

Cases and Statutes on Juvenile Petitions*

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Cases

U.S. Supreme Court

Juveniles are constitutionally entitled to timely and adequate notice of the allegations against them.

In re Gault, 387 U.S. 1, 33–34 (1967). “Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must ‘set forth the alleged misconduct with particularity’ . . . The ‘initial hearing’ in the present case was a hearing on the merits. Notice at that time is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below [petition only had to recite conclusion of delinquency, and juvenile and parents would be advised of facts involved in case at initial hearing], it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth’s freedom and his parents’ right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.”

N.C. Court of Appeals

(1) Juvenile trial court lacked jurisdiction over second juvenile petition, which was filed more than 30 days after complaint about the incident; (2) there was not a fatal variance as to first juvenile petition where petition alleged that juvenile touched victim with his hand and evidence showed he touched her with an object.

In re D.S., ___ N.C. App. ___, 682 S.E.2d 709 (2009), *rev. allowed*, ___ N.C. ___, 682 S.E.2d 208 (2009). On 9/25/07 the court counselor received a complaint about an incident that occurred in a school, involving the juvenile’s holding a piece of candy (Pixy Stix) and touching a female student with it several times. On 10/10/07 the counselor filed a petition based on the complaint, alleging simple assault. On 11/15/07 the court counselor received a second complaint relating to the same incident, and the next day the counselor filed a second petition alleging sexual battery. The trial court adjudicated the juvenile delinquent for both offenses. (1) The court of appeals held that the trial court lacked subject matter jurisdiction with respect to the sexual battery petition because it was *untimely* filed. The court counselor received all the information about the incident on 9/25/07, and could not

*These summaries are drawn from materials prepared by School of Government faculty member Janet Mason, posted at www.sog.unc.edu/programs/dss/case_summaries.html, and the Office of the Juvenile Defender, posted at www.ncids.org/Juvenile%20Defender/JuvDef%20HomePage.htm. For a further discussion of pleading requirements in juvenile delinquency cases, see LOU A. NEWMAN, ALYSON GRINE, & ERIC J. ZOGRY, NORTH CAROLINA JUVENILE DEFENDER MANUAL, Chapter 6 (Aug. 2008), posted at www.ncids.org. For a discussion of pleading requirements in criminal cases, see 1 JOHN RUBIN & ALYSON GRINE, NORTH CAROLINA DEFENDER MANUAL, Chapter 8 (July 2004), posted at www.ncids.org; Jessica Smith, *The Criminal Indictment: Fatal Defect, Fatal Variance, and Amendment*, ADMINISTRATION OF JUSTICE BULLETIN No. 2004/03 (July 2004), posted at www.sog.unc.edu/programs/crimlaw/aoj.htm.

file a second petition based on that incident more than 50 days later, even after receiving a “second complaint.” (2) The court of appeals rejected the juvenile’s argument that the simple assault petition was defective because it alleged that he touched the victim with his hands, while the evidence showed only that he touched her with an object. The court held that the variance was not material and did not affect the juvenile’s ability to prepare a defense.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/081078-1.htm>

Juvenile Petitions Alleging First-Degree Sexual Offense Were Fatally Defective and Deprived Court of Jurisdiction to Accept Juvenile’s Admission of Delinquency Because They Failed to Name Victim

In re M.S., ___ N.C. App. ___, 681 S.E.2d 441 (2009). Juvenile petitions alleging first-degree sexual offense did not name the victim or give the victim’s initials. The petitions simply stated “a child under the age of 13 years.” The court ruled, noting that *State v. McKoy*, ___ N.C. App. ___, 675 S.E.2d 406 (2009) (victim’s initials were sufficient based on the facts in the case) implicitly acknowledged that an indictment must name the victim in some way, ruled that the petitions were fatally defective and deprived the court of jurisdiction to accept the juvenile’s admission of delinquency. Challenges to a court’s subject matter jurisdiction may be raised at any time, including for the first time on appeal.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081016-1.pdf>.

Juvenile trial court lacked jurisdiction because juvenile petition was untimely filed; petition was filed more than 15 days after complaint, and court would not presume that chief court counselor extended time to 30 days.

