

### 5.3 Intake

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## 5.3 Intake

### A. Preliminary Inquiry

**Screening of complaint.** A juvenile court counselor determines whether a complaint alleges a matter within the jurisdiction of the juvenile court. The juvenile must have been at least age 6 and less than age 16 when the act was allegedly committed, and the allegations, if proven, must constitute a crime or infraction if committed by an adult. The court counselor should not file a petition if the complaint is not legally sufficient or is frivolous. G.S. 7B-1701.

**Nondivertible and divertible offenses.** The juvenile court counselor must authorize the filing of a petition if there are “reasonable grounds to believe that a juvenile has committed” one of the specified offenses. The following offenses are nondivertible because, if supported by sufficient evidence, they cannot be diverted by the juvenile court counselor:

1. murder;
2. first-degree rape or second degree rape;
3. first-degree sexual offense or second degree sexual offense;
4. arson;
5. any violation of Article 5, Chapter 90 of the General Statutes [North Carolina Controlled Substances Act] that would constitute a felony if committed by an adult;
6. first degree burglary;
7. crime against nature; or
8. any felony that involves the willful infliction of serious bodily injury on another or that was committed by use of a deadly weapon.

G.S. 7B-1701.

“Serious bodily injury” is not defined in the delinquency statutes, but is defined in criminal statutes as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.” G.S. 14-32.4(a) (assault inflicting serious bodily injury); *see also* G.S. 14-318.4 (using an identical definition of serious bodily injury for felony child abuse). The term is also defined in motor vehicle statutes as “bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of

a bodily member, organ, or mental faculty.” G.S. 20-160.1(b) (failure to yield causing serious bodily injury).

Divertible offenses include felonies not listed above as well as any act that would constitute a misdemeanor if committed by an adult.

Ordinarily, a juvenile court counselor will meet with the juvenile at the beginning of a divertible case in order to conduct a background investigation and determine whether the case should be diverted. However, some court counselors decide not to meet with juveniles charged with nondivertible offenses before the adjudication hearing. This could result in the dispositional hearing being delayed so that the counselor can complete a background investigation for the case. If the dispositional hearing is delayed, the juvenile may suffer adverse consequences, such as being held in secure custody pending disposition. Counsel should consider consenting to or requesting the preparation of a predisposition report after the filing of a nondivertible petition in order to avoid a delay in disposition if the juvenile is adjudicated delinquent.

## **B. Evaluation by Juvenile Court Counselor**

**Statutory requirements.** If the complaint is legally sufficient, the juvenile court counselor must perform an evaluation to decide whether the complaint will be filed as a petition, the matter will be diverted, or no further action will be taken. G.S. 7B-1702. The evaluation must be based on criteria developed by the Division of Adult Correction and Juvenile Justice. The Division’s criteria for diversion can be found in Section 14B N.C. Admin. Code 11D .0102 and include the following seven factors:

- protection of the community;
- seriousness of the offense;
- juvenile’s previous record of involvement in the legal system, including previous diversions;
- ability of the juvenile and the juvenile’s family to use community resources;
- consideration of the victim;
- juvenile’s age; and
- juvenile’s culpability in the alleged complaint.

If practicable, the evaluation must include the following:

- interviews with the complainant and the victim if someone other than the complainant;
- interviews with the juvenile and the juvenile’s parent, guardian, or custodian; and
- interviews with people known to have relevant information about the juvenile or the juvenile’s family.

G.S. 7B-1702. The Court of Appeals has construed G.S. 7B-1702 to mean that the juvenile court counselor must conduct interviews “only when additional evidence is needed to evaluate the factors provided by” the Division of Juvenile Justice. *In re T.H.*,

218 N.C. App. 123, 130 (2012). The evaluation decision still must be based on an individual assessment of the juvenile and the offense alleged. *See In re Register*, 84 N.C. App. 336, 348 (1987) (diversion decision in matter involving multiple juveniles could not be based solely on a juvenile's ability or willingness to pay restitution).

