

Chapter 16

Appeals

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16.1 Overview

Appeals in juvenile delinquency cases are heard in the North Carolina Court of Appeals. G.S. 7B-2602. Some juvenile delinquency appeals are then heard in the Supreme Court of North Carolina. Discussion of appeals in this manual involves the rights of the parties and participants to juvenile delinquency appeals and the orders that may be appealed in those cases.

It is the responsibility of appointed counsel in district court to protect the record for appeal by presenting evidence favorable to the juvenile, making an offer of proof if the

court finds evidence for the juvenile inadmissible, cross-examining the State's witnesses, and making appropriate objections and motions. See Staples Hughes, [Preserving Error for Appeal: A Checklist](#) (2012); 2 NORTH CAROLINA DEFENDER MANUAL Appendix B: Preserving the Record (2d ed. 2013). The appointed attorney must advise the juvenile of the right to appeal and must file a timely notice of appeal if the juvenile decides to appeal. See *infra* § 16.2, Notice of Appeal. Counsel should communicate with the appellate attorney to ensure that all necessary information is transmitted for representation of the juvenile on appeal.

16.2 Notice of Appeal

Notice of appeal must be given in open court at the time of the hearing or in writing within 10 days after entry of a final order. G.S. 7B-2602. Giving oral notice of appeal is preferable as it avoids many of the complications that arise when filing a written notice of appeal. If no disposition is made within 60 days after entry of the order, written notice of appeal of the adjudication may be given within 70 days after entry of the adjudicatory order. *Id.* Counsel should maintain a calendaring system to ensure that appeals are filed within the strict statutory time limits.

If counsel files a written notice of appeal, counsel must ensure that the notice of appeal is in proper form. Although notice of appeal in juvenile delinquency cases is governed by G.S. 7B-2602, the Court of Appeals has applied Rule 3 of the N.C. Rules of Appellate Procedure to the contents of written notices of appeal filed in delinquency cases. See, e.g., *In re A.V.*, 188 N.C. App. 317, 321 (2008) (declining to review dispositional order because the order was not included in the written notice of appeal as required by Rule 3). According to Rule 3(d), a written notice of appeal must specify the party appealing, designate the judgment from which the appeal is taken, and designate the court to which the appeal is taken. The notice of appeal must also be signed by counsel and contain proof of service on the State. A sample notice of appeal is available on the [Juvenile Defender website](#). Counsel should be sure to comply with the requirements of Rule 3 when entering written notice of appeal as a violation of the rule could provide grounds for dismissal of the appeal. See, e.g., *Ribble v. Ribble*, 180 N.C. App. 341, 343 (2006) (dismissing appeal under Rule 3 where the written notice of appeal lacked a certificate of service).

When entering notice of appeal, counsel should be sure to give notice of appeal from an order that can be appealed. If the order cannot be appealed, the appeal will be dismissed. See *In re A.L.*, 166 N.C. App. 276, 277–78 (2004) (dismissing appeal because the juvenile gave notice of appeal from adjudication order, which was not appealable). Appealable orders are discussed *infra* in § 16.3, Right to Appeal.

16.3 Right to Appeal

A. Who Can Appeal

The juvenile, the juvenile's parent, guardian, or custodian and, in limited circumstances, the State and county, may appeal. G.S. 7B-2604. This statute imposes no limitation on appeals by the juvenile or the juvenile's parent, guardian, or custodian.

Counsel should advise the juvenile of the right to appeal, as well as discuss the strengths and weaknesses of an appeal. *See generally Becton v. Barnett*, 920 F.2d 1190, 1194 (4th Cir. 1990) (trial attorney's failure to give notice of appeal prevented the defendant from demonstrating that "his conviction was unlawful through the appellate process"). A juvenile who has been committed or is otherwise detained should also be advised of the right to release pending appeal. *See infra* § 16.5, Disposition Pending Appeal. The juvenile makes the decision whether to appeal.

