Chapter 11
Motions to Suppress

11.1 Motions Practice in Juvenile Court

A. Goals

Advocacy through motions practice is essential to protection of a juvenile's constitutional and statutory rights. Filing motions can achieve several goals in a juvenile case. A pending motion may strengthen the juvenile's bargaining position with the State, while a successful motion may resolve the case, or some portions of it, in the juvenile's favor. Advocacy through motions practice will demonstrate to the court, the prosecutor, and the juvenile that counsel is dedicated to providing an effective and zealous defense. The court and the prosecutor may then be more likely to listen carefully and be persuaded by arguments of counsel.

Drafting a motion requires that counsel research the statutory, constitutional, or case law bases for the motion. A written motion and argument on the record and a memorandum of law submitted to the court, along with appropriate objections, protect the juvenile's rights and preserve issues in the event of an appeal.

B. Types of Motions

A variety of motions may be filed, including a motion requesting that a hearing be closed (*see supra* § 2.7, Right to an Open Hearing), that witnesses be sequestered (*see infra* § 12.5A, Sequestering Witnesses), for discovery (*see supra* § 10.3, Procedures for Obtaining Discovery), requesting an evaluation of capacity (*see supra* § 7.8, Obtaining an Expert Evaluation), requesting that an expert be appointed (*see supra* § 7.8A, Procedures to Obtain Expert Evaluation), and for dismissal of the petition (*see supra* § 6.3H, Defects in Petition: Timing of Motion).

Motions to suppress are particularly important in juvenile court because the State's case often rests on a statement or admission of a juvenile or on evidence obtained from a search of a juvenile. A successful suppression motion may result in the dismissal of the petition by the State or on motion of the juvenile. This chapter focuses on filing and arguing motions to suppress.

11.2 Filing Motions and Hearing Procedures

Before 2015, the Juvenile Code did not contain specific procedures for filing suppression motions in juvenile delinquency cases. However, suppression motions were routinely

litigated in juvenile court. *See, e.g.*, *In re V.C.R.*, 227 N.C. App. 80, 87 (2013) (reversing order denying the juvenile's motion to suppress). In 2015, the General Assembly amended several parts of the Juvenile Code. *See* 2015 N.C. Sess. Laws Ch. 58 (H 879). One of the amendments included a new statute—G.S. 7B-2408.5—that defined the procedures for suppression motions. Those procedures are described below.

A. Timing of Motions

G.S. 7B-2408.5 does not set any deadlines for filing suppression motions. Instead, the statute states that a suppression motion may be made either before or during the adjudicatory hearing. G.S. 7B-2408.5(a), (e). The language in G.S. 7B-2408.5 stands in contrast to G.S. 15A-975, the statute for suppression motions in adult court, which states that a defendant must file a suppression motion before trial unless certain limited exceptions apply.

If the motion to suppress would be dispositive if successful—that is, it would exclude evidence necessary for the State to prove the charged offense—the motion should be filed early in the case. If a motion to suppress is granted before the probable cause hearing, the State may be unable to establish probable cause.

There may be tactical reasons in some instances not to file a motion to suppress until the adjudicatory hearing begins. Counsel may decide to defer filing to avoid revealing to the State that certain evidence may not be admissible at adjudication. If the motion to suppress is granted at a later stage, the State may be unable to produce other sufficient evidence to prove the allegations in the petition.

B. Form and Contents of Motion

If counsel makes a suppression motion before the adjudicatory hearing, the motion must be in writing and a copy of the motion must be served on the State. G.S. 7B-2408.5(a). The motion must state the grounds for suppressing the evidence and must be accompanied by an affidavit containing facts supporting the motion. *Id.* Counsel may sign the affidavit based on information and belief rather than having the juvenile sign as long as counsel includes the source of the information and the basis for the belief in the affidavit. *Id.*; *see also State v. Chance*, 130 N.C. App. 107, 110–11 (1998) (observing that the adult statute governing suppression motions does not require the defendant to sign the affidavit in support of a suppression motion).

It is critical that counsel follow the requirements of G.S. 7B-2408.5(a). If the motion does not allege a legal basis for suppression or the affidavit does not support the ground alleged, the court may summarily deny the motion. G.S. 7B-2408.5(c). In adult cases, the failure to attach an affidavit to the motion waives the right to contest the evidence not only at trial, but also on appeal. *State v. Holloway*, 311 N.C. 573, 578 (1984). Although the reasoning in *Holloway* has not yet been extended to juvenile delinquency cases, counsel should ensure that the suppression motion complies with G.S. 7B-2408.5(a) to avoid waiver of the suppression issue.

If counsel makes a suppression motion during the adjudicatory hearing, the motion may be made "in writing or orally." G.S. 7B-2408.5(e). It is unclear whether a written suppression motion made during the adjudicatory hearing must include an affidavit. G.S. 7B-2408.5(e) states that a suppression motion made during the adjudicatory hearing "may be determined in the same manner as when made before the adjudicatory hearing." Although not specifically stated in the statute, if counsel files a written motion during the adjudicatory hearing, counsel should attach an affidavit to the motion.

The written motion should state both constitutional and statutory grounds for suppression. As part of the 2015 amendments to the Juvenile Code, the General Assembly added language making substantial violations of the G.S. Chapter 15A, the Criminal Procedure Act, a basis for suppression. *See infra* § 11.3C, Substantial Violations of Criminal Procedure Act.

Although not statutorily required, counsel should prepare a memorandum of law supporting the motion to suppress. A memorandum will place before the court the legal authority supporting the motion and will also supplement the record on appeal.

C. Renewal of Objection at Adjudicatory Hearing

If the juvenile files a suppression motion before the adjudicatory hearing and the court denies the motion, the juvenile must renew the motion during the adjudicatory hearing to preserve the motion for appeal. *State v. Grooms*, 353 N.C. 50, 66 (2000). The reason that suppression motions must be renewed is because courts consider pretrial rulings on suppression motions to be "preliminary." *State v. Waring*, 364 N.C. 443, 468 (2010). In practice, this means that the juvenile must object, based on the grounds included in the suppression motion as well as any other applicable grounds, when the State presents the evidence in court. *State v. Golphin*, 352 N.C. 364, 405 (2000).

