

I. Pre-Adjudication Scenarios

A. Non-testimonial Identification Orders

How would you respond to the following requests, supported by affidavits, for nontestimonial identification orders?

1. by the prosecutor, to allow fingerprints to be taken of Jack and Jamal, 7th graders, each of whom is claiming that the other brought to school a gun that was found in a classroom.
2. by the prosecutor, to authorize a swab for DNA testing of Ralph, a 15-year-old juvenile who is in custody and is alleged to have committed a first degree sexual offense.
3. by an attorney, to require the state to fingerprint Sam, age 14, who has been questioned twice in connection with a car theft.

G.S. §§ _____

B. Secure Custody Orders

1. Reid and Pete

About 6:00 p.m. on a Sunday night, a court counselor calls you and says that secure custody orders are needed for two juveniles who have been picked up by the police. The counselor tells you the following: Police, responding to a call from security at Akers Mall, interviewed three boys. The 10-year-old and two 11-year-olds told police that two older boys approached them behind the movie theater; that Boy A pushed one of the boys against the wall, threatened him with a hooked knife, and demanded money. After the boy gave him a dollar, Boy A reached into the boy's pocket and took more money. While Boy A had the first boy against the wall, he demanded money from the other two boys, and both gave Boy B the money they had. During this time Boy B was saying, "Come on Pete! Let's get out of here! They don't have any money! Let's go!" The two teens (A and B) fled with a total of \$39.00. The only description the boys gave was that one was tall and one was short, that the tall one was wearing a purple jacket and baseball cap; and that the shorter one had "funny" hair and was wearing a white sweatshirt.

Thirty minutes later an officer six blocks away located Reid and Pete, who fit the descriptions, and took them into custody. They admitted being at the mall but denied touching or bothering the younger boys. They said the boys were shouting profanities at them and other passers-by and all they did was tell them to stop. Pete, age 15 (Boy A), admitted showing the boys a knife, but he said he was at least 10 feet away and never got closer than that to them. Pete had a hooked knife in his pocket, and Reid (Boy B), age 13, had about \$20.00 in his pocket.

- a. What questions do you have for the court counselor?
- b. Are there statutory grounds for secure custody?
- c. How will you decide whether to order secure custody for Pete? For Reid?

G.S. §§ _____

2. Jewel

The magistrate calls you at home on Friday night and says that officers have brought in a 14 - year-old girl they picked up for stealing a car, fleeing to elude arrest, assault with a deadly weapon causing serious injury (by driving the car into a pedestrian), hit and run, driving without a license, and driving by a person less than 21 years old after consuming alcohol or drugs. She blew .10 on the breathalyzer. She initially told the court counselor that her parents were out of town for the weekend and that her brother, age 17, asked her to drive his car home from a party. When told that the car was stolen, she said the truth was that she had to get away from her boyfriend before he killed her, so she took his keys and drove off in what she thought was his car. The court counselor has prepared a secure custody order and wants the magistrate to sign it.

- a. What questions do you have for the magistrate, the court counselor, or the officers?
- b. Are there statutory grounds for secure custody?
- c. How will you decide whether to order secure custody for Jewel?

G.S. §§ _____

C. First Appearances: Reid and Pete; Jewel *(The offenses involved are described in B., above)*

On Wednesday Reid, Pete, and Jewel are in court for first appearances and hearings on the need for continued secure custody.

1. You have a long juvenile docket, and the courtroom is almost full of juveniles, family members, witnesses, agency personnel, and others.
 - What, if anything, do you say before the first case is called? How is the first case called?
2. When Pete's case is called, his attorney objects to Pete's being in leg restraints and asks you to order that the restraints be removed. The prosecutor objects but states no reason. A sheriff's deputy says that Pete has not caused any problems so far, but urges you not to remove the restraints because he does not want problems if he has to put them back on.
 - How do you respond? G.S. §§ _____
3. When Jewel's case is called, Jewel, who just turned 14, and her attorney are present. Jewel's parents have been served but are not present. When asked, Jewel says she does not know where they are and doesn't care.
 - Would you proceed with Jewel's first appearance?
 - Would you proceed with a hearing on continued secure custody?

