Chapter 12
Adjudicatory Hearings

12.1 Overview

The adjudicatory hearing is the hearing before a district court judge to determine whether a juvenile has committed a delinquent act. At the hearing, the juvenile can either enter an admission to the allegations in the petition or contest the allegations. If the juvenile contests the allegations, the State must prove the allegations beyond a reasonable doubt. Counsel for the juvenile may cross-examine the State's witnesses and may present testimony and other evidence. Procedures for adjudicatory hearings are set forth in Article 24 of the Juvenile Code, G.S. 7B-2400 through 7B-2414.

This chapter outlines the basic procedures for an adjudicatory hearing. Many aspects of the adjudicatory process are discussed in greater detail in other chapters, which are referenced throughout this chapter.

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.

12.3 Negotiating an Admission

A. Juvenile Defender Performance Guidelines

Admissions and negotiations over admissions are discussed in Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level § 8 (2007) adopted by the North Carolina Commission on Indigent Defense Services, and reprinted *infra* in Chapter 18 of this manual.

B. Negotiation with the Prosecutor

Counsel should contact the prosecutor in each case to discuss the possibility of negotiating an admission. The prosecutor may be willing to accept an admission to a misdemeanor rather than a felony or make some other concession that would benefit the juvenile. In some districts, the prosecutor may be willing to continue adjudication with the agreement that the petition will be dismissed if the juvenile abides by certain conditions, or enter into a similar agreement that disposition will be continued. If the prosecutor makes an admission offer, counsel must inform the juvenile of the offer even if the offer does not seem favorable to the juvenile and is likely to be rejected. *See, e.g., State v. Simmons*, 65 N.C. App. 294, 299 (1983) (holding that a defense attorney in a criminal case has a duty to advise the defendant if the State makes a plea offer).

C. Discussion of Options with Juvenile

Counsel should discuss the allegations and evidence with the juvenile before the hearing, advising the juvenile of the strengths and weaknesses of the case. The juvenile must be informed of the right to contest the allegations and have the court adjudicate the matter after hearing the evidence, and that these rights are waived by making an admission. The juvenile should be informed that the petition must be dismissed if the court does not find that the State has proven the allegations in the petition beyond a reasonable doubt. Counsel should advise the juvenile regarding defense strategies and the consequences of an adjudication based on the allegations.

Counsel should discuss the possible benefits and risks of a contested adjudicatory hearing versus negotiating an admission. Considerations might include whether there is an eyewitness, physical evidence, or an admissible confession or statement of a co-respondent. The ability to expunge an adjudication of delinquency may also be an important factor in making decisions about an admission because some records of adjudication may not be expunged. G.S. 7B-3200(b); *see infra* Chapter 17, Expunction of Juvenile Records. Additionally, certain juvenile adjudications may be used in subsequent criminal proceedings. For example, prior adjudications may affect the juvenile in a subsequent criminal case at the time bail is set, during plea negotiations, at trial for impeachment purposes, and as an aggravating factor at sentencing. G.S. 7B-3000(e), (f); *see supra* "Statutory exceptions for use in limited criminal court proceedings" in § 2.8A, Juvenile Court Records. Counsel should advise the juvenile that an admission has the same legal effect as an adjudication by the court. The juvenile must weigh the likelihood

of an adjudication for the offense alleged versus the potential for dismissal in considering a negotiated admission. Counsel should also advise the juvenile of the possible dispositional orders pursuant to an adjudication on the petition or a negotiated admission.

Counsel should advise the juvenile that he can appeal an admission and challenge errors in the court's acceptance of an admission. *See infra* § 16.3F, Appeal Involving an Admission by a Juvenile. However, counsel should also advise the juvenile that the State will have the opportunity to pursue any of the original charges again if the appeal is successful and the admission is vacated. *See In re D.A.F.*, 179 N.C. App. 832, 837 (2006) (holding that the juvenile's successful challenge to his admission "place[d] the parties as they were at the beginning of the proceedings"). In addition, counsel should advise the juvenile that any concessions by the State that were included in the admission agreement will no longer be enforceable if the admission is vacated. *See id*. (reinstating three charges that were dismissed as part of the juvenile's admission agreement with the State); *see also State v. Fox*, 34 N.C. App. 576, 579 (1977) ("Where a defendant elects not to stand by his portion of a plea agreement, the State is not bound by its agreement to forego the greater charge.").

