

## Chapter 6:

# Petition and Summons

<b>6.1 Overview</b>	<b>77</b>
<b>6.2 Terminology Used in This Chapter</b>	<b>77</b>
<b>6.3 Petition</b>	<b>78</b>
A. Contents	
B. Filing of the Petition	
C. Timeliness of Filing	
D. Amendment of Petition	
E. Pleading Defects: North Carolina Defender Manual	
F. Defects and Variances	
G. Fatal Defects in Petitions	
H. Defects in Petition: Timing of Motion	
I. Fatal Variance between Allegations and Proof	
J. Fatal Variance: Timing of Motion	
<b>6.4 Summons</b>	<b>84</b>
A. Issuance of Summons	
B. Requirements for Summons	
C. Service	
<b>6.5 Notice of Hearing</b>	<b>86</b>
<b>Appendix 6-1 Tenth Judicial District Family Court Local Rules for Juvenile Delinquency &amp; Undisciplined Proceedings</b>	<b>87</b>
<b>Appendix 6-2 G.S. 15A-301</b>	<b>89</b>

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## 6.1

### Overview

A juvenile delinquency proceeding is initiated by the filing of a petition with the clerk of superior court and the issuance of a summons by the clerk. Juvenile court jurisdiction is obtained by personal service of the summons and petition on the juvenile and on the juvenile's parent, guardian, or custodian.

## 6.2

### Terminology Used in This Chapter

*Complainant* is the person who files a complaint with the juvenile court counselor. It is also the term used for the person who signs the petition that is filed with the clerk of superior court. The person who signs the petition can be someone other than the person who

originally filed the complaint. In either instance it is not required that the alleged victim be the complainant.

*Complaint* is the report from a law enforcement officer or from a member of the community made to the juvenile court counselor's office alleging delinquent acts committed by a juvenile. The complaint is typically recorded on the Administrative Office of the Courts (AOC) juvenile petition form.

*Petition* is the document filed in the office of the clerk of superior court initiating a juvenile court proceeding. The petition is analogous to a pleading such as a warrant or indictment against an adult in criminal court. See Forms AOC-J-310 through -333 (juvenile delinquency petitions) at [www.nccourts.org/Forms/FormSearch.asp](http://www.nccourts.org/Forms/FormSearch.asp).

*Summons* is the document issued by the clerk of superior court after the petition has been filed. The juvenile must be personally served with the summons and the petition for the court to obtain jurisdiction. The parent, guardian, or custodian of the juvenile must also be personally served unless they cannot be found by a diligent effort, in which case the court may authorize summons by mail or publication. G.S. 7B-1806. In most jurisdictions the summons will include the name and telephone number of the attorney appointed to represent the juvenile. See Form AOC-J-340 (Juvenile Summons and Notice of Hearing (Undisciplined/Delinquent)) (July 1999) at [www.nccourts.org/Forms/Documents/522.pdf](http://www.nccourts.org/Forms/Documents/522.pdf).

## 6.3 Petition

### A. Contents

The petition must 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. There must be a plain and concise statement of the facts supporting each element of the criminal offense the juvenile is alleged to have committed. The information in the petition must be sufficient to inform the juvenile of the alleged delinquent act. G.S. 7B-1802; see *In re Gault*, 387 U.S. 1, 33 (Due Process requires that juvenile be notified in writing of the specific charge or factual allegations to be considered at hearing); see also *infra* § 6.3F (Defects and Variances).

### B. Filing of the Petition

**Statutory requirements.** The juvenile court counselor files a petition if a legally sufficient complaint is received alleging a nondivertible offense or if the juvenile court counselor approves the filing after completing an intake evaluation. The court counselor must have reasonable grounds to believe the facts alleged are true and constitute a delinquent offense. G.S. 7B-1700, -1702. If the complaint is approved for filing by the prosecutor following an appeal of the juvenile court counselor's decision, the prosecutor is responsible for the filing. G.S. 7B-1704, -1705.

