

TRAINING & RESOURCE  
MANUAL FOR ATTORNEYS  
REPRESENTING JUVENILES  
IN FAMILY COURT

CHILDREN'S LAW OFFICE  
UNIVERSITY OF SOUTH CAROLINA  
SCHOOL OF LAW

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# INTRODUCTION

This Manual was created to provide defense attorneys who represent children with an overview of the juvenile justice system in South Carolina and to assist with the training of new public defenders and private defense attorneys. The information contained in the Manual is current as of September 2006. I will make every effort to update the information as changes in law and policy are made.

A majority of the information contained in the Parole and DJJ Policies & Procedures sections is based on internal agency policy and is subject to change at the discretion of the agency. If you have a question about a particular policy, it is advised that you confirm its current content with a DJJ representative or the DJJ web site.

If you have any questions concerning information contained in the Manual or suggestions for additions or changes, please contact me at (803) 576-5575 or BQRichey@sc.edu.

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*- Updated September 2006 -*

# THE CHILDREN'S LAW OFFICE

The Children's Law Office, University of South Carolina School of Law (CLO) was founded in 1995 and serves as a resource center for attorneys and other professionals involved in juvenile justice or child maltreatment cases in South Carolina. The overall purpose of the Children's Law Office is to improve the administration of justice in these cases, by enhancing the knowledge and skills of practitioners of all disciplines.

The CLO provides a full array of training, technical assistance, resource materials and research activities addressing a broad spectrum of law and court-related topics affecting children in the juvenile justice and child protection systems.

The Children's Law Office, a program of the USC School of Law, is funded by a variety of state and federal grant sources including the South Carolina Bar Foundation.

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# BASICS OF JUVENILE COURT



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## DEFINITION OF “CHILD”

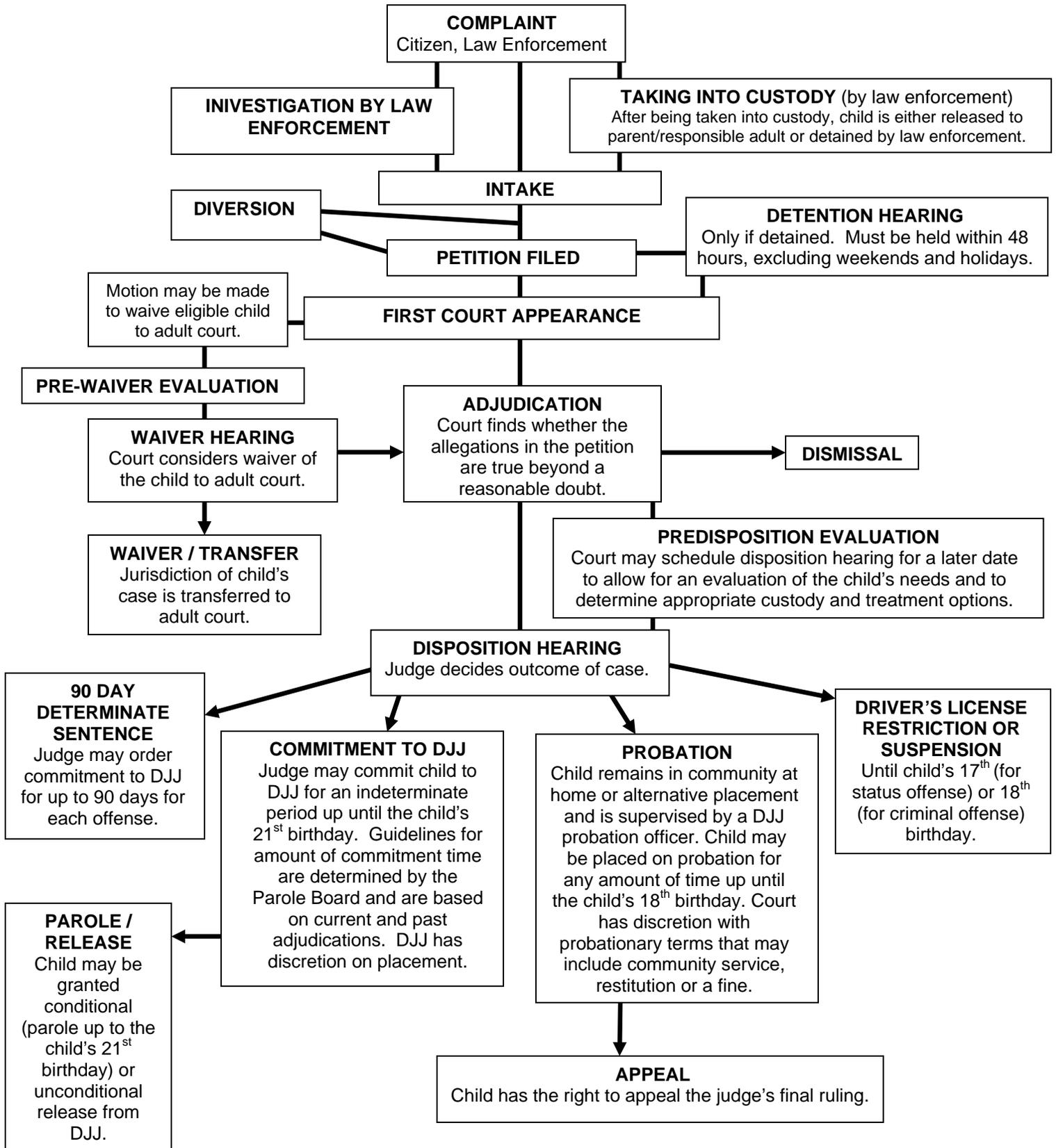
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In South Carolina, the legal age of majority is 18 years of age under S.C. Code Ann. § 20-7-490(1) (Supp. 2005). However, for purposes of the juvenile justice system, S.C. Code Ann. § 20-7-6605(1) (Supp. 2005) defines “child” as follows:

- "Child" means a person less than seventeen years of age.
- "Child" does not mean a person sixteen years of age or older who is charged with a Class A, B, C or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.
- However, a person sixteen years of age who is charged with a Class A, B, C or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor.
- An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item. \*\*

\*\* *Example: If a 16 year old is charged with burglary, first degree and petit larceny arising out of the same circumstance, both charges should be heard in general sessions court.*

# CASE FLOW CHART



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# THE FAMILY COURT PROCESS FOR CHILDREN CHARGED WITH CRIMINAL AND STATUS OFFENSES IN SOUTH CAROLINA

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## INTRODUCTION

Children have special needs and are treated differently than adults by the court system. In South Carolina, the family court has jurisdiction over children who are charged with criminal offenses and status offenses. Status offenses are those offenses which would not be a crime if committed by an adult, such as incorrigibility (beyond the control of the parents), running away, and truancy (failure to attend school as required by law). A person's age determines whether he or she will be treated as a child and tried in family court, or treated as an adult and tried in adult (general sessions) court. South Carolina law defines "child," for juvenile justice purposes, as a person less than seventeen years of age, but the definition excludes sixteen year olds who are charged with felonies that provide for a maximum term of imprisonment of fifteen years or more. Sixteen year olds excluded under this definition, however, may be remanded or transferred to the family court at the solicitor's (prosecutor's) discretion.

Family court delinquency cases differ from adult criminal cases, procedurally and with respect to terminology. These differences, as well as things unique to the juvenile justice system, are addressed below.

## PETITION

Any person, including law enforcement, who believes that a child has committed a criminal or status offense, may initiate a family court proceeding involving the child. Under most circumstances, a police officer or someone authorized by the family court will prepare a petition and file it with the family court. A petition, which is similar to the complaint in the adult system, is a formal document alleging that the child committed a delinquent act. The petition must clearly identify: (1) the facts alleging the child's delinquency; (2) the child's name, age, and address; and (3) the names and addresses of the child's parents or guardian. S.C. Code Ann. § 20-7-7415 (Supp. 2005).

After the petition is filed, the child and the child's parents or guardian are notified of the charges against the child and the court sets a date and time for the adjudicatory hearing (the hearing to decide guilt or innocence).

## **TAKING INTO CUSTODY**

A child may also enter the juvenile justice system upon being taken into custody by law enforcement. The taking into custody is the equivalent of an adult's arrest.

### ***Custodial Interrogation***

While in custody, a child has the same rights as an adult as far as police interrogation and the Fifth Amendment privilege against self-incrimination. If the police want to question the child about an alleged delinquent act, the police must first give Miranda warnings. Miranda warnings involve telling the child that the child has the right to remain silent, that any statements made by the child can be used against the child, that the child has the right to an attorney, and that an attorney will be appointed by the family court to represent the child if the child cannot afford an attorney. *Miranda v. Arizona*, 384 U.S. 436 (1966). The law does not require a child's parents to be present in order for the police to question the child.

## **DETENTION**

When a child is taken into custody by law enforcement, the officer who took the child into custody decides whether to release the child to the child's parent or a responsible adult, or to detain the child, pending a hearing. If the officer determines it is necessary to place the child outside the home until the court hearing, the authorized Department of Juvenile Justice (DJJ) representative must make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when appropriate and available. S.C. Code Ann. § 20-7-7210(A) (Supp. 2005).

Children are eligible for detention only if they meet certain criteria defined by law. For example, the law allows for detention of a child who has been charged with a statutory violent crime; had possession of a deadly weapon; or has no suitable alternative placement, and it is determined that detention is in the child's best interest or is necessary to protect the child, the public, or both. § 20-7-7210(B). A child must be at least eleven to be detained in a detention facility, and children eleven or twelve years of age may only be detained by order of the family court. § 20-7-7210(F).

A child who is taken into custody because of a status offense should not be detained more than 24 hours in a juvenile detention facility, unless a previously issued court order notified the child that further violation of the court's order may result in the secure detention of that child in a juvenile detention facility. If a child is ordered detained for violating a valid court order, the child may be held in secure confinement in a juvenile detention

facility for not more than 72 hours, excluding weekends and holidays. § 20-7-7210(E).

### ***Detention Hearing***

If the officer who took the child into custody has not released the child to a parent or responsible adult, the family court must hold a detention hearing within 48 hours from the time the child was taken into custody, excluding weekends and holidays. A child must be represented by an attorney at this hearing and may only waive this right if he has consulted at least once with an attorney. The court will appoint an attorney to represent the child if the child does not have one. S.C. Code Ann. § 20-7-7215(A) (Supp. 2005). The detention hearing may be held without the child's parents or guardian if they cannot be located after a "reasonable effort," and the court will appoint a guardian ad litem for the child. Rule 32, SCRFC.

At the detention hearing, any evidence relevant to the necessity for detaining the child is admissible. The DJJ representative will report to the court on the facts surrounding the case and make a recommendation as to the child's continued detention pending the adjudicatory hearing. At the conclusion of the detention hearing, the judge will determine: (1) whether probable cause exists to justify the detention of the child; and (2) whether it is appropriate and necessary to detain the child further. S.C. Code Ann. § 20-7-7215(A) (Supp. 2005).

A child who has been ordered detained must be screened by a social worker or a psychologist within 24 hours to determine if the child is in need of any services. A child who is ordered detained is entitled to another hearing: (1) within 10 days following the initial hearing; (2) within 30 days following the 10-day hearing; and (3) at any other time with a showing of good cause. § 20-7-7215(B). A child must not be detained in a detention facility for more than 90 days, absent exceptional circumstances as determined by the court. § 20-7-7215(A).

## **INTAKE**

When referred to the family court for prosecution, a child will go through a screening or intake process. The function of intake is to independently assess the circumstances and needs of a child referred for possible prosecution in the family court. S.C. Code Ann. § 20-7-7405 (Supp. 2005).

During the intake process, a DJJ caseworker at the local DJJ county office interviews the child and the child's parent or guardian. The caseworker will provide information to the child and the parent about the system, collect background information from the child and parent, and have the parent sign releases for school and medical records. The caseworker will

also attempt to identify appropriate services that might be available for the child and the child's family. The information gathered at intake, along with the child's school records, past involvement in the juvenile justice system, and other available information, will be used by the DJJ caseworker when making recommendations to the solicitor and to the court.

## **DIVERSION**

If a child meets certain criteria, the solicitor may allow the child's case to be diverted from the juvenile justice system. This means that instead of being prosecuted in the family court, the child will be allowed to participate in a diversion program, such as arbitration, juvenile pre-trial intervention, or a mentor program. Criteria that would make a child eligible for a diversion program might include being a first time offender, a nonviolent offender, or drug/alcohol dependent. If the child successfully completes the diversion program, the charges against the child will be dismissed.

## **WAIVER (OR TRANSFER OF JURISDICTION)**

Something else that could happen early in the processing of a child's case is waiver. The waiver process is one of the most significant actions that can take place in family court, as it involves waiving or transferring the child's case from family court to adult court.

State law determines when a child is eligible to be waived to adult court and is based on the age of the child and the type of offense the child is alleged to have committed. Prior to waiving a child to adult court, the family court must determine, after a full investigation of the facts and circumstances surrounding the case, that it is in the child's or the public's best interest.

A family court judge has the authority to waive: (1) a child of any age charged with murder; (2) a child 16 or older charged with any criminal offense (not status offense), after full investigation; (3) a 14 or 15 year old charged with an offense which, if committed by an adult, would carry a maximum term of imprisonment of 15 years or more, after full investigation and a hearing; and (4) a child 14 or older charged with carrying a weapon on school property, unlawful carrying of a handgun, assault and battery of a high and aggravated nature, or unlawful distribution of drugs within a half-mile of a school, after full investigation and a hearing. A family court judge is required to waive a child 14 or older charged with an offense which, "if committed by an adult, provides for a term of imprisonment of ten years or more, if the child has previously been adjudicated...or convicted...of committing two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, and the

second offense was committed after the sentence for the first offense was imposed.” S.C. Code Ann. § 20-7-7605 (Supp. 2005).

### ***Waiver Hearing***

The purpose of the waiver hearing is to determine whether waiver is in the child’s and the public’s best interest. A child who is being considered for waiver will usually undergo a pre-waiver evaluation prior to the hearing. The evaluation results are compiled into a waiver evaluation report that is presented at the waiver hearing to assist the judge in deciding whether or not to waive the child.

The U.S. Supreme Court has identified eight factors that may be considered by the judge when deciding whether or not to waive the child to adult court. The eight factors are: (1) the seriousness of the alleged offense and whether waiver is necessary to protect the community; (2) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the alleged offense was against persons or property; (4) whether there is sufficient evidence for a Grand Jury to return an indictment; (5) the desirability of trial and disposition of the entire case in one court when the child’s co-defendants in the alleged offense are adults; (6) the level of sophistication and maturity of the child; (7) the child’s record and previous criminal or adjudicative history; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of services currently available to the court. *Kent v. United States*, 383 U.S. 541 (1966).

## **ADJUDICATION**

When a child is referred to family court and the solicitor chooses to prosecute, a hearing is scheduled for the family court judge to determine whether the child is guilty or innocent of the alleged offense. At this stage, the child will either admit or deny the allegations in the petition. The child has a right to a trial where the solicitor has the burden of proving that the child committed the alleged offense; the child also has the option of admitting the allegations and pleading guilty.

### ***Children’s Rights***

The U.S. Supreme Court has held that children are entitled to fundamental due process rights which are guaranteed to adults by the United States Constitution in proceedings that could result in confinement to an institution in which their freedom would be curtailed. These rights include: (1) the right to notice of the charges and time to prepare for the case; (2) the right to an attorney; (3) the right to confront and cross-examine

witnesses; and (4) the privilege against self-incrimination, including the right to remain silent in court. *In re Gault*, 387 U.S. 1 (1967). The Supreme Court also held that children are guaranteed the right to the adult criminal court standard of “beyond a reasonable doubt” when determining guilt and the right against double jeopardy. *In re Winship*, 397 U.S. 358 (1970), *Breed v. Jones*, 421 U.S. 519 (1975).

Some rights guaranteed adults in criminal prosecutions, however, are not guaranteed children in South Carolina family court adjudications. These rights include the right to a jury trial and the right to bail. The U.S. Supreme Court held that children do not have a constitutional right to a jury trial because the “juvenile court proceeding” has not yet been held to be “criminal prosecution” within the meaning and reach of the Sixth Amendment. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

### ***The Plea***

If there is ample evidence supporting the allegations of the petition (i.e., sufficient proof that the child committed the alleged offense), the child may decide to give up the right to a trial and plead guilty or admit to the facts of the petition. Before a child pleads guilty, the child’s attorney may enter into plea negotiations with the solicitor. Plea negotiations may involve: a reduction of a charge; dismissal of one or more of multiple charges; elimination of the possibility of waiver to adult court; and/or agreements regarding disposition recommendations for the child, such as an agreement by the solicitor to recommend probation. When a child enters a guilty plea, the judge must be satisfied that the plea was entered into voluntarily.

### ***Adjudicatory Hearing***

If the child denies the allegations in the petition, an adjudicatory hearing is held before a family court judge. The adjudicatory hearing is comparable to a trial in adult court. The purpose of the adjudicatory hearing is to determine if the child is guilty or innocent. Before finding a child guilty of an alleged offense and adjudicating the child delinquent, the judge must be satisfied that the evidence proves beyond a reasonable doubt that the child committed the offense.

At the conclusion of the adjudicatory hearing, after all the evidence has been presented, the judge will make a ruling. The judge may find that the child is innocent, find the child guilty and adjudicate the child delinquent, or dismiss the case because of insufficient evidence. It is important to note that an adjudication is not a conviction. Adults who are found guilty of an offense are “convicted;” children are “adjudicated delinquent.”

These hearings are closed to the general public, and only those individuals who have a direct interest in the case or who work for the court may be admitted. S.C. Code Ann. § 20-7-755 (Supp. 2005).

## **DISPOSITION**

The final phase of the court process is the disposition (sentencing) hearing. At the disposition hearing, the judge makes a ruling as to what will happen to the child. Prior to the disposition hearing, the court may order an evaluation of the child's circumstances and background.

### ***Predisposition Evaluation***

After adjudicating a child delinquent, the family court judge may move into the sentencing phase or disposition hearing, or the judge may order the child to undergo an evaluation prior to sentencing the child. The purpose of the evaluation is to gather information about the child and the child's surroundings, background and circumstances. The information is then provided to the judge in a report designed to assist the judge in determining an appropriate sentence, taking into account the needs and the best interests of the child.

This evaluation will include psychological, social and educational assessments that are conducted in the community (community evaluation) or at a DJJ evaluation center. If the child is sent to a DJJ evaluation center, the child will also receive a medical examination and attend school while at the evaluation center. A child may not be committed to an evaluation center for more than 45 days. S.C. Code Ann. § 20-7-7810(C) (Supp. 2005).

The evaluation report prepared for the judge includes: information gathered from interviews with the child and the child's parents or guardian; psychological and possibly psychiatric evaluations and tests; information gathered from the child's teachers and school officials; an overview of the child's school and court records; and recommendations regarding treatment and services that would benefit the child.

### ***Disposition Hearing***

While the purpose of the adjudicatory hearing is to determine whether the child is guilty or innocent of the alleged offense, the purpose of the disposition hearing is to determine what sentence is most appropriate for the child, taking into consideration the child's best interest and the protection of the community.

The court has the authority to: dismiss the petition; order that the child be examined or treated by a physician, psychiatrist, or psychologist and placed in a hospital if necessary; order the child to participate in a community mentor program; designate a state agency as the lead agency to provide a family assessment to the court; suspend or restrict the child's driver's license; place the child on probation; and/or commit the child to a DJJ institution. The judge takes the following into account when sentencing the adjudicated child: evaluation reports, seriousness of the offense(s), school records, behavior at home, and prior court history.

### ***Probation***

The majority of children adjudicated delinquent are placed on probation. The length of probation may be for any amount of time up until the child's eighteenth birthday. When placing a child on probation, the judge will specify what the terms of probation will be, depending on the unique circumstances of the child. The terms of probation may include regular school attendance, random drug testing, restitution, community service, electronic monitoring, curfews, participation in a community program, individual or group counseling, and in- or out-patient treatment.

### ***Commitment***

The court may determine that it is necessary to remove a child from the community and may commit the child to the custody of DJJ for placement at one of its institutions. The judge may commit a child to DJJ for either a determinate period of up to 90 days for each offense, or for an indeterminate period not to exceed the child's twenty-first birthday (unless sooner released by DJJ). Before committing a child to DJJ for an indeterminate period, the court must order the child to undergo an evaluation unless the child has been previously evaluated by DJJ and the evaluation is available to the court. S.C. Code Ann. § 20-7-7810 (Supp. 2005).

A child who receives an indeterminate commitment will be held at DJJ for an indefinite period of time, up to the child's twenty-first birthday. Once committed, the child is given a set of "guidelines," determined by the state Board of Juvenile Parole (the Parole Board). The guidelines set out the minimum and maximum number of months that the child will remain at DJJ and range from 1-3 months to 36-54 months. Guidelines are based on the seriousness of the current offense for which the child is adjudicated and the child's history of previous adjudications. The Parole Board uses these guidelines, along with information regarding the child's behavior and progress while at DJJ, to determine how long the child will be incarcerated. Children may be incarcerated at DJJ longer than their maximum guidelines, up to the child's twenty-first birthday, for reasons

including refusal to comply with a treatment plan, negative behavior, or an additional charge. Children may also be released prior to their minimum guidelines for good behavior. A child who has reached his minimum guidelines has the right to appear before the Parole Board periodically for the purpose of parole consideration (eligibility for release). A child appearing before the Parole Board has the right to an attorney, and an attorney will be appointed for the child if the child's family cannot afford to hire an attorney.

### ***Transfer to Department of Corrections (DOC)***

A child serving a commitment to DJJ for a statutory violent offense or for the offense of assault and battery of a high and aggravated nature, who has not been released by his seventeenth birthday, must be transferred to the Youthful Offender Division of DOC. All other children who have not been released sooner must be transferred to the Youthful Offender Division of DOC at age nineteen. S.C. Code Ann. § 20-7-7810(E) (Supp. 2005).

## **PAROLE**

The Parole Board may grant a child committed to DJJ a conditional or unconditional release. If a child is granted a conditional release, the child will be supervised by the local DJJ county office for a period of time determined by the Parole Board. The specified period of conditional release may not exceed the child's 21<sup>st</sup> birthday. A child on conditional release may be required to pay restitution, perform community service, or complete a local aftercare program in the community. S.C. Code Ann. § 20-7-8320 (Supp. 2005).

## **RIGHT TO APPEAL**

A child may appeal the decision made by the family court judge. A child can only seek review of a final order (i.e. the judge must have made a ruling as to disposition in the case.) If a case is appealed, it is reviewed by the South Carolina Court of Appeals.

## **EXPUNGEMENT OF A CHILD'S RECORD**

Upon reaching the age of 18, a child who was taken into custody for, charged with, or adjudicated delinquent for having committed a status or nonviolent offense may petition the court for an order destroying all official records relating to: (1) being taken into custody; (2) the charges filed against the child; (3) the adjudication; and (4) the disposition. The granting of the order is in the court's discretion. The court will only grant the order for expungement if it finds that the child seeking to have the

records expunged is at least 18 years old, has successfully completed any dispositional sentence imposed upon him, and has not been subsequently charged with committing any criminal offense. S.C. Code Ann. § 20-7-8525 (Supp. 2005).

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# INTAKE

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## DJJ INTAKE SERVICES

DJJ is required by law to provide intake services for children brought before South Carolina's family courts. The function of intake is to "independently assess the circumstances and needs of children referred for possible prosecution in the family court." S.C. Code Ann. § 20-7-7405 (Supp. 2005).

While the solicitor must review DJJ's recommendations as to intake, it is the solicitor who must make the final decision regarding whether or not to prosecute. If the solicitor decides not to prosecute the child, the intake counselor is responsible for assisting the child and family by making referrals for services as appropriate. If the child is adjudicated delinquent or found by the family court to be in violation of the terms of probation, the intake counselor is responsible for recommending appropriate dispositional options to the court, such as services available to the child. *Id.*

*Note: DJJ may change its recommendation in court or prior to a court hearing if any of the child's charges are reduced or dismissed as part of a plea negotiation.*

## THE INTAKE PROCESS

During the intake process, DJJ gathers information about the child. The law states that before the hearing of a child's case, the judge shall "cause an investigation of all facts pertaining to the issue to be made." S.C. Code Ann. § 20-7-7415(C) (Supp. 2005). The investigation should consist of an examination of the child's age, habits, surroundings, home environment, prior court history, and parents' habits and character. Prior to the hearing, the court, in its discretion, may also order that the child undergo a mental examination by a psychologist or psychiatrist. If the child attends school, a report on the child must be obtained from the school that the child attends. S.C. Code Ann. § 20-7-7415(D) (Supp. 2005).

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# NOTICE & SERVICE OF SUMMONS

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## NOTICE

“In any case where the delinquency proceedings may result in the commitment to an institution in which the child’s freedom is curtailed, the child or his parents or guardian must be given notice, with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation.” S.C. Code Ann. § 20-7-7415(D) (Supp. 2005). Notice must be served on both parents. Rule 35(b), SCRFC.

## SERVICE OF SUMMONS

Under S.C. Code Ann. § 20-7-745 (1985):

- Service of summons and any process of the court shall be made as provided by law for service in the court of common pleas.
- The judge may order service by registered or certified mail, addressed to the last known address, or by publication thereof, or both, if the judge determines that personal service of the summons or process is impracticable.
- It shall be sufficient to confer jurisdiction if service is effected at least 48 hours before the time fixed in the summons or process for the return thereof.
- Service of summons, process or notice may be made by any suitable person under the court’s direction.

Anyone summoned who fails to appear without reasonable cause may be proceeded against for contempt of court. If the summons or process cannot be served, or the judge finds that the service will be ineffectual, or that the child’s welfare requires that child be brought into the court’s custody, a warrant may be issued for the child, parent or guardian of the child, or any person who has control or possession of the child, to immediately bring the child before the court. S.C. Code Ann. § 20-7-750 (1985).

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# PROSECUTION

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## **PROSECUTION, DIVERSION OR DISMISSAL**

The solicitor or the solicitor's "authorized assistant" is given statutory authority to determine whether or not a child should be prosecuted in family court. In making this decision, the solicitor must review DJJ's recommendations regarding the child, which are based on information gathered at intake. S.C. Code Ann. § 20-7-7405 (Supp. 2005).

Upon receiving a case referred for prosecution, the solicitor should review the child's court records and case information to ensure that the child was properly charged. If the solicitor determines, based on the information available, the charges are appropriate, the solicitor will make a determination as to whether the case should be prosecuted, referred to a diversion program or dismissed.

If the solicitor determines that the case should be referred to a diversion program, it is not necessary to file a juvenile petition. If prosecution is appropriate, the case continues and an adjudicatory hearing is scheduled.

## **MOTION FOR DISMISSAL**

Children, like adults, have the constitutional right to a speedy trial. Although there is no statutory requirement regarding the time frame in which a case must be prosecuted in family court, the South Carolina Rules of Family Court establish a time frame. Under Rule 35, SCRFC, the adjudicatory hearing must be set at the "earliest practicable date but no later than 40 days from the filing of petition unless delayed by order of the court, which order shall set forth the reasons for the delay."

Failure to schedule the adjudicatory hearing within the prescribed 40 day period can only be used as a ground for dismissal "upon an affirmative showing of material prejudice." Rule 35, SCRFC.

## **SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

RULE 3.8 of the South Carolina Rules of Professional Conduct provides standards for solicitors in criminal cases. The Rule states that a prosecutor in a criminal case shall:

- refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or Rule 3.8.

## **PLEA AGREEMENTS**

In *Santobello v. New York*, 404 U.S. 257 (1971), the Court established that state prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty." (See *Sprouse v. State*, 585 S.E.2d 278 (S.C. 2003))

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# INDIGENT DEFENSE

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## RIGHT TO COUNSEL

A child has a right to counsel in any case “where the delinquency proceedings may result in commitment to an institution in which the child’s freedom is curtailed.” The child or the child’s parent must be advised of this right to counsel in the written notice of the court proceedings and allegations against the child. This notice must also advise the child or child’s parent that an attorney will be appointed to represent the child if they are unable to hire an attorney. S.C. Code Ann. § 20-7-7415(D) (Supp. 2005).

## DETERMINATION OF INDIGENCY

When determining whether a child qualifies for an appointed attorney, the court considers the parents’ financial ability to hire an attorney for the child. (This is usually handled through a screening process that determines indigency according to a baseline weekly income that increases according to the number of dependents.) If the parents are able but refuse to hire an attorney, the court is authorized to appoint an attorney and order the parents to reimburse the Indigent Defense Fund or pay the court-appointed attorney in an amount determined by the court. S.C. Code Ann. § 20-7-7420 (Supp. 2005).

## CONFLICTS

If a child qualifies for an appointed attorney and a conflict arises in the public defender’s office, preventing the public defender from representing the child, a member of the private bar will be appointed to represent the child. Generally, the clerk of court has the judge sign an order appointing the next attorney on the criminal appointment list. If the case is unusually complicated or involves a more serious offense, the judge may decide to appoint an attorney experienced in handling criminal cases.

## WAIVER OF RIGHT TO COUNSEL

In the hearing, the judge must inform the parent and child of their right to counsel, and specifically ask them to consider whether they do or do not waive this right. S.C. Code Ann. § 20-7-7415(D) (Supp. 2005). While the statute allows for the waiver of right to counsel, most judges require children to be represented by an attorney at all court hearings to ensure the child’s rights are protected. A child may waive the right to counsel at the detention hearing only after consulting at least once with an attorney. S.C. Code Ann. § 20-7-7215(A) (Supp. 2005).

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# RULES FOR CONDUCT OF HEARINGS

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## **CONDUCT OF HEARINGS** - S.C. Code Ann. § 20-7-755 (Supp. 2005).

All cases of children must be dealt with as separate hearings by the court and without a jury. The hearings must be conducted in a formal manner and may be adjourned from time to time. The general public must be excluded and only persons the judge finds to have a direct interest in the case or in the work of the court may be admitted. The presence of the child in court may be waived by the court at any stage of the proceedings. Hearings may be held at any time or place within the county designated by the judge. In any case where the delinquency proceedings may result in commitment to an institution in which the child's freedom is curtailed, the privilege against self-incrimination and the right of cross-examination must be preserved. In all cases where required by law, the child must be accorded all rights enjoyed by adults, and where not required by law the child must be accorded adult rights consistent with the best interests of the child.

## **RULES FOR CONDUCT OF HEARINGS** - S.C. Code Ann. §20-7-760 (1985).

Hearings shall be conducted in accordance with the rules of court and the court may consider and receive as evidence the result of any investigation had or made by the probation counselor; provided that either party shall be entitled to examine the probation counselor under oath thereon. The court may adjourn the hearing from time to time for proper cause. Where a petitioner's needs are so urgent as to require it, the court may make a temporary order for support pending a final determination.

## **ADMISSIBILITY OF DOCUMENTS INTO EVIDENCE**

Rule 7, SCRFC, is relied upon frequently in family court proceedings involving children. Under this rule, the following written documents are admissible into evidence without requiring that the person issuing the documents be present in court:

- A written statement of a child's school signed by the school principal or duly authorized school official;
- The school report card showing a child's records of attendance, grades, and other pertinent information, provided that such report is released at periodic intervals by the school;
- A physician's written statement showing that a patient was treated at certain times and the type of ailment; and
- A written DSS or other agency report, reporting the home investigation or any other report required by the court (unless the agency is party).