There are special considerations in negotiations over an admission if the juvenile is not a citizen of the United States. Counsel should investigate negotiation of an admission that will not jeopardize the juvenile's opportunity to remain in the country or become a legal citizen. *See infra* § 12.7, Collateral Effects of Adjudication.

D. Decision of Juvenile

All admission offers must be conveyed to the juvenile by counsel in a confidential setting. Counsel should explain all considerations regarding an admission offer and may explain the offer to a parent with the juvenile's consent. It is the decision of the juvenile, however, whether to accept an admission offer or proceed to adjudication.

12.4 Conduct of the Hearing on an Admission

A. Entering an Admission

After preliminary matters are concluded the court must inquire of the juvenile whether the allegations in the petition are "admitted" or "denied." *In re Wilson*, 153 N.C. App. 196, 197 (2002), *citing* G.S. 7B-2407, 7B-2408 (proper inquiry by court is whether the juvenile "admits" or "denies" the allegations, and juvenile's counsel should respond in kind; use of terms "responsible" or "not responsible" is not correct).

Counsel should ensure that the hearing is on the record. This will allow appellate review of the procedures that resulted in the admission.

B. Admission by Juvenile

Court must personally address juvenile. Before an admission may be accepted, the judge must personally inform the juvenile of statutory rights and determine whether the juvenile understands the consequences of an admission. G.S. 7B-2407(a). Specifically, the judge must:

- inform the juvenile of the right to remain silent and that any statement the juvenile makes may be used against the juvenile;
- determine that the juvenile understands the nature of the charge;
- inform the juvenile of the right to deny the allegations;
- inform the juvenile that by making an admission the right to confront witnesses is waived;
- determine that the juvenile is satisfied with the juvenile's representation; and
- inform the juvenile of the most restrictive disposition on the charge.

G.S. 7B-2407(a)(1)–(6).

The language of G.S. 7B-2407(a) is mandatory, and the failure of the court to address any one of these statutory provisions with the juvenile constitutes reversible error. *In re T.E.F.*, 359 N.C. 570, 575-76 (2005). A signed transcript of admission will not cure an insufficient colloquy with the juvenile that omits the required inquiries. *In re A.W.*, 182 N.C. App. 159, 162 (2007). If the court imposes a disposition that exceeds the disposition described in the transcript of admission or the court's colloquy with the juvenile, the juvenile must be given an opportunity to withdraw the admission. *In re D.A.F.*, 179 N.C. App. 832, 837 (2006); *In re W.H.*, 166 N.C. App. 643, 647 (2004).

Discussions about admission. The court must determine that the admission is the result of an informed choice by the juvenile before accepting an admission. This determination must be based on inquiries by the court of the prosecutor, the juvenile's attorney, and the juvenile as to whether there were prior discussions regarding the terms of the admission and whether there was any improper pressure on the juvenile to admit. G.S. 7B-2407(b).

Factual basis for admission. An admission may be accepted by the court only if the judge determines that there is a factual basis for the admission. The court may base this decision on any of the following:

- a statement of the facts from the prosecutor;
- a written statement of the juvenile;
- sworn testimony, which may contain reliable hearsay; or
- a statement of facts by the juvenile's attorney.

G.S. 7B-2407(c).

The statute does not recognize other sources for a factual basis. In *In re D.C.*, 191 N.C. App. 246, 248 (2008), the Court of Appeals held that G.S. 7B-2407(c) "does not provide

that a juvenile petition may serve as information for determining that there is a factual basis for admitting a juvenile's plea." Based on the limited number of sources described in G.S. 7B-2407(c) and the Court's strict interpretation of the statute in *In re D.C.*, it seems unlikely that a mere transcript of admission or stipulation to the existence of a factual basis, without supporting information from at least one of the above sources, would be sufficient to establish the factual basis for an admission.