Pursuant to G.S. 7B-2604(b)(1) and (2), appeal by the State is limited to appeal of an order:

- finding a State statute unconstitutional; or
- terminating the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

Appeal by a county is limited to an order requiring the county to pay for medical, surgical, psychiatric, psychological, or other evaluation or treatment pursuant to G.S. 7B-2502 (Evaluation and treatment of undisciplined and delinquent juveniles) or pursuant to G.S. 7B-2702 (Medical, surgical, psychiatric, psychological evaluation or treatment of juvenile or parent). G.S. 7B-2604(c); *see also supra* § 13.5B, Court-Ordered Evaluation and Treatment.

B. Appeal of Final Order

Final order. Any "final order" may be appealed to the North Carolina Court of Appeals. G.S. 7B-2602. Under G.S. 7B-2602(1)–(4), a final order is defined to include the following:

- any order finding absence of jurisdiction;
- any order that in effect determines the action and prevents a judgment from which appeal might be taken;
- any order of disposition after an adjudication that a juvenile is delinquent; and
- any order modifying custodial rights.

Appeal from dispositional order. Even where counsel intends to appeal only the adjudication, the appeal under G.S. 7B-2602(3) must be from the *dispositional order* following the adjudication. For instance, the Court of Appeals dismissed the juvenile's

appeal in *In re A.L.*, 166 N.C. App. 276, 277–78 (2004) because the juvenile’s written notice of appeal referred only to the “adjudication of delinquency,” which was not an appealable order under G.S. 7B-2602. In *In re D.K.L.*, 201 N.C. App. 443, 444 (2009), the juvenile’s attorney stated at the beginning of the dispositional hearing that he “intended to appeal from the adjudication of delinquency.” Although the court did not issue a dispositional order during the hearing, the juvenile’s attorney gave oral notice of appeal when the hearing ended. The Court of Appeals later dismissed the juvenile’s appeal because the oral notice of appeal given during the dispositional hearing was premature. *Id.* at 445.

Appeal of adjudication if no dispositional order entered. An adjudicatory order is not a final order under G.S. 7B-2602. However, the statute permits a juvenile to appeal an adjudicatory order by written notice of appeal within 70 days of adjudication if no disposition is made within 60 days after entry of the adjudicatory order. *Id.*; *In re D.F.-M.*, 176 N.C. App. 189 (2006) (unpublished) (appeal of adjudication not premature where notice of appeal was filed 65 days after entry of order of adjudication and court terminated jurisdiction over juvenile without order of disposition); *compare In re Taylor*, 57 N.C. App. 213 (1982) (appeal of adjudication dismissed as premature where notice of appeal was filed eight days after adjudication and no disposition was made); *In re T.E.B.*, 241 N.C. App. 175 (2015) (unpublished) (dismissing the juvenile’s appeal because the juvenile “did not wait until after the 60-day period had expired before appealing”). If the court does not enter disposition within 60 days of the adjudicatory order and the juvenile wants to appeal the adjudicatory order, counsel should be sure to give notice of appeal during the 10-day window between the 60th and 70th day after the adjudicatory order is entered. Failure to do so may subject the appeal to dismissal.

If the juvenile properly appeals an adjudication order under G.S. 7B-2602 when there has been no disposition within 60 days, the trial court is divested of jurisdiction and may not conduct a dispositional hearing while the appeal is pending. *In re J.F.*, 237 N.C. App. 218, 228 (2014); *In re Rikard*, 161 N.C. App. 150, 153–54 (2003). If the juvenile does not appeal the adjudicatory order during the 10-day window, the juvenile may still appeal if the court enters disposition at a later date. *In re M.W.*, 204 N.C. App. 210 (2010) (unpublished).

