11.3 Bases for Motions to Suppress Statement or Admission of Juvenile

A. Constitutional Rights

A juvenile is protected by the constitutional right against self-incrimination guaranteed by the Fifth Amendment. *See In re Gault*, 387 U.S. 1 (1967); *Mincey v. Arizona*, 437 U.S. 385, 398–400 (1978) (involuntary or coerced confession not admissible); *see also supra* § 2.4A, Constitutional Right. After initiation of juvenile proceedings, the juvenile is afforded additional protection under the Sixth Amendment right to counsel, guaranteed to juveniles under *Gault*. *See Montejo v. Louisiana*, 556 U.S. 778 (2009) (a defendant has the right to counsel under the Sixth Amendment during police interrogation). If a juvenile has been questioned in violation of these rights, counsel should file a motion to suppress to prevent the court from admitting the statement into evidence. For a further discussion of these rights, see 1 NORTH CAROLINA DEFENDER MANUAL § 14.3, Illegal Confessions or Admissions (2d ed. 2013).

B. Statutory Rights under Juvenile Code

Juveniles in custody who are being questioned have statutory rights that include and go beyond the requirements of *Miranda* warnings. *See* G.S. 7B-2101; *see also supra* § 2.4B, Statutory Rights. These rights are afforded only if the juvenile is "in custody," a term that is not defined in the statutes but is the subject of case law. *See infra* § 11.4B, Definition of "In Custody."

In setting forth the information that the juvenile must receive before custodial interrogation, the statute tracks *Miranda* with the addition of the third provision below:

1. that the juvenile has a right to remain silent;
2. that any statement the juvenile makes 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.

G.S. 7B-2101(a); *see infra* § 11.4E, Right to Have Parent, Custodian, or Guardian Present; § 11.4F, Right to Consult with and Have Attorney Appointed.

Questioning must cease "[i]f the juvenile indicates in any manner and at any stage . . . that the juvenile does not wish to be questioned further." G.S. 7B-2101(c). The

court must find that the juvenile "knowingly, willingly, and understandingly waived the juvenile's rights" before the juvenile's in-custody statement can be admitted into evidence. G.S. 7B-2101(d); *see infra* § 11.4I, Knowing, Willing, and Understanding Waiver of Rights.

If a juvenile is under age 16, the presence of a parent, guardian, custodian, or attorney is required for an in-custody admission or confession to be admitted into evidence. G.S. 7B-2101(b). The parent, custodian, or guardian must also be advised of the juvenile's rights if an attorney is not present. *Id.* These requirements may not be waived by the juvenile or the parent, custodian, or guardian. *Id.*; *see infra* § 11.4E, Right to Have Parent, Custodian, or Guardian Present.

C. Substantial Violations of Criminal Procedure Act

As part of 2015 amendments to the Juvenile Code, the General Assembly added language stating that the "provisions of G.S. 15A-974 shall apply" to suppression motions in juvenile delinquency cases. G.S. 7B-2408.5(h). G.S. 15A-974 was enacted in 1973 and "broadened" the exclusionary rule to include evidence "obtained as a result of a substantial violation" of the Criminal Procedure Act—that is, Chapter 15A of the General Statutes. *State v. Williams*, 31 N.C. App. 237, 238-39 (1976) (citing G.S. 15A-974(2)). When a court determines whether a violation was substantial, it must consider "all the circumstances," including the importance of the interest that was violated, the extent of deviation from lawful conduct, the extent to which the violation was willful, and the extent to which exclusion of the evidence will deter future violations. G.S. 15A-974(2). A court may not suppress evidence for a statutory violation if the person who committed the violation "acted under the objectively reasonable, good faith belief that the actions were lawful." *Id.*

A number of North Carolina cases have addressed whether a statutory violation warranted suppression. For example, in *State v. Norris*, 77 N.C. App. 525, 529 (1985), *disapproved on other grounds by In re Stallings*, 318 N.C. 565 (1986), the Court of Appeals held that a one-on-one show-up, conducted without a court order before the juvenile was transferred to superior court, constituted a substantial violation and should have been suppressed. The Court held in *State v. McHone*, 158 N.C. App. 117, 122 (2003), that a "search warrant application supported only by a conclusory affidavit" constituted a substantial violation under G.S. 15A-974(2). In contrast, in *State v. Satterfield*, 300 N.C. 621, 626 (1980), the Court held that an officer's failure to remind the defendant of his right to counsel before taking fluid samples pursuant to a non-testimonial identification order did not warrant suppression under G.S. 15A-974(2). In *State v. Pearson*, 356 N.C. 22, 34 (2002), the court held that an officer's failure to return an inventory of evidence seized pursuant to a search warrant to the judge who issued the search warrant did not require suppression of the evidence pursuant to G.S. 15A-974(2). Additional cases involving statutory violations can be found by searching for cases citing G.S. 15A-974(2).