

Chapter 2:

Rights and Protections Afforded to Juveniles

2.1	Sources of Juvenile Rights and Protections	5
2.2	Constitutional Rights Not Afforded to Juveniles	6
2.3	Right to Counsel	6
2.4	Right Against Self-Incrimination	7
	A. Constitutional Right	
	B. Statutory Rights	
	C. Waiver of Right Against Self-Incrimination	
	D. Admission to Juvenile Court Counselor at Intake	
2.5	Right to Standard of Proof Beyond a Reasonable Doubt	9
2.6	Right to an Open Hearing	9
2.7	Right to Confidentiality of Records	10
	A. Juvenile Court Records	
	B. Juvenile Court Counselor's Records	
	C. Law Enforcement Records and Files	
	D. Department of Juvenile Justice and Delinquency Prevention (DJJDP) Records	
	E. Nontestimonial Identification Records	
	F. Exception for Designated Local Agencies	
	G. Confidentiality on Appeal	
2.8	Right to Appointment of Guardian	14
Appendix 2-1	Motion and Order to Destroy Fingerprints and Photographs	17

2.1

Sources of Juvenile Rights and Protections

The U.S. Supreme Court has recognized that juveniles have many of the constitutional due process rights afforded adult defendants: the right to counsel, the right to notice of the charges against them, the right to confront and cross-examine witnesses, and the right against self-incrimination. *In re Gault*, 387 U.S. 1 (1967). Juveniles also have the right to have the alleged offense proven beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 368 (1970). The North Carolina Juvenile Code provides additional statutory rights to juveniles, such as the right to have a parent present during in-custody interrogation, the presumption of indigency, and confidentiality of juvenile court records. G.S. 7B-2101(a), -2000(b), -3000(b). The principal rights are discussed in this chapter, although it is not intended to be exhaustive.

2.2

Constitutional Rights Not Afforded to Juveniles

The U.S. Supreme Court has held that juveniles are not afforded the following rights under the U.S. Constitution:

- Right to bail,
- Right to trial by jury,
- Right to speedy trial, and
- Right to self-representation.

Each of these rights attaches on transfer of a juvenile case to superior court for trial as an adult. *See* G.S. 15A-533, -534, -954(a)(3), -1201, -1242. If the prosecutor is requesting transfer of the case to superior court, the juvenile should be advised of these differences.

Transfer of a juvenile case to superior court is almost always detrimental to the juvenile in the long term. Some juveniles may believe that transfer is a good alternative—for example, a juvenile who is in secure custody pending hearing and who would probably be released on bail in superior court, or a juvenile who is facing commitment to a youth development center and who might get probation in superior court. Counsel should advise the juvenile of the potentially harsh consequences of transfer, such as having a criminal record or being sentenced to prison. *See infra* § 9.8 (Transfer of Jurisdiction to Superior Court).

2.3

Right to Counsel

The juvenile's constitutional right to counsel was first recognized by the U.S. Supreme Court in *In re Gault*, 387 U.S. 1, 41 (1967). This right is codified in G.S. 7B-2000, which states that the juvenile has the right to be represented by counsel in all delinquency proceedings. The statute further provides that all juveniles are conclusively presumed to be indigent. Counsel must be appointed for the juvenile if an attorney has not been retained. A juvenile does not have the right to self-representation. *Id.*

By statute, the juvenile also must be advised during any custodial interrogation of the “right to consult with an attorney and that one will be appointed . . . if the juvenile is not represented and wants representation.” G.S. 7B-2101(a)(4). Questioning must cease once the juvenile has invoked the right to consult an attorney. *See* G.S. 7B-2101(c) (questioning must cease if juvenile indicates wish not to be questioned further). Under G.S. 7B-1501(17), “[w]herever the term ‘juvenile’ is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.”

2.4 Right Against Self-Incrimination

This section briefly reviews a juvenile's right against self-incrimination. For a more in-depth review, *see infra* §§ 11.2, 11.3 (discussing suppression motions).

