

Chapter 8

Custody and Custody Hearings

8.1 Overview of Custody in Delinquency Proceedings	8-1
8.2 Terminology Used in this Chapter	8-2
8.3 Temporary Custody	8-3
8.4 Release	8-4
8.5 Authority to Issue Custody Orders	8-5
8.6 Secure Custody	8-5
A. Overview	
B. Shackling	
C. Criteria for Secure Custody Pending Adjudication	
D. Initial Order for Secure Custody	
E. Place of Secure Custody	
F. Secure Custody Hearing	
G. Secure Custody Following Adjudication of Delinquency	
H. Secure Custody Pending Placement Pursuant to Dispositional Order	
8.7 Nonsecure Custody	8-11
8.8 Custody Pending Appeal	8-13
Appendix 8-1: Juvenile Detention Centers in North Carolina	8-14

8.1 Overview of Custody in Delinquency Proceedings

Juveniles alleged to be delinquent usually remain in their own residences pending both the adjudicatory and dispositional hearings. The Juvenile Code provides for a juvenile to be placed in custody only in specific circumstances, discussed in this chapter. Because there is no right to bail in juvenile court, statutory restrictions on the use of secure custody are important. Counsel must be prepared to argue against an order for secure custody. *See infra* § 8.6A, Overview. Custody is not intended to be punishment under the Code; counsel has a crucial role in ensuring that its use is limited.

There are three types of custody in juvenile delinquency proceedings:

- Temporary custody means taking physical custody of a juvenile until a court order for secure or nonsecure custody can be obtained, such as where a law enforcement officer arrests a juvenile based on reasonable grounds to believe the juvenile is an absconder or has committed a crime for which arrest would be lawful.
- Secure custody is the placement of a juvenile in an approved locked facility after a petition has been filed and pending an adjudicatory or dispositional hearing, or pending placement pursuant to a dispositional order.
- Nonsecure custody is the placement of a juvenile without restriction on the juvenile's freedom of movement in the custody of the Department of Social Services or a person designated by the court. The juvenile may be placed in nonsecure custody after a petition has been filed and pending an adjudicatory or dispositional hearing, or pending placement pursuant to a dispositional order.

8.2 Terminology Used in this Chapter

Absconder is a juvenile who has been ordered into secure custody at an approved detention center or who is in the custody of the Division for placement in a residential facility who has unlawfully left the detention center or residential facility. *See* G.S. 7B-1900(3).

Division is the Division of Adult Correction and Juvenile Justice. The Division is charged with far-reaching duties, including responsibility for operating State juvenile facilities and youth development centers, appointment of the chief court counselor in each district, establishment of community-based treatment and prevention services, and developing training plans for juvenile court counselors and other personnel responsible for the care, supervision, and treatment of juveniles. *See* G.S. 143B-806(b)(1)–(19).

Detention facility is a “facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.” G.S. 7B-1501(9). These locked facilities are commonly referred to as “detention centers.” *See infra* Appendix 8-1: Juvenile Detention Centers in North Carolina.

Holdover facility is a separate space in a jail that has been approved for the detention of juveniles in secure custody. The holdover facility must not allow the juvenile to converse with, see, or be seen by the adult inmates, and must provide close supervision of the juvenile. G.S. 7B-1501(11). Use of the holdover facility is limited to detention for no more than 72 hours of juveniles who are alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult. The court must determine that there is no acceptable alternative placement and that the juvenile must be detained in a holdover facility for the protection of the public. G.S. 7B-1905(c).

Nonsecure custody is placement of a juvenile without restriction on the juvenile's freedom of movement in the custody of the Department of Social Services or a person other than the juvenile's parent, guardian, or custodian.

Secure custody is the detention of a juvenile alleged to be delinquent or adjudicated to be delinquent in an approved locked facility pursuant to a secure custody order.

Temporary custody is the "taking of physical custody [of a juvenile] and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained." G.S. 7B-1900. Temporary custody may be assumed only under specified conditions and is limited to 12 hours or, if any of the 12 hours falls on a weekend or legal holiday, to 24 hours. *Id.*; G.S. 7B-1901(b).

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).

8.4 Release

Many juveniles are released into the custody of parents soon after the initiation of delinquency proceedings. If the court releases the juvenile, it may impose the following conditions:

1. release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings;
2. release into the care of a responsible person or organization;
3. release conditioned on restrictions on activities, associations, residence, or travel if reasonably related to securing the juvenile's presence in court; or
4. any other conditions reasonably related to securing the juvenile's presence in court.