In re K.W., 191 N.C. App. 812 (2008). On 6/26/07 petitions alleging injury to personal property were prepared by the court counselor, signed and verified by an officer, and received by the court counselor for review. The counselor filed the petitions 16 days later. The court adjudicated the juvenile delinquent and placed him on probation. The juvenile appealed, arguing that the trial court lacked subject matter jurisdiction. The court of appeals agreed. The held that because the record did not show that the chief court counselor had granted an extension, filing of the petition more than 15 days after it was received was not timely, and the trial court lacked subject matter jurisdiction. The court of appeals would not presume that the chief court counselor exercised his or her discretion to extend the time for filing.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071472-1.htm>

Juvenile trial court lacked jurisdiction because juvenile petition was untimely filed; petition was filed more than 30 days after complaint.

In re J.B., 186 N.C. App. 301 (2007). The court ruled that the juvenile court judge was without jurisdiction to consider a petition charging a juvenile with misdemeanor larceny. An officer submitted a complaint with a juvenile court counselor on May 9, 2006. The counselor approved the filing as a juvenile petition, which was filed in the clerk’s office on July 24, 2006. The court noted that G.S. 7B-1703(b) requires that a juvenile petition must be filed within a maximum of 30 days after receipt of the complaint (within 15 days after the complaint is received, with an extension for up to 15 days at the chief court counselor’s discretion). The timely filing of the petition is jurisdictional, and the jurisdictional issue may be raised by the juvenile for the first time on appeal.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061691-1.htm>

Juvenile trial court lacked jurisdiction because juvenile petition was untimely filed; petition was filed more than 30 days after complaint.

In re M.C., 183 N.C. App. 152 (2007). The court found that under G.S. 7B-1703(b) a juvenile petition must be filed within 15 days after the complaint is received by the juvenile court counselor, and an extension of an additional 15 days may be granted at the chief court counselor’s discretion. Thus, the

juvenile petition must be filed within a maximum of 30 days after the complaint is received by the juvenile court counselor. In this case, the court stated that the only indication when the juvenile court counselor received the complaint was the date (November 1, 2005) that the petition was verified by a detective. The juvenile petition was filed with the trial court on December 2, 2005, which was more than 30 days from November 1, 2005. Therefore, the trial court was without jurisdiction to hear the matter. Although the juvenile did not raise the issue before the trial court, it could be raised for the first time on appeal. The court vacated the trial court's adjudication and disposition orders and ordered that the case be dismissed.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/060886-1.htm>

Communicating threats charge was not fatally defective.

In re S.R.S., 180 N.C. App. 151 (2006). The juvenile was adjudicated delinquent of communicating threats. As the juvenile was being restrained in an elementary school from going into a hallway, he shouted at a teacher in the hallway that he was going to bring a gun to school the next day and kill the teacher's daughter. The teacher's daughter was a student in the school whom the juvenile had previously assaulted. The juvenile petition charging communicating threats alleged that the juvenile threatened to physically injure the person and damage the property of the teacher and was communicated by orally stating to the victim that he was going to bring a gun to school the next day and kill the teacher's daughter. The court noted problems in the pleading that included allegations of damage to property as well as injury to a person and alleging the juvenile's threatening injury to the teacher instead of the teacher's child. However, the court ruled that the charge was not fatally defective because any confusion in the pleading was clarified by the allegation setting forth the precise conduct forming the basis of the charge—the threat to kill the teacher's daughter. The juvenile had sufficient notice of the offense to defend himself.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/060047-1.htm>

Defect in service of summons waived by general appearance.

In re D.S.B., 179 N.C. App. 577 (2006). The juvenile was adjudicated of second-degree rape. The juvenile appealed, arguing that he was never properly served, since the juvenile and parent were served with the summons and notice of hearing on the day of the juvenile's first hearing (a secure custody hearing). The Court of Appeals noted that under G.S. 7B-1806 the juvenile is to be served no less than five days prior to the scheduled hearing. However, the Court also found that prior decisions have held that delinquency proceedings are governed by the Rules of Civil Procedure, which dictate that a general appearance by a party constitutes submission to the jurisdiction of the court. Relying on *In re Hodge*, 153 N.C. App. 102 (2002), the Court found that the juvenile's appearance at the first appearance, secure custody, and subsequent hearings without contesting the process or jurisdiction constituted a general appearance for the purposes of waiving any defect in service.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/051521-1.htm>

Each petition must allege all elements of the offense, and petition in this case failed to allege purpose of kidnapping, an essential element of the offense; amendment of petition by the State after respondent appealed was nullity.