If the juvenile preserves the suppression issue, but is adjudicated delinquent and appeals, the State bears the burden of proving on appeal that the error was harmless beyond a reasonable doubt. *State v. Robey*, 91 N.C. App. 198, 206 (1988). If the juvenile does not preserve the suppression issue, the issue will be subject to plain error review on appeal. *State v. Stokes*, 357 N.C. 220, 227 (2003). Under plain error review, the juvenile must show that the error had a "probable impact" on the trial court hearing. *State v. Lawrence*, 365 N.C. 506, 518 (2012). The difference between the two standards is critical and could affect the outcome of the appeal. *See, e.g.*, *State v. Pullen*, 163 N.C. App. 696, 702 (2004) (stating that the court "might reach a different result" if the error were preserved and the State bore the burden of proving that the error was harmless beyond a reasonable doubt). Thus, it is crucial that counsel renew the motion to suppress at the adjudicatory hearing when the State presents the evidence that was at issue in the suppression motion.

By amendment to the North Carolina Rules of Evidence in 2003, the General Assembly tried to eliminate the requirement that counsel must renew an objection when evidence that was the subject of an unsuccessful motion to suppress is presented at the adjudication. N.C. R. Evid. 103(a)(2). The Court of Appeals initially enforced this rule.

See State v. Rose, 170 N.C. App. 284, 288 (2005) (defendant not required to renew objection when evidence is offered at trial after motion to suppress denied before trial); *In re S.W.*, 171 N.C. App. 335, 337 (2005) (to same effect). The Court of Appeals thereafter held, however, that the General Assembly impermissibly interfered with the North Carolina Supreme Court's exclusive authority to make rules of practice and procedure for appeals. *State v. Tutt*, 171 N.C. App. 518, 524 (2005). Counsel should therefore continue to object if evidence that has been the subject of a previous motion to suppress is offered at the adjudication.

Counsel should also object during the hearing if evidence that has been ordered suppressed is presented, whether by design or inadvertence. The evidence has been ruled inadmissible and should be excluded from consideration by the court. An objection should also be made during the hearing if evidence that is subject to suppression is introduced by the State without prior notice that it will be offered. If necessary, counsel should request a continuance to research and present legal authority supporting suppression.

D. Appeal of Denial of Motion to Suppress Following Admission

The juvenile's right to appeal the denial of a motion to suppress after admitting the allegations in the petition is subject to multiple rules imposed by statute and case law. Counsel should take great care to comply with the rules to preserve the juvenile's right to challenge the denial of a suppression motion on appeal.

First, the right to appeal an order denying a motion to suppress is limited by statute. According to G.S. 7B-2408.5(g), the juvenile has the right to appeal an order denying a motion to suppress "upon an appeal of a final order of the court in a juvenile matter." G.S. 7B-2408.5(g). A dispositional order is a final order. G.S. 7B-2602; *In re A.L.*, 166 N.C. App. 276, 277 (2004). In contrast, an adjudication order is not a final order. *In re M.L.T.H.*, 200 N.C. App. 476, 480 (2009). G.S. 7B-2602 permits a juvenile to appeal an adjudication order within 70 days if the court does not enter disposition within 60 days. In this instance, the juvenile may be able to challenge an order denying a suppression motion as part of an appeal of an adjudication order. Because the literal terms of G.S. 7B-2408.5(g) require a "final order," the safer practice is to have the judge enter a disposition order within 60 days.

Second, if the juvenile enters an admission instead of proceeding to an adjudication hearing, counsel should give notice of the juvenile's intent to appeal the suppression order before entering an admission. Under G.S. 15A-979(b), a defendant in adult court has the right to appeal an order denying a motion to suppress after pleading guilty. Courts have construed G.S. 15A-979(b) to mean that the defendant must give notice to the prosecutor and the court of his intent to appeal the suppression order before pleading guilty. *State v. Tew*, 326 N.C. 732, 735 (1990); *State v. Brown*, 142 N.C. App. 491, 492 (2001). Courts have not extended the requirement to juvenile delinquency cases and may never do so because, unlike in adult cases, there are no statutory limitations on the issues juveniles may raise on appeal following an admission. As a best practice, however,

counsel should include a statement in the written transcript of admission reserving the right to appeal the order denying the motion to suppress.

Third, counsel must give proper notice of appeal. The juvenile's right to appeal is found in G.S. 7B-2602 and is discussed in more detail *infra* in § 16.3, Right to Appeal. According to G.S. 7B-2602, counsel must give notice of appeal in open court or in writing within 10 days after entry of a final order. In addition, if the juvenile enters an admission, counsel may not rely on the notice of the juvenile's intent to appeal the suppression order as a notice of appeal from a final order. "A Notice of Appeal is distinct from giving notice of intent to appeal." *State v. McBride*, 120 N.C. App. 623, 625 (1995). If the juvenile gives notice of intent to appeal the suppression order before entering an admission, but fails to give notice of appeal from a final order, the appeal will be subject to dismissal for lack of jurisdiction. *State v. Miller*, 205 N.C. App. 724, 725 (2010).

E. State's Right to Appeal Order Granting Motion to Suppress

G.S. 7B-2408.5 does not provide the State with the right to appeal an order granting a motion to suppress. Instead, the State's right to appeal a suppression order is in G.S. 7B-2604(b)(2). According to G.S. 7B-2604(b)(2), the State can only appeal from an order granting a motion to suppress if the order "terminates the prosecution of a petition." In *In re P.K.M.*, 219 N.C. App. 543, 545 (2012), the Court of Appeals dismissed the State's appeal from an order granting a motion to suppress because the trial court did not dismiss the case as part of its order on the motion to suppress. The Court of Appeals noted that an order granting a motion to suppress "does not, standing alone, dispose of a juvenile delinquency case" and suggested that a finding of insufficient evidence might be required to satisfy the requirement that the order terminate the prosecution of a petition. *Id.*

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).

11.4 Case Law: Motions to Suppress In-Custody Statements of Juveniles

A. Scope of Discussion in this Manual

This section reviews cases involving in-custody statements by juveniles. There may be additional grounds for suppressing statements that do not require that the juvenile be in custody, such as involuntary statements under the Fifth Amendment and statements in violation of the Sixth Amendment right to counsel. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 14.3, Illegal Confessions or Admissions (2d ed. 2013).

