

Chapter 11:

Motions to Suppress

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11.1

Motions Practice in Juvenile Court

A. Goals

Advocacy through motions practice is essential to protection of a juvenile’s constitutional and statutory rights. Although the Juvenile Code contains no specific procedures for filing motions, case law confirms that motions may be filed and are often vital to the outcome of the case. For general guidance on the timing, form, and contents of motions, counsel should

consult Article 52, Chapter 15A-951, *et. seq.*, which sets out procedures for motions practice in criminal court.

Filing motions can achieve several goals in a juvenile case. A pending motion may strengthen the juvenile's bargaining position with the State, while a successful motion may resolve the case, or some portions of it, in the juvenile's favor. Advocacy through motions practice will demonstrate to the court, the prosecutor, and the juvenile that counsel is dedicated to providing an effective and zealous defense. The court and the prosecutor may then be more likely to listen carefully and be persuaded by arguments of counsel. *See* "Motions Practice: Tools for Your Defense," Regional Juvenile Defender Workshops (February–May 2006), at www.ncids.org (Training and Reference Materials).

Drafting a motion requires that counsel research the statutory, constitutional, or case law bases for the motion. A written motion and argument on the record and a memorandum of law submitted to the court, along with appropriate objections, protect the juvenile's rights and preserve issues in the event of an appeal.

B. Types of Motions

A variety of motions may be filed, including a motion requesting that a hearing be closed (*see supra* § 2.6), that witnesses be sequestered (*see infra* § 12.5A), for discovery (*see supra* § 10.3), requesting an evaluation of capacity (*see supra* § 7.8), requesting that an expert be appointed (*see supra* § 7.8A), and for dismissal of the petition (*see supra* § 6.3H).

Motions to suppress are particularly important in juvenile court because the State's case often rests on a statement or admission of a juvenile or on evidence obtained from a search of a juvenile. A successful suppression motion may result in the dismissal of the petition by the State or on motion of the juvenile. This chapter focuses on filing and arguing motions to suppress.

11.2

Filing Motions and Hearing Procedures

A. Timing of Motions

No specific statutory deadlines for filing motions to suppress are provided by the Juvenile Code. If the motion to suppress would be dispositive if successful—that is, it would exclude evidence necessary for the State to prove the charged offense—the motion should be filed early in the case. If a motion to suppress is granted before the probable cause hearing, the State may be prevented from showing probable cause, and the petition will be dismissed.

There may be tactical reasons in some instances not to file a motion to suppress until the adjudicatory hearing begins. Counsel may decide to defer filing to avoid revealing to the State that certain evidence may not be admissible at adjudication. If the motion to suppress is granted at a later stage, the State may be unable to produce other sufficient evidence to prove the allegations in the petition.

B. Form and Contents of Motion

A motion to suppress should generally be in writing to give notice to the State and to inform the court of the information that is being sought to be suppressed. In preparing the motion, counsel may need to interview witnesses and review evidence provided by the State through discovery. The written motion will also place in the record the reasons that the information should be suppressed and help preserve the issue and argument in the event of an appeal.

The written motion should state the legal grounds for the motion, including constitutional, statutory, and case law references. If the motion relies on factual allegations, an affidavit setting forth those facts should be included with the motion. *See generally* G.S. 15A-977(a). Counsel may sign the affidavit alleging the facts based on information and belief rather than having the juvenile sign. *State v. Chance*, 130 N.C. App. 107, 110–11 (1998).

Counsel should prepare a memorandum of law supporting the motion to suppress. A memorandum will place before the court the legal authority supporting the motion and will also supplement the record on appeal.

C. Renewal of Objection at Hearing

By amendment to the North Carolina Rules of Evidence in 2003, the General Assembly tried to eliminate the requirement that counsel must renew an objection when evidence that was the subject of an unsuccessful motion to suppress is presented at the adjudication. N.C. R. Evid. 103(a)(2). The Court of Appeals initially enforced this rule. *State v. Rose*, 170 N.C. App. 284, 288 (2005) (defendant not required to renew objection when evidence is offered at trial after motion to suppress denied before trial); *In re S.W.*, 171 N.C. App. 335, 337 (2005) (to same effect). The Court of Appeals thereafter held, however, that the General Assembly impermissibly interfered with the North Carolina Supreme Court's exclusive authority to make rules of practice and procedure for appeals. *State v. Tutt*, 171 N.C. App. 518 (2005). Counsel should therefore continue to object if evidence that has been the subject of a previous motion to suppress is offered at the adjudication.