Appeal from other final orders. There are no opinions in any juvenile delinquency appeals that involve orders finding an absence of jurisdiction, orders determining the action and preventing a judgment from which appeal might be taken, or orders modifying custodial rights, which are appealable under G.S. 7B-2602. Instead, the vast majority of juvenile delinquency appeals are from dispositional orders. These provisions in G.S. 7B-2602 authorize appeal, although they appear to be a vestige of when juvenile delinquency and juvenile abuse, neglect, and dependency cases were combined in a single code.

C. Appeal of Finding of Probable Cause

A finding of probable cause is not a final order for the purpose of an appeal. *In re K.R.B.*, 134 N.C. App. 328, 331 (1999) (finding of probable cause is not a final order that is

immediately appealable; proper time for appeal is following entry of dispositional order); *see supra* § 9.7, Appeal of Finding of Probable Cause.

D. Appeal of Order Transferring Jurisdiction

An order transferring jurisdiction to superior court may be immediately appealed to superior court. G.S. 7B-2603(a). The order must be appealed to superior court to preserve the issue for review by the Court of Appeals. *State v. Wilson*, 151 N.C. App. 219, 222 (2002); *see supra* § 9.10, Appeal of Order of Transfer.

E. Appeal of Order Finding Capacity to Proceed

An order finding a juvenile capable of proceeding is not a final order that may be immediately appealed pursuant to G.S. 7B-2602. Counsel should make an objection on the record to the finding of capacity to proceed and should renew the objection at the outset of the adjudicatory hearing to preserve the issue for appeal. *In re Pope*, 151 N.C. App. 117, 119 (2002) (failure of juvenile to object to court's finding of capacity to proceed or at adjudicatory hearing waived issue on appeal); *see supra* § 7.11D, Objection to Finding of Capacity. *But see* 1 NORTH CAROLINA DEFENDER MANUAL § 2.7E, Objection to Finding of Capacity (2d ed. 2013) (suggesting that failure to object may not waive issue).

F. Appeal Involving an Admission by a Juvenile

In adult criminal appeals, the defendant has a limited right to appeal from a judgment entered on a guilty plea. *See* G.S. 15A-1444; *State v. Royster*, 239 N.C. App. 196, 200 (2015) (dismissing the defendant's appeal because the only argument he presented did not involve any of the issues under G.S. 15A-1444 that can be raised in an appeal from a guilty plea). In contrast, G.S. 7B-2602 does not impose limitations on juvenile delinquency appeals involving admissions. Thus, if the juvenile properly appeals under G.S. 7B-2602, there are no statutory limitations on issues that juveniles can raise in the appeal after entering an admission.

G. Appeal Involving the Denial of a Motion to Suppress

G.S. 7B-2408.5(g) allows the juvenile to appeal the denial of a motion to suppress "upon an appeal of a final order of the court in a juvenile matter." G.S. 7B-2408.5(g). Thus, the juvenile may not appeal from the order denying the motion to suppress but can challenge the order as part of an appeal from a final order. *See supra* § 16.3B, Appeal of Final Order. Additionally, the term "final order" under G.S. 7B-2602 includes a dispositional order, but not an adjudication order. *In re M.L.T.H.*, 200 N.C. App. 476, 480 (2009). A juvenile may appeal an adjudication order within 70 days if no dispositional order is entered within 60 days. G.S. 7B-2602. Although the juvenile may be able to challenge an order denying a suppression motion in an appeal from an adjudication order within the 10-day window if the court does not immediately order a disposition, the safer practice is

to ask the court enter disposition within 60 days or enter notice of appeal when the court finally issues a dispositional order.

Although the juvenile may not appeal from an order denying a motion to suppress, counsel should give notice of the juvenile's *intent to appeal* if the juvenile plans to enter an admission. In adult cases, a defendant who pleads guilty has the right to appeal an order denying a motion to suppress. G.S. 15A-979(b). However, courts have interpreted the statute to mean that the defendant must give notice to the prosecutor and the court of his intent to appeal the order denying the motion to suppress 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 imposed a similar requirement in juvenile delinquency appeals and may never do so because, unlike in adult cases, juveniles are not limited in the issues they may raise 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.