G.S. 7B-1906(f). Some judges will impose electronic house arrest or curfew as conditions of release. If the court imposes conditions, counsel should object to any conditions that are not reasonably related to securing the juvenile's presence in court.

Sometimes the juvenile's parent may refuse to take custody of the juvenile out of frustration with the juvenile's behavior. If the parent is unwilling to take custody of the juvenile, the court may release the juvenile into the custody of a "responsible adult." G.S. 7B-1903(a). Counsel should determine whether the parent is willing to take custody of the juvenile. If the parent is not willing to take custody of the juvenile, counsel should determine whether another adult would be willing to do so and be prepared to offer the court an alternative adult to whom it can release the juvenile. Counsel should also ensure that the person who is willing to accept custody of the juvenile appears in court in order for the judge to confirm that the adult is ready, willing, and able to take custody of the juvenile.

8.5 Authority to Issue Custody Orders

Any district court judge may issue an order for secure or nonsecure custody if the criteria set forth in G.S. 7B-1903 are met. G.S. 7B-1902; *see infra* § 8.6, Secure Custody; § 8.7 Nonsecure Custody. Some judges might decline to modify a secure custody order issued by another judge. However, the court of appeals has held that any judge has the authority to review and modify a secure custody order even if it was issued by a different judge. *In re D.L.H.*, 198 N.C. App. 286, 294 (2009), *overruled on other grounds*, 364 N.C. 214 (2010).

The chief district court judge may delegate the authority to issue secure or nonsecure custody orders to the chief court counselor or the chief court counselor's counseling staff by administrative order filed in the office of the clerk of superior court. G.S. 7B-1902. The authority of the court to issue custody orders is routinely delegated in some districts, giving significant authority to the juvenile court counselor at the initial stage of the juvenile proceeding. If juvenile court counselors are issuing secure custody orders, counsel should determine whether there is a properly filed administrative order delegating this authority. Counsel should object and move for release from custody if there is not.

8.6 Secure Custody

A. Overview

A juvenile may be held in secure custody during three stages of the proceeding: pre-adjudication; post-adjudication/pre-disposition; and post-disposition. G.S. 7B-1903(b), (c). A secure custody order provides for detention of a juvenile in a secure, or locked, facility. G.S. 7B-1501(8), (9); 7B-1905(b), (c). Secure custody entails significant restriction on the juvenile's freedom of movement because the facility is locked and juveniles do not have the right to bail. The statutes provide procedural protection to ensure that a juvenile is not held in secure custody except under specified circumstances. *See infra* § 8.6C, Criteria for Secure Custody Pending Adjudication. Counsel should be prepared to offer alternatives to the court that provide both protection and supervision for the juvenile and protection of the public.

B. Shackling

Requiring the juvenile to be shackled and wear jail attire during court proceedings may cause the juvenile humiliation and may prejudice the judge against releasing the juvenile from secure custody. Shackling also may impede the ability of juveniles to communicate with counsel and assist in their defense. *See generally Deck v. Missouri*, 544 U.S. 622, 630–31 (2005) (discussing reasons U.S. Constitution prohibits routine shackling in adult criminal cases). Counsel should make prior contact with the detention facility to determine the facility's plans for transporting the juvenile to court and request that the

juvenile be attired in appropriate clothing and be free of shackles when brought into the courtroom.

G.S. 7B-2402.1 was enacted in 2007 to protect a juvenile from unnecessary shackling, allowing the court to order shackling only if “reasonably necessary to maintain order, prevent the juvenile’s escape, or provide for the safety of the courtroom.” *Id.* The court must give the juvenile and the juvenile’s attorney an opportunity to be heard, if practical, and make findings of fact in support of any order. *Id.* If shackling will be an issue, counsel should make a motion for removal of restraints before the proceeding begins and be prepared to argue that the statutory criteria for restraints are not met.

