receipt of the report of abuse or neglect, the Director shall give written notice to the person making the report that:

- (1) There is no finding of abuse or neglect; or
- (2) The county Department of Social Services is taking action to protect the welfare of the juvenile and what specific action it is taking.

The notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive his right to this notification and no notification is required if the person making the report does not identify himself to the Director.

"§ 7A-520. Evaluation for court — In all cases in which a petition is filed, the Director of the Department of Social Services shall prepare a report for the court containing a home placement plan and a treatment plan deemed by the Director to be appropriate to the needs of the juvenile. The report shall be available to the judge immediately following the adjudicatory hearing.

"§ 7A-521. **Request for review** — The person making the report shall have five working days, from receipt of the decision of the Director of the Department of Social Services not to petition the court, to notify the prosecutor that he is requesting a review. The prosecutor shall notify the person making the report and the Director of the time and place for the review and the Director shall immediately transmit to the prosecutor a copy of the investigation report.

"§ 7A-522. **Review by the prosecutor.** — The prosecutor shall review the Director's determination that a petition should not be filed within 20 days after the person making the report is notified. The review shall include conferences with the person making the report, the protective services worker, the juvenile, and other persons known to have pertinent information about the juvenile or his family. At the conclusion of the conferences, the prosecutor may affirm the decision made by the Director or may authorize the filing of a petition.

"§ 7A-523. **Duty of county Department of Social Services to report evidence of abuse.** — If the Director finds evidence that a juvenile has been abused as defined by statute, he shall immediately make a written report of his findings to the prosecutor who shall determine whether criminal prosecution is appropriate and who may request the Director to sign the appropriate criminal warrant. The Director of the Department of Social Services shall submit a report of alleged abuse or neglect to the central registry under the policies adopted by the Social Services Commission.

"§ 7A-524. **Authority of medical professionals in abuse cases.** — Any physician or administrator of a hospital, clinic, or other similar medical facility to which an abused juvenile is brought for medical diagnosis or treatment shall have the right, when authorized by the chief district court judge of the district or his designee, to retain physical custody of the juvenile when the physician who examines the juvenile certifies in writing that the juvenile should remain for medical reasons or that in his opinion it may be unsafe for the juvenile to return to his parent, guardian, or caretaker. In such case, the physician or administrator shall notify the parent, guardian, or caretaker and the Director of the Department of Social Services of the county where the juvenile resides. If the parent, guardian, or caretaker contests this action, the Director shall request a hearing before the Chief District Court Judge or the judge designated by him within the judicial district in which the juvenile resides or where the hospital or institution is located, for determination of whether the juvenile shall be returned to his parent, guardian, or caretaker. Pending the hearing, the hospital, clinic, or other similar medical facility may retain temporary physical custody of the juvenile. The hospital, clinic, or medical facility:

- (1) shall request the Director of the Department of Social Services in the county where the juvenile resides to petition the court in the district where the juvenile resides to award physical custody of the juvenile to the Director for placement with a relative or in a foster home under the supervision of the Department of Social Services; or
- (2) shall request the Director of the Department of Social Services in the county where the hospital or other medical facility is located, to petition the court in the district where the hospital or other medical facility is located, to award physical custody of the juvenile to the Director for placement with a relative or in a foster home under the supervision of the Department of Social Services.

Upon receipt of a request pursuant to subsections (1) or (2), the Director of the Department of Social Services shall authorize the filing of such petition without delay.

"§ 7A-525. **Immunity of persons reporting.** — Anyone who makes a report pursuant to this Article, testifies in any judicial proceeding resulting from the report, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be incurred or imposed for such action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed.

"§ 7A-526. **Waiver of privileges.** — Neither the physician-patient privilege nor the husband-wife privilege shall be grounds for excluding evidence of abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse or neglect is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications.

"§ 7A-527. **Central registry.** — The Department of Human Resources shall maintain a central registry of abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Human Resources and shall be confidential, subject to policies adopted by the Social Services Commission which provide for its appropriate use for study and research. Data shall not be used at any hearing or court proceeding unless based upon a final judgement of a court of law.

"ARTICLE 45.

"Venue; Petition; Summons.

"§ 7A-528. **Venue.** — (1) A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall be commenced and adjudicated in the district in which the offense is alleged to have occurred.

When a proceeding in which a juvenile is alleged to be delinquent or undisciplined is commenced in a district other than that of the juvenile's residence, the judge shall proceed to adjudication in that district. After adjudication, these procedures shall be available to the court:

- (a) The judge may transfer the proceeding to the court in the district where the juvenile resides for disposition.
- (b) Where the proceeding is not transferred under subsection (a), the judge shall immediately notify the Chief District Judge in the district in which the juvenile resides. If the Chief District Judge requests a transfer within five days after receipt of notification, the judge shall transfer the proceeding.
- (c) Where the proceeding is not transferred under (a) or (b), the judge, upon motion of the juvenile, shall transfer the proceeding to the court in the district where the juvenile resides for disposition. The judge shall advise the juvenile of the juvenile's right to transfer under this section.

(2) A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. When a proceeding is commenced in a district other than that of the juvenile's residence, the judge, in his discretion or upon motion of the juvenile, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this subsection may be made at any time.

"§ 7A-529. **Pleading and process.** — The pleading in a juvenile action is the petition. The process in a juvenile action is the summons.

"§ 7A-530. **Petition.** — The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of his parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile. Except in cases in which delinquency is alleged, the petition may contain information on more than one juvenile, when the juveniles are from the same home and are before the court for the same reason. In cases of alleged delinquency, the petitions shall be separate.

A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the accusation.

Sufficient copies of the petition shall be prepared so that copies will be available for each juvenile, for each parent if living separate and apart, for the court counselor or social worker, and for any person determined by the court to be a necessary party.

"§ 7A-531. Receipt of complaints; filing of petition. — (1) All reports concerning a juvenile alleged to be delinquent or undisciplined shall be referred to the intake counselor for screening. Thereafter, if it is determined by the intake counselor that a petition should be drawn and filed, the petition shall be drawn by the intake counselor or the clerk, signed by the complainant and verified before an official authorized to administer oaths. If the circumstances indicate a need for immediate attachment of jurisdiction and if the intake counselor is out of the county or otherwise unavailable to receive a complaint and to draw a petition when it is needed, the clerk shall assist the complainant in communicating his complaint to the intake counselor by telephone and, with the approval of the intake counselor, shall draw a petition and file it when signed and verified. A copy of the complaint and petition shall be transmitted to the intake counselor. Procedures for receiving delinquency and undisciplined complaints and drawing petitions thereon, consistent with this Article and Article 43, shall be established by Administrative Order of the Chief Judge in each judicial district under G.S. 7A-146(3).

(2) All complaints concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the Director of the Department of Social Services for screening. Thereafter, if it is determined by the Director that a complaint should be filed as a petition, the petition shall be drawn by the Director, verified before an official authorized to administer oaths, and filed by the Clerk, recording the date of filing.

(3) All complaints, and any decision of the intake counselor or of the Director of Social Services not to authorize that a complaint be filed as a petition shall be reviewed by the prosecutor pursuant to G.S. 7A-516 or G.S. 7A-522. If the prosecutor, after making his review, shall authorize a complaint to be filed as a petition, he shall prepare the complaint to be filed with the Clerk as a petition, recording the day of filing.

"§ 7A-532. Immediate need for petition when Clerks office is closed. — (1) All complaints which may arise when the office of the Clerk of Superior Court is closed shall be referred to the intake counselor or the Director of Social Services according to the nature of the complaint.

(2) When the office of the Clerk of Superior Court is closed, a magistrate may be authorized by the Chief District Judge to draw, verify, and issue petitions as follows:

- (a) when an intake counselor requests a petition alleging a juvenile to be delinquent or undisciplined, or
- (b) when the Director of the Department of Social Services requests a petition alleging a juvenile to be abused, neglected, or dependent.

