

## Chapter 3:

# Juvenile Court Jurisdiction and Parties to Juvenile Proceedings

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## 3.1

### Jurisdictional Overview

The district court has exclusive, original jurisdiction over all juveniles alleged to be delinquent as well as their parents, guardians, or custodians, on the proper filing and service of a petition and summons. Jurisdiction is initially determined by the juvenile's age at the time of the alleged offense. Statutory provisions mandate when a juvenile ages out of the jurisdiction of the juvenile court or when a juvenile case is otherwise closed. *See infra* § 3.3 (Jurisdiction).

## 3.2

### Terminology Used in This Chapter

*Custodian* is a “person or agency that has been awarded legal custody of a juvenile by a court.” G.S. 7B-1501(6).

*Department* is the Department of Juvenile Justice and Delinquency Prevention. G.S. 7B-1501(7a). The Department is charged with far-reaching duties, which include responsibility for State juvenile facilities and youth development centers, appointment of the chief court counselor in each district upon recommendation of the chief district court judge, establishment of community-based treatment and prevention services, and setting standards for juvenile court counselors. *See* G.S. 143B-516(b)(1)–(18).

*Guardian* is a person with legal authority to make decisions for another person. A guardian of the person may be appointed for a juvenile who is the subject of a petition alleging delinquency. G.S. 7B-2001. Under Chapter 35A, “Incompetency and Guardianship,” a guardian of the person can be appointed for a minor only if there is no “natural guardian.” G.S. 35A-1224(a).

*Guardian ad Litem* is a person who is appointed in a legal proceeding to represent the interest of a party who is under a legal disability, including minority and incompetence.

*Jurisdiction* is the legal authority of a tribunal to adjudicate and determine the subject matter before the court.

*Juvenile court counselor* is a “person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.” G.S. 7B-1501(18a). The juvenile court counselor is also responsible for preparing a predisposition report with an attached risk and needs assessment of the juvenile that is presented to the court at disposition pursuant to G.S. 7B-2413.

*Venue* is the judicial district within the state in which a juvenile case is properly heard.

*Youth development center* is a “secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department,” often referred to as training school. G.S. 7B-1501(29).

## 3.3

### Jurisdiction

#### A. Jurisdictional Age Limits

**Minimum age.** A juvenile must be at least six years of age to come under the jurisdiction of the juvenile court on allegations of delinquency. G.S. 7B-1501(7).

**Maximum age.** A juvenile must have been less than 16 years of age at the time the alleged offense occurred. G.S. 7B-1501(7). The juvenile court has no jurisdiction to adjudicate a matter if the defendant was 16 years or older at the time of the alleged offense.

**Special circumstances.** When a delinquency proceeding has been initiated but is not concluded before the juvenile’s 18th birthday, the juvenile court retains limited jurisdiction to determine whether the juvenile petition will be dismissed or the case will be transferred to superior court for trial as an adult. G.S. 7B-1601(c). If the juvenile is subject to this provision, counsel should endeavor to conclude the case before the juvenile’s 18th birthday so that the juvenile is not exposed to the risk of transfer to superior court.

When a person over the age of 18 is charged with a felony and any related misdemeanors alleged to have been committed when the person was at least 13 but less than 16 years of age, the juvenile court has limited jurisdiction to determine whether the juvenile petition will be dismissed or the case will be transferred to superior court for trial as an adult. G.S. 7B-1601(d).

G.S. 7B-1601(c) and (d) are applied most often in cases where allegations of sexual assault are reported years after the alleged act or acts. Counsel should calculate the ages of both the juvenile and the victim at the time of the alleged offense to determine whether there is a defense to an allegation of statutory rape under G.S. 14-27.2 or statutory sexual offense under G.S. 14-27.4.

<b>Significant Ages Under Statutes</b>	
6	Earliest age one can be alleged or adjudicated to be a delinquent or undisciplined juvenile
10	Youngest age an alleged delinquent juvenile may be fingerprinted or photographed
10	Youngest age a delinquent juvenile may be committed to a youth development center
11	Youngest age a delinquent juvenile may be required to register as a juvenile sex offender
13	Youngest age an alleged delinquent juvenile may be transferred to superior court for trial
Under 14	Age at which an alleged delinquent juvenile’s admission or confession must be excluded if the juvenile’s parent/guardian or attorney was not present during an in-custody interrogation
14–18	Age at which an alleged delinquent juvenile must be notified of the right to have a parent or guardian present, as well as an attorney, before an admission or confession may be used against the juvenile
Under 16	Maximum age at which a juvenile may be adjudicated an undisciplined juvenile solely for truancy
16	Age at which a juvenile is charged as an adult
17	Maximum age at which a juvenile may be adjudicated an undisciplined juvenile for acts other than truancy
18	Age at which juvenile court jurisdiction must end, unless under extended jurisdiction
19	Maximum age for extended jurisdiction over delinquent juveniles committed to a youth development center pursuant to adjudication of delinquency for a B1 through E offense
21	Maximum age for extended jurisdiction over delinquent juveniles committed to a youth development center pursuant to adjudication of delinquency for first-degree murder, first-degree rape, or first-degree sex offense

