

## Chapter 12:

# Adjudicatory Hearings

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## 12.1 Overview

The adjudicatory hearing is the hearing before a district court judge to determine whether a juvenile is delinquent. Allegations in the petition must be proved beyond a reasonable doubt by the State. Counsel for the juvenile may cross-examine the State's witnesses and may present testimony and other evidence. Procedures for adjudicatory hearings are set forth in Article 24 of the Juvenile Code, G.S. 7B-2400 to -2414.

This chapter will outline the basic procedures for an adjudicatory hearing. Many aspects of the adjudicatory process are discussed in greater detail in other chapters, which are referenced throughout this chapter.

## 12.2

### Preliminary Matters

#### A. Amendment of Petition

The petition may be amended with permission of the court if the amendment does not change the nature of the offense alleged. The juvenile must be granted time to prepare a defense to the amended petition. G.S. 7B-2400; *see supra* § 6.3D (Amendment of Petition).

#### B. Capacity to Proceed

The juvenile must have capacity to proceed before an adjudicatory hearing may commence. Several procedures for determining capacity in criminal court (G.S. 15A-1001, -1002, and -1003) apply to delinquency proceedings. G.S. 7B-2401; *see supra* Chapter 7 (Capacity to Proceed).

#### C. Open or Closed Hearing

The adjudicatory hearing is generally open to the public. G.S. 7B-2402. It may be closed, however, for good cause on motion of a party or the court, subject to the right of the juvenile to an open hearing. G.S. 7B-2402; *see supra* § 2.6 (Right to an Open Hearing).

#### D. Motions Before Adjudication

Motions concerning the adjudicatory proceedings, such as a motion to suppress, should generally be filed and set for hearing before the date of adjudication. *See supra* §§ 6.3H (Petitions), 11.2A (Motions to Suppress). This will allow time for counsel to prepare based on the court's rulings on evidence and other matters. An oral motion can and should be made at the time of the adjudicatory hearing, however, where counsel has not been afforded the opportunity to file one in writing.

#### E. Continuances

**Statutory grounds.** A continuance may be granted by the court for good cause for so long as is reasonably required:

- to receive evidence, reports, or assessments requested by the court;
- to receive other information needed in the best interest of the juvenile;
- to allow a reasonable time for the parties to conduct expeditious discovery; or
- in “extraordinary circumstances” when necessary for the proper administration of justice or in the best interests of the juvenile.

G.S. 7B-2406; *see In re Lail*, 55 N.C. App. 238, 240 (1981) (grounds for continuance motion must be established and, if based on absence of a witness, an affidavit stating facts to be proved by the witness must be tendered).

**Constitutional grounds.** A continuance may also be based on the juvenile's right to effective assistance of counsel and right to confront one's accusers under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 19, 23, and 24 of the North Carolina Constitution. *See* 1 North Carolina Defender Manual § 13.4A (Aug. 2002) (Motion for Continuance), at [www.ncids.org](http://www.ncids.org). Counsel should base a request for a continuance on both constitutional and statutory grounds.

**Filing the motion.** It is better practice to file a written motion for continuance stating the grounds for the continuance in advance of the hearing date if possible. The motion should be served on the prosecutor and discussed with the juvenile court counselor. At a minimum it is good practice to notify the prosecutor of a continuance request as early as possible and seek consent to the continuance or suggest that witnesses be placed on call so that they can come to court if the motion to continue is denied. An oral motion to continue may be necessary if discovery is delivered by the prosecutor on or just before the hearing date and counsel needs time to review the information with the juvenile.

If a continuance motion is denied, counsel should ensure that the motion for continuance and the reasons supporting it are on the record. Counsel could also request that the proceeding be bifurcated, with the State's evidence presented on one day and the juvenile's evidence presented at a subsequent session of court, so that a necessary defense witness can be called at a later date.