In re B.D.W., 175 N.C. App. 760 (2006). The juvenile was adjudicated delinquent of two counts of second degree kidnapping, one count of common law robbery, and two counts of simple assault. The juvenile appealed, arguing that the petitions for the charges of second degree kidnapping failed to contain all the elements of the crime alleged. The Court of Appeals agreed, finding that the petitions did not allege the purpose of the kidnapping, which is an essential element of second degree kidnapping. The State argued that the companion petitions alleged the conduct needed to satisfy the missing element, but the Court of Appeals, relying on adult criminal cases, rejected the argument and held that each count must contain every element of the offense unless the allegations in the other counts are incorporated by reference. The Court remanded the case for imposition of adjudication on

the lesser included offense of false imprisonment. The Court also noted that pending appeal, the trial court granted the State's motion to amend the petitions to include the missing elements. The Court found that once the juvenile perfected his appeal, the district court lacked jurisdiction to amend the petition, and the amendment was a nullity.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/050388-1.htm>

Petition that fails to charge any criminal offense under North Carolina law is fatally deficient.

In re R.P.M., 172 N.C. App. 782 (2005). The petition alleged that the juvenile committed the offense of "assault with a deadly weapon with intent to inflict serious injury," and the trial court adjudicated the juvenile delinquent of that offense. The Court of Appeals vacated the judgment, holding that the petition was fatally defective because there is no crime of "assault with a deadly weapon with intent to inflict serious injury." The Court of Appeals recognized that, like an indictment, a petition that is fatally deficient "is inoperative and fails to evoke the jurisdiction of the court."

<http://www.aoc.state.nc.us/www/public/coa/opinions/2005/041135-1.htm>

Petitions alleging resisting, delaying, and obstructing officer and assault on officer must include elements required for indictment for these charges.

In re J.F.M., 168 N.C. App. 143 (2005). One of the petitions alleged that the juvenile had resisted, delayed, and obstructed an officer (RDO), and another petition alleged that the juvenile had assaulted an officer. The juvenile argued that the petitions were fatally defective because they did not allege an essential element. The Court of Appeals recognized that a fatally deficient petition is inoperative and fails to evoke the court's jurisdiction. The Court also recognized that petitions for these charges must conform to the requirements for indictments. A charge of RDO must "1) identify the officer by name, 2) indicate the official duty being discharged, and 3) indicate generally how defendant resisted the officer." A charge of assault on an officer "requires allegations that the offender assaulted "an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties." The Court of Appeals found in this case that the petitions sufficiently alleged these elements.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2005/040183-1.htm>

Trial court may not adjudicate juvenile delinquent of offense not charged in petition; petition alleging forcible sex offense did not allow adjudication of statutory sex offense.

In re Griffin, 162 N.C. App. 487 (2004). The juvenile petition alleged that the juvenile engaged in a sex offense against the victim "by force against the victim's will" under G.S. 14-27.4. At the close of the State's evidence, the respondent moved to dismiss on the ground that the State presented no evidence of force. The trial court denied the motion and adjudicated the respondent delinquent of first-degree statutory sex offense, finding that the respondent had sufficient notice that the victim was four years old and that the respondent was 12 years old. The Court of Appeals vacated the judgment, finding that a petition in a juvenile case serves essentially the same function as an indictment in an adult felony case and therefore must allege every element of the offense the state intends to prove at trial. The Court of Appeals recognized that notice must be given in a juvenile proceeding that would be constitutionally adequate in a criminal proceeding. The Court also recognized that a valid indictment is necessary to obtain jurisdiction over a defendant. The petition in this case was fatally defective because the state failed to allege the ages of the respondent and victim, which are essential elements of the offense of statutory sex offense.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2004/021592-1.htm>

**(1) Presence at and participation in adjudicatory hearing waived defective service of petition;
(2) Assault petition was not defective for failure to specify date of offense; time is not essential element of offense unless respondent is prejudiced**