C. Criteria for Secure Custody Pending Adjudication

When a petition has been filed, the court may enter an order for secure custody pending adjudication if it determines that there is a “reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition” *and* that the juvenile:

- is charged with a felony and is a danger to property or persons;
- is a danger to others and is charged with either a misdemeanor having assault as an element of the offense, or is charged with a misdemeanor alleging that the juvenile used, threatened to use, or displayed a firearm or other deadly weapon;
- has demonstrated that the juvenile is a danger to persons and is charged with a violation of G.S. 20-138.1 (impaired driving) or G.S. 20-138.3 (driving by person less than 21 years old after consuming alcohol or drugs);
- willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision after receiving proper notice;
- has a pending delinquency charge and there is reasonable cause to believe that the juvenile will not appear in court;
- is an absconder from a residential facility operated by the Division or a comparable facility in another state; or
- should be detained for the juvenile’s own protection because of recent attempted or actual self-inflicted injury. (The juvenile must have been refused admission by an appropriate hospital. Secure custody is then limited to 24 hours for determination of the need for inpatient hospitalization. Continuous supervision must be provided and a physician must be notified immediately.)

G.S. 7B-1903(b)(1)–(6).

The statute does not give the court discretion to order secure custody for any reasons other than those listed.

D. Initial Order for Secure Custody

The secure custody order must be in writing and direct a law enforcement officer or other authorized person to take the juvenile into custody for transportation to the detention or holdover facility. G.S. 7B-1904. The officer who takes the juvenile into custody must

give a copy of the secure custody order to the juvenile's parent, guardian, or custodian. *Id.* The officer must also give a copy of the petition and secure custody order to the facility. *Id.* Alternatively, the detention facility is authorized to detain the juvenile upon notification by the Department of Public Safety that the petition and secure custody order are on file in the county. *Id.* The petition and secure custody order must then be transmitted to the detention facility within 72 hours of the initial detention of the juvenile. *Id.*

All communications, orders, authorizations, and requests regarding secure custody may be by telephone if other means of communication are "impractical." G.S. 7B-1907. Any resulting written order must indicate the name and title of the person communicating by telephone, the signature and title of the official entering the order, and the hour and date of the authorization. *Id.*

E. Place of Secure Custody

A juvenile meeting the criteria for secure custody may be detained in an approved detention facility. G.S. 7B-1905(b). The detention facility must be separate from any jail, lockup, prison, or other adult penal institution unless the juvenile is alleged to have committed an offense that would constitute a Class A, B1, B2, C, D, or E felony if committed by an adult. In that circumstance, the juvenile may be held in a holdover facility for up to 72 hours if the court finds, based on information provided by the juvenile court counselor, that there is no acceptable alternative placement and the protection of the public requires that the juvenile be detained. G.S. 7B-1905(b), (c).

F. Secure Custody Hearing

Time limits. A juvenile may not be held under a secure custody order for more than five calendar days without either an adjudicatory hearing or an initial hearing to determine the need for continued custody. G.S. 7B-1906(a). If the order was entered by a court counselor pursuant to authority delegated by administrative order of the court, a hearing to review secure custody must be held at the next regularly scheduled court session if it precedes the five-day limit. *Id.* There are no provisions for waiver of the initial secure custody review hearing or of the juvenile's appearance.

Further hearings to review secure custody must be held at intervals of no more than 10 calendar days. G.S. 7B-1906(b). Counsel should continue to work with the juvenile and others to devise an alternative to secure custody.

After the initial secure custody review hearing, further hearings may be waived by the juvenile through counsel. *Id.* Waiver should occur only with the consent of the juvenile and may provide a basis for a concession by the State, such as an earlier date for adjudication or a plea agreement.

Counsel for the juvenile. The court must determine whether the juvenile has retained or been appointed counsel. If the juvenile is not represented, the court must appoint counsel

in accordance with the rules of the Office of Indigent Defense Services. G.S. 7B-1906(c); 7B-2000. The juvenile is entitled to representation of counsel at the initial secure custody hearing as well as at subsequent hearings. *Id.*

Conduct of hearing. The court must first determine whether there is a “reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition” G.S. 7B-1903(b). The statute does not define the term “factual basis” or specify the evidence required in support. If the court finds that there is a reasonable factual basis, the State bears the burden of proving by clear and convincing evidence that secure custody is necessary and that there is “no less intrusive alternative.” G.S. 7B-1906(d). The court must allow the juvenile and the juvenile’s parent, guardian, or custodian to present evidence, testify, and examine witnesses, although the usual rules of evidence do not apply. *Id.*; *see also* “Advocating for release from secure custody,” below. After hearing from all participants, the court must determine whether continued secure custody is warranted based on the criteria in G.S. 7B-1903. G.S. 7B-1906(e). If the court orders the juvenile to remain in secure custody, it must issue a written order with findings that include “the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.” G.S. 7B-1906(g).