A. Constitutional Right

The constitutional right against self-incrimination guaranteed by the Fifth Amendment has been held applicable to juvenile proceedings by the U.S. Supreme Court. *In re Gault*, 387 U.S. 1, 55 (1967). A juvenile cannot be compelled to give information that could later be used against the juvenile in an adjudicatory hearing and cannot be compelled to testify. *Id.*

B. Statutory Rights

Custodial interrogation generally. A juvenile in custody is entitled to statutory protections that include and go beyond the requirements of *Miranda* warnings. G.S. 7B-2101. The Juvenile Code provides that any juvenile in custody must be advised prior to questioning of the following: the right to remain silent; that any statement the juvenile chooses to make can and may be used against the juvenile; that the juvenile has the right to have a parent, guardian, or custodian present during the questioning; and that the juvenile has a right to an attorney and that one will be appointed on request. G.S. 7B-2101(a); *see infra* § 11.3 (Bases for Motions to Suppress Statement of Admission of Juvenile).

There is no statutory definition of "in custody." Under North Carolina case law, the court must determine whether the juvenile is in custody based on (1) a formal arrest, or (2) a restraint on freedom of movement as in an arrest under the totality of the circumstances. *State v. Buchanan*, 353 N.C. 332, 339 (2001), *cited in In re R.H.*, 171 N.C. App. 514 (2005) (unpublished) (juvenile questioned by officer in principal's office who was told he was not under arrest and that he could return to class at any time was not in custody; therefore neither warnings nor waiver were required); *In re W.R.*, 179 N.C. App. 642 (2006) (juvenile was in custody when alternately questioned by the school resource officer and the principal for over an hour); *see infra* § 11.4 (Case Law: Motions to Suppress In-Custody Statement of Juvenile).

The statute provides that interrogation must cease if the juvenile "indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further." G.S. 7B-2101(c); *State v. Branham*, 153 N.C. App. 91, 99 (2002); *State v. Smith*, 317 N.C. 100, 108 (1986) (in-custody confession of 16-year-old defendant inadmissible because it was made after right invoked to have parent present, indicating desire to cease questioning). The Court has also held, however, that a juvenile's custodial admission was admissible when the juvenile initially stated that he did not want to answer questions and then reinitiated conversation with the officer. *State v. Johnson*, 136 N.C. App. 683 (2000) (by nodding affirmatively to the detective in response to his mother's statement that "we need to get this straightened out today and we'll talk with him anyway," juvenile reinitiated the conversation with detective).

Counsel should object to admission of an in-custody statement made after any sign or expression from the juvenile indicating a desire that the interrogation stop.

Custodial statement of juvenile under 14 years old. A custodial confession or admission of a juvenile who is less than 14 years of age may not be admitted into evidence unless made in the presence of the juvenile's parent, guardian, custodian, or attorney. A juvenile under 14 years of age cannot waive the requirement of the presence of a parent, guardian, or custodian in making a confession or admission. The parent, guardian, or custodian must be advised of the juvenile's rights unless an attorney is also present during the interrogation. Further, no right of the juvenile may be waived by the parent, guardian, or custodian on the juvenile's behalf. G.S. 7B-2101(b); *see State v. T.R.B.*, 157 N.C. App. 609, 614 (2003) (parent could not waive right of juvenile under 14 years of age to have parent present during in-custody interrogation by voluntarily leaving the room).

If the requirements of G.S. 7B-2101(b) are satisfied, the right against self-incrimination during custodial questioning *may* be waived by a juvenile who is under 14 years of age. *State v. Flowers*, 128 N.C. App. 697, 701-02 (1998) (defendant under age of 14 "knowingly, intelligently, and voluntarily waived his rights" under facts of case); *see infra* § 2.4C (Waiver of Right Against Self-Incrimination).

Definition of "guardian." The North Carolina Court of Appeals has addressed who is a guardian for the purposes of G.S. 7B-2101(a) and (b). A relative who provided shelter and otherwise provided for the juvenile was found to be a *de facto* guardian even though she had not been appointed guardian by a court. *State v. Jones*, 147 N.C. App. 527, 540 (2001) (caretaker aunt considered guardian for purpose of in-custody interrogation of 13-year-old juvenile, and juvenile could be questioned with caretaker aunt present). An aunt who had not been appointed guardian and who did not provide ongoing care, however, was held not to be a guardian. *State v. Oglesby*, 174 N.C. App. 658, 663 (2005) (aunt with whom juvenile defendant requested to speak was not guardian under interrogation statute because she had no legal authority conferred by the government and there was no showing that she fed, clothed, or housed the defendant).