**Limitations on continuances.** Continuances of adjudicatory hearings may be limited based on the mandate of the Juvenile Code for the court to "proceed with all possible speed in making and implementing determinations." G.S. 7B-1500(4). Counsel should be prepared to provide a clear and compelling reason why a continuance is necessary.

Because continuances are limited by local rules in some districts, counsel should be familiar with local rules and policies restricting continuances.

## F. Discovery

The State should provide counsel with all discovery prior to the adjudicatory hearing so that counsel can prepare to cross-examine witnesses and present a zealous defense against the allegations. *See supra* Chapter 10 (Discovery). Counsel may need to contact the prosecutor if discovery is not delivered in a timely manner. If discovery is not provided sufficiently in advance for counsel to prepare, a motion to continue or for sanctions may be necessary.

## G. Preparation for the Juvenile's Appearance

Counsel should advise the juvenile as to suitable courtroom attire and demeanor. If the juvenile is in detention, counsel should make arrangements with staff for the juvenile to wear appropriate clothing and to ensure that the juvenile will not be brought into court in handcuffs or shackles. *See supra* § 8.5B (Shackling).

## 12.3 Plea Negotiations

### A. Juvenile Defender Performance Guidelines

Pleas and plea negotiations are discussed in Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level § 8 (2007) adopted by the North Carolina Commission on Indigent Defense Services, and reprinted in Chapter 18 of this manual.

### B. Negotiation with the Prosecutor

Counsel should contact the prosecutor in each case to discuss the possibility of a plea negotiation. The prosecutor may be willing to accept an admission to a misdemeanor rather than a felony or make some other concession that would benefit the juvenile. In some districts the prosecutor may be willing to continue adjudication with the agreement that the petition will be dismissed if the juvenile abides by certain conditions, or enter into a similar agreement that disposition will be continued.

The juvenile must be informed of all plea offers, even those that do not seem favorable to the juvenile and are likely to be rejected.

### C. Discussion of Options with Juvenile

Counsel should discuss the allegations and evidence with the juvenile before the hearing, advising the juvenile of the strengths and weaknesses of the case. The juvenile must be informed of the right to contest the allegations and have the court adjudicate the matter after hearing the evidence. Counsel should advise the juvenile regarding defense strategies and the consequences of an adjudication based on the allegations. The juvenile should be informed that the petition must be dismissed if the court does not find that the State has proven the allegations in the petition beyond a reasonable doubt.

Counsel should discuss the possible benefits and risks of proceeding to adjudication versus negotiating a plea agreement. Considerations might include whether there is an eyewitness, physical evidence, or an admissible confession or statement of a co-respondent. The ability to expunge an adjudication of delinquency may also be an important factor in making plea decisions because some records of adjudication may not be expunged. G.S. 7B-3200(b); *see infra* Chapter 17 (Expunction of Juvenile Records). Additionally, certain juvenile adjudications may be used in subsequent criminal proceedings. For example, prior adjudications may affect the juvenile in a subsequent case at the time bail is set, during plea negotiations, at trial for impeachment purposes, and as an aggravating factor at sentencing. G.S. 7B-3000(e); *see supra* § 2.7A (Statutory exception for use in criminal court proceedings). The juvenile must weigh the likelihood of an adjudication for the offense alleged versus the potential for dismissal in considering a negotiated plea. Counsel should also advise the juvenile of the possible dispositional orders pursuant to an adjudication on the petition or a negotiated plea.

The juvenile should be informed of rights that are waived by making an admission and that an admission has the same legal effect as an adjudication by the court. The impact on the ability to appeal should also be discussed.

There are special considerations in plea negotiations if the juvenile is not a citizen of the United States. Counsel should investigate negotiation of a plea that will not jeopardize the juvenile's opportunity to remain in the country or become a legal citizen. *See infra* § 12.7 (Legal Effect of Adjudication).

#### D. Decision of Juvenile

All plea offers must be conveyed to the juvenile by counsel in a confidential setting. Counsel should explain all considerations regarding a plea offer and may explain the offer to a parent with the juvenile's consent. It is the decision of the juvenile, however, whether to accept a plea offer or proceed to adjudication.