There are three ways a petition can be filed:

- First, and most often, the petition is drafted by the juvenile court counselor or the clerk of superior court, signed by the complainant, and verified before an official authorized to administer oaths. G.S. 7B-1803(a).
- Second, if the petition is approved by the prosecutor after review of the court counselor's decision to deny the petition, the prosecutor must prepare the complaint for filing as a petition. G.S. 7B-1803(b).
- Finally, a magistrate is allowed to draft, verify, and accept the petition for filing if the clerk's office is closed and the juvenile court counselor wants to file an emergency petition in order to request a secure custody order. G.S. 7B-1804(b).

**Local rules.** G.S. 7B-1803(a) provides that procedures for receiving complaints and drafting petitions consistent with the Juvenile Code are to be established by administrative order of the chief judge in each judicial district. Although the majority of judicial districts have not adopted local rules for juvenile court, some local rules and forms are available online by county at [www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp](http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp). Counsel should contact the clerk's office to obtain and review a copy of the local administrative order if one exists. *See, e.g., infra* Appendix 6-1 (Tenth Judicial District Family Court Local Rules for Juvenile Delinquency & Undisciplined Proceedings). A motion to dismiss a petition could be based on failure to follow local rules as well as on failure to abide by statutory requirements.

### C. Timeliness of Filing

A petition must be filed within 15 days of receipt of the complaint by the juvenile court counselor unless an extension of up to an additional 15 days is granted in the discretion of the chief court counselor. G.S. 7B-1703(b).

In several unpublished opinions, the Court of Appeals held that the time limits in G.S. 1703(b) are jurisdictional and that failure to file the petition within the statutory limits requires dismissal of the petition. *In re J.B.*, 650 S.E.2d 457 (2007) (unpublished) (court lacked subject matter jurisdiction where petition filed more than 30 days after complaint received); *In re M.C.*, 645 S.E.2d 386 (2007) (unpublished) (court lacked subject matter jurisdiction where petition verified on November 1, 2005, and filed on December 2, 2005, because petition filed outside statutory maximum of 30 days); *In re L.O.*, 631 S.E.2d 894 (2006) (unpublished) (petition signed and notarized on March 31, 2005, marked as approved for filing on April 21, 2005, and filed with the court on May 19, 2005 dismissed as untimely). The North Carolina Court of Appeals has now issued a published case reaching the same result. *In re J.B.*, 650 S.E.2d 457 (2007).

In some of the above cases, the actual date the complaint was received was not reflected in the record. AOC forms marked "revised as of 7/06" include a space for "Date Received by the Department of Juvenile Justice and Delinquency Prevention." If the petition is on an older form, counsel may need to review the juvenile court counselor's file to discover the date the complaint was received.

If a petition has not been filed in a timely manner, counsel should file a motion to dismiss with prejudice, and assert that allowing a new petition to be filed would render meaningless the time requirements of G.S. 7B-1703(b); *see infra* § 6.3H (Defects in Petition: Timing of Motion).

#### D. Amendment of Petition

The petition may be amended with the permission of the court if the amendment does not change the nature of the offense alleged. If the amendment is allowed, the juvenile must be given reasonable time to prepare a defense to the petition as amended. G.S. 7B-2400. The amendment should be denied if it changes the nature of the offense. *In re Davis*, 114 N.C. App. 253, 255–56 (1994) (juvenile could not be adjudicated delinquent for burning *personal property* in a public building when petition alleged burning a *public building*; court improperly allowed amendment, even with consent of juvenile’s counsel, because amended allegation constituted separate offense from that alleged in the petition); *State v. Call*, 162 N.C. App. 268, 273 (2004) (motion to amend indictment alleging possession of drug paraphernalia described as “can designed as a smoking device” to “brown paper container” improperly granted). Counsel should move to dismiss when an amendment that would change the nature of the offense alleged is denied and the State is unable to prove the offense as alleged. An amendment is also not allowed after a delinquency appeal has been perfected. *In re B.D.W.*, 175 N.C. App. 760, 764 (2006) (order allowing amendment of petition at hearing regarding juvenile’s continued detention after juvenile perfected appeal was a nullity as trial court lacked jurisdiction to amend).