(3) The authority of the magistrate under subsection (2) is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition issued under this section shall be delivered to the Clerk's office for processing as soon as that office is open for business.

"§ 7A-533. Commencement of action. — An action is commenced by the filing of a petition in the Clerk's office when that office is open, or by the issuance of a juvenile petition by a magistrate when the Clerk's office is closed, which issuance shall constitute filing.

"§ 7A-534. Issuance of summons. — After a petition has been filed, the Clerk of Superior Court shall issue a summons to the juvenile, to the parent, and to the guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons. The summons shall advise the parent that upon service, jurisdiction over him is obtained and that failure of the parent to comply with any order of the court pursuant to G.S. 7A-584 may cause the court to issue a show cause order for contempt.

A summons shall be directed to the person summoned to appear and shall be delivered to any law enforcement officer having authority and territorial jurisdiction to execute the process.

"§ 7A-535. Service of summons. — The summons shall be personally served upon the parent, the guardian, custodian, or caretaker, and the juvenile or counsel or guardian ad litem, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the judge.

If the parent, guardian, or custodian entitled to receive a summons cannot be found by a diligent effort, the judge may authorize service of the summons and petition by mail or by publication. The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the judge, in his discretion, may direct.

If the parent, guardian, or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, he may be proceeded against as for contempt of court.

The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process apply to juvenile process; provided the period of time for return of an unserved summons is 30 days.

"ARTICLE 46.

"Temporary Custody; Secure and Nonsecure Custody; Custody Hearings.

"§ 7A-536. Taking a juvenile into temporary custody. — Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody under the following circumstances:

- (1) A juvenile may be taken into temporary custody by a law enforcement officer without a court order if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).
- (2) A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a court counselor if there are reasonable grounds to believe that he is an undisciplined juvenile.
- (3) A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a Department of Social Services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that he would be injured or could not be taken into custody if it were first necessary to obtain a court order.
- (4) A juvenile may be taken into custody without a court order by a law enforcement officer, by a court counselor, or by personnel of the Division of Youth Services as designated by the Department of Human Resources if there are reasonable grounds to believe the juvenile is an absconder from any State training school or approved detention facility.

"§ 7A-537. Duties of person taking juvenile into temporary custody. — (1) A person who takes a juvenile into custody without a court order under G.S. 7A-536(1), (2), or (3) shall proceed as follows:

- (a) notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;
- (b) release the juvenile to his parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary.
- (c) If the juvenile is not released under subsection (b), the person having temporary custody shall proceed as follows:

1. in the case of a juvenile alleged to be delinquent or undisciplined, he shall request a petition be drawn pursuant to G.S. 7A-531 or if the Clerk's office is closed, the magistrate pursuant to G.S. 7A-532. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the judge for a determination of the need for continued custody.
 2. in the case of a juvenile alleged to be abused, neglected, or dependent, he shall communicate with the Director of the Department of Social Services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge for a determination of the need for continued custody.
- (d) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours unless:
1. a petition or motion for review has been filed by an intake counselor or the Director of the Department of Social Services, and
 2. an order for secure or nonsecure custody has been entered by a judge.

(2) A person who takes a juvenile into custody under G.S. 7A-536(4) shall, after contacting a judge and receiving an order for secure custody, transport the juvenile to the nearest approved facility providing secure custody. He shall then contact the administrator of the training school or detention facility from which the juvenile absconded, who shall be responsible for returning the juvenile to that facility.

"§ 7A-538. Authority to issue custody orders; delegation. — In the case of any juvenile alleged to be within the jurisdiction of the court, when the judge finds it necessary to place the juvenile in custody, he may order that the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in G.S. 7A-539.

The Chief District Judge may delegate the court's authority to issue secure and nonsecure custody orders for juveniles. This authority may be delegated by administrative order which shall be filed in the office of the Clerk of Superior Court. The administrative order shall specify which officials shall be contacted for approval of continued custody and may include, but shall not be limited to, any available district judge, intake counselors and members of the Chief Court Counselor's staff.

"§ 7A-539. Criteria for secure or nonsecure custody. — (1) When a request is made for nonsecure custody, the judge shall order nonsecure custody only when he finds that there is a reasonable factual basis to believe the matters alleged in the petition are true, and

- (a) the juvenile has been abandoned; or
- (b) the juvenile has suffered physical injury or sexual abuse or is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, or custodian has inflicted the injury or abuse; created the conditions causing the injury, abuse, or exposure; failed to provide, or is unable to provide, adequate supervision or protection; or
- (c) the juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his parent, guardian, or custodian is unwilling or unable to provide or consent to the medical treatment; or
- (d) the parent, guardian or custodian consents to the nonsecure custody order.

In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

(2) When a request is made for secure custody, the judge may order secure custody only where he finds there is a reasonable factual basis to believe that the juvenile actually committed the offense as alleged in the petition, and

- (a) the juvenile is charged with a nondivertible offense; or
- (b) that the juvenile is presently charged with one or more felonies; or
- (c) that the juvenile has willfully failed to appear on the pending delinquency charge or has a record of willful failures to appear at court proceedings; or
- (d) that by reason of the juvenile's threat to flee from the court's jurisdiction or circumstances indicating preparation or design to flee from the court's jurisdiction there is reasonable cause to believe the juvenile will not appear in court on a pending delinquency charge unless he is detained; or
- (e) that exhaustive efforts to identify the juvenile have been futile or by reason of his being a nonresident of the State of North Carolina there is reasonable cause to believe the juvenile will not appear in court on a pending delinquency charge unless he is detained; or
- (f) that the juvenile is an absconder from any State training school or detention facility in this or another state; or
- (g) that the juvenile has a recent record of adjudications for violent conduct resulting in serious physical injury to others, the petition pending is for delinquency, and the charge involves physical injury; or
- (h) that by reason of the juvenile's recent self-inflicted injury or attempted self injury there is reasonable cause to believe the juvenile should be detained for his own protection for a period of less than 24 hours while action is initiated to determine the need for inpatient hospitalization, provided that the juvenile has been refused admittance by one appropriate hospital; or
- (i) that the juvenile alleged to be undisciplined by virtue of his being a runaway should be detained for a period of less than 24 hours to facilitate reunion with his parents or to facilitate evaluation of the juvenile's need for medical or psychiatric treatment.

(3) When a juvenile has been adjudicated delinquent, the judge may order secure custody pending the dispositional hearing or pending placement of a delinquent juvenile pursuant to G.S. 7A-583.

(4) In determining whether secure custody should be ordered, the judge should consider the nature and circumstances of the offense; the weight of the evidence against the juvenile; the juvenile's family ties, character, mental condition, and school attendance record; and whether the juvenile is on conditional release. If the criteria for secure custody as set out in subsections (2) and (3) are met, the judge may enter an order directing an officer or other authorized person to assume custody of the juvenile and to take the juvenile to the place as is designated in the order.

"§ 7A-540. Order for secure or nonsecure custody. — The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, or custodian by the official executing the order. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

"§ 7A-541. Place of secure or nonsecure custody. — (1) A juvenile meeting the criteria set out in G.S. 7A-539, subsection (1), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

- (a) a licensed foster home or a home otherwise authorized by law to provide such care or
- (b) a facility operated by the Department of Social Services or
- (c) any other home or facility approved by the court and designated in the order.

(2) A juvenile meeting the criteria set out in G.S. 7A-539(2) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Human Resources.

(3) Until July 1, 1983, if no juvenile detention home is available, a juvenile meeting the criteria set out in G.S. 7A-539(2) may be detained in a holdover facility which shall be inspected pursuant to G.S. 108-79 through 81, and G.S. 153A-222, and shall meet the State standards provided for in G.S. 153A-221.

(4) Subsection (3) expires on June 30, 1983.

"§ 7A-542. Hearing to determine need for continued secure or nonsecure custody. — (1) No juvenile shall be held under a custody order for more than five calendar days without a hearing on the merits or a hearing to determine the need for continued custody. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-538, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of District Court in the district where the order was entered if such session precedes the expiration of the five calendar day period.