C. Waiver of Right Against Self-Incrimination

A juvenile may waive the right against self-incrimination during a custodial interrogation regardless of age, subject to the requirement that a parent, guardian, custodian, or attorney must be present if the juvenile is under 14. *See supra* § 2.4B (Statutory Rights: Custodial statement of juvenile under 14 years old). Before admitting into evidence a statement of a juvenile resulting from in-custody questioning, the court must make a finding that the juvenile "knowingly, willingly, and understandingly waived" the right against self-incrimination. G.S. 7B-2101(d). The burden of proof is on the State to show that the juvenile made a valid waiver of rights. *State v. Johnson*, 136 N.C. App. 683, 693 (2000). It is not required that there be an express waiver, either orally or in writing, but the State has a heavy burden to show a knowing and voluntary waiver if there is not an express waiver. *State v. Flowers*, 128 N.C. App. 697 (1998); *North Carolina v. Butler*, 441 U.S. 369 (1979).

The district court must review all pertinent evidence in deciding whether the juvenile has waived the right against self-incrimination. Determining whether a waiver was made pursuant to the statutory criteria depends on the trial court's evaluation of "the specific facts and circumstances of each case, including background, experience, and conduct of the accused." *State v. Johnson*, 136 N.C. App. 683, 693 (2000) (valid waiver where juvenile nodded affirmatively he wanted to talk, said "yes" he wanted to answer questions without attorney or mother present, and both juvenile and mother signed waiver of rights form). The Court reiterated the need to examine the "totality of the circumstances" in evaluating whether a waiver is sufficient in *State v. Lee*, noting that the requirements of both *Miranda* and the juvenile statute must be met. 148 N.C. App. 518, 525 (2002) (waiver requirements met where information on juvenile waiver form was clear, juvenile initialed each section and signed at bottom, juvenile had been through arrest process more than once before, and officer testified that juvenile was "very willing to talk").

The Court has held that the lay opinion of the questioning officers as to the juvenile's understanding of his rights and the waiver form were properly admitted as a factor for the court to consider in deciding whether the juvenile understandingly, knowingly, and willingly waived his rights. *State v. Johnson*, 136 N.C. App. 683, 693–94 (2000).

D. Admission to Juvenile Court Counselor at Intake

A statement made by the juvenile to the juvenile court counselor during the intake process is not admissible prior to the dispositional hearing. G.S. 7B-2408. There is no provision for the juvenile's waiver of this protection. Counsel should object to admission at the adjudicatory hearing of any statement made by the juvenile to the juvenile court counselor during the intake process.

2.5

Right to Standard of Proof Beyond a Reasonable Doubt

Juveniles have the constitutional right under the Due Process Clause of the 14th Amendment to be adjudicated under the standard of proof of beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 368 (1970). In *Winship*, the U.S. Supreme Court recognized that although important differences exist between juvenile proceedings and criminal trials, the potential for the juvenile's loss of liberty requires that the standard of proof of beyond a reasonable doubt be applied in juvenile delinquency proceedings. *Id.* at 366–68. This right is codified in G.S. 7B-2409. See *infra* § 12.5D (Burden of Proof).

2.6

Right to an Open Hearing

Juvenile hearings are open by statute, although a hearing may be closed to the public for good cause on motion of a party or the court *unless* the juvenile requests that it be open. In ruling on a motion to close a hearing, the court must consider the allegations against the

juvenile, the age and maturity of the juvenile, the benefit of confidentiality to the juvenile, and the possibility of breach of confidentiality of the juvenile court file and weigh these factors against the benefit to the public of an open hearing. G.S. 7B-2402. It is within the court's discretion whether to close the hearing, and the court's ruling must be upheld unless it is shown to be arbitrary or manifestly unsupported by reason. *In re K.T.L.*, 177 N.C. App. 365, 370 (2006) (court did not abuse discretion in denying motions of State and juvenile for hearing to be closed where testimony, findings of fact, and conclusions of law supported court's decision). Important factors in *K.T.L.* were the publicity the case had already received and the widespread knowledge within the community of the allegations and the juvenile's identity. *Id.* at 370–71.