B. Definition of "In Custody"

Miranda and statutory warnings are required during questioning only when the juvenile is in custody. *See* G.S. 7B-2101. The court must first determine whether the juvenile was in custody in ruling on a motion to suppress. *In re Butts*, 157 N.C. App. 609, 612–13 (2003).

The standard for determining whether a person is in custody for *Miranda* purposes is, "based on the totality of the circumstances, whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest." *State v. Buchanan*, 353 N.C. 332, 339 (2001). This is an objective test of "whether a reasonable person in the position of the defendant would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way," and is not based on

the subjective intent of the interrogator or the perception of the person under questioning. *Butts*, 157 N.C. App. at 613, *quoting State v. Sanders*, 122 N.C. App. 691 (1996); *State v. Buchanan*, 353 N.C. 332 (2001). The juvenile's age is a factor in the custody analysis if the officer knew how old the juvenile was at the time of questioning or if the juvenile's age was "objectively apparent to a reasonable officer." *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011); *see also* LaToya Powell, *Applying the Reasonable Child Standard to Juvenile Interrogations After J.D.B. v. North Carolina*, ADMINISTRATION OF JUSTICE BULLETIN No. 2016/01 (Feb. 2016).

The Court of Appeals has held that the failure of the trial court to determine whether the juvenile was in custody before admitting into evidence the juvenile's statement to law enforcement officers is error. *Butts*, 157 N.C. App. at 614. If the remaining evidence is not sufficient to support an adjudication of delinquency, the trial court must dismiss the case. *Id*. at 616; *see also In re J.L.B.M.*, 176 N.C. App. 613, 625 (2006) (directing trial court to grant juvenile's motion to dismiss on remand if the court found that the juvenile was in custody when he made statements to officers because the remaining evidence was insufficient to support an adjudication).

C. Application of Standard for Determining Whether In Custody

North Carolina appellate courts have applied the test for determining whether a juvenile was in custody in the following contexts. In cases in which the court did not consider the juvenile's age in determining custody, the opinions in those cases may need to be reassessed in light of the U.S. Supreme Court's decision in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

School office. In *In re W.R.*, 363 N.C. 244 (2009), a principal and an assistant principal escorted the juvenile to a school office and questioned him. At some point, a school resource officer entered the office and joined the questioning. The officer also searched the juvenile for weapons. After approximately thirty minutes of questioning, the juvenile admitted that he had taken a knife to school the day before. When the case was heard for adjudication, the juvenile's attorney did not make a motion to suppress the juvenile's statement or object when the court admitted the statement into evidence. The North Carolina Supreme Court upheld the juvenile's adjudication, but noted that "no motion to suppress was made, no evidence was presented and no findings were made as to either the school resource officer's actual participation in the questioning of W.R. or the custodial or noncustodial nature of the interrogation." *Id*. at 248. Based on the "limited record" of the interrogation, the Court could not conclude that the juvenile was subject to custodial interrogation, which would have required *Miranda* warnings and the protections of G.S. 7B-2101. *Id.*

The Court of Appeals held in *In re K.D.L.*, 207 N.C. App. 453 (2010), that the juvenile was improperly subject to custodial interrogation without *Miranda* warnings or the warnings in G.S. 7B-2101. In *K.D.L.*, a teacher contacted a school resource officer after finding marijuana on a classroom floor. The teacher also suspected that the marijuana belonged to the juvenile. When the officer arrived, he patted the juvenile down and

transported him in his patrol car to the principal's office. The juvenile was then questioned by the principal for several hours in the presence of the officer. The Court of Appeals held that it was objectively reasonable for the juvenile to believe he was under arrest because being frisked and transported in a patrol car was not one of the "usual restraints" generally imposed during school. *Id*. at 461.

Home. In *In re Hodge*, 153 N.C. App. 102 (2002), the Court of Appeals held that the juvenile was not in custody when he was questioned by a police officer in the living room of his home. The questioning occurred in the presence of the juvenile's mother and younger brother. No court proceedings had been initiated, and the officer informed the juvenile that he did not have to talk to her and that she was not going to arrest him. Under these circumstances, the Court held that the juvenile "was not subject to a restraint on his freedom of movement of the degree associated with a formal arrest." *Id*. at 109.

The Court of Appeals reached a similar conclusion in *In re D.A.C.*, 225 N.C. App. 547 (2013). There, two officers investigating gunshots asked the juvenile to step outside of his house and talk. The juvenile agreed and went to a point about ten feet outside of the house. The juvenile's parents remained inside the house. The officers then talked to the juvenile for approximately five minutes. One of the officers was in uniform; the other was in civilian clothes. The officers did not place the juvenile under arrest, put handcuffs on him, or search his person. Based on these circumstances, the Court of Appeals held that the juvenile's admission that he fired a gun in the direction of the neighbor's house "did not result from an impermissible custodial interrogation." *Id*. at 555. One of the factors that led to the Court's holding was that the juvenile "was questioned in an open area in his own yard with his parents nearby." *Id*. at 553.

Police station. In *State v. Smith*, 317 N.C. 100 (1986) (decided under former G.S. 7A-595, now G.S. 7B-2101), *overruled in part on other grounds*, *State v. Buchanan*, 353 N.C. 332 (2001), the North Carolina Supreme Court held that the juvenile was in custody when two officers went to the juvenile's home, waited while he dressed, transported him in a police car with doors that could not be opened from the inside, read him his juvenile rights, and took him to the police station where he was again read his rights.

Public housing development. In *In re N.J.*, 230 N.C. App. 140 (2013) (unpublished), two police officers encountered the juvenile while on foot patrol in a public housing complex. The juvenile was sitting on an electrical box with three other juveniles. The officers arrested one of the other juveniles after finding marijuana in his pants pocket. The officers then found thirteen individually wrapped bags of marijuana in a cap on the ground near the electrical box. When the officers asked who the marijuana belonged to, the juvenile said that it was his. The Court of Appeals held that circumstances of the case did not "objectively suggest that a reasonable fifteen-year-old juvenile would have believed he was under arrest" because he was never handcuffed, frisked, or searched. In addition, the discussion occurred in an open area during daylight hours and the officers asked the three juveniles who were not initially arrested only one question.

D. Definition of "Interrogation"

There is no requirement under the federal constitution that officers give *Miranda* warnings to a person in custody if there is no interrogation. *State v. Ladd*, 308 N.C. 272, 280 (1983). The term "interrogation" includes both "express questioning" and its "functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980). "That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response." *Id*. at 301.

