

Juvenile Code Reform Legislation (HB 879) Becomes Effective December 1, 2015

In a prior post, I wrote about SB 331, which proposed several changes to the delinquency subchapter of the Juvenile Code. That bill didn't make it. Instead, it became HB 879 (enacted as [S.L. 2015-58](#)), which includes several new laws intended to either increase due process protections for juveniles, reduce further entry of juveniles in the delinquency system, or reduce juvenile confinement. Although it's similar to the prior Senate bill, there are some important differences that you should know about before the new laws become effective on December 1, 2015. One of these laws involves a juvenile age increase, although it's not quite the change for which "raise the age" advocates were lobbying.

Due Process Protections

- **Custodial Interrogation Age Increase** - Amended G.S. 7B-2101(b) increases from 13 to 15 the age at which a juvenile must have a parent or attorney present during a custodial interrogation in order for the juvenile's statement to be admissible. The practical effect of this change is that juveniles who are 14 or 15 may no longer waive the right to have a parent or attorney present during a custodial interrogation.
- **Bifurcated Hearing Requirement** - Amended G.S. 7B-2202(f) and G.S. 7B-2203(d) require that adjudication hearings be held separately from hearings to determine probable cause and transfer. This change will reverse several decisions by the Court of Appeals which held that entirely separate hearings for determining probable cause, transfer, and adjudication were not required by the Juvenile Code, "so long as the juvenile's constitutional and statutory rights are protected." See [In re G.C.](#), ___ N.C. App. ___, 750 S.E. 2d 548 (2013); [In re J.J., Jr.](#), 216 N.C. App. 366 (2011).
- **Motion to Suppress Procedure** – New G.S. 7B-2408.5 establishes a procedure for filing motions to suppress in juvenile court, which is substantially similar to G.S. 15A-977 (motions to suppress in superior court). It also provides for an appeal from an order denying a motion to suppress and makes the exclusionary rule of G.S. 15A-974 (exclusion or suppression of unlawfully obtained evidence) applicable to this section.

Reducing Further Entry of Juveniles in the Delinquency System

- **Petition Procedure for New Offenders** - Amended G.S. 7B-1701 requires that upon receipt of a complaint alleging a divertible offense, juvenile court counselors must "make reasonable efforts" to meet with the juvenile and the juvenile's parent or guardian, if the Division has not previously received a complaint against the juvenile. This provision suggests that the General Assembly believes that meeting personally with juveniles and their parents will influence court counselors to approve more diversions and file fewer juvenile petitions (although, the Division of Juvenile Justice already diverts or closes 38.5%

- of all juvenile complaints according to this [report](#)).
- **Voluntary Dismissal by Prosecutor** - New G.S. 7B-2404(b) authorizes prosecutors to voluntarily dismiss a juvenile petition with or without leave. If the prosecutor dismisses a petition with leave because the juvenile failed to appear in court, the petition may be refiled, “if the juvenile is apprehended or apprehension is imminent.” This change removes uncertainty about a prosecutor’s authority to dismiss juvenile cases (which, in practice, already occurs) and creates a uniform procedure for doing so.
 - **Prior Adjudication Definition** - Amended G.S. 7B-2507 defines a “prior adjudication” as “an adjudication of an offense that occurs before the adjudication of the offense before the court.” Although not explicit in the statute, the “offense before the court” refers to the offense for which a disposition is being entered. This change reverses [In re P.Q.M.](#), 754 S.E.2d 431 (2014), which defined a prior adjudication as an adjudication that existed prior to the disposition hearing and entry of the disposition (similar to prior convictions under Structured Sentencing). Presumably, the new definition will reduce the number of adjudications that count towards a juvenile’s delinquency history, thereby reducing the length and type of confinement authorized at disposition. For an example on how this change will work in practice, please see my recent [blog post](#) on prior adjudications.
 - **Extension of Probation** - Amended G.S. 7B-2510(c) provides that prior to the expiration of an order of probation, the court may extend the term for an additional period of one year, **after notice** and a hearing (currently, the statute only requires a hearing). The extension hearing may occur after the probation term has expired at the next regularly scheduled court date or at the court’s discretion, if the juvenile fails to appear in court. This change makes clear that a juvenile must receive notice of the extension prior to the expiration of the term. It also shortens the time period in which a court may hold the extension hearing after the term has expired, which the Court of Appeals previously described as “a reasonable time after its expiration.” [In re T.J.](#), 146 N.C. App. 605, 607 (2001).
 - **Probation Violation Dispositions** - Amended G.S. 7B-2510(e) provides that when a juvenile violates probation, the court may either increase the disposition level to the next higher level on the disposition chart or order up to twice the amount of detention days authorized by G.S. 7B-2508, but may not do both, as currently authorized.
 - **Notice of Right to Expunction** - New G.S. 7B-2512(b) requires the trial judge to inform the juvenile, either orally or in writing, about the juvenile’s right to expunction under G.S. 7B-3200, if relevant to the juvenile’s case, at the time of entering the disposition.

Reducing Juvenile Confinement

- **Secure Custody Review Hearings** - Amended G.S. 7B-1903(c) codifies the holding of [In re D.L.H.](#), 198 N.C. App. 286 (2009), and requires custody review hearings be held at least every 10 calendar days when a juvenile is placed in secure custody pending disposition or out-of-home placement, unless the juvenile waives the right to a hearing through counsel. Review hearings may be waived for no more than 30 calendar days with the juvenile’s consent, and the custody order must be in writing with appropriate findings of fact.

- **Restraint of Minors Under 10** - New G.S. 7B-1903(f) prohibits the use of physical restraints to transport a juvenile under the age of 10, who is in secure custody for the purpose of evaluating the juvenile's need for medical or psychiatric treatment under G.S. 7B-1903(b), if the juvenile does not have a pending delinquency charge, unless "reasonably necessary for the safety of the officer, authorized person, or the juvenile."
- **Imposition of Intermittent Confinement Days** - Amended G.S. 7B-2506(12) and G.S. 7B-2506(20) require the court to determine the timing **and imposition** (currently, only timing) of intermittent confinement days. This change appears to codify long-standing case law stating that the court may not delegate its authority to court counselors to impose dispositional options. See [*In re S.R.S.*](#), 180 N.C. App. 151, 158 (2006).

Although it's not the major reform for which many juvenile justice advocates have been lobbying, this legislation represents the most significant change to the delinquency statutes in several years. I'm interested to hear your thoughts and reactions about how (or whether) these changes will produce the desired reforms.