(2) Any juvenile who is alleged to be delinquent shall be advised of his right to have an attorney represent him as provided in G.S. 7A-544 if he appears without counsel at the hearing.

(3) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and his parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(4) The judge shall be bound by criteria set forth in G.S. 7A-539 in determining whether continued custody is warranted.

(5) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

- (a) release on the written promise of the juvenile's parent, guardian, or custodian to produce him in court for subsequent proceedings; or
- (b) release into the care of a responsible person or organization; or
- (c) release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or
- (d) any other conditions reasonably related to securing the juvenile's presence in court.

(6) If the judge determines that the juvenile meets the criteria in G.S. 7A-539 and should continue in custody, he shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(7) Pending a hearing on the merits, further hearings to determine the need for continued custody shall be held at intervals of no more than seven calendar days.

"§ 7A-543. Telephonic communication authorized — All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7A-537, G.S. 7A-539, and G.S. 7A-540 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the

person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

"ARTICLE 47.

"Basic Rights.

"§ 7A-544. Juvenile's right to counsel. — (1) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. In any proceeding in which delinquency is alleged, the judge shall appoint counsel unless counsel is retained for the juvenile.

(2) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency.

"§ 7A-545. Appointment of guardian. — In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for him and may represent the juvenile in legal actions before any court. The guardian shall also have authority to consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces, and undergoing major surgery. The authority of the guardian shall continue until the guardianship is terminated by order, until the juvenile is emancipated pursuant to Article 56, or until the juvenile reaches the age of majority.

"§ 7A-546. Appointment of guardian ad litem — When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. The duties of the guardian ad litem shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to appear on behalf of the juvenile in the court proceeding and to perform necessary and appropriate legal services on his behalf; to present relevant facts to the judge at the adjudicatory hearing and to explore options with the judge at the dispositional hearing; to protect and promote the best interest of the juvenile until formally relieved of the responsibility by the judge; and to appeal, when advisable, from an adjudication or order of disposition to the Court of Appeals.

The judge may order the Department of Social Services or the guardian ad litem to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian ad litem to appear with the juvenile in any criminal action wherein he may be called on to testify in a matter relating to abuse.

The guardian ad litem shall be an attorney-at-law, licensed to practice in the State of North Carolina. In no case may the judge appoint a public defender as guardian ad litem. The judge may grant the guardian ad litem the authority to demand any information or reports whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem and no disclosure of any information or reports shall be made to anyone except by order of the judge.

"§ 7A-546.1. Parents right to counsel. — In cases where the juvenile petition alleges that a juvenile is abused, neglected or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right.

"§ 7A-547. Payment of court appointed attorney or guardian ad litem. — An attorney or guardian ad litem appointed pursuant to G.S. 7A-544, G.S. 7A-546 or G.S. 7A-546.1 of this Article shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency. The judge may require the parent or a custodian

other than a Department of Social Services to pay the attorney's fee or reimburse the State unless the parent or custodian is indigent. The test of the parent's or custodian's ability to pay shall be the test applied to appointment of an attorney in cases of indigency. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.

"ARTICLE 48.

"Law Enforcement Procedures in Delinquency Proceedings.

"§ 7A-548. **Role of the law enforcement officer.** — A law enforcement officer, when he takes a juvenile into temporary custody, should select the least restrictive course of action appropriate to the situation and needs of the juvenile from the following:

- (1) To divert the juvenile from the court by
 - (a) release;
 - (b) counsel and release;
 - (c) release to parents;
 - (d) referral to community resources;
- (2) To seek a petition;
- (3) To seek a petition and request a custody order.

"§ 7A-549. **Interrogation procedures.** — (1) Any juvenile in custody must be advised prior to questioning:

- (a) that he has a right to remain silent; and
- (b) that any statement he does make can be and may be used against him; and
- (c) that he has a right to have a parent, guardian or custodian present during questioning; and
- (d) that he has a right to consult with an attorney and that one will be appointed for him if he is not represented and wants representation.

(2) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (1); however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

(3) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that he does not wish to be questioned further, the officer shall cease questioning.

(4) Before admitting any statement resulting from custodial interrogation into evidence, the judge must find that the juvenile knowingly, willingly, and understandingly waived his rights.

"§ 7A-550. **Authority to issue nontestimonial order in the case of juveniles alleged to be delinquent.** — Nontestimonial identification procedures shall not be conducted on any juvenile without a court order issued pursuant to this Article. A nontestimonial identification order authorized by this Article may be issued by any judge of the District Court or of the Superior Court upon request of a prosecutor. As used in this Article, 'nontestimonial identification' means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a juvenile.

"§ 7A-551. **Time of application.** — A request for a nontestimonial identification order may be made prior to taking a juvenile into custody or after custody and prior to the adjudicatory hearing or prior to trial in Superior Court where a case is transferred pursuant to Article 49 of this act.

"§ 7A-552. **Basis for order.** — An order may issue only on affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

- (1) that there is probable cause to believe that an offense has been committed which if committed by an adult would be punishable by imprisonment for more than two years; and
- (2) that there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and
- (3) that the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

"§ 7A-553. Issuance of order. — Upon a showing that the grounds specified in G.S. 7A-552 exist, the judge may issue an order following the same procedure as in the case of adults under G.S. 15A-274, G.S. 15A-275, G.S. 15A-276, G.S. 15A-277, G.S. 15A-278, G.S. 15A-279, G.S. 15A-280, and G.S. 15A-282.

"§ 7A-554. Nontestimonial identification order at request of juvenile. — A juvenile in custody for or charged with an offense which if committed by an adult would be punishable by imprisonment for more than two years may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures.

"§ 7A-555. Destruction of records resulting from nontestimonial procedures. — The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of such evidence shall be destroyed.
- (2) If in the District Court or Superior Court pursuant to a transfer a juvenile is found not guilty, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under 14 years of age and who is adjudicated to have committed a delinquent act, which would be less than a felony had the juvenile been an adult, all records shall be destroyed.
- (3) If a juvenile 14 years of age or older is found to have committed a delinquent act which would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in such a manner and under such safeguards as to limit their use to inspection for comparison purposes by law enforcement officers only in the investigation of a crime.
- (4) If the juvenile is transferred to Superior Court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law enforcement agency having possession of provisions of this Article which prohibit conducting nontestimonial identification procedures without an order issued by a judge shall be guilty of a misdemeanor."

"ARTICLE 49.

"Transfer to Superior Court.

"§ 7A-557. Transfer of jurisdiction of juvenile to Superior Court. — The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile 14 years of age or older to Superior Court if the juvenile was 14 years of age or older at the time he

allegedly committed an offense which would be a felony if committed by an adult. If the alleged felony constitutes a capital offense and the judge finds probable cause, the judge shall transfer the case to the Superior Court for trial as in the case of adults.

"§ 7A-558. Probable-cause hearing. — (1) The judge shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 14 years of age or older when the offense was allegedly committed unless counsel for the juvenile waives in writing his right to the hearing and stipulates to a finding of probable cause.

- (2) At the probable-cause hearing,
 - (a) a prosecutor must represent the State;
 - (b) the juvenile may be represented by counsel in accordance with G.S. 7A-544;
 - (c) the juvenile may testify as a witness in his own behalf and call and examine other witnesses and produce other evidence in his behalf; and
 - (d) each witness must testify under oath or affirmation and be subject to cross-examination.

(3) The State must 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:

- (a) 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 by him in connection with the case in issue, when stated by that person in a report made by him, is admissible in evidence;
- (b) if there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in another 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.

(4) The juvenile's attorney has the right to examine any court or probation records considered by the court in exercising its discretion to transfer the case.

"§ 7A-559. Where probable cause is established. — (1) If probable cause is found, the prosecutor or the juvenile may move that the case be transferred to the Superior Court for trial as in the case of adults. If the alleged felony does not constitute a capital offense, the judge may proceed to determine whether the needs of the juvenile or the best interest of the State will be served by transfer of the case to Superior Court for trial as in the case of adults.