It is permissible for the court to conduct a secure custody hearing by audio and video transmission approved by the Administrative Office of the Courts. G.S. 7B-1906(h). The equipment must enable the juvenile and the court to see and hear each other. *Id.* In addition, the juvenile and the juvenile’s attorney must be able to communicate “fully and confidentially” during the hearing. *Id.* If the court uses audio and video equipment at the custody hearing, counsel should make sure that communication between counsel and the juvenile is confidential.

There is no requirement that the secure custody hearing be recorded. The only hearings that must be recorded are adjudication and dispositional hearings and hearings on probable cause and transfer to superior court. G.S. 7B-2410. However, the court may order that other hearings be recorded. *Id.* Counsel should consider requesting that the proceeding be recorded so that a court reporter can prepare a transcript if one is needed at a later time.

Advocating for release from secure custody. Counsel for the juvenile should counter the State’s evidence by demonstrating to the court that either: no legal basis exists for secure custody under G.S. 7B-1903(b)(1)–(6) (criteria for secure custody); or a “less intrusive alternative” to secure custody is available to address the underlying reason secure custody has been requested. G.S. 7B-1906(d). For example, if the juvenile is charged with a felony and the prosecutor asserts that the juvenile is a danger to person or property under G.S. 7B-1903(b)(1), counsel should determine whether there is a demonstrated danger based on the nature of the felony described in the petition. A felony that is not inherently dangerous should not be the basis of a secure custody order. In addition, if the juvenile has failed to appear at past hearings, the court might nevertheless be willing to release the juvenile if counsel presents the testimony of a dependable adult willing to be responsible for the juvenile’s appearance or reasons why the juvenile did not previously appear.

Counsel should discuss alternatives to detention with both the juvenile and the parent before the hearing. The court is unlikely to release a juvenile to the parent unless the parent is willing and able to supervise the juvenile and wants the juvenile to return home. If the parent is resistant, counsel should explain that the court may be less likely to release the juvenile later if the parent argues against release at the initial hearing. Counsel can also ask the parent if there are conditions under which the juvenile could return home, such as a court-ordered curfew, day program, or house arrest.

Counsel should offer the court additional alternatives to secure custody if placement with a parent would be unsuitable. For example, placement with a relative or other responsible adult, or in a temporary shelter, may be a viable alternative to secure custody. Conditions on placement also may make release viable. Electronic house arrest is available in some districts. Some districts also have “alternatives to detention” (ATD) programs that involve daily contact with the juvenile by the juvenile court counselor. If an ATD program is not available, counsel could propose a plan to the court that has those features. *See* “Release from secure custody,” below.

Counsel should take advantage of the relaxed rules of evidence to present positive aspects of the juvenile’s life. Such information might include little or no prior juvenile court involvement, strong family support or other support in the community, good school attendance or grades, and the availability of services. It may be important to inform the court if the juvenile is receiving services such as special school assistance, mental health treatment, or services through the Department of Social Services that negate the need for secure custody.

Release from secure custody. The court must release the juvenile if the criteria for secure custody are not met. “Appropriate restrictions” to ensure the juvenile’s appearance at subsequent hearings may be imposed by the order of release from secure custody. G.S. 7B-1906(f). *See supra* § 8.4, Release.

Continuation of secure custody. If the court does not allow release, it must enter a written order finding that there is a reasonable factual basis to believe that the allegations in the petition are true and stating the grounds for secure custody under G.S. 7B-1903(b) (criteria for secure custody). G.S. 7B-1906(g). The findings of fact must set forth the evidence supporting the decision and the purposes of continuing secure custody. *Id.*

Subsequent hearings to review secure custody must be held every 10 calendar days. G.S. 7B-1906(b). Counsel should continue to confer with the juvenile and others in pursuit of an alternative to secure custody.

After the initial hearing to review secure custody, the juvenile may waive further custody hearings. *Id.* The waiver must be made through the juvenile’s attorney and may be conditioned on a concession by the State, such as an earlier date for adjudication or a plea agreement.