Counsel should object to evidence that is not relevant to the specific offense alleged in the petition. This will prevent the court from hearing evidence that pertains to conduct that is not properly alleged and that could be detrimental to the juvenile if the case proceeds to disposition.

If a motion to amend the petition is denied, the State might file a new petition concerning the offense that was the subject of the proposed amendment. Counsel should be prepared to file a motion to dismiss if the new petition is not filed within the statutory time limits for filing the petition. *See* G.S. 7B-1703(b); *see also supra* § 6.3C (Timeliness of Filing).

#### E. Pleading Defects: North Carolina Defender Manual

The North Carolina Defender Manual contains a comprehensive discussion of pleading defects under criminal law, which generally applies to juvenile court petitions. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 8.2F (Common Pleading Defects in District Court) and § 8.6 (Common Pleading Defects in Superior Court) (July 2004), at [www.ncids.org](http://www.ncids.org); *see also* Jessica Smith, *The Criminal Indictment: Fatal Defects, Fatal Variance, and Amendment*, Administration of Justice Bulletin No. 2008/03 (Forthcoming), at [www.sog.unc.edu/bulletins/aoj](http://www.sog.unc.edu/bulletins/aoj).

## F. Defects and Variances

Pleadings may be defective in two general ways. A facial defect is apparent on the face of the document. A variance is a defect that becomes apparent only after the State begins presenting evidence. These defects may be fatal, depriving the court of jurisdiction, or they may be non-fatal, allowing the court to proceed. This chapter primarily discusses fatal defects and variances.

## G. Fatal Defects in Petitions

**Proper signature.** The petition must be signed by the complainant and verified before an official authorized to administer oaths. G.S. 7B-1803(a). A lack of signature or verification renders the petition defective and insufficient to vest jurisdiction with the court. *See In re T.R.P.*, 360 N.C. 588 (2006) (court lacked subject matter jurisdiction where juvenile petition alleging neglect not signed and verified as required by statute). Any person with knowledge of the alleged offense may sign the complaint; it is not required that the alleged victim be the complainant. *See In re Stowe*, 118 N.C. App. 662, 665 (1995) (prosecutor with knowledge of allegations may be complainant).

Counsel should examine each petition to determine if it has been properly signed and verified. If not, counsel should consider moving to dismiss the petition for lack of jurisdiction pursuant to *In re Green*, 67 N.C. App. 501 (1984). *See infra* § 6.3H (Defects in Petition: Timing of Motion).

**Allegations.** The petition must set forth a “plain and concise statement. . . asserting facts supporting every element of a criminal offense. . .” G.S. 7B-1802. The Court of Appeals has stated that juvenile petitions are “generally held to the standards of a criminal indictment” and that failure to allege each essential element of an offense renders the petition “inoperative” to invoke the jurisdiction of the court. *In re J.F.M.*, 168 N.C. App. 143, 150 (2005); *In re Griffin*, 162 N.C. App. 487, 493 (2004) (petition in juvenile action serves function of indictment in felony prosecution; each element of offense must be averred with sufficient specificity).

Petitions that do not meet these requirements are fatally defective and must be dismissed. In applying the standards required for criminal pleadings, the Court of Appeals has found the allegations of the juvenile petition to be deficient in several cases. *See In re B.D.W.*, 175 N.C. App. 760, 762 (2006) (petitions alleging second-degree kidnapping were fatally defective because of failure to allege one of the improper purposes of the confinement as required by statute); *In re R.P.M.*, 172 N.C. App. 782, 787-89 (2005) (petition alleging assault with deadly weapon *with intent to inflict* serious injury failed to allege offense under North Carolina statutes and did not give the juvenile proper notice of offense State attempted to prove); *In re Jones*, 135 N.C. App. 400, 409 (1999) (petitions purporting to allege age-related first-degree sex offenses were fatally defective because they failed to allege ages of victim and juvenile respondent).

The courts have held that a petition, like an indictment, need only give sufficient notice of the allegations and “should not be subjected to hyper technical scrutiny with respect to form.”

