

## Article 24.

### Hearing Procedures.

#### **§ 7B-2400. Amendment of petition.**

The court may permit a petition to be amended when the amendment does not change the nature of the offense alleged. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations. (1979, c. 815, s. 1; 1998-202, s. 6.)

#### **§ 7B-2401. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**

The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent. No juvenile committed under this section may be placed in a situation where the juvenile will come in contact with adults committed for any purpose. (1979, c. 815, s. 1; 1998-202, s. 6.)

#### **§ 7B-2402. Open hearings.**

All hearings authorized or required pursuant to this Subchapter shall be open to the public unless the court closes the hearing or part of the hearing for good cause, upon motion of a party or its own motion. If the court closes the hearing or part of the hearing to the public, the court may allow any victim, member of a victim's family, law enforcement officer, witness or any other person directly involved in the hearing to be present at the hearing.

In determining good cause to close a hearing or part of a hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

- (1) The nature of the allegations against the juvenile;
- (2) The age and maturity of the juvenile;
- (3) The benefit to the juvenile of confidentiality;
- (4) The benefit to the public of an open hearing; and
- (5) The extent to which the confidentiality of the juvenile's file will be compromised by an open hearing.

No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open. (1979, c. 815, s. 1; 1998-202, s. 6; 1998-229, s. 5.)

#### **§ 7B-2402.1. Restraint of juveniles in courtroom.**

At any hearing authorized or required by this Subchapter, the judge may subject a juvenile to physical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the juvenile's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the juvenile and the juvenile's attorney an opportunity to be heard to contest the use of restraints before the judge orders the use of restraints. If restraints are ordered, the judge shall make findings of fact in support of the order. (2007-100, s. 1.)

#### **§ 7B-2403. Adjudicatory hearing.**

The adjudicatory hearing shall be held within a reasonable time in the district at the time and place the chief district court judge designates. (1979, c. 815, s. 1; 1998-202, s. 6; 1998-229, s. 5.)

**§ 7B-2404. Participation of the prosecutor; voluntary dismissal.**

(a) A prosecutor shall represent the State in contested delinquency hearings including first appearance, detention, probable cause, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings.

(b) A prosecutor may dismiss any allegations stated in a juvenile petition with or without leave by entering an oral dismissal in open court at any time or by filing a written dismissal with the clerk. The juvenile, the juvenile's parent, guardian, or custodian, and the juvenile's counsel shall be notified of the dismissal by the prosecutor either in open court or by being served with the written dismissal. In addition, the written dismissal shall be served on (i) the chief court counselor or his or her designee and (ii) if the juvenile is being held in a detention center, the director of the detention center. If the prosecutor dismisses the petition with leave because of the failure of the juvenile to appear in court, the prosecutor may refile the petition if the juvenile is apprehended or apprehension is imminent. (1979, c. 815, s. 1; 1981, c. 469, s. 12; 1998-202, s. 6; 2015-58, s. 2.2.)

**§ 7B-2405. Conduct of the adjudicatory hearing.**

The adjudicatory hearing shall be a judicial process designed to determine whether the juvenile is undisciplined or delinquent. In the adjudicatory hearing, the court shall protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law:

- (1) The right to written notice of the facts alleged in the petition;
- (2) The right to counsel;
- (3) The right to confront and cross-examine witnesses;
- (4) The privilege against self-incrimination;
- (5) The right of discovery; and
- (6) All rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury. (1979, c. 815, s. 1; 1998-202, s. 6.)

**§ 7B-2406. Continuances.**

The court for good cause may continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile. (1979, c. 815, s. 1; 1987 (Reg. Sess., 1988), c. 1090, s. 9; 1998-202, s. 6.)

**§ 7B-2407. When admissions by juvenile may be accepted.**

(a) The court may accept an admission from a juvenile only after first addressing the juvenile personally and:

- (1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile;
- (2) Determining that the juvenile understands the nature of the charge;
- (3) Informing the juvenile that the juvenile has a right to deny the allegations;
- (4) Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;
- (5) Determining that the juvenile is satisfied with the juvenile's representation; and
- (6) Informing the juvenile of the most restrictive disposition on the charge.

(b) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile personally, the court shall determine whether there were any prior discussions involving admissions, whether the parties have entered into any arrangement with respect to the admissions and the terms thereof, and whether any improper pressure was exerted. The court may accept an admission from a juvenile only after determining that the admission is a product of informed choice.

