

8.3 Temporary Custody

8.3 Temporary Custody

Temporary custody is the assumption of physical custody of a juvenile by a law enforcement officer or other authorized person under specified criteria without a court order until a secure or nonsecure custody order can be obtained. G.S. 7B-1900; *see infra* § 8.5, Authority to Issue Custody Orders.

Criteria for temporary custody. Temporary custody of a juvenile may be assumed by a law enforcement officer if grounds would exist for arrest under G.S. 15A-401(b) (Arrest by Officer without a Warrant) if the juvenile were an adult. G.S. 7B-1900(1). If there are reasonable grounds to believe that the juvenile is an absconder from a residential facility operated by the Division, temporary custody may be assumed by a law enforcement officer or by personnel authorized by statute. G.S. 7B-1900(3).

Duties of temporary custodian. A law enforcement officer who takes a juvenile other than an absconder into temporary custody must notify the juvenile's parent, guardian, or custodian (hereinafter the parent) that the juvenile is in temporary custody. The parent must be advised of the right to stay with the juvenile until it is determined whether the juvenile will be placed in secure or nonsecure custody. Failure to notify the parent that the juvenile is in temporary custody is not grounds for release of the juvenile. G.S. 7B-1901(a)(1). Except for an alleged absconder, the law enforcement officer may release the juvenile to the parent if the officer decides that continued custody is not necessary. G.S. 7B-1901(a)(2).

If the juvenile is not released, the law enforcement officer must request that a juvenile court counselor file a petition alleging delinquency unless the juvenile is an alleged absconder. G.S. 7B-1901(a)(3). On the filing of a petition, a district court judge or a juvenile court counselor with delegated authority pursuant to G.S. 7B-1902 must determine the need for continued custody. *Id.* If the juvenile court counselor does not approve the petition, or if the judge or juvenile court counselor decides that continued custody is not warranted after a petition is filed, the juvenile must be released.

Limits on temporary custody. A juvenile may not be held in temporary custody for more than 12 hours or, if the time falls on a Saturday, Sunday, or legal holiday, more than 24 hours. A petition or motion for review must be filed and an order for secure or nonsecure custody must be issued to continue custody beyond these limits. G.S. 7B-1901(b).

Remedies for violations of temporary custody requirements. Counsel should move to suppress any statements made by the juvenile while held in custody in violation of the juvenile's constitutional and statutory rights. *See infra* § 11.3, Bases for Motions to Suppress Statement or Admission of Juvenile; § 11.4, Case Law: Motions to Suppress In-Custody Statements of Juveniles. The violations also may bolster an argument for release of the juvenile from secure custody because of the failure to follow statutory procedure.

But cf. G.S. 7B-1901(a)(1) (failure to notify parent that the juvenile is in temporary custody is not grounds for release of the juvenile).