The juvenile's interest is most often served by closing the hearing to the public, thereby preserving the confidentiality of the proceedings. When the hearing is closed, the juvenile is not subjected to potential emotional or psychological damage resulting from public knowledge of the allegations and evidence. The juvenile may also feel more at ease without additional people in the courtroom. A closed hearing is especially important in cases that draw the attention of the media, such as sex offenses, armed robbery, arson, and gang-related activities, as the juvenile might be subjected to unwanted public reaction or notoriety. Counsel should consult with the juvenile before moving for either an open or closed hearing. See Janet Mason, *Confidentiality in Juvenile Delinquency Proceedings*, Special Series No. 19 (Oct. 2004), at ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/ss19.pdf.

In some districts delinquency cases may be heard in a court session that includes other kinds of cases. To close the hearing, counsel must make a motion prior to the start of the juvenile hearing. If the motion is granted, the court must issue an order closing the hearing, requiring all persons not directly involved in the case to leave the courtroom. Counsel should request that a deputy be stationed at the courtroom door, or that a sign be posted stating that the court is in closed session, to prevent others from entering during the proceeding.

2.7 Right to Confidentiality of Records

A. Juvenile Court Records

Juvenile court records generally closed to public. The clerk of superior court must maintain a complete record that includes every document filed in a juvenile case. G.S. 7B-3000(a). This record is not open to the public except by court order. G.S. 7B-3000(b). The juvenile court record is accessible to the following persons without an order: the juvenile (and the juvenile's attorney pursuant to G.S. 7B-1501(17)); the juvenile's parent, guardian, or custodian; the prosecutor; and court counselors. The prosecutor has discretion to share information from the court file with law enforcement officers sworn in this state but may not provide a photocopy. G.S. 7B-3000(b); see generally Janet Mason, *Confidentiality in Juvenile Delinquency Proceedings*, Special Series No. 19 (Oct. 2004), at ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/ss19.pdf.

If a court issues an order under G.S. 7B-3000(b) allowing access to a juvenile record, it may concurrently issue a protective order preventing further dissemination of the information. *Doe 1 v. Swannanoa Valley Youth Development Center*, 163 N.C. App. 136, 142 (2004) (court issued protective order prohibiting disclosure of information from juvenile record beyond those directly involved in case and allowed parties to submit confidential information under seal).

The court may direct the clerk to seal any part of the court record, which can then be examined or copied only upon court order. G.S. 7B-3000(c). This order extends to all persons, including those that ordinarily have access to the juvenile court record. Counsel should move to seal especially sensitive information in the file, such as mental health records or a psychological or sex offender evaluation, to provide additional protection to the juvenile.

Statutory exceptions for use in criminal court proceedings. A law enforcement officer, magistrate, or prosecutor may use a juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult in formulating pretrial release and plea negotiation recommendations. G.S. 7B-3000(e). This provision suggests that the juvenile adjudication may be disclosed to the court for the limited purpose of deciding whether pretrial release will be recommended or allowed.

An adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in other ways against the juvenile in a subsequent criminal prosecution. The adjudication can be used to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident" under N.C. Evidence Rule 404(b). It may also be used to prove an aggravating factor for felonies and capital cases upon order of the criminal court. G.S. 7B-3000(f). Therefore, an adjudication of delinquency could possibly affect both the verdict and the sentence in a later criminal proceeding.

Counsel should explain these possible consequences to the juvenile if the juvenile is alleged to have committed one of the specified felonies, especially if there is an offer to plead to a misdemeanor or a lesser felony.

Impeachment exception in limited circumstance. Under Rule 609(d) of the North Carolina Rules of Evidence, evidence of an adjudication of delinquency is not generally admissible for impeachment purposes. In a criminal case, however, witnesses other than the defendant may be impeached with adjudications in some circumstances. G.S. 8C-1, Rule 609(d). In a 1972 opinion, the North Carolina Supreme Court held that adjudications could be used to impeach a criminal defendant who is under the age of 18. *State v. Miller*, 281 N.C. 70 (1972). However, *Miller* appears to be superseded by Rule 609.