*In re S.R.S.*, 180 N.C. App. 151, 153 (2006). Cases finding that the errors were a matter of form only include: *In re S.R.S.*, 180 N.C. App. 151, 155 (2006) (petition that alleged offense of communicating threats was not fatally defective as it cited the correct statute and alleged facts supporting each element of offense; under the totality of the circumstances the juvenile had sufficient notice of offense charged and specific misconduct alleged); *In re J.F.M.*, 168 N.C. App. 143, 151 (2005) (petitions were sufficient to apprise juvenile of each element of offenses of resisting, delaying, and obstructing a public officer and assault on a public officer, as they cited the correct statutes and alleged facts supporting each element of the offenses).

#### H. Defects in Petition: Timing of Motion

**Jurisdictional defects.** A motion to dismiss based on a jurisdictional defect in the pleadings may be made at any time in the proceeding. *In re S.R.S.*, 180 N.C. App. 151, 153 (2006) (“it is well established that fatal defects in an indictment or a juvenile petition are jurisdictional, and thus may be raised at any time”); *State v. Wallace*, 351 N.C. 481, 503 (2000). Dismissal of a petition for a jurisdictional defect, however, generally allows a corrected petition to be re-filed if it is not otherwise barred by time limits or other grounds.

A motion to dismiss is sometimes made at a first appearance, which may include other petitions in addition to the one that is the subject of the motion. Some attorneys move to dismiss after adjudication has begun because the State has prepared the case for hearing and may be more amenable to a plea negotiation on all allegations. Although the issue may be raised at any time, the court may be more reluctant to grant a motion to dismiss after hearing a substantial amount of evidence against the juvenile.

Counsel should advise the juvenile of the possibility of a petition being re-filed before moving for a dismissal and explain the possible benefits and risks. Even if a new petition could be filed, dismissal could nevertheless benefit the juvenile. For example, in the interim the juvenile could increase chances for diversion or a more favorable disposition by making improvements in behavior or school performance or by making restitution. Because of the sheer passage of time, the State may decide not to re-file. The primary risk of dismissal is that the case will be re-filed and the juvenile may be in the same position as if the petition had not been dismissed.

If a new petition is filed alleging the same offense or another offense related to the same incident, counsel should consider filing a motion to dismiss for failure to meet the 30 day deadline following receipt of the complaint (G.S. 7B-1703(b)) and for failure to follow the stated purposes of the Juvenile Code in providing “swift, effective dispositions” (G.S. 7B-1500(2)a.), “with all possible speed in making and implementing determinations required . . .” G.S. 7B-1500(4). *See also generally* 1 NORTH CAROLINA DEFENDER MANUAL §§ 8.2E (Timing and Effect of Motions to Dismiss in District Court) and 8.6J (Timing of Motions to Challenge Indictment Defects) (July 2004), at [www.ncids.org](http://www.ncids.org).

**Non-jurisdictional defects.** If a pleading defect is not jurisdictional, failure to object before the State begins its case may constitute a waiver. *See generally* G.S. 15A-952 (certain challenges to indictment in criminal case must be made before arraignment or they are waived). Even

if an objection to a non-jurisdictional defect is timely made and is sustained, the defect may be considered technical and therefore subject to amendment. It may be difficult to determine whether a defect in a pleading is jurisdictional and justifies dismissal, or is merely technical and subject to amendment. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 8.6J (Timing of Motions to Challenge Indictment Defects) (July 2004), at [www.ncids.org](http://www.ncids.org).

Counsel must evaluate any defects in the petition to ensure that counsel does not miss the opportunity to obtain dismissal.

#### **I. Fatal Variance between Allegations and Proof**

A fatal variance occurs when a petition alleges all the necessary elements of an offense but the State proves an offense not alleged in the petition. Even though the State proves all of the elements of a criminal offense, the petition must be dismissed if it does not allege each element of the proven offense. *In re Griffin*, 162 N.C. App. 487, 494–95 (2004) (juvenile improperly adjudicated delinquent of first-degree sex offense based on respective ages of juvenile and victim but petition alleged sex offense by force against victim’s will and failed to allege either victim’s age or difference in age between juvenile and victim); *State v. Loudner*, 77 N.C. App. 453, 454 (1985) (fatal variance exists where indictment alleged sex offense of “performing oral sex” on person in defendant’s custody but evidence showed defendant placed finger in vagina).