In *State v. Jackson*, 165 N.C. App. 763 (2004), the North Carolina Court of Appeals held that officers were not required to give the juvenile defendant *Miranda* warnings because they did not subject him to interrogation. When the officers were with the defendant after a court hearing, the defendant saw a cap that had previously been admitted into evidence at the hearing. According to one of the officers, the defendant "spontaneously" stated that he knew where the cap came from. The officer responded, "[S]o do I." *Id*. at 768. The defendant then made statements indicating that he participated in a robbery. The Court of Appeals held that the officer's response to the defendant did not amount to an interrogation because the officer would not have known that it was likely to elicit an incriminating response.

In contrast, in *In re L.I.*, 205 N.C. App. 155 (2010), the Court of Appeals reversed the trial court's order denying a motion to suppress statements the juvenile made to an officer because the officer asked questions that he should have known would elicit an incriminating response from the juvenile. The juvenile was in a car that was stopped by the officer. During the stop, the officer ordered the juvenile to get out of the car and then asked her for the marijuana that he "knew she had." *Id*. at 157. The juvenile denied having any marijuana, but turned away and reached into her pants. The officer then placed the juvenile under arrest when the juvenile would not allow him to search her pants. The officer also told the juvenile that she would face an additional charge if she took drugs to the jail. In response, the juvenile told the officer that she had drugs in her coat pocket. The Court of Appeals held that the officer's questions constituted an interrogation because the officer's "objective purpose" was to obtain an admission from the juvenile. *Id*. at 162.

The Court of Appeals also held in *In re K.D.L.*, 207 N.C. App. 453 (2010), that a school resource officer engaged in interrogation of a juvenile even though the officer did not ask the juvenile any questions. The officer was contacted after a teacher found marijuana on a classroom floor and suspected that it belonged to the juvenile. The officer frisked the juvenile and transported him to the principal's office. The officer then remained in the office while the principal questioned the juvenile for several hours. The Court of Appeals held that the officer's conduct "significantly increased the likelihood [the juvenile] would produce an incriminating response to the principal's questioning." According to the Court, the officer's "near-constant supervision" of the juvenile's interrogation would

have caused a reasonable person to believe the principal was interrogating him "in concert" with the officer.

E. Right to Have Parent, Custodian, or Guardian Present

Scope of right. The right to have a parent, custodian, or guardian present during custodial interrogation applies to all juveniles, including those who are 16 or over and no longer under the jurisdiction of the juvenile court. G.S. 7B-2101(a)(3); *State v. Fincher*, 309 N.C. 1 (1983) (decided under former G.S. 7A-595(a)(3), now G.S. 7B-2101(a)(3)); *State v. Smith*, 317 N.C. 100 (1986), *overruled in part on other grounds*, *State v. Buchanan*, 353 N.C. 332 (2001). A juvenile is a person who is under the age of 18 and is not married, emancipated, or a member of the armed forces of the United States. G.S. 7B-1501(17).

Before 2015, G.S. 7B-2101(b) stated that only juveniles under the age of 14 could not waive the requirement that a parent, guardian, custodian, or attorney be present when the juvenile made a statement during custodial interrogation. In 2015, the General Assembly extended the protection of G.S. 7B-2101(b) to juveniles under the age of 16. *See* 2015 N.C. Sess. Laws Ch. 58 (H 879). If the juvenile is younger than 16 years old, in custody, and questioned by officers without the presence of a parent, custodian, guardian, or attorney, any statement the juvenile made to the officers is "inadmissible." *In re J.L.B.M.*, 176 N.C. App. 613, 624 (2006) (citing G.S. 7B-2101(b)). If the court admits a statement from a juvenile who was younger than 16 years old, it must affirmatively find that the juvenile made the statement while in the presence of a parent, guardian, or custodian. *In re Young*, 78 N.C. App. 440, 441 (1985).

Suppression of a statement by a juvenile who is 16 years old or older is not automatic when a parent, custodian, or guardian is not present. However, if officers obtain the statement in violation of G.S. 7B-2101—for example, without advising the juvenile of the right to their presence or obtaining a waiver—the statement "must be suppressed." *State v. Branham*, 153 N.C. App. 91, 99 (2002).

Meaning of "parent, custodian, or guardian." The term "parent" is not defined in G.S. 7B-1501 or 7B-2101. There are also no cases that define the term with respect to questioning under G.S. 7B-2101. In *State v. Stanley*, 205 N.C. App. 707, 710 (2010), a criminal appeal involving sex offender registration, the Court of Appeals surveyed various definitions of the term "parent" and determined that it meant "a biological or adoptive parent." If officers obtained a statement from a juvenile in the presence of someone other than a "biological or adoptive parent"—such as a stepparent—counsel should consider filing a motion to suppress on the ground that the statement was obtained in violation of G.S. 7B-2101. *See, e.g., In re M.L.T.H.*, 200 N.C. App. 476, 488 (2009) (holding that an officer gave the juvenile an "improper choice" when advising the juvenile that he could talk to the officer in the presence of the juvenile's brother, who was not a parent, guardian, or custodian).

The term "custodian" is defined under G.S. 7B-1501(6) as "[t]he person or agency that has been awarded legal custody of a juvenile by a court." Examples of custodians include individuals who are granted custody under Chapter 50 of the North Carolina General Statutes (Divorce and Alimony). For instance, a court might grant custody of a juvenile under Chapter 50 to a family member, neighbor, or teacher.

The term "guardian" is not defined in G.S. 7B-1501 or 7B-2101. In *State v. Jones*, 147 N.C. App. 527 (2001), the juvenile defendant moved to suppress a statement that he gave to an officer in the presence of his aunt on the ground that his aunt was not a guardian under G.S. 7B-2101. The Court of Appeals stated that a guardian was a person with legal authority over the juvenile through "court-appointed authority" or "any authority conferred by government upon an individual." The Court held that the juvenile's aunt constituted a guardian because "[b]oth DSS and the local school system . . . gave [her] authority over defendant." *Id.* at 540.