Counsel should also object during the hearing if evidence that has been ordered suppressed is presented, whether by design or inadvertence. The evidence has been ruled inadmissible and should be excluded from consideration by the court.

An objection must also be made during the hearing if evidence that is subject to suppression is introduced by the State without prior notice that it will be offered. If necessary, counsel should request a continuance to research and present legal authority supporting suppression.

D. Appeal of Denial of Motion to Suppress Following Admission

There is no statute in the Juvenile Code similar to G.S. 15A-979(b) of the Criminal Procedure Act providing that the juvenile may appeal denial of a motion to suppress after making an admission. G.S. 15A-979(b) provides that “[a]n order finally denying a motion to

suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.”

The North Carolina Court of Appeals in an unpublished case has implicitly recognized the right of a juvenile to appeal denial of a motion to suppress evidence following an admission. *In re J.B.*, 644 S.E.2d 270 (2007). In *J.B.*, a motion to suppress a statement made by the juvenile and evidence that was seized as a result of that statement was denied following a hearing on the motion. At a later adjudicatory hearing, the juvenile admitted the allegations in the petitions but renewed his arguments regarding the motion to suppress. The Court remanded the case for the lower court to make findings of fact necessary to support its determination that the juvenile was not in custody during interrogation so that those findings could be reviewed on appeal. The right of the juvenile to appeal the denial of the motion to suppress following admission to the allegations was not questioned by the Court.

In *J.B.*, the juvenile through counsel renewed his arguments for suppression at the time he entered an admission. This may preserve the issue for appeal. Counsel may also refer to the procedure described in G.S. 15A-979(b) for adult criminal cases. To preserve the right of appeal under that statute, defendants must expressly communicate their intent to appeal the denial of the suppression motion to the prosecutor and the court at the time of the guilty plea (or, in juvenile cases, the admission). *See State v. Brown*, 142 N.C. App. 491 (2001); *State v. McBride*, 120 N.C. App. 623, *aff'd*, 344 N.C. 623 (1996). To further protect the right the appeal, the conditional nature of the admission should be put on the record before the admission is entered and should appear in the written transcript of admission.

11.3

Bases for Motions to Suppress Statement or Admission of Juvenile

A. Constitutional Rights

A juvenile is protected by the constitutional right against self-incrimination guaranteed by the Fifth Amendment. *See In re Gault*, 387 U.S. 1 (1967); *Mincey v. Arizona*, 437 U.S. 385, 398–400 (involuntary or coerced confession not admissible); *see also supra* § 2.4A (Constitutional Right). After initiation of juvenile proceedings, the juvenile is afforded additional protection under the Sixth Amendment’s right to counsel, guaranteed to juveniles under *Gault*. *See Michigan v. Jackson*, 475 U.S. 625, 636 (1986) (statement of defendant made in violation of Sixth Amendment right to counsel properly ordered suppressed). If a juvenile has been questioned in violation of these rights a motion to suppress should be filed to prevent the court from admitting the statement as evidence. For a further discussion of these rights, *see* 1 NORTH CAROLINA DEFENDER MANUAL § 14.3 (Illegal Confessions or Admissions) (July 2002), at www.ncids.org.

B. Statutory Rights

Juveniles in custody who are being questioned have statutory rights that include and go beyond the requirements of *Miranda* warnings. *See* G.S. 7B-2101; *see also supra* § 2.4B (Statutory Rights). These rights are afforded only if the juvenile is “in custody,” a term that is

not defined in the statutes but is the subject of case law. *See infra* § 11.4B (Definition of “In Custody”).

In setting forth the information that the juvenile must receive prior to custodial interrogation, the statute tracks *Miranda* with the addition of the third provision below:

1. That the juvenile has a right to remain silent;
2. That any statement the juvenile does make can be and may be used against the juvenile;
3. That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
4. That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

G.S. 7B-2101(a); *see infra* §§ 11.4D (Right to Have Parent, Custodian, or Guardian Present), 11.4F (Right to Consult with and Have Attorney Appointed).

