

**2008 Youth Development Center Commitment Project Report  
Office of the Juvenile Defender  
February 2009**

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## Executive Summary

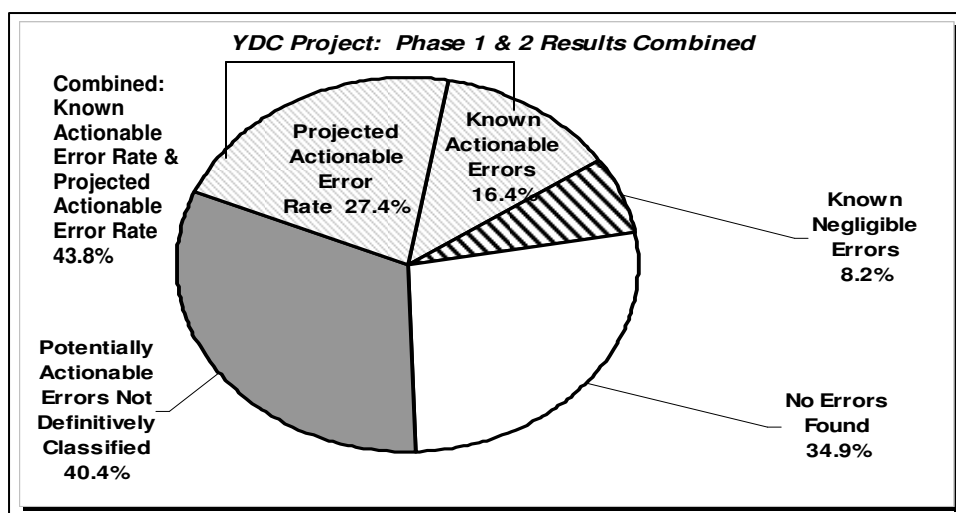
In an effort to determine whether there might be a need for committed juveniles to access legal counsel post-disposition, OJD reviewed the files of 147 juveniles who were committed during 2007 from 11 counties in nine districts. The purpose of the review was to determine whether commitments to youth development centers (“YDCs”) were appropriate and in compliance with the Juvenile Code, or whether juveniles were being committed in error, i.e., without legal basis and/or for a maximum term of commitment that was not legally supported.

During the Project, an “error” was defined as a mistake in the file that could possibly have had an impact on the legality of the commitment or the maximum term of commitment. Errors were reviewed and classified as “actionable,” “negligible,” or “potentially actionable.” An “actionable error” was an error that, if corrected, would result in the release of the juvenile or a reduction in the juvenile’s maximum term of commitment. A “negligible error” was an error that did not directly affect the decision to commit the juvenile and, if corrected, would have had no impact on the release of the juvenile or the juvenile’s maximum term of commitment. A “potentially actionable error” was an error that could not be classified as actionable or negligible from the face of the file, and required further investigation.

### Key Findings

The Project consisted of two phases. During Phase 1 (the “review phase”), errors that were apparent from the file were identified and, if possible, classified. During Phase 2 (the “investigation phase”), additional information from outside of the record, including information obtained during consultations with trial counsel, was gathered about the actionable errors, as well as about a sample of potentially actionable errors in an effort to classify them as actionable or negligible.

The review and investigation phases revealed a total of 24 files (16.4%) with actionable errors, which directly led to an illegal basis or maximum term of commitment that could be corrected by the court. However, because not all of the files with potentially actionable errors were investigated and categorized as actionable or negligible, the true actionable error rate more likely fell between 16.4% and 43.8%.<sup>1</sup>



<sup>1</sup> Refer to “Findings,” 2., Errors, for further details.

The most frequent kinds of errors identified were the imposition of an incorrect dispositional level option, the file missing critical information, especially as to whether or not the juvenile was on probation as a result of a prior event, or an incorrect, unknown, and ambiguous legal basis for commitment.

The Project also identified some concerns regarding court practices. For example, in a number of districts, the court included multiple disposition orders in the juveniles' files, which caused conflicting information in some cases and errors in others. In addition, some courts used local forms instead of official Administrative Office of the Courts ("AOC") forms to enter disposition. Because the local forms did not always capture the appropriate information, this practice had a tendency to lead to errors. Moreover, some orders that affected the rights of the juvenile appeared to have been entered without notice to the parties.

The Project also raised concerns about how often juvenile defense counsel reviewed court orders to determine if errors existed. For instance, OJD learned that many attorneys did not receive copies of court orders, including commitment orders, and therefore were unable to review them for errors.

### **Recommendations**

As a result of the findings of the Project, OJD makes the following recommendations:

- that a statewide systematic review of juvenile commitments be conducted to prevent further illegalities;
- that training for juvenile defense counsel be developed to address the problematic trends, including training on determining dispositions, eligibility for commitment, and maximum terms of commitment, clarifying the record during hearings, and review of orders and returning orders to court for correction or clarification;
- that there be consistent and frequent judicial training on the mechanics of determining disposition, the implementation, modification, and violation of probation, the entering of Level 3 dispositions, and the violation of post-release supervision;
- that official AOC forms be used consistently and that forms be created for hearings where no form currently exists;
- that all parties receive copies of orders;
- that sections of the Juvenile Code governing commitment may need to be reviewed to reduce illegal commitments; and
- that committed juveniles may need access to counsel to review their cases or assist them with legal issues that arise during commitment.

## 2008 Youth Development Center Commitment Project Report

### Introduction to the Juvenile Justice System<sup>2</sup>

#### The Juvenile Justice System: Complaints and Petitions, Adjudications, and Dispositions

The juvenile justice process begins when a citizen or law enforcement officer files a complaint at a local branch of the North Carolina Department of Juvenile Justice and Delinquency Prevention (“DJJDP”). A complaint is defined as a written statement alleging a delinquent (or undisciplined) act. After the complaint is filed, DJJDP completes a process called “intake” to evaluate the complaint for legal sufficiency and to determine if there is a need for court action. If there is not a need for court action, DJJDP refers the juvenile to appropriate resources and monitors the juvenile, a process referred to as “diversion.” If DJJDP approves the complaint for court action, DJJDP files the complaint as a “petition,” which is defined as the legal document alleging the commission of a delinquent (or undisciplined) act. The filing of a petition begins the court action. After the petition is filed and preliminary hearings are held, the juvenile has an “adjudication hearing,” or a hearing to determine whether the allegations are true and the juvenile is responsible for the alleged act(s). If the allegations are true, a “dispositional hearing” (sentencing) is held.<sup>3</sup>

Juvenile dispositions are based on the current, most serious offense for which the juvenile has been adjudicated and the juvenile’s prior delinquency history. Disposition is also entered for juveniles who have been found to be in violation of the terms of their probation or post-release supervision after release from a YDC. The court has the option of entering a Level 1 (Community Disposition), Level 2 (Intermediate Disposition), or Level 3 (Commitment to YDC) disposition in accordance with the Disposition Chart below.

DISPOSITION CHART			
OFFENSE	DELINQUENCY HISTORY		
	LOW (0-1 points)	MEDIUM (2-3 points)	HIGH (4+ points)
<b>VIOLENT (A-E Felony )</b>	Level 2 or 3	Level 3	Level 3
<b>SERIOUS (F-I Felony; A1 Misdemeanor)</b>	Level 1 or 2	Level 2	Level 2 or 3
<b>MINOR (1-3 Misdemeanor)</b>	Level 1	Level 1 or 2	Level 2

The court must have a specific legal basis to enter a Level 3 disposition, which is limited to:

- Adjudication of a violent (felony class A through E) offense with any prior delinquency history;
- Adjudication of a serious (felony class F through I, A1 misdemeanor) offense with a “high” (four or more points) prior delinquency history;
- Eligibility for a Level 2 disposition and a previous commitment to a YDC;

<sup>2</sup> See Appendix A. for a glossary of juvenile court terminology.

<sup>3</sup> See Department of Juvenile Justice and Delinquency Prevention, *2007 Annual Report*, 17 (2007); see also [http://www.ncdjjdp.org/resources/graphics/jj\\_process\\_flowchart.gif](http://www.ncdjjdp.org/resources/graphics/jj_process_flowchart.gif).

- Placement at a Level 2 disposition for a serious offense and a subsequent violation of probation; or
- Adjudication of any offense after being adjudicated of four or more prior offenses.

Commitments may be of a “definite” or “indefinite” term. Definite commitments may be entered for juveniles who: (1) are 14 years old at the time of the offense; (2) have previously been adjudicated for two or more felony offenses; and (3) have previously been committed to a YDC.

The overwhelmingly majority of commitments are “indefinite.” Indefinite commitments always have a minimum term of six months and a maximum term of the juvenile’s 18<sup>th</sup> birthday, except:

- A juvenile may not remain committed beyond the six-month term for a period of time greater than an adult could be sentenced for the same offense at the highest prior record level unless DJJDP extends the term per N.C.G.S. § 7B-2515.
- The maximum term of commitment can also be extended past the juvenile’s 18<sup>th</sup> birthday per N.C.G.S. § 7B-2515 for:
  - ❖ First degree murder, first degree rape, or first degree sex offense, until the juvenile’s 21<sup>st</sup> birthday; and
  - ❖ All other felony class B through E offenses, until the juvenile’s 19<sup>th</sup> birthday.

Though the judge does not enter a specific maximum term of commitment (e.g., “12 months” or “18 months”) for an indefinite commitment, the judge must order:

- The minimum term (six months);
- The absolute maximum term (age 18, 19, or 21); and
- The maximum time the juvenile may remain committed before DJJDP either releases the juvenile or makes a determination that the juvenile’s commitment should be extended.

