

## Reducing Charges in Juvenile Court

Many juvenile cases are resolved through admissions (known as guilty pleas in criminal court), often with the prosecutor's agreement to reduce the charge. Sometimes, the reduced charge is a lesser-included offense of the original offense charged in the petition, such as changing common law robbery to misdemeanor larceny. See *State v. White*, 142 N.C. App. 201, 204 (2001). But, often, a reduced charge is not a lesser-included offense, like changing sexual battery to simple assault. See *State v. Corbett*, 196 N.C. App. 508, 511 (2009). The question then becomes: How can the State proceed on a different offense than the one charged in the petition? Can the prosecutor prepare a misdemeanor statement of charges as in criminal court? Or, is a new petition required? Here are the answers.

### To Proceed on a Lesser-Included Offense:

**Use the Original Petition.** If the new charge is a lesser-included offense, nothing may be required. Several published appellate cases suggest that a juvenile petition is sufficient to allow an adjudication of delinquency for the charged offense and any lesser-included offenses that are supported by the evidence. See, e.g., *In re I.R.T.*, 184 N.C. App. 579 (2007) (reversing adjudication for possession with intent to sell or deliver cocaine and remanding for entry of order on simple possession); *In re J.H.*, 177 N.C. App. 776 (2006) (reversing adjudication for felony possession of stolen goods and remanding for entry of order on misdemeanor possession of stolen goods).

In criminal cases, the law explicitly states that an indictment may support a conviction of the charged offense and any lesser-included offenses. [G.S. 15-170](#). Our courts have interpreted this statute as permitting a conviction on the lesser offense if the indictment alleges all the essential elements of the lesser offense. *State v. Riera*, 276 N.C. 361, 368 (1970). Thus, where a defendant is indicted for felonious larceny, he may be convicted of misdemeanor larceny. *State v. Daniels*, 51 N.C. App. 294 (1981). In contrast, a "short-form" murder indictment would not permit a conviction of assault, which is otherwise a lesser-included offense of murder, since such indictments do not allege an assault. *State v. Collins*, 334 N.C. 54, 63 (1993).

Because juvenile petitions must allege "facts supporting every element of a criminal offense" to provide sufficient notice, [G.S. 7B-1802](#), the same rule should also apply to juveniles. Thus, if the original juvenile petition contains all the essential elements of a lesser-included offense, the prosecutor should be able to proceed on the same petition.

**Move to Amend.** If the new charge is a lesser-included offense that is not adequately alleged in the original petition, the prosecutor can move to amend. [G.S. 7B-2400](#) permits the amendment of a juvenile petition when it "does not change the nature of the offense alleged." In other words, the amended petition must not charge the juvenile with a *different* offense. *In re Davis*, 114 N.C. App. 25, 255 (1994). Because a lesser-included offense is necessarily part of the greater offense,

amending the original petition in this manner would not change the nature of the offense. If the offense is not a lesser-included offense, the State may not amend the petition. *Id.* (where original petition alleged burning a public building, trial judge erred by effectively allowing the State to amend the petition to allege burning of personal property, which was not a lesser-included offense).

### **To Proceed on a Different Offense:**

**File a New Petition.** In criminal cases, prosecutors have various options for alleging offenses not charged in the original pleading. Prosecutors can file a “statement of charges” to charge a different misdemeanor in district court or, as long as the defendant waives the right to a formal indictment, can file an “information” to charge a different felony (and related misdemeanors) in superior court. G.S. 15A-641, 15A-642, 15A-922. In juvenile court, a juvenile petition is the only authorized pleading. [G.S. 7B-1801](#). Thus, to charge a different offense that is not a lesser-included offense, a new petition must be filed.

Generally, for a petition to be filed in juvenile court, a complaint must be submitted to the Division of Juvenile Justice, which must be evaluated by an intake counselor. When the prosecutor wants to charge a reduced offense that is not a lesser offense of the one charged in the original petition, does a new complaint have to be submitted and evaluated? In short, yes, but the process doesn’t have to be onerous.

A prosecutor can sign the complaint as the complainant, as long as a court counselor still approves it to be filed as a petition. *In re Stowe*, 118 N.C. App. 662, 665-66 (1995). This option is useful if the juvenile is in court ready to enter an admission to the reduced charge, but the school resource officer, victim, or other person who initiated the first complaint is not present. To sign as the complainant, the prosecutor must have knowledge of the matters alleged therein and be able to verify the information, but need not have personal or first-hand knowledge. *Id.*

The evaluation of the complaint, generally, requires two steps: (1) a preliminary inquiry to determine jurisdiction and legal sufficiency, and (2) an intake evaluation to determine whether to file the complaint as a petition, divert the juvenile, or take no further action. [G.S. 7B-1701](#), [7B-1702](#). Since an intake evaluation was completed for the first complaint, it would seem unnecessary to repeat this process in most cases involving a reduced charge. *Cf. In re T.H.*, 218 N.C. App. 123, 130 (2012) (holding that intake interviews are not mandatory when the court counselor already has enough information to evaluate the complaint). Presumably, since the pertinent information is the same and the juvenile is willing to enter an admission to the reduced charge, the court counselor can make an expedited filing decision upon receiving the second complaint, perhaps even the same day. Much like filing a statement of charges or information in criminal court, filing a petition can be achieved without unnecessarily delaying the proceedings.

**What happens to the original petition?** The filing of a juvenile petition initiates a new action in juvenile court. There is no such thing as a “superseding” petition. Thus, if a new petition is filed to

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facilitate an admission to a reduced charge and resolve the case, the State should dismiss the original petition. Otherwise, the juvenile will have two, separately pending juvenile petitions for the same incident.