

Chapter 9

Probable Cause and Transfer Hearings

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9.1 Overview

A probable cause hearing is required if a juvenile who is 13 years of age or older is alleged to have committed an offense that would be a felony if committed by an adult. The court must determine that there is probable cause before the case can proceed to adjudication. The probable cause hearing affords the juvenile an opportunity to assess the strength of the State's case, to challenge the sufficiency of the evidence, and to discover information for the adjudicatory hearing if probable cause is found. If there is no finding of probable cause, the petition must be dismissed.

If the court finds probable cause and the offense alleged would be a Class A felony (first degree murder), the case must be transferred to superior court for trial of the juvenile as an adult. If probable cause is found for a felony that is less than a Class A felony, the court may hold a transfer hearing on motion of the prosecutor, the juvenile's attorney, or its own motion to determine whether to transfer jurisdiction to superior court. A discretionary order transferring jurisdiction must be immediately appealed to superior court to preserve the issue for appellate review by the North Carolina Court of Appeals.

Legislative note: This chapter reviews the laws in effect at the time of release of this manual in Fall 2017. During the 2017 legislative session, the General Assembly enacted the Juvenile Justice Reinvestment Act, which expanded the jurisdiction of juvenile court to include crimes committed by 16 and 17-year-olds, except for motor vehicle offenses. Most of the changes apply to offenses committed on or after December 1, 2019. For a discussion of the changes that take effect in 2017, see *infra* Ch. 19, Raise the Age Legislation. For a discussion of the changes that take effect in 2019, see LaToya Powell, [2017 Juvenile Justice Reinvestment Act](#).

9.2 Terminology Used in this Chapter

Probable cause is a finding by the court that a juvenile who is 13 years of age or older is alleged to have committed an offense that would be a felony if committed by an adult and that there is “probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the juvenile committed it. . . .” G.S. 7B-2202(a), (c).

Transfer is the removal of a juvenile proceeding from district court to superior court for trial of the juvenile as an adult. See *infra* § 9.8, Transfer of Jurisdiction to Superior Court.

9.3 First Appearance

A first appearance is an initial hearing that must be held if a petition alleges that a juvenile committed an offense that would be a felony if committed by an adult. The first appearance must occur within 10 days of the filing of the petition or at the secure custody

review hearing if the juvenile is in secure or nonsecure custody. A continuance may be granted for “good cause” if the juvenile is not in custody. G.S. 7B-1808(a).

At the juvenile’s first appearance, the court must inform the juvenile of the allegations in the petition and the date of the probable cause hearing, if applicable, and determine whether counsel has been retained or appointed. Additionally, the court must inform the juvenile’s parents that they must attend all scheduled hearings. G.S. 7B-1808(b)(1)–(4). There is no statutory provision for the court to make other determinations or to set conditions, such as to impose a curfew or to restrict with whom the juvenile may associate, at the first appearance. Counsel should object if the court attempts to go beyond the statutory requirements.

9.4 Probable Cause Hearing

A. When Required

A probable cause hearing must be conducted in any proceeding in which a juvenile is alleged to have committed an offense that would be a felony if committed by an adult and the juvenile was 13 years of age or older at the time of the alleged offense. G.S. 7B-2202(a).

Although the statute requires a hearing if the criteria are met, in some districts a probable cause hearing is not routinely held unless the prosecution is moving for transfer to superior court. In other districts, probable cause hearings are held for all felony allegations. Counsel should consider the merits of requesting a probable cause hearing if one is not routinely scheduled within the statutory time limits. *See infra* § 9.4B, Waiver of Probable Cause Hearing. For instance, the court may dismiss the petition if the State has a weak case, or it may find probable cause for a lesser included offense only. If the court does not dismiss the petition, information obtained during the probable cause hearing may assist counsel in plea negotiations or in preparing for adjudication.

B. Waiver of Probable Cause Hearing

The juvenile, through counsel, may waive by written notice the right to a probable cause hearing. If the hearing is waived, the juvenile must stipulate to probable cause. G.S. 7B-2202(d). Counsel should consider several factors in advising the juvenile whether to waive the probable cause hearing. These factors are discussed below.

Reasons for the hearing.

- If the State’s evidence is marginal, the court may be willing to dismiss for lack of probable cause or find probable cause for a lesser-included misdemeanor, which would preclude transfer of the case to superior court.

- A probable cause hearing may provide counsel with an opportunity to obtain discovery, observe the demeanor of witnesses, and develop impeachment material for the adjudicatory hearing.
- A probable cause hearing may give the juvenile and prosecutor a more realistic view of the case and encourage a plea agreement.

Reasons against the hearing.

- The prosecutor may be willing to make some concession in exchange for a waiver of the hearing, such as a favorable plea agreement either in juvenile or superior court or an agreement not to seek transfer.
- The court may decide to transfer the case to superior court on its own motion if the evidence presented at the probable cause hearing is sufficiently compelling.
- On occasion, a probable cause hearing may alert the prosecutor to additional charges.
- If a witness from a probable cause hearing is unavailable at the adjudicatory hearing, the State may argue that the juvenile had an adequate opportunity to cross-examine the witness at the probable cause hearing and, therefore, that the Confrontation Clause does not bar the State from introducing the witness's testimony or other out-of-court statements. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 3.4C, *Impact of Crawford* (2d ed. 2013).

Generally, the opportunity to test the State's evidence outweighs the potential drawbacks of having a hearing.

C. Time Limits

The probable cause hearing must be held within 15 days of the juvenile's first appearance. The court may continue the hearing for good cause. G.S. 7B-2202(a).

D. Hearing Procedures

Defender Manual. The North Carolina Defender Manual contains a chapter on probable cause hearings in criminal court that includes information generally applicable to juvenile court proceedings. *See* 1 NORTH CAROLINA DEFENDER MANUAL, Ch. 3, Probable Cause Hearings (2d ed. 2013).

Representation. The prosecutor must represent the State at a probable cause hearing. G.S. 7B-2202(b)(1); *cf.* G.S. 7B-2404 (prosecutor must represent State in contested delinquency proceedings, including probable cause). Counsel should object if the prosecutor is not present for the probable cause hearing.

The juvenile must be represented by counsel at the probable cause hearing. G.S. 7B-2202(b)(2).

Evidence and hearsay exceptions. Subject to limited exceptions, discussed below, the State must establish, by nonhearsay evidence or evidence within a hearsay exception,

probable cause that the juvenile committed the charged offense. G.S. 7B-2202(c). Each witness must be under oath and subject to cross-examination. G.S. 7B-2202(b)(4).