### **Legal Right to Counsel Post-Disposition**

Under current law, the only review for juveniles committed to a YDC is appeal to the Court of Appeals. However, there appear to be a small number of appeals (usually fewer than 30 appeals each year in delinquency cases), only some of which involve YDC commitments. Additionally, the Court of Appeals can take up to a year and a half to render a decision. Thus, meaningful appellate review evades many juveniles, and other juveniles may be released from the YDC before an illegal commitment can be reversed or reduced. OJD undertook this Project to determine whether there is an unfulfilled need for legal counsel post-disposition.<sup>4</sup>

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<sup>4</sup> A 2003 assessment of the quality of counsel in North Carolina stated, “[w]hile court proceedings in North Carolina are usually recorded and transcription is available, there is very little post-dispositional advocacy in the state. Records show that the majority of post-disposition motions filed originate with court counselors, not juvenile defense counsel. Advocacy following disposition appears to be hindered by, among other factors, a lack of written motions practice, attorney passivity, a systemic court culture distortion of ‘best interests,’ and limitations on representation after disposition either by local rules or established policy. In the majority of counties in North Carolina, juvenile defense representation effectively ends at disposition.” American Bar Association Juvenile

## Project Goals

During 2008, OJD reviewed 2007 commitment cases from selected districts to determine if juveniles were being committed without legal basis and/or for a maximum term of commitment that was not legally supported. To facilitate review of the cases, OJD approached the chief district court judges of the selected districts and requested, by temporary administrative order, that OJD be allowed to review the cases.<sup>5</sup>

The specific goals of the Project were to:<sup>6</sup>

- Review court files and determine if there were errors resulting in illegal commitments (e.g., juveniles being committed without legal basis and/or for a maximum term of commitment that was not legally supported);
- Identify, if possible, reasons for any illegal commitments that were found;
- Develop an understanding of practices, problems, and training needs for juvenile defense counsel and to improve training;
- Cure illegal commitments, if possible; and
- Determine the need for ongoing review of commitment cases, as well as other issues related to representing committed juveniles or other post-disposition representation.

## Findings

According to DJJDP's 2007 Annual Report, in 2007, 8,132 juveniles had their cases resolved with a Level 1 (Community Disposition), Level 2 (Intermediate Disposition), or Level 3 (Commitment to YDC) disposition.<sup>7</sup> Of those 8,132 juveniles, 437 juveniles' cases resulted in commitment to a YDC. Of the 437 commitments, OJD analyzed a sample of the commitment population and identified commitment error trends, court practices, and defense counsel practices, as well as ambiguous legal issues that require clarification.

### 1. Overview of Sample Study

The sample for this Project consisted of 147 commitments from 11 counties and nine districts, which represented 33.6% of the total 437 commitments in 2007.<sup>8</sup> The participating counties were

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Justice Center and the Southern Juvenile Defender Center in collaboration with the National Juvenile Defender Center and the North Carolina Office of Indigent Defense Services, *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, 5 (2003).

<sup>5</sup> See Appendix C. for a sample 2008 Temporary Administrative Order.

<sup>6</sup> See Appendix B. for a description of the project methodology.

<sup>7</sup> Department of Juvenile Justice and Delinquency Prevention, *2007 Annual Report*, 17 (2007).

<sup>8</sup> While the total number of commitments reviewed was 147, it was impossible to determine the legality of the outcome in one case based on the court file. That case will be excluded from most of the analysis, except in the basic demographic information and in any other instance where the cases could be reported under an "unknown" category. Furthermore, there were 46 juveniles who were committed in Cumberland County, but only 35 cases were provided for review. Of those cases, three of the cases were purged. In Mecklenburg County, there were 47 commitments, but OJD reviewed only 42 of the cases due to time constraints.

chosen because they represented diversity among geography, population, and type of legal representation.

The number of commitments reviewed in each county was as follows:

County	Number of Commitments Reviewed	Percentage
Buncombe	1	0.7%
Cumberland	33	22.4%
Durham	16	10.9%
Edgecombe	3	2.0%
Mecklenburg	40	27.2%
Nash	5	3.4%
New Hanover	14	9.5%
Robeson	4	2.7%
Rowan	12	8.2%
Wake	14	9.5%
Wilson	5	3.4%
<b>Total</b>	147 <sup>9</sup>	100%

Of the total commitments reviewed, 40 have been or are being investigated by OJD. The commitments were investigated because OJD believed that a correction in the juvenile's record would result in either the juvenile's release from YDC or a reduction in the juvenile's maximum term of commitment.

## 2. Errors

### Types of Errors

An "error" for the purpose of the Project was any mistake in the file that could possibly have had an impact on the legality of the commitment or the maximum term of commitment. Errors were reported in three main categories.<sup>10</sup>

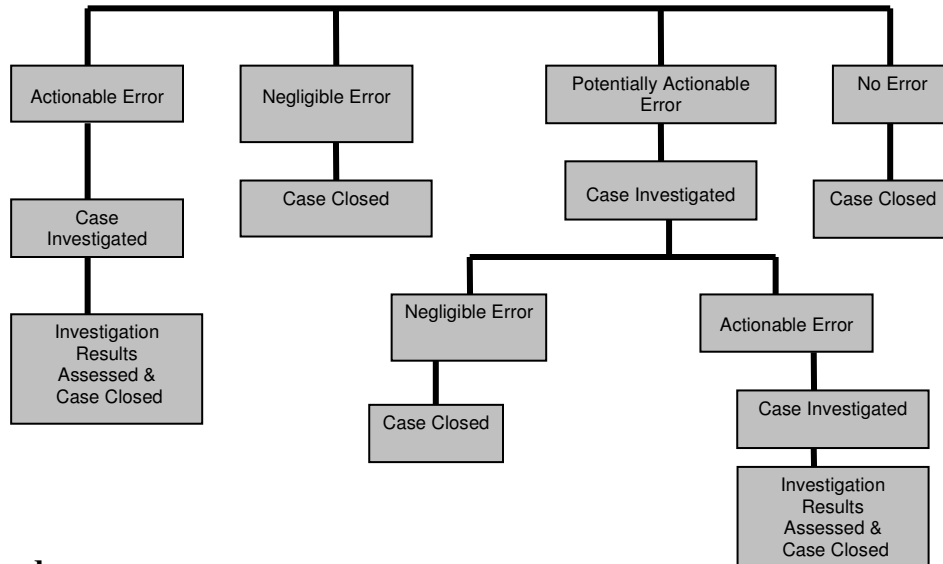
- An "actionable error" was an error that, if corrected, would result in the release of the juvenile or a reduction in the juvenile's maximum term of commitment.
- A "negligible error" was an error that did not directly affect the decision to commit the juvenile and, if corrected, would have had no impact on the release of the juvenile or the juvenile's maximum term of commitment.
- A "potentially actionable error" was an error that could not be classified as actionable or negligible from the face of the file, but required further investigation.

The Project consisted of two phases. Phase 1, the "review phase," involved the review of files and identification and classification of any errors that could be determined on the face of the file. Phase 2, the "investigation phase," involved the investigation of files with actionable errors, as well as a sample of files that contained potentially actionable errors to determine whether the errors were actionable or negligible. After investigation, some potentially actionable errors were clarified and recategorized as actionable errors or negligible errors. Other legal issues not clearly

<sup>9</sup> Refer to footnote 8.

<sup>10</sup> Refer to Appendix G. for further information on the categories of errors.

defined by law were not considered “errors” for the purpose of the Project and are discussed in section 5., below (“Other Legal Issues”).



**Errors Found**

During Phase 1, 95 files were found to contain at least one error, and 51 files revealed no error and were closed. Of the files with errors, nine files had actionable errors, five files had negligible errors, and 81 files had potentially actionable errors.

PHASE 1 (REVIEW PHASE): ERRORS IN COMMITMENT		
	Number	Percentage
<b>Files with Errors</b>	95	65.1%
<b>Files without Errors</b>	51	34.9%
<b>TOTAL NUMBER OF FILES<sup>11</sup></b>	146	100%
<b>Files with Actionable Errors</b>	9	6.2%
<b>Files with Negligible Errors</b>	5	3.4%
<b>Files with Potentially Actionable Errors</b>	81	55.5%
<b>TOTAL NUMBER OF FILES WITH ERRORS</b>	95	65.1%

It should be noted that the files reviewed had an average of 1.8 errors per file. Thus, the total number of errors (173) was greater than the number of files reviewed (147).

**Known Actionable Errors**

Of the nine files that were found to have an actionable error during Phase 1, OJD attempted to return all of them to court for correction. Some examples of these errors included:

- The court incorrectly determined the most serious offense adjudicated;
- The legal basis for commitment was incorrect; and

<sup>11</sup> Refer to footnote 8.

- The maximum term of commitment was incorrect.

Of the nine files with actionable errors, two were successfully returned to court, and the maximum terms of commitment were corrected. A synopsis of each case is below:

- **Case 1:**

- ❖ **Facts:** After the juvenile was charged and adjudicated of breaking and entering a motor vehicle, a Class I felony, in March 2007, the court ordered a Level 3 disposition and committed the juvenile for an indefinite term of at least six months not to exceed his 18th birthday.
- ❖ **Error(s):** A juvenile may not be committed to a YDC for a period of time in excess of the maximum term of imprisonment for which an adult with a prior felony record level of VI could be sentenced for the same offense. For the offense in question, an adult can only be sentenced for a maximum of 15 months, and therefore, the juvenile's commitment could not exceed 15 months. The juvenile would have turned 18 after the maximum commitment period expired. Therefore, OJD filed a motion to modify the maximum term of commitment to the YDC.
- ❖ **Outcome:** The Assistant District Attorney filed a response to the motion to modify the maximum term of commitment and consented to OJD's request to modify the Level 3 Disposition and Commitment Order to state that the juvenile was to complete a maximum term of 15 months. The court agreed to modify the Level 3 Disposition and Commitment Order as stipulated.