H. Appeals by the State

G.S. 7B-2604 addresses the State's right to appeal in a juvenile delinquency case. The State's right is limited. Under G.S. 7B-2604(b)(2), the State may appeal an order granting a motion to suppress, but only if the order "terminates the prosecution of the 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. The Court reasoned 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 necessary to satisfy the requirement that the order terminate the prosecution of a petition. *Id.* The Court also observed that the certification required under G.S. 15A-979(c) in State's appeals in adult criminal cases does not apply to State's appeals in juvenile delinquency cases. In adult cases, if the State wants to take an immediate appeal of an order granting a suppression motion, the prosecutor must certify that the appeal is not taken for the purpose of delay and that the evidence is essential to the case.

If the State appeals an order granting a motion to suppress, counsel should ensure that the trial court enters an order of appellate entries appointing the Appellate Defender to represent the juvenile in the appeal. *See generally infra* § 16.4, Transmitting the Appeal to the Appellate Defender.

I. Writ of Certiorari

Counsel may petition by writ of certiorari for review of a judgment or order from a trial court when the right to appeal has been lost by failure to file timely notice of appeal or when no right of appeal from an interlocutory order exists. N.C. Rules of Appellate Procedure, Rule 21(a)(1). Appellate counsel may file a petition for writ of certiorari to address a defect in a notice of appeal. There are few circumstances in which it would be appropriate for trial counsel to file a petition for writ of certiorari from an interlocutory order, and there is a significant likelihood that the appellate courts would deny the

petition. Counsel should contact the North Carolina Office of the Appellate Defender when considering whether to seek review by writ of certiorari.

J. Supreme Court Jurisdiction

If there is a dissent in the Court of Appeals, appeal lies of right to the Supreme Court of North Carolina. G.S. 7A-30. If the opinion in the Court of Appeals is unanimous, a party may file a petition for discretionary review in the Supreme Court of North Carolina. G.S. 7A-31. The Supreme Court is under no obligation to hear the case and may deny the petition. If the Court grants the petition, the parties must file new briefs in the Supreme Court and present oral arguments.

16.4 Transmitting the Appeal to the Appellate Defender

Once the trial court enters disposition and counsel has filed notice of appeal, counsel should take steps to ensure that the appeal proceeds in a timely manner. Although some juveniles might be represented by retained counsel on appeal, most are represented by the Office of the Appellate Defender or an attorney assigned by the Office of the Appellate Defender. If the juvenile will not be represented by a retained attorney on appeal, counsel should make sure that the trial court enters an order of appellate entries appointing the Office of the Appellate Defender to the case. Counsel should make sure that the clerk sends a copy of the signed order of appellate entries to the Office of the Appellate Defender.

A. The Appellate Entries

An order of appellate entries is a court order that appoints the Appellate Defender to an appeal. In adult criminal appeals, the court will not appoint the Appellate Defender unless the court finds that the defendant is indigent. Juveniles in delinquency cases are presumed to be indigent. G.S. 7B-2000(b). Thus, no finding of indigency is required. Counsel should still review the appellate entries to ensure that the box identifying the Appellate Defender as the juvenile's initial appellate counsel is checked. If the box is not checked, the Appellate Defender must return the form to the clerk to check the box for the Appellate Defender.

An order of appellate entries also identifies the hearings that will be transcribed for the appeal, assigns a court reporter to prepare the transcripts, directs the clerk to send a copy of the complete trial division court file to the juvenile's appellate attorney, and assigns a translator to the appeal if a translator is needed. If counsel does not prepare the order of appellate entries, counsel should ensure that the order of appellate entries lists all of the hearing dates and that section five, which concerns a translator, identifies the juvenile's native language if the juvenile needs a translator. If all of the relevant hearing dates are not listed, the appellate attorney will have to identify the hearings, file a motion to have the hearings transcribed, and coordinate with the court reporter to prepare transcripts of the hearings, which will delay the appeal. Additionally, if the order of appellate entries

does not appoint a translator when one is needed, the appellate attorney will be required to file a motion to appoint a translator, which will delay communication with the juvenile while the motion is ruled on by the court and the appellate attorney coordinates with the translator.