## 12.4 Conduct of the Hearing

#### A. Entering a Plea

After preliminary matters are concluded the court must inquire of the juvenile whether the allegations in the petition are "admitted" or "denied." *In re Wilson*, 153 N.C. App. 196, 197 (2002), *citing* G.S. 7B-2407, -2408 (proper inquiry by court is whether the juvenile "admits" or "denies" the allegations, and juvenile's counsel should respond in kind; use of terms "responsible" or "not responsible" is not correct).

Counsel should ensure that the hearing is on the record. This will allow appellate review of the plea colloquy.

#### B. Admission by Juvenile

***Court must personally address juvenile.*** Before an admission may be accepted, the judge must personally inform the juvenile of statutory rights and determine whether the consequences of an admission are understood. G.S. 7B-2407(a). Specifically, the judge must:

- inform the juvenile of the right to remain silent and that any statement the juvenile makes may be used against the juvenile;
- determine that the juvenile understands the nature of the charge;
- inform the juvenile of the right to deny the allegations;
- inform the juvenile that by making an admission the right to confront witnesses is waived;
- determine that the juvenile is satisfied with the juvenile's representation;
- inform the juvenile of the most restrictive disposition on the charge.

G.S. 7B-2407(a)(1)–(6). *See also In re D.C.* \_\_\_ N.C. App. \_\_\_ (July 1, 2008) (the juvenile petition may not be the source of information for determining if there is a factual basis for the admission).

The failure of the court to address any one of these statutory provisions could result in reversal of the adjudication based on the admission. *In re A.W.*, 182 N.C. App. 159 (2007) (failure of court to address juvenile personally regarding G.S. 7B-2407(a)(1) and (3) required reversal of adjudication); *In re T.E.F.*, 359 N.C. 570 (2005) (language of G.S. 7B-2407(a) is mandatory; failure of the court to question juvenile as to fifth provision, satisfaction with counsel, required that adjudication based on admission be reversed); *In re W.H.*, 166 N.C. App. 643 (2004) (adjudication reversed because Transcript of Admission stated that Level II was the most restrictive disposition for allegation admitted but Level III disposition was imposed; court’s statement that it had the power to “send people to training school” was insufficient).

***Plea discussions.*** The court must determine that the admission is the result of an informed choice by the juvenile before accepting an admission. This determination must be based on inquiries of the prosecutor, the juvenile’s attorney, and the juvenile as to whether there were prior discussions regarding the terms of the admission and whether there was any improper pressure on the juvenile to admit. G.S. 7B-2407(b).

***Factual basis for admission.*** An admission may be accepted by the court only if the judge determines that there is a factual basis for the admission. The court may base this decision on any of the following:

- a statement of the facts from the prosecutor;
- a written statement of the juvenile;
- sworn testimony, which may contain reliable hearsay; or
- a statement of facts by the juvenile’s attorney.

G.S. 7B-2407(c).

If the prosecutor provides a statement of the facts, counsel should request an opportunity to supplement the statement with mitigating or conflicting information as appropriate. Counsel should ask to question witnesses if they might provide helpful information. Caution must be exercised by counsel in providing facts or asking additional questions, however, to avoid presenting or eliciting information that may be harmful to the juvenile.

***Transcript of Admission by Juvenile.*** Counsel should always submit to the court a “Transcript of Admission by Juvenile,” filled out by the juvenile, juvenile’s counsel, and the prosecutor. *See* Form AOC-J-410 (July 1999), at [www.nccourts.org/Forms/Documents/528.pdf](http://www.nccourts.org/Forms/Documents/528.pdf). This will confirm any negotiations and protect the record on appeal. The transcript form includes the information that the judge is required to address personally with the juvenile pursuant to G.S. 7B-2407. Completion and entry of the Transcript of Admission into evidence does not fulfill the court’s statutory duties if the court did not, in fact, address the juvenile personally regarding the matters on the form. *In re A.W.*, 182 N.C. App. 159 (2007).