## B. Termination of Jurisdiction

After the court has obtained jurisdiction over the juvenile, jurisdiction generally continues until terminated by order of the court or until the juvenile reaches the age of 18. G.S. 7B-1601(b). Jurisdiction of the court continues if the court has extended jurisdiction, discussed below. Counsel should request an order terminating jurisdiction when court-ordered supervision ends.

## C. Extended Jurisdiction

**Until age 21.** Jurisdiction may continue until the age of 21 for certain juveniles who were adjudicated delinquent and are in the custody of the Department for placement in a youth development center. The juvenile must have been adjudicated delinquent for an offense that would constitute one of the following crimes if committed by an adult: first degree murder pursuant to G.S. 14-17; first-degree rape pursuant to G.S. 14-27.2; or first-degree sexual offense pursuant to G.S. 14-27.4. In these cases jurisdiction continues until terminated by order of the court or the juvenile reaches the age of 21, whichever first occurs. G.S. 7B-1602(a).

**Until age 19.** Jurisdiction may continue until the age of 19 for certain juveniles who were adjudicated delinquent and are in the custody of the Department for placement in a youth development center. The juvenile must have been adjudicated delinquent for an offense that would constitute a Class B1, B2, C, D, or E felony if committed by an adult. In these cases jurisdiction continues until terminated by order of the court or the juvenile reaches the age of 19, whichever first occurs. G.S. 7B-1602(b).

## D. Jurisdiction over Parent

Upon proper service of the summons and petition, the court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court as a result of allegations of delinquency. G.S. 7B-1601(g); *see infra* § 3.5E (Parent, Guardian, or Custodian). For example, a parent may be ordered to attend parental responsibility classes, obtain an evaluation and receive any recommended treatment, participate in the juvenile's evaluation and treatment, or pay the costs of the juvenile's treatment, support, or appointed attorney's fees. *See* G.S. 7B-2700 to -2706 (Authority over Parents of Juveniles Adjudicated Delinquent or Undisciplined).

## E. Transfer of Jurisdiction to Superior Court

A juvenile who is at least 13 years of age at the time of an alleged offense that would be a felony if committed by an adult is subject to transfer of jurisdiction to superior court for trial as an adult. The case *must* be transferred if the alleged offense would be a Class A felony and the juvenile court judge finds probable cause. G.S. 7B-2200; *see infra* § 9.8 (Transfer of Jurisdiction to Superior Court).

## 3.4 Venue

Venue is the judicial district within the state in which a juvenile case is properly heard. A juvenile proceeding may be bifurcated, with adjudication entered in one judicial district and the case transferred to another judicial district for disposition. G.S. 7B-1800.

**Adjudication.** A juvenile petition must be filed and the matter adjudicated in the judicial district where the offense is alleged to have occurred. G.S. 7B-1800(a).

**Disposition.** Disposition is typically held in the judicial district in which the juvenile legally resides. If the adjudication occurs in a district where the juvenile is in placement but does not have legal residence, the dispositional hearing is usually not transferred. The case is transferred for disposition only if the court “enters an order, supported by findings of fact, that a transfer would serve the ends of justice or is in the best interests of the juvenile.” G.S. 7B-1800(a).

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**Example:** A juvenile who legally resides in Mecklenburg County is in a residential treatment facility in Wake County. If the juvenile is alleged to have committed an offense in Wake County, both the adjudicatory and dispositional hearings will usually be in Wake County. The court may transfer the dispositional hearing to Mecklenburg County only by order setting forth reasons that disposition should occur in the juvenile’s home county. Reasons for transfer might include availability of the juvenile’s treatment providers and records or a prior history with the juvenile court in Mecklenburg County.