(2) If probable cause is not found, the judge shall dismiss the proceeding.

(3) Any order of transfer shall specify the reasons for transfer.

(4) A finding of no probable cause shall not preclude the judge from adjudicating the juvenile delinquent for the commission of a lesser included offense.

"§ 7A-560. Right to bail; detention. — Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. Pending release under this Article, the judge may order that the juvenile be detained in a juvenile detention home or a separate section of a local jail as provided by G.S. 7A-541.

"§ 7A-561. Double jeopardy prohibited. — Jeopardy attaches in an adjudicatory hearing when the judge begins to hear evidence.

"ARTICLE 50.

"Discovery.

"§ 7A-562. Disclosure of evidence by the petitioner. — (1) Statement of the juvenile. Upon motion of a juvenile alleged to be delinquent, the judge shall order the petitioner:

- (a) to permit the juvenile to inspect and copy any relevant written or recorded statements within the possession, custody, or control of the petitioner made by the juvenile or any other party charged in the same action; and
 - (b) to divulge, in written or recorded form, the substance of any oral statement made by the juvenile or any other party charged in the same action.
- (2) Names of witnesses. Upon motion of the juvenile, the judge shall order the petitioner to furnish the names of persons to be called as witnesses. A copy of the record of witnesses under the age of 16 shall be provided by the petitioner to the juvenile upon his motion if accessible to the petitioner.
- (3) Documents and tangible objects. Upon motion of the juvenile, the judge shall order the petitioner to permit the juvenile to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof:
- (a) which are within the possession, custody, or control of the petitioner, the prosecutor, or any law enforcement officer conducting an investigation of the matter alleged; and
 - (b) which are material to the preparation of his defense, are intended for use by the petitioner as evidence, and were obtained from or belong to the juvenile.
- (4) Reports of examinations and tests. Upon motion of a juvenile, the judge shall order the petitioner to permit the juvenile to inspect and copy results of physical or mental examinations or of tests, measurements or experiments made in connection with the case, within the possession, custody, or control of the petitioner. In addition upon motion of a juvenile, the judge shall order the petitioner to permit the juvenile to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it or tests or experiments made in connection with the evidence in the case if it is available to the petitioner, the prosecutor, or any law enforcement officer conducting an investigation of the matter alleged and if the petitioner intends to offer the evidence at trial.
- (5) Except as provided in subsections (1) through (4), this Article does not require the production of reports, memoranda, or other internal documents made by the petitioner, law enforcement officers, or other persons acting on behalf of the petitioner in connection with the investigation or prosecution of the case or of statements made by witnesses or the petitioner to anyone acting on behalf of the petitioner.

(6) Nothing in this section prohibits a petitioner from making voluntary disclosures in the interest of justice.

"§ 7A-563. Disclosure of evidence by the juvenile. — (1) Names of witnesses. Upon motion of the petitioner, the judge shall order the juvenile to furnish to the petitioner the names of persons to be called as witnesses.

(2) Documents and tangible objects. If the court grants any relief sought by the juvenile under G.S. 7A-562, subsection (3), upon motion of the petitioner the judge shall order the juvenile to permit the petitioner to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof which are within the possession, custody, or control of the juvenile and which the juvenile intends to introduce in evidence.

(3) Reports of examinations and tests. If the court grants any relief sought by the juvenile under G.S. 7A-562, subsection (4), upon motion of the petitioner, the judge shall order the juvenile to permit the petitioner to inspect and copy results of physical or mental examinations or of tests, measurements or experiments made in connection with the case within the possession and control of the juvenile which he intends to introduce in evidence or which were prepared by a witness whom he intends to call if the results relate to the witness's testimony. In addition, upon motion of a petitioner, the judge shall order the juvenile to permit the petitioner to inspect, examine, and test, subject to appropriate safeguards, any physical

evidence or a sample of it if the juvenile intends to offer the evidence or tests or experiments made in connection with the evidence in the case.

"§ 7A-564. **Regulation of discovery; protective orders.** — (1) Upon written motion of a party and a finding of good cause, the judge may at any time order that discovery or inspection be denied, restricted, or deferred.

(2) The judge may permit a party seeking relief under subsection (1) to submit supporting affidavits or statements to the court for in camera inspection. If thereafter, the judge enters an order granting relief under subsection (1), the material submitted in camera must be available to the Court of Appeals in the event of an appeal.

"§ 7A-565. **Continuing duty to disclose.** — If a party, subject to compliance with an order issued pursuant to this Article, discovers additional evidence prior to or during the hearing or decides to use additional evidence, and if the evidence is or may be subject to discovery or inspection under this Article, he shall promptly notify the other party of the existence of the additional evidence or of the name of each additional witness.

"ARTICLE 51.

"Hearing Procedures.

"§ 7A-566. **Amendment of petition.** — The judge may permit a petition to be amended when the amendment does not change the nature of the offense alleged or the conditions upon which the petition is based. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations.

"§ 7A-567. **Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.** — The provisions of G.S. 15A-1001, G.S. 15A-1002, and G.S. 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent. No juvenile committed under this section may be placed in a situation where he will come in contact with adults committed for any purpose.

"§ 7A-568. **Adjudicatory hearing.** — The adjudicatory hearing shall be held in the district at such time and place as the Chief District Judge shall designate. The judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

"§ 7A-569. **Participation of the prosecutor.** — A prosecutor from the District Attorney's office shall represent the State in contested delinquency hearings.

"§ 7A-570. **Conduct of hearing.** — (1) The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the judge shall protect the following rights of the juvenile and his parent to assure due process of law: the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right of discovery and all rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.

"§ 7A-571. **Continuances.** — The judge may continue at any time any case to allow additional factual evidence, social information or other information needed in the best interest of the juvenile or in the interest of justice.

"§ 7A-572. **Where allegations of a delinquent or undisciplined act are admitted.** — (1) A judge may accept an admission from a juvenile only after first addressing him personally and

- (a) informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (b) determining that he understands the nature of the charge;
- (c) informing him that he has a right to deny the allegations;
- (d) informing him that by his admissions he waives his right to be confronted by the witnesses against him;
- (e) determining that the juvenile is satisfied with his representation; and
- (f) informing him of the most restrictive disposition on the charge.

(2) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile personally, the judge shall determine whether there were any prior discussions involving admissions, whether the parties have entered into any arrangement with respect to the admissions and the terms thereof, and whether any improper pressure was exerted. The judge may accept an admission from a juvenile only after determining that the admission is a product of informed choice.

(3) The judge may accept an admission only after determining that there is a factual basis for the admission. This determination may be based upon any of the following information: a statement of the facts by the prosecutor; a written statement of the juvenile; sworn testimony which may include reliable hearsay; or a statement of facts by the juvenile's attorney.

"§ 7A-573. Rules of evidence. — (1) Where delinquent or undisciplined behavior is alleged and the allegation is denied, the court shall proceed in accordance with the rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the intake counselor during the preliminary inquiry and evaluation process shall be admissible against the juvenile prior to the dispositional hearing.

(2) Where the juvenile is alleged to be abused, neglected or dependent, the rules of evidence in civil cases shall apply.

"§ 7A-574. Quantum of proof in adjudicatory hearing. — The allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt. The allegations in a petition alleging abuse, neglect, dependence, or undisciplined behavior shall be proved by clear and convincing evidence.

"§ 7A-575. Record of proceedings. — All adjudicatory and dispositional hearings and hearings on transfer to superior court shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The judge may order that other hearings be recorded.

"§ 7A-576. Adjudication. — If the judge finds that the allegations in the petition have been proved as provided in G.S. 7A-574, he shall so state. If the judge finds that the allegations have not been proven, he shall dismiss the petition with prejudice and the juvenile shall be released from secure or nonsecure custody.