A fatal variance also exists if the State presents evidence of every element of the offense alleged but the evidence does not conform to the allegations in the petition. *See State v. Call*, 349 N.C. 382, 424 (1998) (indictment charging assault on “Gabriel Hernandez Gervacio” constituted fatal variance where evidence showed victim was “Gabriel Gonzalez”); *State v. Eppley*, 282 N.C. 249, 259 (1972) (fatal variance exists where evidence shows stolen property is not owned by person alleged as owner in indictment). There can be some variation between the pleading and proof, however, without the variance being fatal. *State v. Call*, *supra*, 349 N.C. at 395 n.1 (difference in name of victim in indictment and in some testimony resulted from confusion arising from custom in some Spanish-speaking countries of not placing surnames last; record clear from transcript and record that victim correctly named in indictment).

There is no fatal variance if the State proves all the essential elements of a lesser- included offense of the offense alleged in the petition. *In re J.H.*, 177 N.C. App. 776 (2006) (petition alleged felonious possession of stolen goods but State proved all elements of misdemeanor possession of stolen goods; remanded for entry of adjudication on lesser charge); *In re B.D.W.*, 175 N.C. App. 760, 764 (2006) (petition alleged second-degree kidnapping but State proved all elements of false imprisonment; case remanded for entry of adjudication on lesser charge).

#### **J. Fatal Variance: Timing of Motion**

A motion to dismiss for fatal variance should be made at the close of the State’s evidence and renewed at the close of all the evidence. *State v. Bell*, 270 N.C. 25, 28 (1967).

## 6.4 Summons

### A. Issuance of Summons

Upon the filing of a delinquency petition, the clerk of superior court must issue a summons to the juvenile and to the juvenile's parent, guardian, or custodian requiring them to appear for a hearing at a stated place and time. G.S. 7B-1805(a). A copy of the juvenile petition must be attached to each summons. G.S. 7B-1805(a). Counsel should review the juvenile court file to ensure that the summons contains the correct information, that it was properly issued, and that the "Return of Service" reflects proper and timely service on both the juvenile and the juvenile's parents, particularly if the juvenile or parent is not present. The summons must have been properly issued even if the juvenile and the juvenile's parents are present for court proceedings.

The North Carolina Court of Appeals has held that the court obtains neither personal jurisdiction nor subject matter jurisdiction where no summons is issued. *See In re C.T. & R.S.*, 182 N.C. App. 472 (2007) (court lacked subject matter jurisdiction over the juvenile, R.S., in termination of parental rights case where no summons issued as to R.S.); *In re Mitchell*, 126 N.C. App. 432 (1997) (court had no jurisdiction where summons not issued in juvenile neglect case); *but see In re J.L.P.*, 181 N.C. App. 606 (2007) (unpublished) (juvenile in delinquency proceeding waived defenses of lack of personal jurisdiction and insufficiency of process under Rule 12(h)(1) of Rules of Civil Procedure by making a general appearance). In *J.L.P.*, the Court distinguished the holding in *Mitchell* by noting that the respondents in that case made a motion to dismiss in district court based on the lack of a summons whereas the juvenile in *J.L.P.* did not.

Where counsel learns that a summons has not been issued, counsel should make a limited appearance to file a timely objection asserting lack of jurisdiction for failure to issue the summons.