If the prosecutor provides a statement of the facts, counsel should request an opportunity to supplement the statement with mitigating or conflicting information as appropriate. Counsel should ask to question witnesses if they might provide helpful information. Caution must be exercised by counsel in providing facts or asking additional questions, however, to avoid presenting or eliciting information that may be harmful to the juvenile.

Transcript of admission by juvenile. Counsel should always submit to the court a "Transcript of Admission by Juvenile," filled out by the juvenile, juvenile's counsel, and the prosecutor. *See* Form AOC-J-410 (Transcript of Admission by Juvenile) (Mar. 2012). This will confirm any negotiations and protect the record on appeal. Although judges in some districts do not require written transcripts of admissions for misdemeanors, counsel should insist that they be completed and filed.

The transcript form includes the information that the judge is required to address personally with the juvenile pursuant to G.S. 7B-2407. Completion and entry of the Transcript of Admission into evidence does not fulfill the court's statutory duties if the court does not, in fact, address the juvenile personally regarding the matters on the form. *In re A.W.*, 182 N.C. App. 159, 162 (2007).

Counsel should review the transcript of admission with the juvenile and assist the juvenile in completing the form. An admission should not be entered if the juvenile does not understand what is being admitted and the possible consequences thereof. A juvenile's inability to understand the information in the transcript may indicate the need for counsel to move for an evaluation of capacity to proceed. *See supra* § 7.5, Standard for Capacity to Proceed to Adjudication. Counsel should make a copy of the transcript to review with the juvenile as the judge is reciting the questions.

***Alford* Admission.** In *North Carolina v. Alford*, 400 U.S. 25 (1970), the U.S. Supreme Court held that a defendant may enter a guilty plea while maintaining innocence. The trial court may accept the plea as long as the defendant enters the plea knowingly, voluntarily, and intelligently. *State v. McClure*, 280 N.C. 288, 294 (1972). A conviction based on an *Alford* plea carries the consequences of a conviction based on a guilty plea. *State v. Alston*, 139 N.C. App. 787, 793 (2000).

In *In re C.L.*, 217 N.C. App. 109 (2011), the Court of Appeals upheld an *Alford* admission in a juvenile delinquency case. The juvenile did not challenge the validity of the *Alford* admission and argued instead that the trial court failed to ensure that he understood he would be treated as guilty based on his *Alford* admission. Applying a totality of circumstances test, the court found that the juvenile's admission was entered

knowingly, voluntary, and intelligently. *Id*. at 116. The juvenile did not argue that the trial court failed to comply with the colloquy requirements in G.S. 7B-2407 for the taking of an admission; the Court of Appeals therefore declined to apply the "strict compliance" test articulated in *In re T.E.F.*, 359 N.C. 570 (2005), for the taking of admissions.

If the juvenile intends to enter an *Alford* admission as part of a negotiated arrangement, counsel should obtain the prosecutor's consent to avoid withdrawal of the arrangement if the prosecutor is dissatisfied with the juvenile's unwillingness to admit responsibility.

12.5 Conduct of Contested Adjudicatory Hearing

A. Sequestering Witnesses

Before the adjudicatory hearing begins, counsel should move to sequester witnesses who might be called to testify at the adjudicatory hearing if doing so would benefit the defense. It is usually helpful to the juvenile for the State's witnesses to be sequestered. This prevents subsequent witnesses from conforming their testimony to prior testimony and requires them to rely only on their own memory of events.

B. Attachment of Jeopardy

Jeopardy attaches when the court begins to hear evidence regarding the allegations in the petition. G.S. 7B-2414; *In re Phillips*, 128 N.C. App. 732, 734 (1998). If there is a procedural defect depriving the court of jurisdiction, however, jeopardy does not ordinarily attach. *See supra* § 6.3D, Amendment of Petition.