(c) The court may accept an admission only after determining that there is a factual basis for the admission. This determination may be based upon any of the following information: a statement of the facts by the prosecutor; a written statement of the juvenile; sworn testimony which may include reliable hearsay; or a statement of facts by the juvenile's attorney. (1979, c. 815, s. 1; 1998-202, s. 6.)

#### **§ 7B-2408. Rules of evidence.**

If the juvenile denies the allegations of the petition, the court shall proceed in accordance with the rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the juvenile court counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing. (1979, c. 815, s. 1; 1981, ch. 469, s. 17; 1998-202, s. 6; 2001-490, s. 2.17.)

**§ 7B-2408.1:** Reserved for future codification purposes.

**§ 7B-2408.2:** Reserved for future codification purposes.

**§ 7B-2408.3:** Reserved for future codification purposes.

**§ 7B-2408.4:** Reserved for future codification purposes.

#### **§ 7B-2408.5. Motion to suppress evidence in adjudicatory hearings; procedure; appeal.**

(a) A motion to suppress evidence in court made before the adjudicatory hearing must be in writing and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. The motion must be accompanied by an affidavit containing facts supporting the motion. The affidavit may be based upon personal knowledge, or upon information and belief, if the source of the information and the basis for the belief are stated. The State may file an answer denying or admitting any of the

allegations. A copy of the answer must be served on the juvenile's counsel or the juvenile's parent, guardian, or custodian, if the juvenile has no counsel.

- (b) The judge must summarily grant the motion to suppress evidence if:
  - (1) The motion complies with the requirements of subsection (a) of this section, it states grounds which require exclusion of the evidence, and the State concedes the truth of allegations of fact which support the motion; or
  - (2) The State stipulates that the evidence sought to be suppressed will not be offered in evidence in any juvenile proceeding.
- (c) The judge may summarily deny the motion to suppress evidence if:
  - (1) The motion does not allege a legal basis for the motion; or
  - (2) The affidavit does not as a matter of law support the ground alleged.
- (d) If the motion is not determined summarily, the judge must make the determination after a hearing and finding of facts. Testimony at the hearing must be under oath.
- (e) A motion to suppress made during the adjudicatory hearing may be made in writing or orally and may be determined in the same manner as when made before the adjudicatory hearing.
- (f) The judge must set forth in the record his or her findings of facts and conclusions of law.
- (g) An order finally denying a motion to suppress evidence may be reviewed upon an appeal of a final order of the court in a juvenile matter.
- (h) The provisions of G.S. 15A-974 shall apply to this section. (2015-58, s. 1.4.)

**§ 7B-2409. Quantum of proof in adjudicatory hearing.**

The allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt. The allegations in a petition alleging undisciplined behavior shall be proved by clear and convincing evidence. (1979, c. 815, s. 1; 1998-202, s. 6.)

**§ 7B-2410. Record of proceedings.**

All adjudicatory and dispositional hearings and hearings on probable cause and transfer to superior court shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The court may order that other hearings be recorded. (1979, c. 815, s. 1; 1998-202, s. 6.)

**§ 7B-2411. Adjudication.**

If the court finds that the allegations in the petition have been proved as provided in G.S. 7B-2409, the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication. If the court finds that the allegations have not been proved, the court shall dismiss the petition with prejudice and the juvenile shall be released from secure or nonsecure custody if the juvenile is in custody. (1979, c. 815, s. 1; 1998-202, s. 6; 2009-545, s. 4.)

**§ 7B-2412. Legal effect of adjudication of delinquency.**

An adjudication that a juvenile is delinquent or commitment of a juvenile to the Division for placement in a youth development center shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-137, s. 3; 2001-95, s. 5; 2011-145, s. 19.1(l).)

**§ 7B-2413. Predisposition investigation and report.**

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. No predisposition report or risk and needs assessment of any child alleged to be delinquent or undisciplined shall be made prior to an adjudication that the juvenile is within the juvenile jurisdiction of the court unless the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney files a written statement with the juvenile court counselor granting permission and giving consent to the predisposition report or risk and needs assessment. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the juvenile to inspect any predisposition report, including any attached risk and needs assessment, to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-423, s. 13; 2001-490, s. 2.18.)

**§ 7B-2414. When jeopardy attaches.**

Jeopardy attaches in an adjudicatory hearing when the court begins to hear evidence. (1979, c. 815, s. 1; 1998-202, s. 6.)