"§ 7A-577. Legal effect of adjudication of delinquency. — An adjudication that a juvenile is delinquent or commitment of a juvenile to the Division of Youth Services shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights.

"§ 7A-578. Predisposition investigation and report. — The judge shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the judge prior to the completion of the adjudicatory hearing. The judge shall permit the juvenile to inspect any predisposition report to be considered by him in making his disposition unless the judge determines that disclosure would seriously harm his treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and his parent, guardian, or custodian at the dispositional hearing. The judge may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or custodian if the judge finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information.

"§ 7A-579. Dispositional hearing. — The dispositional hearing may be informal, and the judge may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and his parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the judge concerning the disposition they believe to be in the best interest of the juvenile.

"ARTICLE 52.

"Dispositions.

"§ 7A-580. **Purpose.** — The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and his family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile. Thus, the judge should arrange for appropriate community-level services to be provided to the juvenile and his family in order to strengthen the home situation.

In choosing among statutorily permissible dispositions for a delinquent juvenile, the judge shall select the least restrictive disposition both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile. A juvenile should not be committed to training school or to any other institution if he can be helped through community-level resources.

"§ 7A-581. **Dispositional alternatives for the delinquent, undisciplined, abused, neglected, or dependent juvenile.** — The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any two of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

- (a) require that he be supervised in his own home by the department of social services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or
- (b) place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
- (c) place him in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. Any department of social services in whose custody or physical custody a juvenile is placed shall have the authority to arrange for and provide medical care as needed for such juvenile.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, he shall allow the parent or other responsible persons to arrange for care. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of such care pursuant to G.S. 7A-584. If the judge finds the parent is unable to pay the cost of care, the judge may charge the cost to the county. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is mentally retarded the judge shall refer him to the area mental health director or local mental health director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health director or local mental health director shall be

responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet his needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

"§ 7A-582. Dispositional alternatives for delinquent or undisciplined juvenile. — In the case of any juvenile who is delinquent or undisciplined, the judge may:

- (1) continue the case for no more than six months in order to allow the family an opportunity to meet the needs of the juvenile through more adequate home supervision, through placement in a private or specialized school or agency, through placement with a relative, or through some other plan approved by the court;
- (2) place the juvenile under the protective supervision of a court counselor for no more than one year so that the court counselor may assist the juvenile in securing social, medical, and educational services and may work with the family as a unit to insure the juvenile is provided proper supervision and care;
- (3) excuse the juvenile from compliance with the compulsory school attendance law when the judge finds that suitable alternative plans can be arranged by the family through other community resources for one of the following: an education related to the needs or abilities of the juvenile including vocational education or special education; a suitable plan of supervision or placement; or some other plan that the judge finds to be in the best interest of the juvenile.

"§ 7A-583. Dispositional alternatives for delinquent juvenile. — In the case of any juvenile who is delinquent, the judge may:

- (1) suspend imposition of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to by him and specified in the dispositional order. The conditions shall not exceed the maximum criminal sanction permissible for the offense;
- (2) require restitution, full or partial, payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. The judge may determine the amount, terms, and conditions of the restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution; however, the judge shall not require the juvenile to make restitution if the juvenile satisfies the court that he does not have, and could not reasonably acquire, the means to make restitution;
- (3) impose a fine related to the seriousness of the juvenile's offense. If the juvenile has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult;
- (4) order the juvenile to perform supervised community service consistent with the juvenile's age, skill, and ability, specifying the nature of the work and the number of hours required. The work shall be related to the seriousness of the

- juvenile's offense and in no event may the obligation to work exceed 12 months;
- (5) order the juvenile to a supervised day program, requiring him to be present at a specified place for all or part of every day or of certain days. The judge also may require the juvenile to comply with any other reasonable conditions specified in the dispositional order that are designed to facilitate supervision;
 - (6) order the juvenile to a community-based program of academic or vocational education or to a professional residential or nonresidential treatment program. Participation in the programs shall not exceed 12 months;
 - (7) impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to:
 - (a) night custody for no more than a total of five nights; or
 - (b) weekend custody for no more than a total of two weekends; Confinement in either case shall be completed within a period of 60 days from the date of disposition.
 - (8) place the juvenile on probation under the supervision of a court counselor. The judge shall specify conditions of probation that are related to the needs of the juvenile including any of the following which apply:
 - (a) that the juvenile shall remain on good behavior and not violate any laws;
 - (b) that the juvenile attend school regularly;
 - (c) that the juvenile not associate with specified persons or be in specified places;
 - (d) that the juvenile report to a court counselor as often as required by a court counselor;
 - (e) that the juvenile make specified financial restitution or pay a fine in accordance with subsections (2) and (3);
 - (f) that the juvenile be employed regularly if not attending school.

An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the judge may extend it for an additional period of one year after a hearing if he finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile:

- (9) order that the juvenile shall not be licensed to operate a motor vehicle in the State of North Carolina for as long as the court retains jurisdiction over the juvenile or for any shorter period of time;
- (10) commit the juvenile to the Division of Youth Services in accordance with G.S. 7A-586.

"§ 7A-584. Authority over parents of juvenile adjudicated as delinquent, undisciplined, abused, neglected, or dependent. — (1) If the judge orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7A-581(3), the judge may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(2) The judge may order the parent to provide transportation for a juvenile to keep an appointment with a court counselor.

(3) Whenever legal custody of a juvenile is vested in someone other than his parent, after due notice to the parent and after a hearing, the judge may order that the parent pay a reasonable sum that will cover in whole or in part the support of the juvenile after the order is entered. If the judge places a juvenile in the custody of a county department of social services and if the judge finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(4) Failure of a parent who is personally served to participate in or comply with subsections (1) through (3) may result in a civil proceeding for contempt.

"§ 7A-585. Dispositional order. — The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

"§ 7A-586. Commitment of a delinquent juvenile to the Division of Youth Services. — (1) A delinquent juvenile 10 years of age or more may be committed to the Division of Youth Services for placement in one of the residential facilities operated by the Division if the judge finds that the alternatives to commitment as contained in G.S. 7A-583 have been attempted unsuccessfully or are inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community.

(2) Commitment shall be for:

- (a) an indefinite term not to exceed the eighteenth birthday of the juvenile; or
- (b) a definite term not to exceed two years if the judge finds that the juvenile is 14 years of age or older, has been previously adjudicated delinquent for two or more felony offenses, and has been previously committed to a residential facility operated by the Division of Youth Services. The Division may reduce the duration of the definite commitment by an amount not to exceed twenty-five percent (25%) if the juvenile has not committed any major infractions of the regulations of any facility to which he is assigned, and the Division of Youth Services may move for a reduction of more than twenty-five percent (25%) pursuant to G.S. 7A-593.

(3) In no event shall commitment be for a period of time in excess of that period for which an adult could be committed.

(4) The Chief Court Counselor shall have the responsibility for transporting the juvenile to the residential facility designated by the Division of Youth Services. The juvenile shall be accompanied to the residential facility by a person of the same sex.

(5) The Division of Youth Services shall accept all juveniles who have been committed for delinquency if the Director finds that the criteria specified in this section have been met. A commitment order accompanied by information requested by the Director shall be forwarded to the Division. The Director shall place the juvenile in the residential facility that would best provide for his needs and shall notify the committing court. The Secretary of the Department of Human Resources may assign a juvenile committed for delinquency to any institution or other program of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile.

(6) When the judge commits a juvenile to the Division of Youth Services, the Director shall prepare a plan for care or treatment within 15 days after assuming custody of the juvenile.

(7) Commitment of a juvenile to the Division of Youth Services does not terminate the court's continuing jurisdiction rights over the juvenile and his parent or guardian. Commitment of a juvenile to the Division of Youth Services transfers only physical custody of the juvenile to the Division. Legal custody remains with the parent, guardian, agency or institution in whom it was vested.