C. Rules of Evidence

The Juvenile Code provides that the rules of evidence in criminal cases are applicable to adjudicatory hearings. G.S. 7B-2408. Evidentiary rules are derived from the North Carolina Rules of Evidence, G.S. 8C-1; statutes governing criminal and delinquency cases; and case law. Pertinent rules include North Carolina Rules of Evidence 401 through 412, regarding relevance; Rules 701 through 706, regarding opinion testimony; and Rules 801 through 806, regarding hearsay. Pertinent statutory evidence provisions include G.S. 15A-1225.1, 15A-1225.2, and 15A-1225.3, which involve remote testimony of child witnesses, witnesses with developmental disabilities or mental retardation, and forensic analysts.

Several juvenile statutes concern admissibility of evidence at adjudication. G.S. 7B-2408 provides that no statement of a juvenile to a juvenile court counselor during the preliminary inquiry and evaluation process is admissible at adjudication. G.S. 7B-3201 provides that an adjudication of delinquency may be used to impeach the testimony of a juvenile respondent in a subsequent proceeding or of a juvenile witness in a delinquency proceeding, regardless of whether the juvenile's record has been expunged. *See also In re S.S.T.*, 165 N.C. App. 533, 534 (2004) (evidence of prior adjudications of delinquency

properly admitted to impeach respondent under G.S. 7B-2408; Rule of Evidence 609(d), limiting use of juvenile adjudications for impeachment, does not apply to testimony by juvenile in juvenile delinquency proceeding). The Rules of Evidence give the court some discretion in deciding whether certain evidence regarding juvenile witnesses will be admitted. *See, e.g.*, *In re Oliver*, 159 N.C. App. 451, 455 (2003) (court did not abuse discretion under Rule 608(b) by refusing to admit into evidence school disciplinary record of juvenile witness or by refusing to allow cross-examination concerning contents of record); *see also* N.C. R. EVID. 403 (court may exclude evidence if its probative value is substantially outweighed by unfair prejudice or other factors).

D. Burden of Proof

The State has the burden of proving the allegations in the petition and the identity of the juvenile as the perpetrator beyond a reasonable doubt. G.S. 7B-2409; *see supra* § 2.5, Right to Standard of Proof Beyond a Reasonable Doubt. Every element of the offense alleged in the petition must be proved by the State. *In re May*, 357 N.C. 423, 426 (2003). Although statutes and case law are clear on this point, it should be reiterated by counsel at the close of the evidence.

E. Record of the Proceedings

The adjudicatory hearing must be recorded by stenographic notes or by electronic or mechanical means. G.S. 7B-2410. Counsel should request a court reporter if there are concerns about the adequacy of a recording. Although an inaccurate transcript may be the basis for a new adjudication, the appellate court may find an incomplete transcript sufficient for appellate review. *In re D.W.*, 171 N.C. App. 496, 503–04 (2005) (although there was no record of the juvenile's testimony on direct examination, the transcript of the juvenile's cross-examination and his attorney's argument was an adequate alternative); *In re Lineberry*, 154 N.C. App. 246, 257 (2002) (tape recording of adjudicatory hearing was adequate under statute even though certain portions were inaudible and were not transcribed; transcript was not so inaccurate as to prevent meaningful review by appellate court).

F. Presentation of Evidence

State's evidence. If the juvenile denies the allegations in the petition, the State must proceed with presentation of evidence. Counsel should be alert for the need to object to inadmissible testimony and should state the grounds for the objection, such as hearsay or expert opinion without proper foundation. Failure to object is likely to constitute a waiver of the objection to admissibility. Unless the court allows a continuing or line objection to a particular line of testimony, an objection, with stated grounds, should be made each time the objectionable evidence is introduced.

The juvenile has the right to cross-examine the State's witnesses. G.S. 7B-2405(3). Counsel should prepare questions for cross-examination before the hearing, derived from discovery, investigation, and counsel's theory of defense. The direct testimony of the

State's witnesses may generate additional areas to pursue on cross-examination. In some instances it may be better not to cross-examine a witness, particularly if the direct testimony was not harmful to the juvenile's case or the answer is unknown and potentially harmful to the juvenile's case. Asking no questions also may underscore the lack of importance of the witness.