Counsel should review the “Transcript of Admission by Juvenile” with the juvenile and assist the juvenile in completing the form. An admission should not be entered if the juvenile does not understand what is being admitted and the possible consequences thereof. A juvenile’s inability to understand the information in the transcript may indicate the need for counsel to move for an evaluation of capacity to proceed. Counsel should make a copy of the transcript to review with the juvenile as the judge is reciting the questions.

## 12.5 Conduct of Adjudicatory Hearing

### A. Sequestering Witnesses

Before the adjudicatory hearing begins, counsel should move to sequester witnesses who might be called to testify at the adjudicatory hearing if doing so would benefit the defense. It is usually helpful to the juvenile for the State’s witnesses to be sequestered. This prevents subsequent witnesses from conforming their testimony with prior testimony and requires them to rely only on their own memory of events.

### B. Attachment of Jeopardy

Jeopardy attaches when the court begins to hear evidence regarding the allegations in the petition. G.S. 7B-2414; *see State v. Brunson*, 327 N.C. 244, 247 (1990) (jeopardy attaches in criminal non-jury trial when court begins to hear evidence or testimony). If there is a procedural defect depriving the court of jurisdiction, however, jeopardy does not ordinarily attach. *See supra* § 6.3D (Amendment of Petition).

### C. Rules of Evidence

The Juvenile Code provides that the rules of evidence in criminal cases are applicable to adjudicatory hearings. G.S. 7B-2408. Evidentiary rules are therefore derived from the North Carolina Rules of Evidence, G.S. 8C-1; statutes covering criminal and delinquency cases; and case law.

Although the North Carolina Rules of Evidence generally apply, the rules applicable to criminal court *specifically* apply to juvenile proceedings. G.S. 7B-2408. Some applicable rules are Rule 410, regarding exclusion of evidence concerning pleas and plea discussions, and Rule 412, also known as the “rape shield statute,” in sex offense cases.

Several juvenile statutes concern admissibility of evidence at adjudication. G.S. 7B-2408 provides that no statement of a juvenile to a juvenile court counselor during the preliminary inquiry and evaluation process is admissible at adjudication. G.S. 7B-3201 provides that an adjudication of delinquency may be used to impeach the testimony of a juvenile respondent in a subsequent proceeding or of a juvenile witness in a delinquency proceeding, regardless of whether the juvenile’s record has been expunged. *In re S.S.T.*, 165 N.C. App. 533 (2004) (evidence of prior adjudications of delinquency properly admitted to impeach respondent under G.S. 7B-2408; Rule of Evidence 609(d), limiting use of juvenile adjudications for impeachment, does not apply to testimony by juvenile in juvenile delinquency proceeding).

The Rules of Evidence give the court some discretion in deciding whether certain evidence regarding juvenile witnesses will be admitted. *In re Oliver*, 159 N.C. App. 451 (2003) (court did not abuse discretion under Rule 608(b) by refusing to admit into evidence school disciplinary record of juvenile witness or by refusing to allow cross-examination concerning contents of record); *see also* Rule 403 of the N.C. Rules of Evidence (court may exclude evidence if its probative value is outweighed by unfair prejudice or other factors).

#### D. Burden of Proof

The State has the burden of proving the allegations in the petition and the identity of the juvenile as the perpetrator beyond a reasonable doubt. G.S. 7B-2409; *see supra* § 2.4 (Right to Standard of Proof Beyond a Reasonable Doubt). Every element of the offense alleged in the petition must be proved by the State. *In re Griffin*, 162 N.C. App. 487, 494 (2004) (State failed to prove each element of offense alleged in petition). Although statutes and case law are clear on this point, it should be reiterated by counsel at the close of the evidence.