Questioning must cease “[i]f the juvenile indicates in any manner and at any stage . . . that the juvenile does not wish to be questioned further.” G.S. 7B-2101(c). The court must find that the juvenile “knowingly, willingly, and understandingly waived the juvenile’s rights” before the juvenile’s in-custody statement can be admitted into evidence. G.S. 7B-2101(d); *see infra* § 11.4H (Knowing, Willing, and Understanding Waiver of Rights).

If a juvenile is under the age of 14, the presence of a parent, guardian, custodian, or attorney is required for an in-custody admission or confession to be admitted into evidence. The parent, guardian, or custodian must also be advised of the juvenile’s rights if an attorney is not present. These requirements may not be waived by the juvenile or the parent. G.S. 7B-2101(b); *see infra* § 11.4E (Requirement that Parent, Custodian, Guardian, or Attorney be Present if Juvenile under 14); *see also* G.S. 15A-211 (requiring electronic recording of in-custody interrogation conducted at place of detention in homicide investigation).

11.4

Case Law: Motions to Suppress In-Custody Statement of Juvenile

A. Scope of Discussion in This Manual

This section reviews cases involving in-custody statements by juveniles. There may be additional grounds for suppressing statements that do not require that the juvenile be in custody, such as involuntary statements under the Fifth Amendment and statements in violation of the Sixth Amendment right to counsel. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 14.3 (Illegal Confessions or Admissions) (July 2002), at www.ncids.org.

B. Definition of “In Custody”

Miranda and statutory warnings are required during questioning only when the juvenile is in custody. See G.S. 7B-2101. The court must first determine whether the juvenile was in custody in ruling on a motion to suppress. *In re T.R.B.*, 157 N.C. App. 609, 612–13 (2003).

The standard for determining whether a person is in custody for *Miranda* purposes is, “based on the totality of the circumstances, whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest.” *State v. Buchanan*, 353 N.C. 332, 339 (2001). This is an objective test of “whether a reasonable person in the position of the defendant would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way,” and is not based on the subjective intent of the interrogator or the perception of the person under questioning. *In re T.R.B.*, 157 N.C. App. at 613, quoting *State v. Sanders*, 122 N.C. App. 691 (1996); *State v. Buchanan*, 353 N.C. 332 (2001). The age of a juvenile has been recognized as a relevant factor in determining whether a reasonable person would feel free to leave in a search and seizure case. *In re I.R.T.*, 647 S.E.2d 129 (2007); see *infra* § 11.6B (Age as Factor in Legality of Search and Seizure). Age would appear to be equally relevant in cases concerning whether a reasonable person in the juvenile’s circumstances would believe that he or she was in custody for the purpose of an interrogation.

The lower court’s determination of whether a juvenile is in custody is a conclusion of law that is reviewed *de novo* on appeal. *State v. Crudup*, 157 N.C. App. 657 (2003); *In re R.H.*, 171 N.C. App. 514 (2005) (unpublished).

Failure of the trial court to make a finding on whether a juvenile was in custody before admitting the juvenile’s statement to law enforcement officers into evidence has been held to be reversible error entitling the respondent to a new adjudicatory hearing. *In re T.R.B.*, 157 N.C. App. 609 (2003). In *T.R.B.*, the case was remanded for the court to make the required finding on whether the juvenile was in custody before ruling on the motion to suppress. *Id.* at 616. The Court also held that it was error to admit a juvenile’s statement before determining whether he was in custody in *In re J.L.B.M.*, 176 N.C. App. 613, 625 (2006) (case remanded for findings on whether the juvenile was in custody and whether his statements were the result of interrogation). In *J.L.B.M.*, the Court further instructed the lower court that if it determined that the juvenile’s statements were inadmissible then it must grant the juvenile’s motion to dismiss, as the juvenile’s statement was the only evidence supporting the adjudication.

There is not a requirement under the federal constitution that rights be explained to a person in custody if there is no interrogation. *State v. Jackson*, 165 N.C. App. 763 (2004) (juvenile defendant’s statements were admissible because made in absence of questioning by officers or actions intended to elicit a response).

