Juvenile Laws and Procedures

BLET: 11F

TITLE: JUVENILE LAWS AND PROCEDURES

Lesson Purpose: To acquaint students with specific responsibilities for line officers in juvenile matters.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives in accordance with information received during the instructional period:

1. Explain the concept of the juvenile court as it relates to the law enforcement officer's role in the community.

2. Describe the laws that apply to legally interviewing a juvenile.

3. Explain the laws contributing to the delinquency of and neglecting juveniles.

4. Identify and describe necessary steps to process different categories or status of youth to include:
   a. Delinquent juvenile
   b. Undisciplined juvenile
   c. Interstate Compact
   d. Petition by listing what it must contain

5. Explain the law and procedures for obtaining nontestimonial identification orders for juvenile suspects.

6. Describe the services provided by the intake counselor as contrasted with the law enforcement role.

7. Describe the officer's responsibility:
   a) For processing abused juveniles.
   b) For processing neglected juveniles.
   c) For working as a team with protective services professionals.
8. Describe the setting and procedure for holding conferences with juveniles and their parents.

9. Identify the criteria needed for obtaining secure and nonsecure custody orders.

Hours: Eight (8)

Instructional Method: Lecture/Practical Exercise

Materials Required: Juvenile Rights Cards

Training Aids: N.C. General Statutes: Chapter 7B, 14, 15A, 110, 122
Handouts
VCR/Monitor (Optional)
Video: Through the Eyes of a Child, Intermedia, Inc. (to order, call 1-800-553-8336) (Optional)


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1. Because of an officer’s regular interaction with juveniles, the instructor must be knowledgeable in juvenile law, procedures, developmental theories, and the dynamics of child abuse and neglect.

2. Instructors may wish to have a child protective service worker and a juvenile court counselor explain their specific responsibilities to students. The goal of an integrated juvenile justice system should be promoted.

3. Instructors are required to obtain Juvenile Rights cards. They may obtain these from the Legal Center of the North Carolina Justice Academy (910-525-4151).

4. AOC forms can be obtained from the following website: www.nccourts.org.

5. Section III directs instructors to ask the following questions. They are designed for students to solve in small groups.

   A. **Neglect**

   You respond on a reported case of 2 young children home alone. Upon arrival you find a 7-year-old child and a 3-year-old child home alone. What do you do?

   (1) Speak with the children. Do not show any disapproval and assess for any need for medical assistance and children’s mental capacity.

   (2) Check the house. Make sure there are no other children in danger in the house.

   (3) Be observant to any possible hazards as you check the house. Examples: matches, open flames, children were locked in the house, is there a phone, or dangerous chemicals available to children.

   (4) Ask children who was looking after them. Try to locate responsible guardian.

   (5) Contact DSS and stand by for them.

   (6) Document events in report.
(7) Work with DSS on investigation and possible criminal charges.

B. Abuse

You respond to a school and a guidance counselor advises you that an eighth grader, age 13, has told her he/she is afraid of his/her father because he beats him/her. You are told the child has bruising on the back and legs. What do you do?

Remember: When a child is in school, the school must act to protect the safety of the child.

(1) Ask the counselor about the child; does the child have a behavior problem, are they credible, what do they know about the family. Have they any contact with the family. Do other children in school have any information.

(2) Ask to speak to the child. Keep some school personnel, guidance counselor, assistant principal, or principal with you while speaking with the child. Ask the child what has happened. Ask to see injuries, but do not examine any private areas or areas the child would be uncomfortable showing you. You may want assistance from a school nurse if available. Remember you are not a doctor.

(3) Contact DSS.

(4) Photographs may be required.

(5) Assist DSS upon their arrival.

(6) Document investigation in report.

(7) Work with DSS on recommendation of possible criminal charges.

(8) You could be asked to assist with a custody order.

Note: Some departments require this investigation be handled by a juvenile investigator.

C. Nontestimonial Identification Order

You investigate a housebreaking and larceny. As a result of your investigation, you find the point of entry is a ground floor, back
bedroom window, which was broken and fingerprints were found. A video game system, gun and cash were stolen. As you further your investigation, several children in the neighborhood tell you that a 15-year-old boy, named John, had bragged about doing this. You speak with John and his parents in a noncustodial interview in his house. John denies this crime, but his parents tell you he just came home with a video system just like the one reported stolen. John refuses to tell you where he got it. There is no serial number, so you are not completely sure if it is the same system. You have exhausted all investigative leads except for comparing fingerprints. What do you do?

Remember: John, John’s parents, or John’s legal counsel cannot give you permission to obtain John's fingerprints for comparison.

(1) You want a nontestimonial identification order (NTO).

(2) You must consult with the assistant district attorney or the district attorney who must then make an application for the order to the District or Superior Court. Once the order is approved and issued, it must be served. After the suspect has complied with the order and the prints have been obtained, the comparison can be made to the prints on the window.

(3) If the prints match, hold as evidence, pending court action.

(4) If the prints do not match and no court action is pending, destroy the juvenile’s prints only.

Remember: You need reasonable grounds to obtain fingerprints, but if you need to obtain a blood sample, you must have probable cause. Probable cause for blood must also use a nontestimonial proceeding.

D. Interview and Interrogation

You are on routine patrol and you observe a stolen car occupied by two teenage males. You stop the vehicle, at which point both subjects run from you. After a short foot chase, both subjects are in custody. You would like to interview both subjects and you learn one is 15 years old and the other is 13 years old. What do you do?

Remember: The rules for custodial interviews of juveniles are different from adults.

(1) Juveniles must also have their Miranda rights read to them.
(2) The 15-year-old juvenile has the right to have his parent, guardian or custodian present, on top of the other rights. The 15-year-old can waive this right.

(3) The 13-year-old has the right to have his parent, guardian or custodian present and he cannot waive this right. Do not interview any person less that 14 without a parent, guardian, custodian or attorney present.

Remember: A parent, guardian or custodian cannot waive a child’s right for them.

E. Other Sample Questions

(1) **Question:** Officer Smith sees juvenile (age 14) assault another juvenile at a football game. It is 10:30 p.m. on Friday night. Juvenile is carrying a concealed knife. What do you do?

**Answer:** See 7B-1900(1) Taking juvenile into temporary custody - if grounds exist to arrest an adult in identical circumstances under 15A-401(b).

7B-1901 Duties of person taking juvenile into custody.

7B-1903(b)(2) Criteria for secure or nonsecure custody when juvenile is charged with misdemeanor at least one element of which is assault on a person and juvenile is a danger to persons.

If you have knowledge of danger - then explain to court counselor.

(2) **Question:** Officer Jones is called to Revco drugs where manager is holding juvenile (age 15) shoplifter and cannot locate mother. What do you do?

**Answer:** See 15A-401(b)

7B-1900(1) Taking into temporary custody

7B-1901 Duties of person taking temporary custody
(3) **Question:** Officer Lane takes larceny report. Suspect believed to be juvenile (age 10) next door. What do you do?

**Answer:** See 7B-2101 Applies only if in custody More than 6 and less than 16

(4) **Question:** Officer Johnson discovers runaway juvenile (age 15) from his city/next city/next county/next state. What do you do?

**Answer:** See 7B-1903(a)(1) In state 7B-2804 Out of state Criteria for secure/nonsecure custody

(5) **Question:** Officer Bessick discovers 13-year-old “cutting school.” What do you do?

**Answer:** See 7B-1901(a)(2) Duties - temporary custody

(6) **Question:** Officer Lyons discovers 7-year-old outside of housing project at 4 a.m. What do you do?

**Answer:** See 7B-301 and 302 Duty to report 7B-101 (9) Definitions and (15)

(7) **Question:** Officer Smith responds to domestic disturbance involving juvenile (age 14) and his/her mother. Mother says, “Take him to jail, I can’t do anything with him!” What do you do?

**Answer:** See 7B-1900(2) Undisciplined 7B-1901 Duties of temporary custody

(8) **Question:** Officer Davie responds to home to investigate possible child abuse/neglect. No one will answer the door. Officer hears very young child crying inside. What do you do?

**Answer:** See Statute on Urgent Necessity; also consider 14-318 Exposing a child under 8 without proper supervision to danger of fire when locked or confined in dwelling, building or enclosure. Class 1 misdemeanor.
(9) **Question:** Officer Ayers has investigative reports and memoranda concerning juvenile (age 15) as possible sex offender. Detective from neighboring county wishes to obtain copy of those reports for local investigative purposes. What do you do?

**Answer:** See 7B-3001(b)(5) Release of records

(10) **Question:** Parent requests officers to assist in returning runaway 17-year-old daughter from boyfriend's home. What do you do?

**Answer:** See 7B-1501(27) Undisciplined
- 7B-1901 Duties
- 7B-1902 Secure/nonsecure custody

(11) **Question:** Parent reports that 16-year-old daughter did not come home from her after school job. She is four hours overdue. What do you do?

**Answer:** See Same as above - enter her into NCIC

(12) **Question:** DSS contacts your police department and requests assistance in determining whether a juvenile (age 13) has been neglected or abused. What do you do?

**Answer:** See 7B-302(e) Investigation by DSS director

(13) **Question:** Wife complains to Officer Timmons that husband has snatched child and is planning to leave the state. What do you do?

**Answer:** See If no custody order - have equal rights to the child

6. To promote and facilitate law enforcement professionalism, three (3) ethical dilemmas are listed below for classroom discussion. At their discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture instructors should “set the stage” for the dilemma prior to taking a break. Instructors are encouraged to develop additional dilemmas as needed.
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a) Upon taking a juvenile into custody, your partner advises her of her juvenile rights. After doing so, your partner begins to ask questions of the juvenile without her parents being present. What will you do?

b) After taking a juvenile into custody you snap a photo and take fingerprints as part of the booking process. After finishing the processing you realize you have turned in cards and photos you obtained without a court order. What will you do?

c) While on patrol late at night, you find a teenager sleeping behind a building. After interviewing the individual, you discover that she has run away from home because her stepfather physically abuses her. She begs you to not tell her parents where she is. What will you do?
I. Introduction

NOTE: Show slide, "Juvenile Laws and Procedures."

A. Opening Statement

Over 23,000 juveniles are arrested each year in North Carolina. All crimes committed by juveniles are serious. A juvenile's first criminal offense may be their only crime if we can handle them according to law and while using good judgment.

During this class, sections of the juvenile code that pertain to law enforcement officers will be reviewed, such as: definitions contained in the code, roles of law enforcement officers, and taking temporary custody of juveniles. Handling and counseling procedures involving delinquent, undisciplined, neglected, and abused children will also be reviewed.

