

## Untimely Filed Juvenile Petitions – What’s the Remedy?

Under [G.S. 7B-1703\(b\)](#), a juvenile court counselor (JCC) has “15 days after the *complaint* is received” to file the complaint as a juvenile petition, or a maximum of 30 days, if the chief court counselor has granted a 15-day extension. I’m often asked whether an untimely filed petition must be dismissed; and if so, whether the State is precluded from filing another petition for the same offense. There are two published appellate cases addressing these issues; *In re D.S.*, 364 N.C. 184 (2010), and *In re J.A.G.*, 206 N.C. App. 318 (2010). Here’s what they say.

**Must the petition be dismissed?** Not necessarily.

In 2007, the court of appeals held that failure to file a juvenile petition within a maximum of 30 days, as required by G.S. 7B-1703(b), deprives the district court of subject matter jurisdiction. *In re J.B.*, 186 N.C. App. 301, 303 (2007). Following that decision, the court vacated numerous adjudication and disposition orders in cases where juvenile petitions had been filed beyond the statutory timeline, even by one day. See, e.g., *In re K.W.*, 191 N.C. App. 812 (2008) (where the petition was filed 16 days after receipt of the complaint and there was no evidence an extension was granted).

Those reversals stopped in 2010, when the North Carolina Supreme Court decided [In re D.S.](#), 364 N.C. 184 (2010), the infamous “Pixy Stix” case. In *D.S.*, a court counselor initially filed a juvenile petition alleging the juvenile committed simple assault by touching a female classmate on her butt with the straw-like candy. A couple months later, the JCC received a second complaint alleging sexual battery (based on the same incident), which he filed as a juvenile petition the next day. The juvenile was adjudicated delinquent for both offenses. However, the court of appeals vacated the sexual battery adjudication based on its conclusion that the petition was filed more than 30 days after the JCC “received all of the information[,]” even though the initial complaint did not allege a sexual battery. *Id.* at 186.

*D.S.* is significant for two reasons. First, in reversing the court of appeals, the supreme court clarified that a “complaint” is a signed and sworn document alleging a delinquent act, as defined by [Title 14B of the N.C. Administrative Code](#) (formerly Title 28). *Id.* at 189. It is the receipt of a formal, written complaint that triggers the time limits for the filing of a petition, not a court counselor’s mere knowledge of an incident. Hence, the sexual battery petition, filed one day after the JCC received a complaint alleging that offense, complied with G.S. 7B-1703(b). Second, the court held that, in any event, the timelines in G.S. 7B-1703 are not prerequisites to jurisdiction in delinquency cases. *Id.* at 194. The court suggested that the statute is directory, rather than mandatory. *Id.* Thus, dismissal is not *required* when a juvenile petition is untimely filed.

**Is there a remedy?** Yes.

*D.S.* does not directly address what trial courts should do when the filing of a juvenile petition does not comply with G.S. 7B-1703. However, the supreme court stated that its decision was consistent

with [In re C.L.C.](#), 171 N.C. App. 438, 443 (2005), which holds that “time limitations in the Juvenile Code are not jurisdictional . . . and do not require reversal of orders in the absence of a showing by the appellant of prejudice resulting from the time delay.” In *C.L.C.*, the court upheld an order terminating a mother’s parental rights, although the trial court and DSS violated several statutory timelines applicable to TPR actions, because the delays were relatively short, and the respondent mother failed to show any prejudice. *Id.* at 443-444. The court has said that *requiring* dismissal for such violations would only cause further delays “because juvenile petitions would have to be re-filed and new hearings conducted.” *In re A.D.L.*, 169 N.C. App. 701, 705 (2005).

By referencing *C.L.C.*, the supreme court implied that like violations of timing requirements in child welfare cases, violations of G.S. 7B-1703 require a showing of prejudice by the juvenile in order to support dismissal of the case. In a delinquency case, for example, a juvenile might demonstrate prejudice by showing that the delay has impaired the juvenile’s ability to prepare a defense based on the loss of evidence or the unavailability of witnesses (see, e.g., [Chapter 7.2](#) of the N.C. Defender Manual, Pretrial Vol. 1, discussing how “pre-accusation delay” may result in a due process violation).

Alternatively, a long delay may be prejudicial to a juvenile by frustrating the statutory purposes of the Juvenile Code, which include “providing swift, effective dispositions” and “encourag[ing] the court and others . . . to proceed with all possible speed[.]” [G.S. 7B-1500](#). A few months ago, a prosecutor consulted me about a petition that was dismissed with prejudice because the District Attorney’s Office took longer than 20 days to review a court counselor’s decision not to file a juvenile petition, in violation of [G.S. 7B-1705](#). By the time a prosecutor approved the filing of the petition, three or four months had passed since the JCC initially received the complaint, and the court found the juvenile was prejudiced by the delay. However, I’m aware of other cases with similar delays in which the court has denied motions to dismiss. Ultimately, whether a juvenile is prejudiced by a filing delay is a discretionary decision by the court.

**If the original petition is dismissed, may another petition be filed? Yes.**

Unless the dismissal was *with prejudice*, a delinquency petition may be refiled when the original petition is dismissed for noncompliance with G.S. 7B-1703(b), if the JCC receives a new complaint. See [In re J.A.G.](#), 206 N.C. App. 318, 322 (2010). The court of appeals cautioned, however, that noncompliance with Juvenile Code requirements “disregard[s] the best interests of the children involved[.]” *Id.* at 323. Thus, court counselors should not view the State’s ability to refile a petition as an excuse to disregard filing deadlines, which encourage the speedy resolution of juvenile cases.

Are defenders filing motions to dismiss untimely filed petitions in your district? If so, how has the court ruled?