Counsel may contact a State's witness who is not represented by an attorney but generally cannot compel the witness to submit to an interview. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 4.4C, Examinations and Interviews of Witnesses (2d ed. 2013). According to Rule 4.2 of the North Carolina Rules of Professional Conduct, counsel may not communicate with any witness who is represented by an attorney without the permission of the attorney.

The North Carolina State Bar has also adopted specific opinions on communication with child witnesses. North Carolina State Bar Ethics Opinion RPC 249 (1997) states that a lawyer may not communicate with a child who is represented by a guardian ad litem or an attorney advocate unless the lawyer obtains their consent. 2009 North Carolina State Bar Formal Ethics Opinion 7 (2012) states that neither a defense attorney nor prosecutor may interview an unrepresented child who is the alleged victim of physical or sexual abuse in a criminal case if the child is younger than the age of maturity as provided in G.S. 7B-2101(b). That statute addresses in-custody interrogations, but the State Bar adopted the age in that statute as the benchmark for interviews in this context. At the time of the State Bar's opinion, the age in G.S. 7B-2101(b) was 14, but the opinion states that the opinion would be modified if the General Assembly changed the age designation. The age of maturity under G.S. 7B-2101(b) was revised in 2015 and is currently 16. A lawyer may interview an unrepresented child under 16 in this kind of case with the consent of a non-accused parent or guardian or a court order allowing the lawyer to seek an interview with the child without such consent. If the child has a guardian ad litem or attorney advocate, the lawyer also must obtain that person's consent under the earlier State Bar opinion.

Important witnesses, such as investigating officers and eyewitnesses, often will need to be thoroughly cross-examined. Counsel must be careful, however, not to open the door through cross-examination to testimony that would otherwise be inadmissible.

Juvenile's evidence. Counsel should confer with the juvenile to decide whether evidence will be presented on behalf of the juvenile. If the State has presented a weak case, it may be good strategy to present no evidence and to renew the motion to dismiss. A motion that is not granted at the close of the State's evidence might be granted at the close of all evidence.

Counsel should interview all witnesses that will be called on behalf of the juvenile. A person who lacks credibility or who seems unsure of the facts may weaken the juvenile's case even if some of the testimony would be helpful. An expert witness must be qualified and tendered to the court as such in order for the expert's opinion to be admissible. *See* N.C. R. EVID. 702. Most experts who have testified in cases before are familiar with this

process and will have documentation concerning education, research, publications, and work experience.

An important decision is whether the juvenile will testify. Counsel should explore with the juvenile those matters that could be raised during cross-examination, especially earlier contradictory statements of the juvenile, if any, and questions that might be posed to impeach the juvenile's credibility. A mock direct and cross-examination of the juvenile may be helpful. Although counsel should advise the juvenile on whether testifying will be beneficial, the decision whether to testify is ultimately the juvenile's.

G. Motion to Dismiss

The juvenile's right to appeal the denial of a motion to dismiss is subject to multiple rules imposed by the North Carolina Rules of Appellate Procedure and case law. Counsel should take great care to comply with the rules to preserve the juvenile's right to challenge the court's ruling on appeal should it deny the motion to dismiss.

First, counsel should always make a motion to dismiss at the close of the State's evidence and then at the close of all the evidence. The failure to do so waives any sufficiency arguments on appeal. *In re Rikard*, 161 N.C. App. 150, 155 (2003) (order of adjudication was affirmed on basis that juvenile failed to renew motion to dismiss at close of all evidence); *In re Hodge*, 153 N.C. App. 102, 107 (2002) (same); *In re Clapp*, 137 N.C. App. 14, 19 (2000) (juvenile was precluded from challenging the sufficiency of the evidence on appeal because he "failed to move for dismissal at the close of the evidence").

Second, as part of the motion, counsel should always assert that the evidence is insufficient to support each element of each offense. The failure to challenge each element could harm the juvenile's chance of relief on appeal. If counsel challenges a specific element in district court and loses and the appellate attorney challenges a different element on appeal, the Court of Appeals might dismiss the sufficiency argument. *See, e.g.*, *State v. Euceda-Valle*, 182 N.C. App. 268, 271 (2007) (rejecting sufficiency argument because the defendant presented "a different argument on appeal than that which he argued to the trial court"). If there are specific weaknesses in the State's evidence, counsel should identify those weaknesses for the court after asserting that the evidence is insufficient for each element.