In re Hodge, 153 N.C. App. 102 (2002). (1) The juvenile was petitioned for indecent liberties between children. Both he and his mother were properly served with a summons and notice of hearing. On a separate date, a second petition was issued against the juvenile for simple assault. Neither the juvenile nor the juvenile's parent was served with the simple assault petition. At the adjudicatory hearing, the juvenile was adjudicated of simple assault. The juvenile appealed, arguing that he had not been properly served with the simple assault petition and therefore the trial court could not exercise personal jurisdiction over him. The Court of Appeals disagreed, holding that the juvenile's presence at the hearing and participation in the hearing constituted a waiver of lack of service and jurisdiction. (2) The petition alleged that the juvenile committed the simple assault "between 1 April 2000 and 15 July 2000." The juvenile argued that the petition was fatally defective because it did not allege a specific date for the offense. The Court of Appeals held that the exact date of offense was not essential to the allegation of assault. To be valid, an indictment must allege either a designated date or a period of time in which the offense was allegedly committed. A failure to specify the date or an error in specifying the date requires that a judgment be vacated only if the failure or error misled the respondent or prejudiced the presentation of his or her defense. The respondent in this case failed to establish that he was misled or prejudiced.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2002/011265-1.htm>

Petition must allege all elements of offense; in statutory sex offense case; petitions were fatally defective because they did not include ages of victim and juvenile.

In re Jones, 135 N.C. App. 400 (1999). The juvenile was charged with four counts of sexual offense. The first petition alleged "[t]hat the juvenile [respondent] is a delinquent juvenile . . . in that at and in the county named above [Buncombe], and on or about the 25th day of November, 1997, the juvenile unlawfully, willfully, and feloniously did engage in a sex offense with [L.G.C.]." The other three petitions were identical except for the date of the offense. The respondent was tried on the theory of first-degree sexual offense, and the trial court adjudicated the respondent delinquent of four counts of violating G.S. 14-27. The Court of Appeals recognized that the cited statute had been repealed several years earlier and that the State had intended to proceed on the theory that the respondent had committed first-degree statutory sex offense, a violation of G.S. 14-27.4(a)(1). To commit that offense, the alleged victim must be less than 13 years old and the respondent must be at least 12 years old and at least four years older than the victim. The Court of Appeals found that the petitions were fatally defective because they failed to contain the crucial allegations of the ages of the alleged victim and juvenile, as required for the offense.

<http://www.aoc.state.nc.us/www/public/coa/opinions/1999/990019-1.htm>

State may not amend petition if it changes nature of offense; petition could not be amended to change offense from setting fire to public building to burning personal property.

In re Davis, 114 N.C. App. 253 (1994). The petition alleged the offense of setting fire to a public building. The evidence at trial showed only that there was a burning of personal property within the building and not a burning of the building itself. At the close of the state's evidence, the juvenile moved to dismiss the offense of setting fire to a public building. The trial court granted the motion but allowed the State to proceed on the offense of burning personal property and adjudicated the juvenile delinquent of that offense. The Court of Appeals held that the trial court had essentially allowed the State to amend the petition and that the amendment was improper because it changed the nature of the offense. The Court compared the juvenile statute then in effect [G.S. 7A-627, which is identical to current G.S. 7B-2400] to the adult misdemeanor statute, G.S. 15A-922(f), which likewise prohibits the State from amending if the amendment changes the nature of the offense.

Juvenile procedures are at least as strict as adult procedures.

State v. Norris, 77 N.C. App. 525, 529 (1985). In a case in which the Court of Appeals excluded evidence of a one-on-one show-up, the Court stated that “the procedural standards for juveniles must be at least as strict as those for adults, when the legislature has given us no guidance otherwise.”

Petition must be signed and verified.

In re Green, 67 N.C. App. 501 (1984). In abuse and neglect case, court held that where a statute requires that a petition be signed and verified, these requirements must be satisfied; otherwise, the petition is fatally deficient and inoperative to invoke the jurisdiction of the court. [Delinquency petitions must be signed and verified under G.S. 7B-1803.]

Amendment that more specifically identified owner of property did not change nature of offense.