School exception for offenses that would be felonies if committed by an adult. A statutory exception exists for information in the juvenile court file that *must* be released to the juvenile's school if the case concerns an offense that would be a felony if committed by an adult. G.S. 7B-3101(a). The juvenile court counselor must notify the school principal if a petition is filed alleging that the juvenile committed a felony, other than a Chapter 20 (motor vehicle)

offense. G.S. 7B-3101(a)(1). If the court dismisses the petition after an adjudicatory hearing, the school must be informed of the dismissal. G.S. 7B-3101(a)(3).

The school must be notified if the court modifies or vacates any order or disposition regarding a juvenile alleged or found to be delinquent for such an offense, or if jurisdiction is transferred to superior court. G.S. 7B-3101(a)(2), (5). The principal also must be notified of any dispositional order, including an order that requires school attendance as a condition of probation. G.S. 7B-3101(a)(4).

Counsel should advise the juvenile that the school will receive this information. The principal will know if school attendance has been ordered as a condition of probation and will be expected to report unauthorized absences. The juvenile should also be informed that any school that is a member of the North Carolina High School Athletic Association must prohibit a student who is adjudicated delinquent for an offense that would be a felony if committed by an adult from participating in sports. This might be an important factor for some juveniles in plea negotiations.

B. Juvenile Court Counselor's Records

The juvenile court counselors' records are not open to public inspection. The record includes "family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile." G.S. 7B-3001(a).

C. Law Enforcement Records and Files

Law enforcement records and files of a juvenile case must be kept separate from those of adults and are not open to public inspection except upon court order. The following persons may examine law enforcement records without court order: the juvenile (and the juvenile's attorney pursuant to G.S. 7B-1501(17)); the juvenile's parent, guardian, custodian, or the authorized representative thereof; the prosecutor; juvenile court counselors; and law enforcement officers sworn in this state. G.S. 7B-3001(b).

D. Department of Juvenile Justice and Delinquency Prevention (DJJDP) Records

DJJDP records include both records of the local court counselor and of facilities to which the juvenile has been committed. Those who may access and obtain copies of DJJDP records about a juvenile without a court order are the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or custodian, or an authorized representative of one of those people. G.S. 7B-3001(c). Additionally, professionals within DJJDP who are directly involved in the juvenile's case and juvenile court counselors may access the records without a court order. Otherwise, records maintained by DJJDP may only be disclosed pursuant to a court order. *Id.*; see also *Doe 1 v. Swannanoa Valley Youth Development Center*, 163 N.C. App. 136, 139 (2004) (deputy commissioner of Industrial Commission had authority to order discovery of DJJDP records in a tort claims action); see generally Janet Mason, *Confidentiality in Juvenile Delinquency Proceedings*, Special Series No. 19 (Oct. 2004), at ncinfo.iog.unc.edu/

[pubs/electronicversions/pdfs/ss19.pdf](#). See also G.S. 7B-3102 (Department required to release identifying information to the public when a juvenile escapes from custody).

E. Nontestimonial Identification Records

Limited authority to conduct nontestimonial identification procedures. A law enforcement officer generally must obtain a court order before conducting nontestimonial identification procedures on a juvenile unless the juvenile has been charged as an adult or has been transferred to superior court for trial as an adult. G.S. 7B-2103. There are limited exceptions for fingerprints and photographs, discussed below.

Retention and destruction of nontestimonial identification records. Nontestimonial identification records of a juvenile 13 years of age or older who is adjudicated delinquent for an offense that would be a felony if committed by an adult may be kept in the juvenile court file. *But see* G.S. 7B-2102(d), (e) (regarding retention and destruction of fingerprints). The records can be used by law enforcement officers only for comparison purposes in the investigation of a crime. “Special precautions,” which are not defined, must be taken to ensure that the nontestimonial identification records are “maintained in a manner and under sufficient safeguards” to ensure that they are accessible only to law enforcement officers for this purpose. G.S. 7B-2108(3).

All nontestimonial identification records must be destroyed if a juvenile petition is not filed, the juvenile is not adjudicated delinquent, or a juvenile under the age of 13 is adjudicated for an offense that would be less than a felony if committed by an adult. G.S. 7B-2108(1), (2).