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If the juvenile does not legally reside in the district where the matter was adjudicated and is not in placement there, the juvenile has the right, upon motion, to have the matter transferred for disposition to the district of residence. Additionally, the chief district court judge in the district of residence must be given notice of the proceeding and may, by timely request, have venue transferred for disposition to that district. Otherwise, it is in the discretion of the adjudicating court whether to transfer venue to the district of residence. G.S. 7B-1800(b).

When the case is transferred for disposition, an attorney in the receiving district is ordinarily appointed to represent the juvenile at the dispositional hearing. The attorney for the dispositional hearing should confer with counsel who represented the juvenile at adjudication and should request information that could be presented in support of a favorable disposition.

## 3.5 Parties and Other Participants

### A. Overview

There are two primary parties in a delinquency case, the juvenile and the State. The juvenile is the subject of the petition and the State bears the burden of proving the allegations beyond

a reasonable doubt. At some stages of the proceeding the juvenile's parent, guardian, or custodian has statutory rights and responsibilities. The juvenile court counselor and the law enforcement officer also have statutory mandates. Other participants may have a substantial role in the proceeding.

## **B. State**

The State is a party to the proceedings through the authority and responsibilities given its agents at various stages of the proceedings. The prosecutor must represent the State in all probable cause hearings and at *contested* delinquency hearings, including first appearance, detention, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings. G.S. 7B-2404 (emphasis added), 7B-2202(b)(1). Neither statute nor case law has defined “contested” for the purpose of this statute. It is commonly assumed that a contested hearing is one that is adversarial— that is, there is an issue that must be decided by the court that is not the subject of an admission or agreement between the parties. Because there is a question of who other than the prosecutor would present the State's position in an uncontested matter, the better practice is for the prosecutor to represent the State in all delinquency hearings.

In practice, at uncontested hearings, and sometimes at contested hearings, the juvenile court counselor assumes the role of representing the State's interest because the court counselor is typically more familiar with the facts of the case and the juvenile's background than the prosecutor. Such an expanded role by the court counselor tends to make the proceedings less formal and may pose a threat to the juvenile's due process rights by making it easier for inadmissible evidence to be allowed and harder for the juvenile's attorney to object and to be heard. Counsel should consider objecting if this occurs.

The State's right to appeal is limited to any order that terminates the case by: upholding the defense of double jeopardy, holding that a cause of action is not stated under a statute, granting a motion to suppress, or finding a State statute unconstitutional. G.S. 7B-2604(b); *see infra* Chapter 16 (Appeals).

Interaction with the prosecutor is necessary for counsel to represent the juvenile effectively. A professional relationship may facilitate various procedures, including discovery and plea negotiations. Although a written motion for discovery should always be filed, counsel may also contact the prosecutor to make arrangements for discovery as well as to negotiate an admission, when appropriate, and to discuss proposals for disposition.

## **C. Juvenile**

The juvenile alleged to be delinquent is the subject of the petition and, as such, is the respondent. The juvenile must be personally served with a summons directing the juvenile to appear at a hearing at a specified place and time, along with a copy of the petition setting forth the delinquent acts that the juvenile is alleged to have committed. G.S. 7B-1802, -1805(a), -1806. Counsel should check the juvenile court file for proper service of the petition and summons, particularly if the juvenile does not appear at the hearing and the court is considering issuing a secure custody order. *See infra* Chapter 6 (Petition and Summons).

The juvenile has the right to be represented by counsel and must be present at all proceedings; there is no provision for waiver of appearance. G.S. 7B-2000, -1805. The juvenile is a party at all stages of the proceeding, including pre-adjudicatory hearings, discovery, adjudication, and disposition. At adjudication the juvenile has the right to confront and cross-examine witnesses and to decide whether or not to testify. G.S. 7B-2405. At the dispositional hearing the juvenile may present evidence and argument for a specific disposition. G.S. 7B-2501.

#### D. Attorney for Juvenile

**Statutory provisions.** Although not a party, the juvenile's attorney is a participant in every court proceeding and has statutory rights as well as ethical obligations. The statutory definition of "juvenile" provides that "[w]herever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well." G.S. 7B-1501(17). Because the juvenile does not have the right to self-representation, counsel will be involved in every aspect of the delinquency proceeding. *See generally infra* Appendix 3-1 (Role of Defense Counsel in Juvenile Proceedings).

**Attorneys' fees.** While the juvenile cannot be held liable for attorney's fees, the court may require payment of attorney's fees from a person other than the juvenile, such as a parent, guardian, or trustee. G.S. 7B-2002; G.S. 7A-450.1, -450.2, -450.3. The court determines at the dispositional hearing whether the parent, guardian, or trustee should be held responsible for attorney's fees. G.S. 7A-450.3.

