

The Magistrate's Role in Filing Juvenile Delinquency and Undisciplined Petitions

Magistrates have limited authority to file juvenile petitions and enter custody orders related to delinquent and undisciplined juveniles. Specifically, a magistrate may “draw and verify the petition and accept it for filing,” in “emergency situations” when the clerk’s office is closed and “a petition is required in order to obtain a secure or nonsecure custody order.” [G.S. 7B-1804](#). Recently, I was invited to discuss this statutory provision with magistrates at their annual fall conference. I had assumed that most magistrates rarely, if ever, file juvenile delinquency or undisciplined petitions and expected to finish the presentation early with few questions. To my surprise, I discovered that magistrates in some counties are routinely being asked to file after hours juvenile petitions and enter secure custody orders, and they had lots of questions. Since I ran out of time trying to answer them all, I decided to write this blog post.

Why do magistrates have the authority to file juvenile petitions?

A secure or nonsecure custody order can be entered only if a juvenile petition has been filed. [G.S. 7B-1903](#). Occasionally, law enforcement officers encounter runaway juveniles after hours and need to request secure custody in order to detain the child for up to 24 hours to facilitate reunion with the child’s parents (without such an order, a runaway must be released after 12 hours). An officer might also want to request secure custody for a juvenile who commits a violent delinquent offense, like armed robbery or burglary, late at night. The Juvenile Code recognizes that situations like these may occur after hours, and thus, gives magistrates the authority to accept petitions for filing to facilitate the entry of a custody order in an emergency.

What are the requirements for filing an after-hours juvenile petition?

Here’s what you need to know if you are ever asked to file a juvenile petition after hours.

- [Telephonic Approval by Court Counselor](#)

Only a juvenile court counselor can approve the filing of a juvenile petition alleging delinquent or undisciplined behavior. See [G.S. 7B-1803\(a\)](#). Thus, if a victim, law enforcement officer, or other complainant goes directly to a magistrate to file a complaint against a juvenile, the magistrate should refer the complainant to juvenile justice or assist that person with communicating the complaint to a court counselor by telephone. If a court counselor approves the complaint to be filed as a juvenile petition, a magistrate can “*draw and verify the petition and accept it for filing*” at the court counselor’s request. The magistrate’s acceptance of the petition “shall constitute filing” the same as if the petition had been filed with the clerk. [G.S. 7B-1804\(b\)](#).

- [Verifying and Accepting the Petition for Filing](#)

Based on feedback from the conference, it appears that most court counselors personally draw the petitions they approve after hours and take them to a magistrate to verify and accept for filing. In such cases, the magistrate's role is fulfilled by signing the petition to verify it and including the date and time of filing (*i.e.*, a file stamp). Every juvenile petition form (*e.g.*, Forms [AOC-J-230](#) and [AOC-J-310](#)) contains a signature box where a magistrate can sign as an official authorized to verify the petition. When a magistrate accepts a juvenile petition for filing, the magistrate should deliver it to the clerk's office on the next business day. [G.S. 7B-1804\(b\)](#).

- [Drawing the Petition](#)

When a juvenile court counselor approves the filing of a petition, the court counselor is required to draw (or draft) the petition. [G.S. 7B-1803\(a\)](#). Because the petition is the pleading in a juvenile action, it must be valid in order for the court to obtain jurisdiction. *In re M.S.*, 199 N.C. App. 260, 262 (2009). Therefore, it's important for petitions to be drawn by trained officials who understand the legal requirements of the Juvenile Code.

Although magistrates may draw petitions in after-hours emergencies, the Juvenile Code doesn't specify exactly when a magistrate should exercise this authority. With respect to clerks, however, the Code is more specific. Clerks may draw a juvenile petition when a court counselor "is out of the county or otherwise unavailable." [G.S. 7B-1803\(a\)](#). In these situations, a clerk may assist a complainant in communicating the allegations to the court counselor by telephone, and with the court counselor's approval, the clerk may then draw the petition and file it when signed and verified. *Id.* It is reasonable to conclude that the magistrate's authority to draw a juvenile petition is similarly limited to situations when a juvenile court counselor is physically unavailable to do so. Because local juvenile justice offices have juvenile court counselors who are "on-call" after hours, magistrates shouldn't be expected to draw petitions very often.

If a magistrate must draw a juvenile petition, the juvenile court counselor should instruct the magistrate on the requirements of a juvenile petition, as provided in [G.S. 7B-1802](#), to make sure that it is legally sufficient. To be valid, the petition must also be signed by the complainant and verified by the magistrate. *In re Green*, 67 N.C. App. 501 (1984). Petitions alleging delinquency must satisfy the same standard as a criminal indictment in that they must allege facts sufficient to support every element of a criminal offense and identify the juvenile as the perpetrator. *In re D.B.*, 214 N.C. App. 489 (2011). As a result, the same charging language used to charge a criminal offense can be used to allege a delinquent act.