In addition to the restriction on hearsay, other requirements of the North Carolina Rules of Evidence may apply at a probable cause hearing in juvenile cases. *See In re Ford*, 49 N.C. App. 680, 683 (1980) (observing that evidentiary questions at a probable cause hearing “may well merit” the court’s attention in a juvenile delinquency appeal). Rule 1101(b) states that the Rules of Evidence do not apply at probable cause hearings “in criminal cases.” There is no comparable provision for probable cause hearings in juvenile cases. However, counsel may not want to object if the evidence provides useful discovery. Even if the rules of evidence are relaxed in juvenile cases and inadmissible evidence is permissible, the State still must establish probable cause by admissible evidence pursuant to G.S. 7B-2202(c).

There is a statutory exception to the hearsay rule at a probable cause hearing allowing the court to receive a report by a physicist, chemist, firearms identification expert, fingerprint technician, or expert or technician in another scientific, professional, or medical field. The report must contain the result of any examination, comparison, or test performed regarding the case. G.S. 7B- 2202(c)(1). “Reliable hearsay” as to value, ownership of property, possession of property by a person other than the juvenile, lack of consent of the owner, possessor, or custodian of property to the breaking and entering of the premises, chain of custody, and authenticity of signature is also admissible if there is “no serious contest.” G.S. 7B-2202(c)(2).

Counsel may object to hearsay that does not fall within an exception. Requiring the State to present non-hearsay evidence may provide an opportunity to evaluate the strength of the State’s evidence and could lead to a finding of no probable cause and dismissal of the petition.

Counsel must determine whether there is a benefit to presenting evidence at the probable cause hearing. Because the State’s burden of proof is relatively low, it is generally disadvantageous to present evidence, as it might establish probable cause or reveal the defense strategy for the adjudicatory hearing.

Confrontation Clause. Although North Carolina law restricts the use of out-of-court statements at probable cause hearings that do not satisfy hearsay rules, the Confrontation Clause may not apply at this stage of the proceedings and may not bar on constitutional grounds out-of-court statements that would be inadmissible at trial. *See Peterson v. California*, 604 F.3d 1166 (9th Cir. 2010) (holding that the Confrontation Clause does not apply to preliminary hearings); *State v. Lopez*, 314 P.3d 236, 239 (N.M. 2013) (same); *Sheriff v. Witzenburg*, 145 P.3d 1002, 1005 (Nev. 2006) (same). *But see Curry v. State*, 228 S.W.3d 292, 296–98 (Tex. App. 2007) (holding that the Confrontation Clause applies at pretrial suppression hearings).

Burden of proof. The State must show that there is “probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the

juvenile committed it. . . .” G.S. 7B-2202(c). North Carolina courts have not defined the standard of probable cause for probable cause hearings in juvenile court. However, some commentators suggest that the standard for probable cause hearings in adult cases is higher than for a lawful arrest—that it is closer to the prima facie evidence requirement for submission of an offense to the jury. *See* 4 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 14.3(a), at 321-22 (3d ed. 2007) (probable cause standard for arrest tolerates “considerable uncertainty” because of need for officers to take immediate action; however, standard for probable cause hearing “should require a higher and different degree of probability” than standard for arrest); CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, CRIMINAL PROCEDURE: AN ANALYSIS OF CASES AND CONCEPTS § 22.03, at 517 (6th ed. 2015) (standard for probable cause hearing in a growing number of states requires prosecutor to present enough evidence to overcome directed verdict for defendant).

E. Advocacy at Probable Cause Hearing

Preparation. Counsel should prepare to challenge the State to meet its burden of proof and should move for dismissal if the State fails to present evidence of each element of the offense alleged and of identification of the juvenile as the perpetrator. Preparation for the hearing includes becoming familiar with the elements of each offense alleged as well as lesser included offenses. If advantageous to the juvenile, counsel should argue for a finding of probable cause for a lesser included offense. Counsel should also prepare case law or legal memoranda to support a motion to dismiss.

Cross-examination. Because the court may not allow counsel a great deal of latitude, cross-examination should be structured to elicit the most important information first. Sample probable cause questions appear at the end of this chapter. *See infra* Appendix 9-1: Sample Questions for Probable Cause and Preliminary Hearings.

Questions on cross-examination will vary depending on counsel’s goal for the hearing. If the desired result is dismissal for lack of probable cause, counsel may want to limit cross-examination, as extensive cross-examination could lead the witness to supply information that supports a finding of probable cause. Closed-ended questions, requiring a yes or no answer, typically provide counsel more control over the witness and are therefore desirable when counsel is seeking dismissal for lack of probable cause. Aggressive cross-examination can be risky, however, as it may cause the witness to refuse to cooperate later or harden his or her resolve for prosecution. Questions may also alert witnesses to problem areas in their testimony that can be addressed at the adjudicatory hearing.

Extensive cross-examination may be desirable where counsel’s goal is to elicit answers that can be used to impeach any inconsistent testimony by the witness at a subsequent hearing or to obtain additional information. Open-ended questions may elicit the most information, with follow-up questions as needed. Obtaining information has been recognized as a legitimate purpose of a probable cause hearing in criminal proceedings. *Coleman v. Alabama*, 399 U.S. 1, 9 (1970) (recognizing constitutional right to counsel at probable cause hearing based on counsel’s ability to obtain discovery and develop

impeachment evidence); *Vance v. North Carolina*, 432 F.2d 984, 988–89 (4th Cir. 1970) (to same effect). Other cases state that the purpose of a probable cause hearing is for the court to determine whether there is probable cause but still recognize that the opportunity for discovery is incidental to that purpose. *State v. Hudson*, 295 N.C. 427, 430 (1978); cf. *In re Bass*, 77 N.C. App. 110, 114 (1985) (stating that a probable cause hearing is not conducted for the purpose of discovery). Counsel should therefore be prepared to explain how questions relate to the issue of probable cause.

Juvenile’s evidence. Under G.S. 7B-2202(b)(3), the juvenile may testify and call other witnesses at the probable cause hearing. Presenting witnesses on the juvenile’s behalf is not usually beneficial, however, as they may reveal the defense strategy for adjudication and may assist the State in meeting its burden of proving probable cause. Potential defense witnesses should ordinarily not be present at the probable cause hearing because the State could call them to testify. Counsel might want to subpoena witnesses for the prosecution if they are unwilling to be interviewed.