#### E. Parent, Guardian, or Custodian

**Role of parent, guardian, or custodian.** The parent, guardian, or custodian (hereinafter the parent) plays an integral role throughout the proceedings, from participation in the intake process and appearance at all scheduled hearings to involvement in dispositional and post-dispositional plans. Parental support, or lack thereof, can make a difference in the outcome of the case. Counsel should represent the expressed wishes of the juvenile, however, which sometimes may conflict with those of the parent. *See generally infra* Appendix 3-1 (Role of Defense Counsel in Juvenile Proceedings); *see also* 1 NORTH CAROLINA DEFENDER MANUAL § 12.8A (Feb. 2004) (Control and Direction of Case).

There is no duty for the juvenile's attorney to talk with the parent, although doing so will generally be necessary as a part of case preparation. Generally, the parent should not be allowed to sit in on counsel's interview with the juvenile. Because there is no parent-child privilege, the parent is subject to being called as a witness and must be excluded to maintain attorney-client confidentiality. Counsel should explain to the parent the need for a private meeting with the juvenile to prevent hurt or angry feelings.

**Intake.** The juvenile court counselor who conducts the intake evaluation usually sends a letter to the parent requesting that the juvenile be brought in for an appointment. If the parent brings the juvenile to the appointment and is cooperative, depending on the circumstances of

the case, the complaint is more likely to be diverted. Conversely, the case is less likely to be diverted if the appointment is missed or if the parent is uncooperative.

***Petition, summons, and notice.*** The parent's name and last known address must be included on the petition, which must be personally served along with a summons issued to the parent. G.S. 7B-1802, -1805(a), -1806. A statement must be included in the summons advising that jurisdiction is obtained over the parent upon service of the summons and petition. G.S. 7B-1805(c). Notice of all scheduled hearings must be given "to all parties, including both parents of the juvenile. . ." G.S. 7B-1807. The parent is required to appear at and bring the juvenile to scheduled hearings and to comply with orders of the court. A parent may be held in criminal contempt for failure to follow these mandates. G.S. 7B-1805.

***Secure custody hearing.*** At a secure custody hearing, the parent is allowed to examine witnesses, present evidence, and testify on the parent's own behalf. G.S. 7B-1906(d). Counsel for the juvenile should be prepared to respond, if necessary, to the parent's presentation to the court.

The parent's position at a secure custody hearing is crucial. A parent who is willing to have the child back home and enforce any court-imposed conditions might persuade the court to release the juvenile from secure custody. Conversely, a parent who insists that the juvenile cannot come home will harm the juvenile's chances for release.

Counsel should talk with the parent about the juvenile's release from secure custody and discuss possible options. For example, if the parent wants the juvenile to come home, counsel could help the parent formulate a plan for care at home. Possible conditions of release might include after-school supervision, a curfew, counseling, or other treatment.

If the parent is against release from secure custody, counsel should try to ascertain the parent's underlying concerns. Counsel can then discuss with the juvenile the parent's objections to release. If the juvenile is willing to make changes in behavior and to follow conditions set out by the court, counsel can relay that information to the parent. Counsel may also explain to the parent the possible consequences of continued secure custody, such as extended out-of-home placement, a referral to the department of social services, or a more restrictive disposition for the juvenile if found delinquent. If the parent remains opposed to the wishes of the juvenile, counsel should present evidence and argument to counter the parent's position at the dispositional hearing.

***Discovery.*** The parent may be able to provide information to counsel that will assist in discovery, such as statements made by or actions of a law enforcement officer during the investigation, or the existence of prior evaluations or treatment of the juvenile. The parent may also provide names and addresses of potential witnesses. Consultation with the parent may be required for counsel to understand fully the information received through discovery.

***Adjudication.*** Although the statute provides that the parent has the rights that the juvenile has in an adjudication hearing (G.S. 7B-2405), the general practice is not to include the parent as a party during the adjudicatory hearing.

The juvenile may want to consult the parent regarding terms of admission or “plea negotiations,” and may ask counsel to explain any offer to the parent. Counsel must make clear to the juvenile and the parent, however, that the decision whether to accept a plea offer is ultimately the juvenile’s.