Fingerprints and photographs. A law enforcement officer must take fingerprints and photographs without a court order in the following limited circumstances:

- The juvenile was 10 years of age or older at the time of allegedly committing a *nondivertible* offense (*see infra* § 5.3A (Nondivertible offenses)), a petition is to be filed, and the juvenile is in the physical custody of law enforcement or the Department of Juvenile Justice and Delinquency Prevention; or
- The juvenile has been *adjudicated* delinquent for an offense that would be a felony if committed by an adult and was 10 years of age or older at the time the offense was committed.

G.S. 7B-2102(a), (b). Exception (1) applies to a juvenile in custody for a nondivertible offense *prior to* adjudication, while exception (2) applies *after* adjudication of an offense that would be a felony if committed by an adult. There is no provision for fingerprints and photographs to be taken without a court order under any other circumstances.

Destruction of fingerprints and photographs. Counsel should file a motion to destroy fingerprints and photographs taken in violation of the provisions of G.S. 7B-2102. *See infra* Appendix 2-1 (Motion and Order to Destroy Fingerprints and Photographs). For example, there is no statutory provision for a juvenile charged with a *divertible* offense to be fingerprinted or photographed unless later adjudicated for an offense that would be a felony if committed

by an adult. There is also no provision for photographing a juvenile who is adjudicated delinquent for an offense that would be less than a felony if committed by an adult.

Fingerprints and photographs taken pursuant to G.S. 7B-2102(a) must be destroyed if a petition is not filed within one year, the court does not find probable cause, or the juvenile is not adjudicated delinquent of an offense that would be a felony or misdemeanor if committed by an adult. G.S. 7B-2102(e). A motion should be filed if the evidence is not destroyed according to statutory provisions.

F. Exception for Designated Local Agencies

DJJDP is authorized by statute to designate local agencies that must share information on request concerning a juvenile who is the subject of a petition alleging abuse, neglect, dependency, delinquency, or undisciplined behavior. Designated agencies may include the local mental health facilities, health department, department of social services, school, district attorney's office, and Office of Guardian ad Litem Services. DJJDP is also included as an agency that may be a designated agency. Shared information is to be used "only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile . . ." and must remain confidential and not open to public inspection. G.S. 7B-3100(a). Counsel should learn whether any local rule or order adds a local agency that is required to share information concerning a juvenile. *See* 28 North Carolina Administrative Code 01A .0301 (chief district court judge may designate a local agency as an agency authorized to share information), .0302 (governing information sharing among agencies).

G. Confidentiality on Appeal

The North Carolina Rules of Appellate Procedure were amended in 2006 to provide that the name of a juvenile who is the subject of an appeal of a final order in a delinquency proceeding, as well as the name of any sibling or other household member who is under the age of 18, must be deleted from all filings, documents, exhibits, or arguments submitted to the appellate court and must be replaced with the juvenile's initials. This requirement does not apply to the sealed verbatim transcript. In addition, the juvenile's address, social security number, and date of birth must be redacted from all documents, exhibits, or arguments, except for the sealed verbatim transcript. North Carolina Rules of Appellate Procedure, Rule 3(b).

2.8 Right to Appointment of Guardian

Guardian appointed for alleged delinquent. The Juvenile Code provides under Article 20, "Basic Rights," that a guardian of the person *may be* appointed for the juvenile if no parent, guardian, or custodian appears at a hearing with the juvenile or if the court finds that it would be in the juvenile's best interest. G.S. 7B-2001 (emphasis added). The guardian is given custody of the juvenile or the discretion to arrange placement, authority to consent to

necessary remedial, psychological, medical, or surgical treatment, and authority to represent the juvenile in legal actions before any court. The guardian also may stand *in loco parentis* to consent to marriage, enlistment in the armed forces, and enrollment in school. *Id.*

Although this statute is listed under basic rights of the juvenile and is intended to safeguard the juvenile, it does not specify procedural protections in the appointment of a guardian for either the parent or the juvenile. It does not specifically provide for notice and a hearing regarding the proposed appointment, and it does not specify the standard for a judicial decision other than “best interests of the juvenile” or that the parent is absent from a hearing. G.S. 7B-2001. The juvenile statute may conflict with Chapter 35A, which applies specifically to guardianships and provides greater protections, as well as due process requirements.