C. Application of Standard for Determining Whether In Custody

The North Carolina appellate courts have determined whether a juvenile was “in custody” for the purposes of interrogation in the cases discussed below.

School office. *In re W.R.*, 179 N.C. App. 642 (2006), *review granted*, 653 S.E.2d 877 (2007). In *W.R.*, a 14-year-old juvenile was not advised of any constitutional or statutory rights before being interrogated. He was questioned for 30 minutes in the office of the assistant principal and was under the supervision of the school resource officer (SRO) when the principal and assistant principal were not in the office. The juvenile was searched by the SRO while in the office, was not told that he could leave, and was detained in the office until his mother picked him up 90 minutes later. Under these circumstances, the Court held that a reasonable person would believe that his movement was restrained to the degree associated with a formal arrest. Therefore, the juvenile's admission that he had brought a weapon to school and on the bus the day before should have been suppressed. Because the juvenile's admission was the only evidence in the record supporting the adjudication, the orders of adjudication and disposition were vacated.

In re R.H., 171 N.C. App. 514 (2005) (unpublished). A different holding resulted when a juvenile was given additional information regarding the questioning. In *R.H.*, a police officer wearing his badge and gun questioned the juvenile in a school office regarding a misdemeanor larceny. The Court held that even though the juvenile testified that he felt intimidated and afraid to leave the room, he was not in custody and was not entitled to receive constitutional or statutory warnings before questioning because the officer told him that he was not under arrest and that he was free to leave the room. His statement to the officer was admissible, and the lower court's denial of the motion to suppress was affirmed.

Home. *In re Hodge*, 153 N.C. App. 102 (2002). A juvenile was held not to be in custody when questioned by a police officer in his home. In *Hodge*, the police officer questioned the juvenile in his home in the presence of his mother and his younger brother, who was the alleged victim. No court proceedings had been initiated, and the officer informed the juvenile that he did not have to talk to her and that she was not going to arrest him. Under these circumstances the Court held that the juvenile was not in custody and was therefore not entitled to be advised of his constitutional or statutory rights under G.S. 7B-2101.

Police station. *State v. Smith*, 317 N.C. 100, 102–03 (1986) (decided under former G.S. 7A-595, now G.S. 7B-2101), *overruled in part on other grounds*, *State v. Buchanan*, 353 N.C. 332 (2001). A juvenile was held to be in custody when two officers went to the juvenile's home, waited while he dressed, transported him in a police car with doors that could not be opened from the inside, read him his juvenile rights, and took him to the police station where he was again read his rights. Because the juvenile was in custody and his statement was made in response to questioning after he requested his mother's presence, admission of his confession was error entitling him to a new trial at which his statement would be suppressed.

D. Right to Have Parent, Custodian, or Guardian Present

Juvenile's right. The right to have a parent, custodian, or guardian present during custodial interrogation applies to all juveniles, including those who are 16 or over and no longer under the jurisdiction of the juvenile court. G.S. 7B-2101(a)(3); *In re Fincher*, 309 N.C. 1 (1983) (decided under former G.S. 7A-595(a)(3), now G.S. 7B-2101(a)(3)); *State v. Smith*, 317 N.C. 100 (1986), *overruled in part on other grounds*, *State v. Buchanan*, 353 N.C. 332 (2001). A

juvenile is a person who is under the age of 18 and is not married, emancipated, or a member of the armed forces of the United States. G.S. 7B-1501(17). The right to have a parent, custodian, or guardian present during custodial interrogation may be waived by a juvenile who is age 14 or older but may not be waived by one who is under 14 years of age. *See infra* § 11.4E (Requirement that Parent, Custodian, Guardian, or Attorney Be Present if Juvenile under 14).

There are no cases discussing who is a “parent” or “custodian” under the statute. Counsel might move to exclude a juvenile’s statement taken in the presence of someone who does not have custodial rights, such as a foster parent or step-parent. 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; statement taken in presence of caretaker aunt was admissible). 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).