- **Case 2:**

- ❖ **Facts:** On November 20, 2007, the juvenile was adjudicated of possession of cocaine. On November 26, 2007, the juvenile was alleged to have violated the terms of his probation. In the dispositional order entered December 21, 2007, the court ordered a Level 3 disposition and committed the juvenile to a YDC for an indefinite term of at least six months.
- ❖ **Error(s):** Based on a review of the juvenile's file, it was unclear whether the juvenile was actually found to be in violation of the terms of his probation because there was no adjudication order finding the juvenile in violation of his probation. In the dispositional order, the court entered a Level 3 disposition based on the juvenile's apparent violation of probation and listed the current offense (i.e., possession of cocaine) as the offense for which the juvenile violated probation. The court also noted on the order that the juvenile had four or more prior adjudications, but it appeared that the juvenile only had three prior adjudications. Additionally, the dispositional order did not state a maximum term for the juvenile's commitment. Based on the above errors, it was unclear on what basis the juvenile was committed and, therefore unclear what the appropriate maximum term of commitment should be. Therefore, OJD filed a motion to review the court record and to clarify the terms of commitment.
- ❖ **Outcome:** The Assistant District Attorney filed a response to the motion to clarify the terms of commitment as follows: (1) the juvenile was placed on probation as a result of an earlier adjudication for felony possession of a stolen firearm and not the November 20, 2007 possession of cocaine; (2) the probation was scheduled to expire on April 24, 2008, but the juvenile violated probation on August 28, 2007;

and (3) as a result, the juvenile was committed until his 18th birthday. The court agreed to modify the order as stipulated.

Six of the nine files with known actionable errors could not be returned to court because the court's jurisdiction had ended as a result of the juvenile aging out of the system or the court terminating the juvenile's jurisdiction. One additional file with a known actionable error was not investigated because the error could not be corrected by further legal action.

### **Negligible Errors**

The five files that were found to have a negligible error during Phase 1 were closed. In these files, although there was an error, the error did not directly affect the decision to commit the juvenile. Therefore, if the error were corrected, it would not have resulted in the release of the juvenile or a reduction in the juvenile's maximum term of commitment. Some examples of these errors included:

- The court incorrectly determined the correct offense class;
- The offense adjudicated was not less than or equal to the offense charged; and
- The court incorrectly determined the most serious offense to be adjudicated on a prior event.

### **Potentially Actionable Errors**

During Phase 1, 81 files were found to have a potentially actionable error, which could not be classified as actionable or negligible from the face of the file, but required further investigation. Some examples of these errors included:

- The court incorrectly determined that the juvenile was on probation;
- The court incorrectly determined the juvenile's prior delinquency history level;
- The court imposed the incorrect dispositional level option;
- The court imposed a dispositional level without an appropriate dispositional level alternative;
- The legal basis for commitment was missing from the order;
- The maximum term of commitment was missing from the order; and
- There were multiple orders stating different commitment terms.

During Phase 2, potentially actionable files were investigated to determine whether they were actionable or negligible. Of the 81 potentially actionable files, 59 files contained errors that were serious enough to classify as errors, but that were not definitively classified for the following reasons:

- 9 files are still being investigated;

- 33 files were not investigated because the error could not be corrected by further legal action; and<sup>12</sup>
- 17 files were not investigated because the court's jurisdiction had already ended.

Investigations of the remaining 22 potentially actionable files were completed during Phase 2, and the errors were recategorized as either actionable or negligible. Fifteen of the files were found to have actionable errors and seven were found to have negligible errors.

Of the 15 files with actionable errors:

- the maximum term of commitment was corrected or clarified by the court in three files;
- ambiguities in the maximum term of commitment or in the juvenile's file were clarified by the court, DJJDP, or after conversations with trial counsel in eight files; and
- four of the files were resolved by other corrections or clarifications to the juvenile's file.

<b>PHASE 2 (INVESTIGATION PHASE): 81 POTENTIALLY ACTIONABLE ERRORS</b>	
<b>POTENTIALLY ACTIONABLE FILES - NOT DEFINITELY CLASSIFIED</b>	
	<b>Number</b>
<b>Files with Pending Investigations</b>	9
<b>Files That Could Not Be Corrected by Further Legal Action</b>	33
<b>Files Where Court's Jurisdiction Ended</b>	17
<b>TOTAL NUMBER OF FILES - NOT DEFINITELY CLASSIFIED</b>	59
<b>POTENTIALLY ACTIONABLE FILES - INVESTIGATIONS COMPLETED &amp; FILES RECATEGORIZED</b>	
<b>Files with Actionable Errors</b>	15
<b>Files with Negligible Errors</b>	7
<b>TOTAL NUMBER OF FILES - INVESTIGATIONS COMPLETED &amp; FILES RECATEGORIZED</b>	22

### **Combined Errors (Phase 1 and Phase 2)**

When Phase 1 and Phase 2 findings were combined, the Project findings were as follows:

- 24 files (or 16.4%) had actionable errors.
- 12 files (or 8.2%) had negligible errors.
- 51 files (or 34.9%) revealed no error.
- 59 files (or 40.4%) contained an error that was serious enough to classify as an error, but that was not definitively classified as actionable or negligible.

<b>PHASES 1 &amp; 2 RESULTS COMBINED: ERRORS IN COMMITMENT</b>		
	<b>Number</b>	<b>Percentage</b>
<b>FILES WITH ACTIONABLE ERRORS</b>	24	16.4%
<b>FILES WITH NEGLIGIBLE ERRORS</b>	12	8.2%
<b>FILES WITHOUT ERRORS</b>	51	34.9%
<b>FILES WITH POTENTIALLY ACTIONABLE ERRORS - NOT DEFINITELY CLASSIFIED</b>	59	40.4%
<b>TOTAL NUMBER OF FILES</b>	146	100%

<sup>12</sup> Of the 33 files that could not be corrected by further legal action, some of the errors were that the file was missing information or the court did not exercise discretion in a prior hearing where the decision could have affected a future decision to commit the juvenile.

### **Projected (Likely) Actionable Error Rate**

Because 15 of the 22 files with potentially actionable errors were recategorized after investigation as files with actionable errors and there is no reason to believe that those files are not representative of the larger “potentially actionable” group, approximately 68.2% of the files in which the error was not definitely classified (or 40 of the 59 files) may have contained an actionable error. Therefore, although 24 files (or 16.4%) contained errors that were definitively classified as actionable, if 68.2% of the additional 59 potentially actionable files also contained at least one actionable error, the true actionable error rate could be as high as 43.8%.

### **3. Court Practices**

During the review and investigation of the Project, OJD attempted to determine if there was any correlation between court practices and commitment errors. In reviewing the juveniles’ court files, it appeared that in 98 cases the court could have entered either a Level 2 or Level 3 disposition. However, various forms and orders in the files suggested that the court itself identified only 58 cases in which it could have entered either a Level 2 or Level 3 disposition, apparently believing that a Level 3 disposition was mandated in the remaining cases. While this difference of 40 cases (27.4%) reflected a significant discrepancy, this was not considered an error for the purposes of this Project because the data was gleaned from various forms and orders, and not one source in the file. However, OJD believes this is an area of concern that should be studied further.

OJD also identified several juvenile court files that contained multiple orders with different information. For instance, in some of the files, there were two different orders, one order on the official AOC form and one local order, which provided different information, including differing terms of commitment. A problem or potential problem with this practice was that the local forms did not capture the information that would have been captured if the AOC form had been used. As a result, there was a higher probability that the commitments might not be in compliance with the Juvenile Code. The use of multiple forms also has the potential for providing conflicting information that causes confusion.<sup>13</sup>

### **4. Defense Counsel Practices**

During the Project, OJD also reviewed defense counsel practices to determine if there was any correlation between the practices and commitment errors. There did not appear to be any indication from review of the files or from further investigation that errors were being identified or addressed by defense counsel after disposition. The investigation phase revealed at least one explanation for the lack of identification of errors, i.e., many attorneys did not receive copies of court orders, including commitment orders.

OJD also analyzed the frequency with which defense counsel contested allegations, appealed commitments, requested credit for time served, and established a juvenile’s extraordinary circumstances. OJD was unable to determine whether there was a direct correlation between the identified practices and commitment errors, but believes these issues should be studied further to determine if any correlation exists:

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<sup>13</sup> Refer to Appendix F. for further information on court practices.

- Contesting allegations: For the commitment event, defense counsel contested the allegation(s) 6.3% of the time, or in seven of the 128 cases where this information was provided. While there is no standard for how often defense counsel should contest allegations, OJD believes this issue should be studied further because these juveniles are facing the most severe sanction.
- Appeals: Of the 144 commitment cases where it could be determined whether there was a direct appeal, there were eight appeals in the prior events that ended in commitment. Though this number suggests that very few of these cases were appealed, there is no data as to whether or not the juvenile was advised of his or her right to appeal and then declined to do so. Of the eight appealed cases, judges released juveniles pending their appeal in 7 or 88% of the cases.
- Credit for time served: Of the total number of commitments reviewed, defense counsel requested credit for time served in detention pending commitment in 1 out of 97 cases, or 1% of the time.<sup>14</sup> Though it is unclear under the current law how this credit applies to indefinite commitments, OJD is concerned that attorneys did not appear to be arguing its application to their clients.
- Establishing extraordinary circumstances: Although OJD's data in this area is not definitive, in the cases reviewed, there were no findings of established extraordinary circumstances, which would have justified a Level 2 disposition when the dispositional chart otherwise dictated a Level 3 disposition.