### B. Requirements for Summons

A summons must be printed on the form prepared by the Administrative Office of the Courts. G.S. 7B-1805(b); *see* Form AOC-J-340 (Juvenile Summons and Notice of Hearing), at [www.nccourts.org/Forms/Documents/522.pdf](http://www.nccourts.org/Forms/Documents/522.pdf). Pursuant to G.S. 7B-1805(b)(1)–(5), the juvenile summons must include notice of the following:

- The nature of the proceeding and the purpose of the scheduled hearing;
- The right to counsel and information on how to have counsel appointed prior to the hearing;
- That if the court finds at the hearing that the allegations are true, the court will hold a dispositional hearing with the authority to enter orders affecting substantial rights of the juvenile and the juvenile's parent, guardian, or custodian;

- That the parent, guardian, or custodian is required to attend scheduled hearings and that failure to attend without reasonable cause may result in proceedings for contempt of court; and
- That the parent, guardian, or custodian must bring the juvenile to court for all scheduled hearings and that failure to do so without reasonable cause may result in proceedings for contempt of court.

The summons must also notify the juvenile and the juvenile's parent, guardian, or custodian that dispositional orders affecting substantial rights may include those that affect the juvenile's custody; impose conditions on the juvenile; require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment; require the parent to undergo psychiatric, psychological, or other treatment or counseling; order the parent to pay for treatment that is ordered for the juvenile or the parent; order the parent to pay support for the juvenile for any period the juvenile does not reside with the parent; and order the parent to pay attorney's fees or other fees or expenses as determined by the court. G.S. 7B-1805(b)(3)(a)–(f).

Counsel should check the summons to make sure that the statutory information is included and the appropriate boxes on the form have been checked. An inadequate summons can be the basis for a motion to release the juvenile from secure custody based on the court's lack of jurisdiction to enter the secure custody order.

### C. Service

**Personal service.** The juvenile must be personally served with the summons and the petition not less than five days before the date of a scheduled hearing. G.S. 7B-1806; *In re McAllister*, 14 N.C. App. 614 (1972) (court had no jurisdiction when no summons, petition, or other notice was served on the juvenile or her parent, guardian, or custodian). The parent, guardian, or custodian of the juvenile also must be personally served unless they cannot be found by a diligent effort, in which case the court may authorize summons by mail or publication. G.S. 7B-1806. A show cause order may be issued to a parent, guardian, or custodian who is personally served and fails without reasonable cause to appear and bring the juvenile to the scheduled hearing. G.S. 7B-1806.

A juvenile may waive a defect in service by making a general appearance. *In re Hodge*, 153 N.C. App. 102, 105-06 (2002) (lack of service of summons, petition, and notice of hearing on juvenile and parents was not fatal because the juvenile made a general appearance without objection to the defect in service). In an older case, the Court held that, under the facts, proof of proper service was not required. *In re Collins*, 12 N.C. App. 142 (1971) (failure of record to show time and manner of service not fatal where record reflected actual notice within statutory time limit). The court has discretion to waive the time requirements for service, although the statute provides no criteria for the court in considering waiver. G.S. 7B-1806.

Before making a general appearance on behalf of the juvenile, especially if the juvenile does not appear, counsel should examine the court file to determine whether the summons was properly issued and served. A limited appearance to file and argue a motion to dismiss

based on failure of service may be required to prevail on the motion and to preserve the issue on appeal. Counsel should also inform the court of lack of service and object on these grounds if the court is contemplating issuing a secure custody order.

**Limited application of G.S. 15A-301 of Criminal Procedure Act.** Several sections of G.S. 15A-301 apply to juvenile process: (a) “Formal Requirements”; (c) “Service”; (d) “Return”, except that the period for return of an unserved juvenile summons is 30 days rather than the longer periods provided in the criminal statute; and (e) “Copies to be Made by Clerk”. G.S. 7B-1806; *see infra* Appendix 6-2 (G.S. 15A-301).

## 6.5

### Notice of Hearing

The clerk must give all parties, including both parents, the juvenile’s guardian or custodian, and any other person standing *in loco parentis* five days written notice of the date and time of all scheduled hearings. Written notice is required unless the parties receive notice in open court or the court orders otherwise. G.S. 7B-1807.

In some districts it is customary for court counselors to give oral notice of hearing. Counsel should consider objecting as this notice does not satisfy statutory requirements.