Record of the hearing. Counsel should ensure that the probable cause hearing is recorded as required pursuant to G.S. 7B-2410. This may aid in impeachment of a witness at the adjudicatory hearing or trial or support a claim of error on appeal. If the courtroom does not have recording equipment, counsel should request that a court reporter attend the hearing and take transcription notes. Counsel could also have an investigator or other person working on behalf of the juvenile be present to make notes of the testimony. That person could then be called to impeach a witness who subsequently gives inconsistent testimony. Finally, counsel could bring their own recording equipment to record the testimony at the hearing.

9.5 Finding of No Probable Cause

The petition must be dismissed if the court finds that the State has failed to show probable cause that the juvenile committed the alleged felony unless the court finds probable cause that the juvenile committed a lesser included misdemeanor offense. G.S. 7B-2202(f)(1)–(2). Because jeopardy does not attach at a probable cause hearing, a subsequent petition is not barred by double jeopardy. *See In re Bullard*, 22 N.C. App. 245, 249 (1974) (determination of probable cause does not place the juvenile in jeopardy). There may be a defense, however, if there is a significant delay in the filing of a new petition. *See supra* § 6.3C, Timeliness of Filing.

If the court finds probable cause to believe that the juvenile committed a lesser included misdemeanor offense, the court may either proceed to adjudication or set a date for an adjudicatory hearing. G.S. 7B-2202(f)(2). If the court proceeds to adjudication, the adjudication must be a separate hearing. *Id.* The juvenile may request a continuance if needed. G.S. 7B-2406.

9.6 Finding of Probable Cause

Mandatory transfer to superior court. If the court finds probable cause to believe that the juvenile committed an offense that would constitute a Class A felony if committed by an adult, the court *must* transfer the case to superior court for the juvenile to be tried as an adult. G.S. 7B-2200.

Discretionary transfer to superior court. On a finding of probable cause to believe that the juvenile committed a felony that would be less than a Class A felony if committed by an adult, the prosecutor, the juvenile, or the court may move for a hearing on transfer to superior court. G.S. 7B-2200. If the juvenile has not had at least five days notice of the intent to seek transfer, the court must continue the transfer hearing at the juvenile's request. G.S. 7B-2202(e).

If the matter proceeds to adjudication in juvenile court in front of the judge who presided over the probable cause hearing, counsel may consider moving for recusal. The judge has ruled on probable cause and might have heard prejudicial hearsay testimony or other evidence that would be inadmissible at the adjudicatory hearing.

9.7 Appeal of Finding of Probable Cause

A finding of probable cause is not a final order and is therefore not immediately reviewable; errors relating to a determination of probable cause may, however, be the subject of an appeal following entry of the dispositional order. *In re K.R.B.*, 134 N.C. App. 328, 331 (1999) (dismissing the juvenile's appeal from the order finding probable cause as it was not properly before the court on appeal). In the case of *In re Ford*, 49 N.C. App. 680, 683 (1980), the Court stated that evidentiary rulings of the trial court during the probable cause hearing "may well merit our attention upon his appeal from a trial resulting in a disposition unfavorable to him. They are not properly before us, however, in relation to a finding of probable cause, which is not a 'final order.'"

9.8 Transfer of Jurisdiction to Superior Court

Jurisdiction over a juvenile *may* be transferred to superior court if the juvenile was at least 13 years old at the time of allegedly committing an offense that would be a felony, other than a Class A felony, if committed by an adult. There must be a motion, notice, hearing, and finding of probable cause before the court may consider transfer. G.S. 7B-2200.

Jurisdiction over a juvenile *must* be transferred to superior court if the juvenile was at least 13 years old at the time of allegedly committing an offense that would be a Class A felony (first-degree murder) and the court finds probable cause. *Id.*

Following transfer, all further proceedings in the matter occur in superior court; generally, adult criminal law and procedure apply. The juvenile must be fingerprinted and the fingerprints sent to the State Bureau of Investigation. G.S. 7B-2201(a). The juvenile must also provide a DNA sample if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A. G.S. 7B-2201(b). If the juvenile is convicted in superior court, any subsequent charges will be heard in criminal rather than juvenile court, even if the juvenile has not yet reached the age of 16. G.S. 7B-1604(b).

The juvenile may request transfer to superior court, although transfer rarely benefits the juvenile. The confidentiality of juvenile court proceedings is lost, and the juvenile is exposed to the adult criminal and penal system. The juvenile is also subject to the collateral consequences of conviction in superior court, which could include bars to employment and professional licensure, voting disenfranchisement, and the loss of public benefits. For a description of collateral consequences for North Carolina offenses, see the [Collateral Consequences Assessment Tool \(C-CAT\)](#). Juveniles who are not citizens risk deportation or harm to their immigration status if convicted as an adult. *Compare* IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA § 4.2F, Juvenile Delinquency Adjudication (Sept. 2017); *see also infra* § 12.7, Collateral Effects of Adjudication. While counsel should advise clients of the adverse consequences of transfer, ultimately it is the juvenile's decision whether to request transfer.

9.9 Procedures for Transfer Hearing

A. Evidence

The prosecutor and juvenile may be heard and offer evidence at the transfer hearing. Counsel for the juvenile is allowed to examine probation or court records that may be considered as evidence by the court. G.S. 7B-2203(a). Counsel should request to review any such records immediately after being appointed to a case subject to transfer.

Although no appellate court has yet addressed the question of whether the North Carolina Rules of Evidence apply at transfer hearings, the operation of Rules of Evidence 101 and 1101 indicate that they apply. *See, e.g., State v. Foster*, 222 N.C. App. 199, 202–03 (2012) (holding that the Rules of Evidence apply to post-conviction DNA testing proceedings because such proceedings are not listed as excluded under N.C. R. Evid. 1101(b) and no statute bars their application to the proceedings). Counsel should therefore object to evidence presented by the State that would be inadmissible under the Rules of Evidence.

Counsel should request other records pertaining to the juvenile's level of maturity, mental and emotional status, educational and service needs, or any other factors that might bolster the argument for retaining the matter in juvenile court. Counsel should also consider filing an *ex parte* motion for funds to hire an expert to examine the juvenile in order to develop evidence supporting retention of the case in juvenile court. Sample

release forms and a sample motion for an expert witness are available on the [Juvenile Defender website](#).

Unless the juvenile directs counsel to seek transfer, counsel should present evidence against transfer to superior court. Evidence may include the juvenile's record, performance on court supervision, educational history, mental and emotional state, intellectual functioning, developmental issues, and family history. Witnesses who can provide helpful insight into the juvenile's character, such as teachers, counselors, psychologists, members of the juvenile's religious community, family, friends, employers, or other people with a positive personal or professional opinion of the juvenile, may be called to testify.