Although the failures to contest allegations, to appeal commitments, to request credit for time served, and to establish extraordinary circumstances were not classified as errors for the purposes of this Project, because defense counsel practices in these areas could directly affect commitment, OJD plans to study these issues further and to address them through attorney training.

## 5. Other Legal Issues

As a result of the review of the files, OJD identified two potential legal issues that were not considered as errors, but as issues attorneys may want to consider bringing to the court's attention. OJD recommends that the legal issues identified below be studied further to ensure that juveniles are not being committed for a maximum term of commitment that is not legally supported.

- Post-release/maximum period of commitment problem. Under N.C.G.S. § 7B-2513, a juvenile must be committed for a minimum term of at least six months. However, no juvenile may be committed to a YDC beyond the maximum time an adult could be sentenced for the same offense for the highest prior record level. For example, if a juvenile is committed for an adjudication of a Class I felony, the juvenile could only remain in the YDC for 15 months, because the maximum sentence an adult with the highest prior record level could receive for the same offense would be 15 months. Though DJJDP has the ability to extend a juvenile's commitment past this term per

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<sup>14</sup> In 25 additional cases, the juveniles did not serve any days in detention and, for the last 25 cases, it was unknown whether the juveniles spent days in detention.

N.C.G.S. § 7B-2515, more frequently the juvenile is released to post-release supervision (to be supervised by a court counselor). If the juvenile is found to have violated post-release supervision, the court may either revoke the juvenile's post-release supervision or enter any other disposition allowed by the Juvenile Code. In several cases reviewed, the juvenile had been committed and had served the maximum period of commitment (in most cases, six months). The juvenile had then been placed on post-release supervision, violated, and returned to YDC on a revocation. OJD is concerned that the law is unclear and that juveniles are being returned to YDC on a revocation in which the juvenile has already completed the maximum term of commitment.

- Extension of post-release supervision. Under N.C.G.S. § 7B-2514(a)(3), a juvenile released from a YDC must be placed on post-release supervision for at least 90 days, but not more than one year. The statute also requires release at least 90 days prior to the juvenile's 18<sup>th</sup>, 19<sup>th</sup>, or 21<sup>st</sup> birthday, depending on the classification of the offense to ensure that the juvenile is placed on post-release supervision for at least 90 days. N.C.G.S. § 7B-1602 and N.C.G.S. § 7B-2513(g) seem to indicate that the court's jurisdiction over the juvenile continues until it is terminated by a court order and not upon the juvenile's release from the YDC. OJD is concerned that the law is unclear and that juveniles are being placed on post-release supervision beyond their 18<sup>th</sup> birthday, when post-release supervision should have been terminated.

## 6. Other Court Practice Concerns

One goal of any justice system is to provide uniform, fair procedures for all participants. In performing the reviews and investigations, OJD also developed concerns about the culture of informality in some of the participating districts. The following two scenarios demonstrate this concern:

- **Case 1:**
  - ❖ **Facts:** The juvenile was committed to a YDC, released on post-release supervision, violated post-release supervision conditions, and revoked to the YDC. Pursuant to a court order, the juvenile was released from the YDC to another placement per DJJDP's request, but the juvenile was to be returned to the YDC "in the event that the juvenile violates the terms and conditions of this placement." OJD, after reviewing the record, was concerned that the court may have proceeded improperly, and contacted trial counsel. Trial counsel revealed that he was not notified about the events described in the order and, after he investigated the matter further, determined that the order was entered without notice to any of the parties listed.
  - ❖ **Problem:** The order seemed to indicate that a hearing occurred, but without notice to all the parties, and that the juvenile's status was altered without following the statutory procedure in N.C.G.S. § 7B-2513.
  - ❖ **Outcome:** OJD wrote a letter to the trial judge regarding the matter and copied all concerned parties. The judge responded in writing, indicating that the court counselor submitted an order to him directly, that there was no hearing but that he was assured by the court counselor that notice was given, that the order was

consented to by the juvenile, and that the juvenile was not prejudiced or harmed in any way. OJD also spoke with the court counselor who drafted the order. The court counselor admitted that the statutory procedure was not followed and indicated that the correct procedure would be followed in the future.

- **Case 2:**

- ❖ **Facts:** The juvenile was adjudicated of a felony in County A. The juvenile's probation was expiring, and a motion was filed to extend probation. Because the juvenile could not be located, the court in County A held a hearing without notice to the juvenile and without the presence of the juvenile or legal counsel. At the hearing, the court extended the juvenile's term of probation. The juvenile was then adjudicated in County B. The court in County B found that probation was extended on the felony charge, and the juvenile ultimately was committed for violating probation stemming from the felony.
- ❖ **Problem:** The juvenile was committed for violating a term of probation that was extended without notice to the juvenile and without the presence of the juvenile or legal counsel.
- ❖ **Outcome:** The issue was revealed upon review of the record on appeal. Trial counsel in County B did not notice the error. Trial counsel attempted to motion the case back to court, but the juvenile turned 18 and the court terminated jurisdiction before any relief could be granted.

## Recommendations

Based on the significant number of illegal commitments that were discovered during the Project, OJD makes the following recommendations in four areas:

- Voluntary review procedures;
- Attorney practice reform, including defender training;
- Court reform; and
- Legislative reform.

### 1. Voluntary Review During 2009

During the Project, a significant number of cases with errors were not corrected due to the court's jurisdiction ending. In some of these cases, the juveniles were released from the YDC; in other cases, juveniles aged out of the court's jurisdiction. To prevent similar circumstances in 2009 and beyond, OJD recommends short-term voluntary review procedures immediately after disposition is entered. More specifically, there are three objectives for the voluntary review procedures: 1) to identify and attempt to remedy as many illegal commitments as possible given current resources; 2) to gather data on the efficiency and effectiveness of the procedures for identifying and remedying illegal commitments; and 3) to prepare for and forecast resource

needs for a possible permanent, mandatory procedure for reviewing commitments.<sup>15</sup> OJD is currently discussing the feasibility of this initiative with judges, defense attorneys, and DJJDP. Based on the data from the Project, OJD is hopeful that it can pursue this extension of the Project with its current level of staffing.

## 2. Attorney Practice Reform

Based on the Project's findings, OJD recommends the following changes to juvenile defense practice.

- Become experts at dispositional advocacy. The errors indicate that attorneys might not have detected errors as they arose during the progress of the case. Specifically, OJD recommends training on:
  - ❖ Carefully and independently reviewing the court record, specifically the prior delinquency history and any filed documents, as soon as possible but prior to an adjudicatory hearing or plea;
  - ❖ Becoming knowledgeable of laws regarding calculation of dispositional levels and the ways in which juveniles can be committed, objecting to any errors that come up during hearings, and preserving the record during hearings for possible appeals;
  - ❖ Clarifying the court order if it sounds unclear at a hearing; and
  - ❖ The importance of being present at any hearing involving the juvenile, receiving a copy of any filed court document, scrutinizing any received court document for error, and motioning the court for timely review of any error found.

OJD is currently consulting with the UNC School of Government to identify opportunities for training on these issues, and believes that the training can be implemented with current resources.

- Use official AOC forms. OJD recommends that juvenile defense counsel play an important role in motivating the court to utilize standard forms and orders for hearings, specifically the use of official AOC forms.
- Receive and review orders. Attorneys should become proactive in the receipt and review of court orders. Specifically, attorneys should:
  - ❖ Ensure that a written order is produced if mandated;
  - ❖ Ensure the timely receipt of all orders;
  - ❖ Review received orders in a timely fashion; and
  - ❖ Return the case to court if an error is detected in the order.
- Use transcripts of admission. In a number of the cases, discrepancies between the adjudication order and eventual commitment order could be rectified by review of the

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<sup>15</sup> See Appendix H. for proposed voluntary review procedures during 2009.

transcript of admission on the underlying offense. OJD recommends that juvenile defense counsel submit transcripts of admission on any offense adjudicated.

### 3. Court Reform

Based on the Project's findings, OJD also recommends the following system changes:

- Consistent and frequent judicial training on the mechanics of determining disposition, the implementation, modification, and violation of probation, the entering of Level 3 dispositions, and the violation of post-release supervision. The errors seem to indicate that the statutes governing these procedures are complicated and require special attention in order for the courts to implement the law accurately.
- Consistent use of official AOC forms. A number of the errors arose from either the use of local or non-AOC forms, which did not accurately reflect the law, or the use of multiple forms, sometimes with missing or even conflicting information.
- New order forms. In certain cases, orders determining the status of the juvenile were missing. Specifically, it was discovered that there are no standard AOC forms that record the result of a probation review hearing. OJD plans to propose sample orders to the AOC Juvenile Forms Subcommittee for review.<sup>16</sup>
- Receipt of copies of orders by all parties. During the course of the review, OJD interviewed individuals from the participating districts as to the receipt of orders once completed. It was discovered that in many of the districts, neither juvenile defense counsel nor the assistant district attorney received a copy of the orders of the court; specifically, the parties did not receive dispositional and commitment orders. If these orders were distributed and reviewed, it is more likely that errors would be detected and the orders returned to court for correction in a timely fashion.

OJD plans to partner with juvenile court stakeholders, such as AOC, DJJDP, and juvenile defense counsel, to address these issues, and does not believe there will be any associated fiscal impact.