"§ 7A-587. Transfer authority of Governor. — The Governor may order transfer of any person less than 18 years of age from any jail or penal facility of the State to one of the residential facilities operated by the Division of Youth Services in appropriate circumstances, provided the Governor shall consult with the Department of Human Resources concerning the feasibility of the transfer in terms of available space, staff, and suitability of program.

When an inmate, committed to the Department of Correction, is transferred by the Governor to a residential program operated by the Division of Youth Services, the Division of

Youth Services may release the juvenile based on the needs of the juvenile and the best interests of the State. Transfer shall not divest the probation-parole officer of his responsibility to supervise the inmate on release.

"§ 7A-588. Prerelease planning. — The Director of the Division of Youth Services shall be responsible for evaluation of the progress of each juvenile at least once every six months as long as the juvenile remains in the care of the Division. If the director determines that a juvenile is ready for release, he shall initiate a prerelease planning process. The prerelease planning process shall be defined by rules and regulations of the Division of Youth Services, but shall include the following:

- (1) written notification to the judge who ordered commitment;
- (2) a prerelease planning conference shall be held involving as many as possible of the following: the juvenile, his parent, court counselors who have supervised the juvenile on probation or will supervise him on aftercare, and staff of the facility that found the juvenile ready for release. The prerelease planning conference shall include personal contact and evaluation rather than telephonic notification.

"§ 7A-589. Conditional release and final discharge. — The Division of Youth Services shall release a juvenile either by conditional release or by final discharge. The decision as to which type of release is appropriate shall be made by the director based on the needs of the juvenile and the best interests of the State under rules and regulations governing release which shall be promulgated by the Division of Youth Services, according to the following guidelines:

- (1) Conditional release is appropriate for a juvenile needing supervision after leaving the institution. As part of the prerelease planning process, the terms of conditional release shall be set out in writing and a copy given to the juvenile, his parent, the committing court, and the court counselor who will provide aftercare supervision.
- (2) Final discharge is appropriate when the juvenile does not require supervision or is 18 years of age.

"§ 7A-590. Revocation of conditional release. — If a juvenile does not conform to the terms of his conditional release, the court counselor providing aftercare supervision may make a motion for review in the court in the district where the juvenile has been residing during aftercare supervision. The judge shall hold a hearing to determine whether there has been a violation. With respect to any hearing pursuant to this section, the juvenile:

- (1) shall have reasonable notice in writing of the nature and content of the allegations in the petition, including notice that the purpose of the hearing is to determine whether the juvenile has violated the terms of his conditional release to the extent that his conditional release should be revoked;
- (2) shall be permitted to be represented by an attorney at the hearing;
- (3) shall have the right to confront and cross-examine any persons who have made allegations against him;
- (4) may admit, deny, or explain the violation alleged and may present proof, including affidavits or other evidence, in support of his contentions. A record of the proceeding shall be made and preserved in the juvenile's record.

If the judge determines that the juvenile has violated the terms of his conditional release, the judge may revoke the conditional release or make any other disposition authorized by this act.

If the judge revokes the conditional release, the Chief Court Counselor shall have the responsibility for returning the juvenile to the facility specified by the Division of Youth Services.

"§ 7A-591. Review of custody order. — In any case where the judge removes custody from a parent or person standing in loco parentis because of dependency, neglect or abuse, the juvenile shall not be returned to the parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.

In any case where custody is removed from a parent, the judge shall conduct a review within six months of the date the order was entered, and shall conduct subsequent reviews at least every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was entered. The director shall make timely requests for calendaring of the yearly reviews thereafter. The clerk shall give 15 days' notice of the review to the parent or the person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, foster-parent, custodian or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review.

The court shall consider information from the Department of Social Services; the juvenile court counselor, the custodian, guardian, the parent or the person standing in loco parentis, the foster-parent, the guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following criteria:

- (a) services which have been offered to reunite the family;
- (b) where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;
- (c) goals of the foster care placement and the appropriateness of the foster care plan;
- (d) a new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;
- (e) reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
- (f) when and if termination of parental rights should be considered;
- (g) any other criteria the court deems necessary.

The judge, after making findings of fact, shall enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

"§ 7A-592. Probation review. — The judge may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this act and only after there is notice and a hearing. If a juvenile violates the conditions of his probation, he and his parent after notice, may be required to appear before the court and the judge may make any disposition of the matter authorized by this act. At the end of or at any time during probation, the judge may terminate probation by written order upon finding that there is no further need for supervision. The finding and order terminating probation may be entered in chambers in the absence of the juvenile and may be based on a report from the court counselor or at the election of the judge, it may be entered with the juvenile present after notice and a hearing.

"ARTICLE 53.

"Modification and Enforcement of Dispositional Orders; Appeals.

"§ 7A-593. Authority to modify or vacate. — (1) Upon motion in the cause or petition, and after notice, the judge may conduct a review hearing to determine whether the order of the court is in the best interest of the juvenile, and the judge may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.

(2) In a case of delinquency, the judge may reduce the nature or the duration of the disposition on the basis that it exceeds the statutory maximum, was imposed in an illegal

manner or is unduly severe with reference to the seriousness of the offense, the culpability of the juvenile, or the dispositions given to juveniles convicted of similar offenses.

(3) In any case where the judge finds the juvenile to be delinquent, undisciplined, abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile or until terminated by order of the court.

"§ 7A-594. Request for modification for lack of suitable services. — If the Director of the Division of Youth Services finds that any juvenile committed to the Division's care is not suitable for its program the Director may make a motion in the cause so that the judge may make an alternative disposition.

"§ 7A-595. Right to appeal. — Upon motion of a proper party as defined in G.S. 7A-596, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

- (1) any order finding absence of jurisdiction;
- (2) any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) any order of disposition after an adjudication that a juvenile is delinquent, undisciplined, abused, neglected, or dependent; or
- (4) any order modifying custodial rights.

"§ 7A-596. Proper parties for appeal. — An appeal may be taken by the juvenile; the juvenile's parent, guardian, or custodian; the State or county agency. The State's appeal is limited to the following:

- (1) any final order in cases other than delinquency or undisciplined cases;
- (2) the following orders in delinquency or undisciplined cases:
 - (a) an order finding a State statute to be unconstitutional;
 - (b) any order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

"§ 7A-597. Disposition pending appeal. — Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the judge orders otherwise. For compelling reasons which must be stated in writing, the judge may enter a temporary order affecting the custody or placement of the juvenile as he finds to be in the best interest of the juvenile or the State.

"§ 7A-598. Disposition after appeal. — Upon the affirmation of the order of adjudication or disposition of the court by the Court of Appeals or by the Supreme Court in the event of such an appeal, the judge shall have authority to modify or alter his original order of adjudication or disposition as he finds to be in the best interest of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered.

"ARTICLE 54.

"Juvenile Records and Social Reports.

"§ 7A-599. Confidentiality of records. — (1) The Clerk of Superior Court shall maintain a complete record of all juvenile cases filed in his office to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the judge, except that the juvenile, his parent, guardian, custodian, or other authorized representative of the juvenile shall have a right to examine the juvenile's record. The record shall include the summons, petition, custody order, court order, written motions, the electronic

or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the judge.

(2) The Chief Court Counselor shall maintain a record of the cases of juveniles under supervision by court counselors which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or his family; a record of the probation reports of a juvenile; interviews with his family; or other information which the judge finds should be protected from public inspection in the best interest of the juvenile.

(3) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by his Department or under placement by the court. This file shall include material similar in nature to that described in subsection (2).

(4) The records maintained pursuant to subsections (2) and (3) may be examined only by order of the judge except that the juvenile shall have the right to examine them.

(5) Law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults except in proceedings when jurisdiction of a juvenile is transferred to Superior Court. Law enforcement records and files concerning juveniles shall be open only to the inspection of the prosecutor, court counselors, the juvenile, his parent, guardian, and custodian.