Community services should also be explored. Counsel should be prepared to offer alternatives for disposition that would not be available if the matter were transferred to superior court.

B. Criteria for Determination

The court must decide whether “the protection of the public and the needs of the juvenile will be served by transfer of the case to superior court” G.S. 7B-2203(b). The statute lists eight criteria for making this determination:

- the age of the juvenile;
- the maturity of the juvenile;
- the intellectual functioning of the juvenile;
- the prior record of the juvenile;
- prior attempts to rehabilitate the juvenile;
- facilities or programs available to the court before the expiration of the court's jurisdiction and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;
- whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
- the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.

G.S. 7B-2203(b)(1)–(8).

The eight statutory criteria are neither weighted nor listed in order of importance for consideration by the court. Counsel should be prepared to argue those factors that support retention of the case in juvenile court as well as to counter the factors most likely to be relied on by the State in seeking transfer. Objections should be raised if the court considers any factors not listed under the statute.

C. Transfer Order

If the court determines that the case should be transferred to superior court, it must enter an order specifying the reasons for transfer. G.S. 7B-2203(c). A transfer of a felony offense also confers jurisdiction on the superior court to try any other offenses arising out of the underlying act or any greater or lesser included offense of that felony. *Id.*; *see also State v. Jackson*, 165 N.C. App. 763, 774 (2004) (superior court had jurisdiction over conspiracy charge that was never filed in district court because the charge was part of transaction that gave rise to other charges properly transferred from district court).

If the court determines that under the statutory criteria the case should be retained in district court, the court must either proceed to an adjudicatory hearing or set a date for adjudication. G.S. 7B-2203(d). If the court proceeds to adjudication, the adjudication must be a separate hearing. *Id.*

9.10 Appeal of Order of Transfer

Appeal to superior court. If the court issues an order transferring the case to superior court, the juvenile may appeal the order to superior court for a “hearing on the record.” G.S. 7B-2603(a). The juvenile must give notice of appeal in open court or in writing within 10 days after entry of the transfer order. The date of entry of the order is determined in the same manner as under Rule 58 of the Rules of Civil Procedure—that is, an order is entered when it is “reduced to writing, signed by the judge, and filed with the clerk of court.” The transfer order must be properly appealed to the superior court to preserve the issue for appeal to the Court of Appeals. If the juvenile fails to properly appeal the order to superior court, any arguments about the transfer order are subject to dismissal. *See State v. Wilson*, 151 N.C. App. 219, 223 (2002) (transfer order not reviewable because juvenile appealed directly to the Court of Appeals instead of appealing to superior court as required by G.S. 7B-2603).

The superior court must review the decision to transfer the case “within a reasonable time” after the juvenile gives notice of appeal. G.S. 7B-2603(a). There are no explicit statutory procedures for the review in superior court, although the use of the term “hearing on the record” indicates that the superior court will review the transcript of the transfer hearing and the juvenile court file. Counsel should be allowed to appear and make arguments based on the record.

The superior court may not reweigh the evidence that the district court considered. *In re E.S.*, 191 N.C. App. 568, 574 (2008). Instead, the superior court must determine whether the district court properly exercised its discretion in transferring the case to superior court. Under an older version of the Juvenile Code, the superior court could only reverse an order transferring a case to superior court for “gross abuse of discretion.” *State v. Green*, 348 N.C. 588, 595 (1998). In contrast, the superior court may reverse a transfer order under the current version of the Juvenile Code “for abuse of discretion” by the district court, which on its face is a less deferential standard. G.S. 7B-2603(a). Cases

have held that a court abuses its discretion when it makes an “error of law,” *State v. Rhodes*, 366 N.C. 532, 535 (2013), or when it “refuses to exercise its discretion in the erroneous belief that it has no discretion as to the question presented.” *State v. Lang*, 301 N.C. 508, 510 (1980).

The superior court has two alternatives after the hearing on the record. It may either remand the case to district court for adjudication or uphold the transfer order. G.S. 7B-2603(c).

Appeal to Court of Appeals. If the superior court upholds the transfer order, the order may be appealed to the Court of Appeals only if the juvenile is subsequently found guilty in superior court. G.S. 7B-2603(d); *State v. Wilson*, 151 N.C. App. 219, 222 (2002) (juvenile may appeal order of transfer to Court of Appeals only after conviction in superior court and only if issue was preserved by proper appeal of issue to superior court); *State v. Hatchett*, 177 N.C. App. 812 (2006) (unpublished) (citing *Wilson*).

In addition, G.S. 15A-1444 provides strict limitations on appeals from guilty pleas. Based on those limitations, a juvenile may not challenge a transfer order on direct appeal if the juvenile pled guilty in superior court. *State v. Evans*, 184 N.C. App. 736, 739 (2007) (dismissing appeal because defendant had no right to challenge transfer order under G.S. 15A-1444). To ensure appellate review of a transfer order, the juvenile must take the case to trial.

Although a juvenile does not have the right to direct appeal of a transfer order after pleading guilty in superior court, a juvenile who pleads guilty may challenge the transfer order in a petition for writ of certiorari. In contrast to direct appeals, review by writ of certiorari is “discretionary.” *State v. Hammonds*, 218 N.C. App. 158, 162–63 (2012).

Under Rule 21 of the Rules of Appellate Procedure, review by writ of certiorari is limited and does not include transfer orders. However, Rule 21 “cannot take away jurisdiction given to [the appellate court] by the General Assembly in accordance with the North Carolina Constitution.” *State v. Stubbs*, 368 N.C. 40, 44 (2015). According to G.S. 15A-1444(e), a defendant who has pled guilty and seeks review of issues that are not appealable as of right “may petition the appellate division for review by writ of certiorari.” Consequently, a juvenile may be able to obtain reversal of a transfer order even if the juvenile lost the right to direct appeal of the order by pleading guilty.

9.11 Right to Pretrial Release on Transfer

Once an order of transfer has been entered, a juvenile has the same right to pretrial release as an adult under G.S. 15A-533 and 15A-534. G.S. 7B-2204, 7B-2603(b). After entering the transfer order, the district court judge must determine the conditions under which the juvenile may obtain release, as provided in G.S. 15A-533 and 15A-534 (i.e., written promise to appear, unsecured bond, custody release, secured bond, or electronic

house arrest with a secured bond). An order of release also must specify the person or people to whom the juvenile may be released. G.S. 7B-2204, 7B-2603(b).

When transfer to superior court is a possibility, counsel should work with the juvenile and the juvenile's family to have a plan for pretrial release to present to the court.