B. Training Objectives

NOTE: Show slide, "Training Objectives."

C. Reasons

Law enforcement officers receive calls in which they find that a child is neglected, dependent or abused. An understanding of the procedures which must be followed, such as whom to contact, what agencies should be involved, and how to handle the investigation, is vital to the safety and health of children in this state. The child victim because of his vulnerability is best served by a team effort of all agencies charged with his protection. Although in separate agencies, cooperation among knowledgeable and dedicated professionals ensures that children in this state will be protected.

Handling the juvenile offender is different in purpose, philosophy, and procedure. The juvenile justice system is separate from the adult system, requiring officers to know and follow unique rules and procedures applicable to juveniles. It is essential that officers understand and conform to the objectives that the juvenile justice system seeks to achieve. With the knowledge gained through the study of this section, officers should be able to deal legally and effectively with juveniles.
II. Body

A. Abused, Neglected and Dependent Juveniles

1. Definitions (G.S. 7B-101)

   a) Abused juvenile: Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

      NOTE: Show slide, "Abused."

      (1) Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means.

      (2) Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.

      (3) Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile:

         (a) First degree rape, as provided in G.S. 14-27.2

         (b) Second degree rape, as provided in G.S. 14-27.3

         (c) First degree sexual offense, as provided in G.S. 14-27.4

         (d) Second degree sexual offense, as provided in G.S. 14-27.5

         (e) Sexual act by a custodian, as provided in G.S. 14-27.7

         (f) Crime against nature, as provided in G.S. 14-177

         (g) Incest, as provided in G.S. 14-178 and 14-179
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(h) Preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5

(i) Employing or permitting the juvenile to assist in a violation of the obscenity laws, as provided in G.S. 14-190.6

(j) Dissemination of obscene material to the juvenile, as provided in G.S. 14-190.7 and G.S. 14-190.8

(k) Displaying or disseminating material harmful to the juvenile, as provided in G.S. 14-190.14 and 14-190.15

(l) First and second degree sexual exploitation of the juvenile, as provided in G.S. 14-190.16 and G.S. 14-190.17

(m) Promoting the prostitution of the juveniles, as provided in G.S. 14-190.18

(n) Taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties

(4) Creates or allows to be created serious emotional damage to the juvenile. Such damage is evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others.

(5) Encourages, directs, or approves of delinquent acts involving moral turpitude (acts which evidence a depraved mind or disregard for acceptable societal standards) committed by the juvenile. Such acts have been held to include fraud, larceny, prostitution, and perjury.

Examples of child abuse: incest, broken bones, burns, bites, bruises, cuts, severe anxiety, rapid weight gain (incest), etc.
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b) Aggravated circumstances: Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

c) Caretaker: Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by a Department of Health and Human Services. “Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider.

d) Clerk: Any clerk of superior court, acting clerk, or assistant or deputy clerk.

e) Community-based program: A program providing non-residential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

f) Court: The district court division of the General Court of Justice.

g) Custodian: The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.
h) **Dependent juvenile:** A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

i) **Director:** The director of the county department of social services in the county where the juvenile resides or is found, or the director’s representative as authorized in G.S. 108A-14.

j) **Intake:** The process of screening and evaluating a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

**Juvenile:** A person who has not reached their eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

**Juvenile Court Counselor:** A person responsible for intake services to juveniles under the supervision of the chief court counselor.

k) **Neglected juvenile:** A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

For purposes of determining a juvenile's neglected status, the statute allows for consideration of whether the juvenile lives in a home where another juvenile has died from abuse or neglect or a home where another juvenile has been subjected to sexual abuse or severe physical abuse by an adult who regularly lives in the home.
Examples of neglect: Parents impaired by drugs or alcohol and no responsible person arranged to supervise children; living conditions indicate a lack of sanitary facilities, lack of heat, exposed wiring, filthy conditions, conditions injurious to the health; malnourishment; ill clothed; lack of medical care; refusal of medical care; unattended children. It is probably neglect if the child is 11 years of age or less. Even if a child is older than 11 it may still be considered neglect if child is not of normal intelligence.

l) **Petitioner**: The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

m) **Prosecutor**: The district attorney or assistant district attorney.

n) **Quantum of Proof**: The allegations in a petition alleging abuse, neglect, or dependency shall be proved by clear and convincing evidence.

o) **Reasonable efforts**: The diligent use of preventive or reunification services by a department of social services when a juvenile’s remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

p) **Safe home**: A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

q) **Shelter care**: The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

2. Juvenile court jurisdiction (G.S. 7B-200)

**NOTE**: Show slide, "Court Jurisdiction."
The court has exclusive, original jurisdiction over any case when a juvenile is alleged to be abused, neglected, or dependent. The court also has exclusive jurisdiction for the following proceedings:

a) Under the Interstate Compact on the Placement of Children (Article 38).

b) Involving judicial consent for emergency surgical or medical treatment for a juvenile when the parent, guardian, custodian, or other person has refused to consent to treatment.

c) For emancipation.

d) To terminate parental rights.

e) To review placement of juvenile in foster care when there is an agreement between parents, guardian, or custodian and social services.

f) In which a person is alleged to have obstructed or interfered with an investigation.

g) Involving consent for an abortion for an unemancipated minor.

Juvenile court has jurisdiction over parent or guardian of a juvenile who has been adjudicated abused, neglected, or dependent, as long as they have been properly served with a summons (G.S. 7B-406). Jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

3. Retention of jurisdiction (G.S. 7B-201)

Once jurisdiction has been obtained, it will continue until one of the following conditions is met:

a) Until terminated by the court, or

b) Until the juvenile reaches 18 years of age, or

c) Until emancipation.
4. Conducting child abuse and neglect investigations

Three manuals which have been developed and are available in the office of each Chief, Sheriff, District Attorney and local Department of Social Services in North Carolina are:

*Child Sexual Abuse Guidelines: Recommendations for Professionals*, Department of Justice 1997. This manual is also available for downloading on the D.O.J. WEB site under citizens rights www. jus.state.nc.us/crsmain/csag/cover.htm


a) Law enforcement investigations

**NOTE: Show slide, "Investigations."**

1. Philosophy (G.S. 7B-300) - Identify the child at risk, prevent abuse or neglect, improve quality of child care and to preserve and stabilize family life. Prosecution of the parents is not one of the purposes as outlined in G.S. 7B-100. In incest or sex abuse cases prosecution should be considered in most situations. A LEO must report abuse to DSS and DSS will decide whether to file a petition. Once it has been reported you may wish to consult a prosecutor for advice in investigating this sexual crime against the child if it was committed by an adult.

2. Emergency (life threatening) or non-emergency investigations

(a) Provide necessary medical assistance.

(b) Notify the Department of Social Services immediately. This should become a team effort when social worker arrives.
(c) Notify juvenile investigator as directed by agency policy.

(d) Take child into custody if necessary (G.S. 7B-500).

(e) Crime scenes should be handled the same as any other--gather evidence, photograph injuries, and so forth.

(f) Conduct interviews.

(g) Answering complaints.

i) The initial approach should be made in an objective and professional manner.

ii) Explain to complainant that the health and safety of the child is being considered.

iii) Show concern and sympathy.

iv) When there is refusal by a parent to enter, probable cause is needed that there is a serious crime being committed. Under common law the home may be entered in order to save life or prevent serious bodily harm. If at any time cooperation is denied by a parent, caretaker, or custodian, you may NOT enter the home unless you have:

- An arrest warrant if the subject resides in the home, or

- A search warrant or reasonable suspicion exists that you need to make a warrantless entry, under
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the authority of 15A-285 to save a life or prevent serious bodily injury.

- Neighbors and others may have to be interviewed to gain this probable cause. Many times there is not a complainant to interview. Once probable cause is established, then the Department of Social Services should obtain a nonsecure custody order and take custody of the child.

Note: In order to have a complete picture about a child and/or family, it is essential that agencies share their expertise, knowledge, and information. Under G.S. 7B-3100 agencies are permitted to share relevant information about juveniles who are abused, delinquent, neglected, dependent, and/or undisciplined. The information which is shared is confidential in that it should be withheld from public inspection. Almost all information can be shared except mental health information on substance abuse. The information which is shared is to be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile. All information must be released in accordance with the provisions of the Family Educational and Privacy Rights Act.

v) Interference with investigation (G.S. 7B-303)

If a person obstructs or interferes with an investigation, the Director is authorized to file a petition to
request an order from the Court directing a named person to cease the obstruction or interference. The petition must specify the conduct which is alleged to constitute the obstruction and must be verified. (Please see handout “Obstruction and Interference” for examples.)

(3) Upon completing the investigation, facts should be discussed with the case worker keeping in mind what is best for the child.

If the decision is to arrest the perpetrators, the law enforcement officer will secure an order for arrest. If the decision is to remove the child, the social worker will obtain the petition and nonsecure order and the officer will serve those along with a civil summons.

b) Duties and powers of agencies and individuals involved in child neglect, dependency and abuse cases

(1) Protective Services: (G.S.7B-300) Each county director of Department of Social Services shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

(2) Duty to Report (G.S.7B-301543)

Every person has a legal duty to report facts which lead the person to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment. Any person or institution who has cause to suspect any of these circumstances to exist must report the case to the Director of the Department of Social Services (DSS), intake services of DSS, in the county where the juvenile resides or is found.

Such a report may be made orally, by telephone, or in writing, and shall include (where known) information regarding the juvenile's name, age, address, and current whereabouts; his parents’
(or guardian's or caretaker's) name and address; the names and ages of other juveniles in the home; the nature and extent of the suspected injury or condition; and any other relevant information which would facilitate DSS response. The reporting party should give his name, address, and telephone number; however, refusal to provide the information will not preclude DSS investigation.

Where a report is received of child sexual abuse in a day care facility or home, the DSS Director must notify the State Bureau of Investigation (SBI) with 24 hours or on the next work day. If, during the course of any other investigation of alleged abuse as cited above, it is discovered that child sexual abuse may have occurred in a day care facility, then DSS must immediately notify the SBI, which may then form a task force to investigate the case.

The duty to report applies to all persons. With one exception, no privileged relationship, such as physician/patient or attorney/client, excuses a failure to report suspected abuse, neglect, or dependency, even if the knowledge is acquired in an official professional capacity. It is only in a case wherein an attorney acquires such knowledge from his client during representation in the abuse, neglect, or dependency case that grounds exist not to report the suspected condition.