Considerations if parent, guardian, or custodian not present. The presence of a parent, guardian, or custodian is mandated for any hearing for which the parent, guardian, or custodian receives notice. G.S. 7B-1805. If the parent, guardian, or custodian does not appear at a hearing after proper notice, counsel should consider the juvenile’s circumstances and wishes, as well as possible consequences, in deciding whether to request that the court appoint a guardian or compel the presence of the parent.

A supportive parent can be a positive factor in the outcome of a delinquency case by advocating for the juvenile, providing supervision, participating in treatment, and providing transportation. Conversely, the compelled presence of a parent adverse to the juvenile’s position may have a harmful effect.

An interested and active guardian may fill the role served by a supportive parent. Appointment of a guardian without notice to the parent and juvenile and without a hearing, however, could result in the appointment of an inappropriate guardian or a guardian to whom the juvenile objects, such as a disliked relative or the Department of Social Services.

Guardian ad Litem distinguished. A guardian ad litem is a person who is appointed in a legal proceeding, often pursuant to Rule 17 of the Rules of Civil Procedure, to represent the interests of a party who is under a legal disability, such as minority or incompetence. *See infra* § 3.5J (Guardian ad Litem).

Appendix 2-1

Motion and Order to Destroy Fingerprints and Photographs

STATE OF NORTH CAROLINA		IN THE GENERAL COURT OF JUSTICE
[] COUNTY		DISTRICT COURT DIVISION
IN THE MATTER OF)	FILE NO. []
)	MOTION AND ORDER TO DESTROY
[JS, A JUVENILE])	FINGERPRINTS AND PHOTOGRAPHS
)	

NOW COMES the juvenile by and through his attorney, Assistant Public Defender _____, pursuant to N.C. Gen. Stat. § 7B-2102, and moves the Court to order the proper authorities to destroy any and all fingerprints and photographs taken of the juvenile in conjunction with the matter before the Court today. In support of the motion, the juvenile provides the Court with the following facts:

THAT a petition was filed in Juvenile Court of [] County on [date] at [time] alleging that the juvenile had committed the act of assault inflicting serious injury, N.C. Gen. Stat. § 14-32.4;

THAT according to a report filed on [DATE] by Greensboro Police [OFFICER'S NAME] the juvenile was fingerprinted and photographed at the [FACILITY] County Jail;

THAT pursuant to N.C. Gen. Stat. § 7B-2102(a) a law enforcement shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the offense allegedly was committed if the offense is a nondivertible offense as set forth in N.C. Gen. Stat. § 7B-1701;

THAT pursuant to N.C. Gen. Stat. § 7B-1701, assault inflicting serious injury is not enumerated as a nondivertible offense.

WHEREFORE, the juvenile moves the court to issue an order to the proper authorities to destroy any and all fingerprints and photographs taken of the juvenile in conjunction with the matter before the Court today.

This the [] day of [], [].

[Attorney's Name]
[Address]
[City, State, Zip Code]
[Telephone Number]

* * * * *

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 [], [].

[ATTORNEY]

STATE OF NORTH CAROLINA
[] COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. []

IN THE MATTER OF

)

)

[JS, A JUVENILE]

)

)

)

ORDER TO DESTROY
FINGERPRINTS AND
PHOTOGRAPHS

THIS MATTER coming on to be heard and being heard before the [JUDGE] of the District Court of the General Court of Justice of the [DISTRICT NUMBER] Judicial District, [COUNTY], upon a motion of [DEFENSE ATTORNEY], Assistant Public Defender, that any and all fingerprints and photographs taken of the juvenile in conjunction with the matter before the Court today be destroyed by the proper authorities.

AND IT APPEARING THAT a petition was filed against the juvenile alleging assault inflicting serious injury.

AND IT APPEARING THAT the juvenile was fingerprinted and photographed in conjunction with this matter in violation of the laws pertaining to the fingerprinting and photographing of juveniles pursuant to N.C. Gen. Stat. § 7B-2102.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the proper authorities destroy any and all fingerprints and photographs taken of the juvenile in conjunction with the matter before the Court today.

This is the [] day of [], [].

[JUDGE]

District Court Judge