**Intake meeting with juvenile and parent.** As part of the intake process, the juvenile court counselor usually sends a letter to the juvenile's parent, guardian, or custodian requesting a meeting with the parent and juvenile. The juvenile and the parent sometimes miss the intake meeting for a number of reasons, including the parent's work obligations, a change in residence, or reluctance to respond. If this occurs, defense counsel should still seek to convince the juvenile court counselor to divert the case or arrange another intake meeting if there is a possibility that the intake counselor might recommend entering into a diversion plan, reducing the charges, or continuing the case indefinitely.

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**Note:** Any statement made by the juvenile to the court counselor during intake is not admissible at the adjudicatory hearing but may be admitted at disposition. G.S. 7B-2408.

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### C. Evaluation Decision by Juvenile Court Counselor

**Time limits.** The juvenile court counselor must complete the intake evaluation within 15 days of receipt of the complaint unless the chief court counselor grants an extension of up to 15 additional days. G.S. 7B-1703(a). If the court counselor approves the filing of a petition, the counselor must file the petition within the evaluation period. G.S. 7B-1703(b). Defense counsel should check each petition to see if it was timely filed. *See infra* 6.3C, Timeliness of Filing. There is no such time limit on when a *complaint* must be filed with the juvenile court counselor.

**Assistance to complainant if petition approved.** Upon approval of the complaint for filing, the statute directs the juvenile court counselor to assist the complainant in preparing and filing the petition if assistance is needed. G.S. 7B-1703(b). In practice, the juvenile court counselor or a law enforcement officer will usually draft the petition. The juvenile court counselor must then mark the petition "Approved for Filing" and sign and date it. *See In re Register*, 84 N.C. App. 336, 346–47 (1987) (record must affirmatively disclose that either the intake counselor or district attorney approved the filing of the petition). It is the responsibility of the juvenile court counselor to transmit the petition to the clerk of superior court for filing. G.S. 7B-1703(b).

**Notice to complainant if petition not approved.** Upon determination that a petition should not be filed, the juvenile court counselor must immediately notify the complainant of the decision. The notice must be in writing and must contain an explanation of the reasons for denial. In addition, the notice must inform the complainant of the right to have the decision of the juvenile court counselor reviewed by the prosecutor. G.S. 7B-1703(c).

**Processing of denied complaints.** In addition to notifying the complainant of the decision not to approve a petition, the juvenile court counselor must mark the complaint "Not

Approved for Filing,” and either “Closed” or “Diverted and Retained” (that is, diverted, discussed *infra* in § 5.4, Diversion). G.S. 7B-1703(c). The juvenile court counselor must sign and date the decision on the complaint. If the case is closed and not diverted, the juvenile court counselor must destroy the complaint after the time has elapsed for review of the decision by the prosecutor. *Id.*

#### **D. Review by Prosecutor of Denial of Petition**

**Request for review.** The complainant may appeal the decision of the juvenile court counselor to the prosecutor. The complainant must request review with the juvenile court counselor within five days of receiving notice of the juvenile court counselor’s decision not to file a petition. The juvenile court counselor must immediately notify the prosecutor of the request and forward a copy of the complaint to the prosecutor. G.S. 7B-1704.

**Review by prosecutor.** The prosecutor must review the decision to deny the petition within 20 days of the notice to the complainant and must provide notice of the review to the juvenile court counselor and the complainant. The prosecutor is required to hold conferences with both the juvenile court counselor and the complainant. A decision must be rendered at the conclusion of the review either affirming the denial or directing the filing of a petition. G.S. 7B-1704, 7B-1705.

**Victim’s rights under the Juvenile Justice Reinvestment Act of 2017.** As part of the Juvenile Justice Reinvestment Act of 2017, the General Assembly amended G.S. 7B-1703(c) to provide that if the court counselor decides not to file a petition, the court counselor must notify not only the complainant, but also the alleged victim. The court counselor must inform both the complainant and the alleged victim of the right to request review by a prosecutor of the decision. The prosecutor must hold conferences with the complainant, the alleged victim, and the court counselor about the decision. The change applies to complaints filed on or after October 1, 2017. *See infra* §19.2, Changes Effective in 2017.