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# CHECKLIST OF IMPORTANT ISSUES TO CONSIDER

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## **IS THE CHILD COMPETENT?**

If the court has reason to believe a child lacks the capacity to understand the proceedings against him or to assist counsel in the child's defense, the court should order that the child undergo a competency evaluation. S.C. Code Ann. § 44-23-410 (2002) (See section on Competency for a more in depth look at competency issues.)

The following red flags may indicate that an evaluation is warranted:

- Child is under 12 years of age.
- Child does not appear to understand the attorney's or judge's questions or what is happening during the attorney/client conferences or court proceedings.
- Child has a history of mental health problems, has been in and out of hospitals, or is on medication.
- Child is in learning disabled (LD), emotionally handicapped (EH) or other special education classes.

## **IS THE CHILD SAFE?**

If there are any indicators that the child is being abused or neglected, the child may need to be taken into emergency protective custody (EPC) by the Department of Social Services (DSS).

A DSS home investigation should be ordered if:

- There are signs of abuse or neglect.
- The child's parent appears to have issues affecting her or his ability to properly care for the child, such as a substance abuse problem or a severe mental illness.

## **SHOULD A GUARDIAN AD LITEM (GAL) BE APPOINTED FOR THE CHILD?**

In certain situations, the judge may appoint an attorney to act as guardian *ad litem* (GAL) for a child in a delinquency case. The appointed GAL is responsible for ensuring that the child fully understands the court proceedings and that the child's rights are being protected.

A GAL should be appointed when:

- The child's parent is the victim. (However, there may be some situations where appointment of a GAL may not be necessary, e.g., it is obvious that the parent brought the charges out of concern for the child and in an effort to get help for the child.)
- The parent cannot be found or willfully fails to come to court.
- The parent does not seem to be concerned with the child's best interests.
- The parent cannot understand the proceedings because of mental incapacity.

### **SHOULD A PSYCHOEDUCATIONAL EVALUATION BE ORDERED?**

If the child is struggling in school, is in regular classes, and has never been tested for learning disabilities, the judge may order that the school perform a psychoeducational evaluation to assess whether the child is properly placed or is in need of special education or related services. The order should include an amount of time, such as three weeks, in which to have the evaluation completed to ensure a timely response.

### **IS THERE A NEED TO DESIGNATE A LEAD AGENCY?**

The court has the authority to designate a state agency to act as lead agency to provide a family assessment to the court. The assessment must include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues. S.C. Code Ann. § 20-7-753(A) (Supp. 2005).

The lead agency is required to provide the family assessment to the court in a timely manner and the court will conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and further the best interests of the child. In developing a comprehensive plan, the court should consider: additional testing or evaluation that may be needed; economic services available to the family; counseling services; and any other programs or services appropriate to the child's and family's needs. S.C. Code Ann. § 20-7-753(B) (Supp. 2005).

The lead agency is also responsible for monitoring compliance with the court ordered plan and must report to the court as ordered. *Id.*

PREPARING  
FOR  
COURT



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# OVERVIEW

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When appointed or hired to represent a child who has been charged with a status or criminal offense, the following steps should be taken prior to going to court:

- Set up an appointment with your client and the child's parent or guardian.
- File a Motion for Discovery and Brady Motion.
- Meet with the solicitor handling the case to discuss possible diversion programs that may be appropriate for your client, as well as potential plea negotiations.

\*\*At this point, you may not have met with your client and may not know if pleading guilty is an option, but it can be helpful to have an idea of what the solicitor might be willing to agree to, as far as negotiating a plea, when you meet with your client. You must discuss with your client any offers made by the solicitor regarding plea negotiations even if your client makes it clear that he or she does not wish to plead guilty.

- Contact your local DJJ office to find out what DJJ is recommending to the court regarding sentencing, and to learn about any community services that may be appropriate and available for your client and client's family. DJJ should have your client's school records and prior court history available for your review.
- Review the petition, incident reports, and other discovery received from the solicitor, as well as the child's school records.
- Meet with your client and client's parent to discuss the case, options and possible outcomes. (See Attorney/Client Conference section.)
- If your client wishes to plead guilty (and you feel confident that your client is competent and understands the implications of giving up the right to a trial):
  - Negotiate with the solicitor for a plea agreement that will result in the best possible outcome for your client.
  - Contact any potential character witnesses willing to speak on your client's behalf to discuss what they will say.

- Prepare your client and client's parent for court.
- If your client wishes to go to trial:
  - Move to have your client undergo a competency evaluation if you have any concerns that your client may not be competent.
  - Review the discovery received from the solicitor's office.
  - Investigate the facts surrounding the case; use an in-house investigator or hire one to assist you if needed.
  - Visit and become familiar with the scene of the alleged crime.
  - Explore all possible defenses.
  - Interview all potential defense witness and prepare them for court.
  - Determine if there is a need for expert testimony, or if it would be beneficial to have an expert testify for the defense, and, if so, locate and engage an expert witness.
  - Prepare your client for testifying (if you determine that your client should testify).
  - Organize all relevant materials and applicable statutes and case law in a Trial Notebook for easy access during the trial.
- In preparation for the disposition hearing, be sure to find out as much as you can about how the child is doing at home and in school. In family court, a judge's decision regarding sentencing maybe influenced as much by the child's behavior at home and school as by the nature of the offenses for which the child is being adjudicated. Therefore, it is very important to have an accurate account of how the child is performing in school, both behaviorally as well as academically, and at home. What kind of attendance and disciplinary record does the child have at school? Is the child well behaved at home? Does the child seem to respect authority? Has the child exhibited any violent, runaway or incorrigible behavior?

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# ATTORNEY/CLIENT CONFERENCE

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When possible, try to meet with your client well in advance of the child's first hearing. Be prepared to meet with your client numerous times, especially if the case is going to trial.

When you meet with your client for an initial interview, while you will have questions for the child's parent, the majority of the conference will involve you asking the child questions and making sure the child understands the court proceedings. Do not let the child's parent or guardian answer for your client during the interview. This is your opportunity to get to know your client and assess the child's competency.

Always remember that the child (not the parent) is your client, even if you have been hired and paid by the parent. It is also important to remember (especially if you are discussing the facts of the case with the child while the parent is in the room) that the attorney-client privilege does NOT extend to the child's parents.

## INTERVIEW PROCESS

To effectively represent your client, you need to obtain all the relevant background information about your client and client's circumstances, as well as the facts surrounding the case. You should have more information about your client than anyone else involved with the case (e.g., the solicitor, DJJ or the judge).

The following is a list of questions you should ask your client during the Attorney/Client Conference:

- What is your full name?
- How old are you?
- When is your birthday?
- What is your address? Is that the address where you always stay? (If not, be sure to get the addresses and phone numbers of all the places your client stays for extended periods of time, e.g., father's, grandmother's, or aunt's home.)
- What is your phone number? (Also ask if there are additional numbers where you can contact your client, such as neighbors' or grandparents', in case your client's number is disconnected.)
- Who else is in your family? (Siblings, grandparents, etc.)
- Are your parents employed? Where?
- Are you enrolled in school?
- What grade?

- What kind of grades are you making this year? (Explain that the judge will have access to the child's school records, so it is important that you, as the child's attorney, have accurate information regarding school records. Verify any school information you are relying on, prior to court, by reviewing DJJ's records, or have the child's parent sign a release allowing you to access the records directly from the school.)
- Are you in regular or special classes? (e.g., Emotionally Handicapped (EH), Learning Disabled (LD), or other special education classes).
- Did you miss any days of school this school year? Any class cuts or tardies?
- Have you had any disciplinary problems at school? How many times have you been suspended this year? Have you ever been expelled from school?
- Are you involved in any extra-curricular or after-school activities?
- Do you go to church? Are you involved in any church activities?
- Have you ever been to court before? Explain.
- Do you have a job?
- Are you pregnant? Do you have any children?
- Do you drink alcohol or take any drugs? (You may get a more honest answer by asking "When is the last time you drank alcohol?" "How often?" "How much?" and "When is the last time you smoked marijuana?" "If you got drug tested today, would you test positive?" Explain that the judge may order the child to take a drug test.)
- Has DSS ever been involved with your family? Have you ever been in DSS custody or lived in a home without your parents/guardians?
- Are you currently taking any medication? Have you taken any medication in the past? If so, what?
- Have you ever been hospitalized? (You are mainly concerned with any psychiatric stays or any serious head injuries.)
- Have you been diagnosed with any mental health problems?
- Are you going to any counseling? Have you ever?
- How is your behavior at home (Ask the parents this one, too because the judge usually will!)
- Is there anything else about you or your family that you think I should know?

After you have interviewed the child regarding background information, ask the child to explain his or her account of the incident which lead to charges being brought against the child. It may be helpful to read the petition to the child and tell the child "this is what the State is saying happened, is that true?" or "now you tell me what happened." Be sure to ask the child about the following:

- Time, date, and place of offense
- Details of the events that lead up to the offense

- Names, addresses and telephone numbers of any potential witness and details about what they witnessed
- Any possible written or oral statements made to the police or anyone else by the child or any co-defendants
- Was your client given Miranda warnings? What were the circumstances? Who gave the warnings? Did your client sign anything?

Next, explain to your client all the possible options that are available, such as going to trial, pleading guilty, enrolling in a diversion program, or taking part in drug court. As the child's attorney, you must make sure the child has a clear understanding of all the options prior to making a decision regarding what course to take.

You are also responsible for making sure the child understands all of the child's rights. The child must clearly understand that he or she has a right to a trial and what that means. If your client wants to plead guilty and you are confident that your client understands his or her rights and the implications of giving up any of those rights, explain the court proceedings for a guilty plea and review all the questions the judge will ask during the plea. (See Guilty Plea section for a list of common questions.)

Answer any questions the child or parent may have. Ask your client's parent to sign release forms before leaving your office to allow you to access any school, medical and/or psychiatric records you may need when preparing your case.

Explain to your client and client's parent the importance of dressing appropriately for court. Never assume you are giving too much advice with this one. Ask your client to wear church clothes or to dress very neatly- no jewelry on males, shirts tucked in, no shorts or short skirts, no baggy pants, etc. Also, make it clear that chewing gum, cell phones and pagers are absolutely not allowed in the court room.

Instruct your client not to discuss the case with anyone without you present or without discussing it with you first.

Explain to your client and client's parent that they need to prepare for a long wait on the day of court. If they are subpoenaed to be in court at 9:00 in the morning and the case is not called before lunch, they will have to come back after lunch, or they may be given another court date if time runs out before their case is heard.

Finally, make sure your client and client's parent understand that if they do not show up for court, the judge will probably issue a bench warrant for their arrest.

## PREPARING YOUR CLIENT FOR COURT

Review the following with your client prior to going to court:

- Dress appropriately for court (i.e., church clothes; shirts tucked in; pants pulled up; no shorts, sleeveless shirts, t-shirts, short skirts or short dresses; and no excessive jewelry - for males, no jewelry is better.)
- Hair should be neat and groomed.
- When speaking to the judge, or when the judge is speaking directly to you, always stand unless the judge tells you to sit down, and make eye contact with the judge; do not look down at the floor.
- Always speak to the judge respectfully (i.e., “Yes, sir,” “No Ma’am” or “Yes, Your Honor”).

Help your client think about what he or she may want to say to the presiding judge. Depending on the circumstances, it may be beneficial to have your client write a letter to the judge expressing remorse and plans to stay out of trouble in the future.

Encourage your client's family to bring other people from the community to show support (e.g., extended family members, family friends, neighbors, minister, coach, etc.) and possibly speak on your client's behalf.

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# DISCOVERY & DISCLOSURE OF EVIDENCE

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When appointed or hired to represent a child in family court, the defense attorney should file a Rule 5 Motion for Discovery and Brady Motion. Rule 5, SCRCrimP, which addresses the disclosure of evidence in criminal cases, is also applicable in juvenile actions. Rule 2, SCRFC. Rule 5 identifies the types of information subject to disclosure by both the prosecution and the defense, and also identifies information that is not subject to disclosure.

## Disclosure Requirements

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Court addressed the prosecution's obligation to disclose evidence to the defense. The *Brady* disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. *State v. Kennerly*, 503 S.E.2d 214, 220 (S.C. Ct. App. 1998) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. *United States v. Bagley*, 473 U.S. 667, (1985). Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. *Kennerly*, 503 S.E.2d at 220. "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Bagley*, 473 U.S. at 678. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. *United States v. Agurs*, 427 U.S. 97, 107(1976).

## Disclosure with Alibi Defense

Upon written request of the solicitor, stating the time, date and place of the alleged offense, the defendant has 10 days to notify the solicitor in writing of the intent to offer an alibi defense. The notice must specify the place where the defendant claims to have been at the time of the alleged offense and the names and addresses of any alibi witnesses. Rule 5(e)(1), SCRCrimP.

After receiving such notice, the solicitor has 10 days (must be at least 10 days prior to trial date) to notify the defense attorney of the names and addresses of any witnesses the State intends to present to establish

defendant's presence at the scene of the alleged crime. Rule 5(e)(2), SCRCrimP.

Failure to comply with the requirements of Rule 5 may result in the exclusion of testimony of any undisclosed witnesses. Rule 5(d)(2), SCRCrimP.

### **Disclosure with Insanity Defense or Plea of Guilty but Mentally Ill.**

Upon written request of the solicitor, the defendant has 10 days to notify the prosecution in writing of the defendant's plan to rely on an insanity defense or to enter a plea of guilty but mentally ill. Rule 5(f), SCRCrimP.

### **Waiver of Disclosure Requirements**

Upon a showing of good cause, the court has the authority to waive the requirements of Rule 5. Rule 5(g), SCRCrimP.

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# RULE 5, SCRCrimP

## DISCLOSURE IN CRIMINAL CASES

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**Rule 5, Disclosure in Criminal Cases** (Applicable to family court cases, per Rule 2, SCRFC)

**(a) Disclosure of Evidence by the Prosecution.**

**(1) Information Subject to Disclosure.**

**(A) Statement of Defendant.** Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

**(B) Defendant's Prior Record.** Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

**(C) Documents and Tangible Objects.** Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

**(D) Reports of Examinations and Tests.** Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

**(2) Information Not Subject to Disclosure.** Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not

authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

**(3) Time for Disclosure.** The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.

**(b) Disclosure of Evidence by the Defendant.**

**(1) Information Subject to Disclosure.**

**(A) Documents and Tangible Objects.** If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

**(B) Reports of Examinations and Tests.** If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

**(2) Information Not Subject to Disclosure.** Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective

prosecution or defense witnesses, to the defendant, his agents or attorneys.

**(c) Continuing Duty to Disclose.** If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

**(d) Regulation of Discovery.**

**(1) Protective and Modifying Orders.** Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

**(2) Failure to Comply With a Request.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

**(e) Notice of Alibi.**

**(1) Notice of Alibi by Defendant.** Upon written request of the prosecution stating the time, date and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such time as the court may direct, upon the prosecution a written notice of his intention to offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

**(2) Disclosure by Prosecution.** Within ten days after defendant serves his notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged crime.

**(3) Continuing Duty to Disclose.** Both parties shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses whose identity, if known, should have been included in the information furnished under subdivisions (1) or (2).

**(4) Failure to Disclose.** If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either party. Nothing in this rule shall limit the right of the defendant to testify on his own behalf.

**(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill.** Upon written request of the prosecution, the defendant shall within ten days or at such time as the court may direct, notify the prosecution in writing of the defendant's intention to rely upon the defense of insanity at the time of the crime or to enter a plea of guilty but mentally ill. If the defendant fails to comply with the requirements of the subdivision, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state. The court may, for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as is appropriate.

**(g) Waiver.** The court may, for good cause shown, waive the requirements of this rule.

JURISDICTION  
&  
VENUE



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# JURISDICTION & VENUE

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## DEFINITION OF “CHILD”

The family court has jurisdiction over any person charged with a criminal or status offense who meets the definition of a “child” as defined by S.C. Code Ann. § 20-7-6605(1) (Supp. 2005). This definition includes any individual who is “less than 17 years of age” (unless the individual was 16 years of age at the time he or she allegedly committed a Class A, B, C or D felony).

A common misunderstanding is that jurisdiction attaches only after the petition is filed; however, according to S.C. Code Ann. § 20-7-7205(A) (Supp. 2005), jurisdiction attaches from the time a child is taken into custody.

## EXCLUSIVE ORIGINAL JURISDICTION

Under S.C. Code Ann. § 20-7-400 (1985), the family court has exclusive original jurisdiction over any action concerning a child living or found within the geographical limits of its jurisdiction:

- who is not being provided with support or education as required by law;
- who is not being provided necessary medical, psychiatric, psychological or other care;
- who is abandoned by his parent or other custodian;
- whose behavior places himself or others at risk of danger;
- who is incorrigible or beyond the control of his parent or other custodian;
- who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 20-7-410; or
- whose custody is the subject of controversy, except in those cases where the law gives other courts concurrent jurisdiction.

Under Section 20-7-400, the family court also has exclusive original jurisdiction and shall be the sole court for initiating action:

- for the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. (As long as it doesn't conflict with the probate court's authority in dealing with such cases.)

- concerning any child 17 or older who allegedly violated or attempted to violate any state or local law or municipal ordinance before reaching the age of 17.
- for the detention of a child charged with committing a criminal offense when detention in a secure facility is found to be necessary.

## **TRANSFER OF CASE FROM CIRCUIT COURT TO FAMILY COURT**

The circuit court must immediately transfer any case to family court involving a child erroneously charged as an adult for committing a criminal offense. S.C. Code Ann. § 20-7-7605(1) (Supp. 2005).

A 16 year old who was charged as an adult for allegedly committing a Class A, B, C or D felony can be remanded to the family court for disposition of the charge at the solicitor's discretion. S.C. Code Ann. § 20-7-6605(1) (Supp. 2005).

## **TERMINATION OF JURISDICTION**

Once the court has acquired jurisdiction over a child, jurisdiction continues as long as it is necessary, in the court's discretion, to retain jurisdiction for the "correction or education" of the child, but jurisdiction terminates on the child's **twenty-first birthday**. S.C. Code Ann. § 20-7-400(B) (1985).

The court retains jurisdiction over any child adjudicated delinquent who was placed on probation until the specified term of probation expires. This may be before but not after the child's **eighteenth birthday**. *Id.*

## **TRAFFIC & FISH, GAME & WATERCRAFT VIOLATIONS**

The family court has concurrent jurisdiction with the magistrate and municipal courts for the trial of children charged with traffic or Title 50 (relating to fish, game, and watercraft) violations. All adjudications for moving traffic violations and other violations affecting a child's driving privileges, including drug and alcohol violations, must be reported to the Department of Motor Vehicles (DMV) by the court. All adjudications for Title 50 violations must be reported to the Department of Natural Resources (DNR). S.C. Code Ann. § 20-7-410 (Supp. 2005).

## **POST CONVICTION PROCEEDINGS**

Post conviction proceedings, including habeas corpus actions, shall be instituted in the court in which the original action was concluded. However, the family court also has original jurisdiction of habeas corpus actions if the person who is the subject of the action would otherwise be within the family court's jurisdiction. S.C. Code Ann. § 20-7-450 (1985).

## **VENUE**

Venue of family court actions “shall be in such county as provided by law.” Family court trials are to be held in the county of venue, unless a change of venue is granted as provided by law. S.C. Code Ann. § 20-7-440 (1985).

## **TRANSFER OF VENUE**

When a petition is filed that involves a child who is a resident of another county in the state, the judge may transfer the case to the county where the child lives if the child has returned home and if it appears that the petitioner and witnesses will not be inconvenienced. If the judge orders a transfer, a copy of the order and all other documents and papers in the file shall be forwarded to the court in the county in which the child resides, and shall be received and processed in the same manner as if filed initially in the latter county. Rule 33, SCRFC.

If the judge decides that an immediate transfer should not be made and an adjudicatory hearing is held and the case is not dismissed, the judge may order transfer to the county of the child's residence for disposition. *Id.*



CUSTODY  
&  
PRE-TRIAL  
DETENTION



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# DETENTION OVERVIEW

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## INTRODUCTION

When a child is taken into custody by law enforcement for committing a delinquent offense, the officer who takes the child into custody makes the initial decision as to whether or not to detain the child. A child who is detained is placed in a secure detention facility while awaiting trial. Children in South Carolina are not afforded the right to bail; however, they are entitled to a hearing within a specified amount of time to determine whether probable cause exists to justify detaining the child and whether the child's continued detention is appropriate and necessary. If a family court judge orders that the child remain in detention following the initial detention hearing, the child is entitled to periodic review hearings on continued detention.

## TAKING INTO CUSTODY

- When a child found violating a criminal law or ordinance is taken into custody, the taking into custody is not an "arrest." S.C. Code Ann. § 20-7-7205(A) (Supp. 2005).
- The family court's jurisdiction attaches from the time of the taking into custody. *Id.*
- The officer taking the child into custody is required to notify the child's parent as soon as possible. *Id.*
- After taking the child into custody, the officer, unless otherwise ordered by the court, has the option of either releasing the child to a parent or responsible adult or detaining the child. *Id.*

## DETENTION ELIGIBILITY

- A child who meets the criteria provided in Section 20-7-7210(B) is eligible for detention.
- Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting. *Id.*
- When the officer who took the child into custody determines that the child needs to be placed outside of the home, the authorized DJJ representative is required to make a "diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available." S.C. Code Ann. § 20-7-7210(A) (Supp. 2005).

## AGE REQUIREMENTS

- No child **ten** years of age or younger may be incarcerated in a jail or detention facility for any reason. S.C. Code Ann. § 20-7-7210(F) (Supp. 2005).
- Children who are **eleven** and **twelve** may only be incarcerated in a jail or detention facility by order of the family court. *Id.*

## EX PARTE ORDER OF RELEASE

If the officer does not consent to the child's release, the parents or other responsible adult may apply to the family court for an ex parte order of release of the child. The officer's written report must be provided to the family court judge who may establish conditions for the child's release. S.C. Code Ann. § 20-7-7210(B) (Supp. 2005).

## PREVENTIVE DETENTION

As with adults, children who have been charged with crimes are presumed innocent, and it is a violation of the due process clause to use pretrial detention as punishment for children. *Bell v. Wolfish*, 441 U.S. 520 (1979). However, "preventive detention" may be justified if there is a legitimate state interest in protecting the community or the child. *Schall v. Martin*, 467 U.S. 253 (1984).

## SCREENING FOR SERVICES

A child ordered detained in a facility must be screened within **24 hours** by a social worker, or psychologist if appropriate, to determine whether the child is emotionally disturbed, mentally ill or otherwise in need of services. If it is determined that the child is in need of services, the services must be provided immediately. S.C. Code Ann. § 20-7-7215(B) (Supp. 2005).

## TIME LIMIT

No juvenile should be detained in secure confinement for more than **90 days**, absent exceptional circumstances. S.C. Code Ann. § 20-7-7215(A) (Supp. 2005).

## DETENTION ALTERNATIVES

**House Arrest:** House arrest is often used as an alternative to detention. The child is court ordered to remain in the home and may only participate in outside activities which have been approved by the court.

**Voice Monitoring:** The child receives computerized calls and must answer and verify that he or she is at home. The system allows the child a window of time to call back before it alerts DJJ that the child has not

responded (in case the child is in the shower, etc.). The cost for voice monitoring is \$1.45 per day for four calls. (As of September 2006, only 23 counties have been trained and have access to Voice Monitoring due to limited budget.)

**Electronic Monitoring:** The child is released from secure detention under a special court order of electronic monitoring which offers 24-hour oversight. A curfew can be set for any time of the day or night and for any length of time, as ordered by the court. If electronic monitoring is ordered, the child wears a bracelet around the ankle. The bracelet functions as a transmitter, sending signals to a unit in the home. The unit reports movement through the phone system to a computer which faxes information to the local DJJ office each day. Violations are monitored by DJJ probation officer staff and reported to the court. A phone line must be available in the child's home, and the parents must sign releases and an agreement that they will not destroy the equipment.

DJJ contracts with a private provider to have access to electronic monitoring (EM) equipment. Every county in the state has access to EM equipment, and the county director for each DJJ office will know how to access units if they do not have any in their office, generally by contacting another county office to borrow any available units.

Electronic monitoring costs DJJ \$1.99 per day, while the cost of detaining a child at DJJ's secure detention facility is \$150.00 per day (\$50.00 of which is charged back to the county.) There is no cost to the child or the county for electronic monitoring.

**GPS Monitoring:** GPS (Global Positioning Satellite) Monitoring, which is similar to EM, utilizes a GPS device to track the child's location. (As of September 2006, only 15 counties have been trained and have access to GPS due to limited budget.)

GPS costs \$5.00 per day if "passive" and \$10.00 if "active." With passive GPS, the company contracting with DJJ to provide the monitoring service provides DJJ with a "next day printout" of the child's status from the previous day. With active GPS, the contracting company provides immediate contact with DJJ if the child leaves the specified zone or enters a restricted area.

**Shelter Placement:** Children who are awaiting a court appearance may be referred by the court to non-secure placement in lieu of secure detention. Services may be offered for up to a two-week period.



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# DETENTION HEARING

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## TIME REQUIRMENTS

A detention hearing must be held within **48 hours** from the time a child is taken into custody, excluding Saturdays, Sundays and holidays. However, under S.C. Code Ann. § 20-7-7210(E) (Supp. 2005), a child taken into custody because of a status offense must not be detained more than **24 hours**, unless a previously issued court order notified the child that further violation of the court's order may result in detention. If a child is ordered detained for violating a valid court order, the child may be held in secure confinement in a juvenile detention facility for up to **72 hours**, excluding weekends and holidays. However, the law does not preclude a law enforcement officer from taking a status offender into custody.

A child ordered detained is entitled to "further and periodic review:"

- within **10 days** following the initial hearing;
- within **30 days** following the 10-day hearing; and
- at any other time with a showing of good cause.

## RIGHT TO COUNSEL

A child has the right to an attorney in the detention hearing. The court must appoint an attorney for the child if none is retained. By law, a child may not proceed without an attorney unless the child waives the right to counsel after consulting at least once with an attorney. S.C. Code Ann. § 20-7-7215(A) (Supp. 2005).

## PRESENCE OF PARENTS

Rule 32, SCRFC, provides that the detention hearing may be held without the presence of the child's parents if they cannot be located after reasonable effort. If the parents are not located, the court must appoint a guardian *ad litem* for the child.

## PURPOSE OF HEARING

The court makes a determination as to whether: (1) probable cause exists to justify detention; and (2) it is appropriate and necessary for the child to remain in detention.

## **EVIDENCE**

Rule 32, SCFCR, allows the court to admit “any evidence relevant to the necessity of detaining a child.” Therefore, evidence such as hearsay, which is generally inadmissible, may be presented by the State when arguing for detention.

## **DETENTION HEARING PROCEDURE**

The following is an overview of a typical detention hearing, though procedure may vary to some degree from county to county:

- The detention hearing begins with the solicitor calling the case and presenting the State’s witnesses. The State has the burden of proving probable cause exists to justify detention and that continued detention is appropriate and necessary.
  - Potential witnesses for the state may include a law enforcement office, a DJJ community specialist, witnesses of the alleged incident and the victim.
  - Generally, the law enforcement representative (may be an officer without any direct knowledge of the case who reads from incident reports or notes from the reporting officer, since hearsay is admissible in this hearing) will testify as to probable cause and reasons why the child should be detained.
  - The DJJ representative may testify regarding the child’s prior court history and school records, and DJJ’s recommendation regarding continued detention.
  - After the solicitor questions each witness on direct examination, the defense attorney has the opportunity to cross examine each witness.
- After the State has presented its case, the defense attorney will present any witnesses the defense may have.
  - Potential witnesses may include parents/guardians and character witnesses who may testify regarding: the child’s home environment (level of structure, supervision and stability in the home); the child’s behavior in the home and at school; any special needs or disabilities the child may have; and how the child will be monitored if allowed to return home while awaiting trial.
  - As with the State’s witnesses, defense witnesses are also subject to cross examination, by the solicitor.
- Following the defense’s case, the judge will usually hear from the attorneys as to why the child should be detained or released. The judge will also want to hear from parents who have not testified.
- The judge will make a ruling as to whether the child will remain in detention or be released while awaiting trial.

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# DETENTION STATUTES

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## SECTION 20-7-7210. Out-of-home placement.

(A) When the officer who took the child into custody determines that placement of a juvenile outside the home is necessary, **the authorized representative of the Department of Juvenile Justice shall make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available.**

(B) A child is eligible for detention in a secure juvenile detention facility only if the child:

(1) is charged with a violent crime as defined in Section 16-1-60;

(2) is charged with a crime which, if committed by an adult, would be a felony or a misdemeanor other than a violent crime, and the child:

(a) is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;

(b) has a demonstrable recent record of willful failures to appear at court proceedings;

(c) has a demonstrable recent record of violent conduct resulting in physical injury to others; or

(d) has a demonstrable recent record of adjudications for other felonies or misdemeanors; and

(i) there is reason to believe the child is a flight risk or poses a threat of serious harm to others; or

(ii) the instant offense involved the use of a firearm;

(3) is a fugitive from another jurisdiction;

(4) requests protection in writing under circumstances that present an immediate threat of serious physical injury;

(5) had in his possession a deadly weapon;

(6) has a demonstrable recent record of willful failure to comply with prior placement orders including, but not limited to, a house arrest order;

(7) has no suitable alternative placement and it is determined that detention is in the child's best interest or is necessary to protect the child or public, or both; or

(8) is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity.

A child who meets the criteria provided in this subsection is eligible for detention. **Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program.** If the officer

does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer's written report must be furnished to the family court judge who may establish conditions for the release.

(C) No child may be placed in secure confinement or ordered detained by the court in secure confinement in an adult jail or other place of detention for adults for more than six hours. However, the prohibition against the secure confinement of juveniles in adult jails does not apply to juveniles who have been waived to the court of general sessions for the purpose of standing trial as an adult. Juveniles placed in secure confinement in an adult jail during this six-hour period must be confined in an area of the jail which is separated by sight and sound from adults similarly confined.

(D) Temporary holdover facilities may hold juveniles during the period between initial custody and the initial detention hearing before a family court judge for a period up to **forty-eight hours**, excluding weekends and state holidays.

(E) A child who is taken into custody because of a violation of law, which would not be a criminal offense under the laws of this State if committed by an adult, must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained more than **twenty-four hours** in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies the child that further violation of the court's order may result in the secure detention of that child in a juvenile detention facility. If a juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than **seventy-two hours**, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.

(F) Children **ten** years of age and younger must not be incarcerated in a jail or detention facility for any reason. Children **eleven or twelve** years of age who are taken into custody for a violation of law which would be a criminal offense under the laws of this State if committed by an adult or who violates conditions of probation for such an offense must be incarcerated in a jail or detention facility only by order of the family court.