**Disposition.** The parent is allowed to offer evidence in rebuttal to the predisposition report and to present evidence and recommendations at the dispositional hearing. G.S. 7B-2413, -2501(b). Usually the court will ask if the parent wishes to make a statement during the hearing. *But cf. In re Powers*, 144 N.C. App. 140 (2001) (parents’ rights to present evidence and make recommendations at dispositional hearing were not violated when trial court did not address parents and record did not show any attempt by parents to make statement). The court may also explain the parent’s duties while the juvenile is on probation or otherwise under the court’s jurisdiction. As part of a dispositional order, the parent may be ordered to undergo psychiatric, psychological or other treatment, attend parental responsibility classes, or pay the cost of the juvenile’s treatment or placement. G.S. 7B-2502(b), -2701, -2702.

The parent’s presentation at the dispositional hearing may have a determinative effect in persuading the court to adopt the juvenile’s proposed plan. If the parent’s position is contrary to that of the juvenile, counsel should try to resolve the conflict but otherwise be prepared to argue against the parent’s position at the hearing.

If the parent’s position on the disposition of the case is consistent with the juvenile’s, counsel may consider calling the parent as a witness at disposition. Counsel should observe the parent’s demeanor when talking about the juvenile, discuss possible questions with the parent, and review the testimony that the parent would present. After this discussion, counsel must decide whether the parent’s testimony will be beneficial or detrimental to the juvenile.

**Post-disposition.** The parent can play a key role in the success or failure of the juvenile’s compliance with the dispositional order. Among other things, the parent can provide encouragement, supervision, and reminders of and transportation to appointments. Counsel should talk with the parent as well as the juvenile about the requirements of the dispositional order and the consequences of failure to follow the order. If the juvenile is placed outside the home as part of the disposition, the parent can offer support through visits, letters, and telephone calls. If the juvenile is committed to a youth development center, the parent should also participate in post-release planning and assist the juvenile in following post-release conditions. *See infra* § 15.9 (Post-Release Supervision).

**Appeal.** A parent has the right to appeal an order of the court. G.S. 7B-2604(a). *See infra* § 16.3 (Right to Appeal). A parent presumably can appeal the adjudicatory or dispositional order in addition to orders directed only to the parent. *See In re Powers*, 144 N.C. App. 140 (2001) (parents appealed dispositional order committing juvenile to Department). Orders directed solely to the parent include those ordering the parent to undergo medical, psychiatric, or psychological treatment or counseling, as well as those requiring the parent to pay the juvenile’s attorney’s fees pursuant to G.S. 7B-2002, -2502(b).

**Civil restitution.** A person who has suffered physical injury or damage to real or personal property as a result of the malicious or willful actions of a minor may sue to recover monetary

damages in civil court from the parent of the minor. The parent is strictly liable for monetary damages up to \$2000 under the statute. G.S. 1-538.1. However, parents are not liable if the minor was removed from their custody by court order or contract prior to the act. *Id.* Although a civil suit is a separate proceeding, the payment of damages to an alleged victim by a parent may be helpful in reaching a satisfactory resolution in the juvenile case.

A parent may also be civilly liable for losses resulting from larceny, shoplifting, theft by employee, embezzlement, or obtaining property by false pretenses by an unemancipated minor. Civil liability arises if the parent knew or should have known that the child was likely to commit such an act and failed to make reasonable efforts to control the child despite having had the opportunity to do so. Compensatory and consequential damages are limited to not less than \$150 and not more than \$1000. G.S. 1-538.2.

Educational entities are entitled to recover much more substantial sums from a parent of an unemancipated minor who commits certain offenses specified by statute. These offenses include those occurring on “educational property” involving explosives or incendiary devices, a hoax using a false bomb, a false report of a destructive device, or use of a firearm. Civil liability arises if the parent knew or should have known that the child was likely to commit such an act and failed to make reasonable efforts to control the child despite having had the opportunity to do so. G.S. 1-538.3 (Negligent supervision of minor).

**Attorney’s fees.** The court may require payment of attorney’s fees from a person other than the juvenile, such as a parent, guardian, or trustee. G.S. 7B-2002; G.S. 7A-450.1, -450.2, -450.3. The court determines at the dispositional hearing whether the parent, guardian, or trustee should be held responsible for attorney’s fees. G.S. 7A-450.3.