Credit for time served. In 2010, the Supreme Court of North Carolina held that juveniles are not entitled to credit for time served in secure custody. *In re D.L.H.*, 364 N.C. 214, 216 (2010). The decision overruled older decisions issued by the court of appeals, such as *In re R.T.L.*, 183 N.C. App. 299 (2007) (unpublished), and *In re Allison*, 143 N.C. App. 586 (2001), in which the court held that it was proper for trial courts to give juveniles credit for time served. Although juveniles are no longer entitled to credit for time spent in secure custody, there is no bar to the court taking such time into account at the dispositional hearing. The court has a great deal of latitude at the dispositional hearing. *See* G.S. 7B-2501 (granting the court authority to select the “most appropriate disposition” for the juvenile). In addition, according to G.S. 7B-2500, a dispositional order should promote public safety, emphasize accountability and responsibility, and provide the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a responsible and productive member of the community. If the juvenile has spent a significant amount of time in secure custody or received services while in secure custody, counsel should argue that many of the purposes of disposition have already been met.

G. Secure Custody Following Adjudication of Delinquency

When secure custody may be ordered. After an adjudication of delinquency, the court may continue the dispositional hearing pursuant to G.S. 7B-2406 and order that the juvenile be held in secure custody pending the dispositional hearing. G.S. 7B-1903(c). The most common reason judges continue dispositional hearings is because the juvenile court counselor has not completed the predisposition report and risks and needs assessment. However, the judge might also grant a continuance to permit the juvenile to obtain an evaluation or gather other evidence for the hearing.

Criteria for secure custody. Secure custody orders issued after an adjudication of delinquency are governed by a less stringent standard than secure custody orders issued after the initial accusation. The court of appeals has held that G.S. 7B-1906(g), which requires the court to specify the evidence on which it bases an order of secure custody after the initial accusation, does not apply to secure custody orders issued after the juvenile has been adjudicated delinquent. *In re Z.T.W.*, 238 N.C. App. 365, 374 (2014). Rather, G.S. 7B-1903(c) allows the court to hold a juvenile in secure custody pending disposition or placement when “the juvenile has been adjudicated delinquent.” The decision is reviewed for abuse of discretion. *See id.* at 374–75 (holding that trial court was justified in ordering secure custody pending out-of-home placement based on various aspects of court counselor’s report); *see also In re R.D.R.*, 175 N.C. App. 397, 401 (2006) (upholding post-adjudication secure custody under G.S. 7B-1903(c) based on trial court’s finding that juvenile had been adjudicated delinquent on three different charges and should be in secure custody pending disposition hearing a week later).

Advocating for release from secure custody. After adjudication, the court may proceed without a predisposition report if one is not available and the court makes a written finding that one is not needed. G.S. 7B-2413. If the prosecutor or court counselor requests a continuance and an order for secure custody even though a predisposition

report is not needed, counsel should object and ask the court to deny the continuance and make a finding that a predisposition report is not needed. Counsel should determine the highest permissible period of confinement, if any, allowed at disposition for the offense adjudicated and the juvenile's delinquency history. If continued secure custody would exceed the amount of time the juvenile could be confined pursuant to a dispositional order, counsel should argue for reduction or termination of secure custody.

Review of secure custody following adjudication. For several years, there was some confusion about whether judges should hold review hearings after the juvenile was adjudicated delinquent. Although G.S. 7B-1906(b) stated that review hearings were required “[a]s long as the juvenile remains in secure or nonsecure custody,” some judges declined to hold review hearings. In 2009, the court of appeals held that juveniles are entitled to review hearings after adjudication. *In re D.L.H.*, 198 N.C. App. 286, 294 (2009), *overruled on other grounds*, 364 N.C. 214 (2010). The General Assembly amended G.S. 7B-1903 in 2015 to codify the holding in *D.L.H.* See 2015 N.C. Sess. Laws Ch. 58 (H 879). Under current G.S. 7B-1903(c), the court must hold review hearings every 10 calendar days for juveniles in secure custody after adjudication. The juvenile may waive further hearings for no more than 30 calendar days. *Id.*

If the court places the juvenile in secure custody after the adjudication hearing, counsel should monitor the progress toward completion of the predisposition report, risk and needs assessment, and any evaluations needed for disposition, and argue for release from secure custody if there are unreasonable delays. Counsel should offer the court alternatives to detention and reasons supporting release at each review.

H. Secure Custody Pending Placement Pursuant to Dispositional Order

The court may order secure custody following the dispositional hearing but before placement pursuant to the dispositional order. G.S. 7B-1903(c). The period between the dispositional hearing and the juvenile's placement may be lengthy if the placement facility has a long waiting list. This period may also be harmful to the juvenile if the juvenile lacks necessary services or counseling that might occur once the placement begins. The juvenile retains the same right to review hearings and release from secure custody as in other stages of the case. G.S. 7B-1906(b). Counsel should present the court with alternatives to detention and reasons for release at each hearing.