# Appendix 6-1

## Tenth Judicial District Family Court Local Rules for Juvenile Delinquency & Undisciplined Proceedings

### Rule 7 Service of Summons and Petitions

7.1 Upon the filing of a petition alleging a juvenile to be Delinquent or Undisciplined, the Juvenile Court Clerk shall issue a Juvenile Summons, and Notice of Hearing. For Delinquent and Undisciplined Cases form AOC-J-340 shall be used. For Motions for Review, and Dispositional Hearings form AOC-J-240 shall be used. The summons shall comply with N.C.G.S. 7B-1805 and contain the court-appointed attorney's name, telephone number, as well as the date, time and place of hearing. The summons and a copy of the petition shall be served on the juvenile's parent(s), guardian or custodian by the Sheriff's Department, City Police Department, or Town Police Department. Service shall be accomplished in accordance with N.C.G.S. 7B-1806.

7.2 When the juvenile and his or her parent(s), guardian, or custodian attend an intake meeting, and the decision is made to file a petition for a Felony Charge(s), the Juvenile Court Clerk will be notified by the Juvenile Court Counselor's Office to prepare a summons for first appearance, which the Intake Counselor will serve, along with a copy of the petition(s), on the parent(s), guardian or custodian and the juvenile before they leave the Intake Meeting. If the juvenile and parent(s), guardian or custodian do not attend the Intake Meeting, then the normal service procedure shall be implemented as follows: the Sheriff's Department, City Police Department or Town Police Department will assist in serving the summons and a copy of the petition in a manner to meet the scheduling guidelines.

7.3 When a matter appears on the printed docket and it is determined that service of a Delinquent Summons, Undisciplined Summons or Show Cause Order on a parent or juvenile was unsuccessful for reasons such as, but not limited to, the following: vacant address, incomplete address (no apartment #), false information given, juvenile resides outside of Wake County, etc. the matter will be removed from the calendar and the assigned Juvenile Court Counselor shall notify the petitioner (investigating officer, school social worker, etc.) of the need for a valid service address. The matter will not be recalendered until such time as adequate information is obtained to enable law enforcement to accomplish service. It shall be the petitioner's responsibility to provide this information as expeditiously as possible to the assigned Juvenile Court Counselor, who shall then notify the Juvenile Court Clerk, at which point a new court date will be made to the District Court.



# Appendix 6-2

## G.S. 15A-301

### Criminal process generally.

- (a) Formal Requirements. –
  - (1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk in either paper form or in electronic form in the Electronic Repository as provided in G.S. 15A-301.1.
  - (2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.
- (c) Service. –
  - (1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.
  - (2) A corporation may be served with criminal summons as provided in G.S. 15A-773.
- (d) Return. –
  - (1) The officer or other employee designated as provided in subsection (b) who serves or executes a criminal process that was first created and exists only in paper form must enter the date and time of the service or execution on the process and return it to the clerk of court in the county in which issued. The officer or other employee designated as provided in subsection (b) of this section who serves or executes a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall promptly cause the date of the service or execution to be recorded as provided in that section.
  - (2) If criminal process that was created and exists only in paper form is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.
    - a. Warrant for arrest – 180 days.

- b. Order for arrest – 180 days.
  - c. Criminal summons – 90 days or the date the defendant is directed to appear, whichever is earlier.
- (3) Failure to return the process to the clerk as required by subdivision (2) of this subsection does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).
  - (4) The clerk to which return of a criminal process that was created and exists only in paper form is made may redeliver the process to a law-enforcement officer or other employee designated as provided in subsection (b) for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.
- (e) Copies to Be Made by Clerk. –
    - (1) The clerk may make a certified copy of any criminal process that was created and exists only in paper form filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).
    - (2) When criminal process is returned to the clerk pursuant to subdivision (d)(1) and it appears that the appropriate venue is in another county, the clerk must make and retain a certified copy of the process and transmit the original process to the clerk in the appropriate county.
    - (3) Upon request of a defendant, the clerk must make and furnish to him without charge one copy of every criminal process filed against him.
    - (4) Nothing in this section prevents the making and retention of uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose