

## OAD's Top Tips

Assistant Appellate Defender Jillian Katz &  
Assistant Appellate Defender Hannah Love

### **1. Make Motions to Suppress Confessions**

- If your client was interviewed, consider whether your client could be considered “in custody” and whether they were “interrogated”
- Make a motion to suppress under
  - Fourth Amendment – i.e. *Miranda*
  - N.C.G.S. § 7B-2101
    - Any juvenile in custody must be advised prior to questioning:
      - That the juvenile has a right to remain silent;
      - That any statement the juvenile does make can be and may be used against the juvenile;
      - That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
      - 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.
- There have new case law developments regarding SROs interrogating kids at schools (See opinion for *In re: D.A.H.*, 2021-NCCOA-135, April 20, 2021)

### **2. Make Sure the Petition Charges a Crime**

- Make sure the petition charges a crime.
  - The petition must set forth a “plain and concise statement ... asserting facts supporting every element of a criminal offense[.]” N.C.G.S. § 7B-

1802. Failure to allege each essential element of an offense deprives the trial court of jurisdiction. *In re J.F.M.*, 168 N.C. App. 143, 150 (2005).

- Due Process requires that the juvenile be notified in writing of the specific charge or factual allegations to be considered at the hearing. *In re Gault*, 387 U.S. 1, 33 (1967).
- Review the petition for other fatal defects that deprive the trial court of jurisdiction:
  - Is the petition signed by the complainant and verified? *See* N.C.G.S. § 7B-1803(a); *In re T.R.P.*, 360 N.C. 588, 593 (2006).
  - Is the petition signed by the court counselor? Does the petition include the words “Approved for Filing?” *See* N.C.G.S. § 7B-1703(b); *In re T.K.*, 253 N.C. App. 443, 448 (2017).
- Additionally, make sure the evidence at the hearing matches the allegations in the petition.
  - A fatal variance occurs when a petition alleges all the necessary elements of an offense but the State proves an offense not alleged in the petition.
  - A fatal variance also exists if the State presents evidence of every element of the offense alleged, but the evidence does not conform to the allegations in the petition.
  - If the evidence at trial does not match the allegations in the petition, trial counsel should make a motion to dismiss the petition at the close of the State’s case.
    - When making a motion to dismiss, counsel should argue that a fatal variance exists between the allegations in the petition and the proof at trial.
    - If the Juvenile then presents evidence, counsel must renew the motion to dismiss, including the variance argument, at the end of all the evidence.
- Further discussion of the sufficiency of a petition and fatal variance can be found in Chapter 6 of the Juvenile Defender Manual, available electronically at: <https://defendermanuals.sog.unc.edu/juvenile/63-petition>

### 3. Adjudication and Disposition Orders are Often Deficient in their Findings of Fact

- Ensure that the Judge makes required findings under N.C.G.S. §§ 7B-2501(c) and 2411.
  - The Judge must make **\*written\*** findings on the adjudication order.
    - Must include the date of the offense, the (M) or (F) classification of the offense, and the date of adjudication
    - Must say “at a minimum,” that “the allegations in the petition have been proven beyond a reasonable doubt.”
    - Saying that the Juvenile “is responsible” is not enough
    - N.C. Gen. Stat. § 7B-2411
  - The Judge must make **\*written\*** findings on the disposition order that show that the court considered the following dispositional factors when choosing a disposition:
    - The seriousness of the offense;
    - The need to hold the juvenile accountable;
    - The importance of the protecting the public safety;
    - The degree of culpability indicated by the circumstances of the particular case; and
    - The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.
    - N.C. Gen. Stat. § 7B-2501(c)

### 4. Ask for Your Client to be Released Pending Appeal

- In any case where your client is committed to YDC, request that your client be released pending appeal. Release must occur unless the court makes written findings with “compelling reasons” why a juvenile should remain in custody during the appeal.
- N.C. Gen. Stat. § 7B-2605:
  - Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the court orders

otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.

- This request should be made when the juvenile gives notice of appeal. If the juvenile gives notices of appeal *after* the disposition hearing, the trial attorney should check to see if the judge marked box #3 on the appellate entries form (denying release pending appeal) and whether the court made the required findings.
- If the trial court did not find that release pending appeal is denied and/or did not make written findings of compelling reasons why it is in the best interests of the juvenile or the State to remain in custody pending appeal, trial counsel should file a written motion requesting the juvenile’s release pending appeal.
- An explanation of custody pending appeal can be found in Chapter 8 of the Juvenile Defender Manual, available electronically at:  
[https://defendermanuals.sog.unc.edu/sites/default/files/pdf/Chapter%2016%20Appeals\\_0.pdf](https://defendermanuals.sog.unc.edu/sites/default/files/pdf/Chapter%2016%20Appeals_0.pdf)
- A sample Motion for Release Pending Appeal and Order can be found on the Juvenile Defender’s website:  
<https://www.ncjuveniledefender.com/trial-motions-and-forms-index>

#### **5. Consider if Asking for a Stay of a Probationary Sentence Pending Appeal Makes Sense in Your Case**

- Frequently, a juvenile completes probation before he is able to obtain any relief through the appellate process. Where there are potentially meritorious issues, the juvenile could be deprived of the practical benefit of any relief granted on appeal if the dispositional order is not stayed pending appeal.
- Judges could misuse their continuing jurisdiction to keep a juvenile on probation for years, despite the appeal being successful.
- A Motion to Stay Disposition Pending Appeal is governed by Rule 8 of the N.C. Rules of Appellate Procedure. Pursuant to Rule 8, the request to stay disposition should be filed in the trial court.

- A sample motion to stay disposition is available on the Juvenile Defender’s website: <https://www.ncjuveniledefender.com/trial-motions-and-forms-index>

## **6. Being a Zealous Advocate, Even if you Annoy People!**

- While you of course need to be respectful and attuned to the written and unwritten rules of practice in your court, you must balance that with being zealous advocate.
- You may need to educate judges.
- Don’t be afraid to make objections. Make written motions! Make sure you get a ruling on it! Try something out of the box.

## **7. Be Well-Versed in Collateral Consequences**

- Direct juvenile and criminal
- Educational – participating in activities and sports
- “Real World”
  - Employment
  - Subsequent Education – student loans
  - Housing
  - Military
  - Immigration

## **8. Utilize a Social Worker or other Professional**

- Professionals can help you and the court better understand the needs of your client.
  - Ex: A social worker can provide a second opinion as to your client’s mental health and developmental needs

## **9. Keep Up with Recent Juvenile Appellate Decisions**

- Appellate decisions are available online at:  
<https://appellate.nccourts.org/opinions/?format=old>
- The N.C. Court of Appeals issues opinions on the first and third Tuesday of each month.
- Decisions of the Supreme Court of North Carolina are issued on Fridays, approximately once per month. The Supreme Court posts the next decision date on the website listed above.
- Case summaries are provided through the UNC SOG Juvenile Law Listserv. You may subscribe to the listserv at:  
<https://www.sog.unc.edu/resources/listservs/recent-nc-court-decisions-juvenile-law-sogjuvenile>
- Case summaries are also available on the Juvenile Justice Case Compendium, available at: <https://www.sog.unc.edu/jjcc>

## **10. Great Things We (and You!) Have Seen**