(G) For purposes of this section, "adult jail" or other place of detention for adults includes a state, county, or municipal police station, law enforcement lockup, or holding cell. "Secure confinement" means an area having bars or other restraints designed to hold one person or a group of persons at a law enforcement location for any period of time and for any reason. Secure confinement in an adult jail or other place of detention does not include a room or a multipurpose area within the law enforcement center, which is not secured by locks or other security devices. Rooms or areas of this type include lobbies, offices, and interrogation rooms. Juveniles held in these areas are considered to be in non-secure custody as long as the room or area is not designed for or intended for use as a residential area, the juvenile is not handcuffed to a stationary object while in the room or area, and the juvenile is under continuous visual supervision

by facility staff while in this room or area which is located within the law enforcement center. Secure confinement also does not include a room or area used by law enforcement for processing "booking" purposes, irrespective of whether it is determined to be secure or non-secure, as long as the juvenile's confinement in the area is limited to the time necessary to fingerprint, photograph, or otherwise "book" the juvenile in accordance with state law.

#### **SECTION 20-7-7215. Detention hearing; psychological screening.**

(A) If the officer who took the child into custody has not released the child to the custody of the child's parents or other responsible adult, the court shall hold a detention hearing **within forty-eight hours** from the time the child was taken into custody, excluding Saturdays, Sundays, and holidays. At this hearing, the authorized representative of the department shall submit to the court a report stating the facts surrounding the case and a recommendation as to the child's continued detention pending the adjudicatory and dispositional hearings. The court shall appoint counsel for the child if none is retained. No child may proceed without counsel in this hearing, unless the child waives the right to counsel and then only after consulting at least once with an attorney. At the conclusion of this hearing, the court shall determine whether probable cause exists to justify the detention of the child and the appropriateness of, and need for, the child's continued detention. If continued detention of a juvenile is considered appropriate by the court and if a juvenile detention facility exists in that county which meets state and federal requirements for the secure detention of juveniles or if that facility exists in another county with which the committing county has a contract for the secure detention of its juveniles and if commitment of a juvenile by the court to that facility does not cause the facility to exceed its design and operational capacity, the family court shall order the detention of the juvenile in that facility. A juvenile must not be detained in secure confinement in excess of ninety days except in exceptional circumstances as determined by the court. A detained juvenile is entitled to further and periodic review:

- (1) within **ten days** following the juvenile's initial detention hearing;
- (2) within **thirty days** following the ten-day hearing; and
- (3) at any other time for good cause shown upon motion of the child, the State, or the department.

If the child does not qualify for detention or otherwise require continued detention under the terms of Section 20-7-7210(A) or (B), the child must be released to a parent, guardian, or other responsible person.

(B) A juvenile ordered detained in a facility **must be screened within twenty-four hours** by a social worker or if considered appropriate by a psychologist in order to determine whether the juvenile is emotionally disturbed, mentally ill, or otherwise in need of services. The services must be provided immediately.



# WAIVER



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# WAIVER OVERVIEW

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## INTRODUCTION

Waiver is one of the most significant actions that can occur in the early stages of a case involving a child charged with a criminal offense. It is also known as transfer. Waiver is the transfer of jurisdiction of a child's case from family court to a court which would have trial jurisdiction if the offenses were committed by an adult.

## ELIGIBILITY

A family court judge has the authority under S.C. Code Ann. § 20-7-7605 (Supp. 2005) to waive:

- A child who is any age and charged with murder;
- A child who is 16 or older and charged with any criminal offense, after full investigation;
- A child who is 14 or 15 and charged with an offense which, if committed by an adult, would carry a maximum term of imprisonment of 15 years or more (Class A,B,C or D felony), after full investigation and a hearing; and
- A child who is 14 or older and charged with carrying a weapon on school property, unlawful carrying of a handgun, assault and battery of a high and aggravated nature, or unlawful distribution of drugs within a half-mile of a school, after full investigation and a hearing.

A family court judge is required to waive a child 14 or older who is charged with an offense which, "if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated...or convicted...for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more." S.C. Code Ann. § 20-7-7605(10) (Supp. 2005). ("An adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense." *Id.*)

In *Slocumb v. State*, 522 S.E.2d 809 (S.C. 1999), the Court held that S.C. Code Ann. § 16-3-659 (1985) prohibits a child under the age of fourteen from being waived to general sessions court on a criminal sexual conduct charge.

## **INITIATION OF THE WAIVER PROCESS**

The waiver process is initiated by the solicitor who makes a motion to waive the child to a court which would have trial jurisdiction of the offenses if they were committed by an adult. The solicitor will also make a motion that DJJ conduct a pre-waiver evaluation. A motion to waive may be made any time after the petition has been filed unless the child is charged with murder or criminal sexual conduct. S.C. Code Ann. § 20-7-7605 (Supp. 2005).

## **MURDER AND CRIMINAL SEXUAL CONDUCT CASES**

When a child is charged with murder or with criminal sexual conduct, the solicitor has 30 days after filing the petition to request in writing that the case be transferred to general sessions court. The family court judge is authorized to determine this request. If the judge denies the request, the solicitor has 5 days to appeal the decision to the circuit court. The circuit court judge who hears the appeal has the discretion to retain jurisdiction in general sessions or relinquish jurisdiction to the family court.

S.C. Code Ann. § 16-3-659 (1985) prohibits a child under the age of fourteen from being waived to general sessions court on a criminal sexual conduct charge. *Slocumb v. State*, 522 S.E.2d 809 (S.C. 1999).

Section 16-3-659 states that the "common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State. Provided, that any person under the age of 14 shall be tried as a juvenile for any violation of Sections 16-3-651 to 16-3-659.1" (criminal sexual conduct).

## **PRE-WAIVER EVALUATION REPORT**

After moving to waive, the solicitor will generally move that the child undergo a pre-waiver evaluation.

The report is typically divided into 2 parts:

- One part is conducted by the community specialist(s) in the county. This part contains a social history of the child, including prior court history/criminal record, a family description, a report on social agencies involved with the child, a physical description, school information, early development/medical history, information regarding community and home adjustments, etc.
- The second part is conducted by a DJJ psychologist. This part contains a referral statement, sources of information, a mental status examination, a psychological summary, and conclusions. These conclusions are drawn from an analysis of the factors the court will

consider in determining whether or not to waive the child. These factors include the level of sophistication and maturity of the child; the likelihood of reasonable rehabilitation; adequate protection of the public; and procedures, services, and facilities currently available to the family court which could benefit the child.

## **WAIVER HEARING**

The waiver hearing is generally the most serious of all hearings for a child involved in the juvenile justice system. At the conclusion of this hearing, the family court judge rules on whether the child is to be prosecuted in family court or in a court which would have trial jurisdiction of the offense(s) if committed by an adult. In *Kent v. United States*, 383 U.S. 541 (1966), the U.S. Supreme Court ordered that a full investigation must be conducted on children who the State intends to waive. The Court also identified eight factors to be taken into consideration when making the determination of whether or not to waive the child. (See "The Eight Determinative Factors of Kent v. U.S.")

The solicitor has the burden of proving that the child should be waived. The solicitor will present witnesses and enter the pre-waiver evaluation report into evidence. Hearsay is admissible; this is not a trial on the merits.

Following the State's case, the defense will present its case in an effort to show the court that the child should be treated as a child and remain in family court instead of being prosecuted as an adult. After hearing all the evidence and reviewing the pre-waiver evaluation report, the court will make its ruling based on the *Kent* factors and the factual findings.

## **POST WAIVER HEARING ISSUES**

If the family court does not waive the child and retains jurisdiction, the judge who presided over the waiver hearing should not preside over the adjudicatory hearing. Rule 34, SCRFC.

If the family court waives the child and relinquishes jurisdiction to another court, the family court has full authority to grant bail and hold a preliminary hearing (although in practice, this is rarely, if ever, done by the family court judge).

Waiver or transfer of certain charges against a child does not result in all pending charges being transferred. If a charge is not transferred, it remains a family court charge and the child retains all of the protection of the juvenile system as to that charge. *Johnson v. State*, 437 S.E.2d 20 (S.C. 1993).

# WAIVER

Under S.C. Code of Laws § 20-7-7605

CHARGE-	UNDER AGE 14	14 YEARS OLD	15 YEARS OLD	16 OR OLDER
<b>Class A Misdemeanors</b>				
<b>Class B Misdemeanors</b>				
<b>Class C Misdemeanors</b>				
<b>Class E Felonies</b>				
<b>Class F Felonies</b>				
<b>Class A Felonies</b>				
<b>Class B Felonies</b>				
<b>Class C Felonies</b>				
<b>Class D Felonies</b>				
<b>ABHAN</b>				
<b>Carrying Weapon on School Grounds</b>				
<b>Unlawful Carrying of Pistol</b>				
<b>Distribution of Controlled Substance within ½ mile radius of school</b>				
<b>CSC</b>				
<b>Murder</b>				
Offense which, if committed by an adult, provides for 10+ years, if child previously adjudicated for 2 prior offenses which, if committed by an adult, provide for 10+. (See §20-7-7605(10) for full explanation.)				

- No Waiver Allowed
- Waiver Allowed (upon petition of solicitor if found by family court judge to be in the child's or public's best interest, after full investigation and hearing)
- Mandatory Waiver
- Automatic Jurisdiction in General Sessions Court (unless remanded to family court)

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# THE 8 DETERMINATIVE FACTORS OF *KENT V. U.S.*

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In *Kent v. United States*, 383 U.S. 541 (1966), the United States Supreme Court established the following criteria for determining whether jurisdiction should be waived:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if injury resulted.
4. The merit of prosecuting the complaint, i.e., whether there is evidence upon which a grand jury may be expected to return an indictment.
5. The desirability of trial and disposition of the entire offense in one court when the child's co-defendants are adults.
6. The sophistication and maturity of the child as determined by consideration of his home, environmental situation, emotional attitude and living pattern.
7. The child's prior record and involvement with the juvenile justice system.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available to the family court.



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# WAIVER STATUTE

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## SECTION 20-7-7605. Transfer of jurisdiction.

In accordance with the jurisdiction granted to the family court pursuant to Sections 20-7-400, 20-7-410, and 20-7-420, jurisdiction over a case involving a child must be transferred or retained as follows:

(1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this article. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a child **sixteen years of age** or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

(5) If a child **fourteen or fifteen years of age** is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within **thirty days** after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this article. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 20-7-8510 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child **fourteen years of age** or older is charged with a violation of Section 16-23-430(1), Section 16-23-20, assault and battery of a high and aggravated nature, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child **fourteen years of age** or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

# ADJUDICATION



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# ADJUDICATORY HEARING

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## OVERVIEW

The adjudicatory hearing is a hearing held by the family court judge to determine whether a child engaged in a delinquent act; it is the trial for a child accused of committing a delinquent act.

## HEARING DATE

Under the South Carolina Rules of Family Court, the adjudicatory hearing must be scheduled for the “earliest practicable date but no later than 40 days from the filing of the petition unless otherwise delayed by order of the court.” If the hearing is delayed by order of the court, the order must identify the reasons for the delay. Failure to schedule the adjudicatory hearing within the prescribed 40 days may be a ground for dismissal, but only if there is an “affirmative showing of material prejudice.” Rule 35(a), SCRFC.

## NOTICE OF HEARING

Notice of the adjudicatory hearing must be served on both parents and both must be ordered to be present. If the child is not living with the parents, notice is to be served on the guardians or persons with whom the child resides. The parent or guardian must be present at the hearing and excused only by the judge upon a showing of sickness or other justifiable cause. Rule 35(b), SCRFC.

## ADJUDICATORY HEARING PROCESS

The South Carolina Rules of Evidence apply in adjudicatory hearings. Rule 1101, SCRE. The South Carolina Rules of Criminal Procedure also apply in adjudicatory hearings insofar as practicable and to the extent they are not inconsistent with the statutes and rules governing family court. Rule 37, SCRCrimP.

Prior to hearing any testimony, the judge, upon motion of any party, may sequester or exclude witnesses from the courtroom. The victim in the case may not be sequestered.

Since the judge is both the trier of law and fact in family court cases, if opening statements are made, they are usually brief. The hearing generally begins with the solicitor presenting the State’s case against the child by presenting witnesses to testify. The State has the burden of

proving beyond a reasonable doubt that the child committed the delinquent act as charged. The child's attorney will have the opportunity to cross examine the state's witnesses, and the solicitor will be given the option to re-direct on any issues raised by the defense attorney on cross examination.

## **MOTION FOR DIRECTED VERDICT**

After the solicitor presents the case against the child, the defense attorney may move for a directed verdict on the grounds that the State has not presented competent evidence to prove its case. Rule 19, SCRFC, states that "on motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the petition after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the petition." In ruling on the motion, the judge only considers the existence or non-existence of evidence and not the weight of the evidence. Rule 19, SCRCrimP. The judge must view the evidence in the light most favorable to the State, when determining if there is any "direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced." *State v. Williams*, 400 S.E.2d 131, 132 (1991).

If the judge grants the motion for a directed verdict, the trial ends and the child is found not guilty. If the judge finds that there is sufficient evidence to proceed, the defense will present its case.

## **ADJUDICATORY HEARING PROCESS, Continued**

On advice of counsel, the child may or may not take the stand and testify. As with the State's witnesses, defense witnesses are also subject to cross-examination, by the solicitor.

Following the defense's case, the solicitor may call rebuttal witnesses to discredit statements and facts presented by the defense witnesses. At the end of the adjudicatory hearing, the solicitor and the defense attorney will make their closing arguments to the judge.

After hearing all the evidence presented, the judge will make a ruling as to guilt or innocence. If the judge finds that the State did not meet its burden of proving the case beyond a reasonable doubt, the judge will find the child "not guilty." If the verdict is "not guilty," the child is released from the court's jurisdiction. This verdict cannot be appealed by the State and the case cannot be retried. If the judge determines that the child is guilty, the disposition hearing is set for a future date following an evaluation, or is held immediately.

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# GUILTY PLEA

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## OVERVIEW

In family court, a child enters into a guilty plea by formally admitting to the allegations in the petition. A guilty plea must be made voluntarily and should only be accepted by the court after the child has been informed of and understands his or her rights. A guilty plea has the same effect as an adjudication following a trial on the merits.

## PREPARING YOUR CLIENT FOR A GUILTY PLEA

When a client makes an informed decision to give up the right to a trial and plead guilty, it is very important to prepare that client for the plea; this is especially true when your client is a child.

Educate your client about the court proceedings for a guilty plea, who will be present in the courtroom (e.g., judge, solicitor, DJJ staff, court reporter, bailiffs), and what their roles are.

Review with your client the list of questions the judge will likely ask during the plea. (See “Guilty Plea Procedure” section for a list of common plea questions.) While most family court judges try to use words that a child will understand, you should be prepared to explain certain legal terms that would obviously be confusing to a child (e.g., “waive” your right). It is also advisable that you explain to your client prior to the plea that the judge will probably ask the following: “Do you understand that I have the authority to send you to DJJ for an indeterminate period not to exceed your twenty-first birthday?” If the child hears this for the first time in court, without understanding what an “indeterminate” sentence means, the plea may fall through because the child, fearful of going to jail until the child’s twenty-first birthday, no longer wants to plead guilty.

If probation is a possibility for your client, discuss the importance of following all the probationary terms ordered by the judge to avoid being charged with a probation violation in the future.

Explain any and all possible collateral consequences of pleading guilty (e.g., loss of driving privileges, effects of subsequent probation or parole violations, sex offender registry, SVPA, enhanced penalties for subsequent adjudications or convictions in certain types of cases).

Advise your client and family members how to dress for court (See “Preparing your Client for Court”), as well as how to appropriately address

the court. If your client and any family members are going to address the court, discuss with them what they intend to say. Clarify that this will not be the time or place to deny guilt (*unless entering a no contest or Alford plea*), speak negatively of the victim or cast blame on anyone else. It is important, especially in family court, for the child to accept responsibility for the child's actions and show remorse for causing pain to the victims and the child's family. You will be speaking on behalf of your client and, unless questioned by the judge, your client does not have to say anything; although saying "I'm sorry" (if sincere) cannot hurt.

## **PLEA NEGOTIATIONS**

Prior to meeting with the solicitor to discuss plea negotiations, make sure you are prepared and have a clear understanding of the facts and circumstances surrounding your client's case. As the defense attorney, you should be the one to instigate negotiations.

In an effort to obtain the best possible outcome for your client when negotiating with the solicitor, be sure to point out any exaggerations in the petition and incident reports, and explain all the mitigating factors and positive attributes your client has.

The solicitor has the authority to:

- Dismiss the charges.
- Allow your client to take part in a diversion program.
- Reduce or change the pending charge(s) named in the petition(s).
- Agree to enter into a "Negotiated Plea" (whereby the judge, although not bound to the agreement, must allow defendant to withdraw the plea, if unwilling to accept the plea as negotiated).
- Agree to recommend a (favorable) sentence to the judge (different from entering into a negotiated plea).
- Agree to take no position as to sentencing (if unwilling to recommend a favorable sentence).

## **GUILTY PLEA PROCEDURE**

Generally (though it may vary county to county), the process begins with the solicitor calling the case and indicating that the child wishes to plead guilty. The judge will ask the defense attorney if she or he has had a full opportunity to discuss the case with the child and if the child has indicated that he or she wishes to admit the charges as stated by the solicitor. The judge will then question the child to ensure that the child understands the charges, his or her rights, the implications of pleading guilty, and that the child is pleading guilty freely and voluntarily.

The following or similar questions will be asked of the child by the judge at the beginning of the plea:

- What is your full name?
- How old are you?
- Do you go to school?
- What grade are you in? (If the child is behind in school, the judge may inquire as to why.)
- Are you making good grades or bad grades?
- Are you working?
- You were in the courtroom when the solicitor and your attorney told me that you wish to plead guilty to and admit to these charges. Is that correct?
- Do you understand that by pleading guilty, you are giving up your right to a trial?
- Do you understand that if you go to trial, you would be presumed innocent of the charges and the state would have to prove your guilt beyond a reasonable doubt? That you would not have to testify against yourself at trial? That your lawyer may question and cross-examine the witnesses who will testify against you at the hearing? That you have a right to have witnesses present to testify on your behalf?
- Who is here with you today?
- Have you had enough time to talk with your parent/guardian about why you are here today?
- Have you had enough time to talk with your lawyer about your case?
- Do you understand the charges against you?
- Has your lawyer answered all of your questions?
- Has your lawyer done everything you have asked her/him to do?
- Are you satisfied with her/his services?
- Has anyone in any way forced you or threatened you or pressured you or promised you anything to get you to plead guilty?
- Are you under the influence of any medication, alcohol or drugs that would keep you from understanding what we are doing here today?
- Are you pleading guilty freely and voluntarily?
- Do you understand that, if I find you guilty and adjudicate you delinquent, I have the authority to sentence you to the Department of Juvenile Justice for an indeterminate period not to exceed your 21<sup>st</sup> birthday?
- Do you still wish to plead guilty?
- Are you pleading guilty because you are guilty?

Following these questions, the judge will direct the solicitor to state the facts of the case. The solicitor will read out the petition, and the judge will ask the child if the child agrees with what was said in the petition.

Next, the judge will ask to hear from the DJJ community specialist who will report on the child's school records and prior court history. The community specialist will also make a sentencing recommendation to the court on behalf of DJJ.

At this point, the judge may give the victim an opportunity to address the court.

The defense attorney will then be allowed to speak on behalf of her/his client. The defense attorney may also ask the judge to hear from the child and/or family members or friends of the child who wish to speak on the child's behalf.

The judge may ask further questions of the child, defense attorney, solicitor, or DJJ community specialist. The solicitor may also request the opportunity to respond to statements made by the defense or recommendations regarding disposition of the case.

The judge may then ask the child if he or she has any further questions and will accept the plea by stating the following (or something similar): "The Court finds that your decision to plead guilty in this case is freely, voluntarily and intelligently made and that you have had the advice of a competent lawyer with whom you say you are satisfied. I accept your guilty plea and adjudicate you delinquent."

## **VALIDITY OF GUILTY PLEA**

In *Gaines v. State*, 517 S.E.2d 439 (S.C. 1999), the South Carolina Supreme Court held that the test for a valid guilty plea is whether the record establishes that a guilty plea was voluntarily and understandingly made, citing *Boykin v. Alabama*, 395 U.S. 238 (1969). Generally, "the [court] must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea." In *State v. Armstrong*, 211 S.E.2d 889 (S.C. 1975), the Court also acknowledged that the "court's warning should include an explanation of the defendant's waiver of constitutional rights and a realistic picture of all sentencing possibilities." The trial judge will usually question the defendant about the facts surrounding the case to ensure the defendant understands the implications of pleading guilty. See, e.g., *State v. Lambert*, 225 S.E.2d 340 (S.C. 1976).

## TYPES OF PLEAS

**Guilty Plea** – A guilty plea consists of a waiver of trial and an express admission of guilt.

**Negotiated Plea** - A negotiated plea is a plea where the defense attorney and solicitor have reached an agreement as to sentencing. If the judge does not accept the plea as negotiated, the judge must allow the defense attorney to withdraw the plea, or it is automatically appealable.

If the judge or the solicitor appears to stray from pre-arranged terms of a negotiated plea, the defense attorney must move to withdraw the plea. *Brooks v. State*, 481 S.E.2d 712 (S.C. 1997). In *Jordan v. State*, 374 S.E.2d 683 (S.C. 1988), the defense attorney was held to be ineffective for failing to attempt to withdraw the plea where the solicitor opposed probation after promising to remain silent on the issue.

**Nolo Contendere or No Contest** – In a *nolo contendere* (Latin for “I do not wish to contend,” often shortened to *nolo*) or no contest plea, the child does not admit guilt but does not dispute the charges either. The no contest plea has the same effect as a guilty plea, but the child does not have to come out and say “I did it.” S.C. Code Ann. § 17-23-40 (2003) specifically allows no contest pleas to be entered on misdemeanor charges with consent of the court; however, many judges will allow a no contest plea on almost any degree of crime. Even if the charge is a misdemeanor, the defense attorney should approach the judge before the plea begins to see if the judge is willing to accept a no contest plea. (Some family court judges refuse to accept these pleas because of the importance of accepting responsibility for one’s actions.)

**Alford Plea** – In *NC v. Alford*, 400 U.S. 25 (1970), the Supreme Court held that a defendant may enter a plea of guilty while actually maintaining his innocence. In order to enter an Alford plea, the defendant must be convinced, after being informed of the evidence against him, that he would be convicted if he went to trial. The defendant must also be getting some benefit from the plea, such as a reduced charge or favorable sentence recommendation.

## EFFECTIVE ASSISTANCE OF COUNSEL

The following steps should be taken in order to provide effective representation to a client who ultimately pleads guilty:

**Pre-plea investigation** – Before advising your client to plead guilty, you must conduct adequate investigations into possible defenses. *Cobbs v. State*, 408 S.E.2d 223 (S.C. 1991).

**Advice as to Sentencing** – It is very important to have a clear and accurate understanding of the sentencing laws, as well as DJJ’s policies and the Juvenile Parole Board’s sentencing guidelines, when advising a client regarding possible sentences.

Advice that misstates the law, whether overstating or understating a possible sentence, is ineffective assistance of counsel if the defendant relies on the advice when making the decision to plead guilty. *Hinson v. State*, 337 S.E.2d 338, (S.C. 1989), *Ray v. State*, 401 S.E.2d 151, (S.C. 1991). In *Hill v. Lockhart*, 474 U.S. 52 (1985), the Court held that the two-part standard adopted in *Strickland v. Washington*, 466 U.S. 668 (1984) for evaluating claims of ineffective assistance of counsel - “requiring that the defendant show that counsel’s representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” - applies to guilty plea challenges based on ineffective assistance of counsel. The Court stated that “in order to satisfy the second, or ‘prejudice,’ requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.*

#### **DUTY TO WITHDRAW FROM PLEA**

In *Santobello v. New York*, 404 U.S. 257, (1971) the Court established that “state prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty.” (See *Sprouse v. State*, 585 S.E.2d 278 (S.C. 2003)). If you enter into an agreement with the solicitor and the solicitor appears to stray from the pre-arranged terms of the plea, you must move to withdraw from the plea. In *Jordan v. State*, 374 S.E.2d 683 (S.C. 1988), the Court held that counsel was ineffective for failure to attempt to withdraw from the plea where the solicitor opposed probation after promising to remain silent on the issue. The Court stated that counsel’s failure to protect defendant’s right to enforce the plea agreement with the solicitor’s office fell below “prevailing professional norms.” The Court also held that there was a reasonable probability that “but for the fact that counsel failed to object to the continuation of the guilty plea proceeding once the solicitor reneged on the plea bargaining agreement, that defendant would not have pleaded guilty, but would have insisted on going to trial.”

You must also move to withdraw if the judge appears to deviate from the terms of a negotiated plea. *Brooks v. State*, 481 S.E.2d 712 (S.C. 1997).

# DISPOSITION



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# DISPOSITION HEARING

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## OVERVIEW

The disposition hearing is the sentencing phase of the family court process. It is the hearing where the judge determines what is most appropriate regarding treatment and custody for a child who has been adjudicated delinquent. In making this determination, the judge will consider the seriousness of the offense, the child's prior record, the child's family background, school records and any available social reports or evaluations.

The disposition hearing may be held immediately following the adjudicatory hearing, or it may be scheduled for a later date, pending an evaluation of the child and the child's circumstances.

## PREDISPOSITION EVALUATION

There are two reasons why the judge may order a child to undergo a predisposition evaluation: (1) the judge may determine that he or she needs more information about the child and the child's needs before sentencing the child; or (2) it may be required by law.

Before committing a child to DJJ, the court must order the child to undergo an evaluation, unless one of the exceptions described below applies. There are two types of predisposition evaluations: the community evaluation, where the child remains at home or in alternative placement in the community while undergoing the evaluation; and the residential evaluation, where the child is committed to DJJ for not more than 45 days while undergoing the evaluation. S.C. Code Ann. § 20-7-7810(C) (Supp. 2005).

While the law equates a community evaluation to a residential evaluation, it is not required to include all the components of a residential evaluation. Both types of evaluation include psychological, social and educational assessments. A child who undergoes a residential evaluation will also receive a medical examination and attend school while at the evaluation center. *Id.*

The evaluation report prepared for the judge includes: information gathered from interviews with the child and the child's parents or guardian; psychological and possibly psychiatric evaluations and tests; information

gathered from the child's teachers and school officials; an overview of the child's school and court records; and recommendations regarding treatment and services that would benefit the child.

Following either type of evaluation, DJJ will submit an evaluation report to the court. This report will include information gathered from interviews with the child and the child's parents or guardian; psychological and, if applicable, psychiatric evaluations and tests; information gathered from the child's teachers and school officials; an overview of the child's school and court records; and recommendations regarding custody, treatment and services that would benefit the child.

The court may waive the evaluation in writing and move straight into disposition of the case if the child:

- has already undergone a community or residential evaluation and the evaluation is available to the court;
- has been released from DJJ within the past year and the child's previous evaluation or other equivalent information is available to the court; or
- receives a determinate sentence of 90 days or less. *Id.*

## **DISPOSITION HEARING PROCEEDINGS**

Rule 37, SCRFC, requires the judge who presided over the adjudicatory hearing to preside over the disposition hearing as well, unless a change of venue is made pursuant to Rule 33(b), SCRFC, or unless "otherwise unavailable." In practice, and especially in larger counties with several family court judges, the judge assigned to juvenile cases the day the child is scheduled for the disposition hearing is the judge who will preside, as opposed to the judge who actually presided over the adjudicatory hearing.

Though proceedings may vary county to county, the following is an overview of a typical disposition hearing:

Generally, the hearing begins with the solicitor calling the case. The judge will then ask to hear from the DJJ community specialist who will report on the child's school records and prior court history. The DJJ representative will also highlight the evaluation report (if an evaluation was conducted), which the judge will have read in full prior to the hearing, and make a recommendation on behalf of DJJ as to sentencing. Next, the solicitor will address the court and make a recommendation regarding sentencing. The court will hear from the defense attorney who will speak on the child's behalf and request a sentence for the child. The court may also ask the child and the child's parents questions before sentencing the child.

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# DISPOSITIONAL POWERS OF THE COURT

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## SECTION 20-7-7805. Adjudication.

(A) When a child is found by decree of the court to be subject to this article, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

- (a) additional testing or evaluation that may be needed;
- (b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;
- (c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and
- (d) any other programs or services appropriate to the child's and family's needs.

The lead agency is responsible for monitoring compliance with the court-ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child's own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child's probation. This specified term of probation may expire before but not after the **eighteenth birthday** of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 20-7-7808. The court may impose **monetary restitution** or participation in supervised work or **community service**, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child's particular role in causing this loss, and the child's ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court-ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a **fine not exceeding two hundred dollars** when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 20-7-7808;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child's **twenty-first birthday**;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23-3-430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; and

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.

(B) Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the

institution or agency shall give to the court information concerning the child which the court may require. Counsel of record, if any, must be notified by the court of an adjudication under this section, and in the event there is no counsel of record, the child or the child's parents or guardian must be notified of the adjudication by regular mail from the court to the last address of the child or the child's parents or guardian.

(C) No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 20-7-7605(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment.

#### **SECTION 20-7-7807. Suspension or restriction of driver's license.**

(A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child's driver's license until the child's **seventeenth birthday**.

(B) If a child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a term or condition of probation, the court may suspend or restrict the child's driver's license until the child's **eighteenth birthday**.

(C) If the court suspends the child's driver's license, the child must submit the license to the court, and the court shall forward the license to the Department of Motor Vehicles for license suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child's driver's license, the court may restrict the child's driving privileges to driving only to and from school or to and from work or as the court considers appropriate. Upon the court restricting a child's driver's license, the child must submit the license to the court and the court shall forward the license to the Department of Motor Vehicles for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a 'child' as provided for in Section 20-7-6605, the court may suspend or restrict the driver's license of a child under the age of seventeen until the child's eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child's driver's license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Motor Vehicles.

**SECTION 20-7-7808. Youth Mentor Act; establishment of and participation in Youth Mentor Program.**

(A) This section may be cited as the "Youth Mentor Act".

(B) The Attorney General's Office shall establish a Youth Mentor Program to serve juvenile offenders under the jurisdiction of the family court. The program shall consist of a church mentor program and a community mentor program. Participation in the program may be required as a pretrial diversion option by a solicitor or as an optional, alternative disposition by a family court judge. The circuit solicitor may charge a juvenile offender who participates in the Youth Mentor Program a fee to offset the actual cost of administering the program; however, no juvenile offender is barred from the program because of indigence. This program must be available for juveniles who commit nonviolent offenses. For purposes of this subsection, nonviolent offenses mean all offenses not listed in Section 16-1-60.

(C) When a child is charged with a nonviolent offense which places him under the jurisdiction of the family court and the solicitor is of the opinion that justice would be better served if the child completed a church mentor program, the solicitor may divert the child to such a program. Upon completion of the program, the proceedings in family court must be dismissed.

Participation in the church mentor program is voluntary, and the child or his parents or guardians may refuse to participate based upon their religious beliefs or for any other reason.

The Attorney General must establish guidelines for the program, the mentors, and the churches, mosques, masjids, synagogues, and other religious organizations that participate in the church mentor program.