## F. Foster Parents and Other Caretakers

Foster parents and other caregivers who have “assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court” are entitled to receive notice of juvenile hearings. G.S. 7B-1807. They are not otherwise given statutory rights as a party or participant in the proceeding because they are not a parent, custodian, or guardian. In practice, however, they play an important role. For example, although a juvenile may be in the legal custody of the department of social services, the foster parent is the person who provides day-to-day care. The foster parent may be the person who brings the juvenile to appointments with the court counselor and the juvenile’s attorney, and accompanies the juvenile to court. Likewise, the juvenile may live with a relative or friend who has no legal authority but who serves as a parental figure.

A caretaker may be called as a witness by the State or by the juvenile at the adjudicatory or dispositional hearing. The court counselor’s dispositional recommendations and the feasibility of a dispositional plan may be greatly influenced by the caretaker. A caretaker should be consulted by counsel just as a parent would be. It is also possible that a caretaker without legal authority over the juvenile could be recognized as a guardian by the court. *See State v. Jones*, 147 N.C. App. 527 (2001) (caretaker aunt considered guardian for purpose of in-custody interrogation of 13-year-old defendant); *but see State v. Oglesby*, 361 N.C. 550 (2007)

(aunt without legal authority and with whom defendant did not reside was not guardian for purpose of in-custody interrogation).

## G. Juvenile Court Counselor

**Overview.** The juvenile court counselor (hereinafter court counselor), although not a party, has important statutory duties throughout the juvenile proceeding, from receiving and evaluating complaints during the intake process to preparing a predisposition report and risk and needs assessment to be submitted if the case progresses to disposition. Counsel for the juvenile should endeavor to establish a good working relationship with the court counselor to facilitate access to records and other information. The counselor may also be more inclined to review information provided by counsel on the juvenile's behalf.

Historically the court counselor has played an important role in the courtroom. In some instances, counselors have acted outside statutorily defined duties and assumed the role of prosecutor, making remarks in open court that are, in effect, testimony without having been sworn as a witness. This practice may minimize the role of the juvenile's attorney by making it more difficult to cross-examine the court counselor or make objections. Counsel should be well acquainted with the statutory responsibilities of the court counselor and should object as necessary if the counselor exceeds that role.

**Statutory role.** The court counselor has the statutory duty to decide whether a complaint should or must be filed as a petition or whether it will be diverted. G.S. 7B-1701, -1702; *see infra* § 5.3 (Intake). Thus the court counselor has the power to determine that a divertible offense will never come to court. *See infra* § 5.4 (Diversion).

**Secure custody.** A secure custody order is often issued based on information from the court counselor. In addition, the chief district court judge may delegate authority by administrative order to the chief court counselor or the chief court counselor's counseling staff to issue a secure custody order. G.S. 7B-1902. The court may not, however, delegate the authority for the juvenile to be detained or housed in a holdover facility. *Id.* Counsel should contact the court counselor when the juvenile is in secure custody to obtain information concerning the issuance of the secure custody order.

**Adjudication.** Other than at a probable cause hearing, the prosecutor is *required* by statute to represent the State at contested hearings only. G.S. 7B-2202(b)(1),-2404. Therefore the court counselor may step in to present the State's evidence in an uncontested adjudication. This practice, however, may constitute the unauthorized practice of law as well as conflict with the court counselor's duty to present an unbiased report and recommendations at the dispositional hearing.

**Disposition.** At disposition the court counselor has a prominent role mandated by statute. The court counselor submits a predisposition report, also called a dispositional report, with a risk and needs assessment of the juvenile. The report must include information regarding the juvenile's "social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts. . . ." G.S. 7B-2413. The report containing the risk and needs assessment is not to be undertaken

prior to adjudication without the written consent of the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney. *Id.* Counsel should obtain or provide this consent if a delay in disposition might be detrimental to the juvenile.

The dispositional hearing cannot proceed until the court receives the predisposition report containing the dispositional recommendations unless the court makes a written finding that one is not needed. Counsel for the juvenile is entitled to have and to review the report prior to the dispositional hearing. G.S. 7B-2413. In practice, the court may proceed on an oral presentation by the court counselor. Counsel should object if lack of a written report is detrimental to the juvenile. Because the court often gives great weight to the report of the court counselor, juvenile's counsel should work with the counselor, if possible, to arrive at recommendations acceptable to the juvenile. Otherwise counsel should be prepared to respond to the dispositional report and offer alternatives that further the juvenile's objectives. Counsel should be alert for the need to cross-examine the court counselor regarding the report and recommendations, or to move to strike portions of the report that contradict or are not supported by evidence presented at adjudication.