In contrast, the juvenile defendant in *State v. Oglesby*, 361 N.C. 550, 555 (2007), moved to suppress a statement that he gave to an officer because the officer would *not* permit his aunt to be present during questioning. The juvenile argued that his aunt was a guardian for purposes of G.S. 7B-2101. In denying the motion to suppress, the North Carolina Supreme Court narrowed the definition of guardian to mean a person who has established a relationship with the juvenile "by legal process." The Court held that the juvenile's aunt did not qualify as a guardian because evidence that she was a "mother figure" to the defendant did not establish the "*legal* authority" necessary for her to be treated as a guardian under G.S. 7B-2101. *Id.* at 556 (emphasis in original). Although the Court did not give examples of individuals who are granted legal authority to act as guardians, G.S. 7B-600 and 35A-1220, *et seq.*, provide procedures for the appointment of guardians. Based on *Oglesby*, it would appear that a person appointed to act as a guardian under G.S. 7B-600 or 35A-1220, *et seq.*, would qualify as a guardian for purposes of G.S. 7B-2101.

Jones and *Oglesby* demonstrate the different ways in which violations of G.S. 7B-2101 might occur. In *Jones*, the juvenile defendant argued that the presence of a person who was not a guardian violated his rights. In *Oglesby*, the juvenile defendant argued that the exclusion of a person who was a guardian violated his rights. Counsel should therefore carefully analyze the circumstances surrounding any statement the juvenile made during custodial interrogation to determine whether there are grounds for suppression under G.S. 7B-2101.

Invocation and waiver of right by juvenile under 16. A juvenile who is under the age of 16 need not invoke and may not waive the requirement that a parent, guardian, custodian, or attorney be present when a statement is made during a custodial interrogation. G.S. 7B-2101(b). The right applies automatically.

The juvenile's right under G.S. 7B-2101 to have a parent, guardian, or custodian present during questioning belongs to the juvenile. A parent, custodian, or guardian cannot waive the right on the juvenile's behalf. See G.S. 7B-2101(b); *In re Butts*, 157 N.C. App. 609,

614 (2003). In *Butts*, the juvenile, who was less than 14 years of age, was questioned at the police station and made a statement without a parent, custodian, guardian, or attorney present. The lower court admitted the juvenile's statement without determining whether he was in custody on the ground that custody was irrelevant because the juvenile's father waived the right to a parent's presence by voluntarily leaving the room. In reversing and ordering a new adjudicatory hearing, the Court held that a parent cannot waive the requirement of a parent's presence during a custodial interrogation of a juvenile under the age of 14 (now, 16). The juvenile's statement would therefore be inadmissible at adjudication if he was found to be in custody at the time it was given. Similarly, in a case under former G.S. 7A-595(b) (now G.S. 7B-2101(b)), the Court held that the lower court must affirmatively find that the 12-year-old juvenile's custodial statement was made in the presence of a parent, guardian, custodian, or attorney before admitting it into evidence. *In re Young*, 78 N.C. App. 440 (1985).

Invocation and waiver of right by juvenile 16 or over. For officers to question a juvenile who is 16 years old or older and in custody, they must obtain a waiver of the right to have a parent, custodian, or guardian present. For a discussion of the requirements for waiver, see *infra* § 11.4I, Knowing, Willing, and Understanding Waiver of Rights.

When a juvenile who is 16 years old or older invokes the right to have a parent, custodian, or guardian present, questioning must cease. *State v. Branham*, 153 N.C. App. 91, 99 (2002). In *State v. Smith*, 317 N.C. 100 (1986), the juvenile defendant asked that his mother be present during questioning after he was read his rights at the police station. Before his mother arrived, two officers resumed speaking to the juvenile, which resulted in the juvenile making a confession. Even though the juvenile stated that he wanted to make a statement without his mother present and signed a waiver form, the Court held that the officers violated his statutory rights by resuming questioning after he had invoked the right to have his mother present. In questioning a juvenile who is 16 years old or older, however, police officers are not required to inform the juvenile that his parents or attorney are actually present. *State v. Gibson*, 342 N.C. 142, 149 (1995).

A parent, custodian, or guardian may not waive the juvenile's right to the parent's presence after the juvenile has invoked the right. *State v. Branham*, 153 N.C. App. 91, 98 (2002). In *Branham*, the juvenile defendant requested that his mother be present as he was being questioned. Although she was in the police station, his mother did not want to be present. The Court of Appeals held that a parent may not waive the juvenile's right under G.S. 7B-2101(a)(3), and the juvenile defendant was entitled to a new trial at which his statement would be suppressed.

In some cases, it may not be clear whether the juvenile invoked the right to have a parent, custodian, or guardian present. In criminal cases, officers are not required to cease questioning unless the defendant "articulate[s] his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis v. United States*, 512 U.S. 452, 459 (1994). In *State v. Saldierna*, 369 N.C. 401 (2016), the Supreme Court of North Carolina extended the reasoning of *Davis* to cases involving juveniles and held that officers have

"no duty to ask clarifying questions or to cease questioning" without an "unambiguous, unequivocal invocation" of the juvenile's right under G.S. 7B-2101 to the presence of a parent, custodian, or guardian.

The Supreme Court in *Saldierna* reversed the Court of Appeals' decision, which held that "an ambiguous statement touching on a juvenile's right to have a parent present during an interrogation triggers a requirement for the interviewing officer to clarify the juvenile's meaning." *State v. Saldierna*, 242 N.C. App. 347, 359 (2015). The Court of Appeals based its holding on "concerns about the special vulnerability of juveniles subject to custodial interrogations." *Id.* The Court of Appeals relied on the U.S. Supreme Court's decision in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), which recognized that children often lack the judgment to avoid choices that could be detrimental to them and that children are more susceptible to outside pressures than adults. The U.S. Supreme Court raised similar concerns in previous opinions. *See, e.g., Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion) ("Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult."); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (observing that juveniles are "not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and . . . [are] unable to know how to protect [their] own interests or how to get the benefits of [their] constitutional rights"); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (plurality opinion) ("[W]e cannot believe that a lad of tender years is a match for the police in such a contest [as custodial interrogation]. . . . He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.").