8.7 Nonsecure Custody

Definition. Nonsecure custody is the granting of legal and physical custody without restriction on the juvenile's freedom of movement to the Department of Social Services (DSS) or to a person other than the juvenile's parent, guardian, or custodian. G.S. 7B-1903(a). The juvenile cannot be placed in a locked facility pursuant to a nonsecure custody order. Nonsecure custody is more often ordered in cases involving undisciplined juveniles but is sometimes ordered in delinquency cases.

Criteria. Before entering a nonsecure custody order, the court must first consider releasing the juvenile to the juvenile’s parent, guardian, custodian, or other responsible adult. G.S. 7B-1903(a). If the court places the juvenile in nonsecure custody, it must find that the juvenile meets one or more criteria for secure custody but that it is in the juvenile’s best interest to be in a nonsecure placement. G.S. 7B-1903(a)(2); *see supra* § 8.6C, Criteria for Secure Custody Pending Adjudication. If the court orders nonsecure custody, the court must give preference to a relative who is “willing and able to provide proper care and supervision of the juvenile” unless such placement is not in the juvenile’s best interest. G.S. 7B-1905(a). Otherwise, a juvenile must be placed in nonsecure custody with DSS, or a person designated by the court, for temporary residential placement in a licensed foster home or a home authorized to provide such care, a facility operated by DSS, or any other home or facility approved by the court and designated in the order. G.S. 7B-1905(a)(1)–(3).

Nonsecure custody with the Department of Social Services. Placement of the juvenile in nonsecure custody with DSS is rare. Nevertheless, if the court places the juvenile in the custody of DSS, counsel should determine the length and location of the placement and the name and contact information of the person responsible for the juvenile. Counsel should also discuss the placement with the juvenile. If the juvenile opposes the placement, counsel should present alternatives to the court at the next custody review hearing.

In some cases, DSS will file a petition under Subchapter I of the Juvenile Code alleging that the juvenile is abused or neglected. These cases are sometimes referred to as “dual jurisdiction or cross-over cases.” *See* Janet Mason, [*Dual Jurisdiction or Cross-Over Cases in Juvenile Court*](#) (District Court Judges’ Summer Conference, June 23, 2010). If DSS files a petition alleging abuse or neglect, the court must appoint a guardian ad litem and, if the guardian ad litem is not an attorney, an attorney advocate for the juvenile. G.S. 7B-601. The court will also hold proceedings to adjudicate the allegations in the petition. *See* G.S. 7B-800 through G.S. 7B-808 (Hearing Procedures). Counsel for the juvenile in the delinquency case does not represent the juvenile in the proceedings against the juvenile’s parent. *See* G.S. 7B-601(a) (stating that the guardian ad litem and attorney advocate “have standing to represent the juvenile in all actions under” Subchapter I of the Juvenile Code). Counsel should therefore maintain contact with the guardian ad litem and attorney advocate in order to stay informed about the location of the juvenile, what services the juvenile is receiving, and other information that may bear on delinquency proceedings.

Advocating for nonsecure custody. Counsel for the juvenile might request nonsecure custody as an alternative to secure custody, particularly if there is a suitable relative with whom the juvenile would agree to live. The court also might be willing to place the juvenile in nonsecure custody with a responsible adult. Some juveniles, however, prefer to remain in secure custody rather than be in DSS placement. Counsel should discuss the alternatives with the juvenile before making a request to the court.

Initial order for nonsecure custody. A nonsecure custody order must be in writing and must direct the law enforcement officer or other authorized person to assume custody of the juvenile. G.S. 7B-1904. The juvenile should be in the officer's custody only for transportation to a DSS placement or to the person granted nonsecure custody by the court.

Review hearings. Hearings pursuant to a nonsecure custody order follow the procedures for a secure custody hearing except that the initial review hearing must be within seven calendar days of the court's placing the juvenile in nonsecure custody, a subsequent review hearing must be within seven business days, and further reviews must occur at intervals of no more than 30 calendar days. G.S. 7B-1906(b). The court must find that the juvenile meets the criteria for nonsecure custody under G.S. 7B-1903(a)(2). *See supra* § 8.6F, Secure Custody Hearing.