Counsel for the juvenile is entitled to review the court counselor's records. Reviewing the records and contacting the court counselor are an important part of counsel's investigation. Counsel should request a copy of the predisposition report in advance and be prepared to counter any information contained in the predisposition report.

#### **H. Law Enforcement Officer**

A law enforcement officer is often the petitioner or a witness in a delinquency proceeding. There are statutory guidelines that a law enforcement officer must follow in interrogating, fingerprinting, and photographing a juvenile or obtaining other nontestimonial identification of a juvenile. G.S. 7B-2100, -2109; *see infra* § 2.7E (Nontestimonial Identification Records). If a law enforcement officer is involved with the juvenile's case, counsel should request all law enforcement records in order to determine whether:

- statutory and constitutional guidelines were followed in investigating the case;
- any physical evidence is in the possession of law enforcement;
- the juvenile made an in-custody statement or admission;
- the juvenile made an out-of-custody statement or admission to anyone; or
- statements were taken from potential witnesses.

Many juvenile cases are based on an admission of the juvenile, so it is important to discover any admissions made by the juvenile and the surrounding circumstances. Counsel should be alert for violations of the juvenile's statutory and constitutional rights and should be prepared to move to suppress unlawfully obtained evidence. *See infra* Chapter 11 (Motions to Suppress). A careful review of law enforcement records may also reveal potential witnesses for the juvenile, as well as assist counsel in making objections during the adjudicatory hearing.

## I. Guardian ad Litem

A guardian ad litem is a person who is appointed in a legal proceeding to represent the interests of a party who is under a legal disability, including minority and incompetence, often pursuant to Rule 17 of the North Carolina Rules of Civil Procedure. The guardian ad litem stands in place of the real party in interest—the person for whom the appointment was made—and makes decisions as required for the case.

Even though all juveniles are minors, appointment of a guardian ad litem for an alleged delinquent is neither required, as in cases alleging neglect or abuse, nor provided for in the court's discretion, as in cases alleging dependency. *See* G.S. 7B-601. A guardian ad litem might arguably be appointed pursuant to Rule 17 of the Rules of Civil Procedure, although there is no statutory provision authorizing payment of the guardian ad litem from State funds. A juvenile unable to make decisions and assist counsel in formulating a defense, however, would generally be considered incapable of proceeding and therefore subject to the provisions of G.S. 15A-1001 through 15A-1003 of the North Carolina Criminal Procedure Act. One who is incapable of proceeding cannot be subject to an adjudication of delinquency. *See infra* Chapter 7 (Capacity to Proceed); *see also* Janet Mason, *Minors as Parties in Civil Actions*, JUVENILE LAW BULLETIN No. 2007/02, at 12–13 (June 2007), at [www.sog.unc.edu/pubs/electronicversions/pdfs/jvlb0702.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/jvlb0702.pdf).

If a parent or a sibling is the alleged victim, the juvenile might benefit from appointment of a guardian ad litem to advocate for the best interests of the juvenile, which is ordinarily the role of the parent. In these cases, the parent might have divided loyalties or even hostility toward the juvenile resulting from the alleged offense.

## J. Other Participants

***Department of Social Services.*** The juvenile may be the subject of an investigation by or be in the custody of the local department of social services (hereinafter DSS) because of abuse, neglect, or dependency allegations. This could affect many aspects of the delinquency proceeding, including disposition, in that the juvenile may be unable to return home as a result of a juvenile order in a DSS proceeding. Counsel should contact the DSS social worker to determine the juvenile's status.

If the juvenile is in DSS custody and is in need of treatment or is ordered at disposition to comply with conditions, the DSS social worker will be largely responsible for arranging treatment and assisting the juvenile in complying with the order.

***Mental health service providers.*** The juvenile may have received or may be receiving mental health services. If so, there are records that include progress notes, medication history, and evaluations of the juvenile. Counsel should obtain the standard release form used by the provider involved and have the juvenile and the juvenile's parent sign for release of the records to counsel. This will allow counsel to receive copies of the juvenile's records and to discuss the juvenile's history and needs with the treatment providers. The counselor or therapist may be more likely than others to promote treatment and may be a potential witness and ally for the juvenile at disposition.

***School personnel.*** Counsel should obtain a release of information and investigate the juvenile's current school status, academic and disciplinary history, and special education needs, if any. School personnel are often involved in the juvenile's case, both in and out of court, because of the allegations or other school issues. The juvenile's attorney should contact school personnel to determine the school's objectives, which may conflict with those of the juvenile. Counsel should be prepared to respond to information provided to the court by school personnel.