(3) Investigation by Department of Social Services (G.S. 7B-302)

When a report is received, the Director of DSS (Director) must make a prompt and thorough investigation to ascertain the facts, the extent of abuse or neglect, and the risk of harm to the juvenile, in order to determine whether to provide protective services or file a petition. The Director has a number of options, which include immediate removal of the juvenile from the home, arrangement for protective services in the
home, and filing of a petition in District Court. Protective services workers are authorized to assume temporary custody of an abused or neglected juvenile where warranted.

Within five working days after receipt of a report, the Director must give written notice to the person making the report regarding whether the report was accepted for investigation and whether the report was referred to a law enforcement agency.

Within five working days after completion of a protective services investigation, the Director must give subsequent written notice to the person making the report as to whether there is a finding of abuse, neglect, or dependency and what action, if any, DSS has taken. Any reporting person who is dissatisfied with DSS decisions and actions may request a review of the case by the District Attorney. See 7B-305 and 306.

(4) Law enforcement assistance (G.S. 7B-302)

In conducting investigations, the Director may consult with state or local law enforcement officers. Officers are required to assist in the investigation and evaluation of the seriousness of any report upon request of the Director.

The Director (or his representative) is authorized to make written demand for any information or reports, whether or not confidential, which may be relevant to the protective services case. Any public or private agency or individual must provide access to such information and reports upon the Director's request, unless the information is protected by attorney-client privilege or otherwise exempt from disclosure by federal law.

If a law enforcement agency believes that release of the information will jeopardize the state's right to prosecute or a defendant's right to a fair
trial or will undermine an ongoing or future investigation, the agency may seek an order from the court to prevent disclosure of the information. Such actions are to be given immediate priority on the trial and appellate court dockets. Most communities use the multi-disciplinary team approach in dealing with abuse, neglect, dependent cases as well as cases involving the death of a child.

Note: Under 14-322.3 when a parent abandons an infant less than seven days of age by voluntarily delivering the infant to, without expressing an intent to return for the infant, a law enforcement officer who is on duty or at a police station or sheriff's department, emergency medical service worker who is on duty or at a fire or emergency medical services station as provided under 7B-500(b) or by voluntarily delivering an infant under seven days of age to any adult and that parent does not express an intent to return for the infant as provided under 7B-500(d), that parent cannot be prosecuted under 14-322 or 14-322.1. When an infant is taken into temporary custody under 7B-500(b) or (d) that individual shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a local law enforcement agency. Anyone who takes an infant into temporary custody under section 7B-500(b) or (d) may ask about the parents' identities and relevant medical history but must also tell the parent that there is no requirement to provide information.

(5) Duty of Director/Investigation by local law enforcement/District Attorney (G.S. 7B-307)

The Director of the Department of Social Services (Director) is required to make an immediate oral report and a subsequent written report to the District Attorney and the appropriate local law enforcement agency if he (the Director) finds evidence that a juvenile may
have been abused (according to the Juvenile Code definition) within 48 hours of receiving the report of abuse.

The law enforcement agency must immediately initiate and coordinate a criminal investigation with the DSS investigation. This investigation must be initiated no later than 48 hours after receipt of the information from the Director.

The District Attorney shall make a decision whether to prosecute after completion of the investigation.

In cases wherein the Director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the procedure to be followed is the same as in cases of alleged abuse (discussed directly above).

If the Director receives a report that a juvenile has been abused or neglected in a day care facility or home, the Director must notify the Department of Health and Human Resources (DHR), the Division of Child Development, within 24 hours or on the next working day of receipt of the report. In cases of alleged child sexual abuse in day care facilities or homes, the Director must also notify the State Bureau of Investigation.

(6) Authority of medical professional (G.S. 7B-308)

Any physician or administrator of a hospital, clinic, or other medical facility shall have the right, when authorized by the chief district judge, to retain physical custody of the juvenile who has been abused and should remain for medical treatment. The time limit is 12 hours which gives the Department of Social Services' social worker time to obtain a nonsecure order.
(7) Immunity for reporting and cooperating persons (G.S. 7B-309)

Any person who makes a report pursuant to the statute, cooperates with DSS in a protective services inquiry or investigation, or testifies in any judicial proceeding resulting from such investigation is immune from civil or criminal liability that might otherwise be imposed, provided that the person was acting in good faith.

5. Criminal statutes

NOTE: Show slide, "Criminal Statutes."

a) Felony child abuse (G.S. 14-318.4)

A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury to the child or who intentionally commits an assault upon the child which results in any serious physical injury is guilty of a Class E felony, except as provided in (a3) of the statute.

Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and a Class E felony.

Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony.
“**Serious bodily injury**" is defined 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.

b) Misdemeanor child abuse (G.S. 14-318.2)

Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of a Class 1 misdemeanor.

c) Indecent liberties between children (G.S. 14-202.2)

A person who is under the age of 16 years is guilty of taking indecent liberties with children if the person either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire. Violation of this statute is a Class 1 misdemeanor. Note that these will almost always be delinquency cases.

d) Contributing to delinquency and neglect by parents and others (G.S. 14-316.1)

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile...
within the jurisdiction of the court to be in a place or condition or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected is guilty of a Class 1 misdemeanor.

The same definitions which are found in G.S. 7B-101 are applicable in making a determination of whether a juvenile is delinquent, undisciplined, abused, or neglected.

The statute requires that the juvenile fall within the age limits specified in the provisions governing jurisdiction (G.S. 7B-200), so that the Court has jurisdiction (regardless of whether it chooses to exercise such jurisdiction in a separate proceeding). The age of the juvenile either at the time of the alleged offense or when the condition causing the juvenile to be delinquent, neglected, abused, or undisciplined governs, and must be considered when making charging decisions.

There is no minimum age for juveniles alleged to be abused or neglected. For juveniles alleged to be delinquent or undisciplined, the minimum age is six years.

Juveniles alleged to be abused or neglected must be less than eighteen years of age for this statute to apply. Juveniles alleged to be delinquent must be less than sixteen years of age and at least six years old for this statute to apply. Jurisdiction for juveniles alleged to be undisciplined has been extended to include sixteen and seventeen year olds.

It is not necessary for the juvenile to be adjudicated, delinquent, dependent, abused, neglected or undisciplined in order for a person to be found guilty of a violation. The evidence must support a finding that the juvenile could have been adjudicated for a conviction to stand.

e) Taking indecent liberties with a student (G.S.14-202.4)

“Indecent liberties” means willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying
sexual desire OR willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student. (This does not include vaginal intercourse or a sexual act as defined under G.S. 14-27.1 such as cunnilingus, fellatio, analingus, or anal intercourse. Sexual act also means penetration, however slight, by any object into the genital or anal opening.)

If the defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the victim and defendant were present together in the same school (a school at which the student is enrolled and the school personnel is employed or volunteers) but before the victim ceases to be a student, the defendant is guilty of a Class I felony.

If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, or coach, and who is less than four years older than the victim, takes indecent liberties with a student, the defendant is guilty of a Class A1 misdemeanor.

f) Intercourse and sexual offenses with certain victims (G.S. 14-27.7)

If a defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before victim ceases to be a student, the defendant is guilty of a Class G felony.

A defendant who is school personnel, other than a teacher, school administrator, student teacher, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.
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g) Weapons offenses

(1) Selling or giving weapons to minors prohibited (G.S. 14-315)

(2) Firearms must be stored to protect minors (G.S. 14-315.1)

(3) Warning upon sale or transfer of firearm to protect minor (G.S. 14-315.2)

(4) Permitting young children to use dangerous firearms (G.S. 14-316)

(5) Weapons on school grounds/educational property (G.S. 14-269.2)

(6) Possession of handguns by minors prohibited (G.S. 14-269.7)

h) Miscellaneous offenses

(1) Sale or purchase of tobacco products to persons less than eighteen years of age (G.S. 14-313(a)) - Sale of tobacco products to person under the age of eighteen is prohibited. As amended, this section requires those engaged in the sale of tobacco products to demand photographic identification of any prospective purchaser whom the seller has reasonable grounds to believe is under the age of eighteen. This section also restricts the purchase of tobacco products by those under the age of eighteen and restricts sale of tobacco products through vending machines.

(2) Permitting minors to enter bar rooms or billiard rooms (G.S. 14-317)

(3) See new drug offenses - sales to minors or using minors to sell drugs

(4) Exposing children to fire (G.S. 14-318)
(5) Discarding or abandoning iceboxes and other specified containers; necessary precautions (G.S. 14-318.1)

(6) Failing to pay minors for doing certain work (G.S. 14-321)

6. Venue, pleadings, petitions (G.S. 7B-400 to 7B-407)

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent is brought by the Director of Social Services by a petition and summons filed in the clerk's office in the district where a juvenile resides or is present (G.S. 7B-400 to G.S. 7B-407). A decision not to file a petition is reviewable by the prosecutor on request (G.S. 7B-306).

The petition contains the name and last known address of the juvenile's parent/guardian/custodian and alleges the facts of neglect, abuse and/or dependency (G.S. 7B-402). The Sheriff's Office serves the petition and summons which does not authorize taking a child into custody

a) A summons is issued by the clerk at the time of the filing of a petition to the parent, guardian, custodian, or caretaker. The summons must be personally served upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing (G.S. 7B-406 and 407).

b) Emergency situation

Under G.S. 7B-404, if the clerk's office is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue the petition:

(1) When the director requests a petition alleging neglect, abuse, and dependency, or

(2) When the director requests a petition alleging obstruction of or interference with an investigation (G.S. 7B-303).

7. Temporary custody

NOTE: Show slide, "Temporary Custody."
Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. **Personal care and supervision means close, constant supervision by the law enforcement officer who took the child into temporary custody.** It does not mean that the juvenile can be placed in a room alone or given to someone else to care for and watch. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order (G.S. 7B-500). Law enforcement and the Department of Social Services may wish to operate as a team under these circumstances.

Under G.S. 7B-501, a person who takes a juvenile into custody without a court order must:

a) Notify the juvenile's parent, guardian, custodian or caretaker that juvenile has been taken into temporary custody.

b) Advise the parent, guardian, custodian or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody.

c) Release the juvenile to the parent, guardian, custodian or caretaker if the person has the juvenile in temporary custody decides that continued custody is unnecessary.

d) The person having temporary custody shall communicate with the Director of the Department of Social Services. If the decision is to file a petition, the Director must contact a district court judge or a person who has been delegated authority by the chief district court judge.

e) A juvenile cannot be held in temporary custody more than 12 hours (or more than 24 hours if any of the 12
hours falls on a Saturday, Sunday or legal holiday) unless:

(1) A petition or motion for review has been filed by the Director of the Department of Social Services, and

(2) An order for nonsecure custody has been entered by the court.