Right invoked. The Court held that the juvenile defendant, who was more than 14 years old, effectively invoked his right under former G.S. 7A-595 (now G.S. 7B-2101) to have his mother present during custodial interrogation, rendering his confession inadmissible. *State v. Smith*, 317 N.C. 100, 108 (1986), *overruled in part on other grounds*, *State v. Buchanan*, 353 N.C. 332 (2001) (setting standard for “custody,” discussed *supra* § 11.4B). In *Smith*, the juvenile defendant asked that his mother be present during questioning after he was read his rights at the police station. Before his mother arrived, two officers resumed speaking to the juvenile, making what the Court termed “particularly evocative” statements, which resulted in the juvenile making a confession. Even though the juvenile stated that he wanted to make a statement without his mother present and signed a waiver form, the Court held that the officers violated his statutory rights by resuming questioning after he had invoked the right to have his mother present.

A parent may not waive the juvenile’s right to the parent’s presence after the juvenile has invoked the right. *State v. Branham*, 153 N.C. App. 91 (2002). In *Branham*, the juvenile defendant requested that his mother be present as he was being questioned. Although she was in the police station, his mother did not want to be present. The Court of Appeals held that a parent may not waive the juvenile’s right under G.S. 7B-2101(a)(3), and the juvenile defendant was entitled to a new trial at which his statement would be suppressed.

E. Requirement that Parent, Custodian, Guardian, or Attorney Be Present if Juvenile under 14

A juvenile who is under the age of 14 may not waive the requirement that a parent, guardian, custodian, or attorney be present when a statement is made during a custodial interrogation. The parent also cannot waive the right on the juvenile’s behalf. *See* G.S. 7B-2101(b); *In re*

T.R.B., 157 N.C. App. 609, 614 (2003). In *T.R.B.*, the juvenile, who was less than 14 years of age, was questioned at the police station and made a statement without a parent, custodian, guardian, or attorney present. The lower court admitted the juvenile's statement without determining whether he was in custody on the ground that custody was irrelevant because the juvenile's father waived the right to a parent's presence by voluntarily leaving the room. In reversing and ordering a new adjudicatory hearing, the Court held that a parent cannot waive the requirement of a parent's presence during a custodial interrogation of a juvenile under the age of 14. The juvenile's statement would therefore be inadmissible at adjudication if he was found to be in custody at the time it was given.

In a case under former G.S. 7A-595(b) (now G.S. 7B-2101(b)), the Court held that the lower court must affirmatively find that the 12-year-old juvenile's custodial statement was made in the presence of a parent, guardian, custodian, or attorney before admitting it into evidence. *In re Young*, 78 N.C. App. 440 (1985).

F. Right to Consult with and Have Attorney Appointed

A juvenile has the right to consult with an attorney during questioning and an attorney must be appointed if the juvenile so requests. G.S. 7B-2101(b). Although the statute when literally construed provides for appointment of counsel during questioning, in practice questioning ceases and an attorney is appointed only if a petition is filed.

G. When Questioning Must Cease

Interrogation must cease when the right to remain silent or have a parent, guardian, custodian, or attorney present is invoked under G.S. 7B-2101(a). *State v. Branham*, 153 N.C. App. 91 (2002). In *Branham*, the 16-year-old juvenile invoked his right to have his mother present during custodial questioning. After his mother refused to enter the interrogation room, the officers informed the juvenile of her decision and told him he could continue with a statement if he chose. Although the juvenile subsequently made a written statement and signed a waiver form, the Court held that all questioning should have ceased when he requested his mother's presence. The Court remanded the case for a new trial in which his statement would be suppressed.

Questioning may resume after a waiveable right is invoked if communication is initiated by the juvenile. *State v. Johnson*, 136 N.C. App. 683 (2000). In *Johnson*, the juvenile invoked his right to silence during a custodial interrogation in his mother's presence. His mother then interrupted and told him "we need to get this straightened out today and we'll talk with him anyway." *Id.* at 686. After the juvenile "nodded affirmatively" to the officer, the officer asked if he wanted to answer questions without a lawyer or parent present. The juvenile answered "yes" and signed a waiver of rights form. The Court held that the juvenile's nod of his head re-initiated communication with the officer after he had invoked the right to remain silent, and his statement was therefore admissible.