Third, counsel should always assert as part of the motion to dismiss that there is a variance between the crime alleged in the petition and any crime that might be supported by the evidence. If counsel does not argue as part of the motion to dismiss that there is a variance, any argument involving a variance that the juvenile raises on appeal will be waived. *State v. Pickens*, 346 N.C. 628, 645 (1997); *State v. Mason*, 222 N.C. App. 223, 226 (2012). Thus, counsel should first say that he or she is moving to dismiss for insufficient evidence of each element of each offense. Counsel should then argue for dismissal on the basis of a variance between the offense or theory alleged in the petition and the evidence presented at the adjudicatory hearing. If the variance argument is

successful, the trial court must dismiss the offense alleged in the petition for insufficient evidence. The trial court may not adjudicate the juvenile delinquent of an offense not alleged in the petition. *See In re Griffin*, 162 N.C. App. 487, 494 (2004) (vacating adjudication for first-degree sexual offense where the theory alleged in the petition was based on the use of force, but the evidence presented at the adjudicatory hearing involved a separate theory of guilt based on the relative ages of the juvenile and the victim).

Fourth, counsel should always constitutionalize the motion to dismiss for insufficient evidence by asserting that the denial of the motion would violate the Fourteenth Amendment to the United States Constitution and Article I, § 19 of the North Carolina Constitution. Counsel should constitutionalize the motion to dismiss for fatal variance by asserting that adjudicating the juvenile on a theory not supported by the petition would violate the Fourteenth Amendment of the United States Constitution and Article I, §§ 19, 12, and 24 of the North Carolina Constitution.

When the trial court rules on a motion to dismiss a petition in a juvenile delinquency case, the juvenile "is entitled to the application of the same rules in weighing the evidence against him on a motion for nonsuit or to dismiss as if he were an adult criminal defendant." *In re Vinson*, 298 N.C. 640, 656 (1979). The court must determine whether the State presented "substantial evidence of each of the material elements of the offense alleged." *In re Eller*, 331 N.C. 714, 717 (1992). When the evidence raises no more than a suspicion that the juvenile committed the offense, the court must grant the motion to dismiss. *In re R.N.*, 206 N.C. App. 537, 540 (2010). "This is true even though the suspicion so aroused by the evidence is strong." *Vinson*, 298 N.C. at 657. The court must consider the evidence in the light most favorable to the State and give the State any reasonable inference that can be drawn therefrom. *In re A.W.*, 209 N.C. App. 596, 599 (2011). The court must also consider evidence offered by the juvenile that explains or clarifies the State's evidence, as well as exculpatory evidence presented by the State. *State v. Bates*, 309 N.C. 528, 535 (1983); *State v. Bruton*, 264 N.C. 488, 499 (1965).

12.6 Order of Adjudication

If the court does not find that the allegations in the petition have been proved beyond a reasonable doubt, it must dismiss the petition with prejudice. G.S. 7B-2411. The juvenile must be released if in custody. *Id*.

If the court finds that the allegations have been proved beyond a reasonable doubt, it must state this in a written adjudication order. G.S. 7B-2409, 7B-2411. If the court fails to apply the reasonable doubt standard or it is unclear which standard the court applied, the adjudication order is subject to reversal. *See In re C.B.*, 187 N.C. App. 803, 807 (2007) (reversing adjudication order that applied both the reasonable doubt and clear, cogent, and convincing standards to the evidence); *In re Eades*, 143 N.C. App. 712, 714 (2001) (remanding adjudication because the trial court failed to state that the allegations in the petition were proven beyond a reasonable doubt).