G.S. §§ _____

D. Hearing on Need for Continued Secure Custody
(The offenses involved are described in B., above)

1. Pete

After the first appearance in Pete’s case, the prosecutor argues that Pete, age 15, should remain in custody pending adjudication because he used a dangerous knife to rob the younger boys and he was already on probation for breaking and entering, possession of stolen property, and possession of drug paraphernalia. The officer who took Pete into custody is out of town and won’t be available for another week. Pete’s mother, with whom he lives, asks you to let him go home. She says he is afraid to go back to detention and that she can make sure he leaves home only to go to school and back. Pete’s attorney argues that Pete must be released because (i) he has been held for more than 72 hours, (ii) the officer is not present to give a reasonable factual basis, and (iii) the state has presented no evidence.

- What else do you want to know?
- What do you think of Pete’s lawyer’s arguments?

G.S. §§ _____

2. Jewel

Jewel’s mother arrives late and is present for the secure custody hearing. Jewel’s father is a truck driver and is out of town. The police officer who took Jewel into custody and a court counselor testify about events that brought Jewel into custody. She is alleged to be delinquent for possession of stolen property, fleeing to elude arrest, assault with a deadly weapon causing serious injury, hit and run, driving without a license, and driving by a person less than 21 years old after consuming alcohol or drugs. Jewel’s attorney argues that there is no basis for keeping her in secure custody, that once sober she stopped being a threat to anyone, and that her parents can ensure that she returns to court. He says that Jewel’s hitting the pedestrian was an accident that happened because she was scared and trying to get away from her violent boyfriend. Jewel’s mother says that the boyfriend is a “snake” and is the cause of many of Jewel’s problems. She says that maybe it would do Jewel some good to stay locked up for a while, but she immediately takes that back and urges the court to let her take Jewel home. Jewel is presently on probation for shoplifting.

- What else do you want to know?
- What are your options?
- What would you do?

G.S. §§ _____

E. Motions

What would you do in response to the following pre-adjudication motions?

1. **Pete.** Pete remained in custody and at a second secure custody hearing the court released him to his parents with certain restrictions, to which Pete and his parents agreed. At the beginning of the adjudicatory hearing Pete's attorney moves to dismiss because neither Pete nor his parents were ever served with the petition and summons.

G.S. §§ _____

2. **Jewel.** When Jewel's case is called her attorney asks you to close the hearing. The prosecutor objects, stating that the public needs to know "what these kids are up to." Jewel's attorney argues that Jewel is just barely 14 and that subjecting her to public scrutiny and embarrassment is contrary to the whole purpose of having a juvenile court.

G.S. §§ _____

3. **Tim.** A petition was filed on 4/25/11 alleging that Tim, age 10, is delinquent for willfully and wantonly injuring personal property with a value of more than \$1,000.00, a Class 1 misdemeanor under G.S. 14-160. Specifically, the petition alleges that between 4/22/11 and 4/24/11, Tim used an air rifle to shoot out the windows of twelve cars in his neighborhood. The case is continued from 5/18/11 to 6/18/11. Then it is continued again until July 30. On that date Tim's attorney moves for a forensic evaluation to determine Tim's capacity to proceed.

G.S. §§ _____

4. **Tim.** At a hearing on the capacity issue a forensic psychologist testifies that Tim suffers from anxiety disorder and ADHD and that he lacks the capacity to proceed, because "no ten-year-old can understand his situation in relation to this kind of court proceeding or rationally assist his lawyer." The state calls the school resource officer and a teacher, who testify that Tim is a C+ student, that he can clearly communicate and articulate his feelings, and that his intellect and verbal skills are just slightly below average. Tim's attorney argues that the psychologist's opinion should carry more weight than those of the school officials.

a. What would you do next?

b. If you determine that Tim lacks the capacity to proceed, what are your options?

G.S. §§ _____