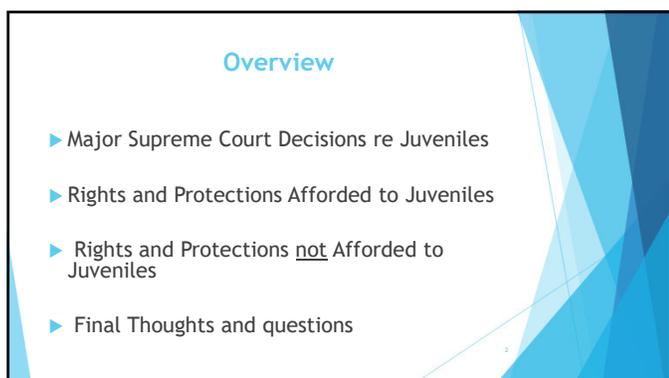
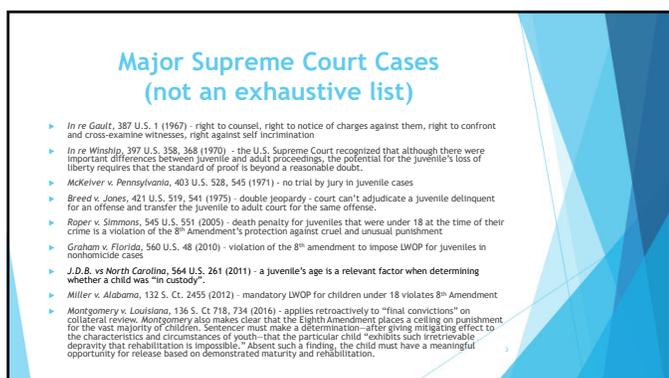


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3

Essential Rights for Juveniles in Court

- ▶ Right to Counsel
- ▶ Right Against Self Incrimination
- ▶ Right to Standard of Proof Beyond a Reasonable Doubt
- ▶ Right to be Free from Double Jeopardy
- ▶ Right to an Open Hearing
- ▶ Right to Confidentiality of Records
- ▶ Right to Notice of Charges against them
- ▶ Right to Confront and Cross Examine Witnesses
- ▶ Right to have parent present during in custody interrogation
- ▶ Presumption of Indigency
- ▶ Right to Appointment of Guardian

4

In re Gault, 387 U.S. 1 (1967)

- ▶ U.S. Supreme Court recognized that juveniles are entitled to many rights afforded adult defendants:
 - ▶ Right to counsel
 - ▶ Right to notice of charges
 - ▶ Right to confront and cross-examine witnesses
 - ▶ Right against self incrimination

5

What do you do?

- ▶ Angry father comes in with his 14 year old daughter to the first appearance. The father is missing work, does not want to be there and has refused to allow the child to speak to the court appointed attorney because “she did the crime, she needs to do the time”. He has 3 other children in the home who “know how to follow rules”, and “why should he have to pay for a lawyer”.
- ▶ He wants to waive counsel on his child’s behalf and allow her to “plead guilty”.

6

Right to Counsel

- ▶ *In re Gault*, 387 U.S. 1, 41 (1967) - first recognized
- ▶ § 7B-2000. Juvenile's right to counsel; presumption of indigence.
 - ▶ (a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. Counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.
 - ▶ (b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-144, s. 22.)
- ▶ § 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;
- ▶ § 7B-2101. Interrogation procedures.
 - ▶ (a) Any juvenile in custody must be advised prior to questioning:
 - ▶ (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.
- ▶ **EXPRESSED INTEREST**

7

Presumption of Indigency

- ▶ § 7B-2000. Juvenile's right to counsel; presumption of indigence.
 - ▶ (a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. Counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.
 - ▶ (b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-144, s. 22.)
- ▶ **CONSIDER WAIVING FEES**
- ▶ **PAY ATTENTION TO RESTITUTION REQUESTS - WHAT CAN JUVENILE ACTUALLY PAY?**

8

Right to Notice of Charges Against them

- ▶ *In re Gault* - right to notice of charges against them
- ▶ § 7B-1802. Petition.
 - ▶ The petition shall 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. The petition shall allege the facts that invoke jurisdiction over the juvenile. The petition shall not contain information on more than one juvenile.
 - ▶ A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation.
 - ▶ Sufficient copies of the petition shall be prepared so that copies will be available for the juvenile, for each parent if living separate and apart, for the guardian or custodian if any, for the juvenile court counselor, for the prosecutor, and for any person determined by the court to be a necessary party. (1979, c. 815, s. 1; 1981, c. 469, s. 9; 1998-202, s. 6; 2001-890, s. 2.10.)
- ▶ § 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;

9

What do you do?

- ▶ 10 year old female juvenile is charged with a sex offense involving an 8 year old male victim. The 10 year old juvenile denies the allegations and wants to have a contested hearing. The ADA keeps delaying the trial because he is concerned about trauma to the victim. The juvenile is ready for trial and the victim is able to testify.
- ▶ Case needs to be heard
 - ▶ ADAs can take steps to protect victim
 - ▶ Juvenile is entitled to have a trial no matter how uncomfortable or horrible the facts may be
 - ▶ Right to confront witness - should not be held against juvenile

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Right to Confront and Cross Examine Witnesses

- ▶ § 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;**
- ▶ **Right to have a trial - dispel the "kiddie court" notion**

11

Right against Self Incrimination

- ▶ **Can't be compelled to give information that could be used against him/her**
- ▶ **CANNOT be compelled to testify**
- ▶ 5th Amendment of the U.S. Constitution
- ▶ Applicable to juvenile proceedings per *In re Gault*, 387 U.S. 1, 55 (1967)
- ▶ § 7B-2101. Interrogation procedures.
 - ▶ (a) Any juvenile in custody must be advised prior to questioning:
 - ▶ (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.
 - ▶ (b) When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
 - ▶ (c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.
 - ▶ (d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juveniles rights. (1979, c. 815, s. 1; 1998-202, s. 6; 2019-58, s. 1.1.)