### 4. Legislative Reform

As part of a systemic reform, OJD believes that certain changes in the law might reduce the number of errors in the cases of committed juveniles. Based on the above findings, OJD recommends review of the sections of the Juvenile Code pertaining to commitment to determine whether clarification would reduce the number of illegal commitments. OJD also recommends further exploration of a new statutory right to counsel for committed juveniles or some other mechanism for consistent statewide review of cases that end in a commitment, including an examination of the likely fiscal impact of any legislative changes.

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<sup>16</sup> See Appendices M., N., and O. for recommended Probation Review Form Orders.

## Conclusion

The Project was undertaken to determine whether there was a need to provide access to legal counsel post-disposition for committed juveniles. The primary finding of the Project was that between 16.4% and 43.8% of the files reviewed contained actionable errors. As a result of the Project's findings, OJD recommends a series of reforms in attorney and court practice, training, and legislation.

In addition, OJD believes that consistent review of commitments would bring certain cost benefits. The cost of keeping a juvenile in a YDC is more than \$95,000 annually.<sup>17</sup> If a juvenile who was improperly committed is either released from YDC or has his or her commitment period reduced, it could save the state thousands of dollars. Though the issues presented in this report are numerous and concerning, OJD believes that by implementing the recommendations, North Carolina can better provide the consistent, uniform protections of juveniles that are guaranteed by law.

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<sup>17</sup> See the Department of Juvenile Justice and Delinquency Prevention's Juvenile Crime Prevention Council Continuation Review, 73 (Feb. 1, 2008).

## **Appendix A: YDC Project Terminology**

## YDC Project Terminology

<b><u>TERM</u></b>	<b><u>DEFINITION</u></b>
<b>Adjudication</b>	The court process whereby the allegations in a petition/motion are proven. <i>Similar Adult Term: Conviction</i>
<b>Adjudicatory hearing</b>	The hearing whereby the allegations in a petition/motion are proven. <i>Similar Adult Term: Trial</i>
<b>Admission</b>	The juvenile's statement that he/she committed the alleged crime or infraction. <i>Similar Adult Term: Plea of guilty or responsible</i>
<b>Court counselor</b>	The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the North Carolina Department of Juvenile Justice and Delinquency Prevention. <i>Similar Adult Term: Probation Officer</i>
<b>Delinquent act</b>	A crime or infraction under State law or an ordinance of local government, including violation of the motor vehicle laws, or direct contempt by a juvenile as defined by N.C.G.S. § 5A-31. <i>Similar Adult Term: Crime</i>
<b>Delinquent juvenile</b>	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 an ordinance of local government, including violation of the motor vehicle laws, or who commits direct contempt as defined by N.C.G.S. § 5A-31. <i>Similar Adult Term: Found guilty</i>
<b>Denial</b>	The juvenile's assertion that he/she did not commit the alleged crime or infraction. <i>Similar Adult Term: Plea of not guilty</i>
<b>Detention facility</b>	A facility approved to provide secure confinement and care for juveniles, including both State and locally administered detention homes, centers, and facilities. <i>Similar Adult Term: Jail</i>
<b>Disposition</b>	An order of the court in response to an adjudication. <i>Similar Adult Term: Sentence, punishment</i>
<b>Dispositional chart</b>	The chart used to determine the appropriate disposition after adjudication. <i>Similar Adult Term: Sentencing grid</i>

<b>First appearance</b>	The initial hearing for a juvenile alleged in a petition to have committed a felony. <i>Similar Adult Term: Felony first appearance</i>
<b>Motion for review</b>	The process by which the court reviews allegations that the juvenile has violated the conditions of probation, post-release supervision, or other information to be considered by the court in order to alter the juvenile's supervision. <i>Similar Adult Term: Probation violation; sometimes also used as a kind of motion for appropriate relief</i>
<b>Petition</b>	The legal document alleging the commission of a delinquent or undisciplined act; it is approved by a court counselor and, when filed, begins the court action pertaining to the juvenile. <i>Similar Adult Term: Warrant</i>
<b>Prior delinquency history</b>	The juvenile's previous record of crime(s) or infraction(s), which is considered at each disposition. <i>Similar Adult Term: Prior record level</i>
<b>Secure custody</b>	Controlled/locked custody of delinquent or undisciplined juveniles. <i>Similar Adult Term: Temporary incarceration; "in jail"</i>
<b>Secure custody order</b>	An order mandating the controlled/locked custody of a delinquent or undisciplined juvenile. <i>Similar Adult Term: Order for arrest</i>
<b>Transcript of admission</b>	The record of the juvenile's statement pertaining to whether or not he/she committed the alleged crime or infraction. <i>Similar Adult Term: Plea transcript</i>
<b>Youth development center</b>	A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department. Previously called "training school." <i>Similar Adult Term: Prison</i>

## **Appendix B: YDC Project Methodology**

## YDC Project Methodology

### Participating Counties

In order to review an adequate number of cases from a representative sample of districts, yet limit the number to a manageable caseload, OJD reviewed cases from the following selected districts. OJD originally considered four other districts, for a total of 19 counties in 14 districts, but decided to limit the reviews due to time and resources.

DISTRICTS/COUNTIES REVIEWED BY OJD & NUMBER OF 2007 COMMITMENTS			
DISTRICT	COUNT(IES)	TYPE OF REPRESENTATION	2007 YDC COMMITMENTS
5	New Hanover	PAC	15
7	Nash, Edgecombe, Wilson	PAC	15
10	Wake	PD, PAC	14
12	Cumberland	PAC	46
14	Durham	Legal Clinics, PD, PAC	19
16B	Robeson	PD, PAC	4
19C	Rowan	PAC	13
26	Mecklenburg	K, PAC	47
28	Buncombe	PD, PAC	2
<b>TOTAL</b>			<b>175</b>
<b>LEGEND</b>	<b>PAC</b> - Private Assigned Counsel; <b>PD</b> - Public Defender; <b>K</b> - Contract		
Type of representation reflects legal representation in 2007, which may have since changed.			

The above counties were chosen based on geographic diversity, population diversity, and the number of commitments during 2007 and represent the four methods of representation (i.e., public defender, private assigned counsel, contract attorney, and legal clinics). These combined counties cover nine of the current district court districts, and account for approximately 33.6% of the juveniles committed in 2007 (175 commitments). Of those 175 commitments, OJD reviewed 147. While the total number of commitments reviewed was 147, it was impossible to determine the legality of the outcome in one case based on the court file. That case has been excluded from most of the analysis, except in the basic demographic information and in any other instance where the cases could be reported under an “unknown” category. Furthermore, in Cumberland County, there were 46 commitments, but only 35 cases were provided for review. Of those cases, three of the cases were purged. In Mecklenburg County, there were 47 commitments, but OJD reviewed only 42 of the cases due to time constraints.

### Notice to District Attorneys in Participating Districts

After OJD selected the participating counties, OJD contacted the elected District Attorneys in those counties by letter to inform them of the Project and to offer to answer any questions or provide any additional information about the Project and its goals. Though few district attorneys or assistant district attorneys contacted OJD as a result of the letter, OJD did interact with several assistant district attorneys during the course of the investigations.

### Memorandum of Agreement with the Department of Juvenile Justice and Delinquency Prevention (“DJJDP”) Regarding Contacting Juveniles in YDCs

To facilitate cooperation between OJD and DJJDP and to allow attorneys appointed by OJD

access to committed juveniles, OJD and DJJDP entered into a Memorandum of Agreement (“MOA”).

### **Entitlement to Counsel**

There is no express right to counsel for committed juveniles. N.C.G.S. § 7A-451(a)(8) states that an indigent person is entitled to counsel “in the case of a juvenile, [at] a hearing as a result of which commitment to an institution or transfer to superior court for trial on a felony charge is possible.” The entitlement is extended under N.C.G.S. § 7B-2000, which states:

- (a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. Counsel for the juvenile shall be appointed . . . in any proceeding in which the juvenile is alleged to be
  - (i) delinquent . . .

In addition, “[a]ll juveniles shall be conclusively presumed to be indigent.” N.C.G.S. § 7B-2000(b). N.C.G.S. § 7B-1501(17) also defines the term “juvenile” as follows: “Whenever the term ‘juvenile’ is used with reference to rights and privileges that term encompasses the attorney for the juvenile as well.”

A juvenile may contest the “nature or duration of the disposition on the basis that it was imposed in an illegal manner” under N.C.G.S. § 7B-2600. No express right to counsel is provided in this section, but an attorney could file a motion requesting review of either the legal basis of the juvenile’s commitment or the term of the commitment.

Because no express right to counsel currently exists, OJD collaborated with the chief district court judges in the Project counties to allow counsel to review and investigate cases, as well as advocate for the juvenile if actionable errors were found.

### **Phase 1: Review of the Juvenile Court File**

#### **Document Review**

Although juvenile records maintained by the clerk are closed from public inspection, a record may be examined by order of the court. N.C.G.S. § 7B-3000(b). In the participating counties, OJD asked the chief district court judges to enter a temporary administrative order allowing OJD to review any case in which a juvenile was committed in 2007 and authorizing OJD to contact the affected juvenile, if necessary. The administrative orders were in effect from January 1, 2008 through December 31, 2008, but actual representation has extended into 2009 in some cases.

For the selected counties, OJD reviewed the following documents in the juvenile court files:

- All petitions filed (including new criminal charges, motions for review, and undisciplined petitions);
- All first appearance and probable cause orders;
- All adjudication and disposition orders;
- All continuance orders;
- All orders terminating supervision or jurisdiction;

- Certain documents from the court counselor's office; and
- Any other order affecting the supervision or jurisdiction of the court.