#### E. Record of the Proceedings

The adjudicatory hearing must be recorded by stenographic notes or by electronic or mechanical means. G.S. 7B-2410. Counsel should request a court reporter if there are concerns about the adequacy of a recording. Although an inaccurate transcript may be the basis for a new adjudication, the appellate court may find an incomplete transcript sufficient for appellate review. *In re Hartsock*, 158 N.C. App. 287, 292 (2003) (recording of adjudicatory hearing on four-track audio recorder was sufficient under G.S. 7B-2410); *In re Lineberry*, 154 N.C. App. 246, 257 (2002) (tape recording of adjudicatory hearing was adequate under statute even though certain portions were inaudible and were not transcribed; transcript was not so inaccurate as to prevent meaningful review by appellate court).

#### F. Presentation of Evidence

**State's evidence.** If the juvenile denies the allegations in the petition, the State must proceed with presentation of evidence. Counsel should be alert for the need to object to inadmissible testimony and should state the grounds for the objection, such as hearsay or expert opinion without proper foundation. Failure to object is likely to constitute a waiver of the objection to admissibility. Unless the court allows a continuing or line objection to a particular line of testimony, an objection, with stated grounds, should be made each time the objectionable evidence is introduced.

The juvenile has the right to cross-examine the State's witnesses. G.S. 7B-2405(3). Counsel should prepare questions for cross-examination before the hearing, derived from discovery, investigation, and counsel's theory of defense. The direct testimony of the State's witnesses may generate additional areas to pursue on cross-examination. In some instances it may be better not to cross-examine a witness, particularly if the direct testimony was not harmful to the juvenile's case or the answer is unknown and potentially harmful to

the juvenile's case. Asking no questions also may underscore the lack of importance of the witness.

Counsel may contact a State's witness who is not represented by an attorney but generally cannot compel the witness to submit to an interview. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 4.5B (May 1998) (Examinations and Interviews of Witnesses), at [www.ncids.org](http://www.ncids.org). Counsel should not communicate with any witness who is represented by an attorney without the permission of the attorney.

Important witnesses, such as investigating officers and eyewitnesses, often will need to be thoroughly cross-examined. Counsel must be careful, however, not to open the door through cross-examination to testimony that would otherwise be inadmissible.

***Motion to dismiss at the close of the State's evidence.*** Counsel must make a motion to dismiss at the close of the State's evidence. The petition might be dismissed and, if not, the motion is necessary to preserve the issue of insufficiency of evidence on appeal. In criminal cases, North Carolina courts have held that when the defendant moves for dismissal, the question for the trial court is whether the State has put on substantial evidence of each essential element of the offense charged, or of a lesser included offense, and that the defendant was the perpetrator of the offense. If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the perpetrator, the motion to dismiss should be allowed. The evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn from the evidence. *State v. Malloy*, 309 N.C. 176 (1983). In assessing the motion to dismiss, the court must consider evidence offered by the juvenile that explains or clarifies the State's evidence as well as exculpatory evidence presented by the State. *State v. Bates*, 309 N.C. 528, 535 (1983); *State v. Bruton*, 264 N.C. 488, 499 (1965). The motion must be renewed at the close of the juvenile's evidence.

***Juvenile's evidence.*** Counsel should confer with the juvenile to decide whether evidence will be presented on behalf of the juvenile. If the State has presented a weak case, it may be good strategy to present no evidence and to renew the motion to dismiss. A motion that is not granted at the close of the State's evidence might be granted at the close of all evidence.

Counsel should interview all witnesses that will be called on behalf of the juvenile. A person who lacks credibility or who seems unsure of the facts may weaken the juvenile's case even if some of the testimony would be helpful. An expert witness must be qualified and tendered to the court as such in order for the expert's opinion to be admissible. *See* Rule 702 of the N.C. Rules of Evidence. Most experts who have testified in cases before are familiar with this process and will have documentation concerning education, research, publications, and work experience.

An important decision is whether the juvenile will testify. Counsel should explore with the juvenile matters that could be raised during cross-examination, especially earlier contradictory statements of the juvenile, if any, and questions that might be posed to impeach the juvenile's credibility. A mock direct and cross-examination of the juvenile may be helpful.