(D) When a child is adjudicated delinquent for a nonviolent offense in family court, the family court judge may order the child to participate in the community mentor program. When a child is ordered to participate in the community mentor program, he must be assigned to a community organization which shall assign a mentor to the child. The mentor shall monitor the academic and personal development of the child for a minimum period of six months and a maximum period not exceeding one year as ordered by the court. Failure to complete the program shall result in the child being brought before the family court for appropriate sanctions or revocation of suspended commitment.

The Attorney General must establish guidelines for the program, the mentors, and the community organizations that participate in the community mentor program.

**SECTION 20-7-7810. Commitment.**

(A) A child, **after the child's twelfth birthday** and before the seventeenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child's seventeenth birthday, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable

corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of seventeen years may be committed or sentenced to any other penal or correctional institution of this State.

(B) All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 20-7-400, 20-7-410, 20-7-460, 20-7-750, 20-7-760, 20-7-1520, and this article, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department, commitment must be for an indeterminate sentence, not extending beyond the **twenty-first birthday** of the child unless sooner released by the department, or for a determinate commitment sentence **not to exceed ninety days**.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty-five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

- (1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;
- (2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child's previous evaluation or other equivalent information is available to the court; or
- (3) receives a determinate commitment sentence not to exceed **ninety days**.

(D) When a child is adjudicated delinquent or convicted of a crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the child may be committed for an indeterminate period until the child has reached age twenty-one or until sooner released by the Board of Juvenile Parole under its discretionary powers or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile's nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the Board of Juvenile Parole, the juvenile must be released by age twenty-one according to the provisions of the child's commitment; however, notwithstanding the

above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(E) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16-1-60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his **seventeenth birthday** must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his **nineteenth birthday** must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Board of Juvenile Parole, a juvenile transferred pursuant to this subsection must be released by his twenty-first birthday according to the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(F) Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:

(1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 20-7-6605, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 20-7-6605; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 20-7-6605, including truancy.

Orders issued pursuant to this subsection must acknowledge:

(a) that the child has been advised of all due process rights afforded to a child offender; and

(b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.

A child committed under this section may not be confined with a child who has been determined by the department to be violent.

**SECTION 20-7-7815. Commitment of mentally ill or retarded; request for release; taking juveniles into custody.**

(A) No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or retardation. If, after a juvenile is referred to the Reception and Evaluation Center, it is determined that the juvenile is mentally ill, as defined in Section 44-23-10, or mentally retarded to an extent that the juvenile could not be properly cared for in its custody, the department through the voluntary admission process or by instituting necessary legal action may accomplish the transfer of the juvenile to another state agency which in its judgment is best qualified to care for the juvenile in accordance with the laws of this State. This legal action must be brought in the juvenile's resident county. The department shall establish standards with regard to the physical and mental health of juveniles whom it can accept for commitment.

(B) When the state agency to which a juvenile is transferred determines that it is appropriate to release from commitment that juvenile, the state agency must submit a request for release to the Juvenile Parole Board. If the Juvenile Parole Board does not grant the request to release the juvenile, the juvenile must be placed in an environment consistent with the provisions of this section.

(C) If a juvenile transferred to another state agency pursuant to this section is absent from a treatment facility without proper authorization, any state or local law enforcement officer upon the request of the director, or a designee, of the state agency to which the juvenile has been transferred and without the necessity of a warrant or a court order, may take the juvenile into custody and return the juvenile to the facility designated by the agency director or the designee.



# APPEALS



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# JUVENILE APPEAL CHECKLIST

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**\*\*Appeal must be filed within 10 Days of Disposition**

**Name of Client:** \_\_\_\_\_  
**File Number:** \_\_\_\_\_  
**Docket Number:** \_\_\_\_\_  
**Disposition Date:** \_\_\_\_\_

1. Prepare "Notice of Appeal" (Duplicate original & make 4 copies).
2. Prepare "Proof of Service" (Duplicate original & make 4 copies).
3. File an original of the Notice of Appeal and an original of the Proof of Service with the family court. Have the 4 sets of copies certified as true copies of the originals filed. **(Do this within 10 days of disposition.)**  
DATE FILED \_\_\_\_\_
4. Serve a certified true copy of the Notice of Appeal and Proof of Service on opposing counsel on the same date as the filing with the family court.  
DATE OF SERVICE \_\_\_\_\_
5. File the original of the Notice of Appeal and Proof of Service with the South Carolina Court of Appeals by mailing them together. Also include a certified true copy of any dispositional order issued in the case.  
**(Do this within 10 days of service on opposing counsel.)**  
DATE MAILED \_\_\_\_\_
6. The Office of Appellate Defense will need the following documents if handling the appeal:
  - Certified true copies of the Notice of Appeal and Proof of Service;
  - Date of filing with the Court of Appeals and Clerk of Court;
  - Juvenile Petition, Adjudicatory Order, Commitment Order, and all accompanying written motions, affidavits, search warrants, confessions, statements, and other relevant documents;
  - Certified true copies of any and all written exhibits introduced at trial and any written motions filed by the defense or prosecution;
  - Certified true copy of any dispositional order issued in the case;
  - A list of the dates of all hearings and the name(s) and addresses of the presiding judge(s) and court reporters; and
  - Order of Appointment, or Affidavit of Indigency and signed Order of Indigency.  
DATE MAILED \_\_\_\_\_
7. Mail copies of all associated documents to client.



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# SPECIAL CONSIDERATIONS FOR APPEALS, INCLUDING EXTRAORDINARY WRITS, IN JUVENILE CASES

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*by Tara S. Taggart, Esq.*

There are many obstacles to providing juveniles with adequate post-dispositional representation. Among these is the difficulty of challenging a very short sentence in a slow appellate system. Even though South Carolina has a relatively rapid appellate system, the average appeal still takes on average a year or longer. Appealing sentences of less than a year means the sentence may well be completed, and the issue will be moot before the appellate court decides the case. Caseload pressures at both the public and appellate defender levels are another hurdle in providing adequate representation.

During the past few years, the South Carolina Office of Appellate Defense has made a special effort to challenge several aspects of juvenile sentences using extraordinary writs. The assistance of the public defender organizations is critical to this effort because it is the trial lawyer who must identify the case, both in terms of preserving error as well as notifying Appellate Defense, as possibly requiring supersedes or other extraordinary treatment. In the following cases, we were successful in obtaining writs of supersedes and proceeded with appeals on the basis of capable of repetition yet evading review. In the Interest of Darlene C., 278 S.C. 664, 301 S.E. 2d 126 (1983).

In the Interest of Vincent J., 333 S.C. 233, 509 S.E. 2d 261(1998), the South Carolina Supreme Court held that S.C. Code Ann. § 20-7-7810(F) (Supp. 1999) does not limit a family court's power to commit non-status offenders for greater than 90 days for contempt. In footnote three, the Supreme Court noted the family court cannot commit a contemnor to an indeterminate sentence because it would trigger the right to a jury trial and the family court does not conduct jury trials.

In In re Tonisha G., 336 S.C. 407, 520 S.E. 2d 807 (1999), the Supreme Court confirmed that where a status offender is charged with contempt of court, the sentence cannot exceed ninety days.

The body of juvenile law in South Carolina is sparse because of the inherent problems mentioned above. The development of the law in this area would not be possible without proper error preservation at the trial level. General principles of preserving error for appellate review apply to

juvenile cases just as they do to adult criminal appeals: An issue must be raised to and ruled upon by the trial judge. State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991). Objections must be on a specific ground. State v. Bailey, 253 S.C. 304, 170 S.E. 2d 376 (1969). Moreover, if the trial judge has not squarely and unquestionably ruled on your issue in a written order, it is best to file a motion for reconsideration. This motion is frequently called a “59(e) motion” even though Rule 59(e) of South Carolina Rules of Civil Procedure actually only addresses the time in which a motion to alter or amend must be made (“10 days after receipt of written notice of the entry of the order”).

And, of course, the notice of intent to appeal a juvenile action from the family court must be filed within 10 days after receipt of written notice of entry of the order or judgment. Rules 203(b) (2) and b (3), SCACR. Because the notice of intent to appeal confers subject matter jurisdiction upon the appellate courts, it is critical that the notice be timely filed.

The notice of intent to appeal should be filed from the dispositional order rather than the adjudicatory order. In re Lorenzo B., 307 S.C. 439, 415 S.E. 2d 795 (1992). The South Carolina Court of Appeals recently dismissed a case in which the adjudicatory order only had been appealed. The client was forced to file a post-conviction relief action in order to obtain a belated appeal, delaying the process even more.

Another issue is how to proceed with a juvenile client with some type of disability. Ms. Phyllis M. Ross, Coordinator of the Corrections Program of Protection & Advocacy for People with Disabilities, Inc., is very knowledgeable in the fight to keep children with disabilities from being improperly incarcerated. Her number is 803/782-0675. Protection & Advocacy should be involved as early as possible. For purposes of appeal, it is helpful if any reports, etc., from agencies are entered into evidence, or if that is not permitted, at least proffered. See, e.g., State v. Silver, 314 S.C. 483, 431 S.E. 2d 250 (1993) (failure to make proffer of excluded evidence will preclude appellate review).

Effective representation of juvenile defendants can be a thankless task. However, we have the opportunity in South Carolina to make a big difference by aggressively pursuing all of the remedies on appeal, including extraordinary writs.

August 22, 2000

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# RULE 203, SCACR

## NOTICE OF APPEAL

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### RULE 203, SCACR

**\*\*The following segments of Rule 203 are applicable to juvenile cases:**

**(a) Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 233.

**(b) Time for Service.**

**(2) Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

**(3) Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

**(d) Filing.**

**(1) Appeals from the Circuit Court, Family Court and Probate Court.**

**(A) Where to File.** The notice of appeal shall be filed with the clerk of the lower court and with the ... Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

**(i)** Proof of service showing that the notice has been served on all respondents;

(ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing; and

(iii) A filing fee as set by order of the Supreme Court; this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies.

**(C) Form and Content.** The notice of appeal shall be substantially in the form designated in the Appendix to these Rules. It shall contain the following information:

(i) The name of the court, judge, and county from which the appeal is taken.

(ii) The docket number of the case in the lower court.

(iii) The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

(iv) The name of the party taking the appeal.

(v) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

**(3) Effect of Failure to Timely File.** If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 231.

**(e) Form and Content.** The notice of appeal shall be substantially in the form designated in the Appendix to these Rules.

**(1) Appeals from the Circuit Court, Family Court and Probate Court.** In appeals from lower courts, the notice of appeal shall contain the following information:

**(A)** The name of the court, judge, and county from which the appeal is taken.

**(B)** The docket number of the case in the lower court.

**(C)** The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

**(D)** The name of the party taking the appeal.

**(E)** The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

# PAROLE



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# BOARD OF JUVENILE PAROLE

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The Board of Juvenile Parole (Parole Board) is responsible for determining when and under what conditions children who have been committed to DJJ for an indeterminate sentence are to be released. However, effective April 1, 2007, DJJ will be responsible for determining the release and revocation of release of children committed to DJJ for an indeterminate period for status and misdemeanor offenses, as well as for violations of probation for status and misdemeanor offenses. With this change in law, the Parole Board will still be responsible for making determinations regarding release and revocation of release of children committed to DJJ for all other offenses. S.C. Code Ann. § 20-7-8303 (Supp. 2006).

The Parole Board was created and is governed by S.C. Code Ann. §§ 20-7-7005 to 7020 and §§ 20-7-8305 to 8330 (Supp. 2005). It is composed of 10 members who are appointed by the Governor for four year terms. At least one member must be appointed from each of the six congressional districts. S.C. Code Ann. § 20-7-7005(A) (Supp. 2005).

The Parole Board establishes “guidelines” for children serving indeterminate sentences at DJJ. Guidelines are a range of time with a minimum and maximum number of months the child will likely serve during the commitment period. Guidelines can run anywhere from 1-3 months to 36-54 months. The Parole Board uses these guidelines, along with reports of the child’s behavior and progress, to determine the length of commitment. The Parole Board may keep indeterminately committed children at DJJ beyond their maximum guidelines, but not past their twenty-first birthday. They may also release children prior to their minimum guidelines for good behavior and progress.

When releasing a child from an indeterminate commitment, the Parole Board has the option of granting the child a conditional or an unconditional release. A child who is conditionally released or released on parole will be supervised by DJJ for a period of time not to exceed the child’s twenty-first birthday. A child released on parole may be required to complete a local aftercare program or program at a wilderness camp, marine institute, or group home as a term of the conditional release. S.C. Code Ann. § 20-7-8320 (Supp. 2005).

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# DJJ PAROLE GUIDELINES

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## PAROLE GUIDELINES GRID, COMPUTATION SHEET & LIST OF OFFENSES BY CATEGORY

### HOW TO COMPUTE GUIDELINES

When determining what a child's guidelines will be if committed to DJJ, refer to the Parole Guidelines Grid on the following page.

The Parole Guidelines Computation Sheet will take you through the process.

1. You will need to know exactly what charges the child is being adjudicated for at the present hearing, as well as all the charges for which the child has been adjudicated in the past.
2. Refer to the list of offenses by category and find the category for the most serious, present, pending charge for which the child is being adjudicated - that will determine the CATEGORY on the left side of the grid.
3. Refer to the Point Assignments for Other Adjudications - each category is allocated a number of points.
  - a. Add up all the points for any other adjudications for the present hearing and all the adjudications in the child's history.
  - b. Use the Conversion Table to come up with a number 0-6. That determines where you come down from the top of the grid.

Remember, these are just GUIDELINES! The Parole Board (and DJJ, beginning April 2007) determines when the child gets released.

\*\*\*IMPORTANT: Changes may be made to the offense categories periodically by the Board of Juvenile Parole, at the Board's discretion. The offense categories in this manual are current as of September 2006.

If you have any questions concerning the guidelines, contact Blanche Richey at the Children's Law Office.

JUVENILE: \_\_\_\_\_ ID #: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ DATE OF COMMITMENT: \_\_\_\_\_

SCDC TRANSFER: \_\_\_\_\_ SVPA: \_\_\_\_\_ DATE OF RECOMMITMENT(S): \_\_\_\_\_

### **PAROLE GUIDELINES GRID**

	0	1	2	3	4	5	6
<b>CATEGORY VI</b>	1-3	1-3	1-3	1-3	1-3	1-3	1-3
<b>CATEGORY V</b>	3-6	3-6	3-6	3-6	3-6	3-6	3-6
<b>CATEGORY IV</b>	3-6	3-6	3-6	6-12	6-12	6-12	6-12
<b>CATEGORY III</b>	6-12	6-12	6-12	12-18	12-18	12-18	12-18
<b>CATEGORY II</b>	12-18	12-18	15-24	15-24	15-24	18-36	18-36
<b>CATEGORY I</b>	18-36	18-36	18-36	18-36	24-48	24-48	24-48
<b>CATEGORY X</b>	24-48	24-48	24-48	24-48	36-54	36-54	36-54
<b>CATEGORY XX</b>	36-54	36-54	36-54	36-54	36-54	36-54	36-54

Review Schedule: 1<sup>st</sup> Review: \_\_\_\_\_ Min: \_\_\_\_\_ Max: \_\_\_\_\_

**SPECIAL NOTE: Per Proviso 39.17: Pre-Dispositional Confinement Credit reflected in minimum and maximum review dates, days credit.**

Parole Examiner:

County:

CC: Juvenile & Institution:

JUVENILE: \_\_\_\_\_

## PAROLE GUIDELINES COMPUTATION SHEET

I) **Most Serious Current Adjudication/Offense**      **Category**  
\_\_\_\_\_

II) **Point Assignments for Adjudications other than Most Serious Current Offense:**

Category VI	1
Category V	2
Category IV	3
Category III	5
Category II	8
Category I	15
Category X	21
Category XX	25

**Adjudications Other Than Most Serious Current Offense and Points Assigned:**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**TOTAL POINTS:** \_\_\_\_\_

III) **Conversion of Total Points to Guideline Grid:**

1-4	0
5-8	1
9-13	2
14-18	3
19-23	4
24-28	5
29-over	6

**Grid Assignment:** \_\_\_\_\_      **Guideline Range:** \_\_\_\_\_

## OFFENSE CODES SORTED BY CATEGORY

*These offense categories are current as of September 2006.*

<b>CODE</b>	<b>CLASS</b>	<b>DESCRIPTION</b>	<b>ACRONYM</b>	<b>CAT</b>	<b>SCORE</b>
01909	AIDING	AIDING/ABETTING CAT. XX	AIDXX	XX	25
01904	ATTEMPT	ATTEMPT CATEGORY XX	ATMPXX	XX	25
01097	KIDNAPPING	CONSP.KIDNAP,SENT.MURDR	KDCNMR	XX	25
01117	MURDER	HOMICIDE-CHILD ABUSE I	HOMCD1	XX	25
01096	KIDNAPPING	KIDNAP,SENTENCE MURDER	KIDMUR	XX	25
01119	MURDER	KILLING BY POISON	POISMR	XX	25
01121	MURDER	KILLING IN A DUEL	DUELMR	XX	25
01120	MURDER	KILLING,STABBING/THRUST	STABMR	XX	25
01312	LYNCHING	LYNCHING, 1ST DEGREE	LYNCH1	XX	25
01116	MURDER	MURDER	MURDER	XX	25
01122	MURDER	MURDER BY EXPLOSIVE/INC	EXPMUR	XX	25
07184	PROBATION	PROB VIOL FOR CAT XX	PRBVXX	XX	25
01905	ACCESSORY	ACCESS BEF/AFT CAT XX	ACBAXX	X	21
01907	AIDING	AIDING/ABETTING CAT. X	AIDX	X	21
02006	ARSON	ARSON 1ST DEGREE	ARSON1	X	21
01253	SEX	ASLT W/INT,CSC,1ST DEGR	INTCS1	X	21
01899	ATTEMPT	ATTEMPT CATEGORY X	ATMPX	X	21
02079	BURGLARY	BURGLARY 1ST DEGREE	BURGL1	X	21
01015	KIDNAPPING	CONSPIRACY KIDNAPPING	CNSPKD	X	21
01157	SEX	CRIM SEX CDT W/MINR, 1ST	SEXMR1	X	21
01160	SEX	CSC 1ST DEGREE	SEXCO1	X	21
01140	ROBBERY	ENTER BANK W/INT.STEAL	BNKINT	X	21
01561	HIV	EXPOSEING HIV VIRUS	HIVEXP	X	21
03019	DUI	FELONY DUI, LOSS LIFE	FELDUI	X	21
01463	TRAFFIC	HIT & RUN, W/DEATH	HRNDTH	X	21
01118	MURDER	HOMICIDE-CHILD ABUSE II	HOMCD2	X	21
01230	RAILROAD	INTRFR W/RR SIGNS;DEATH	RRDETH	X	21
01095	KIDNAPPING	KIDNAPPING	KIDNAP	X	21
01220	MANSLAUGHTER	MANSLAUGHTER VOLUNTARY	VMANSL	X	21
03114	DRUGS	MDP ICE,CRANK,CRACK-3RD	CRACK3	X	21
03187	DRUGS	MDP NARCOTICS - 2ND	NARC2	X	21
03188	DRUGS	MDP NARCOTICS - 3 & SUB	NARC3	X	21
01384	RAILROAD	OBSTRUCT RR; IF DEATH	OBSDTH	X	21
07177	PROBATION	PROBATION VIOL. CAT X	PRBVX	X	21
01206	HIGHWAY	PUT ON HWY,DEATH RESULT	HWYDTH	X	21
01180	AIRPORT	REV/DAM AIRPORT; DEATH	APTDTH	X	21
01139	ROBBERY	ROBBERY WITH A DEADLY W	ARMROB	X	21
02141	BURGLARY	SAFECRACKING	SAFECR	X	21
03368	DRUGS	TRAF.ICE,CRANK,100-199G	ICE199	X	21
03369	DRUGS	TRAF.ICE,CRANK,200-399G	ICE399	X	21

03349	DRUGS	TRAF.ICE,CRANK,28-99/3+	99ICE3	X	21
03389	DRUGS	TRAF.ICE,CRANK,28-99G/2	ICE99	X	21
03370	DRUGS	TRAF.ICE,CRANK,400G UP	TRFICE	X	21
03280	DRUGS	TRAFF COCAINE/100-199G	COC100	X	21
03288	DRUGS	TRAFF COCAINE/200-399G	COC200	X	21
03281	DRUGS	TRAFF COCAINE/400G &UP	COCTRF	X	21
03148	DRUGS	TRAFFIC COCAINE, 28-99G	3COC99	X	21
03147	DRUGS	TRAFFIC COCAINE,10-27G	TRCOC3	X	21
01055	MANSLAUGHTER	TRAFFIC RELATED VOLUNTAR	TRFVMN	X	21
03149	DRUGS	TRF,HEROIN,MORPH,28G +	HERN28	X	21
03387	DRUGS	TRF.COCAINE(10-27G)/2ND	TRC027	X	21
03388	DRUGS	TRF.COCAINE(28-99G)/2ND	TRC099	X	21
03287	DRUGS	TRF.HEROIN,MORP(14-27G)	HERN14	X	21
03451	DRUGS	TRF.ICE,CRANK(10-27G)2D	ICE27	X	21
03452	DRUGS	TRF.ICE,CRANK(10-27G)3+	27ICE3	X	21
03453	DRUGS	TRF.LSD,1000+ DOSAGE	LSDTHO	X	21
03455	DRUGS	TRF.LSD,100-499 DOSE//2	LSD100	X	21
03456	DRUGS	TRF.LSD,100-499DOSE//3+	TRLSD3	X	21
03458	DRUGS	TRF.LSD,500-999DOSE//2	LSD500	X	21
03459	DRUGS	TRF.LSD,500-999DOSE//3+	LSDTF3	X	21
03292	DRUGS	TRF.METH (15KG OR MORE)	TRMETH	X	21
03285	DRUGS	TRF.MJ(10,000 LBS./MORE)	TRFMAR	X	21
02839	BOMB	VIOL.EXPLOSIV CNTRL--4TH	EXPLO4	X	21
01014	ASSAULT	A&B W/INTENT TO KILL	A&BKIL	I	15
01900	ACCESSORY	ACCS BEF/AFT CAT X	ACBAX	I	15
01903	AIDING	AIDING/ABETTING CAT. I	AIDI	I	15
02007	ARSON	ARSON 2ND DEGREE	ARSON2	I	15
01254	SEX	ASLT W/INT,CSC,2ND DEGR	INTCS2	I	15
01010	ASSAULT	ASSAULT W/INTENT TO KILL	ASLTKL	I	15
01898	ATTEMPT	ATTEMPT CATEGORY I	ATMPI	I	15
01012	POISON	ATTEMPT TO POISON W/INTE	POISON	I	15
01482	ALCOHOL	BOAT DUI; DEATH RESULTS	ALDEAT	I	15
01020	CARJACKING	CARJACKING, GREAT HARM	CARINJ	I	15
03403	DRUGS	CONCEAL PROP.FROM DRUGS	DRGCON	I	15
01161	SEX	CSC 2ND DEGREE	SEXCO2	I	15
01159	SEX	CSC W/MINR 11-14, 2ND DE	SEXMR2	I	15
01163	SEX	CSC W/MINR,>16YOA,2ND DG	CSCMR2	I	15
01810	SEX	ENGAGE >18YOA FOR SEX	CHLDSX	I	15
02050	BOMB	EXPLOSIV/INCNDIARY,INJRY	BMBINJ	I	15
02426	TRAFFIC	FAIL STOP SCHLBUS;DEATH	SCBSDT	I	15
01239	TRAFFIC	FAIL STOP/BLUE LGT;DEATH	FELBLU	I	15
03020	DUI	FELONY DUI, GRT BODY HRM	FELHRM	I	15
03393	DRUGS	FINANCE PROP.FROM DRUGS	DRGFIN	I	15
01231	RAILROAD	INJUR RR, ENDANGER LIFE	RRINJY	I	15
01103	SEX	LEWD ACT ON CHILD UNDER	LEWDAT	I	15
01313	LYNCHING	LYNCHING 2ND DEGREE	LYNCH2	I	15
03191	DRUGS	M,PWITD I,II,III-3&SUBS	MPWID3	I	15

03310	FOOD	MALICIOUS TAMPER W/FOOD	FDTMPR	I	15
03161	DRUGS	MDP ICE,CRANK,CRACK--2ND	CRACK2	I	15
07178	PROBATION	PROBATION VIOL. CAT.1	PRBVI	I	15
01240	RESISTING	RESIST ARREST W/WPN\2ND	ARRST2	I	15
01138	ROBBERY	ROB OPER HIRED VEHICLES	TAXROB	I	15
01142	ROBBERY	ROB TRAIN AFTER ENTRY	TRANRB	I	15
01815	SEX	SEX W/PATIENT OF DMH	SEXPAT	I	15
03320	PRISONERS	TAKE HOSTAGES BY INMATE	PRHOST	I	15
03220	BOMB	THREAT,ETC.,W/BOMB--2ND	BOMBT2	I	15
03392	DRUGS	TRAF.ICE,CRANK,28-99G/1	ICE28	I	15
02361	DRUGS	TRAF.ILLEGAL,4-13G--1ST	HERON4	I	15
03402	DRUGS	TRAF.MJ(10-99LBS)/2ND	TRMAR2	I	15
02359	DRUGS	TRAFFIC COCAINE,28-99/1	99COC1	I	15
01141	ROBBERY	TRAIN ROBBERY BY STOPPN	STPTRN	I	15
03394	DRUGS	TRANS MONEY FROM DRUGS	DRTRNS	I	15
02156	DRUGS	TRF.HEROIN,MORPH(4-13G)2	HERON2	I	15
03457	DRUGS	TRF.LSD,500-999DOSE//1	LSD999	I	15
03291	DRUGS	TRF.METH(1500G - 14KG)	TRMTH1	I	15
03290	DRUGS	TRF.METH(150-1499 G)	MTH150	I	15
03158	DRUGS	TRF.METHAQ,15-149G/2ND+	METHQ2	I	15
03284	DRUGS	TRF.MJ(2000-9999 LBS)	MJ9999	I	15
03283	DRUGS	TRF.MJ,200-1999 POUNDS	MRJ100	I	15
03145	DRUGS	TRFFIC MJ(10-99LBS)-3RD	99MRJ3	I	15
02875	BOMB	VIOL.EXPLOSIV CNTRL--3RD	EXPLO3	I	15
01013	ASSAULT	ABHAN	AGASBA	II	08
01902	ACCESSORY	ACCS BEF/AFT FACT CAT I	ACBAI	II	08
03168	ESCAPE	AID CAPITAL OFFN.ESCAPE	AIDCAP	II	08
03902	AIDING	AIDING/ABETTING II	AIDII	II	08
02008	ARSON	ARSON 3RD DEGREE	ARSON3	II	08
01256	RESISTING	ASLT OFFICER RESISTG ARR	ASLTPO	II	08
01255	SEX	ASLT W/INT,CSC,3RD DEGR	INTCS3	II	08
01009	ASSAULT	ASSAULT HIGH/AGGRAVATED	AGASLT	II	08
02900	ATTEMPT	ATTEMPT CATEGORY II	ATMPII	II	08
02486	RAILROAD	B&E/SHOOT INTO RR CARS	B&ERRC	II	08
05630	BLACKMAIL	BLACKMAIL OR EXTORTION	BLMAIL	II	08
01481	ALCOHOL	BOAT DUI;GREAT INJURY	ALBOAT	II	08
01421	BREACH	BREACH TRUST,\$5,000 OR<	BRECH5	II	08
02086	BURGLARY	BURGLARY 2ND,VIOLENT	BURG2B	II	08
02082	BURGLARY	BURGLARY 3RD DEGREE-2ND	3BRGL2	II	08
01017	CARJACKING	CARJACKING, W/O INJURY	CARJAK	II	08
03044	WEAPONS	CARRYING PISTOL UNLAWFU	ULAWPI	II	08
02481	CHILDREN	CHILD ABANDONMENT	CHLDAB	II	08
01137	ROBBERY	COMMON LAW/STRONG ARM	SARROB	II	08
03071	COMPUTER	COMPUTER CRIME 1ST DEGR	CMPTR1	II	08
03441	PRISONERS	CONCEAL WEAPON, INMATE	INMWPN	II	08
03337	PRISONERS	CONTRABAND CTY/MUNI PRSN	CNTCTY	II	08
02000	COUNTERFEIT	COUNTERFEITING MONEY		II	08

02390	DOMESTIC	CRIM.DOM.VIOL.HI & AGGR	DMVAGR	II	08
01162	SEX	CSC 3RD DEGREE	SEXCO3	II	08
03301	GRAVES	DESTRUCTION OF GRAVES	DSGRVS	II	08
03052	WEAPONS	DISCHARGING FIREARM INT	DISFRA	II	08
03300	WEAPONS	DISPLAY FIREARM IN PUBLI	DSPLFA	II	08
03701	DRUGS	DIST OTH.CRACK,PWID,SCHL	SCHODR	II	08
03165	DUI	DUI--4TH & UP	DUI4	II	08
01484	AIRPORT	ENTRY AIRCRAFT TO REMVE	ENTAIR	II	08
01880	SEX	EXPLOIT MINOR--2ND DEGR	EXPLM2	II	08
01881	SEX	EXPLOIT MINOR--3RD DEGR	EXPLM3	II	08
05012	BOMB	EXPLOS/INCNDIARY,NO INJ	BOMBNO	II	08
02397	TRAFFIC	FAIL STOP BLUE;INJURIES	BLUINJ	II	08
02424	TRAFFIC	FAIL STOP SCHLBUS;INJRY	SCHBUS	II	08
01764	IMPRISONMENT	FALSE IMPRISONMENT	IMPRSN	II	08
02813	FTC	FINANCIAL IDENTITY FRAUD	FIDFRD	II	08
02075	FORGERY	FORGERY,\$5,000 OR MORE	FRGRY5	II	08
03074	PRISONERS	FURNISHING CONTRABAND E	CONTRB	II	08
02521	LARCENY	GL,RET.RENTED,\$5,000/+	GLRNT5	II	08
02524	LARCENY	GL,RET.VIDEO,\$5000/MORE	GLVID5	II	08
02479	LARCENY	GRAND LARCENY,\$5,000/+	GRDLR5	II	08
03443	DRUGS	HIRE UNDER 17 FOR DRUGS	HIRDRG	II	08
01462	TRAFFIC	HIT/RUN,GREAT BODILY INJ	HTRNBI	II	08
03304	HOUSBREAKING	HOUSE ENTER W/O BREAKING	HOUSWO	II	08
03090	SEX	INCEST	INCEST	II	08
03339	PRISONERS	INCITE PRISONERS RIOT	PRRIOT	II	08
01485	RAILROAD	INTRFR W/RR SIGNS;INJRY	INJINF	II	08
01056	MANSLAUGHTER	INVOL.MNSLAUGH.,TRAFFIC	TRFIMN	II	08
03474	LARCENY	LARCNY COMODITIS,\$5,000	LARCNY	II	08
05705	LOOTING	LOOTING,STATE OF EMRGNC	LOOTNG	II	08
03190	DRUGS	MPWITD I,II,III-2ND OF	MPWID2	II	08
03218	BOMB	MAKING A BOMB THREAT-1S	BOMBT1	II	08
02494	MALICIOUS	MAL.INJ.ANIMAL/PP,5000+	MLIPP5	II	08
02416	MALICIOUS	MAL.INJ.REAL PROP.5000+	MALRP5	II	08
03111	UTILITIES	MAL.INJ.TO UTILITY SYS	MALUTL	II	08
01221	MANSLAUGHTER	MANSLAUGHTER INVOLUNTAR	IMANSL	II	08
03160	DRUGS	MDP ICE,CRANK,CRACK--1ST	CRACK1	II	08
03186	DRUGS	MDP NARCOTICS - 1ST	NARC1	II	08
05781	MISPRISION	MISPRISION OF A FELONY	MSPRSN	II	08
03143	OBSCENE	OBSCEN MAT.TO 12YOA >	OBMT12	II	08
01237	RAILROAD	OBSTRUCT RR;NO DEATH	RROBST	II	08
01422	BREACH	OBTAIN SIGN/PROP FALSE	BRCPRP	II	08
01883	SEX	PARTICIPATE IN PROSTITU	MNRPRS	II	08
03440	PRISONERS	PARTICIPATE PRISON RIOT	PARRIT	II	08
01003	ABORTION	PERFORM OR SOLICITING AB	ABORTN	II	08
03122	WEAPONS	POINTING FIREARM	PTFIRA	II	08
03315	WEAPONS	POSS SAWED-OFF SHOTGUN	SAWGUN	II	08
03101	DRUGS	POSS.1G ICE,CRANK,COC-2	PSCOC2	II	08