9.12 Detention Following Transfer

If the juvenile does not meet pretrial release conditions, the court must order that the juvenile be held in a detention center while awaiting trial. G.S. 7B-2204, 7B-2603(b). The court may order that the juvenile be held in a holdover facility when the juvenile is required to be in court for pretrial hearings or for trial, if the court finds that it would be inconvenient to return the juvenile to the detention center. *Id.* For more information about detention centers and holdover facilities, see *supra* § 8.6, Secure Custody.

Appendix 9-1: Sample Questions for Probable Cause and Preliminary Hearings

The following is reprinted with permission from CRIMINAL PRACTICE INSTITUTE: PRACTICE MANUAL, Chapter 2 Appendix C (Public Defender Service for the District of Columbia, 2011 Edition). The sample questions were created for probable cause hearings in criminal cases, but they may be useful for such hearings in juvenile cases.

The following questions are very basic and include only some aspects of certain offenses. The questions are not designed to replace the specific, detailed questioning of witnesses necessary to elicit the unique facts in a particular case.

I. Identification

A. Questions about the Event Itself

1. Get a detailed narrative of what happened, including where the witness was coming from, what the witness was doing prior to the incident, and where the witness was going.
2. Who was the witness with?
3. What was the witness paying attention to just before the witness noticed the perpetrator for the first time?
4. From which direction did the perpetrator approach (front, rear, side, don't know)?
5. What was the exact location of the confrontation? (Get this in words and try to have the witness draw a diagram of the scene.)
6. Exactly what happened? Was there more than one person involved? (Get the exact and relative roles of the persons involved.)
7. If there was more than one perpetrator, find out which one is supposed to be the defendant. (Where was the defendant at all times, in absolute terms and in relation to the other perpetrators and witnesses?)
8. Which perpetrator made contact with the witness?
9. When did the witness first notice the perpetrator(s)? How far away were they? What drew the witness's attention to the perpetrator(s)?
10. Was anything taken from the witness? What was done with it after it was taken?
11. In which direction or to where did the perpetrator(s) flee? For how long after the incident did the witness keep the perpetrator(s) in sight?

B. Opportunity to Observe

Witness's state of mind

1. What had the witness been doing prior to the incident?
2. Had the witness been drinking or using any drugs?
3. Where was the witness going at the time of the incident?
4. How much sleep had the witness had the night before?
5. Was the witness tired? Preoccupied?

6. Was the witness frightened?
7. Was the witness focusing on a weapon during the incident, or on another individual?

Physical conditions of observation

1. What was the distance between the witness and the perpetrator when the witness first noticed the perpetrator?
2. What was the distance between the two of them during the majority of the incident?
3. What was the duration of the incident? (If it was a long time, split it up into parts. The witness may not have had a good opportunity to view during some of the segments or may have been focusing on one particular item or person.)
4. What was the angle of observation between the witness and the perpetrator?
5. What is the witness's hearing like? Vision?
6. How long did the incident take? (Note: Time is **very** important. Most witnesses will say that an event took minutes when it actually took seconds. Demonstrate how long a minute is—the time may be cut considerably.)
7. What were the weather conditions like? (Sunny, rainy, overcast, stars out, etc.)
8. What were the lighting conditions? Were there streetlights, house lights, car lights, etc.? Was any of the lighting filtered or obstructed? Get exact locations of all lights. Were the streetlights high or low intensity? Were there any lights available that were not turned on?
9. Were there any physical barriers or obstructions between the witness and the perpetrator, e.g., cars, trees, or other witnesses?

C. Reporting the Incident

Police

1. How was the incident reported to the police? (Call made? Flagging down a car?)
2. Who reported the incident?
3. How soon after the event was it reported?
4. With whom was the incident discussed?
5. Exactly what did the witness say in giving the report?
6. Did the person to whom the report was made make any statements or say anything?
7. Were there other witnesses who talked to the police?
8. Were there other witnesses who did not talk to the police?
9. Did the police read back to the witness what had been written down? Did the witness change anything or adopt it?
10. Did the witness forget to tell the police anything that the witness is now telling you?
11. What was the initial description the witness gave to the police?
12. Did the witness make a written statement?
13. Was the witness under the influence of any drugs or alcohol when speaking with the police?
14. Has the witness spoken with anyone else about the incident?

Prosecutor

1. Has the witness been to the grand jury? Did the witness testify or only meet with a prosecutor? What questions were asked by the prosecutor and the grand jurors?
2. What was the witness's testimony?
3. Did the prosecutor take notes of the meeting?
4. Who else has met with the prosecutor?
5. Is there anything the witness told the grand jury or the prosecutor that the witness has not told you?
6. Is there anything the witness told you that the witness did not tell the grand jury or the prosecutor?

D. Description of the Perpetrator

1. Age
2. Height (relative to witness or another object)
3. Weight
4. Skin color and complexion
5. Nose (shape)
6. Mouth (shape, especially lips)
7. Teeth—color, missing, crooked, straight, crowded, gaps, unusual shape, noticeable crowns
8. Eyes (color, shape, and positioning)
9. Shape of face (broad, narrow, type of forehead, etc.)
10. Glasses?
11. Facial hair (type, style, color, amount)
12. Hair (style, amount, color)
13. Clothing description (style, color, distinguishing features)
 - a. Coat
 - b. Hat
 - c. Pants
 - d. Shirt
 - e. Shoes
 - f. Any other articles?
14. Any distinguishing or unusual features?
15. Was the perpetrator carrying any object? (Get full descriptions of any weapons: style, type, color, size, where the item came from.)
16. Was there anything distinctive about the perpetrator's voice, the way the perpetrator walked, or any unusual mannerisms?
17. Does the description that the witness gave to you differ in any way from that which the witness gave to the police? Did the witness add anything or leave anything out?

E. Evaluation of the Witness—Background

1. Has the witness ever been a victim of a crime before?
2. Has the witness ever been a witness to a crime before?

3. How articulate is the witness?
4. How certain or sure does the witness appear to be?
5. How anxious is the witness to pursue this case?