In districts in which there were few commitments, OJD requested that the clerk copy the juvenile court files and send them to OJD. In districts with more than a few commitments, OJD traveled to the district to review the juvenile court files at the courthouse. In Cumberland and Mecklenburg counties, the number of cases necessitated some assistance from local delinquency contract attorneys and interns to review the files efficiently.

### **Data Collection**

During the review of the file, OJD collected data to determine if there were any trends that could be used to help juvenile defense counsel better prepare their cases against commitment. OJD captured specific data using an Access database designed for this Project. Information that was captured included, but was not limited to, the following:

- The juvenile's initials and the file number;
- The juvenile's age, race, and sex;
- The county and district from which the case originated;
- The last grade the juvenile completed in school;
- The event that triggered commitment (i.e., new offense or probation violation);
- The juvenile's prior undisciplined history;
- The juvenile's prior delinquency history (e.g., allegations, adjudications, probation violations, or commitments);
- The maximum term of commitment;
- The type of appointed counsel for the juvenile (i.e., private assigned counsel, public defender, contract attorney, or legal clinic);
- The names of the juvenile's attorney and the presiding judge;
- Any error found; and
- Practices of juvenile defense counsel (including whether allegations were contested, whether charges were dismissed or reduced, whether the case was appealed, whether the attorney sought release of the juvenile pending appeal, and whether the attorney requested credit for time served if the juvenile was in detention pending commitment).

### **Phase 2: Investigations and Accessing the Juveniles**

If an error was found during OJD's review of the juvenile's court file, OJD planned to contact the juvenile to determine if the juvenile wanted to pursue the case. If so, OJD intended to contact the trial attorney with the new information unless OJD had cause to refer the case to a different attorney. The rationale for contacting the juvenile's trial attorney was that it would be the better practice for the juvenile's former counsel to take the case back to court, because of the

attorney's familiarity with the parties and the practices of the district. However, as the Project progressed, OJD found that a better practice was to contact the trial attorney first if information in the file was unclear. In some of those cases, the trial attorney investigated issues in the case and resolved them. In addition, OJD contacted DJJDP to clarify issues such as multiple orders with different information.

If the juvenile was released from a YDC before the attorney attempted to make contact, OJD contacted the juvenile to discuss the error. This was done for two reasons. First, the juvenile could be on post-release supervision, which could be terminated if the court determined the juvenile should not have been committed. Second, the prior commitment could also be used to commit the juvenile in a future disposition where the juvenile otherwise could not be committed. See N.C.G.S. § 7B-2508(d).

During the Project, it was determined that contact with the juvenile was sometimes delayed by communications between OJD and DJJDP. In an effort to expedite the process, OJD has been in consistent discussions with DJJDP administration on the importance of working together for the benefit of juveniles. For future cases, our hope is that OJD will be able to develop a contact at every YDC who can help facilitate communication with committed juveniles. We also hope to develop a system for getting a timely response from the local DJJDP offices if information needs to be obtained regarding a juvenile.

### **Phase 3: Advocacy**

#### **Returning the Case to Court for Review**

Although OJD initially proposed an alternative method of returning the case to court, it determined during the Project that contacting the attorney to file motions to modify or clarify illegal commitments sometimes delayed the case. Consequently, in most of the cases that were returned to court because of this Project, OJD filed the relevant motions and represented the juveniles.

N.C.G.S. § 7B-2600 reads as follows:

- (a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.
- (b) In a case of delinquency, the court may reduce the nature or the duration of the disposition on the basis that it was imposed in an illegal manner or is unduly severe with reference to the seriousness of the offense, the culpability of the juvenile, or the dispositions given to juveniles convicted of similar offenses.

Generally, this statute is used to notify the court of changes in the juvenile's circumstances, such as the juvenile has moved to another county or the juvenile has successfully completed the conditions of probation and should be released from supervision early. However, it is clear from subsection (b) that the right exists for a juvenile to challenge his or her disposition, which of course, would include commitment to a YDC. Therefore, OJD provided form motions that attorneys could apply to the particular circumstances of the case.

**Office of Appellate Defender Intersection**

In some cases, the trial attorney may have appealed to the Court of Appeals the disposition committing the juvenile, generating an automatic appointment of the Office of the Appellate Defender (“OAD”). Therefore, some cases may have had a pending appeal while OJD was reviewing the commitment and taking any appropriate action. In those cases, after discussing the issue with the Appellate Defender, if an appeal was pending in the matter, OJD contacted appellate counsel to relay any change in the juvenile’s case that could affect the appeal. Eight cases that were reviewed were also on appeal.

Additionally, OAD notified OJD during 2008 when any case was being appealed that involved the commitment of a juvenile. OJD consulted on 10 of these cases, which produced greater identification of legal issues, but mixed outcomes. In one case, the court had not properly entered the maximum period of commitment. The appellate attorney consulted with OJD, motioned the case in trial court, and successfully had the juvenile’s maximum term of commitment reduced. Another case involved a juvenile who had his probation extended without his being notified or present in court. The juvenile was later committed based on the extended probation. However, by the time the case was motioned back to trial court, the juvenile had turned 18, making the argument moot.

## **Appendix C: 2008 Temporary Administrative Order**

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF [ ]

DISTRICT COURT DIVISION

**ADMINISTRATIVE ORDER**

This matter coming before the undersigned as Chief District Court Judge for the [ ] Judicial District ([ ] County).

In response to a request from the Office of the Juvenile Defender and the Office of Indigent Defense Services the Court hereby Orders that:

1. While this order is in effect, the Office of the Juvenile Defender shall be allowed to review all juvenile delinquency cases in which the juvenile was committed to a youth development center in 2007.
2. In furtherance of this order, the Clerk of Court shall provide access to files of all juveniles who were named as respondent in a petition filed alleging delinquency and subsequently committed to a youth development center during the calendar year 2007.
3. The Juvenile Defender and his immediate staff shall be allowed to review, record, and, if necessary, photocopy information from files maintained by the Clerk of Court which fit the criteria stated in paragraphs 1 and 2 above.
3. The Juvenile Defender and his immediate staff may only use this information only in such a manner as will ensure that the confidentiality of the juveniles and their records are preserved.
4. While this order is in effect, the Office of the Juvenile Defender shall have the authority to contact the affected juvenile for matters relating to the juvenile’s commitment to a youth development center.
5. While this order is in effect, the Office of the Juvenile Defender shall have the authority to represent the juvenile in this Court for matters relating to the juvenile’s commitment to a youth development center.
6. This Order shall remain in effect from January 1, 2008 through December 31, 2008.

This is the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_

[ ]

Chief District Court Judge

**Appendix D: Motion to Modify and Vacate Commitment to  
Youth Development Center**



Gen. Stat. § [NUMBER].

- 4. In the dispositional order, the Honorable Judge [NAME] ordered a Level 3 disposition and committed the juvenile to a youth development center for an indefinite term of at least six months not to exceed the juvenile's [NUMBER] birthday.
- 5. That pursuant to N. C. Gen. Stat. § [7B-2508 or 7B-2510], the court could not commit the juvenile to a youth development center because [STATE REASONS].

WHEREFORE, the Juvenile requests the Court to schedule a review hearing to reconsider the order of the court committing the juvenile and to enter disposition not inconsistent with N.C. Gen. Stat. § [7B-2508 or 7B-2510].

Respectfully submitted this the [ ] day of [ ], 20   .

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[ATTORNEY]  
 [ADDRESS]  
 [CITY, STATE, ZIP]  
 [TELEPHONE]

\* \* \* \* \*

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the [NUMBER], Judicial District by deposit of said copy with [NAME], Assistant District Attorney.

This the [ ] day of [ ], 20\_\_.

\_\_\_\_\_

[ATTORNEY]

**Appendix E: Motion to Modify Maximum Term of Commitment to  
Youth Development Center**

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

[ ] COUNTY

DISTRICT COURT DIVISION

FILE NO. [ ]

STATE OF NORTH CAROLINA

)

)

v.

) MOTION TO MODIFY MAXIMUM TERM

) OF COMMITMENT TO YOUTH

[JUVENILE]

) DEVELOPMENT CENTER

NOW COMES the Juvenile, by and through his attorney, and requests this Honorable Court, pursuant to N.C. Gen. Stats. § 7B-2600 and 7B-2513, to issue an ORDER correcting the commitment order in the above captioned case which was entered on [DATE]. The Juvenile requests a hearing on this motion.

In support of said motion, the Juvenile states the following:

1. On [DATE], the Juvenile was charged with [OFFENSE], in violation of N.C. Gen. Stat. § [NUMBER].
2. On [DATE], the Juvenile was adjudicated of [OFFENSE], a violation of N.C. Gen. Stat. § [NUMBER].
3. In the dispositional order, the Honorable Judge [NAME] ordered a Level 3 disposition and committed the juvenile to a youth development center for an indefinite term of at least six months not to exceed the juvenile's [NUMBER] birthday.

4. That pursuant to N.C. Gen. Stat. § 7B-2513(a), the court could only commit the juvenile for [TIME PERIOD] for an adjudication of [OFFENSE] because [STATE REASONS].

WHEREFORE, the Juvenile requests the Court to schedule a review hearing to determine the correct maximum term of commitment.

Respectfully submitted this the [ ] day of [ ], 20 .

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[ATTORNEY]

[ADDRESS]

[CITY, STATE, ZIP]

[TELEPHONE]

\* \* \* \* \*

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the [NUMBER], Judicial District by deposit of said copy with [NAME], Assistant District Attorney.

This the [ ] day of [ ], 20 .