8. Nonsecure custody

NOTE: Show slide, "Nonsecure Custody."

Under G.S. 7B-503 when there is a nonsecure custody order, the court must first consider the release of the juvenile to the parent, relative, guardian, custodian or other responsible adult. If the court issues a nonsecure custody order, law enforcement serves the order and a Department of Social Services worker takes custody of the child. An order for nonsecure custody is made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

a) The juvenile has been abandoned, or

b) The juvenile has suffered physical injury or sexual abuse, or

c) The juvenile is exposed to substantial risk of physical injury or sexual abuse because the caretaker, parent, guardian, or custodian:

   (1) Has created conditions likely to cause injury or abuse, or

   (2) Has failed to provide, or is unable to provide adequate supervision or protection, or

   (3) The juvenile is in need of medical treatment to cure or to alleviate or to prevent suffering serious physical harm which may result in death or disfigurement or substantial impairment of bodily functions and the juvenile's parent, guardian, custodian or caretaker is unwilling or unable to provide or consent to the medical treatment.
e) The juvenile's parent, guardian, custodian, or caretaker consents to the nonsecure custody order, or

f) The juvenile is a runaway and consents to nonsecure custody.

A guardian ad litem (GAL) for the child is appointed after the abuse, neglect or dependency petition is filed. Law enforcement officers who are investigating these types of cases may need to consult with the GAL.

A nonsecure custody order (G.S. 7B-504) authorizes a law enforcement officer or other authorized person to assume custody and make a due return on the order. A copy of the order must be given to the juvenile's parent, guardian, custodian or caretaker.

9. Special statutes

North Carolina has several special statutes for parents and legal guardians of children. They include liability for damage caused by a minor, liability for shoplifting, larceny etc. Please see handout “Special Statutes for Parents and Legal Guardians" for detailed information. Also included in this handout are statutes which allow a judge to order the defendant to pay restitution, and to pay for the costs of counseling.

10. Child snatching by a parent

NOTE: Show slide, "Child Snatching."

a) In order for any type of action (civil or criminal) to be brought in cases wherein it is alleged that one parent has "snatched" or kidnapped his or her child, there must first be an enforceable and valid court order in place governing custody of the child. Until such an order is entered, either parent may take the child to any geographical location of the parent's choosing.

b) Law enforcement officers who respond to complaints from aggrieved parents should always determine whether any court orders exist which establish custody rights of the parents. This is easily accomplished by
asking the complaining parent what, if any, court action has taken place prior to the immediate incident of alleged child snatching. If no valid court orders exist, then the officer has no authority to force either spouse to comply with the wishes of the other in these situations. Officers should explain to the complaining parent that it will be necessary for the parent to seek the advice of a domestic attorney. Resolution of these issues cannot be handled by law enforcement officers, but must take place pursuant to the statutes and procedures governing domestic relations and child custody.

c) In cases wherein a complaining parent alleges that the snatching parent has violated an existing custody order, officers should not attempt to enforce such orders without further direction from the issuing court. The custody statutes provide a remedy and specify the process whereby the aggrieved parent can seek redress. An officer should never take a child away from one parent and give it to the other parent without explicit authority from the court.

d) In cases wherein it is alleged that any person has transported a child outside North Carolina with the intent to violate an existing custody order, then that person may be guilty of a violation of G.S. 14-320.1.

When any federal or state court has awarded custody of a child under the age of 16 years, then it shall be a felony for any person to take or transport (or cause to be taken or transported) the child from any point within the State to any point outside the limits of the State or to keep the child outside the limits of the State. Keeping a child outside the State limits in violation of a court order for a period in excess of 72 hours is prima facie evidence of the offender's intent to violate the custody order at the time he took the child from the State. (Prima facie evidence is evidence which, because of the fact of its existence, is presumed to be true unless the other party can show evidence to the contrary to overcome the presumption.)

Effective January 1, 1995, persons convicted of a violation of this statute shall be punished as Class I
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felons (applicable to offenses occurring on or after January 1, 1995).

e) In cases wherein local law enforcement officers wish to enlist the assistance of federal authorities, one must look to the United States Code to determine applicable procedure.

Title 18, Section 1073 of the United States Code (18 U.S.C. 1073), which addresses flight to avoid prosecution, was expressly declared to apply to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable State felony statutes (in North Carolina, the applicable statute is G.S. 14-320.1, cited above).

The Federal Bureau of Investigation (FBI) may provide assistance in cases of children abducted by a spouse where a State felony warrant is outstanding, there is sufficient evidence to show with reasonable certainty that the defendant has unlawfully fled the State to avoid prosecution, and the requesting State authorities (the District Attorney) are willing to extradite the defendant and prosecute him for violation of the State statute.

11. Missing children (G.S. 143B-495)

NOTE: Show slide, "Missing Children."

The North Carolina Center for Missing Persons in Raleigh is part of the North Carolina Department of Crime Control and Public Safety. The Center coordinates efforts to locate missing persons, particularly children. A toll free telephone number, 1-800-522-KIDS, is available for those seeking assistance. Also you can contact the National Center of Exploited and Missing Children at 1-800-843-5678 or www.icmec.missingkids.com.

Section 499.1 of Chapter 143B of the General Statues requires a local law enforcement agency receiving a missing person report from a parent, spouse, guardian, or legal custodian to immediately enter this report in the federal NCIC national missing persons file. The local law enforcement agency must also immediately notify all of its on-duty officers and initiate a
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statewide broadcast to other agencies to be on the lookout for the missing person. A copy of the missing person report must also be sent to the North Carolina Center for Missing Persons.

The North Carolina Center for Missing Persons recommends the following procedure upon receipt of a missing child report:

a) Complete the missing person report form (PIN IR-209) and advise parents to contact the N.C. Center for Missing Persons on the toll-free line, 1-800-522-KIDS (5437).

b) Determine if emergency measures are necessary if the missing child appears in danger or under a disability.

c) Make an immediate entry into DCI/NCIC files of missing persons, with a notation for disabled persons - EMD; on those disappearing involuntarily - EMI; on those disappearing under threatening circumstances - EME. All others under 18 years old should be entered as juveniles - EMJ.

d) A copy of the message should be directed to the N.C. Center for Missing Persons.

e) Missing persons who are located should be cleared out of DCI/NCIC and the N.C. Center for Missing Persons.

B. Undisciplined and Delinquent Juveniles

NOTE: Show slide, "Undisciplined and Delinquent."

1. Definitions (G.S. 7B-1501)

a) **Adjudication**: An adjudication of delinquency is not a conviction for the purpose of forfeiture of citizenship rights. An adjudicatory hearing of delinquency is to determine whether the allegations stated in the petition are true. The quantum of proof in a delinquency proceeding is beyond a reasonable doubt. An adjudication of undisciplined requires that the allegations be proven by clear and convincing evidence.

b) **Chief court counselor**: The person responsible for administration and supervision of juvenile intake,
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probation, and post-release supervision in each judicial
district, operating under the supervision of the
Department of Juvenile Justice and Delinquency
Prevention.

c) **Clerk:** Any clerk of superior court, acting clerk, or
assistant or deputy clerk.

d) **Community-based program:** A program providing
non-residential or residential treatment to a juvenile
under the jurisdiction of the juvenile court in the
community where the juvenile's family lives. A
community-based program may include specialized
foster care, family counseling, shelter care, and other
appropriate treatment.

e) **Court counselor:** A person responsible for probation
and post-release supervision to juveniles under the
supervision of the chief court counselor.

f) **Custodian:** The person or agency that has been
awarded legal custody of a juvenile by a court.

g) **Delinquent juvenile:** Any juvenile who, while less
than 16 years of age but at least 6 years of age, commits
a crime or infraction under State law or under an
ordinance of local government, including violation of the
motor vehicle laws.

h) **Department:** The Department of Juvenile Justice and
Delinquency Prevention (DJJDP).

i) **Detention:** The secure confinement of a juvenile
pursuant to a court order.

j) **Detention facility:** A facility approved to provide
secure confinement and care for juveniles. Detention
facilities include both State and locally administered
detention homes, centers, and facilities.

k) **Emancipated minor:** Any juvenile who is 16 or 17
years of age; who has been a resident for 6 months may
petition the court for a judicial decree of emancipation.
Emancipation has the legal effect of allowing the
juvenile to make contracts and conveyances, to sue and
be sued and to transact business as if an adult. The juvenile's parent, guardian, or custodian is relieved of all legal duties and obligations to the juvenile. The decree is irrevocable.

l) **Holdover facility:** A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

m) **House arrest:** A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

n) **Intake counselor:** A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

o) **Interstate Compact on Juveniles:** An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state. Contact the Interstate Compact Administrator in Raleigh.

p) **Judge:** Any district court judge.

q) **Juvenile:** Except as provided under the definition of delinquent juvenile and undisciplined juvenile, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

r) **Juvenile court:** Any district court exercising jurisdiction pursuant to this Chapter.
s) **Petitioner:** The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

t) **Post-release supervision:** The supervision of a juvenile who has been returned to the community after having been committed to DJJDP for placement in a youth development center.

u) **Probation:** The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

v) **Protective supervision:** The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

w) **Teen court program:** A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

x) **Youth Development Center (previously referred to as a training school):** A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department of Juvenile Justice and Delinquency Prevention.

y) **Undisciplined juvenile**

   (1) A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or
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(2) A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile’s parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

2) Victims and Witnesses
Employees of law enforcement agencies, district attorneys' offices, the judicial system, and the correctional system should make a reasonable effort to accomplish for victims and witnesses of crimes thirteen things listed in G.S. 15A-825, Fair Treatment for Certain Victims and Witnesses. A "victim" is defined as a person against whom there is probable cause to believe that a crime has been committed. A “witness is defined as a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not the an action or proceeding has been commenced. "Crime" is defined as a felony or serious misdemeanor as determined in the sole discretion of the district attorney and also includes felonies and serious misdemeanors committed by juveniles.

The Crime Victims' Rights Act does not appear to apply to delinquent acts committed by juveniles because the language of that act indicates it is concerned with adults (arrest, charge, etc.). (See section on Dealing with Victims and the Public.)

aa) Wilderness program: A rehabilitative residential treatment program in a rural or outdoor setting.

2. Jurisdiction over undisciplined juveniles (G.S. 7B-1600)

NOTE: Show slide, "Jurisdiction Over Undisciplined Juveniles."

