

Article 19.

Temporary Custody; Secure and Nonsecure Custody; Custody Hearings.

§ 7B-1900. 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 without a court order under the following circumstances:

- (1) By a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).
- (2) By a law enforcement officer or a juvenile court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.
- (3) By a law enforcement officer, by a juvenile court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center, and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Division if there are reasonable grounds to believe the juvenile is an absconder from any residential facility operated by the Division or from an approved detention facility. (1979, c. 815, s. 1; 1985, c. 408, s. 1; 1985 (Reg. Sess., 1986), c. 863, s. 1; 1994, Ex. Sess., c. 27, s. 2; 1995, c. 391, s. 1; 1997-443, s. 11A.118(a); 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.13; 2011-145, s. 19.1(l).)

§ 7B-1901. Duties of person taking juvenile into temporary custody.

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-1900(1) or (2) shall proceed as follows:

- (1) 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 the 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, guardian, or custodian that the juvenile is in custody shall not be grounds for release of the juvenile.
- (2) Release the juvenile to the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is unnecessary, the person having temporary custody may deliver the juvenile to the juvenile's school or, if the local city or county government and the local school board adopt a policy, to a place in the local school administrative unit.
- (3) If the juvenile is not released, request that a petition be drawn pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has been drawn and verified, the person shall communicate with the juvenile court counselor. If the juvenile court counselor approves the filing of the petition, the juvenile court counselor shall contact the judge or the person delegated authority pursuant to G.S. 7B-1902 if other than the juvenile court counselor, for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or

legal holiday, unless a petition or motion for review has been filed and an order for secure or nonsecure custody has been entered.

(c) A person who takes a juvenile into custody under G.S. 7B-1900(3), after receiving an order for secure custody, shall transport the juvenile to the nearest approved facility providing secure custody. The person then shall contact the administrator of the facility from which the juvenile absconded, who shall be responsible for returning the juvenile to that facility. (1979, c. 815, s. 1; 1981, c. 335, ss. 1, 2; 1994, Ex. Sess., c. 17, s. 1; c. 27, s. 3; 1995, c. 391, s. 2; 1998-202, s. 6; 2001-490, s. 2.14.)

§ 7B-1902. Authority to issue custody orders; delegation.

In the case of any juvenile alleged to be within the jurisdiction of the court, when the court finds it necessary to place the juvenile in custody, the court may order that the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in G.S. 7B-1903.

Any district court judge may issue secure and nonsecure custody orders pursuant to G.S. 7B-1903. The chief district court judge may delegate the court's authority to the chief court counselor or the chief court counselor's counseling staff by administrative order filed in the office of the clerk of superior court. The administrative order shall specify which persons may be contacted for approval of a secure or nonsecure custody order. The chief district court judge shall not delegate the court's authority to detain or house juveniles in holdover facilities pursuant to G.S. 7B-1905 or G.S. 7B-2513. (1979, c. 815, s. 1; 1981, c. 425; 1983, c. 590, s. 1; 1998-202, s. 6.)

§ 7B-1903. Criteria for secure or nonsecure custody.

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and that:

- (1) The juvenile is a runaway and consents to nonsecure custody; or
- (2) The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

- (1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.
- (2) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.
- (2a) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with a violation of G.S. 20-138.1 or G.S. 20-138.3.
- (3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.

- (4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.
- (5) The juvenile is an absconder from (i) any residential facility operated by the Division or any detention facility in this State or (ii) any comparable facility in another state.
- (6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.
- (7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.
- (8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays.

(c) When a juvenile has been adjudicated delinquent, the court may order secure custody pending the dispositional hearing or pending placement of the juvenile pursuant to G.S. 7B-2506. As long as the juvenile remains in secure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days but may be waived for no more than 30 calendar days only with the consent of the juvenile, through counsel for the juvenile, either orally in open court or in writing. The order for continued secure custody shall be in writing with appropriate findings of fact.

(d) The court may order secure custody for a juvenile who is alleged to have violated the conditions of the juvenile's probation or post-release supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.

(e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this section are met, the court 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 designated in the order.