03102	DRUGS	POSS.1G ICE,CRANK,COC-3	POSCOC	II	08
02430	VEHICLE	POSSESS STOLEN VEH.5000	STAUTO	II	08
01812	SEX	PRO/DIR.SEX PERFORM >18	PRODSX	II	08
07179	PROBATION	PROBATION VIOL. CAT.II	PRBVII	II	08
01423	BREACH	PROPT,FALSE TOKN,\$5,000	TRSTPR	II	08
03250	HIGHWAY	PUT SUBST,PERS.INJURY	HWYPER	II	08
01983	HOMICIDE	RECK HOMICIDE BY BOAT	BOATHM	II	08
01135	HOMICIDE	RECKLESS HOMICIDE	RECHOM	II	08
01483	AIRPORT	REM/DAM AIPORT; INJURY	APTINJ	II	08
01241	RESISTING	RESIST ARREST W/WPN1ST	ARRST1	II	08
03514	RSG	RSG, VALUE >\$5,000	RCVSG5	II	08
02364	WEAPONS	SALE,POSS.PISTOL PERSON	SALEPS	II	08
03318	WEAPONS	SELL,RENT,ETC SAWED-OFF	SELSAW	II	08
01317	STALKING	STALKING/AGGRAVATED	INJUNC	II	08
02418	LARCENY	STEAL BOATS,ETC.\$5000/+	VESSEL	II	08
03469	LARCENY	STEAL CROPS \$5,000/+	LRCROP	II	08
02417	LARCENY	STEAL LIVESTOCK,\$5000/+	LIVSTK	II	08
03470	LARCENY	STEAL TOBACCO,\$5000/+	TOBACC	II	08
03772	BONDS	STEALING BONDS, \$5,000	BONDS5	II	08
03222	BOMB	STINK BOMBS,CAUSE HARM	STINKH	II	08
03450	DRUGS	TRAF.ICE,CRANK,10-27G/1	TRICE1	II	08
02278	DRUGS	TRAFFIC COCAINE,10-27G,1	TRFCC1	II	08
02360	DRUGS	TRAFFIC MJ,10-99LBS.1ST	TRMAR1	II	08
03317	WEAPONS	TRANSPORT SAWED-OFF,ETC	TRNSAW	II	08
03454	DRUGS	TRF.LSD,100-499 DOSE//1	TRLSD1	II	08
02362	DRUGS	TRF.METHAQUALONE,15-149G	METHQ1	II	08
03371	RSG	UNLAWFUL CHOP SHOP	OWNCHP	II	08
02225	VEHICLE	USE CAR W/O, W/INTENT	GLAUTO	II	08
03539	WEAPONS	USE,MFG,TEFLON-COATED	TEFAMM	II	08
03303	GRAVES	VANDALI/DESCRATE BURIAL	VANGRV	II	08
03435	BOMB	VIOL.EXPLSV CNTRL ACT/2	EXPLO2	II	08
03543	WEAPONS	VIOLATION OF SC GUN LAW	VIOGUN	II	08
03549	WEAPONS	WEAPON DURING VIOLENT	WEPNVL	II	08
03040	WEAPONS	WEAPON ON SCHOOL GROUNDS	SCHLWP	II	08
01559	ABUSE	ABUSE INCAPACITATED PER	ABUSIN	III	05
03900	ACCESSORY	ACCS BEF/AFT CAT II	ACBAIL	III	05
03556	DRUGS	ADULTERATED DRUGS--2ND	ADLTD2	III	05
03557	DRUGS	ADULTERATED TO DEFRAUD	DRGADL	III	05
02406	STALKING	AGGRAVATED STALKING	AGRVST	III	05
05903	AIDING	AIDING/ABETTING CAT. III	AIDIII	III	05
03540	ANIMALS	ANIMAL FIGHT/BAIT ACT	ANIBAT	III	05
02076	ARSON	ARSON,ATTEMPT TO BURN	ATTBRN	III	05
02544	ASSAULT	A&B ON SCHOOL EMPLOYEE	A&BSCH	III	05
01525	ASSAULT	ASLT ON A CORRECTIONAL EE	ASLTEM	III	05
03899	ATTEMPT	ATTEMPT CATEGORY III	ATMIII	III	05
02258	VEHICLE	AUTO OR GAS BREAKING	AUTBRK	III	05
01420	BREACH	BREACHTRUST, \$1>5,000	BRECH1	III	05

03038	SEX	BUGGERY	BUGGRY	III	05
02080	BURGLARY	BURGLARY 2ND NON-VIOLENT	BURG2A	III	05
02266	ARSON	BURNING LANDS, 2ND OFFEN	BRNLN2	III	05
03573	RSG	CHOP SHOP/ALTER,ETC,VIN	RSGCH2	III	05
03572	RSG	CHOP SHOP/TAMPER ID	RSGCHP	III	05
03575	RSG	CHOP SHOP; CONSPIRACY	CHPCNS	III	05
03574	RSG	CHP SHP;ATTMPT TO ALTER	CHPATM	III	05
03072	COMPUTER	COMPUTER CRIME 2ND DEGR	CMPT2B	III	05
02020	FTC	CRIM.POSS.FTC FORGERY > \$1000	FTCDEV	III	05
03049	CONSPIRACY	CRIMINAL CONSPIRACY	CONSPR	III	05
03462	DRUGS	CULTIVATING MARIJUANA	ENTRMJ	III	05
03053	WEAPONS	DICHARG FIREARM IN CITY	CITYGN	III	05
03372	OBSCENE	DISS,PROCUR,PROMOT OBSC	OBSDIS	III	05
03348	OBSCENE	DISS.OBS.TO UNDER 18YOA	OBDS18	III	05
03146	OBSCENE	DISS.OBSC.MAT.TO MINORS	OBCMNR	III	05
03801	DRUGS	DIST,ETC.CRACK,PWID,SCHL	SCHDRG	III	05
03518	RECORDED	DISTR.REC,1000+; 1ST +	RCDIS1	III	05
03517	RECORDED	DISTR.REC,101-999AUD;2ND	RECDIS	III	05
01576	STEROIDS	DISTR.STEROIDS;2ND/SUBS	DSTSTR	III	05
03164	DUI	DUI--3RD OFFENSE	DUI3	III	05
01252	ESCAPE	ESC.CUST,RECAPT IN STAT	ESCRIS	III	05
01251	ESCAPE	ESC.CUST,RECAPT.OUT OF	ESCROS	III	05
02469	ESCAPE	ESC.PRISON,RECAP.IN STA	PRSNES	III	05
02470	ESCAPE	ESC.PRISON,RECAP.OUT ST	PRSNOS	III	05
03546	PRISONERS	FAIL RET.FURL.PRSN (IN)	FURLIN	III	05
03547	PRISONERS	FAIL RET.FURL.PRSN(OUT)	FRLOUT	III	05
02396	TRAFFIC	FAIL STOP FOR BLUE LGT	BLULT2	III	05
03507	PERJURY	FALSE SWEAR TO OATH	FSWEAR	III	05
01199	FOOD	FOOD STAMP FRAUD-\$1,0000	FOODF1	III	05
02425	FOOD	FOOD STMP FRAUD,\$5,000+	FOODF2	III	05
02533	FOOD	FOOD STMP, \$1,001-4,999	FOODF4	III	05
02535	VEHICLE	FORGE TITLE,ETC.	VEHFRG	III	05
02446	CHECKS	FRAUD CHK >\$500--2ND	FRDCK5	III	05
02220	FTC	FTC FORGERY	FTCFRG	III	05
02348	FTC	FTC THEFT	FTCTHF	III	05
02370	FTC	FTC/RECV VALUE >\$500	FTCREC	III	05
02522	LARCENY	GL,RET.RENTED,\$1001-4999	GLRNT1	III	05
02523	LARCENY	GL,RET.VIDEO,\$1001-4999	GLVID1	III	05
02478	LARCENY	GRAND LRCNY(\$1001-4999)	GRDLR1	III	05
03166	TRAFFIC	HABITUAL TRAFFIC OFFEND	HABTRF	III	05
03347	OBSCENE	HIRE >18YOA,VIOL.OBSCEN	OBHIRE	III	05
03162	DRUGS	IMITATION CONTROL SUBST	IMITAT	III	05
03091	SEX	INDECENT EXPOSURE	INDCTE	III	05
03473	GRAVES	INJURE PROPT.OF GRAVE	GRVINJ	III	05
02366	RIOT	INSTIGATE RIOT W/WEAPON	RIOTWP	III	05
05023	ALARM	INTERFERENCE WITH FIRE	INTFAL	III	05
03336	COURTS	INTIMIDATION OF COURT	INTMID	III	05

02571	RAILROAD	INTRFERE W/RR SIGNS/SIG	INTFRR	III	05
02259	LARCENY	LARCENY,BRK AUTO,PETROL	LARAUT	III	05
02707	LARCENY	LARCNY BOATS,\$1001-4999	VSEL1	III	05
03565	LARCENY	LARCNY COMODITIS,>5,000	LRCNY1	III	05
03189	DRUGS	M,PWITD SCH.I,II,III--1	MPWID1	III	05
03193	DRUGS	M,PWITD SCH.IV--2 & SUB	IVSCH2	III	05
02458	MALICIOUS	MAL.INJ.PLACE WORSHIP	WRSHPV	III	05
03046	WEAPONS	MFG/POSSESS FIREBOMB	FIRBMB	III	05
03496	COIN	MFG/SALE OF SLUGS	MFSLGS	III	05
02493	MALICIOUS	ML.INJ.ANML/PP,1001-4999	MLIPP1	III	05
02510	MALICIOUS	ML.INJ.RL.PRP,1001-4999	MALRP1	III	05
03121	PERJURY	PERJURY	PERJRY	III	05
03497	COIN	PLAYER TAMPER W/GAME	VIDTMP	III	05
02538	VEHICLE	POS.STLN VEH,\$1001-4999	PSAUT1	III	05
03100	DRUGS	POSS.1G ICE,CRANK,COC-1	PSCOC1	III	05
03180	DRUGS	POSS.NARC.(I,II)--2ND	DRUG2	III	05
03181	DRUGS	POSS.NARC.(I,II)--3RD &	DRUG3	III	05
01582	STERIODS	POSS.STERIODS,100+;2ND+	STRPOS	III	05
03463	WEAPONS	POSSESS WEAPON;PATIENT	DMHWPN	III	05
03124	TOOLS	POSSESSION OF TOOLS FOR	CRTOOL	III	05
03542	ANIMALS	PRESENCE AT ANIML FIGHT	ANIPRE	III	05
07180	PROBATION	PROBATION VIOL. CAT.III	PBVIII	III	05
01532	BREACH	PROP,FALS TOKN,\$1-4,999	TRSPR1	III	05
02129	LARCENY	PURSE SNATCHING	PURSES	III	05
02537	VEHICLE	REC/SELL VEH.W/FLSE VIN	SELVIN	III	05
02570	AIRPORT	REM/DAM AIRPT;NO INJ/DTH	AIRPRT	III	05
02536	VEHICLE	REMOVE,FALSE VIN	REMVIN	III	05
05431	ARREST	RIGHT TO KNOW GROUNDS	ARREST	III	05
03513	RSG	RSG, \$1,000 < \$5,000	RCVSG1	III	05
02579	RAILROAD	SHOOT/THROW MISSILE AT	RRMISL	III	05
02529	SHOPLIFTING	SHOPLIFTING,\$1001-4999	SHLFT1	III	05
02530	SHOPLIFTING	SHOPLIFTING,OVER \$5000	SHLFT5	III	05
01531	BREACH	SIG/PROP,FALSE,\$1-4,999	BRCPR1	III	05
03563	LARCENY	STEAL CROP, \$1001-4999	LYCRP1	III	05
03564	LARCENY	STEAL TOBACCO,\$1001-4999	TOBAC1	III	05
05519	BONDS	STEALING BONDS,\$1-5,000	BONDS1	III	05
02526	LARCENY	STL LIVSTOCK,\$1001-4999	LVSTK1	III	05
03097	FIREARMS	TEACH/DEMO EXPL,2ND+ OFF	TCHXP2	III	05
05655	SCHOOL	THREAT TO SCHOOL TEACHER	TEACHR	III	05
05260	THREAT	THREATEN A PUBLIC EMPLOYEE	PUBLIC	III	05
03516	RECORDED	TRANSF.REC.SOUNDS/1ST +	RECTR1	III	05
03515	RECORDED	TRANSF.REC.SOUNDS/2ND +	RECTR2	III	05
03545	PRISONERS	TRESPASS STATE CORRECTL	PRSTRS	III	05
03023	DRUGS	UNLAW PRESCRIP/BLANK,2 +	BLKPRE	III	05
03544	BOMB	VIOL.EXPLOSIV CNTRL--1ST	EXPLO1	III	05
02265	ARSON	WILLFUL BURN LAND	BRNLND	III	05
02578	RAILROAD	WILLFUL OBSTRUCT RR	OBSRWY	III	05

03681	COMPUTER	\$1K-25K,2ND DG,1ST OFFNS	CMPT2A	IV	03
05900	ACCESSORY	ACCS BEF/AFT CAT III	ABAI3	IV	03
03169	ESCAPE	AIDING NON-CAPITAL OFFE	AIDESC	IV	03
05603	AIDING	AIDING/ABETTING CAT. IV	AIDIV	IV	03
05899	ATTEMPT	ATTEMPT CATEGORY IV	ATMPIV	IV	03
01069	ADOPTION	BABY SELLING/ADOPTION	BABYSL	IV	03
02090	LARCENY	BICYCLE LARCENY	BILAR2	IV	03
03955	BREACH	BREACH OF PEACE,AGGRAVAT	BRPCAG	IV	03
02427	BURGLARY	BURGLRY 3RD DEGREE--1ST	3BRGL1	IV	03
02263	ARSON	BURN CROPS, OTHER PERS.P	BRNPPT	IV	03
03159	WEAPONS	CARRYING FIREARM ON PRE	FIRLIQ	IV	03
03685	DOMESTIC	CRIM DOMESTIC VIOL--3RD	DOMVL3	IV	03
01575	STEROIDS	DISTR.STEROIDS;1ST OFFN	STRDS1	IV	03
03163	DUI	DUI--2ND OFFENSE	DUI2	IV	03
03178	DUS	DUS--3RD & UP	DUSUS3	IV	03
05009	TRESPASS	ENTERING PUBLIC BUILDIN	ATTDES	IV	03
05838	EXTORTION	EXTORTION	EXTORT	IV	03
03065	TRAFFIC	FAILURE TO STOP FOR OFF	BLUFLT	IV	03
02077	FORGERY	FORGERY, LESS \$5,000	FORGRY	IV	03
02203	CHECKS	FRAUD CHK <\$500--2ND	FRDCK2	IV	03
03077	TELEPHONE	HARASSMENT ETC BY TELEP	OBSTEL	IV	03
05013	MALICIOUS	INJURY OR DESTRUCTION O	TENDES	IV	03
03092	ARREST	INTERFERENCE WITH OFFIC	INTFER	IV	03
03192	DRUGS	MPWITD SCH.IV--1ST OFF	IVSCH1	IV	03
03051	MALICIOUS	MAL.INJ. CTHOUSE/JAIL	INJAIL	IV	03
03118	OBSTRUCTING	OBSTRUCTING JUSTICE	OBSTJS	IV	03
03120	SEX	PEEPING TOM	PEEPIG	IV	03
01577	STEROIDS	POSSESS STEROIDS; 1ST	STRPS1	IV	03
07181	PROBATION	PROBATION VIOL. FOR CAT.	PRBVIV	IV	03
03501	PROSTITUTION	PROSTITUTION	PROST	IV	03
02341	RECORDED	RECORD LIVE; 1ST/MORE	RECLV1	IV	03
02342	RECORDED	RECORD LIVE; 2ND/MORE	RECLV2	IV	03
03136	RESISTING	RESISTING AN OFFICER	RESOFF	IV	03
03144	OBSCENE	SENDING OBSCENE MESSAGE	OBCMES	IV	03
03096	FIREARMS	TEACH/DEMO EXPL,1ST OFFN	TCHXP1	IV	03
05494	ALCOHOL	TRANSF/GIFT BEER/WINE TO	GFTBER	IV	03
03562	DRUGS	UNLAWFUL/BLANK PRESCRIPT	BLANK1	IV	03
03212	COMPUTER	\$1,000<,3RD DEG,1ST OFFN	CMPT3A	V	02
03745	COMPUTER	\$1,000<,3RD DG,2ND+ OFFN	CMPT3B	V	02
05600	ACCESSORY	ACCS BEF/AFT CAT IV OR V	ACBAIV	V	02
05609	AIDING	AIDING/ABETTING CAT. V	AIDV	V	02
03015	ANIMALS	ANIMALS, ILL TREATMENT	ANIMAL	V	02
05612	ASSAULT	ASSAULT & BATTERY SIMPLE	SIMA&B	V	02
05658	ASSAULT	ASSAULT (SIMPLE)	SIMASL	V	02
05805	ATTEMPT	ATTEMPT CATEGORY V	ATMPV	V	02
01032	BREACH	BREACH OF TRUST W/FRAU	BREACH	V	02
05891	BREACH	BREACH PEACE,UNAGGRAVTD	BRCHPC	V	02

05264	ARSON	BURNING CROSS IN PUBLIC	BRNCRS	V	02
03043	WEAPONS	CARRY CONCEALED WEAPON	CONCWP	V	02
05175	CONTEMPT	CONTEMPT OF COURT (CRIMINAL)	CNTMPC	V	02
03700	DOMESTIC	CRIM DOMESTIC VIOL--1&2	DOMVIL	V	02
03504	PUBLIC	CURFEW & LOITERING	LOITER	V	02
03273	FRAUD	DEFRAUD HOTEL,INN	FRDINN	V	02
05006	RIOT	DIRECTING OR ENCOURAGIN	RIOT	V	02
05021	SCHOOL	DISTURBING SCHOOLS	DISTSL	V	02
05702	TRAFFIC	DRIVE W/O STATE LICENSE	DWOLIC	V	02
05027	DUI	DUI--1ST OFFENSE	DUI1	V	02
05028	DUS	DUS--1ST OFFENSE	DUS1	V	02
03177	DUS	DUS--2ND OFFENSE	DUSUS2	V	02
05014	TRESPASS	ENTERING PREMISES AFTER	FALVAC	V	02
05750	SCHOOL	ENTICE CHILD NOT ATTEND	SCHATT	V	02
03505	TRESPASS	ENTRY LAND AFT NOTICE	ENLAND	V	02
02423	TRAFFIC	FAIL STOP SCH.BUS,NO,1ST	BSINJ1	V	02
02442	TRAFFIC	FAIL STOP SCH.BUS,NO,2ND	BSINJ2	V	02
02093	LARCENY	FAILURE TO RETURN TAPE	RVIDEO	V	02
03064	TRAFFIC	FAILURE TO STOP AND GIV	LEVSCN	V	02
05601	FALSE	FILING FALSE COMPLAINT	FLSCMP	V	02
02770	FINANCIAL	FINAN. TRANSACTION CARD >\$500	FTCFR5	V	02
02731	FINANCIAL	FINAN. TRANSACTION CARD < 500	FTCFRD	V	02
05700	FLAG	FLAG DESCECRATION	FLAGDS	V	02
02070	FORGERY	FORGERY	FORGER	V	02
02800	CHECKS	FRAUD CHECK > \$500, 1ST	FRDCKV	V	02
02202	CHECKS	FRAUD CHK <\$500--1ST	FRDCK1	V	02
05026	GAMBLING	GAMBLING LAW VIOLATION	GAMBLV	V	02
02738	DRUGS	DIST. OF PRESCRIP. DRUGS W/O RX	SCRPTS	V	02
03632	DRUGS	GLUE SNIFF/AROMAT HYDRO	GLUEAR	V	02
03078	TRAFFIC	HIT & RUN,MINOR PERS INJ	HITRUN	V	02
03464	TRAFFIC	HIT/RUN,W/PROP DAMAGE	HTRNPP	V	02
05008	BOMB	ILLEGAL USE OF STINK BM	NUSDEV	V	02
03087	TELEPHONE	ILLEGAL USE OF TELEPHON	ILLTEL	V	02
03378	SCHOOL	INTERFER W/SCHOOL BUS	SCHLBS	V	02
03113	COIN	INTERFERE W/VIDEO GAME	NTRFVD	V	02
02091	LARCENY	LARCENY BIKE >\$1,000	BILAR1	V	02
05701	LITTERING	LITTERING	LITTER	V	02
03194	DRUGS	M,PWITD SCH.V--1ST OFFN	VSCHD1	V	02
03195	DRUGS	M,PWITD SCH.V--2 & SUBS	VSCHD2	V	02
02492	MALICIOUS	MAL.INJ.ANIMAL/PP,>1000	MLIAPP	V	02
02116	MALICIOUS	MAL.INJ.REAL PROP.1000>	MALRPT	V	02
03196	DRUGS	MFG,POSS,SELL PARAPHERN	PARAPH	V	02
05607	TOBACCO	MINOR POSSESS TOBACCO	TOBACO	V	02
05193	WILDLIFE	NIGHT HUNTING	NTHNTG	V	02
05659	ALCOHOL	OPEN CONTAINER LAW	OPNCNT	V	02
05979	ALCOHOL	OPERATE BOAT DUI	ALBDUI	V	02
01901	OTHER	OTHER ACTS AGAINST PERS	OTHPER	V	02

02902	OTHER	OTHER ACTS AGAINST PROP	OTHPRO	V	02
03903	OTHER	OTHER ACTS AGAINST PUBL	OTHACT	V	02
05905	OTHER	OTHER ACTS RELATING TO	OTHADT	V	02
03205	OTHER	OTHER FIREARM VIOLATION	OTHFRA	V	02
03157	OTHER	OTHER OFFENSES PUBLIC	OTHOFF	V	02
03502	OTHER	OTHER SEX OFFENSES	OTHSEX	V	02
05030	OTHER	OTHER TRAFFIC OFFENSES	OTHTRF	V	02
05019	LARCENY	PETTY LARCENY	PETLAR	V	02
03179	DRUGS	POSS.NARC (I,II)--1ST	DRUG1	V	02
03183	DRUGS	POSS.OTHER,SCH I-V,2&SUB	DRUG5	V	02
03182	DRUGS	POSS.OTHER,SCH.I-V, 1ST	DRUG4	V	02
07182	PROBATION	PROBATION VIOL. CAT.V	PRBVLV	V	02
05022	PUBLIC	PUBLIC DISORDERLY CONDU	PUBDIS	V	02
03156	PUBLIC	PUBLIC DRUNKENNESS	PUBDKS	V	02
03204	HIGHWAY	PUT SUB HWY,W/MAL,NO INJ	HWYMAL	V	02
03203	HIGHWAY	PUT SUBSTNCE HWY,NO MAL	HWYNOM	V	02
03130	TRAFFIC	RACING	RACING	V	02
05029	TRAFFIC	RECKLESS DRIVING	REKDRI	V	02
03132	RSG	RECV STOLEN GOODS<\$1000	RSGLS1	V	02
05005	RIOT	RIOT,ROUT,AFFRAY,NO WPN	AFFRAY	V	02
02433	SEX	SEX OFFNDR REG.VIOL;1ST	SEXREG	V	02
02528	SHOPLIFTING	SHOPLIFTING,UP TO \$1000	SHPLFT	V	02
03659	DRUGS	SIMPLE POSS.MARIJUANA--1	SMPLMJ	V	02
03185	DRUGS	SIMPLE POSSESS MJ/HH--2N	DRUG7	V	02
01315	STALKING	STALKING/HARRASSMENT	STALKG	V	02
05660	ALCOHOL	TRANSPORT ALCOHOL IN VEH	TRAALC	V	02
03503	TRESPASS	TRESPASSING	TRESPTS	V	02
05015	TRESPASS	UNLAWFUL ENTRY INTO ENC	UNLENT	V	02
05604	ALCOHOL	UNLAWFUL POSESSION OF AL	POSALC	V	02
05605	ALCOHOL	UNLAWFUL POSS/CNSMP ALCH	CONSAL	V	02
02226	VEHICLE	USE CAR W/O, W/O INTENT	AUTOTN	V	02
03718	BOMB	USE OF FAKE BOMB	FAKBMB	V	02
05007	MASKS	WEARING MASKS OR LIKE	MASKS	V	02
06609	JUVENILE	VIOL OF HOUSE ARREST ORD (crim.)	HOUSER	V	02
06605	JUVENILE	CURFEW VIOLATION	CURFEW	VI	01
06603	JUVENILE	INCORRIGIBLE	INCORR	VI	01
06606	JUVENILE	OTHER JUVENILE CHARGES	OTHJUV	VI	01
07183	PROBATION	PROBATION VIOL.CAT.VI	PBVLVI	VI	01
06601	JUVENILE	RUNAWAY	RUNAWY	VI	01
06602	JUVENILE	TRUANCY	TRUNCY	VI	01
06609	JUVENILE	VIOL HOUSE ARREST ORDER (status)	HOUSER	VI	01
05176	JUVENILE	CONTEMPT OF COURT (STATUS)	CNTMPS	VI	01

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# PAROLE STATUTES

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## **SECTION 20-7-7005. Board of Juvenile Parole.**

(A) There is created under the Department of Juvenile Justice the Board of Juvenile Parole. The parole board is composed of ten members appointed by the Governor with the advice and consent of the Senate. Of these members, one must be appointed from each of the six congressional districts and four members must be appointed from the State at large. If a vacancy occurs on the parole board when the Senate is not in session, the Governor may appoint a member to fill the vacancy and the appointee is a de facto member until the Senate acts upon the appointment.

(B) Members of the parole board shall serve four-year terms and until their successors are appointed and qualify and these terms expire on June thirtieth of the appropriate year.

(C) No member may be reappointed to the parole board until two years after the expiration of a full four-year term.

## **SECTION 20-7-8305. Board of Juvenile Parole; procedures.**

(A)(1) The Board of Juvenile Parole shall meet monthly and at other times as may be necessary to review the records and progress of children committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these children. The parole board shall make periodic inspections, at least quarterly, of the records of persons committed to the custody of the Department of Juvenile Justice and may issue temporary and final discharges or release these persons conditionally and prescribe conditions for release into aftercare.

(2)(a) It is the right of a juvenile who has not committed a violent offense, as defined by Section 16-1-60, to appear personally before the parole board every three months for the purpose of parole consideration, but no appearance may begin until the parole board determines that an appropriate period of time has elapsed since the juvenile's commitment.

(b) The parole board, in its discretion, may waive the quarterly review of juveniles committed to the department for the commission of a violent crime, as defined in Section 16-1-60, until the juvenile reaches the minimum parole guidelines the board establishes for the juvenile. At that point, the board, in its discretion, is authorized to schedule its first review of the juvenile from three months up to twelve months after the juvenile reaches the minimum parole guidelines established by the board. The scheduling of subsequent reviews is in the discretion of the board but must occur within three to twelve months of the juvenile's last appearance.

(3) In order to allow reviews and appearances by children, the chairman of the parole board may assign the members to meet in panels of not less than three members to receive progress reports and recommendations, review cases, meet with children, meet with counselors, and to hear matters and consider cases for release, parole, and parole

revocation. Membership on these panels must be periodically rotated on a random basis by the chairman. At the meetings of the panels, a unanimous vote must be considered the final decision of the parole board. A panel vote that is not unanimous must not be considered as a final decision of the parole board and the matter must be referred to the full parole board, which shall determine the matter by a majority vote of its membership. The parole board or panel may conduct parole hearings by means of a two-way, closed circuit television system.

(B) In the determination of the type of discharges or conditional releases granted, the parole board shall consider the interests of the person involved and the interests of society and shall employ the services of and consult with the personnel of the Reception and Evaluation Center. The parole board may from time to time modify the conditions of discharges or conditional releases previously granted.

(C) The parole board shall develop written guidelines for the consideration of juveniles' releases on parole. The guidelines must be given to juveniles upon commitment and periodically reviewed with each juvenile to assess the progress made toward achieving release on parole.

#### **SECTION 20-7-8310. Legal representation before board.**

The parole board shall permit legal representation of a juvenile who appears before it for the purpose of parole or parole revocation. The department shall allocate funds to contract with a public defender corporation or similar type legal program for legal assistance for the purpose of appearing before the parole board for a juvenile who desires this service but who cannot either personally or through the juvenile's family afford the assistance.

#### **SECTION 20-7-8315. Aftercare investigations; promulgation of regulations; board employees.**

(A) The department is charged with the responsibility of making aftercare investigations to determine suitable placement for children considered for conditional release from the correctional schools. The department shall also have the responsibility of supervising the aftercare program, making revocation investigations, and submitting findings to the parole board.

(B) The director and such staff as he shall designate in the performance of their duties of investigation, counseling and supervision, and revocation investigations, are considered official representatives of the parole board.

(C) The director and his staff are subject to the regulations for parole and parole revocation promulgated by the parole board and shall meet with the parole board at its meetings when requested. Community-based counselors, or their supervisors, with assigned clients committed to institutions of the department shall periodically visit the institutions in order to counsel their clients and accomplish the duties as outlined in this subarticle.

(D) Recognizing the need to maintain autonomy and to provide a check and balance system, the parole board shall employ a director of parole and other staff necessary to carry out the duties of parole examinations, victim liaison, and revocation hearings. The

director serves at the will and pleasure of the parole board. All staff are employees of the parole board and are directly responsible to the parole board both administratively and operationally. Funds allocated for the functions designated in this section must be incorporated as a line item within the department's budget and are subject to administrative control by the parole board.

(E) The department shall continue to provide the budgetary, fiscal, personnel, and training information resources and other support considered necessary by the parole board to perform its mandated functions.

#### **SECTION 20-7-8320. Conditional release.**

(A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the parole board until the expiration of the specified term imposed in the juvenile's conditional aftercare release. The specified period of conditional release may expire before but not after the twenty-first birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the parole board be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release.