The court has exclusive original jurisdiction over any case involving a juvenile who is alleged to be undisciplined. The age
at the time of the offense governs. A juvenile is undisciplined if he is less than 16 but more than 6 and is truant; or beyond control of his parents; or regularly disobedient or a runaway. The jurisdiction of the court extends to 16 and 17 year olds and includes all of the above behaviors except truancy.

Jurisdiction continues until:

a) Terminated by order of the court.

b) The juvenile reaches 18 years of age, or

c) The juvenile is emancipated.

The court has jurisdiction over the parent, guardian, or custodian of a juvenile if they have properly served with a summons pursuant to G.S. 7B-1805.

There are two parts to the definition of the undisciplined juvenile and both parts refer to a 24-hour period before a juvenile is considered a runaway. Previous law did not state a time period. Under the new code, a report may be taken prior to the end of the 24-hour period, but entry into the NCIC is in question. However, if the juvenile is regularly disobedient to and beyond the disciplinary control of the parent, the 24 hours for purposes of NCIC or report taking would not apply.

3. Conducting investigations involving juveniles

a) Undisciplined offenses

Truants - It may be best not to take a suspected truant into custody even though the law permits this as you have to release him to his parent. It would be less trouble just to return him to the principal. Usually when skipping school, juveniles can be convinced to be transported back to the school principal. The school officials can handle truancy problems when the child is returned. The principal should be asked if the officer can be of assistance. The removal of the truant from the street may help to prevent crimes.

b) Undisciplined juveniles - This means being out of the control of the parents on a regular basis. Officers would usually not wish to take this child into custody unless
there exists some extremely violent conditions. It may be necessary to take custody of the juvenile under these conditions, but he cannot be detained in a secure custody facility. When taken into temporary custody, a disposition must be made within 12 hours. During that time period he will calm down to the point where he may be returned to his parents. A group home may be available. If the child is a mental case, judicial hospitalization procedures would be appropriate.

c) Curfews

G.S. 153A-142 and 160A-198 allow a county or a city, by an appropriate ordinance, to impose a curfew on persons of any age less than 18.

NOTE: Students should be advised to check to see what, if any, ordinance has been enacted in their particular jurisdiction. The instructor should discuss an ordinance from a local jurisdiction with the class.

d) Runaway juveniles

NOTE: Show slide, "Runaway."

(1) Information should be taken and an investigation report made without any waiting period on juveniles.

(2) Gather the facts as in any investigation.

(3) Inform the complainant of the procedure to be followed in trying to locate their child.

(a) There is a 24-hour wait on runaways to place them in the National Crime Information Center (NCIC). If the child/juvenile can fit under the category of regularly disobedient and beyond the disciplinary control of the parent, the 24-hour wait does not apply.

(b) Check any possible locations as suggested by them.
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(c) Advise them a teletype (D.C.I.) will be sent to out-of-town locations to which they believe the child is headed.

(d) Advise them the child will be placed in the NCIC files. Explain to them about the NCIC.

(4) Advise complainant of the law on runaway juveniles

(a) If located in jurisdiction, he will be returned to them.

(b) If child refuses to return home, he could be placed in a group or runaway home, placed in custody of the Department of Social Services or confined in a detention facility.

(c) Sometimes, parents may refuse to take child, but by explaining the neglect laws and the fact they could be prosecuted for neglect, they may be persuaded to accept their responsibility. Parents must provide food, clothing, and shelter until age 18 under the neglect statute. They cannot refuse to provide for the child.

(d) Any officer in the country may take in custody under the Interstate Compact any juvenile they have reasonable information to believe is an escapee, absconder, or a runaway from his home state. These juveniles may be placed in a secure detention facility until their return.
(5) Runaways ages 16 and 17 (G.S. 110-44.1)

Note: Remember the definition for undisciplined juveniles has been expanded to cover 16 and 17 year olds. If the child is also regularly disobedient and beyond control of the parent, there is no 24-hour waiting period. Parents can request a petition as undisciplined for this age group.

A parent may file a complaint with the Civil District Court alleging that the defendant who is a child under the age of 18 has left home and refused to return and comply with the direction and control of the parent. This also applies to anyone who may harbor the child. Failure to comply with the court order shall be punishable as for contempt. Petition must be filed in jurisdiction where child is located. The location of the child must be known before complaint is filed. For children under 18 who leave North Carolina, the procedure provided in G.S. 7B-2804, Interstate Compact on Juveniles, is available.

4. Conducting parent-juvenile conferences

NOTE: Show slide, "Parent-Juvenile Conference."

NOTE: The Juvenile Code enacted in 1998 encourages the use of informal action as well as diversion for both undisciplined and delinquent juvenile offenders.

a) Counseling

(1) Definition: Process through which a trained counselor assists a person to develop abilities in resolving problems.

(2) Although law enforcement officers will not be counseling on a long-term basis, the communications with the juvenile and their parents may have a lasting effect. The needs of the child must be met and the assistance of the parents is necessary. Conducting the meeting in
b) Initial conference

(1) Most children who are taken into custody are released to their parent. Only a few will be or should be confined.

(2) The location of the initial meeting with the parent is the most important.

(a) An office is the best place. The atmosphere is controlled. It is more secure and less dangerous than the home. More privacy and fewer distractions such as TV, other children, animals or neighbors that could be in the home.

(b) The place of arrest is the second choice. This may not be appropriate in some situations.

(c) Occasionally, the child may be taken home. The parents may not have transportation or there may be some other good reason.

(d) Always try to reach parents by telephone even though the child states they are not at home. Even have another car check by the home to see if they can locate them.

(3) Procedure for the initial meeting

(a) Insist on privacy.

(b) Sit down, be relaxed, do not be in a hurry, explain the reason for having their child in custody, and the purpose of the meeting.

(c) Give the juvenile the opportunity to explain to his mother what he has done.
Fill in the facts that he omits. He most likely will tell the facts in a way that is most favorable for him. Parents must be convinced that the child committed the offense before they will take corrective measures.

(d) Confirm the information that the juvenile has given.

(e) Ask the parents if they are experiencing any problems with the child or if they have any information that would be helpful such as: any previous arrests, his emotional health, his school work, or any other information that helps you make your disposition.

(f) Diverting the child is an option. It may be good to delay telling the parents of this option. Some delay will cause anxiety on the part of the child and the parents. Explain to the parents that background information will be collected and they will be advised later of the disposition of the case. Background information may be obtained from the school principal, other officers, relatives, victim, law enforcement records, and any agency that has previously worked with the child.

(g) Criteria for diverting child from court. The law gives officers the authority to divert; however, the victim may not agree with the disposition and they may seek a petition from the intake counselor. Explain the procedure for obtaining the petition to them.

i) If the child continues to deny committing the offense, he should be sent to court.

ii) The age of the juvenile should be considered.
iii) The attitude of the child toward his parents, victim, and community should be considered. Is he remorseful? Arrogant? Disobedient to his parents? Out of their control? Who can help with this problem? Court? Some other agency?

iv) Attitude of parents. Are they concerned or unconcerned? Are they responsible people? Have they had so many problems with the child that they have given up on him?

v) Previous record of the juvenile.

vi) Nature of the offense. This may show some emotional problem of the child. This helps determine what agency may meet the needs of the child.

vii) Information from any referral source that has previously worked with the child.

viii) Advise parents the necessity of taking proper disciplinary steps that they think appropriate. If referred to any agency, explain the necessity of following through. A petition may be obtained if they refuse or later choose not to follow through with recommendations. The intake counselor has more restrictions in this area than the officer does.

ix) If referred to court, explain that the court intake counselor will be in contact with them.
x) Whenever the facts confirm that the juvenile has violated the law—whatever the disposition—an arrest record and juvenile referral should be made and maintained in the proper place in the department's records according to departmental rules.

5. Jurisdiction over delinquent juveniles (G.S. 7B-1601)

NOTE: Show slide, "Jurisdiction Over Delinquent Juveniles."

a) The court has exclusive original jurisdiction over any case involving a juvenile who is alleged to be delinquent. Jurisdiction continues until:

(1) Terminated by order of the court, or

(2) The juvenile reaches 18 years of age, unless special conditions for expanded jurisdiction apply.

b) If the delinquency proceedings cannot be concluded before the juvenile reaches 18, jurisdiction would be retained for the sole purpose of concluding a probable cause hearing and either:

(1) Transferring the case to superior court for trial as an adult, or

(2) Dismissing the petition.

c) When the court has not obtained jurisdiction over a juvenile before the juvenile reaches age 18 for a felony and any related misdemeanors allegedly committed on or after the juvenile's 13th birthday and prior to his 16th birthday the court retains jurisdiction for the sole purpose of conducting a probable cause hearing and either:

(1) Transferring the case to superior court for trial as an adult, or
(2) Dismissing the petition.

d) The court has jurisdiction over delinquent juveniles when they are in the custody of DJJDP and has jurisdiction over proceedings to determine whether a juvenile who is under the post-release supervision of the court counselor has violated the terms of the juvenile's post-release supervision.

e) The court has jurisdiction over persons 18 years of age or older who are under the extended jurisdiction of the juvenile court. Extended jurisdiction (G.S. 7B-1602) is when a juvenile is committed to the office for placement in a youth development center for an offense which if committed by an adult would be:

(1) First-degree murder (G.S. 14-17)
(2) First-degree rape (G.S. 14-272)
(3) First-degree sexual offense (G.S. 14-27.4)

Jurisdiction continues until terminated by court order or until terminated by court order or until the juvenile reaches age 21, whichever comes first.

f) Extended jurisdiction also applies if a juvenile commits an offense which if committed by an adult would be a:

(1) Class B1 felony
(2) Class B2 felony
(3) Class C Felony
(4) Class D Felony
(5) Class E Felony

The extended jurisdiction continues until terminated by order of the court or until the juvenile reaches age 19, whichever occurs first.

g) The court has jurisdiction over the following proceedings (G.S. 7B-1603)
1. Interstate compact on the placement of children.

2. Judicial consent to emergency surgery or medical treatment for a juvenile when the parent, guardian or custodian refuses to consent.

h) A juvenile, including a juvenile who is under the jurisdiction of the court, is subject to prosecution as an adult if:

   (1) He commits a criminal offense on or after the juvenile's 16th birthday, or

   (2) He is an emancipated juvenile, or

   (3) He commits an offense after he is transferred to and convicted in superior court. committed the offense before they will take corrective measures.