Before 2009, courts were not required to issue written adjudication orders. *In re Rikard*, 161 N.C. App. 150, 154 (2003). Based on 2009 amendments, adjudication orders must now be in writing. G.S. 7B-2411. The written order must include the offense date, misdemeanor or felony classification of the offense, and the date of adjudication. In *In re J.V.J.*, 209 N.C. App. 737, 740–41 (2011), the Court of Appeals reversed an adjudication order in which although the trial court found beyond a reasonable doubt that the juvenile was "responsible," the order did not address the allegations and stated only "through a fragmentary collection of words and numbers" that the offense described in the petition occurred. In contrast, in *In re K.C.*, 226 N.C. App. 452, 461 (2013), the Court upheld an adjudication order because the order "provide[d] the date of the offense, the fact that the assault is a class 2 misdemeanor, the date of the adjudication, and clearly state[d] that the court considered the evidence and adjudicated [the juvenile] delinquent as to the petition's allegation of simple assault beyond a reasonable doubt."

Counsel should review the written order to ensure that it is consistent with the oral order announced in open court and, if inconsistencies exist, move that the trial court make appropriate modifications.

12.7 Collateral Effects of Adjudication

An adjudication of delinquency is not a conviction of a criminal offense. A juvenile who has been found to be delinquent does not forfeit any citizenship rights. G.S. 7B-2412. There may be adverse consequences, however, for a noncitizen.

Because it is not considered a conviction, an adjudication of delinquency generally does not have the adverse immigration consequences that result from convictions. However, certain adverse immigration consequences do not require a conviction; mere bad acts can trigger a penalty. Examples include being a drug addict or abuser, engaging in prostitution, using false documents, smuggling aliens, or drug trafficking. *See* IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA § 4.2F, Juvenile Delinquency Adjudication (Sept. 2017). A juvenile adjudication involving offenses of this nature may be grounds for deportation or bar admission to the country as a legal immigrant. Adjudications involving these offenses can also be used to deny an application for Special Immigrant Juvenile Status, which helps certain undocumented children in the state juvenile/foster care system obtain lawful immigration status. *See id.* A delinquency adjudication may be considered an adverse factor if the juvenile applies for a discretionary benefit under the immigration laws, such as citizenship or a green card. *See id.* Counsel should contact an immigration lawyer for additional information when representing a juvenile who is not a citizen.

An adjudication may be used to impeach a juvenile witness in a juvenile delinquency proceeding and in some instances in subsequent criminal proceedings. *See supra* § 12.5C, Rules of Evidence; "Statutory exceptions for use in limited criminal court proceedings" in § 2.8A, Juvenile Court Records. An adjudication for a Class A, B1, B2, C, D, or E felony can be used to impose an aggravated sentence for a conviction in adult court or to

impose a death sentence in a capital case if the felony involved the use or threat of violence. G.S. 15A-1340.16(d)(18a), 15A-2000(e)(3).

Adjudication of an offense that would be a felony if committed by an adult bars participation in high school sports for as long as the juvenile is in school. This is by rule of the North Carolina High School Athletic Association, which governs high school sports. The policy is available on the Association's website. Counsel should inform the juvenile of this consequence if the juvenile is admitting a felony offense or might be adjudicated for such an offense.

The court also might require registration as a sex offender for certain offenses, discussed *infra* in § 13.9, Registration of Juvenile Adjudicated for Certain Sex Crimes.

12.8 Expunction of Juvenile Record

Some records of delinquency may be expunged under prescribed statutory conditions. G.S. 7B-3200 through 7B-3202; *see infra* Chapter 17, Expunction of Juvenile Records; *see also* "Expunction of Delinquency Matters" in John Rubin, Relief from a Criminal Conviction: A Digital Guide to Expunctions, Certificates of Relief, and Other Procedures in North Carolina (UNC School of Government 2016). This may be an important consideration if the juvenile is offered the opportunity to admit to an allegation that would be subject to expunction.

If the juvenile is adjudicated delinquent for an offense that is subject to expunction, counsel should advise the juvenile and the parent, with the juvenile's consent, of the expunction process. Anyone wishing to pursue expunction should be advised to contact the Clerk of Superior Court's office for appropriate paperwork if and when the criteria for expunction are met.