A blank order of appellate entries is available on the Administrative Office of the Courts website. See [Form AOC-J-470](#) (Appellate Entries in Delinquency Proceeding) (June 2015). Although the order of appellate entries includes a notation that the juvenile entered notice of appeal, the order is *not* a substitute for giving proper notice of appeal. *State v. Blue*, 115 N.C. App. 108, 113 (1994).

B. Timeliness of the Transfer

Currently, there is no deadline under the Rules of Appellate Procedure for the trial court to enter an order of appellate entries. In part because of the lack of any deadline, there is usually a delay between the filing of the notice of appeal and the appointment of the Appellate Defender. In some cases, the delay lasts several weeks, which in turn delays the appeal. One of the purposes of the Juvenile Code is to provide “swift” dispositions in juvenile delinquency cases. G.S. 7B-1500(2)a. Counsel therefore should take the following steps to reduce delays that may occur in district court after notice of appeal is filed.

First, counsel should talk to the juvenile before the dispositional hearing about whether the juvenile intends to appeal. Although G.S. 7B-2602 gives the juvenile 10 days to enter notice of appeal, giving notice of appeal when disposition is entered will prevent delays at the outset of the appeal. See *supra* § 16.2, Notice of Appeal (discussing giving oral notice of appeal).

Second, counsel should fill out the order of appellate entries and submit it to the judge after giving oral notice of appeal or filing written notice of appeal. Although the order of appellate entries is often prepared by the clerk, there is no rule preventing counsel from completing the form. If counsel prepares the order of appellate entries and presents it to the judge, counsel can reduce any delays that might result from the clerk completing the order. Counsel should ensure that the originals of a written notice of appeal and order of appellate entries are filed with the clerk.

Third, counsel should work with the clerk to ensure that a court reporter is assigned to the appeal in a timely manner. Generally, the first deadline in an appeal is for the preparation of the transcript. See N.C. R. APP. P. 7 (stating that the court reporter has 60 days to prepare the transcript in civil appeals). In some counties, the clerk knows which court reporter to assign to a juvenile delinquency appeal. In other counties, the clerk does not immediately know who to assign and must identify a court reporter, which delays commencement of the initial deadline for the transcript. If the clerk is unsure which court reporter to assign, counsel should contact the Court Reporting Manager for the Administrative Office of the Courts (AOC). David Jester, the current Court Reporting Manager, will assist the clerk in identifying a court reporter for the juvenile’s appeal. He

can be reached by phone at (919) 831-5974 or by email at David.E.Jester@nccourts.org. Counsel should also check that the clerk completes the “Tracking and Receipt” section on the second page of the order of appellate entries as the date that the recording of the hearing is transmitted to the court reporter starts the initial 60-day period that the court reporter has to prepare the transcript.

Fourth, counsel should ensure that the clerk sends a copy of the order of appellate entries to the Office of the Appellate Defender in a timely manner. According to Rule 3.2(c) of the [Rules of the Office of Indigent Defense Services for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals](#) (May 2015), the clerk “shall immediately” send the judgment and order of appellate entries to the Office of the Appellate Defender once the order of appellate entries is filed. If there is any question of whether the order has been sent, counsel may contact the Office of the Appellate Defender and advise the office of the appeal. The Office of the Appellate Defender will follow up with the clerk or counsel if there is a delay in receiving the order of appellate entries.