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[ATTORNEY]

**Appendix F: Other Project Findings (Profile of Committed  
Juveniles, Court Practices, and Defense Counsel Practices)**

## Other Project Findings

### Profile of Committed Juveniles

#### Age and Race

Of the 147 commitments reviewed, 81.8% of the juveniles were 15 or 16 when they committed the commitment offense. The average age of both male and female juveniles at the time of commitment was 16. At the time of commitment, 79.6% were either 16 or 17 years of age. The committed juveniles were overwhelmingly male (88.4%) and a large majority (81%) were black.

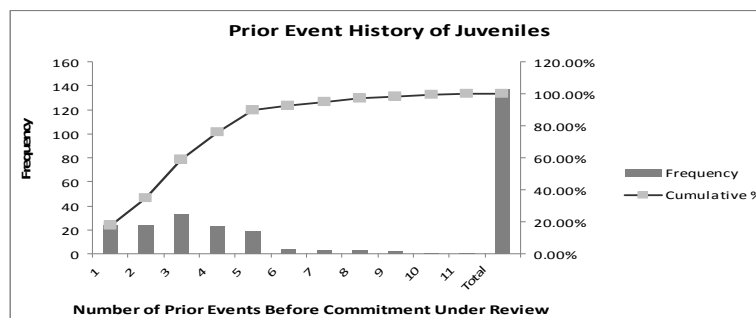
AGE AT COMMITMENT BY GENDER			RACE		
Gender	Number	Percentage	Race	Number	Percentage
Female	17	11.6%	Black	119	81.0%
Male	130	88.4%	Hispanic	4	2.7%
Total	147	100.0%	Unknown	3	2.0%
			White	21	14.3%
			Total	147	100.0%

#### Education

Education level could be determined for 61.9% of the committed juveniles. Of those juveniles, the data indicated that over a third (36.3%) had completed the seventh grade or less than the seventh grade at the time they were committed. Almost nine of 10 (86.8%) of the committed juveniles had not gone past the eighth grade before being committed. Based on the data received, the vast majority of the committed juveniles were in a lower grade than they should have been based upon their age.

#### Delinquency History

During the review and investigation of the Project, “prior events” were defined as allegations, adjudications, or probation violations resulting in a disposition being entered prior to the adjudication that led to the juvenile’s commitment. The “commitment event” was defined as the adjudication triggering commitment, whether it was a new offense or a probation violation. Each charge for a prior event or commitment event was considered an allegation. Of the 146 commitments analyzed, juveniles had an average of 3.4 prior events before the commitment event. Furthermore, for each prior event, there was an average of 2.96 allegations. The most frequent serious adjudicated offenses for the juveniles’ first contacts with the juvenile justice system were Class H felonies (at 32 or 21.8%) and Class 1, Class 2, and Class 3 misdemeanors combined (with a total of 52 or 35.4%).



For each commitment event, juveniles had an average of 3.48 allegations. Moreover, the most

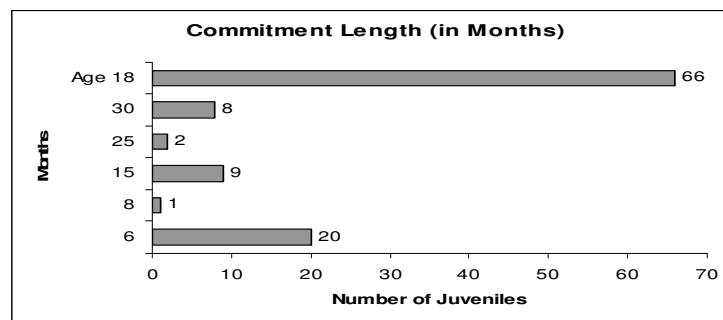
frequent offense for which juveniles were committed was a probation violation. Of the 146 commitments analyzed, 59 juveniles (40.4%) were committed for a probation violation. The second and third most frequent offenses for which juveniles were committed were robbery with a dangerous weapon (with a total of 12 or 8.2%) and breaking and entering (with a total of eight or 5.5%). With the exception of probation violations, Class H felonies were the most frequently adjudicated class of offenses (20 or 13.6%).

Of the 146 commitments considered, nine juveniles (6.16%) were committed as a result of their first offense, meaning the juveniles did not have any prior event history. Twenty-nine (19.9%) of the committed juveniles had been committed previously. Of the juveniles being committed for a second or third time, the most frequent adjudicated offenses were probation violation (at seven or 24.1%) and simple assault (at six or 20.7%).

### Court Practices

During the review and investigation of the Project, OJD discovered that the average time between a juvenile's commission of an offense and the court's commitment of the juvenile was 122 days, or 1/3 of a year.

The maximum term of commitment was specified for 106 of the 147 commitments, or 72.6% of the total commitments. Of those commitments, 20 juveniles (18.9%) were committed for six months, one juvenile (0.9%) was committed for eight months, nine juveniles (8.5%) were committed for 15 months, two juveniles (1.9%) were committed for 25 months, eight juveniles (7.6%) were committed for 30 months, and 66 juveniles (62.3%) were committed until their 18<sup>th</sup> birthday.



Additionally, of 309 total events (taking into consideration the prior events and commitment events) where this information was provided, the average length of probation was 9.7 months. 28.5% of the probation lengths were six months or less and 58.3% were for one year.

### Defense Counsel Practices

During the review and investigation of the Project, OJD also reviewed defense counsel practices. OJD first examined types of legal representation and found that a majority of the cases resulting in commitments (84.4%) were handled by private assigned counsel. Contract attorneys handled the bulk of the remaining cases, at 10.2%. Additionally, in 137 cases with at least one prior event, 52 juveniles (38%) had the same attorney throughout the juvenile's delinquency history, 70 juveniles (51.1%) had the same attorney for at least two prior events, and 15 juveniles (10.9%) never had the same attorney.

Additionally, OJD analyzed the outcomes of the cases. In comparing the highest alleged charge

to the adjudicated charge, OJD reviewed 597 events (including known prior events and commitment events less 19 unknown outcomes), and found the following: 32 (5.4%) ended in a voluntary dismissal or dismissal with leave; 45 (7.5%) ended in no adjudication (i.e., a finding that the juvenile was not responsible for the charge alleged); and 53 (10%) of adjudicated offenses ended with the adjudicated offenses being less than the alleged offenses. Of the 53 lesser charges, 45 (85%) of the adjudicated classes were at least one class lower than the alleged offense. Further data analysis also indicated that, of the cases where the dispositional level was either a Level 2 or Level 3, 73.7% of the juveniles were not committed.

<i>DISPOSITION LEVELS 2 OR 3: PERCENT OF COMMITMENTS</i>				
<b>PRIOR EVENT OFFENSE LEVEL STUDY</b>	<b>COMMITTED</b>	<b>NOT COMMITTED</b>	<b>TOTAL</b>	<b>PERCENTAGE OF THOSE NOT COMMITTED</b>
<b>Minor</b>	5	5	10	50.0%
<b>N/A</b>	1	1	2	50.0%
<b>PV</b>	3	9	12	75.0%
<b>Serious</b>	5	22	27	81.5%
<b>Violent</b>	1	4	5	80.0%
<b>Unknown</b>		1	1	100.0%
<b>Total</b>	15	42	57	73.7%

As far as appeals were concerned, of the 144 commitment cases where it could be determined whether there was a direct appeal, there were eight appeals in the prior events that ended in commitment. Six of the eight appeals occurred in Mecklenburg County cases, where 50% of the legal representation was provided by private appointed counsel and 50% by contract attorneys. Of the eight appealed cases, judges released juveniles pending their appeal in 7 (88%) of the cases.

## **Appendix G: Categories of Errors Table**

<b>CATEGORIES OF ERRORS</b>	
<b>LEGAL BASIS</b>	<b>TERM OF COMMITMENT</b>
Court incorrectly determined offense class	Court incorrectly identified whether commitment was definite or indefinite
Offense adjudicated upon admission or a finding of delinquency was not less than or equal to the offense alleged	Maximum term of definite commitment was more than 2 years
Attorney was not present at hearing -adjudication	Maximum term of indefinite was incorrect
Attorney was not present at hearing-disposition	
Attorney was not present at hearing -probation violation	
Attorney was not present at hearing- other	
Court incorrectly determined most serious offense	
Court incorrectly determined offense level	
Court incorrectly counted the number of prior adjudications	
Court incorrectly calculated delinquency history level	
Court incorrectly determined dispositional level options	
Disposition level entered was not correct after determining the offense level and points	
Court incorrectly determined whether juvenile was on probation	
Court incorrectly determined whether juvenile was on post-release supervision	
Legal basis statement was not recorded and/or incorrect	
Court imposed incorrect sanction/disposition	
Missing probation violation order	
Missing adjudication order	
Missing disposition order	
Other	

## **Appendix H: 2009 Voluntary Review Procedures**

## **2009 Voluntary Review Procedures**

### **Districts to be Reviewed**

OJD proposes to work with the following counties: Alamance, Buncombe, Durham, Forsyth, Guilford, Mecklenburg, New Hanover, Robeson, Rowan and Wake. Each of these counties previously agreed to participate in the 2007 Project. These counties have legal counsel provided primarily by public defenders, contract counsel, or well-qualified private counsel, and in most cases OJD has a good working relationship with the judges in the county. OJD believes it can work closely with these attorneys and judges to ensure that the files are copied and delivered to OJD for review, that assistance with investigations will be timely, and that the attorneys will be interested in bringing the cases back to court for review. Also, the number of cases should be reviewable with the current resources of the office and voluntary assistance. Review of the cases and data entry should take approximately 360 hours (2 hours per case/180 cases). Based on the 2008 study, approximately 65% of the cases (117) will require investigation, which should take approximately 351 hours (3 hours per case/117 cases). If OJD provided direct representation on all cases predicted to be brought to court, which would be approximately 30%, or 35 cases, the representation should take approximately 350 hours (10 hours per case/35 cases). Total time involved would be 1061 hours.