F. Making an Identification

1. How was the identification made—show-up, photo array, line-up, caught on the scene, second sighting?
2. What did the police say to the witness before the identification? Did the witness overhear anything being said?
3. What did the police say during the identification?
4. What did the witness say in making the identification? (Exact words.)
5. What did the police say after the identification?
6. Did the police write down what the witness said?
7. Were there any other witnesses around during the identification? How close were they to this witness?
8. Were there other identifications made?
9. What did any other witness say about an identification?
10. Was the witness asked to identify anyone but was unable to do so? (Get full details.)
11. On what did the witness base the identification—clothes, face, relative size, body build?
12. How soon after the incident was the identification made?
13. Did the person the witness identified appear to be different in any way from the perpetrator? (Was there different facial hair? Different clothes?)
14. If there was more than one perpetrator, how was each one identified? (Brought out together in a show-up? Pictures together in one photo array? Together in a line-up?)
15. How certain is the witness of this identification? Did police ask this? What was witness's response?
16. Is the witness more certain now than at the time of the original identification? Have there been multiple identifications that now make the person more certain?
17. If there is more than one person, is the witness more certain of one than the other?

G. Show-up Identification

1. Was the witness taken to the suspect, or was the suspect transported to the witness?
2. Was this show-up at the scene of the crime or at another location?
3. Where was the witness at the time of the identification? (Actual position on a diagram or in detailed words, and relative to the perpetrator.) Could the suspect see the witness? Could the suspect hear the witness?
4. What was said by the police before, during, and after the identification?
5. What did the witness tell the police at all stages (before, during, and after the identification)?
6. What description had the witness given to the police? What description did the police have from other witnesses?
7. Were there police around the suspect when the suspect was brought back? Was the suspect handcuffed? In a police car?

8. Who else was present during the identification? Could other witnesses hear what this witness said? Could this witness hear what other witnesses said?
9. Did the suspect have to do anything during the show-up (e.g., say anything, put on or take off an article of clothing)?
10. What were the viewing conditions at the time of the show-up in terms of lighting, distance from the subject, and general opportunity to observe the person being shown?
11. Note: Ask all the questions in Making an Identification, above.

H. Second Sighting

1. Did the witness ever see the suspect again on the street? (When? Where? Under what circumstances?)
2. What did the witness do after seeing the suspect again?
3. Was anyone else present?
4. What was the witness paying attention to just before seeing the person again?
5. What was the lighting?
6. Was anything said to or by the suspect?
7. Note: Ask all the questions in Making an Identification, above.

I. Photo Identification

1. Was this the first identification?
2. Were there any identifications or failures to identify at the scene?
3. Where were the photos shown?
4. Were the pictures loose or in a book? What kind of photos were they?
5. Did the police say anything to the witness about the pictures (e.g., that the pictures were all of known rapists, that they suspected someone in the pictures or book, etc.)?
6. How did the police handle the pictures? Did they let the witness look through the pictures on his or her own? Did they sit there with the witness? Did they show the witness the pictures one at a time? How did they lay the pictures out—in a row, in a stack, in two rows? In what order?
7. How many pictures were there?
8. Were all the pictures the same? Same size, same color?
9. What did the police say before showing the pictures?
10. Did the police say anything while showing the pictures?
11. Did the police say anything after the viewing? After the identification?
12. What exactly did the witness do? Did the witness look through all of them and then pick out one? Did the witness stop at one picture and make an identification? After identifying one picture, did the witness go through the pictures again or finish going through them? Did the witness ever turn the pictures over and see the back? Was anything on the back?
13. Was the witness aware of any dates on the pictures?
14. Did the witness write anything on any picture?
15. What exactly did the witness say in picking a picture?
16. Was more than one picture picked?

17. How sure is the witness that the identification is correct?
18. Did the picture differ in any way from the witness's memory of the perpetrator?
19. Did the police write anything down at any time?
20. Where in the stack or book was the person whom the witness identified?
21. What drew the witness to the identified picture?
22. How long did the showing take? Who else was present? If there were other witnesses present, did they view the photos together or separately?
23. What other identifications were made?
24. Note: Ask all the questions in Making an Identification, above.

J. Line-up Identification

1. Did the witness go to the line-up? Did the witness identify anyone there?
2. What was the witness told before going to the line-up? Was the witness shown photos before the line-up?
3. How did the witness get to the line-up? (Picked up by the police? With other witnesses?)
4. What was the witness told by the police outside the line-up room?
5. Did the witness ask the police any questions?
6. Did the witness talk to other witnesses while waiting outside the line-up room?
7. How many people were in the line-up room?
8. In what position in the line-up was the suspect standing?
9. Did the witness identify the suspect in the presence of other witnesses?
10. What exactly did the witness say in making the identification?
11. What did the police say to the witness outside the line-up room?
12. What did the witness say to other witnesses, or what did the witnesses say to him or her?
13. What did the witness tell the police? (Especially find out the witness's degree of certainty about the identification.)
14. How sure is the witness of the identification?
15. On what basis was the identification made? (Face, clothes, relative body build?)
16. Was there anyone else in the line-up who resembled the person whom the witness identified?
17. Was there anything different between the person the witness identified and the perpetrator?
18. Did the witness look down the line and then identify someone or did the witness just center on one person?
19. Had the witness ever made another identification in this case? When and how? (Get full details.)
20. Had the witness been shown any pictures recently? (When, how many, by whom, what other witnesses, what was said?)
21. Did the witness ask anyone in the line to do anything, say something, turn a particular way?
22. Note: Ask all the questions in Making an Identification, above.

II. Alibi Witness

1. Was the defendant with you on [date]?
2. How do you recall that specific day?
3. How do you recall the specific time?
4. When did the defendant arrive?
5. When did you first see the defendant?
6. Where did you first see the defendant (address, exact place, etc.)?
7. Was the defendant alone or with someone else?
8. Who was the defendant with?
9. Where does that person live?
10. Did anyone else see you and the defendant together?
11. Who?
12. Where does that person live?
13. How long was defendant with you?
14. How do you know it was this long?
15. What exactly did defendant do or say? (As specific and detailed as possible.)
16. Did defendant ever leave your presence during this period of time?
 - a. When?
 - b. How many times?
 - c. How long was defendant gone each time?
 - d. When did defendant return?
17. When did defendant finally leave?
18. How do you know?
19. Who, if anyone, left with defendant?
20. Where did defendant go?
21. How do you know?
22. How did the defendant act during the period of time the defendant was with you? (As specific as possible.)
 - a. Intoxicated? Drugged?
 - b. Nervous?
 - c. Excited? Calm?
 - d. Normal?
 - e. Angry? Happy? Sad?
23. What is your relationship with the defendant?
 - a. Close friend? Casual friend? Know to speak of?
 - b. Relative by blood? Relative by marriage?
 - c. Employer?
24. How long have you known the defendant?
25. When was the last time you saw the defendant before [date in question]?
26. Where? What was the defendant doing, etc.?
27. Have you seen the defendant since [date in question]?
28. Where? What was the defendant doing?
29. Are you aware that the defendant is charged with [offense]?
30. How did you learn this?
31. What exactly do you know about the offense?

