

16.5 Disposition Pending Appeal

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If the juvenile is placed in custody at the conclusion of the dispositional hearing and the juvenile gives notice of appeal, counsel should seek the juvenile's release while the appeal is pending. Counsel should argue that the juvenile should be released under G.S. 7B-2605. According to the statute, the juvenile must be released, with or without conditions, unless the court enters a temporary order affecting custody or placement. Such an order must be in writing and must state "compelling reasons" that the placement or custody is in the best interests of the juvenile or the State. *In re G.C.*, 230 N.C. App. 511, 519 (2013) (remanding order denying release where the court failed to provide a written statement of compelling reasons for denying the juvenile's release); *In re J.J.D.L.*, 189 N.C. App. 777, 781 (2008) (no error in denying motion for release from custody pending appeal where the trial court found as a compelling reason that the juvenile had committed first degree sex offenses with a child); *In re K.T.L.*, 177 N.C. App. 365 (2006) (order placing juvenile in custody of Department of Social Services satisfied G.S. 7B-2605 because it was in writing and provided compelling reasons for placement); *In re W.H.*, 166 N.C. App. 643, 648 (2004) (although issue was moot, stating that conclusions in dispositional order would have provided compelling reasons for continued custody of the juvenile if the court had entered a separate order under G.S. 7B-2605).

A sample motion and order for the juvenile's release under G.S. 7B-2605 are available on the [Juvenile Defender website](#). Sections 2 and 3 on the first page of the AOC form for the order of appellate entries also provide the court with space to address the question of the juvenile's release. See [Form AOC-J-470](#) (Appellate Entries in Delinquency Proceeding) (June 2015).

G.S. 7B-2605 permits the juvenile's release regardless of the type of custody. For instance, depending on the offense classification and the juvenile's delinquency history level, the court can place the juvenile in intermittent confinement under G.S. 7B-2506(12), confinement at a juvenile detention facility under G.S. 7B-2506(20), or confinement at a Youth Development Center under G.S. 7B-2506(24). If the court orders any of these types of custody, counsel should seek the juvenile's release under G.S. 7B-2605.

If the court orders probation or other dispositional alternatives that do not involve custody, counsel should consider filing a motion to stay the dispositional alternatives. A sample motion to stay disposition pending the appeal is available on the [Juvenile Defender website](#). Although the Juvenile Code does not address whether the trial court may grant a stay, stays are authorized under Rule 8 of the N.C. Rules of Appellate Procedure. Counsel should advise the juvenile that the juvenile will still be required to comply with the dispositional alternatives if the adjudication or dispositional orders are upheld on appeal.