(B) As a condition of correctional release, the parole board may enforce participation in restitution, work ordered by the court, and community service programs established or approved by the Department of Juvenile Justice.

#### **SECTION 20-7-8325. Violation of conditional release; authority of aftercare counselor to take juvenile into custody.**

(A) At any time during the period of conditional release, an aftercare counselor or the counselor's supervisor may issue or cause to be issued a warrant for the juvenile to be taken into custody for violating any of the conditions of the release. A police officer or other officer with power to arrest, upon request of an aftercare counselor, may take the juvenile into custody. The arresting officer shall obtain a warrant signed by the aftercare counselor setting forth that the juvenile, in the counselor's judgment, violated the conditions of the release which is authority for the detention of the juvenile in an appropriate place of detention. If an aftercare release revocation is necessary, the aftercare counselor shall submit in writing a thorough report to the parole board, showing in what manner the delinquent child has violated the conditional release. A child returned to the custody of a correctional school by aftercare revocation shall have a hearing or review of the child's case by the parole board. The parole board is the final authority to determine whether or not the child failed to abide by the aftercare rules and conditions of release.

(B) An aftercare counselor who has successfully completed Class I or II law enforcement officer training and received a certificate from the Department of Public Safety pursuant to the provisions of Article 9, Chapter 6 of Title 23 has the power, when commissioned by the department, to take a child conditionally released from the custody of the department and subject to the jurisdiction of the Board of Juvenile Parole into custody upon the issuance of a warrant for violating the conditions of his release.

**SECTION 20-7-8330. Revocation of conditional release after expiration of aftercare supervision.**

The order of revocation of a conditional release may be issued and made effective after the period of aftercare supervision prescribed in the release has expired when the violations of the conditions or release occurred during the aftercare supervision period.

**SECTION 20-7-8335. Probation counselors; authority to take juvenile into custody.**

(A) To be eligible for appointment as a probation counselor, an applicant must possess:  
(1) a college degree involving special training in the field of social science or its equivalent;

(2) a personality and character as would render the applicant suitable for the functions of the office.

(B) Probation counselors shall live in districts as determined by the director. Each counselor periodically shall visit the schools under the supervision of the Department of Juvenile Justice and become familiar with the records, background, and needs of the children and shall make periodic reports to the school.

(C)(1) The duties of probation counselors include:

(a) conducting an investigation of the child and the child's home as may be required by the court;

(b) being present in court at the hearing of cases;

(c) furnishing to the court information and assistance as the judge may require; and

(d) taking charge of a child before and after hearings as may be directed by the court.

(2) During the probationary period of a child and during the time that the child may be committed to an institution or to the care of an association or person for custodial or disciplinary purposes, the child is always subject to visitation by the probation counselors or other agents of the court.

(D) A probation counselor who has successfully completed Class I or II law enforcement officer training and received a certificate from the Department of Public Safety pursuant to the provisions of Article 9, Chapter 6 of Title 23 has the authority, when commissioned by the department, in the execution of his duties, to take a child under the jurisdiction of the family court into custody pursuant to an order issued by the court directing that the child be taken into custody.

(E) In the performance of the duties of probation, parole, community supervision, and investigation, the probation counselor is regarded as the official representative of the court, the department, and the Juvenile Parole Board.

DJJ POLICIES  
&  
PROCEDURES



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# AGENCY OVERVIEW

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**Note:** The following information, which highlights DJJ's responsibilities and organizational structure, was obtained from the DJJ web site (with non-substantive editorial changes). **This section provides an overview of internal agency policies that are subject to change. If you have a question concerning a particular policy, it is advised that you confirm its current content with a DJJ representative or the DJJ web site.**

## INTRODUCTION

The South Carolina Department of Juvenile Justice (DJJ), a state cabinet agency, is responsible for providing rehabilitation and custodial care for children who are on probation, incarcerated, or on parole for a criminal or status offense. DJJ is organized within four divisions and two support offices.

## DIVISION OF COMMUNITY SERVICES

DJJ's Division of Community Services provides a wide range of direct services to children and their families including field services, community justice, consultation and evaluation services, and residential services.

### Field Services

DJJ provides services to children and their families in the community through 43 DJJ county offices, servicing all 46 counties in the state. Community case managers are involved with children from the moment they enter the system until they complete probation or parole. The county staff conduct detention screenings and intake interviews; complete risk/needs assessments; and make recommendations to the family court for disposition. Case managers also coordinate case diversion, supervise children on probation or parole, and participate in prevention initiatives.

Additional support services are available to the community through collaboration or partnership with the family court system, schools, and local organizations throughout South Carolina.

### Community Justice

The primary focus of the Office of Community Justice is to develop effective programs that lead to creating a balanced and restorative justice system for everyone impacted by juvenile crime - juveniles, their families, and victims. Programs coordinated through this office include:

- Juvenile Arbitration - provides a statewide network of community-based programs that successfully divert first-time juvenile offenders charged with committing non-violent criminal offenses.
- Prevention Services - partners with the family court system, schools, and local organizations throughout South Carolina to develop and implement a variety of delinquency prevention initiatives for at-risk youth.
- Victim Services - offers a variety of services, including contacting victims of juvenile crime prior to making disposition recommendations; informing victims of any post-adjudicatory hearings, juvenile release or transfer; referring victims to community resources; and advocating on behalf of victims.
- Interstate Compact Services - arranges for supervision of delinquent children who move to or from South Carolina.
- Placement Services - offers educational, therapeutic, and social skills development sessions in a highly supervised and structured environment. This includes wilderness camps, marine institutes, and multi-agency private providers (group homes).

### **Consultation and Evaluation Services**

DJJ's Office of Consultation and Evaluation Services is responsible for conducting psychological evaluations and consulting with other DJJ staff about individual cases. The psychologists also perform pre-waiver evaluations for children being considered for waiver to adult court. This office also provides consultation on all treatment-related issues in the Community Services Division.

### **Residential Services**

DJJ operates an array of residential services for children in the community. The array includes three secure evaluation centers, several group homes, and a pretrial detention center. The evaluation centers provide court-ordered evaluations for adjudicated children prior to final disposition of their cases. Each facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. By law, the length of stay cannot exceed 45 days.

DJJ's pre-trial Detention Center, located in Columbia, serves children from 44 of South Carolina's 46 counties (Richland and Charleston counties operate their own pre-trial detention facilities). DJJ group homes also serve as alternative placement for nonviolent offenders.

## **DIVISION OF REHABILITATIVE SERVICES**

DJJ's Division of Rehabilitative Services is made up of three campuses within the Broad River Road Complex that provide children committed by the family courts with around-the-clock custodial care and individualized treatment/rehabilitation.

The campuses are Willow Lane, John G. Richards and Birchwood. (See Long-term Campus section for additional information.)

Each campus provides:

- education services through an independent school district
- psychological and social work services by licensed clinical staff
- medical, dental and mental health services by licensed practitioners
- psychiatric services by contracted licensed practitioners
- custodial care by certified correctional staff
- recreational activities by trained staff
- religious services by certified chaplains

## **DIVISION OF EDUCATIONAL SERVICES**

DJJ operates its own school district with academic programs that are fully accredited by the South Carolina Department of Education. All children attend school while detained or incarcerated at DJJ.

Children committed to DJJ can earn either a high school diploma or a GED. DJJ's school district also offers students: 10 vocational courses; extensive special education services; the nation's first Army JROTC and Communities in Schools (CIS) programs in a juvenile correctional facility setting; media centers; career development centers; and guidance counselors (including a pre-release guidance counselor).

The agency's school district offers educational programs in Columbia at Birchwood High School, Birchwood Middle School, Willow Lane High School, and Willow Lane Middle School. Other satellite programs attached to these two schools are operated at DJJ's three regional evaluation centers, as well as the agency's Detention Center.

DJJ's school district and schools function just like other school districts and schools in South Carolina - with a district superintendent, principals, teachers, directors and program coordinators. However, DJJ's schools differ from other South Carolina schools in several ways:

- Schools are in session year-round (enabling students to make up absences and close learning gaps).
- DJJ's school district has no local tax base, relying exclusively on state and federal funding.
- Classes are geared to meet the individual needs of each student.

## **DIVISION OF ADMINISTRATIVE SERVICES**

DJJ's Division of Administrative Services is comprised of the following offices: Fiscal Affairs; Human Resources; Information Technology; Medicaid Administration; Staff Development and Training; and Support Services.

## **OFFICE OF POLICY AND PLANNING**

The Office of Policy and Planning provides support to the divisions through programs and grants development; research and statistics; and planning and evaluation. The office's mission is to develop departmental efforts to strategically plan for agency growth, as well as to provide necessary information to effectively manage the agency's resources for quality service delivery.

Essential functions of the office include the promotion of best practices as evidenced in research and evaluation; the continuous improvement of programs and services; the promotion of data-based decision making by DJJ staff and agency stakeholders through publication of statistical analysis and trends in juvenile crime; the development of tools and technologies to improve the department's performance and efficiency; and long-term, strategic planning.

## **OFFICE OF THE INSPECTOR GENERAL**

DJJ's Inspector General ensures compliance with applicable state and federal laws, regulations, and policies, and promotes professional accountability within the agency. Functions of the Office of Inspector General include public safety, internal affairs, internal audits, compliance and inspection, and juvenile and family relations.

The Event Reporting Management Information System (ERMIS), a state-of-the-art computer system managed by the Office of the Inspector General, ensures the comprehensive tracking, reporting, and managing of events occurring within the agency on a statewide basis 24 hours a day, 7 days a week. Monthly reports of specific events are reported to the State Law Enforcement Division.

In its juvenile and family relations function, the office advocates on behalf of DJJ children and families by addressing their concerns or questions, representing their rights, conducting disciplinary hearings, and inviting family involvement throughout a child's rehabilitative progress.

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# DETENTION & EVALUATION CENTERS

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## JUVENILE DETENTION CENTER

1725 Shivers Road  
Columbia, South Carolina 29212  
(803) 896-9440  
Contact: Aaron B. McCorkle, Administrator

DJJ's Juvenile Detention Center is a centralized pretrial detention facility, serving juveniles from most of South Carolina's 46 counties (Richland and Charleston, operate their own long-term and short-term detention facilities). The Detention Center is a secure, short-term facility providing custodial care and treatment to male and female juveniles ages 11 to 17 detained by law enforcement agencies and the family courts prior to disposition. Youths awaiting trial on serious and violent charges reside at DJJ's Detention Center to ensure public safety and the juveniles' immediate availability for court proceedings. A new, expanded Detention Center opened in 2001, replacing a historically overcrowded facility.

## MIDLANDS REGIONAL EVALUATION CENTER

1721 Shivers Road  
Columbia, South Carolina 29210  
(803) 896-7455  
Contact: Ronny Grate, Administrator

DJJ's Midlands Regional Evaluation Center provides court-ordered evaluations for adjudicated juveniles from the midlands area prior to final disposition of their cases. The facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. The facility serves male and female juveniles ages 11 to 17 from 19 midlands counties and is one of three regionalized evaluation centers around the state. By law, the length of stay for adjudicated juveniles cannot exceed 45 days. The center opened in 1997.

## **UPSTATE REGIONAL EVALUATION CENTER**

1585 Jonesville Highway  
Union, South Carolina 29379  
(864) 429-3610  
Contact: Robbie Littlejohn, Administrator

DJJ's Upstate Regional Evaluation Center provides residential court-ordered evaluations for adjudicated juveniles from the upstate area prior to final disposition of their cases. The facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. The facility serves male and female juveniles ages 11 to 17 from 15 upstate counties and is one of three regionalized evaluation centers around the state. By law, the length of stay for adjudicated juveniles cannot exceed 45 days. The center opened in 1997.

## **COASTAL REGIONAL EVALUATION CENTER**

331 Campbell Thickett Road  
Ridgeville, South Carolina 29472  
(843) 821-3073  
Contact: Loretta Bookard, Administrator

DJJ's Coastal Regional Evaluation Center provides residential court-ordered evaluations for adjudicated juveniles from the coastal area prior to final disposition of their cases. The facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. The facility serves male and female juveniles ages 11 to 17 from 16 lowcountry counties and is one of three regionalized evaluation centers around the state. By law, the length of stay for adjudicated juveniles cannot exceed 45 days. The center opened in 2002.

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# LONG-TERM CAMPUSES

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There are three long term campuses operated by DJJ, all of which are located within the Broad River Road Complex in Columbia.

## **Willow Lane**

Willow Lane is facility for girls in long-term commitment and boys with aggression difficulties. Some of the programs offered to the juveniles include Peer Mediation, Conflict Resolution, Systematic Treatment for Aggression Replacement (STAR), and the Young Offender Program. Willow Lane is also home to Willow Lane Middle School and Willow Lane High School. The facility originally opened as the Riverside School for Girls in 1966.

## **John G. Richards**

John G. Richards specializes in providing substance abuse treatment services to 12 to 18 year-old males with alcohol and other drug abuse problems. These services are designed to assist juveniles in abstaining from using alcohol and drugs and in becoming productive members of their communities upon release. John G. Richards is also home to a Communities in Schools (CIS) program, which provides specialized education services and is the nation's first in a juvenile correctional setting. John G. Richards opened in 1966.

## **Birchwood**

Birchwood programs are designed to meet the needs of 12 to 18 year old male juveniles committed for sex offenses or other serious and violent offenses. Birchwood is also home to Birchwood Middle School and Birchwood High School. Programs include: The Behavioral Level System; The Sex Offender Treatment Program; The Junior Reserve Officer Training Corps, a cooperative effort between DJJ's school district and the U.S. Army; and a more restrictive Special Management Unit for male juveniles who require temporary separation from the main population. Birchwood opened in 1975.



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# DMH SERIOUSLY MENTALLY ILL (SMI) STATUS

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## OVERVIEW

Children who have been committed to DJJ are screened to determine if they qualify for SMI status and should therefore be transferred to DMH. To be eligible, a child must be "seriously mentally ill" or "developmentally disabled." Only children who have been committed to a long-term DJJ institution may be considered for SMI status; children committed to a DJJ evaluation center are not eligible for consideration. SMI children are transferred to DMH where their needs can be better met, although they remain committed to DJJ.

\*\* The "Agreement between DJJ & DMH for the Identification and Transfer of DJJ Juveniles with Serious Mental Illness," provides a complete outline of the process, including eligibility requirements, by which children with a serious mental illness who are committed to DJJ are transferred to and treated by DMH.

## BACKGROUND *(by Mark W. Binkley, General Counsel, SCDMH)*

A federal class action lawsuit was brought against South Carolina's juvenile correctional agency, the Department of Juvenile Justice (DJJ), in 1990, alleging the conditions in DJJ institutions unconstitutional in several respects, many of which stemmed from overcrowding. A "class" of plaintiffs comprising all juveniles committed to DJJ institutions was recognized by the Court. At the behest of the plaintiffs' attorneys, the federal court singled out two groups within the general class of juveniles at DJJ as comprising distinct "subclasses": seriously mentally ill committed juveniles and developmentally disabled committed juveniles.

In Alexander S. v. Boyd, the U. S. District Court for the District of South Carolina found that the due process rights of mentally ill and developmentally disabled juveniles in institutions operated by DJJ were being violated. In a March 31, 1992 Order, the Court found that DJJ was not providing an appropriate level of care and treatment for these two subclasses of juveniles. In fact, the Court specifically found that DJJ was providing "no care and treatment for their mental conditions." The Court ordered the named defendants to "take whatever action may be necessary to secure placement of these juveniles with the state agency that is equipped with the facilities and the medical personnel to provide appropriate care and treatment..."

Working in concert with the Governor's office, the Department of Mental Health (DMH) and DJJ explored different options for meeting the mental

health needs of the subclass of mentally ill juveniles. One initial approach was a DMH program to address treatment needs in a secure correctional environment at DJJ. Ultimately, however, the State agreed to address the treatment needs of seriously mentally ill committed juveniles by transferring them indefinitely for treatment to public and private treatment facilities identified by DMH.

In a South Carolina Family Court Order dated October 15, 1996, the Family Court found that "DMH is the state institution which is best qualified to care for the juveniles who have been and will be identified under the (Federal Court's seriously mental ill subclass] criteria." Although physically transferred to DMH, the subclass juveniles remain legally committed to DJJ and can only be released from their indeterminate commitment by the Juvenile Parole Board or upon completion of determinate commitment.

Implementing the decision to provide mental health treatment to seriously mentally ill committed juvenile delinquents in non-correctional settings has posed many challenges and raised numerous unique issues. Many of the challenges are of the traditional variety: the seriously emotionally disturbed juvenile committed to DJJ, like seriously emotionally disturbed juveniles everywhere, have difficult behaviors and challenging clinical needs. Their impulsive, provocative and sometimes aggressive behaviors make them difficult to work with and treat, and result in periodic disruptions in their residential treatment. Such juveniles cause frustration not only among direct treatment providers, but also among state agency staff trying to supervise or manage that treatment. Such frustrations, in turn, can lead to treatment providers and state agencies involved with the juveniles finding fault with or blaming each other when problems or adverse incidents occur during the course of treatment. However, treatment failures, disrupted placements, elopements, and minor criminal offenses such as drug use, are predictable occurrences when treating a sizeable population of seriously emotionally disturbed adolescents over a course of months or years. Through good clinical care, professional program administration, and active independent case management and supervision, such adverse events will be less frequent and less severe. However, given that the treatment providers and the clients are human, adverse events should be anticipated.

In addition to the difficulties of treating seriously emotionally disturbed juveniles with histories of prior delinquent behavior, there are unique legal and administrative issues that result from the legal fiction that these juveniles remain legally committed to the DJJ while physically residing in a variety of DMH and private residential treatment programs. These unique issues gave rise to a multi-agency committee with the ambitious task of offering guidance and solutions for the State agency staff and treatment provider responsible for serving the DMH subclass juveniles.

## **AGREEMENT BETWEEN DJJ & DMH FOR THE IDENTIFICATION AND TRANSFER OF DJJ JUVENILES WITH SERIOUS MENTAL ILLNESS**

**WHEREAS**, THE South Carolina Department of Juvenile Justice, hereinafter referred to as DJJ, is responsible for providing community-based and institutional services to juveniles charged with or adjudicated delinquent for having committed a criminal offense as delineated in Title 20, Chapter 7, of the S.C. Code of Laws; and

**WHEREAS**, DJJ is authorized by state law (20-7-7815) to transfer juveniles committed to its custody who are seriously handicapped by mental illness and who because of such illness can not be adequately cared for in its custody, to the state agency best suited to care for and treat such juveniles; and

**WHEREAS**, the South Carolina Department of Mental Health, hereinafter referred to as DMH, is authorized to provide community and hospital services to promote the mental health of children and adolescents pursuant to Title 44 of the S.C. Code of Laws; and

**WHEREAS**, DJJ and DMH acknowledge their shared responsibility to identify delinquent juveniles with a serious mental illness as early as possible in order to minimize their penetration into the juvenile justice system; and

**WHEREAS**, DJJ and DMH acknowledge their shared responsibility to serve delinquent juveniles with a serious mental illness and recognize that the care and treatment of such children can best and most economically be done through a collaborative effort involving not only their limited resources but also the resources, expertise and financial assistance of other federal, state and local agencies as well; and

**WHEREAS**, DJJ and DMH believe that such services for juveniles committed to DJJ custody who are seriously handicapped by mental illness and who because of such illness can not be adequately cared for in DJJ custody can best be provided in programs separate from secure correctional institutions, which house other incarcerated delinquent youth, in programs with a treatment milieu which have been designed and are operated by treatment professionals who can promptly, professionally and, when necessary, securely, identify, serve and treat the mental health needs of these juveniles;

**NOW THEREFORE**, based on these shared responsibilities and the goal of better serving these juveniles in DJJ custody who are seriously handicapped by mental illness and who because of such illness can not be adequately cared for in DJJ custody, DJJ and DMH enter into the agreement set forth below.

## PURPOSE/APPLICATION

The purpose of this Memorandum of Agreement is to outline the process by which juveniles with a serious mental illness committed to the custody of the State for having committed criminal or status offenses who are seriously handicapped by mental illness and are transferred to and treated by the Department of Mental Health, the state agency best suited to address the treatment needs of such juveniles. This agreement is applicable to any juvenile in the custody of SCDJJ, excluding only those juveniles who are temporarily committed solely for the purpose of evaluation at one of the Department's three secure evaluation centers.

**A. CRITERIA FOR INCLUSION:** DJJ juveniles served under this agreement will meet the following diagnostic criteria as having a serious mental illness, as updated by DSM-IV criteria:

**Category I:** The following diagnoses are presumptively considered by diagnosis as requiring treatment services beyond the capability of DJJ. A juvenile must be determined to have a seriously mental illness in accord with criteria established by the American Psychiatric Association and be unable to interpret their environment in an acute and realistic manner and require intense specialized care. Using diagnoses as delineated in the DSM IV, any juvenile who has been professionally diagnosed as having any of the following illnesses shall be considered seriously mentally ill:

1. Pervasive Developmental Disorder (Autism, Rhett's, and Childhood Disintegrative Disorder)
2. Cognitive Disorders (Delirium, Dementia, and Amnestic Disorder)
3. Psychotic Disorders (Schizophrenia, Schizophreniform, Schizoaffective, Delusional Disorder, and Psychotic Disorder Not Otherwise Specified)
4. Dissociative Identity Disorder
5. Major Depression Recurrent and Single Episode (Active)
6. Bipolar Disorders (All Subtypes)

**Category II:** In addition, other juveniles who carry DSM-IV diagnoses may require further assessment to determine the degree of debilitation caused by their illness as requiring treatment services beyond the capability of DJJ. Axis V (the global assessment scale) of the DSM-IV shall be used to determine the status of these juveniles. A score of fifty or below on this axis usually indicates that a juvenile is handicapped by his illness to the degree that he cannot be adequately cared for at DJJ facilities. Accordingly, juveniles who score fifty or below on this axis and who have the following professionally diagnosed illnesses will be considered seriously mentally ill requiring treatment services beyond the capability of DJJ after they have been unsuccessfully treated (behavioral interventions and psychotropic medications as prescribed by the treating physician) in a DJJ facility:

1. Asperger's Disorder
2. Pervasive Developmental Disorder NOS
3. Eating Disorders
4. Attention Deficit/ Hyperactivity Disorder
5. Mental Disorder due to a general medical condition (Personality Change, Mood, and Anxiety); and Mental Disorder Not Otherwise Specified due to a general medical condition.
6. Personality Disorders (Borderline, Paranoid, Schizoid, and Personality Disorder, N.O.S.).
7. Cyclothymic or Dysthymic Disorder
8. Post Traumatic Stress Disorder

Regardless of the presumptive inclusion or exclusion of a juvenile by diagnosis under Category I or II, DJJ or DMH may initiate a case-by-case staffing of any juvenile diagnosed with a mental illness and in need of treatment for a mental illness, to otherwise consider inclusion or exclusion for services under this agreement.

DJJ juveniles meeting the above criteria and served under this agreement will be referred to as "DJJ Juveniles with a Serious Mental Illness."

**B. IDENTIFICATION OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:** All juveniles upon commitment to DJJ will be screened for mental illness. If after the initial screening, or at any time prior to release, serious mental illness is suspected, a referral to DJJ psychological staff shall be made. DJJ's psychological staff shall interview, assess and, if deemed necessary, test all juveniles referred to them for possible serious mental illness. They will also consult with the appropriate DMH Community Mental Health Center (CMHC) Children, Adolescents and Families (CAF) Director in all cases where the juvenile has been a client of DMH, prior to referral to the DJJ contract psychiatrist. At the time of any such referral to a DJJ contract psychiatrist, a copy of the referral (Inclusion Form), with copies of supporting documents to include DJJ social work and psychology reports, psychiatric records, reports or evaluations, available school records or medical records, incident reports and other relevant information, will be sent to DMH CAF Director and applicable CMHC(s) having served the juvenile. The DJJ contract with the DJJ contract psychiatrist will reflect the applicable procedures in this section and those following. DJJ agrees to notify DMH upon any change of contract psychiatrist.

After the DJJ contract psychiatrist's diagnostic determination that the juvenile is a DJJ Juvenile with a Serious Mental Illness, DMH may separately or in conjunction with DJJ and/or the DJJ contract psychiatrist, provide consultation and/or evaluate the juvenile. If face-to-face evaluation is needed, DJJ will make arrangements for designated DMH personnel to interview the juvenile in his or her current setting. If at any time DMH disagrees with DJJ's determination that the juvenile is a DJJ Juvenile with a Serious Mental Illness, DMH may start the exclusion process as described in G following. If DMH initiates this process prior

to transfer, diagnostic resolution will be reached prior to the inter-agency staffing held within 45 days of identification (see Section G). Unless the exclusion consideration process results in a final determination that a juvenile is not a DJJ juvenile with a serious mental illness, said juvenile must transfer to DMH for needed treatment within 90 days of the initial determination as described above.

**C. INTERAGENCY STAFFING:** Within 45 days of a juvenile being identified as a DJJ Juvenile with a Serious Mental Illness DJJ will facilitate a treatment team staffing to identify treatment/placement needs of the identified juvenile. This team will consist of at a minimum, the DMH state and community representative, a DJJ psychologist, DJJ social worker, a representative from DJJ's education division, DJJ's Coordinator of Special Needs Case Management (CSNCM), an advocate from Protection and Advocacy, the juvenile's Parole Board Examiner, the juvenile's DJJ Community Specialist and his or her parents or guardian. The absence of one or more invited individual treatment team member shall not require a rescheduling. Upon the meeting's conclusion, DMH will assume primary case management responsibility.

**D. TRANSFER OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:** The authority for and the process by which DJJ Juveniles with a Serious Mental Illness are transferred to DMH is found in Section 20-7-7815 of the S.C. Code of Laws. Utilizing this authority, and having determined that juveniles identified as seriously mentally ill cannot be properly cared for, due to their mental health needs, within DJJ's secure correctional facilities, and that DMH is the state agency best qualified to meet and address these juveniles' mental health needs, the DJJ CSNCM will ensure that DJJ transfers all DJJ Juveniles with a Serious Mental Illness within 90 days of such designation. The CSNCM will utilize the Transfer Document for DJJ Juveniles with a Serious Mental Illness (Attachment A) for this purpose.

As set forth in this document, although transferred to the custody of DMH, all DJJ Juveniles with a Serious Mental Illness remain in a DJJ commitment status and can be released from such status only by the Board of Juvenile Parole or the expiration of a determinate sentence. This means that while DMH has complete authority for determining appropriate treatment, appropriate levels of restriction and security, and to move these juveniles between any facilities or programs they operate or with which they contract (private placements), such juveniles can not be released to their home, or placed in non-residential programs in their home community, by DMH without the consent and approval of the Juvenile Parole Board or the expiration of a determinate sentence. Both parties understand and agree that placement options available to DMH include therapeutic foster care and that DMH has the authority to consider and place juveniles in foster care placements close to the juvenile's or victim's home if clinically indicated for family treatment and reunification. DJJ will not oppose placement decisions made by DMH or release recommendations made by DMH to the Juvenile Parole Board on DJJ juveniles with serious mental illness who have been transferred to DMH, consistent with terms set forth above.

In those cases where a DJJ Juvenile with a Serious Mental Illness has been placed within a psychiatric inpatient placement prior to his or her transfer to DMH, DMH will make every reasonable effort to secure an appropriate placement in lieu of returning the juvenile to DJJ.

For those DJJ Juveniles with a Serious Mental Illness who are required to register in South Carolina's Sex Offender Registry, pre-initial registration shall continue to be the responsibility of DJJ. Upon the transfer of such juveniles to DMH, all subsequent registration requirements or notifications of pre-registration updates caused by a change in placement, etc., shall be the responsibility of DMH.

**E. PROGRAMMING FOR DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:** DMH recognizes the necessity for a dual approach to treatment plans for transferred DJJ Juveniles with a Serious Mental Illness, which meets both the needs of the juveniles and the need for public safety. DJJ Juveniles with a Serious Mental Illness in the custody of DMH may receive passes and furloughs consistent with appropriate treatment and therapeutic practices as determined and established by DMH, consistent with the Order of Judge Donna Strom, dated October 15, 1996, and with the "Blanding" Decree, which is referred to therein.

This order states in effect that DJJ Juveniles with a Serious Mental Illness transferred to DMH custody from DJJ shall be treated by DMH as they treat all other involuntarily committed mentally ill juveniles and that DMH shall be guided in making their placement and treatment decisions for such juveniles by what they determine to be the most suitable and appropriate therapeutic environment for the juvenile.

After a juvenile is transferred to DMH and following DMH progressive treatment, care and management, if the DMH treating psychiatrist believes that the identified juvenile is in need of short-term behavioral health treatment, care and management beyond DMH capability, the DMH DJJ Liaison will facilitate an interagency staffing. This staffing will be attended by at least the treating physician and other clinical staff, DJJ's Director of Clinical and Professional Services and CSNCM, a state level DMH representative, the assigned JPB parole examiner, a P&A advocate, and the juvenile's parents. Procedures for these staffings, once agreed to, shall be made an attachment to this Agreement.

**F. PLACEMENT AND MOVEMENT OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:** DJJ Juveniles with a Serious Mental Illness transferred by DJJ to DMH pursuant to Section 20-7-7815 may be subsequently transferred to any placement deemed appropriate by DMH. Furthermore, DJJ Juveniles with a Serious Mental Illness will fully participate in programs to which they are assigned, to include off-campus passes and overnight furloughs home. Such placement may include therapeutic foster care if clinically indicated (see Section D, above). Such therapeutic foster care placements close to the juvenile's or victim's home may be considered appropriate on a case-by-case basis as such placements may be clinically indicated for family treatment and reunification.

Whenever a DJJ Juvenile with a Serious Mental Illness is moved to a different facility or program from which he/she was originally assigned following transfer from DJJ, the DMH DJJ Liaison will notify DJJ's Coordinator of Special Needs Case Management and the Parole Board of the placement within one working day after it occurs. Initial notification may be verbal followed within 48 hours with written notification. This and any subsequent movement will be the responsibility of DMH. However, when DMH determines that placement with the juvenile's family, or placement in non-residential therapeutic program in the juvenile's home community is appropriate, this placement can be implemented only by a conditional or unconditional release by the Juvenile Parole Board or upon the end of the juvenile's determinate sentence. (See Section D)

For those DJJ juveniles with a serious mental illness who are arrested and detained for charges accrued in placement, DMH will engage in a reasonable effort (considering the severity of the offense) to find, secure and transport such juveniles to an appropriate treatment setting until those charges are resolved. If a new adjudication occurs, DMH will pursue placement in order to avert a return to DJJ. If unavoidable, DMH has 90 days upon the new date of commitment to find and place such a juvenile within an appropriate alternative placement. All recommitted juveniles who have not received DMH services for the preceding 90 days, and who are returned to DJJ, will be reevaluated to determine whether or not they continue to have a serious mental illness that would prevent them from being adequately cared for in DJJ custody. DMH Public Safety and the juvenile's local Mental Health Center CAF Director will track the juvenile's progress through the judicial system and prepare for alternative placement as needed.