(6) All records and files maintained by the Division of Youth Services shall be withheld from public inspection and shall be open only to the inspection of the juvenile, professionals in that agency who are directly involved in the juvenile's case, and court counselors. The judge authorizing commitment of a juvenile shall have the right to inspect and order the release of records maintained by the Division of Youth Services on that juvenile.

(7) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents.

(8) Nothing in this section shall preclude the necessary sharing of information among authorized agencies.

"§ 7A-600. Expunction of records of juveniles adjudicated delinquent and undisciplined.

— (1) Any person who has attained the age of 16 years may file a petition in the court where he was adjudicated undisciplined for expunction of all records of that adjudication.

(2) Any person who has attained the age of 16 years may file a petition in the court where he was adjudicated delinquent for expunction of all records of that adjudication provided:

- (a) The offense for which he was adjudicated would have been a crime if committed by an adult.
 - (b) The person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (3) The petition shall contain, but not be limited to, the following:
- (a) an affidavit by the petitioner that he has been of good behavior since the adjudication and, in the case of a petition based on a delinquency adjudication, that he has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States, or the laws of this State or any other state;
 - (b) verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation

of the petitioner in the community in which he lives and that his character and reputation are good;

- (c) a statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined.

The petition shall be served upon the district attorney in the district wherein adjudication occurred. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

(4) If the judge, after hearing, finds that the petitioner satisfies the conditions set out in subsections (1) or (2), he shall order and direct the Clerk of Superior Court and all law enforcement agencies to expunge their records of the adjudication including all references to arrests, complaints, referrals, petitions, and orders.

(5) The Clerk of Superior Court shall forward a certified copy of the order to the sheriff, chief of police, or other law enforcement agency.

(6) Records of a juvenile adjudicated delinquent or undisciplined being maintained by the Chief Court Counselor, an intake counselor or a court counselor shall be retained or disposed of as provided by the Juvenile Services Division.

(7) Records of a juvenile adjudicated delinquent or undisciplined being maintained by personnel at a residential facility operated by the Division of Youth Services, shall be retained or disposed of as provided by the Department of Human Resources.

"§ 7A-601. Effect of expunction. — (1) Whenever a juvenile's record is expunged, with respect to the matter in which the record was expunged, the juvenile who is the subject of the record and his parent may inform any person or organization including employers, banks, credit companies, insurance companies, and schools that he was not arrested, he did not appear before the court, and he was not adjudicated delinquent or undisciplined.

(2) Notwithstanding subsection (1), in any criminal or delinquency case if the juvenile is the defendant and chooses to testify or if he is not the defendant and is called as a witness, the juvenile may be ordered to testify with respect to whether he was adjudicated delinquent.

"§ 7A-602. Notice of expunction. — Upon expunction of a juvenile's record, the Clerk of Superior Court shall send a written notice to the juvenile at his last known address informing him that the record has been expunged and with respect to the matter involved, the juvenile may inform any person that he has no record. The notice shall inform the juvenile further that if the matter involved is a delinquency record, the juvenile may inform any person that he was not arrested or adjudicated delinquent except that upon testifying in a criminal or delinquency proceeding, he may be required by a judge to disclose that he was adjudicated delinquent.

"ARTICLE 55.

"Interstate Compact on Juveniles.

"§ 7A-603. Execution of Compact. — The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:.

"§ 7A-604. Findings and purposes. — That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

- (1) cooperative supervision of delinquent juveniles on probation or parole;
- (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded;
- (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

- (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

"§ 7A-605. Existing rights and remedies. — That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

"§ 7A-606. Definitions. — That, for the purposes of this Compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; 'probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected, or dependent children; 'state' means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

"§ 7A-607. Return of runaways. — (1) That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the State. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be

executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him, shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(3) That 'juvenile' as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

"§ 7A-608. Return of escapees and absconders. — (1) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted

with such requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to this Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of transportation costs of such return.

"§ 7A-609. Voluntary return procedure. — That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without a requisition in another state party to this Compact under the provisions of G.S. 7A-607(1) or G.S. 7A-608(1), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact

Administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order, in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

"§ 7A-610. Cooperative supervision of probationers and parolees. — (1) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer the supervision accordingly.

(2) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(4) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

"§ 7A-611. Responsibility for costs. — (1) That the provisions of G.S. 7A-607(2), G.S. 7A-608(2), and G.S. 7A-609(4) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(2) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to G.S. 7A-607(2), G.S. 7A-608(2), or G.S. 7A-609(4) of this Compact.

"§ 7A-612. Detention practices. — That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

"§ 7A-613. Supplementary agreements. — That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided, in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

- (1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles taking into consideration the character of facilities, services, and subsistence furnished;
- (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;
- (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
- (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
- (5) provide for reasonable inspection of such institutions by the sending state;
- (6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and
- (7) make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

"§ 7A-614. Acceptance of federal and other aid. — That any state party to this Compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this Compact, and may receive and utilize, the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

"§ 7A-615. Compact administrators. — That the governor of each state party to this Compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more efficiently the terms and provisions of this Compact.

"§ 7A-616. Execution of Compact. — That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or (of) execution to be in accordance with the laws of the executing state.

"§ 7A-617. Renunciation. — That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under G.S. 7A-610 hereof shall continue as to parolees and probationers

residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under G.S. 7A-613 hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present section.

"§ 7A-618. Severability. — That the provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

"§ 7A-619. Compact administrator. — Pursuant to said Compact, the Governor is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. Said Compact Administrator shall serve subject to the pleasure of the Governor. The Compact Administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State hereunder.

"§ 7A-620. Supplementary agreements. — The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the Compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

"§ 7A-621. Discharging financial obligations imposed by Compact on agreement. — The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder.

"§ 7A-622. Enforcement of Compact. — The courts, departments, agencies, and officers of this State and subdivisions shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

"§ 7A-623. Additional procedure for returning runaways not precluded. — In addition to any procedure provided in G.S. 7A-607 and G.S. 7A-609 of the Compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any such runaway juvenile.

"§ 7A-624. Proceedings for return of runaways under G.S. 7A-607 of Compact; 'juvenile' construed. — The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of G.S. 7A-607 of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of G.S. 7A-607 of the Compact is in order shall upon request fix a reasonable

time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of G.S. 7A-607 of the Compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the Compact pursuant to a requisition for his return from a court of that state, shall not exceed 30 days. In applying the provisions of G.S. 7A-607 of the Compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word 'juvenile' as used in this Article to mean any person who has not reached his or her eighteenth birthday.

"§ 7A-625. Interstate parole and probation hearing procedures for juveniles — Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact on Juveniles, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or a probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this Article within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for retaking or the reincarceration.

"§ 7A-626. Hearing officers. — Any hearing pursuant to this Article may be before the Administrator of the Interstate Compact on Juveniles, a deputy of such Administrator, or any other person authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile parole or probation violations, except that no hearing officer shall be the person making the allegation of violation.

"§ 7A-627. Due process at parole or probation violation hearing. — With respect to any hearing pursuant to this Article, the parolee or probationer:

- (1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that the purpose of the hearing is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;
- (2) shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing;
- (3) shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;
- (4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions.

A record of the proceedings shall be made and preserved.

"§ 7A-628. Effect of parole or probation violation hearing outside the State. — In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact on Juveniles, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this Article, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully

considered by the appropriate officer or officers of this State in making disposition of the matter.

"§ 7A-629. Amendment to the Interstate Compact on Juveniles concerning interstate rendition of juveniles alleged to be delinquent. — (1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of G.S. 7A-608 and G.S. 7A-609 of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in G.S. 7A-608 of the Compact shall be forwarded by the judge of the court in which the petition has been filed.