H. Knowing, Willing, and Understanding Waiver of Rights

Constitutional and statutory requirements. Constitutional and statutory rights may be waived by the juvenile, except for the requirement that a parent, guardian, custodian, or attorney be present during custodial interrogation of a juvenile under 14 years of age. The court must make a finding that a juvenile “knowingly, willingly, and understandingly waived” rights under the statute before admitting into evidence a statement resulting from a custodial interrogation. G.S. 7B-2101(d). The State bears the burden of proving that the juvenile made a “knowing and intelligent waiver” under both *Miranda* and the statute. *State v. Lee*, 148 N.C. App. 518 (2002) (oral warnings and written waiver form were sufficient to inform juvenile defendant of his constitutional and statutory rights under the “totality of the circumstances”). The State must meet its burden by a preponderance of the evidence. *State v. Flowers*, 128 N.C. App. 697, 701 (1998).

The lower court’s findings of fact that a juvenile knowingly, voluntarily, and understandingly waived rights under both *Miranda* and the statute must be supported by evidence in the record. *State v. Brantley*, 129 N.C. App. 725 (1998) (valid waiver where juvenile defendant was informed she could have parent or guardian present and signed waiver of rights form stating she had knowingly, voluntarily, and understandingly waived *Miranda* rights).

Test. In determining whether a waiver of rights was voluntary, the court must look at the “totality of the circumstances,” including custody, mental capacity, physical environment, and manner of interrogation. *State v. Bunnell*, 340 N.C. 74, 80 (1995). The court must consider 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); see *infra* § 11.6B (Age as Factor in Legality of Search and Seizure). The courts have held that an interrogating officer does not have a duty to explain constitutional or statutory rights to a juvenile in greater detail than is required by *Miranda* and the statute. *State v. Flowers*, 128 N.C. App. 697, 700 (1998) (decided under former G.S. 7A-595(a), now G.S. 7B-2101(a)), cited by *State v. Lee*, 148 N.C. App. 518, 521 (2002). A rote recitation of rights by an officer, however, may not satisfy the totality of circumstances test under *Miranda* and the statute because it may be insufficient to enable a juvenile, as opposed to an adult, to make a knowing, voluntary, and intelligent waiver of rights.

A lay witness, including the interrogating officer, may offer an opinion on the juvenile’s understanding of his or her rights if based on personal observation. *State v. Johnson*, 136 N.C. App. 683, 693 (2000) (opinion testimony of detectives regarding the juvenile’s understanding of his waiver of rights was properly admitted because they were present when the juvenile was read his rights and when he signed the waiver form).

Express waiver not required. Although the court must make a finding that the juvenile knowingly waived rights under the statute, it is not required that the juvenile make an express waiver of rights, either orally or in writing. If there is not an express waiver, the State has a heavy burden to show a knowing and voluntary waiver. *State v. Flowers*, 128 N.C. App. 697, 701 (1998) (decided under former G.S. 7A-595(a), now G.S. 7B-2101(a)); *North Carolina*

v. Butler, 441 U.S. 369, 375–76 (1979). In *Flowers*, the Court found that the juvenile made a legally sufficient waiver when he responded that he understood after being informed of his rights and then responded to questions. There can be no waiver if a juvenile has not been properly advised of the rights at issue. *State v. Fincher*, 309 N.C. 1, 11 (1983).

11.6

Suppression of Evidence Obtained through Illegal Search and Seizure

A. Scope of Discussion in This Manual

Much of the case law regarding search and seizure is derived from criminal proceedings. The discussion in this manual is limited to age as a relevant factor in determining whether a seizure has occurred within the meaning of the Fourth Amendment and a brief review of juvenile case law regarding search and seizure in the school setting.

The North Carolina Defender Manual contains a chapter devoted to the issues surrounding warrantless search and seizure cases. See Vol. 1, Chapter 15 of the North Carolina Defender Manual (April 2006 and Sept. 2006 Supp.), at www.ncids.org.