6. Screening of delinquency and undisciplined complaints by juvenile intake services

   a) **Intake Services:** (G.S. 7B-1700) The purpose of juvenile intake services is to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true; whether or not it’s within the jurisdiction of the juvenile court; whether or not the facts warrant court action; and whether or not assistance from community resources is needed. The intake counselor does not engage in investigation but can refer the complaint to law enforcement.

   b) **Nondivertible Offenses:** (G.S. 7B-1701) The intake counselor must authorize the complaint to be filed as a petition if reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

      NOTE: Show slide, "Nondivertible Offenses."

      (1) Murder

      (2) First or second degree rape
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(3) First or second degree sexual offense

(4) Arson

(5) Felony violations of Article 5, Chapter 90

(6) First-degree burglary

(7) Crime against nature

(8) Any felony involving the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon.

c) Evaluation of Complaint: (G.S. 7B-1702) The intake counselor determines whether a complaint should be filed as a petition, the juvenile diverted, or the case resolved without further action.

d) Complaint Evaluation Decision: (G.S. 7B-1703) The intake counselor has 15 days from receipt of the complaint with a possible 15 additional days of extension at the discretion of the chief court counselor. If the complaint is approved, it is transmitted to the clerk of superior court. If the intake counselor decides not to file a petition, the complainant must be notified immediately in writing with reasons for the decision as well as notice of the complainant's right to have the decision reviewed by the prosecutor. The complainant has five calendar days (G.S. 7B-1704) after receipt of the intake counselor's decision not to file the petition to request review by the prosecutor.

No later than 20 days after the complainant is notified, the prosecutor must review the intake counselor's decision. The prosecutor must then notify the complainant of his decision to affirm the intake counselor's decision or direct the filing of the petition. (G.S. 7B-1705)

e) Diversion plan/referral: (G.S. 7B-1706) Unless the offense is nond divertible, the intake counselor after finding legal sufficiency, may divert the juvenile to:
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(1) An appropriate public/private resource

(2) A restitution program

(3) Community service

(4) Victim/offender mediation

(5) Regimented physical training

(6) Counseling

(7) A teen court program (see handout “Teen Court Program and Diversion Plans”)

As part of the diversion plan, the intake court counselor may enter into a contract which explains the role of the intake counselor, the parents and the juvenile as well as the conditions to abide by. The contract cannot exceed 6 months. The parties must understand and agree that a juvenile's completion of the contract precludes filing a petition but violation of the contract may result in a petition.

7. Petition and summons by Juvenile Court Intake Services

a) The petition must contain the name, date of birth, address of the juvenile and the address of the juvenile's parent. It should contain facts which invoke jurisdiction as well as a statement asserting the facts which support every element of the offense. The petition and summons alleges an offense committed by a juvenile and a time to appear in court. The petition does not authorize taking physical custody of the juvenile.

NOTE: Distribute handouts, “Juvenile Petitions” and “Juvenile Contact Report.” Copies of these AOC forms (J-130, J-310, J-230) can be obtained from the following website: www.nccourts.org.

b) Filing the Petition: (G.S. 7B-1803) The intake counselor draws the petition after screening and evaluation. If the counselor is not available, the clerk of court assists the complainant in contacting the
c) **Action:** (G.S. 7B-1800) An action is commenced by filing a petition in the clerk's office or if the office is not open, a magistrate may draw, verify and accept the petition for filing at the intake counselor's request. The magistrate's authority is limited to emergency situation when a petition is required to obtain a secure or nonsecure custody order.

d) **Summons:** (G.S. 7B-1805) The summons and petition must be personally served on the parent, guardian or custodian and juvenile not less than 5 days before the hearing. The summons must contain the information required under G.S. 7B-1805.

e) **First Appearance:** A juvenile's first appearance for a felony must occur within 10 days or at the initial hearing required under G.S. 7B-1906 for secure or nonsecure custody.

8. **Temporary custody**

**NOTE:** Show slide, “Temporary Custody.”

a) Officers are authorized under G.S. 7B-1900 to take juveniles into temporary custody without court orders in certain circumstances. Temporary custody is the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. Personal care and supervision of a juvenile means immediate and proximate attendance by the officer exercising temporary custody.

(1) **Delinquent** - A law enforcement officer is authorized to take a juvenile into temporary custody without a court order if grounds exist for the arrest of an adult under identical circumstances under G.S. 15A-401(b), the statute which governs arrest (i.e., if you would have the requisite probable cause to make an arrest if the
case involved an adult, then you would be authorized to take a juvenile into temporary custody).

(2) **Undisciplined Juvenile** - A law enforcement officer is authorized to take a juvenile into temporary custody without a court order, as is a court counselor, if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.

(3) **Absconder** - A law enforcement officer is authorized to take a juvenile into temporary custody without a court order, as is a court counselor, Division of Youth Services worker, or member of the Black Mountain Rehab Center Security Force, if there are reasonable grounds to believe that the juvenile is an absconder from a youth development center or a detention facility.

b) An officer who attempts to take a juvenile into temporary custody is bound by the same restrictions as one who attempts to take an adult into custody under similar circumstances. An officer may use only that amount of force which is reasonably necessary to accomplish the intended purpose (i.e., to take temporary custody where authorized).

Deadly force cannot be used to prevent escape or effect custody of a juvenile when the juvenile presents no imminent threat of death or serious injury or to officers or third person.

See N.C.G.S. 15A-401(d), which governs use of force by law enforcement officers and "use of force" departmental policies.

c) **Duties of officers taking juveniles into temporary custody without court order (G.S. 7B-1901)**

A juvenile who is taken into temporary custody without a court order shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or local holiday, unless a petition
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has been filed by an intake counselor and an order for secure or nonsecure custody has been entered.

An officer who takes a juvenile into temporary custody without a court order, under one of the circumstances enumerated above, must proceed as follows:

(1) Notify the juvenile's parent, guardian, caretaker, or custodian that the juvenile has been taken into custody and advise the person of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent shall not be grounds to release the juvenile.

(2) Release the juvenile to his parent, guardian, or custodian if the officer decides that continued custody is unnecessary.

(3) If the juvenile is not released (as provided for in (2) above), the officer should communicate with an intake counselor, who shall make a determination for filing the petition and the need for continued custody.

(4) An officer who takes a juvenile into temporary custody after the juvenile has absconded from a youth development center or detention facility (as described above) must contact a judge and receive an order for secure custody, and transport the juvenile to the nearest secure custody facility. The officer should then contact the administrator of the youth development center or detention facility from which the juvenile absconded. It is the responsibility of the administrator to arrange for returning the juvenile to the facility.

9. Secure and nonsecure custody orders

NOTE: Show slide, "Nonsecure and Secure Custody Orders Criteria."
a) **Authority to issue custody orders:** (G.S. 7B-1902) Any district court judge may issue secure and nonsecure custody orders. The chief district court judge may delegate the court's authority to the chief court counselor or chief court counselor's counseling staff by administrative order filed in the office of the clerk of superior court. However, the chief district court judge cannot delegate the court's authority to detain or house juveniles in holdover facilities.

b) **Criteria for nonsecure custody:** (G.S. 7B-1903) When there is a request for nonsecure custody, the court must first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult. An order for nonsecure custody must only be made when there is a reasonable factual basis to believe the matters alleged in the petition are true and that:

1. The juvenile is a runaway and consents to nonsecure custody, or
2. The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interest of the juvenile that the juvenile be placed in a nonsecure placement.

c) **Criteria for secure custody:** When a secure custody order is requested, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense alleged in the petition and one of the following circumstances exists:

1. The juvenile is charged with a felony and it is demonstrated that the juvenile is a danger to property or persons.
2. The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person, or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.
(3) The juvenile who has been properly notified, has willfully failed to appear on a pending delinquency charge or on charges of violation of probationer post release supervision.

(4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.

(5) The juvenile is an absconder from:

(a) Any residential facility operated by DJJDP or any detention facility in this State, or

(b) Any comparable facility in another state.

(6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury.

(7) The juvenile is alleged to be undisciplined because he is a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody.

(8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice.

When a juvenile has been adjudicated delinquent, the court can order secure custody pending a dispositional hearing or pending placement in a youth development center.

The court may order secure custody for a juvenile who's alleged to have violated the conditions of probation or post-release supervision but only if alleged to have committed acts that damage property or injure persons.

If the criteria is met for secure custody, the court can enter an order directing an officer or other authorized
person to assume custody of the juvenile and take him
to the place designated in the order.

d) **Order for secure or nonsecure custody:** (G.S. 7B-1904)

The order shall be in writing and direct a law
enforcement officer to assume custody. The parent and
child must be given a copy. If the order is for secure
custody, copies of the custody order and petition must be
given to the detention facility.

A juvenile can be taken into secure custody based on a
D.C.I. message that a petition and custody order are on
file. Copies of the petition and order must be sent to the
detention facility within 72 hours.

e) **Place of secure or nonsecure custody:** (G.S. 7B-1905)

(1) Nonsecure custody

If a relative of the juvenile is not willing or able
to provide care/supervision of the juvenile, the
court may place the juvenile in a licensed foster
home or other authorized home; a facility
operated by a department of social services; or
any other home/facility approved by the court.

(2) Secure custody

A juvenile may be temporarily detained in an
approved detention facility separated from
adults. If no acceptable alternative placement is
available, a juvenile who has committed an A,
B1, B2, C, D, or E felony may be detained in
secure custody in a holdover facility for up to 72
hours.

f) **Secure or nonsecure custody hearings:** (G.S. 7B-1906)

No later than 5 calendar days after placing a juvenile in
secure custody or 7 calendar days in nonsecure custody,
a hearing must be held either on the merits or to
determine the need for further custody. If longer detention is desired, the state must, with clear and convincing evidence, prove to the judge that the juvenile should be kept in custody.

10. Law enforcement procedures in delinquency proceedings

NOTE: Show slide, "Law Enforcement Procedures."

a) Role of the law enforcement officer (G.S. 7B-2100)

A law enforcement officer who takes a juvenile into temporary custody should select the appropriate course of action to the situation, the needs of the juvenile, and the protection of the public safety.

The officer may:

(1) Release the juvenile with or without first counseling the juvenile;

(2) Release the juvenile to the juvenile's parent, guardian or custodian;

(3) Refer the juvenile to community resources;

(4) Seek a petition or

(5) Seek petition and request custody order.

b) Non-custodial interview guidelines

To increase the chances that the courts will view the interview as non-custodial, follow the suggestions below:

(1) Use "You are free to leave" rather than "You are not under arrest." Repeat this phrase frequently especially if you use accusatory statements.

(2) Where it appears applicable, offer the defendant a ride home.

(3) Avoid overly pointed, directly accusatory statements.
(4) Limit the number of officers present during the interview.

(5) Avoid visible weapons.