Counsel should ask whether the juvenile has an Individualized Education Plan (IEP). An IEP is the unique plan developed for each public school child with a disability who needs special education and related services. The IEP is developed by a team of qualified professionals and the child's parents to address the specific needs of the child within the school setting. See *A Guide to the Individualized Education Program*, U.S. Department of Education (July 2000), at [www.ed.gov/parents/needs/speced/iepguide/index.html](http://www.ed.gov/parents/needs/speced/iepguide/index.html).

# Appendix 3-1

## Role of Defense Counsel in Juvenile Delinquency Proceedings<sup>1</sup>

An attorney in a juvenile delinquency proceeding or in an order to show cause proceeding against an undisciplined juvenile shall be the juvenile's voice to the court, representing the express interests of the juvenile at every stage of the proceedings. The attorney owes the same duties to the juvenile under the Rules of Professional Conduct, including the duties of loyalty and confidentiality, as an attorney owes to an adult criminal defendant.

The attorney for a juvenile is bound to advocate the expressed interests of the juvenile. In addition, the attorney has a responsibility to counsel the juvenile, recommend to the juvenile actions consistent with the juvenile's interest, and advise the juvenile as to potential outcomes of various courses of action.

The attorney for a juvenile shall meet with the juvenile as soon as practical; communicate with the juvenile in a manner that will be effective, considering the juvenile's maturity, physical, mental and/or emotional health, intellectual abilities, language, educational level, special education needs, cultural background and gender; educate the juvenile as to the nature of the proceedings; determine the objectives of the juvenile; and keep the juvenile informed of the status of the proceedings. The attorney should move the court for appointment of an interpreter if the primary language of the juvenile or the juvenile's parents or guardian is other than English and the attorney has difficulty communicating with them.

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1. This statement of the role of defense counsel in juvenile delinquency proceedings was derived from a number of sources. *See, e.g.*, National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005); American Council of Chief Defenders, National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (2005); Amy Howell & Brook Silverthorn, Southern Juvenile Defender Center, *Representing the Whole Child: A Juvenile Defender Training Manual*, § IV (2004); California Administrative Office of the Courts, *Effective Representation of Children in Juvenile Delinquency Court* (2004); Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Access to Counsel* (2004); Katherine R. Kruse, *Washington University Journal of Law and Policy*, *Lawyers Should be Lawyers, But What does that Mean? A Response to Aiken & Wizer & Smith* (2004); Frank E. Vandervort, *Michigan Bar Journal*, *When Minors Face Major Consequences: What Attorneys in Representing Children in Delinquency, Designation, and Waiver Proceedings Need to Know* (2001); National Association of Counsel for Children, *Recommendations for Representation of Children in Abuse and Neglect Cases*, Part IV (2001); Barbara Butterworth, Will Rhee & Mary Ann Scali, American Bar Association Juvenile Justice Center, *Juvenile Defender Delinquency Notebook*, Chapter 2, § 2.2 (2000); Massachusetts Committee for Public Counsel Services, *Assigned Counsel Manual: Policies and Procedures*, Parts III. A.4 & J 1.2 (2000); Kentucky Department of Public Advocacy, *Juvenile Law Manual*, Chapters 1 & 3 (1999); IJA/ABA *Juvenile Justice Standards, Standards Relating to Private Parties*, Standard 3.1 (1996); Stephen Wizner, *4 Columbia Human Rights Law Review* 389, *The Child and the State: Adversaries in the Juvenile Justice System* (1972).

If the attorney determines that the juvenile is unable to understand the proceedings or otherwise cannot assist the attorney in representing the juvenile, the attorney shall move the court for an evaluation of the juvenile's capacity to proceed and otherwise proceed according to Rule 1.14 of the Rules of Professional Conduct.

The attorney for a juvenile should consider moving the court to appoint a guardian if it appears to the attorney that the juvenile does not have a parent or other adult to provide assistance in making decisions outside the scope of the attorney's representation.

Decisions whether to admit to allegations of a petition and whether to testify are those of the juvenile, after consultation with the attorney. Decisions regarding the method and manner of conducting the defense are those of the attorney, after consultation with the juvenile.

An attorney for the juvenile should be knowledgeable of dispositional alternatives available to the court. The attorney should inform the juvenile and the juvenile's parents or guardian of those alternatives, of possible recommendations to the court, and of the possible outcome of the hearing. At the dispositional hearing, the attorney shall provide the court with reasonable dispositional alternatives, if desired by the juvenile.