

## 2.3 Right to Counsel

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The juvenile’s constitutional right to counsel was first recognized by the U.S. Supreme Court in *In re Gault*, 387 U.S. 1, 41 (1967). This right is codified in G.S. 7B-2000, which states that the juvenile has the right to be represented by counsel in all delinquency proceedings. The right to counsel extends to hearings on revocation of post-release supervision, G.S. 7B-2516, but not to the juvenile court counselor’s decision to file a juvenile petition. Nevertheless, if counsel is retained or appointed to represent the juvenile on another case, counsel could assist the juvenile while the court counselor screens the case. *See infra* § 5.1B, Importance to Juvenile’s Counsel.

In addition, all juveniles are conclusively presumed to be indigent and must be appointed counsel in any proceeding in which the juvenile is alleged to be delinquent unless counsel is retained for the juvenile. Although the right to an appointed attorney extends to appeals, juveniles are not entitled to an appointed attorney in expunction proceedings. *See* G.S. 7A-451 (defining the scope of the entitlement to appointment of counsel).

By statute, the juvenile also must be advised during any custodial interrogation of the “right to consult with an attorney and that one will be appointed . . . if the juvenile is not represented and wants representation.” G.S. 7B-2101(a)(4). Questioning must cease once the juvenile has invoked the right to consult an attorney. *See* G.S. 7B-2101(c) (questioning must cease if juvenile indicates wish not to be questioned further). Under G.S. 7B-1501(17), “[w]herever the term ‘juvenile’ is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.”

Counsel for the juvenile serves as the juvenile’s “voice to the court, representing the expressed interests of the juvenile at every stage of the proceedings.” IDS Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level, Performance Guideline 2.1(a) (2007); *see also infra* Appendix 3-1, Role of Defense Counsel in Juvenile Delinquency Proceedings (stating that the juvenile’s attorney “is bound to advocate the expressed interests of the juvenile”). Counsel does not seek to advance the juvenile’s best interests, as defined by the juvenile’s parents or guardian, the prosecutor, or the trial court. Instead, the role of the juvenile defense attorney is to seek the juvenile’s input, understand the juvenile’s perspective, and enable the juvenile, to the greatest extent possible, to decide how to proceed. If counsel does not serve the juvenile’s expressed interests, “the juvenile would be subjected to a pre-*Gault* proceeding in which protecting the juvenile’s due process rights are relegated to a mere technicality.” Robin Walker Sterling, [Role of Juvenile Defense Counsel in Delinquency Court](#) at 8 (National Juvenile Defender Center 2009).