(6) Don't use an "interrogation room" setting. (Use a break room.)

(7) Don't perform any invasive procedures (finger printing, blood samples, hair samples, etc.) during this non-custodial interview.

(8) Do not over supervise the non-custodial suspect. Let him/her go to the bathroom alone, water fountain, etc.

(9) Document in your notes all facts that support non-custody.

(10) If the "non-custody" is challenged at a suppression hearing, the officers should encourage the District Attorney to insist on detailed "findings of fact," showing all the facts that support non-custody. (Must have this on record for Appeals Court.)

(11) If you are attempting to create a non-custodial setting, do not read *Miranda*.

c) Interrogation procedures  (G.S. 7B-2101)

**NOTE: Show slide, "Interrogations."**

A law enforcement officer who wishes to interrogate a juvenile must follow the governing statutory procedures.

(1) As with any case wherein an officer conducts custodial interrogation, the officer must properly advise the juvenile of his constitutional rights, as required by the United States Constitution, by giving *Miranda* warnings. In addition to the usual *Miranda* warnings, the interrogating officer must advise the juvenile of the additional right to have a parent, guardian, or custodian present during questioning.
Any juvenile in custody must be advised of the following prior to questioning:

(a) That you have the right to remain silent;

(b) That anything you say can and will be used against you.

(c) That you have the right to have a parent, guardian, or custodian present during questioning; and

(d) That you have the right to talk with a lawyer for advice before questioning and to have that lawyer with you during any questioning. If you are not represented by a lawyer, one will be appointed to represent you before any questioning if you wish.

NOTE: Pass out juvenile rights warning cards.

(2) The required warnings must be given whenever officers arrest (or otherwise take into custody) and wish to question a person who is 14, 15, 16, or 17 years old and who is not a member of the armed forces or emancipated by marriage or court order. The juvenile may waive his rights (i.e., choose not to invoke the protections guaranteed him via his rights) and make a statement without a parent, guardian, or custodian present.

(3) The required warnings must be given whenever officers take into custody and wish to question a person who is less than 14 years old. Any statement which the juvenile makes will be inadmissible in court unless the juvenile's parent, guardian, custodian, or attorney is present during the interview. Officers must advise the juvenile's parents, guardian, or custodian of the juvenile's rights if the juvenile's attorney is not present. The parent, guardian, or
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custodian may not waive the juvenile's rights on his behalf; only the juvenile can waive his rights.

(4) In order to obtain a valid waiver of a juvenile's rights, an interrogating officer must not only advise the juvenile of those rights, the officer must also be able to show that the juvenile understood his rights and voluntarily, knowingly, and intelligently waived his rights. Officers should be careful to explain each of the rights to a juvenile and should ensure that the juvenile understands the rights, and acknowledges that understanding.

(5) If the juvenile indicates in any manner and at any stage of the questioning that he does not wish to be questioned further, interrogating officers must honor the request and immediately cease the interrogation.

(6) A judge must find that the juvenile knowingly, willingly, and understandingly waived his rights and made the statement voluntarily. If such a finding is not made, then any statement made by the juvenile pursuant to the custodial interrogation may not be admitted in evidence. The court will consider all of the circumstances surrounding the statement when making its determination, including the interrogating officers' conduct before and during the interview, the juvenile's age and physical and mental condition (including any intoxication or influence of alcohol/drugs), the length of the interview, and the environment in which the interview took place (e.g., closed, locked door in small room in the police department).

(7) An officer who wishes to conduct a custodial interrogation of a juvenile should consider the following suggestions:

(a) Always use the printed card to advise of *Miranda* and juvenile rights and do it the same way every time.
(b) Use a written waiver of rights form. Read everything to the juvenile and have him read it back to you and initial each section, so that you will later be able to show that the juvenile understood and acknowledged his understanding of his rights.

(c) Keep meticulous notes regarding the interview. Note beginning and ending times, the interview environment, the juvenile's physical and apparent mental/emotional condition, the juvenile's answers to all of your questions (including questions regarding his background, DOB, family, address, and so on - the juvenile's ability to respond correctly and recognition of his circumstances will help to show his understanding), your conduct (including what you said), and the like.

(d) Allow the juvenile a certain degree of freedom, as circumstances permit. Let him go to the restroom, offer him a soda, let him talk to his mother--do what you can to keep the interview from taking place in an improperly coercive, "police-dominated atmosphere," *Miranda v. Arizona*, 384 U.S. 436 (1966).

(e) Exhibit patience. Always be professional and courteous, and treat every person with dignity and respect (even though he may not deserve or recognize it!). The judge who reviews your cases will appreciate your courtesy, and more importantly, will take it into consideration in his ruling on admissibility of the juvenile's statement.

Note: There has been some confusion in the North Carolina courts as to what is a custodial interview or a non-custodial interview. [See *State v. Green*, 500 SE.2d (N.C. App. 1998) and *State v. Jackson*, 497 SE 2d 409 (N.C. 1998)]. *State v. Buchanan* 353 N.C. 332 (April 6,
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2001) appears to have resolved the confusion by reversing some cases and clarifying other cases. The N.C. Supreme Court has decided that a person is in custody for Miranda purposes only when he has been formally arrested or deprived of his freedom of movement to the degree associated with a formal arrest.

d) Notification of parent and school (G.S. 15A-505)

NOTE: Show slide, "Notification of Parent and School."

A law enforcement officer who charges a minor (this includes 16 and 17 year olds) with a criminal offense must notify the minor's parent, or guardian of the charge, as soon as practicable, in person or by telephone.

If the minor is taken into custody, the law enforcement officer or his immediate superior (according to departmental policy), must notify a parent or guardian in writing that the minor is in custody within 24 hours of the minor's arrest.

If the parent or guardian of the minor cannot be found, then the officer or his immediate superior must notify the minor's next of kin of the minor's arrest as soon as practicable.

No notification by the officer is required for a minor who is either charged or in custody if:

(1) The minor is emancipated.

(2) The minor is not taken into custody and has been charged with a motor vehicle moving violation for which three or fewer points are assessed under N.C.G.S. 20-16(c), except an offense involving impaired driving, or

(3) The minor has been charged with a motor vehicle offense that is not a moving violation.

If a person is charged with a criminal offense which is a felony (except for those under Chapter 20), the officer
must notify the principal of any school the person attends. The notification must be made as soon as practicable but within 5 days either by telephone or in person.

If the person is taken into custody, the officer or his immediate supervisor must notify any school the person attends. The notification must be in writing and must be made within 5 days of the person’s arrest.

"School" means any public or private school in the State.

e) Fingerprints and photographs (G.S. 7B-2102)

NOTE: Show slide, "Fingerprints and Photographs."

(1) A law enforcement officer or agency must fingerprint and photograph a juvenile: (G.S. 7B-2102(a))

(a) Who was 10 years old or older, and (at the time of the offense)

(b) Who committed a nondivertible offense, and

(c) When a complaint has been prepared for filing as a petition, and

(d) The juvenile is in the physical custody of law enforcement or DJJDP.

(2) If a law enforcement agency does not take fingerprints or photographs of a juvenile under the above section or the prints have been destroyed, the officer must fingerprint and photograph a juvenile: (G.S. 7B-2102(b))

(a) Who has been adjudicated delinquent, and

(b) Who was 10 years old or older (at time of offense), and
(c) Who committed a felony.

(3) All fingerprints and photographs must be made in proper format for transfer to the S.B.I. and F.B.I. After a juvenile who is 10 years or older has been adjudicated delinquent of a felony, the fingerprints must be sent to the S.B.I. and placed in AFIS to be used for all investigative and comparison purposes. Other than this electronic file, fingerprints and photographs must be maintained separately from any juvenile record. They are not public record, must be withheld from inspection and are not eligible for expunction.

(4) If a juvenile is fingerprinted and photographed under G.S. 7B-2102(a) (physical custody), the custodian of records must destroy them at the earlier of the following:

(a) A petition is not filed within one year of the photographing or fingerprinting.

(b) The court does not find probable cause.

(c) Juvenile is not adjudicated delinquent of a felony or misdemeanor.

Consult your departmental policy and refer to the BLET section on “Fingerprinting and Photographing Arrestees.”

11. Nontestimonial identification order (G.S. 7B-2103)

NOTE: Show slide, “NTO.”

A nontestimonial identification order (NTO) may be issued by any judge of district or superior court on request of a prosecutor. Any law enforcement officer who wishes to conduct nontestimonial identification must first consult with the district attorney or assistant district attorney, who must then make application for the order to a District or Superior Court Judge.

a) Nontestimonial means identification by:
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(1) Fingerprints
(2) Palm prints
(3) Footprints
(4) Measurements
(5) Blood or urine specimens
(6) Saliva samples
(7) Hair samples
(8) Any reasonable physical examination
(9) Handwriting exemplars
(10) Voice samples
(11) Photographs
(12) Line-ups

b) A request for a NTO may be made prior to taking a juvenile into custody or after custody and prior to the adjudicatory hearing (G.S. 7B-2104).

c) An NTO can be issued only on an affidavit sworn to before the court and establishes the following grounds:

(1) That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;

(2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.
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d) A nontestimonial identification order to obtain a blood specimen from a juvenile may be issued only on affidavits sworn to before the court and establishing the following grounds:

1. That there is probable cause to believe that an offense has been committed that would be a felony (if committed by an adult).

2. That there is probable cause to believe that the juvenile named or described in the affidavit committed the offense, and

3. That there is probable cause to believe that obtaining a blood specimen from the juvenile will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

*Note: Please be aware that any procedure which is invasive (any procedure which is not normally associated with arrest procedures; any taking of blood, any probing of the body cavity areas; any procedure for which trained medical personnel are necessary) versus noninvasive procedure would need judicial approval.*

e) A juvenile who is in custody or charged with an offense which is a felony may request a nontestimonial identification procedure because it will be of material aid to the juvenile's defense. (See G.S. 7B-2107)

f) Destruction of NTO records

Destruction of records must be performed by the law enforcement agency which has possession of the records, in accordance with statutory guidelines and court order. The law enforcement agency must make written certification to the court following destruction of the records.

*Note: See handout “Destruction of NTO Records” for the statutory guidelines on destruction of NTO records.*
Note: Any person who wilfully violates any provision which prohibits the conducting of a nontestimonial identification procedure without a court order is guilty of a Class 1 misdemeanor.

Except as provided under G.S. 7B-2102, a court order is required for any nontestimonial identification procedures conducted on a juvenile unless the juvenile has been transferred to adult court or charged as an adult.

12. Transfer of jurisdiction to Superior Court

NOTE: Show slide, "Probable Cause and Transfer Hearings."

