

## SECURE CUSTODY

- I. Who can issue an order and how that affects when an initial hearing must be held
  - A. §7B-1902 – delegated authority
  - B. §7B-1906 – generally, the initial hearing must be within 5 days for secure custody, for nonsecure 7 days. BUT
    1. if it was issued by someone with delegated power, then the hearing must be on the next regularly scheduled district court session (not the next regularly scheduled session of Juvenile court)
    2. This hearing can't be continued and it can't be waived.
  - C. §7B-1808 – first appearance must be held within 10 days of filing of the petition, regardless of whether the child is in custody or not, and may not be continued if the child is in secure or nonsecure custody.
  - D. Remedies if any of the above are not followed:
    1. Due process argument – motion to dismiss pursuant to §15A-954(a)(4) through §7B-2405.
    2. Everybody follows the law argument.
- II. When a child can be taken into custody/kept in custody
  - A. Taken into custody, §7B-1900
    1. When the officer would have authority for arresting an adult
    2. OR if there is reason to believe the child is undisciplined
    3. OR if there is reason to believe that the child has escaped from specific juvenile facilities.
    4. §7B-1901 – can only be kept in custody for 12hours (24 over holiday or weekend) without a petition or motion for review and an order for custody being issued.
  - B. Kept in custody, §7B-1903
    1. Nonsecure custody – runaways WHO AGREE TO NONSECURE CUSTODY, or a juvenile who qualifies for secure custody, but in whose best interests nonsecure custody is a better fit.
    2. Secure custody – reasonable factual basis to believe juvenile committed offense alleged in petition plus one of the following
      - a. charged with felony and has demonstrated a danger to property or persons
      - b. juvenile has demonstrated a danger to persons and is charged with an assault or a charge involving the use, display, or threat to use a firearm or deadly weapon (doesn't include mere possession of a weapon)
      - c. juvenile has willfully failed to appear on a pending charge, or violation of probation
        - must have been properly notified
        - failure must be willfull, consider asking for a show cause on parents instead of pick-up on juvenile
      - d. there is reasonable cause to believe juvenile will not appear in court for a pending delinquency charge
      - e. juvenile is an absconder from a residential facility operated by the department or from a detention facility, or from a comparable facility in another state.
      - f. There is reasonable cause to believe the juvenile needs to be detained for his own protection because he has recently suffered or attempted self-inflicted

physical injury. This can be for no more than 24 hours, and the juvenile must have been refused admission by an appropriate hospital, and must receive continuous supervision while in custody.

- g. The juvenile is alleged to be undisciplined due to being a runaway and has refused nonsecure custody. This cannot be for more than 24 hours unless over a holiday or weekend, and then no more than 72 hours.
  - h. The juvenile is alleged to be undisciplined, and has failed to come to court. This cannot be for more than 24 hours unless over a holiday or weekend, and then no more than 72 hours. The juvenile must be brought to court ASAP.
3. Probation violations – only if the juvenile is alleged to have committed acts that damage property or injure persons.

### III. How to get a child out of custody/finding alternative solutions

- A. Bargaining for release: anything you can give the State in exchange for release?
  - 1. waiver of an evidentiary hearing
  - 2. waiver of some time requirement on discovery or on evidentiary hearing
  - 3. anything else you would normally be a stickler for but that does not prejudice your client's interests in the case
- B. NEVER NEVER NEVER agree to waive any hearing without something in return
- C. Build a list of everything wrong with the State's case
  - 1. weaknesses of the case
  - 2. procedural/legal violations
- D. Time the child will be looking at if actually adjudicated
- E. Alternative placements
  - 1. more supervised living alternatives
  - 2. house arrest
  - 3. group homes
- F. Minimize the perceived risks
  - 1. prior history of coming to court
  - 2. school attendance history
  - 3. school disciplinary history
  - 4. involvement of parents/family
  - 5. lack of prior history
  - 6. involvement of other agencies

### IV. Pre-disposition detention

- A. What the statutes say
  - 1. §7B-1903 – predisposition detention
  - 2. §7B-2413 – the court SHALL proceed to a disposition hearing upon receipt of a predisposition report, may proceed without one
  - 3. §7B-2406 – continuances. Should only be for good cause and only for a reasonable length of time to receive information necessary.
- B. Set specific deadlines for whatever needs to be done
- C. Demand statutory detention hearings
  - 1. §7B-1906
  - 2. Due process violation to keep child in without hearings & for extended time.
  - 3. Exercise the right to appeal

**NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE**  
**ROBESON COUNTY** **JUVENILE COURT DIVISION**

**FILE NO.**

**IN THE MATTER OF:**            )  
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**MOTION TO DISMISS**

**NOW COMES** the Juvenile, through counsel, and gives Notice to the Court that the juvenile moves pursuant to §7B-2405; §15A-954(a)(4); §7b-1906; and the 4<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution; and Article 1, Sections 19 and 21 of the North Carolina Constitution to dismiss his charges and provides in support of the motion the following:

1. That the juvenile was taken into custody on Saturday, November 16, 20\_\_ in the early morning hours.
2. That a petition alleging the juvenile had committed the delinquent act of Armed Robbery was filed on November 16, 20\_\_ at 8:50 a.m.
3. That a Secure Custody Order was issued at the same time.
4. That the Secure Custody Order was issued by Furman Ivey, supervising Court Counselor, pursuant to delegated authority granted by Administrative Order 05-31-02.
5. That the juvenile’s due process rights under the United States Constitution and the North Carolina Constitution require that certain procedural safeguards be observed when the state of North Carolina deprives a juvenile of his freedom of movement.
6. That in the state of North Carolina, these safeguards have been provided for and codified under §7B-1906.
7. That §7B-1906(a) requires that when a secure Custody Order is signed by an authorized delegate pursuant to §7B-1902, the juvenile’s initial hearing to determine if further detention is warranted “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.”
8. That on Monday, November 18, 20\_\_, there were five sessions of District Court held in Robeson County.
9. That the juvenile was not brought before any judge on Monday, November 18, 20\_\_.
10. That the juvenile was brought before District Court Judge James Gregory Bell for his initial Detention Hearing at approximately 11:00 am on Tuesday, November 19, 20\_\_.

11. That, absent the required hearing, the juvenile should have been released from secure custody on Monday, November 18, 20\_\_.
12. That the juvenile was not so released, and continues in Secure Custody to the date of this Motion.
13. That the juvenile was thereby deprived of his liberty interests in violation of §7B-1906, the United States Constitution, and the North Carolina Constitution.
14. That the juvenile's liberty interests have been irreparable harmed by this unlawful decision.

**WHEREFORE**, the juvenile prays the Court to enter an Order dismissing the petition with prejudice pursuant to §15A-954(a)(4) and §7B-2405.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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Attorney of the Juvenile  
Assistant Public Defender