The Supreme Court in *Saldierna* did not discuss the impact of *J.D.B.* and other U.S. Supreme Court decisions recognizing the differences between adults and juveniles. These differences may be relevant to determining in particular cases whether a reasonable officer would have considered statements made by the juvenile to be a clear request to have a parent, guardian, or custodian present during questioning. The Supreme Court also did not address provisions giving juveniles greater protection than adults in the court system. *See* G.S. 7B-2101(c) (providing that if juvenile indicates "in any manner" and "at any stage of the questioning" that the juvenile does not wish to be questioned further, the officer must cease questioning); LaToya Powell, *A Juvenile's Request for a Parent During Custodial Interrogation Must Be Unambiguous*, ON THE CIVIL SIDE, UNC SCH. OF GOV'T BLOG (Mar. 8, 2017) (discussing impact of this statutory requirement). If there is some ambiguity in the juvenile's statements about having a parent present during questioning, counsel should consider arguing that concerns about providing greater protection to juveniles would have led a reasonable officer to believe the juvenile wanted a parent present while the officer spoke to the juvenile. *See, e.g., In re T.E.F.*, 359 N.C. 570, 575, (2005) (holding that the State has a "higher burden" to protect the rights of juveniles); *Lewis v. State*, 288 N.E.2d 138, 141 (Ind. 1972) ("The concept of establishing different standards for a juvenile is an accepted legal principle since minors generally hold a subordinate and protected status in our legal system").

Even where the juvenile has not clearly invoked the statutory right to have a parent, guardian, or custodian present, the juvenile's statements are inadmissible unless the juvenile knowingly, willingly, and understandingly waived that right, which is a separate question. In *Saldierna*, the Supreme Court remanded the case for a determination of whether there was a valid waiver. For a discussion of the requirements for waiver and the result on remand, see *infra* § 11.4I, Knowing, Willing, and Understanding Waiver of Rights.

F. Right to Consult with and Have Attorney Appointed

A juvenile has the right to consult with an attorney during questioning, and an attorney must be appointed if the juvenile so requests. G.S. 7B-2101(b). Although the statute provides for the appointment of counsel during questioning, in practice questioning ceases and an attorney is appointed only if a petition is filed. The U.S. Supreme Court held in *Davis v. United States*, 512 U.S. 452, 459 (1994) that officers are not required to stop an interrogation if the defendant in a criminal case makes an "ambiguous or equivocal reference to an attorney." Relying on *Davis*, the Supreme Court of North Carolina held in *State v. Saldierna*, 369 N.C. 401 (2016), that officers do not have a duty to clarify an ambiguous assertion of the juvenile's statutory right under G.S. 7B-2101 to the presence of a parent, custodian, or guardian. *See supra* "Invocation and waiver of right by juvenile 16 or over" in § 11.4E, Right to Have Parent, Custodian, or Guardian Present. However, the U.S. Supreme Court has recognized that different treatment is required of juveniles and adults with respect to constitutional rights under *Miranda* and in other contexts. *See id.* (discussing cases). Counsel should argue that these differences warrant clarifying questions when there is some ambiguity about whether the juvenile has invoked the constitutional right to an attorney.

G. Right to Remain Silent

A juvenile has the right to remain silent. *In re Gault*, 387 U.S. 1, 55 (1967). In criminal cases, a defendant must unambiguously state that he wishes to remain silent in order for an interrogation to end. *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010). The Supreme Court of North Carolina reached a similar conclusion in *State v. Saldierna*, 369 N.C. 401 (2016), with respect to the juvenile's statutory right to have a parent, custodian, or guardian present during questioning. *See supra* "Invocation and waiver of right by juvenile 16 or over" in § 11.4E, Right to Have Parent, Custodian, or Guardian Present. However, the U.S. Supreme Court has recognized that different treatment is required of juveniles and adults with respect to constitutional rights under *Miranda* and in other contexts. *See id.* (discussing cases). Counsel should argue that these differences warrant clarifying questions when there is some ambiguity about whether the juvenile has invoked the constitutional right to silence.

H. When Questioning Must Cease

Interrogation must cease if the juvenile invokes the right to remain silent, the right to have an attorney present, or the right to have a parent, guardian, custodian present. *State*

v. Branham, 153 N.C. App. 91, 95 (2002); *see also supra* § 11.4E, Right to Have Parent, Custodian, or Guardian Present. Questioning may resume if the juvenile initiates further communication with officers. *Id.*

In *State v. Johnson*, 136 N.C. App. 683 (2000), the juvenile invoked his right to silence during a custodial interrogation in his mother's presence. His mother then interrupted and told him "we need to get this straightened out today and we'll talk with him anyway." *Id.* at 686. After the juvenile "nodded affirmatively" to the officer, the officer asked if he wanted to answer questions without a lawyer or parent present. *Id*. The juvenile answered "yes" and signed a waiver of rights form. The Court held that the juvenile's nod of his head re-initiated communication with the officer after he had invoked the right to remain silent and that his statement was therefore admissible.

I. Knowing, Willing, and Understanding Waiver of Rights

Constitutional and statutory requirements. Constitutional and statutory rights may be waived by the juvenile, except for the requirement that a parent, guardian, custodian, or attorney be present during custodial interrogation of a juvenile under 16 years of age. G.S. 7B-2101(b). Before admitting into evidence a statement resulting from a custodial interrogation, the court must make a finding that a juvenile "knowingly, willingly, and understandingly waived" his or her rights. G.S. 7B-2101(d). The finding must be supported by record evidence. *State v. Brantley*, 129 N.C. App. 725, 729 (1998). The State bears the burden of proving by a preponderance of the evidence that the waiver of both constitutional and statutory rights was "knowing and intelligent." *State v. Flowers*, 128 N.C. App. 697, 701 (1998).

Test. In determining whether a waiver of rights was voluntary, the court must look at the "totality of the circumstances," including custody, mental capacity, physical environment, and manner of interrogation. *State v. Bunnell*, 340 N.C. 74, 80 (1995). The court must consider the "specific facts and circumstances of each case, including background, experience, and conduct of the accused." *State v. Johnson*, 136 N.C. App. 683, 693 (2000); *see infra* § 11.5B, Age as Factor in Legality of Search and Seizure. A lay witness, including the interrogating officer, may offer an opinion on the juvenile's understanding of his or her rights if based on personal observation. *See State v. Johnson*, 136 N.C. App. at 693 (opinion testimony of detectives regarding the juvenile's understanding of his waiver of rights was properly admitted because they were present when the juvenile was read his rights and when he signed the waiver form). When the interrogation involves a juvenile, the court must "carefully scrutinize" the circumstances to determine whether the juvenile "legitimately waived" his rights. *State v. Reid*, 335 N.C. 647, 663 (1994).