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Right Against Self Incrimination (continued)

- ▶ If the requirements of G.S. 7B-2101 (b) are satisfied, the juvenile may waive the right against self incrimination. *State v. Flowers*, 128 N.C. App. 697, 701-02 (1998)
 - ▶ (b) When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
- ▶ *** The State bears the burden of proving by preponderance of the evidence that the waiver is knowing and intelligent. *State v. Flowers*, 128 N.C. App. 697, 701-02 (1998)
- ▶ Then the Court must determine (looking at specific facts and circumstances of each case, including background, experience and conduct of the juvenile) whether the waiver was knowing and intelligent. *State v. Johnson*, 136 N.C. App. 683, 693 (2000)

13

Right Against Self Incrimination (continued)

- ▶ § 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.
- ▶ § 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.)
- ▶ *J.D.B. vs North Carolina*, 564 U.S. 261 (2011) - a juvenile's age is a relevant factor when determining whether a child was "in custody".

14

Right to Standard of Proof Beyond a Reasonable Doubt

- ▶ Due Process Clause of the 14th Amendment
- ▶ *In re Winship*, 397 U.S. 358, 368 (1970) - the U.S. Supreme Court recognized that although there were important differences between juvenile and adult proceedings, the potential for the juvenile's loss of liberty requires that the standard of proof is beyond a reasonable doubt.
- ▶ § 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.)

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Right to Be Free from Double Jeopardy

- ▶ *Breed v. Jones*, 421 U.S. 519, 541 (1975) - established/recognized right for juveniles
 - ▶ Court can't adjudicate a juvenile delinquent for an offense and transfer the juvenile to adult court for the same offense. (Also, *in re J.L.W.*, 136 N.C. App. 596, 598 (2000))
- ▶ Jeopardy attaches when the trial court begins to hear evidence. *In re Hunt and In re Dowd*, 46 N.C. App. 732, 735 (1980)
- ▶ If the court dismisses a petition based on lack of sufficient evidence, the juvenile can't be prosecuted for the same or greater offense. *In re Drakeford*, 32 N.C. App. 113, 119 (1977)

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What do you do?

- ▶ A 15 year old juvenile male is taken into custody after a brief car chase ends with the juvenile abandoning the car and jumping out. The juvenile is cooperative and is sitting on the sidewalk near the car in handcuffs. The officer begins to ask him questions about what happened. The juvenile says "I just want to talk, don't want my parents to know I'm here". He admits to stealing the car and going for a joyride. He said he was bored due to being home all the time due to COVID. He makes several other incriminating statements. He is charged with Larceny of a Motor Vehicle, Possession of a Stolen Vehicle, and several other charges.
- ▶ His attorney files a Motion to Suppress the statements he made to law enforcement officers.

17

Right to have a Parent present during In Custody Interrogations

- ▶ § 7B-2101. Interrogation procedures.
 - ▶ (a) Any juvenile in custody must be advised prior to questioning:
 - ▶ (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.
 - ▶ (b) When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
 - ▶ (c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.
 - ▶ (d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights. (1979, c. 815, s. 1; 1998-202, s. 6; 2015-58, s. 1.1.)
- ▶ *J.D.B. vs North Carolina*, 564 U.S. 261 (2011) - a juvenile's age is a relevant factor when determining whether a child was "in custody".

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Constitutional Rights not afforded to Juveniles

- ▶ Trial by Jury - *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971)
- ▶ The U.S. Supreme Court has not ruled on the following:
 - ▶ Right to Bail
 - ▶ Right to a Speedy trial
 - ▶ Right to Self Representation
- ▶ The NC General Assembly has not provided these rights to juveniles either
 - ▶ § 78-245. 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.
- ▶ ***** Each of these rights attaches on transfer of a juvenile case to superior court for trial as an adult**

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References, Resources, etc.

- ▶ North Carolina Juvenile Defender Manual, Oct. 2017 edition, David W. Andrews and John Rubin
 - ▶ <https://defendermanuals.sog.unc.edu/defender-manual/7>
- ▶ N.C. General Statutes 7B
 - ▶ <https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter7B>
- ▶ N.C. Juvenile Defender Website
 - ▶ <https://ncjuveniledefender.com/>
- ▶ Applying the Reasonable Child Standard to Juvenile Interrogations after *J.D.B. v. North Carolina*, Latoya B. Powell, February 2016 Juvenile Law Bulletin
 - ▶ <https://www.sog.unc.edu/publications/bulletins/applying-reasonable-child-standard-juvenile-interrogations-after-jdb-v-north-carolina>
- ▶ National Juvenile Defender Center website
 - ▶ <https://njdc.info/>

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Final thoughts and Questions

- ▶ Juvenile Court is a court of record - don't treat as kiddie court
 - ▶ Serious, potentially long-term consequences for kids
- ▶ Maintain high standards for attorneys
- ▶ Procedural due process - active, empathetic listening
- ▶ Recognize that people of color are disproportionately impacted/represented in juvenile court
- ▶ **QUESTIONS?**

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