The District Court may transfer jurisdiction over a juvenile 13 years of age or older to Superior Court if the juvenile was 13 years of age or older at the time of the alleged offense. The alleged offense must be an offense which would be a felony if committed by an adult. The probable cause and transfer hearings are separate.

a) Probable cause hearing (G.S. 7B-2202)

(1) Proper notice must be given and a hearing held wherein a finding of probable cause is entered by the District Court. A Class A felony must be transferred if there is a finding of probable cause.

(2) The probable cause hearing must be held within 15 days. If probable cause is found and transfer to superior court is not required (Class A felony), the court may proceed to the transfer hearing or set a date for that hearing, on the court’s, the prosecutor’s, or defense attorney’s motion.

(3) If the court does not find probable cause for a felony offense the court must:

(a) Dismiss the proceeding, or

(b) Proceed to an adjudicatory hearing or set a date for a hearing, when there is
probable cause to believe that the juvenile
committed a lesser included offense which
would be a misdemeanor.

b) Transfer hearing (G.S. 7B-2203)

(1) The decision to transfer jurisdiction of felonies
committed by juveniles to Superior Court (except
for a Class A felony) rests solely with the District
Court judge. A prosecuting attorney may make
recommendations to the Court, however, the
Court has the ultimate authority in such cases.

(2) The court must determine whether the protection
of the public and the needs of the juvenile will be
served by transferring the case to superior court.
The following factors must be considered: age ,
maturity, intellectual level, prior record, prior
attempts at rehabilitation, programs available,
vioence or premeditation involved in the offense
and the seriousness of the offense.

13. Hearing procedures

a) Amendment of petition (G.S. 7B-2400)

If the court allows, a petition may be amended when the
amendment does not change the nature of the alleged
offense. The juvenile must be given a reasonable
opportunity to prepare a defense to the amended
petition.

b) Open hearings (G.S. 7B-2402)

All hearings must be open to the public unless the court
closes all or part of the hearing for good cause on a
motion of the parties or its own motion.

Even if the hearing is closed, the court may allow the
victim, member of the victim's family, law enforcement
officer, witness or any other person directly involved to
be present.

In order to close a hearing or part of a hearing the judge
must consider the circumstances of the case including,
Juvenile Laws and Procedures

but not limited to the allegations; age and maturity of juvenile; benefit to juvenile of confidentiality; benefit to public of open hearing; will the juvenile be compromised by an open hearing.

If a juvenile requests an opening hearing, it may not be closed by the court.

NOTE: Emphasize the difference of the burden of proof between delinquent and undisciplined cases.

NOTE: An officer may need to attend various hearings which involve the juvenile. Information such as social, educational, and psychological histories may need to be shared among the professionals involved in the juvenile's case.

Note: Information about the juvenile which police officers possess because of their knowledge of the family and the community should be shared with the juvenile court counselor and the prosecutor.

c) Dispositional alternatives for undisciplined juveniles (G.S. 7B-2503)

The alternatives available to the court under G.S. 7B-2503, when a juvenile has been adjudicated undisciplined allow the court to:

(1) Require that the juvenile be supervised in the juvenile's own home;

(2) Place the juvenile in the custody of a parent, guardian, relative, private agency, or some other suitable person;

(3) Place the juvenile in the custody of the county department of social services;

(4) Excuse the juvenile from compulsory school attendance law; and

(5) Place the juvenile under the protective supervision of a court counselor.
Note: Please see handout “Conditions of Protective Supervision for Undisciplined Juveniles” (G.S. 7B-2504).

d) Contempt of court for undisciplined juveniles (G.S. 7B-2505)

Under G.S. 7B-2505, the court counselor, or the court on its own motion may ask the court to issue an order directing a juvenile (who has been adjudicated undisciplined) to appear and show cause why the juvenile should not be held in contempt for willfully failing to comply with an order of the court. The court must appoint counsel for a juvenile who is alleged to be in contempt unless counsel is retained. For a first finding of contempt, the court may order the juvenile confined in an approved detention facility for up to 24 hours; for a second finding, up to 3 days; and for a third or subsequent finding, up to 5 days. The court has discretion to determine the timing of the confinement. G.S. 7B-2505 prohibits confining a juvenile for more than 14 days in one 12-month period.

e) Dispositional alternatives for delinquent juveniles (G.S. 7B-2506)

The juvenile code has developed three levels of punishment for a juvenile who have been adjudicated delinquent. The sentencing also takes into account the prior record of the juvenile and assigns points to those offenses. The court may choose from a number of alternatives available under the guidelines. It is important that law enforcement officers realize that each juvenile adjudication counts when determining where the juvenile fits in the sentencing guidelines. In addition, law enforcement officers may have additional insight into the juvenile’s problem(s) which would be helpful to the court.

Note: Please consult handout “Dispositional Alternatives for Delinquent Juveniles” for the sentencing guidelines for juveniles.

14. Interstate Compact (G.S. 7B-2800 to 2827)
NOTE: Show slide, "Interstate Compact."

For assistance in resolving Interstate Compact problems, contact the Compact Administrator, Division of Social Services, Department of Health and Human Services, Raleigh, N.C.

a) All 50 states and the District of Columbia are members. The Compact provides a procedure for obtaining the return of a North Carolina juvenile who has gone to another state as well as returning a juvenile found in North Carolina to the state of normal residence.

b) Juvenile, as used in this statute, means any person who is a minor under the law of the state of residence of the person entitled to his legal custody. The age definition of "juvenile" in North Carolina is a person under 18.

c) Runaways and escapees - G.S. 7B-2804) - under the Compact any officer who has reasonable information that a person is a minor under the laws of the state of residence and has run away from another state without the consent of a parent may be taken into custody and detained for up to 30 days. If there are criminal charges, the juvenile should be prosecuted before releasing him to his home state. The juvenile court will handle the return process once the juvenile is confined.

d) Rendition - (G.S. 7B-2826) - permits the return to North Carolina of any juvenile who commits a delinquent act in our state and returns to his home state before being apprehended. Some of the states are not a party to the rendition agreement of the interstate compact.

Check with your prosecutor to determine the juvenile ages as well as whether or not a particular state is a party to the rendition agreement of the interstate compact.

15. Juvenile records (G.S. 7B-2901)

NOTE: Show slide, "Juvenile Records."

Under the juvenile code there has been an effort to balance appropriate confidentiality and appropriate disclosure. The
new code clarifies a person's ability to obtain copies of records that the person has a right to inspect.

a) The Clerk's Record

The court may direct the clerk to "seal any portion of a juvenile's record," so that it may only be examined by court order. Otherwise, the clerk's record may be examined, and copies obtained of the written parts of the record by:

(1) The juvenile;

(2) The juvenile's parent, guardian, or custodian, or that person's representative;

(3) The prosecutor;

(4) Court counselors

Only when notice of an appeal has been given may electronic or mechanical recordings of the hearings that are part of a record be transcribed and only by order of the court.

A prosecutor may share information from a juvenile's record with N.C. sworn law enforcement officers but may not allow photocopying of any part of the record. When attempting to determine "pretrial release and plea negotiating decisions," law enforcement, the magistrate, and the prosecutor may use a juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult.

b) Law enforcement records

**NOTE: Show slide, "Law Enforcement Records."

The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without a court order:

(1) The juvenile;
(2) The juvenile's parent, guardian, or custodian, or that person's authorized representative;

(3) The district attorney or prosecutor;

(4) Court counselors;

(5) Law enforcement officers sworn in this state.

c) DJJDP records

The following persons may examine and obtain copies of DJJDP records and files concerning a juvenile without a court order:

(1) The juvenile;

(2) The juvenile's parent, guardian, or custodian, or that person's authorized representative;

(3) Professionals in the agency who are directly involved in the juvenile’s case; and

(4) Court counselors.

d) Disclosure of information about juveniles

(1) Information sharing among agencies

Under G.S. 7B-3100 the DJJDP, after consultation with the Conference of Chief District Court Judges, has been directed to adopt rules designating local agencies that are authorized to share information relevant to any case in which a petition has been filed alleging that a juvenile is undisciplined, delinquent, abused, neglected or dependent. Information that agencies share pursuant to the section may be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile.

(2) Disclosure by or to schools
Information shared by the schools under G.S. 7B-3100 must be released in accordance with the federal Family Educational Rights and Privacy Act. G.S. 115C-404(b) prohibits the use of information obtained under G.S. 7B-3100 to be used as the sole basis for a decision to suspend or expel a student. Under G.S. 7B-3101 court counselors are required to notify schools of certain occurrences in cases of juveniles alleged or found to be delinquent for felony offenses. G.S. 115C-404(a) specifies when a school must destroy information obtained under G.S. 7B-3100 or 3101.

**NOTE: Emphasize (G.S. 7B-3101) - Court counselors and not law enforcement officers are responsible for verbal and written notification of the following to the principal of the school that the juvenile attends.**

(a) Petition alleging a felony.

(b) Transfer to Superior Court.

(c) Any order requiring school attendance when a juvenile has been alleged and found delinquent.

(d) Court dismisses petition alleging a felony.

(e) Court modifies or vacates any order or disposition under G.S. 7B-2600 concerning a juvenile alleged or found delinquent for a felony.

Under G.S. 15A-505 however, the officer is responsible for notifying the school if a juvenile who is 16 or 17 years old or emancipated is charged with a criminal offense which is a felony (except Chapter 20) or is taken into custody.

III. Discussion Questions
Juvenile Laws and Procedures

NOTE: Refer to the “Instructor Notes” section for hypothetical questions and have students formulate answers in groups of 2-4.

NOTE: Distribute handout, “Summary Comparison of Procedures in Criminal Cases” and review with students.

IV. Conclusion

A. Summary

During this block we have defined terms used in juvenile law; covered procedures utilized by law enforcement officers in dealing with juveniles including temporary custody, obtaining secure and non-secure custody orders, interrogation, and obtaining non-testimonial identification orders; covered the function of the juvenile court and court counselors; covered the officer's role and protective services' role in handling abused and neglected juveniles; covered dealing with complaints of missing juveniles; and covered procedures for holding conferences with the juvenile and his/her parents.

NOTE: Show slide, “Training Objectives.”

B. Questions from Class

C. Closing Statement

To be a truly "full-service" officer, the line law enforcement officer must be competent in effectively dealing with juveniles. In fact, a large percentage of crimes are perpetrated by juveniles. We cannot just pass all situations to a juvenile officer or unit. The officer that fully understands juvenile law and procedures is more valuable to his/her community and profession.