In *State v. Brantley*, 129 N.C. App. 725 (1998), the Court of Appeals held that the juvenile knowingly, voluntarily, and understandingly waived her rights before making a statement to officers where the officers informed the juvenile that she could have a parent or guardian present and the juvenile signed a waiver of rights form describing her *Miranda* rights. Similarly, the Court held in *State v. Williams*, 209 N.C. App. 441 (2011),

that the juvenile knowingly and voluntarily waived his right to have his mother present during questioning. In *Williams*, the juvenile initially invoked his right to have his mother present during questioning on a murder charge. When officers later returned to the interrogation room, the juvenile said that the officers had "misunderstood" him and that he only wanted his mother present for questioning on a separate robbery charge. *Id*. at 443. He also said that he did not want his mother present when he talked to officers about the murder charge.

In contrast, on remand from the Supreme Court's decision in *State v. Saldierna*, discussed previously, the Court of Appeals held that the juvenile did not knowingly, willingly, and understandingly waive his rights before confessing to an interrogating officer. *State v. Saldierna*, ___ N.C. App. ___, 803 S.E.2d 33 (2017), *rev. granted*, ___ N.C. ___ (Nov. 1, 2017). The juvenile was 16 years old, had an 8th grade education, and had no prior experience with police officers. His primary language was Spanish. The juvenile was also interrogated in the presence of three officers and signed an English waiver form. Immediately after signing the form, the juvenile asked to call his mother. In ruling on the juvenile's waiver, the Court of Appeals explained, "[t]o be valid, a waiver should be voluntary, not just on its face, i.e., the paper it is written on, but *in fact*. It should be unequivocal and unassailable when the subject is a juvenile." *Id*. at 41 (emphasis in original). Based on the totality of the circumstances, the Court determined that the juvenile's waiver was invalid. *Id*. at 43.

The North Carolina Court of Appeals has held that an interrogating officer does not have a duty to explain constitutional or statutory rights to a juvenile in greater detail than is required by *Miranda* and the statute. *State v. Flowers*, 128 N.C. App. 697, 700 (1998) (decided under former G.S. 7A-595(a), now G.S. 7B-2101(a)), *cited by State v. Lee*, 148 N.C. App. 518, 521 (2002); *see also supra* "Invocation and waiver of right by juvenile 16 or over" in § 11.4E, Right to Have Parent, Custodian, or Guardian Present (discussing whether officer has obligation to clarify ambiguous invocation of this statutory right). However, the Supreme Court has more recently acknowledged that juveniles possess only an "incomplete ability to understand the world around them" and that the risk of false confessions is "all the more troubling . . . when the subject of custodial interrogation is a juvenile." *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 273 (2011). In addition, there is now a growing body of research demonstrating that juveniles need more protections than adults. One study concluded that commonly-used juvenile *Miranda* warnings "are far beyond the abilities of the more than 115,000 preteen offenders charged annually with criminal offenses" Richard Rogers et al., *The Comprehensibility and Contents of Juvenile Miranda Warnings*, 14 PSYCHOL. PUB. POL'Y & L. 63 (2008). In another study, juveniles age 15 and younger were significantly more likely than older juveniles to make decisions that represented compliance with authority. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333 (2003). If counsel is assigned to a case in which the interrogating officer did not explain *Miranda* warnings to the juvenile and there is a question of whether the juvenile understood his rights before waiving them, counsel should consider presenting these studies and arguing that the juvenile's waiver was not voluntary.

Express waiver not required. Although the court must make a finding that the juvenile knowingly waived his or her rights under the statute, the court is not required to base its finding on an express waiver by the juvenile of his or her rights. If there is not an express waiver, the State has a heavy burden to show a knowing and voluntary waiver. *State v. Flowers*, 128 N.C. App. 697, 701 (1998) (decided under former G.S. 7A-595(a), now G.S. 7B-2101(a)); *North Carolina v. Butler*, 441 U.S. 369, 375–76 (1979). In *Flowers*, the Court found that the juvenile made a legally sufficient waiver when he responded that he understood after being informed of his rights and then responded to questions. There can be no waiver if a juvenile has not been properly advised of the rights at issue. *State v. Fincher*, 309 N.C. 1, 11 (1983).

J. Recording of Statements

G.S. 15A-211 requires electronic recording of custodial interrogations of juveniles in criminal investigations conducted at any place of detention. The requirement is not limited to specific offenses. The statute does not define the term "juvenile" and may apply to any person under the age of 18. *See* G.S. 7B-101(14) (defining juvenile for purposes of Juvenile Code as person under age 18); *see also State v. Fincher*, 309 N.C. 1 (1983) (applying statutory juvenile warning requirements to defendants under age 18). If investigating officers violate the statute, the trial court must consider the officers' non-compliance in adjudicating any suppression motions based on the interrogation. G.S. 15A-211(f). The failure to comply with the statute is also admissible in support of any claims that the juvenile's statement was involuntary or unreliable. *Id*. For a further discussion of the legislation, see John Rubin, *2007 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at 5–6 (UNC School of Government, Jan. 2008), and John Rubin, *2011 Legislation Affecting Criminal Law and Procedure* at 35, no. 63 (UNC School of Government, Dec. 12, 2011).

11.5 Suppression of Evidence Obtained through Illegal Search and Seizure

A. Scope of Discussion in this Manual

Much of the case law regarding search and seizure is derived from criminal proceedings. The discussion in this manual is limited to age as a relevant factor in determining whether a seizure has occurred within the meaning of the Fourth Amendment and a brief review of juvenile case law regarding search and seizure in the school setting.

The North Carolina Defender Manual contains a chapter devoted to the issues surrounding warrantless search and seizure cases. *See* 1 NORTH CAROLINA DEFENDER MANUAL Ch. 15, Stops and Warrantless Searches (2d ed. 2013).