16.5 Disposition Pending Appeal

If the juvenile is placed in custody at the conclusion of the dispositional hearing and the juvenile gives notice of appeal, counsel should seek the juvenile’s release while the appeal is pending. Counsel should argue that the juvenile should be released under G.S. 7B-2605. According to the statute, the juvenile must be released, with or without conditions, unless the court enters a temporary order affecting custody or placement. Such an order must be in writing and must state “compelling reasons” that the placement or custody is in the best interests of the juvenile or the State. *In re G.C.*, 230 N.C. App. 511, 519 (2013) (remanding order denying release where the court failed to provide a written statement of compelling reasons for denying the juvenile’s release); *In re J.J.D.L.*, 189 N.C. App. 777, 781 (2008) (no error in denying motion for release from custody pending appeal where the trial court found as a compelling reason that the juvenile had committed first degree sex offenses with a child); *In re K.T.L.*, 177 N.C. App. 365 (2006) (order placing juvenile in custody of Department of Social Services satisfied G.S. 7B-2605 because it was in writing and provided compelling reasons for placement); *In re W.H.*, 166 N.C. App. 643, 648 (2004) (although issue was moot, stating that conclusions in dispositional order would have provided compelling reasons for continued custody of the juvenile if the court had entered a separate order under G.S. 7B-2605).

A sample motion and order for the juvenile’s release under G.S. 7B-2605 are available on the [Juvenile Defender website](#). Sections 2 and 3 on the first page of the AOC form for the order of appellate entries also provide the court with space to address the question of the juvenile’s release. See [Form AOC-J-470](#) (Appellate Entries in Delinquency Proceeding) (June 2015).

G.S. 7B-2605 permits the juvenile's release regardless of the type of custody. For instance, depending on the offense classification and the juvenile's delinquency history level, the court can place the juvenile in intermittent confinement under G.S. 7B-2506(12), confinement at a juvenile detention facility under G.S. 7B-2506(20), or confinement at a Youth Development Center under G.S. 7B-2506(24). If the court orders any of these types of custody, counsel should seek the juvenile's release under G.S. 7B-2605.

If the court orders probation or other dispositional alternatives that do not involve custody, counsel should consider filing a motion to stay the dispositional alternatives. A sample motion to stay disposition pending the appeal is available on the [Juvenile Defender website](#). Although the Juvenile Code does not address whether the trial court may grant a stay, stays are authorized under Rule 8 of the N.C. Rules of Appellate Procedure. Counsel should advise the juvenile that the juvenile will still be required to comply with the dispositional alternatives if the adjudication or dispositional orders are upheld on appeal.

16.6 Disposition Following Resolution of Appeal

If the appellate court upholds the adjudicatory or dispositional order, the juvenile court has authority to modify the original order of adjudication or disposition. The court may make changes found to be in the best interest of the juvenile "to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending." G.S. 7B-2606. The statute makes provision for this order to be entered *ex parte*, with notice given to interested parties to show cause within 10 days why the modifying order should be vacated or altered.

Several due process issues are raised by this statute, and it is therefore unlikely to be used. Counsel should object to a modification that imposes a more onerous disposition absent a subsequent adjudication and should request an opportunity to be heard. The statute provides counsel opportunity to inform the court of progress made by the juvenile during the appellate process that warrants a more favorable adjudication or disposition.

16.7 Cost of Appeal

A juvenile has the right to appointed counsel on appeal in delinquency proceedings. The juvenile is presumed to be indigent. G.S. 7B-2000. In some circumstances, the court may order reimbursement of appointed attorney's fees, including those of the appellate defender, from a parent, guardian, or trustee in possession of funds or property for the benefit of the juvenile. *See* G.S. 7B-2002; G.S. 7A-450.1, 7A-450.2, 7A-450.3. Although a parent or guardian who may be ordered to pay the cost of appeal might exert pressure on a juvenile not to appeal, the decision to appeal is the juvenile's. Counsel has a duty to be a zealous advocate for the juvenile, which includes filing an appeal on request of the juvenile.