- [Signing the Petition](#)

If the magistrate draws the petition for the court counselor, the magistrate must complete the approval section on the back of the petition designated as the "*Decision of Court Counselor*"

Regarding the Filing of the Petition." (see Side Two of Form [AOC-J-310](#)) If instructed to do so by the court counselor, the magistrate should check the box to indicate that the petition is "Approved for Filing" and complete the signature box to the right. There are spaces for the magistrate to provide the date, time, and name of the court counselor giving telephonic approval. The magistrate should provide his or her own name, title, and signature as the "person receiving telephonic approval."

What are the requirements for entering custody orders?

Here are the basic requirements for entering custody orders after hours.

- Telephonic Approval by Judge or Juvenile Court Counselor

District court judges and juvenile court counselors are the only officials who may authorize custody orders, but court counselors can do so only if they have been given this authority by the chief district court judge in an administrative order filed with the clerk. [G.S. 7B-1902](#). Similar to the filing of a petition, the Juvenile Code recognizes that judges and juvenile court counselors are sometimes unavailable (e.g., late at night) to personally enter a custody order and allows them to approve the order by telephone "when other means of communication are impractical." [G.S. 7B-1907](#). Thus, a magistrate may enter custody orders after hours based upon telephonic approval.

- Criteria for Secure Custody

A judge or juvenile court counselor who approves a secure or nonsecure custody order by telephone should instruct the magistrate on how to complete the order. An order for secure custody, which authorizes placement of the juvenile in a juvenile detention facility – never a jail – may be issued only when the court finds a reasonable factual basis to believe the juvenile committed the alleged offense and that one of the criteria listed in [G.S. 7B-1903\(b\)](#) exists. These criteria are also listed on the secure custody form, [AOC-J-440](#), as findings that should be entered by the official entering the order.

- Maximum Duration of Order

The judge or juvenile court counselor should also inform the magistrate of the maximum duration of the order, which must be included on the written order. In general, an initial secure custody order may remain in effect for up to "five calendar days" and an initial nonsecure custody order may remain in effect for up to "seven calendar days." [G.S. 7B-1906\(a\)](#). Both time periods include weekends and holidays. In both cases, if a court counselor approved the custody order, instead of a judge, a custody review hearing must be held on the next regularly scheduled session of district court, which may shorten the duration of the order.

- [Signing the Custody Order](#)

A written custody order based upon telephonic approval does not require the signature of the judge or court counselor who approved the order since it is being entered outside that person's presence. Instead, [G.S. 7B-1907](#) requires that the written order 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.

Consistent with this statute, both custody orders (Forms [AOC-J-440](#) and [AOC-J-441](#)) contain a separate signature box (underneath the signature box designated for the "Judge/Judge's Designee") that must be completed by "*the person receiving telephonic approval.*" Since the magistrate is the person receiving telephonic approval, the magistrate would write his or her name and title in the spaces provided and sign the order in the space designated for the "*signature of person receiving telephonic approval.*" Again, the written order must only contain the *name and title* of the official who authorized the order (by telephone), whereas it requires the *signature and title* of the official entering the order.

It appears that several magistrates are signing custody orders as the "judge's designee" based on local practices. However, doing so could render a custody order invalid since the law only permits a judge to designate a juvenile court counselor to authorize these orders. The signature box designated for the "judge/judge's designee" is the same box, which suggests that it is to be signed by either a judge or an official designated by the judge to authorize the order. In other words, the only official who would sign in that box as the judge's designee is a juvenile court counselor who has been given the authority to approve custody orders by the chief district court judge in an administrative order filed with the clerk. [G.S. 7B-1902](#).

Should the Magistrate Keep Copies of the Petition and Custody Order?

No. The Juvenile Code does not instruct magistrates to keep their own copies of juvenile petitions or custody orders filed after hours. In fact, it may violate the Juvenile Code for magistrates to do so. Juvenile records are confidential and must be maintained in a confidential file held by the clerk. [G.S. 7B-3000\(a\)](#). The juvenile's confidential record must include the original juvenile petition and any secure or nonsecure custody order entered in the case. In general, magistrates may access juvenile records only through prosecutors, who can share information from the records with a magistrate but cannot provide copies.

Magistrates should, however, give a copy of the petition to the law enforcement officer or other official executing the secure or nonsecure custody order, since that official must in turn give copies of the petition to the person or agency with whom the juvenile is being placed. See [G.S. 7B-1904](#).

Hopefully, the actual process of filing an after-hours juvenile petition and entering a secure or nonsecure custody order is not as complicated as this blog post makes it sound. The bright side for

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magistrates is that these procedures are intended to apply only in true emergency situations when there is an immediate need for the filing of a juvenile petition so that a juvenile can be placed in custody. And, in most cases, a juvenile court counselor should complete the petition and custody order him or herself. If you have other questions and concerns related to after-hours juvenile proceedings, I would love to hear from you. I truly enjoyed being at your conference.