B. Age as Factor in Legality of Search and Seizure

The North Carolina Court of Appeals held in a 2007 case that age is a relevant factor in determining whether a person has been seized within the meaning of the Fourth Amendment. *In re I.R.T.*, 647 S.E.2d 129 (2007). In *I.R.T.*, the juvenile was 15 years old when he was questioned by two officers with gang unit emblems on their shirts and carrying visible guns, who had arrived in marked police cars. Under these circumstances, including the consideration of the age of the juvenile, the Court found that a reasonable person would not feel free to leave and that the juvenile was therefore “seized” within the meaning of the Fourth Amendment. The Court upheld the denial of the juvenile’s motion to suppress the evidence resulting from a search, however, finding that based on the juvenile’s conduct and other circumstances the officers had reasonable suspicion to seize the juvenile, as well as probable cause to search the juvenile.

C. Juvenile Case Law: Search and Seizure at School

New Jersey v. T.L.O., 469 U.S. 325 (1985). In *T.L.O.*, the United States Supreme Court distinguished between a search of a student in school performed by a police officer and one conducted by a school official. Law enforcement officers must conform to the requirements of the Fourth Amendment. School officials, although held to some Fourth Amendment limitations, must meet the lower standard of whether the search is reasonable under all the circumstances.

In re Murray, 136 N.C. App. 648 (2000). Following *T.L.O.*, the North Carolina Court of Appeals applied the “reasonableness” standard in holding that a search of a student’s book bag at school by a principal was not illegal.

In re D.D., 146 N.C. App. 309 (2001). The Court applied the standard of reasonableness outlined in *T.L.O.* to police officers working “in conjunction with” school officials where the officers’ function was to “maintain a safe and educational environment.” *Id.* at 319. The Court affirmed the lower court’s denial of the juvenile’s motion to suppress evidence resulting from a search on school property because the school resource officer and other police officers were involved at the request of the school principal, their involvement was minimal relative to the principal’s, the officers did not initiate the investigation, and the officers did not direct the principal’s actions but merely held the juveniles in place so that the principal could act.

In re J.M.F. & T.J.B., 168 N.C. App. 143 (2005). The Court, relying on *D.D.*, applied the reasonableness standard of *T.L.O.* in upholding the detention of a student by a school resource officer on school grounds.

In re S.W., 171 N.C. App. 335 (2005). The *T.L.O.* standard of reasonableness was applied in upholding a search of a student at school by a school resource officer. The officer, although an employee of the Durham County Sheriff’s Department, worked exclusively as a school resource officer. For a more complete discussion of the above cases, *see* “Search, Seizure, and Interrogation Case Law,” by Matt Wunsche, 2007 New Juvenile Defender Program, at www.ncids.org (Training and Reference Materials).

11.7

Suppression of Illegal Identifications

A. Constitutional Grounds

Due Process prohibits identification procedures that are impermissibly suggestive. For a discussion of applicable law and cases addressing whether identification procedures are impermissibly suggestive, *see* 1 NORTH CAROLINA DEFENDER MANUAL § 14.4 (Illegal Identification Procedures) (July 2002), at www.ncids.org.

B. Eyewitness Identification Reform Act

New statutory procedures for eyewitness identification were enacted, effective March 1, 2008, for use in criminal proceedings. G.S. 15A-284.50 to -284.53. The act outlines the methods law enforcement officers must use to conduct photo or live lineups for the purpose of eyewitness identification.

Although the statutes do not specify that they are applicable to juvenile proceedings, the purpose of the act is “to help solve crime, convict the guilty, and exonerate the innocent” by improving eyewitness identification procedures. G.S. 15A-284.51. As these ends are equally important in juvenile court, counsel should argue that any eyewitness identification of a juvenile by lineup must comply with the requirements of the Eyewitness Identification Reform Act.

The Act provides two remedies for non-compliance that could be argued in a juvenile case. First, failure to comply with any of the statutory requirements may be considered by the court in ruling on a motion to suppress an eyewitness identification. Second, failure to

comply with any of the statutory requirements is admissible as evidence to support a claim of eyewitness misidentification if the evidence is otherwise admissible. G.S. 15A-284.52(d)(1), (2). If a juvenile lineup does not comply with statutory requirements, counsel should cite the Act in a written motion to suppress, in argument, and in questioning regarding eyewitness misidentification.

For a further discussion of the Eyewitness Identification Reform Act, *see* John Rubin, *2007 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at 2–4 (Jan. 2008), at www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0801.pdf.

