

## **12.2 Preliminary Matters**

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## **12.2 Preliminary Matters**

### **A. Amendment of Petition**

The petition may be amended with permission of the court if the amendment does not change the nature of the offense alleged. The juvenile must be granted time to prepare a defense to the amended petition. G.S. 7B-2400; *see supra* § 6.3D, Amendment of Petition.

### **B. Capacity to Proceed**

The juvenile must have capacity to proceed before an adjudicatory hearing may commence. Several procedures for determining capacity in criminal court (G.S. 15A-1001, 15A-1002, and 15A-1003) apply to delinquency proceedings. G.S. 7B-2401; *see supra* Chapter 7, Capacity to Proceed.

### **C. Open or Closed Hearing**

The adjudicatory hearing is generally open to the public. G.S. 7B-2402. It may be closed for good cause on motion of a party or the court, subject to the right of the juvenile to an open hearing. G.S. 7B-2402; *see supra* § 2.7, Right to an Open Hearing.

### **D. Motions before Adjudication**

Motions concerning the adjudicatory proceedings, such as a motion to suppress, should generally be filed and set for hearing before the date of adjudication. *See supra* § 6.3H, Defects in Petition: Timing of Motion; § 11.2A, Timing of Motions. This will allow time for counsel to prepare based on the court's rulings on evidence and other matters. An oral motion can and should be made at the time of the adjudicatory hearing, however, where counsel has not been afforded the opportunity to file one in writing.

## E. Continuances

**Statutory grounds.** A continuance may be granted by the court for good cause for as long as is reasonably required:

- to receive evidence, reports, or assessments requested by the court;
- to receive other information needed in the best interest of the juvenile;
- to allow a reasonable time for the parties to conduct expeditious discovery; or
- in “extraordinary circumstances” when necessary for the proper administration of justice or in the best interests of the juvenile.

G.S. 7B-2406; *see In re Lail*, 55 N.C. App. 238, 240 (1981) (grounds for continuance motion must be established and, if based on absence of a witness, an affidavit stating facts to be proved by the witness must be tendered).

**Constitutional grounds.** A continuance may also be based on the juvenile’s right to effective assistance of counsel and right to confront one’s accusers under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 19, 23, and 24 of the North Carolina Constitution. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 13.4A, Motion for Continuance (2d ed. 2013). Counsel should base a request for a continuance on both constitutional and statutory grounds.

**Filing the motion.** It is better practice to file a written motion for continuance stating the grounds for the continuance in advance of the hearing date if possible. The motion should be served on the prosecutor and discussed with the juvenile court counselor. At a minimum it is good practice to notify the prosecutor of a continuance request as early as possible and seek consent to the continuance or suggest that witnesses be placed on call so that they can come to court if the motion to continue is denied. An oral motion to continue may be necessary if discovery is delivered by the prosecutor on or just before the hearing date and counsel needs time to review the information with the juvenile.

If a continuance motion is denied, counsel should ensure that the motion for continuance and the reasons supporting it are on the record. Counsel could also request that the proceeding be bifurcated, with the State’s evidence presented on one day and the juvenile’s evidence presented at a subsequent session of court, so that a necessary defense witness can be called at a later date.

**Limitations on continuances.** Continuances of adjudicatory hearings may be limited based on the mandate of the Juvenile Code for the court to “proceed with all possible speed in making and implementing determinations.” G.S. 7B-1500(4). Counsel should be prepared to provide a clear and compelling reason why a continuance is necessary.

Because continuances are limited by local rules in some districts, counsel should be familiar with local rules and policies restricting continuances. Local rules for each district are available on the [Administrative Office of the Courts website](#).

## **F. Requirement of Separate Adjudicatory Hearing**

Before 2015, the Court of Appeals held in *In re J.J., Jr.*, 216 N.C. App. 366, 369 (2011), that it was proper for the trial court to hold a probable cause hearing, transfer hearing, and adjudicatory hearing in “one proceeding.” The Court reached a similar conclusion in *In re G.C.*, 230 N.C. App. 511, 522 (2013). In 2015, the General Assembly enacted a reform bill for the Juvenile Code. *See* 2015 N.C. Sess. Laws Ch. 58 (H 879). As part of the legislation, the adjudication hearing must now be a separate proceeding from probable cause or transfer hearings. G.S. 7B-2202(f)(2), 7B-2203(d). The legislation thus reverses the holdings of *In re J.J., Jr.* and *In re G.C.* and requires bifurcated hearings. In theory, the court could hold a separate adjudicatory proceeding on the same day as the earlier proceeding. Counsel should object if additional time is needed to prepare for the adjudicatory hearing or proceeding with the adjudicatory hearing would otherwise not be in the juvenile’s interest.

## **G. Discovery**

The State should provide counsel with all discovery before the adjudicatory hearing so that counsel can prepare to cross-examine witnesses and present a zealous defense against the allegations. *See supra* Chapter 10, Discovery. Counsel may need to contact the prosecutor if discovery is not delivered in a timely manner. If discovery is not provided sufficiently in advance for counsel to prepare, a motion to continue or for sanctions may be necessary. *See, e.g., In re A.M.*, 220 N.C. App. 136, 138 (2012) (trial court erred by depriving juvenile of any remedy, such as granting a motion in limine or continuing the case, for the State’s failure to disclose the name of a witness during discovery).

## **H. Voluntary Dismissal by Prosecutor**

For many years, there was some uncertainty among prosecutors about whether the State had the authority to dismiss juvenile delinquency petitions. As part of the 2015 reform of the Juvenile Code, the General Assembly made clear that prosecutors are permitted to voluntarily dismiss juvenile petitions with or without leave. G.S. 7B-2404(b). The statute allows the prosecutor to dismiss a petition with leave if the juvenile failed to appear in court; the prosecutor may refile the petition “if the juvenile is apprehended or apprehension is imminent.” *Id.* The statute does not specify any other circumstances in which a prosecutor may dismiss a petition with leave.

## **I. Preparation for the Juvenile’s Appearance**

Counsel should advise the juvenile as to suitable courtroom attire and demeanor. If the juvenile is in detention, counsel should make arrangements with staff for the juvenile to wear appropriate clothing and to ensure that the juvenile will not be brought into court in handcuffs or shackles. *See supra* § 8.6B, Shackling.