32. Have you ever talked about the offense with the defendant? (If yes, details.)
33. Have you ever talked with police about the offense? (If yes, details as to when, where, what said, etc.)
34. Have you ever talked with the Assistant United States Attorney about this case? (If yes, details as to when, what said, etc.)
35. Have you testified before the grand jury about this case? (If yes, details as to when, what said, etc.)
36. Have you spoken to anyone else about the offense? (If yes, details as to when, what said, by whom, etc.)
37. Did you ever tell the police, the grand jury, or the prosecutor that the defendant was with you on [date of offense]?
38. Have you previously testified as an alibi witness for the defendant?
39. Have you ever been convicted of an offense? (When, where, disposition.)
40. Where do you now live? Phone number? Length of time?
41. Where did you live before that? Length of time?
42. Where do you work? (If unemployed, how long?)
43. What is your position?
44. How long have you been employed there?
45. Where did you work before that? How long? Position?

III. Self-defense

All the following questions should be asked of all witnesses (the complainant, eyewitnesses, complainant's friends and relatives, defendant's friends and relatives, police officers). They **must** be asked in cases where the defense may be self-defense—i.e., all homicides, ADWs, assaults, etc. These questions are not exhaustive, but merely guidelines. Additional questions should be asked and tailored to the particular fact situation involved. The investigator must try to elicit specific instances rather than general impressions, e.g., he's a bad guy, always fighting.

A. Evidence of Complainant's Aggressive or Bad Character to Show Propensity for Violence

1. Was the complainant a violent, aggressive person? Always getting into fights, arguments, altercations with people? Threatening people? (Specify details as to when, where, with whom, persons present, outcome, etc.)
2. Did the complainant associate with people with a reputation for assaultive behavior toward others? If so, who were these other people and where do they live?
3. Have you ever known the complainant to carry any type of weapon?
4. What kind of weapon?
5. Did the complainant always carry it? Frequently? Occasionally? (Specify.) Who would know the complainant carried a weapon?
6. Has the complainant ever used a weapon on anyone other than the defendant? (If yes, specify details as to when, where, on whom, injuries, persons present, outcome, etc.)
7. Do you know of the above from personal observation or from what others have told you? (If others, specify details as to who, when, where, etc.)
8. Was the complainant violent, aggressive when sober, or violent only when intoxicated or drinking?

9. Was the complainant known to drink to excess? Use narcotics?
10. Was the complainant ever charged, arrested, or tried for any assaultive behavior against anyone? (If so, details as to date, jurisdiction, result.) (Also find out the details of any non-violent charges.)

B. Defendant's Knowledge of Complainant's Violent, Aggressive, or Bad Character

1. Determine whether the defendant was aware of any of the above factors pertaining to the complainant. If the defendant was aware, obtain the specific details as to how the defendant knew, who told the defendant, when the defendant became aware, etc.
2. Had the complainant ever made threats against the defendant in the past?
 - a. To the defendant personally? (When, where, who was present, etc.)
 - b. To other people concerning the defendant? (When, where, who was present, etc.)
 - c. Did the defendant know of these threats? (How? When? Where? What was defendant's reaction?)
 - d. Was the defendant ever present when the complainant made threats to others?
3. Did the defendant know of the complainant's reputation for carrying a weapon?
 - a. Does the defendant know this from personal observation?
 - b. Does the defendant know this from other people?

C. Prior Relationship Between Defendant and Complainant

1. Have the defendant and the complainant had any difficulty with each other in the past?
 - a. When—day, date, time?
 - b. Where? (Precise place.)
 - c. Who else present? (Full names, addresses, telephone numbers.)
 - d. Cause of dispute or altercation?
 - e. Who spoke first and what exactly was said?
 - f. Any challenges or threats made? What and by whom and response?
 - g. Who committed first overt act? What was it? Response?
 - h. Did defendant attempt to withdraw?
 - i. Were any weapons involved? What type? Who had them? How used?
 - j. Anyone injured? Nature and what extent?
 - k. Why did the defendant do what he or she did?
2. Did the witness ever tell police and/or prosecutor any of the above? If so, what and when?

Note: These questions do not attempt to explore the details of the altercation giving rise to the instant offense, an area that of course must be covered in great detail. Specific questions concerning this area are suggested below.

IV. Crimes against Persons

A. Where

1. Where did offense take place (address)?
2. Where at this address was the exact location of the offense?
3. Where exactly were the participants when the altercation began?
4. Where exactly were the participants immediately prior to the blow being struck?
5. Where exactly were the participants at the time of the (fatal) blow?
6. Where exactly was the witness during all of the above?
7. Where exactly were all other witnesses during all of above?
8. (Homicide case:) Where at this address was the exact place of death?

B. When

1. When did the altercation begin?
2. When did the defendant arrive on the scene?
3. When did the complainant arrive on the scene?
4. When did the witness being interviewed arrive on the scene?
5. When did the other witnesses arrive on the scene?
6. (Homicide case:) When was the fatal blow struck?
7. When was the offense reported?
8. (Homicide case:) When did the decedent die?

C. What

1. What was the cause of the altercation?
2. What exactly took place and what was said and done by the defendant and the complainant during the course of the altercation?
 - a. Who spoke first and what was said? Done?
 - b. Any challenge or threats made? What? By whom? Response?
 - c. Who committed the first physical act?
 - d. What was it?
 - e. What was the response?
 - f. Did defendant try to withdraw or wade in?
 - g. Did the complainant retreat?
3. Were any weapons involved?
 - a. Who had them?
 - b. Where were they?
 - c. What type?
 - d. Who used them?
 - e. Was the weapon used by defendant visible to the complainant?
 - f. Was the weapon used by complainant visible to the defendant?
 - g. Were any weapons recovered by the police on or near the decedent? By anyone? Turned over to police?
 - h. Did the police recover any weapon from the defendant?

4. What, in your opinion, caused defendant to do what he or she did?
5. (Homicide case:) What if anything did defendant say or do immediately after inflicting the fatal blow?
6. (Homicide case:) What if anything did decedent say or do immediately after receiving the fatal blow?
7. (Homicide case:) Did decedent say anything to police after the fatal blow was struck? What? Where? When?
8. (Homicide case:) Did the decedent say anything to anyone else after the fatal blow was struck? What? When? Where?
9. What, if anything, did the witness being interviewed tell the police? Prosecutor?
 - a. When?
 - b. Where?
 - c. To whom?
 - d. Sign statements?
 - e. Testify at preliminary hearing? Grand jury?
10. What did other witnesses tell the police? Prosecutor?
11. What did the witness being interviewed do during the entire incident?
12. What did the other witnesses do during the entire incident?