Although counsel should advise the juvenile on whether testifying will be beneficial, the decision whether to testify is ultimately the juvenile's.

***Motion to dismiss at close of all evidence.*** North Carolina Rule of Appellate Procedure 10(b)(3) provides that if a defendant presents evidence after a motion to dismiss is denied at the close of the State's evidence, the motion *must* be renewed at the close of all the evidence to preserve the issue on appeal. *In re Rikard*, 161 N.C. App. 150, 155 (2003) (order of adjudication was affirmed on basis that juvenile failed to renew motion to dismiss at close of all evidence); *In re Hodge*, 153 N.C. App. 102, 106–07 (2002) (failure to renew motion to dismiss for lack of proof of all elements of offense at close of all evidence waives issue on appeal).

## 12.6

### Order of Adjudication

At the close of the evidence if the court does not find that the allegations in the petition have been proved beyond a reasonable doubt, it must dismiss the petition with prejudice. The juvenile must be released if in custody. G.S. 7B-2411. If the court finds that the allegations have been proved beyond a reasonable doubt it must state this on the record. G.S. 7B-2409, -2411; *In re Eades*, 143 N.C. App. 712, 714 (2001) (order of disposition vacated where court failed to enter an adjudicatory order; court must state that allegations have been proved beyond a reasonable doubt).

Counsel should review the written order to ensure that it is consistent with the oral order announced in open court.

## 12.7

### Legal Effect of Adjudication

An adjudication of delinquency is not a conviction of a criminal offense. A juvenile who has been found to be delinquent does not forfeit any citizenship rights. G.S. 7B-2412. There may be adverse consequences, however, for a non-citizen.

An adjudication of delinquency does not generally have adverse immigration consequences for a noncitizen because it is not considered a conviction for immigration purposes. However, certain adverse immigration consequences do not require a conviction; mere bad acts can trigger a penalty. Examples include being a drug addict or abuser, engaging in prostitution, using false documents, smuggling aliens, or drug trafficking. A juvenile adjudication involving offenses of this nature may be grounds for deportation or bar admission to the country as a legal immigrant. Adjudications involving these offenses can also be used to deny an application for Special Immigrant Juvenile Status, which helps certain undocumented children in the state juvenile/foster care system obtain lawful immigration status. Finally, a delinquency adjudication may be considered an adverse factor if the juvenile applies for a discretionary benefit under the immigration laws, such as citizenship or a green card. *See* IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA § 4.2F

(Feb. 2008), at [www.ncids.org](http://www.ncids.org). Counsel should contact an immigration lawyer for additional information.

An adjudication may be used to impeach a juvenile witness in a juvenile delinquency proceeding and in some instances in subsequent criminal proceedings. *See supra* §§ 12.5C (Rules of Evidence), 2.7A (Statutory exception for use in criminal court proceedings).

Adjudication of an offense that would be a felony if committed by an adult bars participation in high school sports for as long as the juvenile is in school. This is by rule of the North Carolina High School Athletic Association, which governs high school sports. The policy is online at [www.nchsaa.org](http://www.nchsaa.org), “Felony Policy.” Counsel should inform the juvenile of this consequence if the juvenile is admitting a felony offense or might be adjudicated for such an offense.

## 12.8 Expunction of Juvenile Record

Some records of delinquency may be expunged under prescribed statutory conditions. G.S. 7B-3200 to -3202; *see infra* Chapter 17 (Expunction of Juvenile Records). This may be an important consideration if the juvenile is offered the opportunity to admit to an allegation that would be subject to expunction.

If adjudicated delinquent for an offense that is subject to expunction, counsel should advise the juvenile and the parent with the juvenile’s consent of the expunction process. Anyone wishing to pursue expunction should be advised to contact the Clerk of Superior Court’s office for appropriate paperwork if and when the criteria for expunction are met.