B. Age as Factor in Legality of Search and Seizure

The North Carolina Court of Appeals held in a 2007 case that age is a relevant factor in determining whether a person has been seized within the meaning of the Fourth

Amendment. *In re I.R.T.*, 184 N.C. App. 579 (2007). In *I.R.T.*, the juvenile was 15 years old when he was questioned by two officers with gang unit emblems on their shirts and carrying visible guns, who had arrived in marked police cars. Under these circumstances, including the consideration of the age of the juvenile, the Court found that a reasonable person would not have felt free to leave and that the juvenile was therefore "seized" within the meaning of the Fourth Amendment. *Id.* at 585. The Court upheld the denial of the juvenile's motion to suppress the evidence resulting from a search, however, finding that based on the juvenile's conduct and other circumstances the officers had reasonable suspicion to seize the juvenile as well as probable cause to search the juvenile.

C. Case Law: Search and Seizure at School

Standard for school searches. In *New Jersey v. T.L.O.*, 469 U.S. 325, 341–42 (1985), the U.S. Supreme Court distinguished between a search of a student in school performed by a police officer and one conducted by a school official. Law enforcement officers must conform to the requirements of the Fourth Amendment. School officials, however, are held to a lower standard. To determine the legality of a search by a school official, the court must first determine whether the search was justified at its inception. Second, the court must determine whether the search was reasonably related to the circumstances that initially justified the search. In *In re Murray*, 136 N.C. App. 648, 652 (2000), the North Carolina Court of Appeals followed *T.L.O.* and held that the search of a student's book bag at school by a principal was reasonable under this standard.

In *In re D.D.*, 146 N.C. App. 309, 319 (2001), the Court of Appeals applied the standard from *T.L.O.* and upheld a search of a juvenile by police officers working "in conjunction with" school officials. The Court has since upheld other searches and seizures of juveniles by school resource officers under the *T.L.O.* standard. *See, e.g., In re J.F.M. & T.J.B.*, 168 N.C. App. 143 (2005) (upholding detention of a student by a school resource officer); *In re S.W.*, 171 N.C. App. 335 (2005) (affirming search of a student by an officer who worked "exclusively" as a school resource officer); *In re D.L.D.*, 203 N.C. App. 434, 439 (2010) (upholding search of a student at school by a sheriff's corporal assigned to the school and who had made "numerous arrests" there). The Court of Appeals has stated that the *T.L.O.* standard applies to officers who are "primarily responsible to the school district rather than the local police department." *In re J.F.M. & T.J.B.*, 168 N.C. App. at 147.

The Court has also recognized that a school search of a juvenile by "outside law enforcement officers" would be weighed against the standard of probable cause. *In re D.D.*, 146 N.C. App. at 318. Other courts have reached similar conclusions. *See, e.g., State v. Meneese*, 282 P.3d 83, 88 (Wash. 2012) (school resource officer with police duties, but no authority to discipline students, held to the standard of probable cause for search of juvenile's backpack); *Patman v. State*, 537 S.E.2d 118, 120 (Ga. App. 2000) (police officer working special duty at a high school required to have probable cause to search juvenile's jacket pocket), *overruled on other grounds by State v. Kazmierczak*, 771 S.E.2d 473, 479 (Ga. App. 2015).

Intrusive school searches. Although searches by school officials are not subject to probable cause, intrusive searches might not survive scrutiny under the lower standard outlined in *T.L.O.* In *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377 (2009), the U.S. Supreme Court held that a strip search of a 13-year-old student by an assistant principal was unreasonable where there was no indication of danger to students from the type and quantity of drugs that led to the search and where there was no reason to suspect that the student was carrying pills in her underwear. Based on *Redding*, the North Carolina Court of Appeals reversed a delinquency adjudication based on drugs found during a "bra-lift" that was conducted during a school-wide search because the search lacked "individualized grounds for suspecting" that the juvenile had drugs on her person. *In re T.A.S.*, 213 N.C. App. 273, 280-81 (2011). However, the North Carolina Supreme Court vacated the Court of Appeals opinion and remanded the case to district court for further findings. *In re T.A.S.*, 366 N.C. 269, 269 (2012).

11.6 Suppression of Illegal Identifications

A. Constitutional Grounds

Due Process prohibits identification procedures that are impermissibly suggestive. For a discussion of applicable law and cases addressing whether identification procedures are impermissibly suggestive, see 1 NORTH CAROLINA DEFENDER MANUAL § 14.4, Illegal Identification Procedures (2d ed. 2013).

B. Eyewitness Identification Reform Act

In 2007, the North Carolina General Assembly enacted the Eyewitness Identification Reform Act (hereinafter "the Act") in order to create uniform eyewitness identification procedures and reduce the risk of misidentification. *See* G.S. 15A-284.50 through G.S. 15A-284.53. The Act initially applied only to photo line-ups and live line-ups, not show-ups. *State v. Rawls*, 207 N.C. App. 415, 423 (2010). In 2015, the General Assembly amended the Act so that it would also apply to show-ups. *See* 2015 N.C. Sess. Laws Ch. 212 (H 566).

Although the Act does not specify that it is applicable to juvenile delinquency proceedings, the purpose of the Act is "to help solve crime, convict the guilty, and exonerate the innocent" by improving eyewitness identification procedures. G.S. 15A-284.51. As these ends are equally important in juvenile court, counsel should argue that any eyewitness identification of a juvenile by lineup must comply with the requirements of the Act.

The Act provides several requirements for photo line-ups. For instance, photo line-ups must be conducted by an independent administrator, who must show the photos to the witness sequentially, one at a time. G.S. 15A-284.52(b). The Act also provides requirements for show-ups. A show-up is only permitted "when a suspect matching the description of the perpetrator is located in close proximity in time and place to the crime,

or there is reasonable belief that the perpetrator has changed his or her appearance in close time to the crime, and only if there are circumstances that require the immediate display of a suspect to an eyewitness." G.S. 15A-284.52(c1). Officers may not conduct a show-up with a photograph, but must use a live suspect. *Id*.

There are two remedies for non-compliance with the Act that could be argued in a juvenile case. First, failure to comply with any of the statutory requirements may be considered by the court in ruling on a motion to suppress an eyewitness identification. Second, failure to comply with any of the statutory requirements is admissible as evidence to support a claim of eyewitness misidentification if the evidence is otherwise admissible. G.S. 15A-284.52(d)(1), (2). If a juvenile line-up or show-up does not comply with statutory requirements, counsel should cite the Act in a written motion to suppress, in argument, and in questioning regarding eyewitness misidentification.

For a further discussion of the Eyewitness Identification Reform Act, *see* John Rubin, *2007 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at 2–4 (Jan. 2008).