D. How

1. How did defendant, complainant, witness, and other witnesses arrive and leave?
2. How long did entire incident last?
3. How were the weapons used?
 - a. By defendant?
 - b. By complainant?
 - c. By anyone else?
4. How were the injuries inflicted on complainant/defendant?
 - a. Where?
 - b. How severe?
 - c. How many?
 - d. Where was person treated?
 - e. How did person get there?
5. How many times, if any, did the defendant tell the complainant to leave him or her alone? What was said? Did complainant hear it?
6. How far from complainant was defendant when incident began?
7. How far from decedent was defendant immediately before the (fatal) blow was struck?
8. How many times did the complainant tell the defendant to leave him or her alone? What was said? Did the defendant hear it?
9. How far from the complainant and the defendant was the witness during all of the above?
10. How many people participated in the altercation? Who? What did they do?

V. Crimes against Property

A. Where

1. Where did the offense take place (address)?
2. Where specifically did entry into the premises occur?
3. Where specifically did the taking occur?
4. Where specifically was the perpetrator during entire incident?
5. Where specifically were any witnesses during incident?
6. Where specifically were any occupants during incident?
7. What locations did police dust for fingerprints?
8. What items did police dust for fingerprints?
9. Where on the premises or items were prints lifted?
10. Where was the property stolen from or from where to where was it moved?

B. When

1. When did the offenses occur—date, time?
2. When did the perpetrator first arrive? Leave?
3. When was the offense discovered? By whom?
4. When was the offense reported? By whom?
5. When was the offense recovered—date, time?
6. When was property purchased? Where? Price paid? Is there a receipt? Estimate of value at time of taking? Basis of estimate?

C. What

1. What exactly occurred during entire incident?
2. What exactly was said by perpetrator during entire incident?
3. What exactly was said by each of the witnesses during entire incident?
4. What property was taken by perpetrator?
 - a. Complete detailed description.
 - b. Unusual characteristics?
 - c. How was item identified?
5. What tools were used to gain entrance? How used? Marks left on premises? Any recovered?
6. What weapon, if any, did perpetrator use? (Describe weapon and use.)
7. What items, if any, did perpetrator leave at premises? Where are they now?
8. What information was reported to police?
9. What information was reported to insurance company? When? Where? What company? Result?
10. Was the complainant told by the insurance company that no recovery was possible unless a report was first made to the police?

D. How

1. How did the perpetrator arrive? Depart? (Mode of transportation.)
2. How did perpetrator gain entrance to premises where the property was? How did the perpetrator depart the house? (Detail each.)
 - a. Breaking?
 - b. Jimmying?
 - c. Picking locks?
 - d. Slipping locks?
 - e. Unlocked entrance?
 - f. Let in by occupant?
3. How was any property removed from the premises?
4. How was the property recovered?

E. Who

Answers to questions contained in General Identification section should be obtained, if applicable.

VI. Unauthorized Use of Motor Vehicle**A. Where**

1. Where was car taken from? Address? Exact location at this address?
2. Where was the car's driver? Address?
3. Where was the car recovered? Address? Exact location at this address?

B. When

1. When was the car taken—date, time? Basis for estimate?
2. When was the car discovered missing—date, time? Basis for estimate?
3. When was the car reported missing—date, time?
4. When was the car driven after the theft—date, time? Duration?
5. When was the car recovered—date, time?
6. When was the defendant arrested—date, time? Statements? Others with defendant? Who was driving? Where in the car was defendant?

C. What

1. What kind of car—make, model, year, color, license plate number, manufacturer's number, mileage at time of taking and recovery, condition at time of taking and recovery.
2. What items, if any, were removed from the car by the user?
3. What items, if any, belonging to user were left in the car?
4. What portion of the car was dusted for prints?
5. From what portion of the car were prints lifted?

6. What prior relationship, if any, existed between the owner of vehicle and the defendant?
7. What police officers were involved in the case?

D. How

1. How was car taken?
 - a. Keys in car?
 - b. Car jumped?
 - c. Another key used?
 - d. Ignition locked/unlocked?
 - e. Windows/door jimmied/broken?
 - f. Slashed top?
 - g. Tools used? Describe how.
 - h. Permission to drive given to anyone?
2. How did participants arrive on scene? Depart?

E. Who

1. Who witnessed the removal? Recovery? (Details, names, addresses, and what seen.)
2. Who was in car at time of recovery? (Details, names, addresses, positions in car.)
3. Who reported vehicle stolen?
4. Who else participated in removal of vehicle? Use of vehicle?

VII. False Pretenses, Forgery, and Uttering

A. Where

1. Where did the offense take place (address)?
2. Where specifically did the exchange occur at this address?
3. Where specifically was the defendant during the entire incident?
4. Where specifically were all witnesses located during the entire incident?

B. When

1. When did offense occur—date, time?
2. When did the forger/utterer first arrive?
3. When did the forger/utterer leave?
4. When was the offense reported?
5. When was the property recovered?

C. What

1. What exactly occurred during the entire incident?
2. What exactly was said by forger/utterer during the entire incident?
3. What exactly was said by all witnesses to the incident?

4. What type of identification did forger/utterer use?
5. What type of instrument was used by forger/utterer (check, credit card, etc.)?
6. What property and/or money did forger/utterer get?
 - a. Complete detailed description?
 - b. When purchased?
 - c. Value (at time of purchase and at time of taking)?
 - d. How is item identified?
 - e. Any unusual characteristics?
 - f. Condition at time of purchase and time of recovery?
7. What names were on the instrument?
 - a. Payee?
 - b. Maker?
 - c. Endorser?
8. What exactly did forger/utterer write?
 - a. When?
 - b. Where?
 - c. In whose presence?

D. Who

1. Who else was with forger/utterer? (Detail everything they said and did during entire incident.)
2. Who reported incident?
3. Who responded (MPD, FBI, Secret Service)? Detail everything that transpired thereafter.

E. Photograph

Was photograph of forger/utterer taken when the instrument was passed? If so, where was camera, where was forger/utterer at the time of picture, where is picture now?

F. Handwriting Analysis

This is generally applicable if interviewing the arresting or investigating officer. Probe all the details surrounding the taking of a handwriting sample from the defendant: when, where, who was present, what was written, what was said by all, waiver obtained, etc.