### **Entitlement to Counsel/Right to Review**

As previously discussed, there is no express right to counsel for committed juveniles. Consequently, OJD proposes requesting the voluntary assistance of the chief district court judges as was done in the initial Project. OJD will ask the chief district court judges in the participating counties to enter a temporary administrative order appointing OJD to review any case in which a juvenile is committed in 2009 and authorizing OJD to contact the affected juvenile. If the judges agree, the administrative order would be in effect from January 1, 2009 through December 31, 2009, but actual representation may extend into 2010, depending on the nature of the case.

### **Review Procedures**

Again, if the judges agree, OJD would be appointed in every case in which a juvenile is committed from the participating counties. The appointment could come from a standing administrative order, or the committing judge could order that OJD be appointed to individual cases on the record.

Once a juvenile is committed, OJD would request that the trial attorney copy the entire court file and mail it to OJD, preferably within five days. Because this would be an additional task for attorneys, particularly assistant public defenders, OJD plans to work closely with the chief public defenders to ensure the process is efficient and timely.

Every file would be reviewed under the same procedure as the initial Project, and data about the case and the juvenile would be entered into the Access database as in the initial Project. Information that will be captured includes, but is not limited to, the following: the juvenile's initials and the file number; the date of birth, race and sex of the juvenile; the county and district from which the case originated; the grade the juvenile last completed in school; the event that triggered commitment (i.e., new offense or probation violation); the juvenile's prior

undisciplined history; the juvenile's prior delinquency history (e.g., allegations, adjudications, probation violations, dispositions, commitments); the maximum term of commitment; the type of appointed counsel for the juvenile (i.e., private assigned counsel, public defender, contractor, law clinic); the names of the juvenile's attorney and the presiding judge; the attorney time in the cases; and any error found. Data would also be collected during the investigation phase to determine the success of the review procedure. The information collected may be used to support a proposal to make commitment review a permanent process. OJD expects it to take between a half hour and two hours to review each case.

### **Investigation Procedures**

Sometimes the information gathered at the review stage of the initial Project generated questions about the case not answerable by the court file. Therefore, there may be an occasional need to contact the attorney who represented the juvenile at the commitment hearing prior to contacting the juvenile. OJD feels confident that working with the above-mentioned counties would expedite the process of gathering any additional needed information.

If OJD finds an error in the file and does not need to contact the attorney, or after contacting the attorney, OJD will contact the juvenile, notify the juvenile of the new information, and ask the juvenile if he or she wants the case to continue. If the juvenile has been released from YDC before OJD attempts to make contact, OJD will still contact the juvenile and consult with the juvenile regarding the error. The juvenile could be on post-release supervision, which may be terminated if the court determines the juvenile should not have been committed. In addition, the prior commitment can be used as a basis for commitment of the juvenile in a future disposition where the juvenile otherwise could not be committed. N.C.G.S. § 7B-2508(d).

If the juvenile wants the case to continue, OJD will contact the trial attorney and request that the trial attorney notice the judge of the circumstances, ask to be appointed to further investigate the case, and file a motion to bring the case back to court. OJD believes it would be the better practice for the juvenile's former counsel to bring the case back to court, because of the attorney's familiarity with the parties and the practices of the district. OJD will contact another local attorney if the juvenile's former counsel is unwilling or unable to continue the representation. Utilizing local attorneys may embolden the attorneys to bring future similar matters to the court's attention. In very limited circumstances where no local attorney can be appointed, OJD will represent the juvenile directly. If the decision is made to advocate, OJD or the trial counsel will make efforts to inform the parent or guardian about the case.

### **Results**

As cases are being investigated and advocated, OJD will track the time and resources involved, in an effort to project the needs in future voluntary processes or a long-term permanent process. OJD will also track problems that may occur in order to make the process more effective in the future.

**Appendix I: Motion For Review (Violation) Order**

STATE OF NORTH CAROLINA  _____ County	<i>File No.</i>  In The General Court Of Justice District Court Division			
IN THE MATTER OF: <i>Name And Address Of Juvenile</i>	<b>MOTION FOR REVIEW (VIOLATION) ORDER</b>  G.S. 7B-2510, -2600			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"><i>Juvenile's Date Of Birth</i></td> <td style="width: 33%;"><i>Age</i></td> <td style="width: 33%;"><i>Date Of Hearing</i></td> </tr> </table>		<i>Juvenile's Date Of Birth</i>	<i>Age</i>	<i>Date Of Hearing</i>
<i>Juvenile's Date Of Birth</i>		<i>Age</i>	<i>Date Of Hearing</i>	

This case was heard at a session for juvenile hearings before the undersigned Judge presiding upon a Motion(s) for Review filed on \_\_\_\_\_. The following persons were present at the hearing:

Name	Relationship	Name	Relationship

	<b>FINDINGS</b>	
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The Court finds as follows:

1. The juvenile was represented by:

<i>Name Of Attorney</i>
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2. The Court has jurisdiction over the parties and the subject matter.
3. The juvenile:
  - a. Denied the allegations in the motion(s) for review and, based on the evidence presented, the court finds:
    - The allegations have not been proven by the greater weight of the evidence; or
    - The allegations have been proven by the greater weight of the evidence.
  - b. Admitted the allegation(s) contained in the motion(s) for review.
4.  The assistant district attorney took a voluntary dismissal as to the following motion(s) for review filed on \_\_\_\_\_.

	<b>CONCLUSIONS OF LAW</b>	
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The Court concludes as a matter of law that:

- 1. The juvenile has not violated the conditions of probation; or
- 2. The juvenile has violated the conditions of probation.

	<b>ORDER</b>	
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It is therefore ORDERED that:

- 1. The case be dismissed.
- 2. The juvenile continue under the original conditions of probation as ordered by this court on *(date)* \_\_\_\_\_.
- 3. The juvenile’s conditions of probation are modified as follows:
  
- 4. A new disposition is entered at Level \_\_\_\_, under the following conditions:
  
- 5. The juvenile’s probation is extended for \_\_\_\_ months because the extension is necessary to protect the community or to safeguard the welfare of the juvenile for the following reasons:

<i>Date</i>	<i>Name Of District Court Judge (Type Or Print)</i>	<i>Signature Of District Court Judge</i>
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**Appendix J: Motion For Review (Other Than Violation) Order**

STATE OF NORTH CAROLINA  _____ County			File No.  In The General Court Of Justice District Court Division	
IN THE MATTER OF: <i>Name And Address Of Juvenile</i>			<b>MOTION FOR REVIEW (OTHER THAN VIOLATION) ORDER</b>  G.S. 7B-2510, -2600	
<i>Juvenile's Date Of Birth</i>	<i>Age</i>	<i>Date Of Hearing</i>		

This case was heard at a session for juvenile hearings before the undersigned Judge presiding upon a Motion(s) for Review filed on \_\_\_\_\_. The following persons were present at the hearing:

Name	Relationship	Name	Relationship

	<b>FINDINGS</b>	
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The Court finds as follows:

1. The juvenile was represented by:

<i>Name Of Attorney</i>
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2. The Court has jurisdiction over the parties and the subject matter.
3. Based on the evidence presented the court finds:

	<b>CONCLUSIONS OF LAW</b>	
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The Court concludes as a matter of law that:

- 1. The juvenile's probation be extended for \_\_\_\_ months.
  
- 2. Other:

	<b>ORDER</b>	
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It is therefore ORDERED that:

- 1. The juvenile's probation be extended for \_\_\_\_ months because the extension is necessary to protect the community or to safeguard the welfare of the juvenile for the following reasons:
  
- 2. Other:

<i>Date</i>	<i>Name Of District Court Judge (Type Or Print)</i>	<i>Signature Of District Court Judge</i>
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**Appendix K: Motion For Review (Post-Release Supervision  
Violation) Order**

STATE OF NORTH CAROLINA  _____ County	<i>File No.</i>  In The General Court Of Justice District Court Division		
IN THE MATTER OF: <i>Name And Address Of Juvenile</i>	<b>MOTION FOR REVIEW (POST-RELEASE SUPERVISION VIOLATION) ORDER</b>		
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><i>Juvenile's Date Of Birth</i></td> <td style="width:10%;"><i>Age</i></td> <td style="width:57%;"><i>Date Of Hearing</i></td> </tr> </table>		<i>Juvenile's Date Of Birth</i>	<i>Age</i>
<i>Juvenile's Date Of Birth</i>	<i>Age</i>	<i>Date Of Hearing</i>	
G.S. 7B-2516, -2600			

This case was heard at a session for juvenile hearings before the undersigned Judge presiding upon a Motion(s) for Review filed on \_\_\_\_\_. The following persons were present at the hearing:

Name	Relationship	Name	Relationship

<b>FINDINGS</b>
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The Court finds as follows:

1. The juvenile was represented by:

<i>Name Of Attorney</i>
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2. The Court has jurisdiction over the parties and the subject matter.
3. The juvenile:
- a. Denied the allegations in the motion(s) for review and, based on the evidence presented, the court finds that:
    - The allegations have not been proven by the greater weight of the evidence; or
    - The allegations have been proven by the greater weight of the evidence.
  - b. Admitted the allegation(s) contained in the motion(s) for review.
4.  The assistant district attorney took a voluntary dismissal as to the following motion(s) for review filed on \_\_\_\_\_.