**G. RECONSIDERATION / REVIEW PROCESS:** The transfer of a DJJ Juvenile with a Serious Mental Illness to the custody of DMH, pursuant to Section 20-7-7815 and this agreement, is intended to be a permanent movement of that juvenile from confinement within the juvenile correctional system. Only in cases where a juvenile's psychiatric diagnosis is changed to one not considered a serious mental illness, as listed in Section A, may a juvenile remain in, or be returned to a correctional confinement. However, even in such cases, options short of confinement in a secure correctional institution will be considered and determined to be inappropriate before re-incarceration is sought.

If, prior to a transfer to DMH under this agreement, a DJJ contract psychiatrist changes a juvenile's diagnosis to one that is not listed in Section A above, the juvenile simply remains within a DJJ facility or program. If prior to a transfer to DMH under this agreement, DMH disagrees with the DJJ contract psychiatrist's diagnosis and need for transfer, DMH may initiate the reconsideration process. This sequence is identical to the one described below except that the Community Mental Health Center acts in lieu of the "treating psychiatrist." Furthermore, resolution will be reached prior to the "45 Day" interagency staffing described in section B. To insure this, the CSNCM will share all relevant psychiatric information with the local mental health center Children, Adolescents and

Families (CAP) Director within 5 days of identification. Prior to considering exclusion, CMHC staff will consider all DJJ provided psychological and other relevant information. Moreover, a reconsideration staffing, if needed, will be scheduled within 15 days of identification.

If after transfer, the treating psychiatrist believes that the juvenile does not have a serious mental illness, the treating psychiatrist will make a reasonable attempt to contact the DJJ contract psychiatrist. If, after such consultation, the treating psychiatrist continues to believe that the juvenile is not seriously mentally ill and changes the diagnoses to one not on the list, the DMH DJJ Liaison will facilitate an interagency staffing. This staffing will be attended by at least the treating physician and other clinical staff, DJJ's Director of Clinical and Professional Services and CSNCM, a state level DMH representative, the assigned JPB parole examiner, a P&A advocate, and the juvenile's parents. If the staffing results in the DJJ Director of Clinical and Professional Services concurring with the treating psychiatrist's diagnosis, the juvenile will be either returned to a DJJ facility or treatment transferred to an alternative placement.

If there is a lack of consensus among members of the treatment team regarding whether the juvenile is appropriately diagnosed with a serious mental illness, a review of this decision may be sought. The review process will consist of the disagreeing entity contacting and reviewing the juvenile's case with the Associate Director of Child and Adolescent Psychiatry at the Hall Institute. If the disagreeing entity is not an employee of the Department of Juvenile Justice, then DJJ's Director of Clinical and Professional Services and the CSNCM shall also be included in this review. Should these individuals not reach consensus, then a further review can be pursued to the DMH Medical Director. The DMH Medical Director's decision will be the final decision in regards to this change in diagnosis.

DMH and DJJ agree that if a juvenile is identified as having a serious mental illness, such status and prescribed transfer will supersede a reassignment to the Youthful Offender Division of the Department of Corrections, Pursuant to 20-7-7810. Once identified as having a serious mental illness, inclusion for transfer and DMH services under this agreement will only be lost given a release by the Juvenile Parole Board, determinate sentence expiration or a diagnostic change. The latter two of the three are delineated above.

**H. RECORDS:** Subject to applicable law and respective privacy practices, DJJ/DMH clinical staff and treatment team members shall upon reasonable request have access to and may be provided copies at no charge, all relevant records (community institutional, medical, etc.) on juveniles who are seriously mentally ill or who are suspected of being seriously mentally ill as needed to provide, treatment or care services under this agreement including referral and coordination of such treatment or care services. Additional information on such juveniles not reduced to writing, but known to DJJ/DMH staff, shall also be provided by staff of either agency.

**I. TRACKING THE STATUS AND PLACEMENT OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:**

A master list of all DJJ juveniles with a serious mental illness served by SCDMH under this agreement will be kept by DJJ's Office of Clinical and Professional Services. This list will contain the juvenile's name, his/her committing offense, his/her mental health diagnosis and date of this diagnosis, the juvenile's status (i.e., committed, confined within DJJ; transferred to DMH); the facility/program the juvenile is located in and the dates of placement. In order to keep this master list current, within one working day after a DJJ Juvenile with a Serious Mental Illness is moved by DMH within its system, or within its network of private providers, or released by the Juvenile Parole Board, notice of such movement shall be provided to DJJ's Office of Clinical and Professional Services.

**J. OTHER RELATED SERVICES:** Inpatient hospital psychiatric services for DJJ Juveniles, both those who are designated as seriously mentally ill or otherwise, will continue to be available as needed at William S. Hall Psychiatric Institute or DMH inpatient programs through voluntary, judicial involuntary, and emergency involuntary admission pursuant to the Children's Commitment Act (Section 44-22-10, et seq., S.C. Code of Laws).

**K. ESCAPES:** As required by applicable contract with a residential treatment provider, when such provider has confirmation that a DJJ Juvenile with a Serious Mental Illness has escaped from or has failed to return to an assigned placement, that provider, within 30 minutes, will complete a Notice of Escape form and will fax it to DMH Public Safety and DMH/DJJ Liaison. DMH Public Safety will immediately enter the information in the NCIC as well as contact local law enforcement and DJJ Police. DJJ Police will then immediately notify the DJJ Director of Communications and Victims' Service Office who will then contact the victim(s) as required.

On the following business day, the DMH/DJJ Liaison will notify the assigned Juvenile Parole Board Examiner as well as the DJJ Coordinator of Special Needs Case Management and/or Director of Clinical and Professional Services.

DMH has primary responsibility for the apprehension efforts, and either the placement or DMH may file escape charges against the juvenile if applicable. If so, DMH Public Safety and the juvenile's local mental health center CAF Director or designee, together with the local DJJ Community Specialist, will track the juvenile's progress through the judicial system, obtain the Detainer Orders and prepare for alternative placement as needed. If recommitted escape charges are filed, refer to Section F above regarding Placement and Subsequent Movement of Juveniles with a Serious Mental Illness. Once the juvenile is apprehended, the above notification procedure will be followed.

If escape charges are filed, DMH Public Safety and the juvenile's local mental health center will track the juvenile's progress through the judicial system, obtain the Detainer Orders and prepare for alternative placement as needed. If

recommitted, please refer to Section F, herein, regarding Placement and Movement of Seriously Mentally Ill Juveniles.

**L. VICTIM NOTIFICATION:** When a DJJ Juvenile with a Serious Mental Illness is transferred from DJJ to DMH, victim notification, if such has been requested, will be provided to the victim by DJJ's Victims Services Section.

In addition, DJJ's Victim Services Section will notify DMH of victim notification requirements, if any, at the time of transfer of a DJJ Juvenile with a Serious Mental Illness and will handle all required victim notification in the case of a seriously mentally ill juvenile's escape from DMH custody once notified of the escape. As reflected in a separate agreement between DMH and the Juvenile Parole Board, following the initial transfer, all subsequent victim notificants (except for escapes), brought about by the movement of a juvenile within the continuum of DMH and private provider placements, or brought about due to the furlough or the granting of passes to the juvenile, or due to the release of the juvenile, will be provided by the Victim Notification Section of the Juvenile Parole Board, following their notification of this event (in the case of transfers furloughs, and passes) by DMH.

DMH acknowledges that because of the role of the Juvenile Parole Board in regards to the release of juvenile offenders for Victim Notification purposes, DMH will notify the Juvenile Parole Board whenever a seriously mentally ill juvenile is placed in a facility or program that may grant the juvenile a pass or furlough unaccompanied by a staff member.

If a DJJ Juvenile with a Serious Mental Illness who has not been released from commitment status escapes/absconds from the facility/program in which the juvenile has been placed by DMH, DMH or the private provider in whose program DMH has placed the juvenile, shall immediately contact DJJ's Public Safety Division (803-896-9100) and the Board of Juvenile Parole (803-896-5614). Upon receipt of notification, DJJ's Public Safety Division shall enter the juvenile's name and other appropriate data on the NCIC and assure that local law enforcement and DJJ Victim Services are contacted regarding the escape. However, DMH will be the lead agency responsible for coordinating the apprehension efforts. DJJ will refer all contacts and questions from local law enforcement agencies to DMH.

**M. MEDIA NOTIFICATION:** Contacts with the media by DMH/DJJ shall be governed by their respective confidentiality laws, and release of information policies and practices. DJJ will inform the press (if contacted) that the juvenile in question was committed to DJJ and was transferred pursuant to Section 20-7-7815, Code of Laws of South Carolina to the custody of DMH, the agency best suited to meet the treatment needs of the juvenile. All further inquiries from the media will be referred to DMH Office of Public Affairs for handling.

**N. TRANSPORTATION:** Once DJJ transfers a DJJ Juvenile with a Serious

Mental Illness to his or her initial DMH placement, DMH is responsible for providing or arranging any subsequent transports as related to treatment or care of the child while transferred to DMH for treatment. Unless DMH permits a juvenile's parent to transport the juvenile to the juvenile's Juvenile Parole Board hearings, DMH shall provide such transportation, either by its own staff or under contract, for juveniles served under this agreement from the juvenile's treatment facility-or program as may be required for the juvenile's attendance at Juvenile Parole Board hearings.

Upon commitment expiration and a return home, transportation to and from local mental health centers shall be the responsibility of the juvenile's parent or guardian. In the event that the parent or guardian is unable/unwilling to transport then the primary case manager at DMH and the assigned community specialist at DJJ will collaborate to resolve the transportation issue.

**O. SUPERVISION UPON RELEASE - RELEASE PLANNING PROCESS**

**STAFFINGS:** DMH and DJJ acknowledge that the authority to release a DJJ Juvenile with a Serious Mental Illness, as with any other juvenile indeterminately committed by the family court for commission of a crime, rests exclusively with the Board of Juvenile Parole. DMH and DJJ further acknowledge that to effectively manage release opportunities, both Agencies must be involved in the release planning process and in the supervision of and provision of treatment services to the juvenile upon release. DJJ agrees that for all DJJ Juveniles with a Serious Mental Illness conditionally released by the Board of Juvenile Parole, it will provide supervision at the level specified by the Board of Juvenile Parole. DMH agrees that ordered or needed mental health services will be provided to these juveniles, through its local mental health centers, on a priority basis, and that the provision of these services will be coordinated and monitored by the assigned case manager at DMH. DMH further agrees that its local mental health centers will provide prioritized services to these juveniles, and will not deny, restrict or modify such services because they do not agree with the diagnosis which rendered the juvenile as seriously mentally ill.

Prior to release by the Juvenile Parole Board, DJJ further agrees that the juvenile's assigned community specialist will continue to submit to the Juvenile Parole Board, community board reports, which emphasize primarily the suitability and readiness of the juvenile's family, home and community to accept the juvenile upon his release. Prior to release, periodic staffing will be held on all seriously mentally ill juveniles. Prior to recommending release, a final staffing will be held and a unified recommendation of the juvenile's anticipated future treatment needs and the best way to address these needs will be presented to the Board. DJJ agrees that it will defer to the clinical expertise of DMH staff regarding a juvenile's readiness for release. The juvenile's parole examiner shall be invited to all staffings.

For juveniles age eighteen and over, the joint staffing will include a review of

mental health and other services available to individuals age eighteen and over, including adult services.

DMH agrees that while it is solely responsible for coordinating discharge planning, making applications to step-down programs, and arranging for transportation to and from all placements, DMH will coordinate doing so with all appropriate agencies. DJJ commits to assisting in this process through their attendance and participation at all called staffings and meetings involving committed DJJ Juveniles with a Serious Mental Illness.

The purpose of the periodic staffings will be to discuss the juvenile's treatment progress in placement, the anticipated course of treatment in the community and placement needs upon the juvenile's release. After these staffings occur, local efforts will be undertaken by both agencies to either secure the necessary service for the juvenile or prepare the existing services to admit the juvenile upon release. Prior to the anticipated release of the juvenile, a final staffing will be scheduled to discuss the actual course of treatment and to finalize the clinical recommendations and the discharge and placement plan. At this time, appointments will be made with the local agencies to ensure a smooth transition to the community. Throughout this process, the local mental health center case manager will be responsible for clinical case management, while the DJJ community specialists will be responsible for the matters associated with the juvenile's supervision. After release, the juvenile will be contacted by the local agencies within a week after the release date.

**P. FISCAL RESPONSIBILITY:** Prior to the transfer of seriously mentally ill juveniles, DJJ will assume fiscal responsibility for all care and treatment provided at the South Carolina Department of Juvenile Justice. All costs associated with the care and treatment of subclass juveniles will be governed by DMH laws and procedures after the transfer.

**Q. CONTINUED INTERAGENCY COLLABORATION:** DMH and DJJ Directors agree to meet at least quarterly and more frequently, if necessary, to address the immediate and long-term interagency service needs of DJJ Juveniles with Serious Mental Illness.

The parties to this Agreement further agree to participate in continuing meetings and discussions on further refinements to, and improvement of, this Agreement. Should any such agreement be reached, it will be reduced to writing and made an attachment to this Agreement.

**R. AMENDMENTS AND TERMS OF AGREEMENT:** The term of this agreement shall remain in effect from the date of signing by both parties unless amended in writing by mutual agreement of the Directors of DJJ and DMH. Either party may terminate the Agreement within 90 days written notice provided to the other Agency, addressed to the Director of that Agency, which notifies the other Agency of its intent to terminate this Agreement.



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# **DDSN SERIOUSLY MENTALLY RETARDED (SMR) STATUS**

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## **OVERVIEW**

Children who have been committed to DJJ are screened to determine if they qualify for SMR status and should therefore be transferred to DDSN. To be eligible, a child must be diagnosed with “serious mentally retardation.” Only children who have been committed to a long-term DJJ institution may be considered for SMR status; children committed to a DJJ evaluation center are not eligible for consideration. SMR children are transferred to DDSN where their needs can be better met, although they remain committed to DJJ.

The following Agreement between DJJ and DDSN provides a complete outline of the process, including eligibility requirements by which children diagnosed with serious mental retardation who are committed to DJJ are transferred to and treated by DDSN.

## **AGREEMENT BETWEEN DJJ AND DDSN FOR THE TREATMENT OF JUVENILE DELINQUENTS WITH SERIOUS MENTAL RETARDATION**

The South Carolina Department of Juvenile Justice, hereinafter referred to as DJJ, is responsible for providing community based and institutional services to juveniles charged with, or adjudicated delinquent for, having committed an offense as delineated in Title 20, Chapter 7, of the S. C. Code of Laws; and

DJJ is authorized by the state law (20-7-7815) to transfer juveniles committed to its custody who are seriously handicapped by serious mental illness or mental retardation and who, because of such disabilities, cannot be adequately cared for in its custody, through the voluntary admission process or by instituting necessary legal action to accomplish the transfer of such juveniles to another state agency which in its judgment is best qualified to care for them in accordance with the laws of this State; and

The South Carolina Department of Disabilities and Special Needs, hereinafter referred to as DDSN, is authorized to provide and/or procure institutional or community based residential services to promote the well-being of adolescents with mental retardation as delineated in Title 44, Chapter 20, of the S.C. Code of Laws; and

DJJ and DDSN acknowledge their responsibility to serve delinquent juveniles with serious mental retardation and recognize that the care and treatment of such children can best and most economically be done through a collaborative effort involving not only their limited resources and expertise, but the resources,

expertise and financial assistance of other federal, state, local and private agencies; and

DJJ and DDSN believe that services for committed delinquent juveniles with serious mental retardation should be provided in facilities separate from those which house other incarcerated delinquent youth. When such juveniles are identified, appropriate placement by DDSN will be secured. DJJ and DDSN further agree that these juveniles with serious mental retardation should be placed into programs with a treatment milieu which has been designed and is operated by treatment professionals who can promptly, professionally and, when necessary, securely, identify, serve and treat the cognitive and adaptive deficits of these juveniles until these juveniles' commitments end; and

Now, based on these shared responsibilities and the goals of better serving these delinquent youth with serious mental retardation, DJJ and DDSN enter into the agreement established below.

### **PURPOSE / APPLICATION**

The purpose of the Memorandum of Agreement is to outline the process by which those juveniles diagnosed with serious mental retardation (SMR) committed to the custody of the State for having committed offenses are transferred for treatment to the South Carolina Department of Disabilities and Special Needs.

DJJ and DDSN jointly embrace several philosophical and procedural concepts which support this document. These are:

- The goal of attaining for each juvenile maximum mental, physical, and social development while minimizing the reoccurrence of a delinquent act;
- The belief that juveniles with mental retardation accused of an illegal act should be prosecuted when found legally competent unless there are other circumstances mitigating against prosecution;
- To support and assist each juvenile offender with serious mental retardation in remaining within or returning to their family and home, or in the community environment;

Out of home placements from a DJJ institution require careful planning and must take into account needs for structure, supervision, training, and public safety; consequently, a 90-day time frame will be in effect, beginning with the date that the DDSN Liaison Psychologist diagnoses a juvenile with SMR, for locating appropriate placement and completing the transfer;

When out-of-home placements are necessary for supervision, management and treatment, the principle of least restrictive alternative should be followed. Institutional placement should be the last alternative, and should be considered only if no other available and appropriate community alternative exists;

That in addressing the procedures and concepts of this agreement, accurate, effective and timely communications, information sharing, and cooperative

agency actions are necessary to ensure the best management and treatment decisions and outcomes for juveniles;

That in the matter of assessing the presence and evaluating the extent of mental retardation of individuals falling under this agreement, DDSN's findings shall generally be accepted by DJJ. However, in those cases where DJJ does not accept DDSN's findings as to their determination, the case will be referred to an independent reviewer pursuant to the review procedure provided in this agreement; and

That nothing in this agreement should be understood to preclude, supplement, or substitute the respective responsibilities that DJJ and DDSN are required to discharge under the South Carolina Code and/or Judge Anderson's orders of March 31, 1992 and April 24, 1992, nor does this agreement supersede other relevant provisions, procedures, or due process requirements under the S.C. Code.

**A. CRITERIA FOR INCLUSION:** Mental retardation is herein defined as significantly sub-average intellectual functioning (i.e., an IQ of approximately 70 or below on an individually administered IQ test) with concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. Mental retardation will be considered present when the individual's measured IQ is approximately 70 or below, is considered a valid estimate of current intellectual functioning, and is accompanied by deficits in adaptive functioning as listed above that are consistent with the individual's history. When measures of adaptive functioning cannot be administered in the standardized manner prescribed by the authors/publishers of the instrument(s), an estimate of adaptive functioning will be made based on available data and clinical judgment in a manner agreed upon by clinical staff from both agencies.

Once the presence of mental retardation has been established for a given juvenile, his or her identification as a juvenile with SMR will be determined on the basis of Judge Anderson's Court Order dated March 31, 1992 and the Supplemental Order dated April 24, 1992. Juveniles who are found to have Moderate Mental Retardation or below (i.e., IQs of approximately 55 or below with concurrent deficits in adaptive functioning) will be identified as juveniles with SMR. Juveniles who are found to have Mild Mental Retardation (i.e., IQs of approximately 55 to approximately 70 with concurrent deficits in adaptive functioning) will be further assessed with regard to their adjustment to the demands of institutional living. Such juveniles will qualify if and when they fail to demonstrate the ability to:

1. Care for self in the DJJ environment;
2. Protect self and not be victimized because of mental condition; or
3. Demonstrate sufficient judgement and ability to follow and understand instructions so as to benefit from DJJ programs.

Determination of the above competencies will be made following interviews with DJJ personnel who work directly with the juvenile, to include Juvenile Correctional Officers, teachers, social workers, and/or psychologists. Results of these interviews, including names of respondents, will be documented.

**B. IDENTIFICATION OF SUBCLASS MEMBERS:** All juveniles committed to DJJ will be screened for possible referral to DDSN. If after the initial screening or at any time prior to release SMR is suspected, a referral to the appropriate DJJ Supervising Psychologist shall be made for further review. DJJ's psychology staff may elect to interview, further assess and, if deemed necessary, test all juveniles referred to them. On the basis of the results of this assessment, the Supervising Psychologist will refer to the DDSN Liaison Psychologist those cases which are believed to qualify. The referral and staffing protocol between DJJ and DDSN shall include the following: 1) Completion of a standard referral form (see Attachment A) by DJJ to DDSN with all the required information; 2) A packet of information attached to the referral form to include DJJ social work and psychological reports, psychiatric reports (if completed), any available school records or medical information and any other pertinent data. After receiving completed referrals from DJJ, DDSN will determine eligibility within 30 days and notify DJJ of its findings. In those cases where the DDSN Liaison Psychologist determines that the juvenile does not meet criteria for SMR designation, the DDSN Liaison will document the reasons for denial and will forward that finding along with pertinent clinical documentation, to include staff interviewed and tests administered, to the DJJ Director of Clinical and Professional Services. If DJJ disagrees and consensus cannot be reached by the DJJ team, the DJJ Coordinator of Special Needs Case Management (CSNCM), and the DDSN Liaison Psychologist, DJJ appeals shall be first channeled to the DJJ Director of Clinical and Professional Services and DDSN Liaison Psychologist for resolution in consultation with the principal designees of the State Directors of DDSN and DJJ. If the appeal issue(s) cannot be resolved by these professionals and between the principal designees within fifteen (15) working days from the receipt of the appeal to DDSN, then a referral will be made to a qualified independent reviewer agreed upon by the Agencies. The reviewer, after reviewing all available documentation and testing, conducting additional testing, if necessary, and utilizing this agreement's established criteria, shall make recommendations to the State Director of DDSN who will then make a final determination regarding inclusion/eligibility as delineated in Section 44-20-430. Should DJJ appeal and an independent reviewer is needed, DJJ and DDSN State Directors will determine how payment will be made for the reviewer on a case by case basis.

**C. LOSS OF INCLUSION STATUS:** Once the DDSN Liaison Psychologist diagnoses a juvenile with SMR, this status will be removed only if the juvenile's commitment ends or if the juvenile's diagnosis is changed to a diagnosis other than SMR.

**D. INTERAGENCY STAFFING:** Within 30 days of SMR designation, DJJ will initiate a treatment team staffing with DDSN to identify treatment/placement needs of such juveniles. This team will consist of those individuals identified under Section H of this document. Upon conclusion of this treatment team meeting, DDSN will assume primary case management responsibility.

**E. JUVENILE TRANSFERS:** The authority for and the process by which juveniles diagnosed with SMR are transferred to DDSN is found in Section 20-7-7815 of the S. C. Code of Laws. DJJ, through the voluntary admission process or by instituting necessary legal action in the family court, as delineated in Section 20-7-7815 and Section 44-20-450, and through use of a Transfer Document (Attachment B) shall accomplish the transfer of the juvenile to DDSN. As set forth in this document, although transferred to the jurisdiction of DDSN, all qualifying juveniles remain in a DJJ commitment status and can be released from such status only by the Board of Juvenile Parole or the expiration of a determinate sentence. DDSN has authority for determining appropriate treatment and placement, appropriate levels of restriction and security, and may move these juveniles between any placement or programs operated by DDSN or with which DDSN contracts. Juveniles cannot be released to their home or placed in non-residential programs in their home community by DDSN without consent and approval of the S.C. Juvenile Parole Board. In the event that DDSN is unable to secure a transfer date for a juvenile diagnosed with SMR, whose age warrants movement to South Carolina Department of Corrections, DJJ has the authority to hold juveniles for up to six months beyond their transfer date. As a result, DJJ will retain, for up to 90 days, a juvenile already diagnosed with SMR until he or she transfers to an appropriate treatment program.

For those juveniles diagnosed with SMR who are required to register in South Carolina's Sex Offenders Registry, registration shall continue to be the responsibility of DJJ. Upon the transfer of such juveniles to the jurisdiction of DDSN, all subsequent registration requirements or notifications of registration updates caused by a change in placement, etc., shall be the responsibility of DDSN.

**F. PROGRAMMING:** DDSN recognizes the necessity for a dual approach to treatment plans for juveniles diagnosed with SMR which meets both the individual needs of the juveniles and the need for public safety. These juveniles placed under the jurisdiction of DDSN may receive off-site visitation with family and for individual or group activities consistent with appropriate treatment and therapeutic practices as determined by DDSN.

**G. PLACEMENT/MOVEMENT OF QUALIFYING JUVENILES:** Juveniles diagnosed with SMR transferred by DJJ to DDSN pursuant to Section 20-7-7815 may be placed by DDSN in any appropriate placement. Such placement may include, if clinically indicated, therapeutic foster care, so long as the therapeutic foster home in which the juvenile is placed is not located in the juvenile's and/or

victim's home community, or county, if ordered by the Court. Such therapeutic foster care placements close to the juvenile's or victim's home may be considered appropriate on a case-by-case basis as such placements may be clinically indicated for family treatment and reunification.

When a juvenile diagnosed with SMR is moved to a different placement or program from which he/she was originally assigned following placement by DDSN, DDSN will notify DJJ's CSNCM and a S.C. Juvenile Parole Board representative of the placement within one working day after it occurs. Initial notification may be verbal followed within 48 hours with written notification.

In the event a juvenile escapes from a DDSN residential facility or a DDSN contractual provider's facility, DDSN will immediately notify DJJ's Public Safety Office (803-896-9100) and the DJJ CSNCM (803-896-9593). In the event a juvenile is removed from such a facility for crisis, DDSN will immediately notify DJJ's CSNCM. In both cases, DDSN will also notify a S.C. Juvenile Parole representative.

Should a juvenile diagnosed with SMR incur criminal charges while in a DDSN facility or privately contracted facility, and such juvenile is consequently placed in Detention awaiting his or her hearing on those charges, DDSN will prepare an alternate placement plan so the juvenile may be placed upon disposition of the charges or release from detention, given that the juvenile commitment continues. DDSN will be able to secure another alternative placement for any such juvenile diagnosed with SMR once the criminal charges have been resolved.

**H. INTERAGENCY TREATMENT TEAM MEMBERSHIP:** A subclass juvenile's treatment team shall consist of, at a minimum, the DDSN Liaison Psychologist, the DDSN state and DSN community representative, a DJJ psychologist, a DJJ social worker, a representative from DJJ's education division, and DJJ's CSNCM. An advocate from Protection and Advocacy, the juvenile's S.C. Juvenile Parole Board Examiner, the juvenile's DJJ Community Specialist and a representative from the juvenile's home school district will also be invited to attend. The absence of one or more invited individual treatment team members shall not require the rescheduling of team meetings.

**I. RETURN TO DJJ – REMOVAL FROM THE SUBCLASS:** The transfer of a juvenile diagnosed with SMR to the jurisdiction of DDSN is intended to be a movement of that juvenile from confinement within the juvenile correctional system. Only in cases where a juvenile's diagnosis is changed to a diagnosis which does not qualify him/her will a juvenile, once transferred to DDSN, be returned to correctional confinement at DJJ. In such cases, options short of re-confinement in a secure correctional institution will be considered and must be determined inappropriate before re-incarceration is sought.

A juvenile already designated as having SMR and transferred to DDSN will not be returned to DJJ prior to a treatment team staffing to include clinical staff from both agencies. If DDSN believes a juvenile does not meet the qualifications for SMR, DDSN will notify the DJJ CSNCM. Prior to a change in diagnosis occurring which could result in a return to DJJ, the designated DDSN Liaison Psychologist shall be consulted and a staffing with the juvenile's treatment team shall occur. If as a result of this staffing it is agreed that the juvenile does not meet the qualifications for SMR, a DDSN/DJJ Removal Form will be completed by those present; this form will clearly outline the reasons the juvenile does not qualify and will specify appropriate placement and treatment for the juvenile. Should DJJ and DDSN fail to agree, the appeal process outlined in Section B (Identification of Subclass Members) shall be followed.

If a conditional release has been granted by the S.C. Juvenile Parole Board and revocation is subsequently initiated, a juvenile may be returned to DJJ's institutional facilities or placed in some other secure correctional facility or program only after a preliminary hearing conducted by the S.C. Juvenile Parole Board's hearings officer has been held and a decision has been made by the hearings officer or S.C. Juvenile Parole Board to do so has occurred.

If a juvenile who has been diagnosed with SMR returns to DJJ either because parole is revoked or because the juvenile has committed a new offense, the juvenile will retain his or her SMR designation if he or she has been diagnosed with Moderate Mental Retardation or below (i.e., an IQ of approximately 55 or below with concurrent deficits in adaptive functioning), and DDSN will secure placement within 90 days of being notified of the revocation or recommitment. Should such a juvenile have a diagnosis of Mild Mental Retardation (i.e., an IQ of approximately 55 to approximately 70 with concurrent deficits in adaptive functioning), he or she will be further assessed with regard to institutional adjustment. Such juveniles will be diagnosed with SMR if they demonstrate poor institutional adjustment as described in Section A, "Criteria for Inclusion." Such a determination will be made by the DDSN Liaison Psychologist within 30 days of notification of the juvenile's return to a DJJ institution. DDSN reserves the right to re-assess any juvenile if any new information becomes available that may impact the juvenile's continued status as a subclass member.

**J. RECORDS/COMMUNICATION:** DJJ and DDSN clinical staff and treatment team members shall have access to and may copy, upon request, all community, institutional, medical, test data, etc. on juveniles who may be or are diagnosed with SMR. Additional information on such juveniles not reduced to writing, but known to DJJ or DDSN staff, shall also be provided by staff of either agency to staff of the other agency.

**K. COORDINATION AND RECORD OF MOVEMENT:** A master list of all juveniles diagnosed with SMR, which contains the juvenile's name, his/her committing offense, his/her diagnosis and date of this diagnosis, the juvenile's

commitment status (i.e., commitment, confined within DJJ; transferred to DDSN; conditionally released by the S.C. Juvenile Parole Board; expiration of determinate sentence), the placement/program the juvenile is located in and the dates of placement will be kept by DJJ's Office of Clinical and Professional Services. A master list of all DJJ institutional referrals to DDSN which contains the juvenile's name, date of birth, committing offense, date of referral to DDSN, date of inclusion, eligibility status, and placement/program services will be kept by DDSN's Office of Behavioral Supports. Therefore, in order to keep these master lists current, within one working day after a juvenile diagnosed with SMR is moved by DDSN within its network of private providers or released by the S.C. Juvenile Parole Board, notice of such movement will be provided to DJJ's CSNCM and DDSN's Office of Behavioral Supports and included on these master lists.

**L. TRANSPORTATION:** When a juvenile diagnosed with SMR is transferred from a DJJ institution into a placement secured by DDSN, DJJ will transport the juvenile from the DJJ institution to the designated placement facility. The placement facility, the local DSN board, and DDSN will then be responsible for coordinating transportation for the juvenile after he/she is placed outside the DJJ institution. If a juvenile diagnosed with SMR in a DJJ institution has been conditionally or unconditionally released by the S.C. Juvenile Parole Board, or has completed a determinate sentence at DJJ, DDSN will be responsible for coordination of transportation for the juvenile from the DJJ institution.