Continuation of nonsecure custody. The court must enter a written order finding that the juvenile meets one or more criteria for secure custody but that it is in the best interest of the juvenile to continue in nonsecure custody. G.S. 7B-1906(g). The findings of fact must set forth the evidence supporting the decision and the purposes of continuing nonsecure custody.

8.8 Custody Pending Appeal

If the juvenile appeals the case, the court must release the juvenile, with or without conditions, unless it 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. G.S. 7B-2605; *In re J.J., Jr.*, 216 N.C. App. 366, 376 (2011). The court of appeals has held that findings included in a dispositional order can support a custody order under G.S. 7B-2506. *In re R.A.S.*, 166 N.C. App. 515 (2004) (unpublished). However, a finding that no placement is available for the juvenile during the appeal is "clearly insufficient." *In re W.G.C.*, 166 N.C. App. 516 (2004) (unpublished).

If counsel gives oral notice of appeal from a dispositional order imposing a period of confinement, counsel should ask the court to release the juvenile pursuant to G.S. 7B-2605. If counsel gives written notice of appeal after the dispositional hearing, counsel should include a request for release under G.S. 7B-2605 in the notice of appeal or in a separate motion. A sample notice of appeal and a sample motion for release pending appeal are available on the [Juvenile Defender website](#).

For a discussion of appeals in juvenile delinquency cases, see *infra* Ch. 16, Appeals.

Appendix 8-1: Juvenile Detention Centers in North Carolina

State Detention Centers

ALEXANDER

928 NC HIGHWAY 16 S.

TAYLORSVILLE, NC 28681

Manager: KIMBERLY COWART

Telephone: 828.632.1141

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Tuesday and Thursday (6:30-7:30 p.m.)

Saturday-Sunday (1:30-3:00 p.m.)

Available to Visit: Parents, Grandparents, Legal Guardian

CUMBERLAND

1911 COLISEUM DRIVE

FAYETTEVILLE, NC 28306

Director: EUGENE S. HALLOCK

Telephone: 910.486.1399

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Monday (7:30-8:30 p.m.)

Saturday and Sunday (1:00-2:00 p.m.)

Available to Visit: Parents, Grandparents, Legal Guardian

CABARRUS

822 McWHORTER ROAD

CONCORD, NC 28027

Director: ANGELA WILSON

Telephone: 704.720.0807

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Wednesday (5:30-6:30 p.m.)

Saturday (12:30-3:30 p.m.) and Sunday (12:30-1:30 p.m.)

Available to Visit: Parents, Grandparents, Legal Guardian

NEW HANOVER

3830 JUVENILE CENTER ROAD

CASTLE HAYNE, NC 28429

Director: JIM SPEIGHT

Telephone: 910.675.0594

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Wednesday (6:30-7:30 p.m.)

Saturday and Sunday (1:00-3:30 p.m.)

Available to Visit: Parents, Grandparents, Legal Guardian

PITT

451 BELVOIR ROAD

GREENVILLE, NC 27834

Director: STANLEY MELVIN

Telephone: 252.830.6590

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Wednesdays (7:00-8:00 p.m.)

Saturday and Sunday (2:00-4:00 p.m.)

Available to Visit: Parents, Grandparents, Legal Guardian

WAKE

700 BEACON LAKE DRIVE

RALEIGH, NC 27610

Director: SHEILA L. DAVIS

Telephone: 919.212.3104

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Tuesday and Wednesday (5:30 -6:30 p.m.)

Saturday and Sunday (2:00-4:00 p.m.)

Available to Visit: Parents, Grandparents, Legal Guardian

County Detention Centers

DURHAM COUNTY YOUTH HOME

2432 BROAD STREET

DURHAM, NC 27704

Director: ANGELA NUNN

Telephone: 919.560.0840

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Wednesday, Saturday, and Sunday (6:00-8:00 p.m.)

Available to Visit: Parents and any other visitor who is 18-years old or older and approved by the juvenile court counselor

GUILFORD COUNTY

15 LOCKHEED COURT

GREENSBORO, NC 27409

Director: DOUG LOGAN

Telephone: 336.641.2600

Attorney Visiting Hours: Anytime (call first)

Regular Visiting Hours: Wednesday (5:30-8:00 p.m.)

Saturday (10:00-12:30 p.m.)

Available to Visit: Parents, Grandparents, Other Relatives (21-years old or older), Legal Guardian