(f) If the court finds that there is a need for an evaluation of a juvenile for medical or psychiatric treatment pursuant to subsection (b) of this section and that juvenile is under 10 years of age and does not have a pending delinquency charge, the law enforcement officer or other authorized person assuming custody of the juvenile shall not use physical restraints during the transport of the juvenile to the place designated in the order, unless in the discretion of the officer or other authorized person, the restraints are reasonably necessary for the safety of the officer, authorized person, or the juvenile. (1979, c. 815, s. 1; 1981, c. 426, ss. 1-4; c. 526; 1983, c. 590, ss. 2-6; 1987, c. 101; 1987 (Reg. Sess., 1988), c. 1090, s. 3; 1989, c. 550; 1998-202, s. 6; 2000-137, s. 3; 2001-158, s. 1; 2007-493, s. 31; 2011-145, s. 19.1(l); 2012-172, s. 3; 2015-58, s. 3.1.)

§ 7B-1904. 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. The official executing the order shall give a copy of the order to the juvenile's parent, guardian, or custodian. If the order is for nonsecure custody, the official executing the order shall also give a copy of the petition and order to the person or agency with whom the juvenile is being placed. 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. A message of the Department of Public Safety stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

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 the officer incur criminal or civil liability for its execution. (1979, c. 815, s. 1; 1989, c. 124; 1998-202, s. 6; 2009-311, s. 15; 2014-100, s. 17.1(t).)

§ 7B-1905. Place of secure or nonsecure custody.

(a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in nonsecure custody with a department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care;
- (2) A facility operated by a department of social services; or
- (3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile. If the court finds that the relative is willing and able to provide proper care and supervision, the court shall order placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interest of the juvenile. Placement of a juvenile outside of this State shall be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter.

(b) Pursuant to G.S. 7B-1903(b), (c), or (d), a juvenile may be temporarily detained in an approved detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution, except as provided in subsection (c) of this section. It shall be unlawful for a county or any unit of government to operate a juvenile detention facility unless the facility meets the standards and rules adopted by the Department of Public Safety.

(c) A juvenile who has allegedly committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody in a holdover facility up to 72 hours, if the court, based on information provided by the juvenile court counselor, determines that no acceptable alternative placement is available and the protection of the public requires the juvenile be housed in a holdover facility. (1979, c. 815, s. 1; 1983, c. 639, ss. 1, 2; 1997-390, s. 4; 1997-443, s. 11A.118(a); 1998-202, s. 6; 1998-229, s. 3; 1999-423, s. 14; 2001-490, s. 2.15; 2012-172, s. 4.)

§ 7B-1906. Secure or nonsecure custody hearings.

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days without a hearing on the merits or an initial hearing to determine the need for continued custody. A hearing conducted under this subsection may not be continued or waived. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-1902, 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 city or county where the order was entered if the session precedes the expiration of the applicable time period set forth in this subsection. If the session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) As long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays when the courthouse is closed for transactions, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days. In the case of a juvenile alleged to be delinquent, further hearings may be waived only with the consent of the juvenile, through counsel for the juvenile.

(c) The court shall determine whether a juvenile who is alleged to be delinquent has retained counsel or has been assigned counsel; if the juvenile is not represented by counsel, counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(d) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the juvenile and the juvenile's 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 court shall not be bound by the usual rules of evidence at the hearings.

(e) The court shall be bound by criteria set forth in G.S. 7B-1903 in determining whether continued custody is warranted.

(f) The court may impose appropriate restrictions on the liberty of a juvenile who is released from secure custody, including:

- (1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings;
- (2) Release into the care of a responsible person or organization;
- (3) Release conditioned on restrictions on activities, associations, residence, or travel if reasonably related to securing the juvenile's presence in court; or
- (4) Any other conditions reasonably related to securing the juvenile's presence in court.

(g) If the court determines that the juvenile meets the criteria in G.S. 7B-1903 and should continue in custody, the court 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.

(h) The hearing to determine the need to continue custody may be conducted by audio and video transmission which allows the court and the juvenile to see and hear each other. If the

juvenile has counsel, the juvenile may communicate fully and confidentially with the juvenile's attorney during the proceeding. Prior to the use of audio and video transmission, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the chief district court judge and approved by the Administrative Office of the Courts. (1979, c. 815, s. 1; 1981, c. 469, s. 13; 1987 (Reg. Sess., 1988), c. 1090, s. 4; 1994, Ex. Sess., c. 27, s. 1; 1997-390, ss. 5, 6; 1998-202, s. 6; 1998-229, s. 4; 2000-144, s. 21; 2003-337, s. 10.)

§ 7B-1907. Telephonic communication authorized.

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-1901, 7B-1903, and 7B-1904 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. (1979, c. 815, s. 1; 1998-202, s. 6.)