"§ 7A-630. Out-of-State Confinement Amendment. — (1) The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows:

- (a) Whenever the fully constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.
- (b) Escapees and absconders who would otherwise be returned pursuant to G.S. 7A-608 of the Compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to G.S. 7A-608, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in G.S. 7A-608 may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.
- (c) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.
- (d) As used in this amendment: 1. 'sending state' means sending state as that term is used in G.S. 7A-610 of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of G.S. 7A-608 of the Compact; 2. 'receiving state' means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.
- (e) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a 'Compact Institution' and shall confine persons therein as provided in Paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to 'Compact Institutions' at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

- (f) Persons confined in 'Compact Institutions' pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said 'Compact Institution' for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.
- (g) All persons who may be confined in a 'Compact Institution' pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.
- (h) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.
- (i) This amendment shall take initial effect when entered into by any two or more states party to the Compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

(2) In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.

"ARTICLE 56.

"Emancipation.

"§ 7A-631. Who may petition. — Any juvenile who is 16 years of age or older and who has resided in the same county in North Carolina or on federal territory within the boundaries of North Carolina for six months next preceding the filing of the petition may petition the court in that county for a judicial decree of emancipation.

"§ 7A-632. Petition. — The petition shall be signed and verified by the petitioner and shall contain the following information:

- (1) the full name of the petitioner, his birth date, and state and county of birth;
- (2) a certified copy of the petitioner's birth certificate;
- (3) the name and last known address of the parent, guardian, or custodian;
- (4) the petitioner's address and length of residence at that address;
- (5) the petitioner's reasons for requesting emancipation; and

- (6) the petitioner's plan for meeting his own needs and living expenses which plan may include a statement of employment and wages earned that is verified by his employer.

"§ 7A-633. **Summons.** — A copy of the filed petition along with a summons shall be served upon the petitioner's parent, guardian, or custodian who shall be named as respondents. The summons shall include the time and place of the hearing and shall notify the respondents to file written answer within 30 days after service of the summons and petition. In the event that personal service cannot be obtained, service shall be in accordance with G.S. 1A-1, Rule 4(j).

"§ 7A-634. **Hearing.** — The judge, sitting without a jury, shall permit all parties to present evidence and to cross-examine witnesses. The petitioner shall have the burden of showing by a preponderance of the evidence that emancipation is in his best interest. Upon finding that reasonable cause exists, the judge may order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other expert to evaluate the juvenile's mental or physical condition. The judge may continue the hearing and order investigation by a court counselor or by the county Department of Social Services to substantiate allegations of the petitioner or respondents.

No husband-wife or physician-patient privilege shall be grounds for excluding any evidence in the hearing.

"§ 7A-635. **Considerations for emancipation.** — In determining the best interest of the petitioner and the need for emancipation, the judge shall review the following considerations:

- (1) the parental need for the earnings of the petitioner;
- (2) the petitioner's ability to function as an adult;
- (3) the petitioner's need to contract as an adult or to marry;
- (4) the employment status of the petitioner and the stability of his living arrangements;
- (5) the extent of family discord which may threaten reconciliation of the petitioner with his family;
- (6) the petitioner's rejection of parental supervision or support; and
- (7) the quality of parental supervision or support.

"§ 7A-636. **Final decree of emancipation.** — After reviewing the considerations for emancipation, the judge may enter a decree of emancipation if he determines:

- (1) that all parties are properly before the court or were duly served and failed to appear and that time for filing an answer has expired; and
- (2) that the petitioner has shown a proper and lawful plan for adequately providing for his own needs and living expenses; and
- (3) that the petitioner is knowingly seeking emancipation and fully understands the ramifications of his act; and
- (4) that emancipation is in the best interest of the petitioner.

The decree shall set out the court's findings.

If the judge determines that the criteria in subsections (1) through (4) are not met he shall order the proceeding dismissed.

"§ 7A-637. **Costs of court.** — The judge may tax the costs of the proceeding to any party or may, for good cause, order the costs remitted.

The Clerk of Superior Court may collect costs for furnishing to the petitioner a certificate of emancipation which shall recite the name of the petitioner and the fact of the petitioner's emancipation by court decree and shall have the seal of the Clerk of Superior Court affixed thereon.

"§ 7A-638. **Legal effect of final decree.** — As of entry of the final decree of emancipation:

- (1) The petitioner has the same right to make contracts and conveyances, to sue and be sued, and to transact business as if he were an adult.

(2) The parent or guardian is relieved of all legal duties and obligations owed to the petitioner and is divested of all rights with respect to the petitioner.

(3) The decree is irrevocable.

Notwithstanding any other provision of this section, a decree of emancipation shall not alter the application of G.S. 14-322.2, G.S. 14-326.1, or the petitioner's right to inherit property by intestate succession.

"§ 7A-639. **Appeals.** — Any petitioner, parent, or guardian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the judge may enter a temporary order affecting the custody or placement of the petitioner as he finds to be in the best interest of the petitioner or the State.

"§ 7A-640. **Application of common law.** — A married juvenile is emancipated by this Article. All other common law provisions for emancipation are superceded by this Article.

"ARTICLE 57.

"Judicial Consent For Emergency Surgical Or Medical Treatment.

"§ 7A-641. **Judicial authorization of emergency treatment; procedure.** — A juvenile in need of emergency treatment under Article 1A of Chapter 9 of the North Carolina General Statutes, whose physician is barred from rendering necessary treatment by reason of parental refusal to consent to treatment, may receive such treatment with court authorization under the following procedure:

(1) The physician shall sign a written statement setting out:

- (a) the treatment to be rendered and the emergency need for treatment, and
- (b) the refusal of the parent, guardian, or person standing in loco parentis to consent to the treatment; and
- (c) the impossibility of contacting a second physician for a concurring opinion on the need for treatment in time to prevent immediate harm to the juvenile.

(2) Upon examining the physician's written statement prescribed in subsection (1) and finding:

- (a) that the statement is in accordance with this Article, and
- (b) that the proposed treatment is necessary to prevent immediate harm to the juvenile.

A judge may issue a written authorization for the proposed treatment to be rendered.

(3) In acute emergencies in which time may not permit implementation of the written procedure set out in subsections (1) and (2), a judge may, in his discretion, authorize treatment in person or by telephone upon receiving the oral statement of a physician satisfying the requirements of subsection (1) and upon finding that the proposed treatment is necessary to prevent immediate harm to the juvenile.

(4) A judge's authorization for treatment overriding parental refusal to consent should not be given without attempting to offer the parent an opportunity to state his reasons for refusal; however, failure of the judge to hear the parent's objections shall not invalidate judicial authorization under this Article.

(5) A judge's authorization for treatment under subsections (1) and (2) shall be issued in duplicate. One copy shall be given to the treating physician and the other copy shall be attached to the physician's written statement and filed as a juvenile proceeding in the office of the Clerk of Superior Court.

(6) A judge's authorization for treatment under subsection (3) shall be reduced to writing as soon as possible, supported by the physician's written statement as prescribed in subsection (1) and shall be filed as prescribed in subsection (5).

A judge's authorization for treatment under this Article, shall have the same effect as parental consent for treatment.

Following a judge's authorization for treatment and after giving notice to the juvenile's parent, the judge shall conduct a hearing in order to provide for payment for the treatment rendered. The judge may order the parent or other responsible parties to pay the cost of such treatment. If the judge finds the parent is unable to pay the cost of treatment, such cost shall be a charge upon the county when so ordered.

This Article shall operate as a remedy in addition to the provisions in G.S. 7A-581(3)."

Sec. 2. The following sections of Chapter 110 are repealed: G.S. 110-22, G.S. 110-23.1, G.S. 110-24, G.S. 110-58 through G.S. 110-64.9, and G.S. 110-115 through G.S. 110-123.

Sec. 3. The following sections of Chapter 134A are repealed: G.S. 134A-18, G.S. 134A-19, G.S. 134A-23, G.S. 134A-24, G.S. 134A-27, G.S. 134A-28, and G.S. 134A-30 through G.S. 134A-33.

Sec. 4. If any section or provision of this act be declared unconstitutional or invalid by the courts, the same shall not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Sec. 5. This act shall become effective January 1, 1980.

In the General Assembly read three times and ratified, this the 7th day of June, 1979.