In re Jones, 11 N.C. App. 437, 438 (1971). State could amend petition alleging larceny where petition sufficiently alleged offense of larceny and the “amendment in no way changed the nature of the offense but simply identified more specifically the owner of the property allegedly stolen.” Opinion does not indicate original or amended allegation. *But see* 1 NORTH CAROLINA DEFENDER MANUAL § 8.2F, at 10–11 (July 2004) (citing cases in which court found allegations of ownership defective).

Statutes

7B-1703. Evaluation decision

(a) The juvenile court counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

(b) Except as provided in G.S. 7B-1706, if the juvenile court counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The juvenile court counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words "Approved for Filing", shall sign it, and shall transmit it to the clerk of superior court.

(c) If the juvenile court counselor determines that a petition should not be filed, the juvenile court counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The juvenile court counselor shall sign the complaint after indicating on it:

- (1) The date of the determination;
- (2) The words "Not Approved for Filing"; and
- (3) Whether the matter is "Closed" or "Diverted and Retained".

Except as provided in G.S. 7B-1706, any complaint not approved for filing as a juvenile petition shall be destroyed by the juvenile court counselor after holding the complaint for a temporary period to allow review as provided in G.S. 7B-1705.

7B-1801. Pleading and process

The pleading in a juvenile action is the petition. The process in a juvenile action is the summons.

7B-1802. Petition

The petition shall contain the name, date of birth, and address of the juvenile and the name and last known address of the juvenile's parent, guardian, or custodian. The petition shall allege the facts that invoke jurisdiction over the juvenile. The petition shall not contain information on more than one juvenile.

A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation.

Sufficient copies of the petition shall be prepared so that copies will be available for the juvenile, for each parent if living separate and apart, for the guardian or custodian if any, for the juvenile court counselor, for the prosecutor, and for any person determined by the court to be a necessary party.

7B-1803. Receipt of complaints; filing of petition

(a) All complaints concerning a juvenile alleged to be delinquent or undisciplined shall be referred to the juvenile court counselor for screening and evaluation. Thereafter, if the juvenile court counselor determines that a petition should be filed, the petition shall be drawn by the juvenile court counselor or the clerk, signed by the complainant, and verified before an official authorized to

administer oaths. If the circumstances indicate a need for immediate attachment of jurisdiction and if the juvenile court counselor is out of the county or otherwise unavailable to receive a complaint and to draw a petition when it is needed, the clerk shall assist the complainant in communicating the complaint to the juvenile court counselor by telephone and, with the approval of the juvenile court counselor, shall draw a petition and file it when signed and verified. A copy of the complaint and petition shall be transmitted to the juvenile court counselor. Procedures for receiving delinquency and undisciplined complaints and drawing petitions thereon, consistent with this Article and Article 17 of this Chapter, shall be established by administrative order of the chief judge in each judicial district.

(b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a complaint and any decision of the juvenile court counselor not to authorize that the complaint be filed as a petition. If the prosecutor, after review, authorizes a complaint to be filed as a petition, the prosecutor shall prepare the complaint to be filed by the clerk as a petition, recording the day of filing.

7B-1804. Commencement of action

(a) An action is commenced by the filing of a petition in the clerk's office when that office is open, or by a magistrate's acceptance of a petition for filing pursuant to subsection (b) of this section when the clerk's office is closed.

(b) When the office of the clerk is closed and the juvenile court counselor requests a petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw and verify the petition and accept it for filing, which acceptance shall constitute filing. The magistrate's authority under this subsection is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition accepted for filing under this subsection shall be delivered to the clerk's office for processing as soon as that office is open for business.

7B-2400. Amendment of petition

The court may permit a petition to be amended when the amendment does not change the nature of the offense alleged. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations.

7B-2405. Conduct of the adjudicatory hearing

The adjudicatory hearing shall be a judicial process designed to determine whether the juvenile is undisciplined or delinquent. In the adjudicatory hearing, the court shall protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law:

- (1) The right to written notice of the facts alleged in the petition;
- (2) The right to counsel;
- (3) The right to confront and cross-examine witnesses;
- (4) The privilege against self-incrimination;
- (5) The right of discovery; and
- (6) All rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.