

ADVOCACY (CONT)

- The hearing on shackling should be held prior to the youth entering the court room.
- Youth Released – explain conditions to juvenile and what will happen if she / he does not follow. Check in w/ juvenile and parent in between court dates (meeting with juvenile should be scheduled)
- Did you know in 2021, 66% of detention admissions were for Black or African-American youths whereas 19% were White. Don't be afraid to bring this information with the judges, prosecutors, and court counselors in your jurisdiction.

SECURE CUSTODY CRITERIA

GS 7B-1903(b)

The court may order secure custody only where there is finding of 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 a danger to property or persons.
2. The juvenile has demonstrated a danger to persons and is charged with either (i) a misdemeanor at least one element of assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.
 - a. The juvenile has demonstrated a danger to person 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, probation violation 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) a residential facility operated by DACJJ, any detention facility in NC or (ii) any comparable facility in another state.
6. There is reasonable cause to believe the juvenile should be detained for their own protection recently suffering or attempted self-inflicted physical injury.
7. The juvenile is alleged to be undisciplined by virtue of being a runaway and is inappropriate for nonsecure custody placement or refuses, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, to evaluate the their need for medical or psychiatric treatment or to facilitate reunion with the 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, excl. Saturdays, Sundays, and State holidays.

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QUESTIONS

For more information, contact the North Carolina Office of the Juvenile Defender at 919-890-1650.

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OFFICE OF THE JUVENILE DEFENDER

PROVIDING TRAINING, TECHNICAL ASSISTANCE, AND POLICY GUIDANCE

SECURE CUSTODY QUICK GUIDE

THIS GUIDE IS INTENDED AS A REFERENCE.
IT DOES NOT REPLACE THE NEED TO READ STATUTES AND RELEVANT CASE LAW.

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OVERVIEW

- A youth can be taken into temporary custody without a court order only under certain circumstances. See 7B-1900.
- Youth taken into temporary custody 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. See 7B-1901(b).
- Any district court judge can issue order for secure custody.
- By administrative order, the chief district court judge can delegate authority to the chief court counselor or the chief's counseling staff. See 7B-1902.
- For youth 16 and 17 years of age, a superior court judge can issue a secure custody order when a juvenile matter that has been transferred to superior court has been remanded back to juvenile court. (7B-1902)

CRITERIA GS 7B-1903(b)

- Court shall first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult.
- Court must find that there is a reasonable factual basis to believe the juvenile committed the offenses alleged AND one of the eight facts listed in 7B-1903(b).
- Court may also order secure custody when a juvenile has been adjudicated delinquent and disposition is pending or pending placement of the juvenile.
- 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, only if the juvenile is alleged to have committed acts that damage property or injure persons.
- Continued secure custody hearings shall be heard no more than every 10 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.
- For youth 16 or 17 years of age at the time the youth allegedly committed a Class A through G felony, further hearings to determine the need for continued secure custody shall be held every 30 days.
 - Through counsel, the youth may request further hearings be held every ten days for good cause shown as determined by the court.

HEARING GS 7B-1906

TIMING & RULES

- Initial hearing must be held within five calendar days.
- If custody order has been entered by an official, usually a chief court counselor exercising authority delegated pursuant to G.S. 7B-1902, initial SC hearing shall be conducted on the day of the next regularly scheduled session of district court.
- Initial hearing cannot be continued or waived.
- Court not bound by usual rules of evidence 7B-1906(d).
- Video hearings – procedures and equipment must be approved by NCAOC.
- Burden of proof – State's burden at every stage of proceeding to prove by clear and convincing evidence that restraint on the juvenile's liberty is necessary and that no less intrusive means will suffice. 7B-1906(d).
- If a matter is remanded back from superior court to juvenile court, a hearing on the continued need for secured custody must be held no later than 10 days from the initial order. This initial hearing cannot be waived.
- After the initial hearing for matters remanded back to juvenile court, subsequent hearings are held pursuant to 7B-1906(B1) or every 30 days unless through counsel, the youth requests that the hearing be held every 10 days for good cause shown.

COURT

- Determine if juvenile has retained counsel or has been assigned counsel (youth must be represented).
- Receive testimony – not bound by usual rules of evidence Allow the juvenile's parent, guardian or custodian to be heard, present evidence and examine witnesses.
- Bound by criteria in 7B-1903 when determining whether continued custody is warranted.
- May impose appropriate restrictions on juvenile who is released from custody. Outlined in 7B-1906(f).

ORDER FOR CONTINUED CUSTODY GS 7B-1904; 7B-1906(g)

- Shall be in writing. Directs law enforcement officer or other authorized person to take custody of juvenile.
- Court must enter order with appropriate written findings of fact if court determines the juvenile meets criteria in 7B-1903.
 - FOF must include evidence relied upon and state the purpose which continued SC will serve. (sometimes the court will give oral findings and then issue a written order without those findings elaborated).

PLACEMENT GS 7B-1905

- Pursuant to G.S. 7B-1903 (b), (c), or (d), youth may be temporarily detained in an approved detention facility.
- Once jurisdiction is transferred to superior court, youth under the age of 18, pending release, shall be detained in a detention facility while awaiting trial.
- Youth that have alleged committed offenses class A-E felonies can be held in a juvenile hold over facility for up to 72 hours, if the court determine that no acceptable alternative placement is available, and protection of the public requires it.
- If the youth is 18 years of age or older but falls within the jurisdiction of juvenile court, the youth may be temporarily detained in county jail where charges arose.

SHACKLING GS 7B-2402.1

ALLOWED IF:

- Judge finds restraints to be reasonably necessary to maintain order, prevent youth from escaping or provide safety for courtroom.
- Judge provides the youth and attorney opportunity to be heard BEFORE judge orders use of restraints (whenever practical).
- Judge must make written findings of fact to support an order for restraints.
- Make a motion prior to proceeding to remove any restraints.

ADVOCACY TIPS

- Find out as soon as possible if you have a client in detention. Try to meet with your client prior to initial SC hearing if possible.
- Try to talk with parent / guardian to determine if they want the juvenile home or if there are other family members the juvenile can stay with. If possible make sure other "responsible adult" is in court.
- Prepare both juvenile and parent for hearing by discussing issues that will be raised in court such as school attendance and activities, home life, risk of flight, etc.
- Talk with court counselor, who will likely have information you need and a position on custody. Note: The ADA, not the court counselor argues the state's position to the court.
- Provide judge with factual information why juvenile should be released – emphasize that in order to continue secure custody, no less intrusive means are available. Offer proposed conditions of release i.e. electronic monitoring; house arrest, no contact with victim.
- Advise court of special needs; medical, education, mental health of juvenile and advise detention center (in writing) if juvenile remains detained.