**M. VICTIM NOTIFICATION:** When a juvenile diagnosed with SMR is placed under the jurisdiction of DDSN pursuant to 20-7-7815, DJJ's Office of Victim Services will provide notification to the victim, if requested. In addition, DJJ's Victims Services Office will notify DDSN of victim notification requirements, if any, at the time of the initial placement staffing (described in Section D). DJJ will handle all required victim notification in the case of an escape from a DDSN placement. DDSN agrees to notify the DJJ Office of Victim Services at (803) 896-9544, [fax: (803) 896-6917; pager: 1-800-614-4407] of escapes. All subsequent victim notifications (except for escapes) brought about by the movement of a juvenile within DDSN or private provider's placements or brought about due to furloughs or the granting of passes to the juvenile, will be handled by the S.C. Juvenile Parole Board. DDSN will notify the S.C. Juvenile Parole Board's Victim Assistance Program and the DJJ Community Specialist whenever a juvenile diagnosed with SMR is placed in a facility or program that may grant the juvenile a pass or furlough unaccompanied by a staff member. DDSN will ensure that the facilities within its jurisdiction provide timely advance notification (at least two weeks) to the Juvenile Parole Board Victim Assistance Program of a juvenile's unsupervised pass/furlough, and also direct its private provider placements to provide such advance notification. The Juvenile Parole Board's Victim Assistance Program will, in turn, provide advance notification of any passes/furloughs to the victim. Similarly, DDSN agrees to notify the DJJ Office of

Victims Services of escapes, off-site visitation and passes, or movement of a juvenile diagnosed with SMR so that victim notification can occur.

**N. SUPERVISION UPON RELEASE – PLANNING PROCESS STAFFINGS:**

DDSN and DJJ acknowledge that the authority to release a juvenile diagnosed with SMR, as with any other juvenile indeterminately committed by the family court for commission of a crime, rests exclusively with the S.C. Juvenile Parole Board. DDSN and DJJ further acknowledge that to effectively manage release opportunities, both Agencies must be involved in the release planning process and in the supervision of, and provision of treatment services to, the juvenile upon release. DJJ agrees that for all juveniles conditionally released by the S.C. Juvenile Parole Board, it will provide supervision at the level specified by the S.C. Juvenile Parole Board. DDSN agrees that ordered and needed services will be provided to juveniles diagnosed with SMR through its local DSN Provider Networks on a priority basis, and that provision of these services will be coordinated and monitored through the DDSN State office.

DJJ further agrees that the juvenile's assigned community specialist will continue to submit to the S.C. Juvenile Parole Board community board reports which emphasize primarily the suitability and readiness of the juvenile's family, home and community to accept the juvenile upon release. Prior to recommending release, a final staffing will be held and recommendations of the juvenile's anticipated future treatment needs and the best way to address these needs will be presented to the S.C. Juvenile Parole Board. DJJ agrees that it will defer to the clinical expertise of DDSN staff regarding a juvenile's readiness for release whenever the two Agencies disagree. The juvenile's parole examiner shall be invited to all staffings. DDSN will be notified and shall have access to any board hearings or reviews by the S.C. Juvenile Parole Board.

For juveniles age eighteen and over, the joint staffings will include a review of the individual's needs and services available. DDSN agrees that while it is primarily responsible for coordinating discharge planning, making applications to step-down placements/programs, and arranging for transportation to and from all placements, DDSN will coordinate these activities with all appropriate agencies including DJJ. DJJ commits to assisting in this process as requested by DDSN and through DJJ's attendance and participation at called staffings and meetings involving juveniles diagnosed with SMR.

**O. IDENTIFICATION OF OTHER POPULATIONS:**

DDSN and DJJ recognize that some delinquent juveniles needing DDSN services may not qualify for SMR diagnosis. DJJ will continue to refer to DDSN those individuals who appear to meet the criteria for DDSN Community Services. DJJ and DDSN will work cooperatively to obtain parental permission for DDSN to complete the intake process. After receiving completed referrals from DJJ as outlined in Section B, DDSN will determine eligibility within 90 days and notify DJJ of its decision. In making its determination, DDSN may use acceptable data derived from other

sources, including DJJ, in determining intellectual status and adaptive functioning and certification of an individual to have mental retardation. If additional information is necessary to make such a determination, DDSN will contact DJJ to seek such information. If eligibility criteria are not met for DDSN Community services, DJJ will follow its own internal guidelines to assure that the juvenile's needs are met and appropriate services provided.

**P. COST SHARE AGREEMENT:** DDSN and DJJ will continue to pursue cost share agreements for juveniles who are identified as having mental retardation and adjudicated as delinquent who are on probation and/or conditionally released from DJJ. These cost share agreements will be in accordance with the cost share formula originated by the Children's Case Resolution System but which may vary in terms of the percentage of funding amounts shared as agreed upon by the agencies.

**Q. CONTINUED INTERAGENCY COLLABORATION:** DDSN and DJJ Agency Directors or their designees agree to meet at least twice yearly, and more frequently if necessary, to address the immediate and long-term interagency service needs of juvenile delinquents with mental retardation as well as continued development and improvement of this Agreement.

DJJ and DDSN will provide joint trainings to their respective staff on the content of this agreement. Training content will be approved by both agencies to assure consistency in information delivery.

**R. AMENDMENTS AND TERMS OF AGREEMENT:** The terms of this Agreement shall remain in effect from the date of signing by both parties unless amended in writing by mutual agreement of the Directors of DJJ and DDSN. Either party may terminate the Agreement with 90 days written notice provided to the other Agency, addressed to the Director of that agency, which notifies the other Agency of its intent to terminate this Agreement.

*Signed June 12, 2006*

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# TRANSFER TO DEPARTMENT OF CORRECTIONS

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## TRANSFER AT AGE SEVENTEEN

A child committed to DJJ following an adjudication for a violent offense contained in S.C. Code Ann. § 16-1-60 or for assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of DJJ by his or her seventeenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. S.C. Code Ann. § 20-7-7810(E) (Supp. 2005).

### **S.C. Code Ann. § 16-1-60 Violent Offenses:**

- Murder (§ 16-3-10)
- Criminal Sexual Conduct, first and second degree (§§ 16-3-652, 16-3-653)
- Criminal Sexual Conduct with Minors, first and second degree (§ 16-3-655)
- Assault with Intent to Commit Criminal Sexual Conduct, first and second degree (§ 16-3-656)
- Assault and Battery with Intent to Kill (§ 16-3-620)
- Kidnapping (§ 16-3-910)
- Voluntary Manslaughter (§ 16-3-50)
- Armed Robbery (§ 16-11-330(A))
- Attempted Armed Robbery (§ 16-11-330(B))
- Carjacking (§ 16-3-1075)
- Drug Trafficking as defined in §§ 44-53-370(e) and 44-53-375(C)
- Arson, first degree (§ 16-11-110(A))
- Arson, second degree (§ 16-11-110(B))
- Burglary, first degree (§ 16-11-311)
- Burglary, second degree (§ Performance (§ 16-3-810)
- Homicide by Child Abuse (§ 16-3-85(A)(1))
- Aiding and Abetting Homicide by Child Abuse (§ 16-3-85(A)(2))
- Accessory Before the Fact to Commit any of the above offenses (§ 16-1-40)
- Attempt to Commit any of the above offenses (§ 16-1-80)

## TRANSFER AT AGE NINETEEN

Any child who has not been paroled or released from the custody of DJJ by his or her nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. S.C. Code Ann. § 20-7-7810(E) (Supp. 2005).



JUVENILE  
RECORDS



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# JUVENILE RECORDS OVERVIEW

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## CONFIDENTIALITY OF COURT AND DJJ RECORDS

The court is required to keep records of every case involving a child who comes before the family court. DJJ also gathers information and prepares records regarding each child. All of these records are confidential and can only be disclosed to the judge, the child's attorney, someone who needs access to the records in order to defend against an action initiated by the child, and to those with a legitimate interest who obtain a court order. S.C. Code Ann. §§ 20-7-8505, 8510(A) (Supp. 2005).

## AUTHORIZED RELEASE OF INFORMATION BY DJJ

- DJJ's Director is required to develop policies for sharing "necessary and appropriate" information with service providers, other state agencies, and school districts as necessary to assist a child who is under DJJ's supervision. S.C. Code Ann. § 20-7-8510(B) (Supp. 2005).
- Any reports and recommendations produced by DJJ for the court's consideration at a disposition hearing must be provided to the court, the solicitor, and the child's attorney by DJJ. S.C. Code Ann. § 20-7-8510(D) (Supp. 2005).
- DJJ must notify the principal of a school in which a child is enrolled, intends to be enrolled, or was last enrolled upon final disposition of a case in which the child is charged with certain listed offenses. Each school is responsible for developing a policy to keep such information confidential. S.C. Code Ann. § 20-7-8510(E) (Supp. 2005).
- Upon request, DJJ must provide the victim of a crime with the defendant child's name, basic descriptive information, information about the juvenile justice system, the status of the case, available victim services, and DJJ's dispositional recommendations. S.C. Code Ann. § 20-7-8510(F) (Supp. 2005).
- Upon request, DJJ and/or SLED must provide to the Attorney General, a solicitor, or a law enforcement agency, a copy of a child's offense history for criminal justice purposes, and may provide other information pursuant to an ongoing criminal investigation or prosecution. S.C. Code Ann. § 20-7-8510(G), (H) (Supp. 2005).

- DJJ may fingerprint and photograph a child upon the filing of a petition, release from detention, release on house arrest, or commitment to DJJ. Fingerprints and photographs taken by DJJ are confidential and must not be transmitted to SLED, the FBI, or another agency or person, except for the purpose of: aiding DJJ in apprehending an escapee; assisting the Missing Persons Information Center in finding a missing or runaway child; locating a child who fails to appear in court as summoned; or locating a child who is the subject of a house arrest order. S.C. Code Ann. § 20-7-8510 (I) (Supp. 2005).

## **CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS**

Law enforcement records and information identifying children pursuant to the Juvenile Justice Code are confidential and must be kept separate from records of adults, which are open to inspection by the public. S.C. Code Ann. § 20-7-8515(A), (B) (Supp. 2005).

## **AUTHORIZED RELEASE OF INFORMATION BY LAW ENFORCEMENT**

- Law enforcement information or records of children created pursuant to the provisions of the Juvenile Justice Code article may be shared among law enforcement agencies, solicitors' offices, the Attorney General, DJJ, DMH, SCDC, and the Department of Probation, Parole and Pardon Services for criminal justice purposes without a court order. S.C. Code Ann. § 20-7-8515(D) (Supp. 2005).
- Incident reports are to be provided to the victim pursuant to S.C. Code Ann. § 16-3-1520. S.C. Code Ann. § 20-7-8515(E) (Supp. 2005).
- Incident reports, including information identifying a child, must be provided by law enforcement to the principal of the school in which the child is enrolled when the child has been charged with:
  - a statutory violent crime;
  - an offense that would carry a maximum term of imprisonment of fifteen years or more if committed by an adult;
  - a crime involving a weapon, as defined in Section 59-63-370;
  - assault and battery against school personnel;
  - assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or
  - distribution or trafficking unlawful drugs. *Id.*
- Incident reports involving other offenses must be provided to the principal upon request. This information must be maintained by the principal in the manner set forth in S.C. Code Ann. § 20-7-8510(E) and

must be forwarded with the child's permanent school records if the child transfers to another school.

## Photographs

A child charged with any offense may be photographed by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must photograph the child upon admission. These photographs may only be disseminated for criminal justice purposes or to assist the Missing Persons Information Center in the location or identification of a missing or runaway child. S.C. Code Ann. § 20-7-8515(F) (Supp. 2005).

## Fingerprints

- A child charged with an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be fingerprinted by the law enforcement agency that takes the child into custody. If the child is detained, the detention facility must fingerprint the child upon admission. S.C. Code Ann. § 20-7-8515(G) (Supp. 2005).
- A law enforcement agency may petition the court for an order to fingerprint a child when the child is charged with any other offense or the law enforcement agency has probable cause to suspect the child of committing any offense. *Id.*
- A child's fingerprint records must be kept separate from the adult fingerprint records and transmitted to the SLED files. S.C. Code Ann. § 20-7-8515(H) (Supp. 2005).
- When a child has been **adjudicated delinquent** for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult, the child's fingerprint records:
  - may be transmitted by SLED to the FBI files. S.C. Code Ann. § 20-7-8515(I) (Supp. 2005).
  - must be provided by SLED or the law enforcement agency that took the child into custody to a law enforcement agency upon request for criminal justice purposes or to assist the Missing Person Information Center in locating or identifying a missing or runaway child. S.C. Code Ann. § 20-7-8515(J) (Supp. 2005).
- A child's fingerprints and any SLED records regarding the fingerprints must not be disclosed for any purpose not specifically authorized by law or court order. S.C. Code Ann. § 20-7-8515(K) (Supp. 2005).

- Upon notification that a child has not been adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult, SLED and the law enforcement agency who took the child into custody must destroy the fingerprints and all records created as a result of such information. S.C. Code Ann. § 20-7-8515(L) (Supp. 2005).

#### **RELEASE OF INFORMATION TO NEWSPAPER, TV OR RADIO STATION**

S.C. Code Ann. § 20-7-8520(A) (Supp. 2005) prohibits providing a newspaper or radio or television station the name, identity, or picture of a child under the court's jurisdiction unless:

- authorized by court order;
- the solicitor has petitioned the court to waive the child to circuit court;
- the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or
- the child has been adjudicated delinquent in court for one of the following offenses:
  - a violent crime, as defined in S.C. Code Ann. § 16-1-60;
  - grand larceny of a motor vehicle;
  - a crime in which a weapon, as defined in S.C. Code Ann. § 59-63-370, was used; or
  - distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

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# JUVENILE RECORDS STATUTES

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## **SECTION 20-7-8505. Juvenile records; confidentiality.**

The court shall make and keep records of all cases brought before it. The records of the court are confidential and open to inspection only by court order to persons having a legitimate interest in the records and to the extent necessary to respond to that legitimate interest. These records must always be available to the legal counsel of the child and are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

## **SECTION 20-7-8510. Confidentiality and exceptions; policies for transmission of information; inter-agency agreements; reports and recommendations by the department; notice to school principal; information provided to victims; privileges preserved.**

(A) Except as provided herein, all information obtained and records prepared in the discharge of official duty by an employee of the court or department are confidential and must not be disclosed directly or indirectly to anyone, other than the judge, the child's attorney, or others entitled under this article or any other article to receive this information, unless otherwise ordered by the court. The court may order the records be disclosed to a person having a legitimate interest and to the extent necessary to respond to that legitimate interest. However, these records are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

(B) The director of the department must develop policies providing for the transmission of necessary and appropriate information to ensure the provision and coordination of services or assistance to a child under the custody or supervision of the department. This information must include that which is required for the admission or enrollment of a child into a program of services, treatment, training, or education. The information may be provided to another department or agency of state or local government, a school district, or a private institution or facility licensed by the State as a child-serving organization. This information may be summarized in accordance with agency policy.

(C) The director is authorized to enter into interagency agreements for purposes of sharing information about children under the supervision or in the custody of the department. The agencies entering into these agreements must maintain the confidentiality of the information.

(D) Reports and recommendations produced by the department for the court for the purpose of a dispositional hearing must be disseminated by the agency to the court, the solicitor, and the child's attorney.

(E) (1) The department must notify the principal of a school in which a child is enrolled, intends to be enrolled, or was last enrolled upon final disposition of a case in which the child is charged with any of the following offenses:

- (a) a violent crime, as defined in Section 16-1-60;
- (b) a crime in which a weapon, as defined in Section 59-63-370, was used;
- (c) assault and battery against school personnel, as defined in Section 16-3-612;
- (d) assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or
- (e) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(2) Each school district is responsible for developing a policy for schools within the district to follow to ensure that the confidential nature of a child offense history and other information received is maintained. This policy must provide for, but is not limited to:

- (a) the retention of the child offense history and other information relating to the child offense history in the child's school disciplinary file or in some other confidential location;
- (b) the destruction of the child offense history upon the child's completion of secondary school or upon reaching twenty-one years of age; and
- (c) limiting access to the child's school disciplinary file to school personnel. This access must only occur when necessary and appropriate to meet and adequately address the educational needs of the child.

(F) When requested, the department must provide the victim of a crime with the name of the child and the following information retained by the department concerning the child charged with the crime:

- (1) other basic descriptive information, including but not limited to, a photograph;
- (2) information about the juvenile justice system;
- (3) the status and disposition of the delinquency action including hearing dates, times, and locations;
- (4) services available to victims of child crime; and
- (5) recommendations produced by the department for the court for the purpose of a dispositional hearing.

(G) The department or the South Carolina Law Enforcement Division, or both, must provide to the Attorney General, a solicitor, or a law enforcement agency, upon request, a copy of a child offense history for criminal justice purposes. This information must not be disseminated except as authorized in Section 20-7-8515. The department and the South Carolina Law Enforcement Division must maintain the child offense history of a person for the same period as for offenses committed by an adult.

(H) Other information retained by the department may be provided to the Attorney General, a solicitor, or a law enforcement agency pursuant to an ongoing criminal investigation or prosecution.

(I) The department may fingerprint and photograph a child upon the filing of a petition, release from detention, release on house arrest, or commitment to a juvenile correctional institution. Fingerprints and photographs taken by the department remain confidential and must not be transmitted to the State Law Enforcement Division, the Federal Bureau of Investigation, or another agency or person, except for the purpose of:

- (1) aiding the department in apprehending an escapee from the department;
- (2) assisting the Missing Persons Information Center in the location or identification of a missing or runaway child;
- (3) locating and identifying a child who fails to appear in court as summoned;
- (4) locating a child who is the subject of a house arrest order; or
- (5) as otherwise provided in this section.

(J) Nothing in this section shall be construed to waive any statutory or common law privileges attached to the department's internal reports or to information contained in the file of a child under the supervision or custody of the department.

#### **SECTION 20-7-8515. Law enforcement records; confidentiality.**

(A) Except as provided herein, law enforcement records and information identifying children pursuant to this article are confidential and may not be disclosed directly or indirectly to anyone, other than those entitled under this article to receive the information.

(B) Law enforcement records of children must be kept separate from records of adults. Information identifying a child must not be open to public inspection, but the remainder of these records are public records.

(C) Law enforcement agencies must maintain admission and release records on children held in secure custody, nonsecure custody, or both. The records must include the times and dates of admission and release from secure and nonsecure custody and, if appropriate, the times and dates of transfer from one custody status to another.

(D) Law enforcement information or records of children created pursuant to the provisions of this article may be shared among law enforcement agencies, solicitors' offices, the Attorney General, the department, the Department of Mental Health, the Department of Corrections, and the Department of Probation, Parole and Pardon Services for criminal justice purposes without a court order.

(E) Incident reports in which a child is the subject are to be provided to the victim of a crime pursuant to Section 16-3-1520. Incident reports, including information identifying a child, must be provided by law enforcement to the principal of the school in which the child is enrolled when the child has been charged with any of the following offenses:

- (1) a violent crime, as defined in Section 16-1-60;
- (2) an offense that would carry a maximum term of imprisonment of fifteen years or more if committed by an adult;
- (3) a crime in which a weapon, as defined in Section 59-63-370, was used;

- (4) assault and battery against school personnel, as defined in Section 16-3-612;
- (5) assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or
- (6) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

Incident reports involving other offenses must be provided upon request of the principal. This information must be maintained by the principal in the manner set forth in Section 20-7-8510(E) and must be forwarded with the child's permanent school records if the child transfers to another school or school district.

(F) A child charged with any offense may be photographed by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must photograph the child upon admission. These photographs may only be disseminated for criminal justice purposes or to assist the Missing Persons Information Center in the location or identification of a missing or runaway child.

(G) A child charged with an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be fingerprinted by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must fingerprint the child upon admission. In addition, a law enforcement agency may petition the court for an order to fingerprint a child when:

- (1) the child is charged with any other offense; or
- (2) the law enforcement agency has probable cause to suspect the child of committing any offense.

(H) The fingerprint records of a child must be kept separate from the fingerprint records of adults. The fingerprint records of a child must be transmitted to the files of the State Law Enforcement Division.

(I) The fingerprint records of a child may be transmitted by the State Law Enforcement Division to the files of the Federal Bureau of Investigation only when the child has been adjudicated delinquent for having committed an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.

(J) The fingerprint records of a child adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be provided by the State Law Enforcement Division or the law enforcement agency who took the child into custody to a law enforcement agency upon request by that agency for criminal justice purposes or to assist the Missing Person Information Center in the location or identification of a missing or runaway child.

(K) The fingerprints and any record created by the South Carolina Law Enforcement Division as a result of the receipt of fingerprints of a child pursuant to this section must not be disclosed for any purpose not specifically authorized by law or court order.

(L) Upon notification that a child has not been adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult, the South Carolina Law Enforcement Division and the law enforcement agency who took the child into custody must destroy the fingerprints and all records created as a result of such information.

**SECTION 20-7-8520. Release of information about children under certain circumstances.**

(A) The name, identity, or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be provided to a newspaper or radio or television station unless:

(1) authorized by court order;

(2) the solicitor has petitioned the court to waive the child to circuit court;

(3) the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or

(4) the child has been adjudicated delinquent in court for one of the following offenses:

(a) a violent crime, as defined in Section 16-1-60;

(b) grand larceny of a motor vehicle;

(c) a crime in which a weapon, as defined in §59-63-370, was used; or

(d) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(B) When a child is bound over to the jurisdiction of the circuit court, the provisions of this section pertaining to the confidentiality of fingerprints and identity do not apply.

(C) The provisions of this section do not prohibit the distribution of information pursuant to the provisions of Article 7, Chapter 3 of Title 23.



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# EXPUNGEMENT OF JUVENILE RECORDS

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## OVERVIEW

Expungement is the destruction of a person's official records relating to that person being taken into custody, the charges filed against him, his adjudication, and his disposition. The effect of expungement is to "restore the person in the contemplation of the law to the status he occupied before being taken into custody." If a person wishes to have his juvenile record expunged, he must petition the court for an order of expungement. If an expungement order is granted and that person's records are destroyed, that person is not required to recite or acknowledge the charge or adjudication in response to an inquiry made of him for any purpose. S.C. Code Ann. § 20-7-8525(C) (Supp. 2005).

## RESTRICTIONS

- No one under 18 may petition the court to have his juvenile record expunged. § 20-7-8525(A).
- No one who has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult may petition the court to have his juvenile record expunged. *Id.*
- An adjudication for a violent crime cannot be expunged. § 20-7-8525(B); only status and nonviolent offenses can be expunged.

## ELIGIBILITY REQUIREMENTS

Anyone seeking to have his juvenile record expunged:

- must be at least 18;
- must have successfully completed any court ordered sentence; and
- must be free of any subsequent criminal charges. § 20-7-8525(A).

Even if someone is eligible to have his juvenile records expunged, expungement is discretionary with the judge. § 20-7-8525.

## EXPUNGEMENT APPLICATION PROCESS

Per Order of the Chief Justice, dated July 11, 2003, the expungement application process is as follows:

- (1) The applicant must apply to the solicitor in the circuit in which the offense(s) was committed for an application for expungement.

- (2) The applicant must pay the following amounts to the solicitor in the form of separate certified checks or money orders:
  - a non-refundable administrative fee of \$150.00 made payable to the solicitor;
  - a non-refundable SLED verification fee of \$25.00 made payable to SLED, when applicable;
  - a filing fee of \$35.00 made payable to the county clerk of court, when applicable.
- (3) The solicitor will send the application to DJJ and DJJ will return the application to the solicitor, either granting or denying approval.
- (4) If the application is approved by DJJ, the solicitor will send the application to SLED in order to verify that the offense is eligible for expungement, as provided by the South Carolina Code of Laws.
- (5) SLED will return the application to the solicitor and indicate if the offense(s) is eligible for expungement.
- (6) If the offense is deemed eligible by SLED, the solicitor will obtain all necessary signatures, including the signature of the family court judge.
- (7) Once the order is signed by the family court judge, the solicitor will file the order with the clerk of court.
- (8) The solicitor will provide copies of the expungement order to all pertinent governmental agencies as well as the applicant or the applicant's attorney.

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# EXPUNGEMENT STATUTE

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## **SECTION 20-7-8525. Petition for destruction of records.**

(A) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status or a nonviolent offense may petition the court for an order destroying all official records relating to:

- (1) being taken into custody;
- (2) the charges filed against the child;
- (3) the adjudication; and
- (4) disposition.

The granting of the order is in the court's discretion. However, a person may not petition the court if he has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult. In addition, the court must not grant the order unless it finds that the person who is seeking to have the records destroyed is at least eighteen years of age, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense.

(B) An adjudication for a violent crime, as defined in Section 16-1-60, must not be expunged.

(C) If the expungement order is granted by the court, no evidence of the records may be retained by any law enforcement agency or by any municipal, county, state agency, or department. The effect of the order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody. No person to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

(D) For purposes of this section, an adjudication is considered a previous adjudication only if it occurred prior to the date the subsequent offense was committed.



# COMPETENCY



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# OVERVIEW OF COMPETENCY ISSUES

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Judges have the inherent duty to order a competency examination if there is reason to believe that the person charged with the criminal offense is not fit to stand trial. S.C. Code Ann. § 44-23-410 (Supp. 2005) states that whenever a family court judge has reason to believe that a child on trial before him, charged with a criminal offense or civil contempt, is not fit to stand trial because the child lacks the capacity to understand the proceedings or to assist in the child's defense as a result of a lack of mental capacity, the judge is required to: (1) order examination of the child by two examiners designated by DMH; or (2) order the child committed for examination and observation to an appropriate facility of DMH or DDSN.

Despite the mandatory language of the statute requiring a judge to order a competency examination if there is reason to believe that a child charged with a criminal offense is not fit to stand trial, ordering a competency examination is within the judge's discretion and a refusal to grant an examination will not be disturbed on appeal absent a clear showing of an abuse of discretion. *State v. Singleton*, 472 S.E.2d 640 (S.C. Ct .App. 1996).

The following excerpts from "Evaluating Youth Competence in the Justice System" (MacArthur Juvenile Court Training Curriculum) address the issue of competence of children to stand trial or adjudicative competence, as well as competence of children to waive *Miranda* rights.

## **Adjudicative Competence**

Adjudicative competence, or competence to stand trial (which includes the entering of a guilty plea), is one protection that has taken on new implications in the modern context of punitive approaches to youth who misbehave. Concerns about the capacities of immature youths to understand the nature of the adjudication process and to make critical decisions related to it are being raised in legislatures and courts across the nation. Historically, defendants could lack adjudicative competence because of their mental health status or mental retardation. For the first time, *immaturity* is being considered in adjudicative competence determinations, i.e., some defendants, by virtue of their age and developmental status, lack the capacities to be a competent defendant.

The "test" for adjudicative competence was enunciated by the U.S. Supreme Court in *Dusky v. United States*, 362 U.S. 402 (1960): "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has rational as well as factual understanding of the proceedings against him."

In *Drope v. Missouri*, 420 U.S. 162 (1975), the Court held that the incompetence doctrine was “so fundamental to an adversary system of justice,” that conviction of an incompetent defendant, or failure to adhere to procedures designed to assess a defendant’s competence when doubt has been raised, violates the due process clause of the federal Constitution. “It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” Nor is such a defendant competent to enter a plea of guilty in lieu of a trial. *Godinez v. Moran*, 509 U.S. 389 (1993) holds that the legal tests for competence to stand trial and competence to plead guilty (and waive counsel) are the same. Incompetence bars adjudication, whether by plea or trial, and this includes any pretrial proceedings that could be adverse to the defendant’s interests.

Adjudicative competence in juvenile and criminal proceedings serves three important purposes:

1. **Preserving the integrity of the criminal process.** The credibility of the criminal process is undermined if the defendant lacks a basic moral understanding of the nature and purpose of the proceedings against him or her.
2. **Reducing the risk of erroneous convictions.** The accuracy or reliability of the adjudication is threatened if the defendant is unable to assist in the development and presentation of a defense.
3. **Protecting the defendant’s decision-making autonomy.** To the extent that decisions about the course of adjudication must be made personally by the defendant, he or she must have the abilities needed to make decisions.

Adjudicative competence has two components:

1. **Competence to assist counsel.** The minimum conditions legally required for participating in one’s own defense generally include the capacity to:
  - o understand the charges and the basic elements of the adversary system;
  - o appreciate one’s situation as a defendant in a delinquency or criminal prosecution; and
  - o relate pertinent information to counsel concerning the facts of the case.

These abilities, taken together, fulfill *Dusky’s* requirement that the defendant be able “to consult with counsel with a reasonable degree of rational understanding.”

2. **Decisional competence.** A defendant who is competent to assist counsel may nevertheless not be competent to make specific decisions regarding the defense of his or her case that arise as the trial process unfolds.

Case law reflects four criteria that may be invoked in determining decisional competence:

- the capacity to understand information relevant to the specific decision at issue (understanding);
- the capacity to appreciate one's situation as a defendant confronted with a specific legal decision (appreciation);
- the capacity to think rationally about alternative courses of action (reasoning); and
- the capacity to express a choice among alternatives (choice).

Tests for competency include the MacArthur Competence Assessment Tool - Criminal Adjudication (MCAT-CA) and the Interdisciplinary Fitness Interview. It should be noted, however, that these tests have only been validated with adults; they have not been validated for juveniles.

### **Competence to Waive Miranda Rights.**

In 1966, in *Miranda v. Arizona*, the U.S. Supreme Court required procedural safeguards to protect the rights of an accused person to be free from compelled self-incrimination when being questioned while in custody. An accused can "waive" (give up) Miranda rights and give a statement to police, but such waivers must be knowledgeable and voluntary. Psychologist Thomas Grisso has developed a standardized assessment of a youth's competence to waive Miranda rights.

### **Relevant U.S. Supreme Court Decisions**

***Miranda v. Arizona*, 384 U.S. 436 (1966):** A suspect of crime has constitutional rights to avoid self incrimination and to advice of counsel prior to or during in-custody legal proceedings such as police questioning. Unless the suspect has made a "knowing and intelligent" waiver of these rights, his or her statements may not be used in subsequent delinquency or criminal proceedings.

***In re Gault*, 387 U.S. 1 (1967):** Juveniles have a constitutional right to counsel and to avoid self-incrimination.

***Fare v. Michael C.*, 442 U.S. 707 (1979):** The Court permitted into evidence a juvenile's confession made to his probation officer, holding that:

- While the mere fact of being a juvenile does not invalidate waiver of rights, juveniles as a class are at greater risk than adults of having deficiencies in the intellectual or emotional characteristics required to satisfy the standard

for valid waiver. Each case is to be decided on “totality of the circumstances” rather than any single factor such as age, intellectual functioning, or mental disorder. Legal descriptions of “totality of circumstances” focus on two broad types of factors: features of the situation in which the youth confessed, and characteristics of the youth relevant to abilities to understand and apply the *Miranda* warnings.

- Juveniles’ confessions require special scrutiny. See also *Haley v. Ohio*, 332 U.S. 596 (1948) and *Gallegos v. Colorado*, 370 U.S. 49 (1962).

### **Standard for Competent Waiver of *Miranda* Rights**

Waiver must be voluntary, knowing, and intelligent, based upon the totality of the circumstances. Totality of circumstances involves an assessment of the interaction between the circumstances of the interrogation/confession, and the characteristics of the youth.

*Gallegos* recognized that youth may fear police or give greater deference to authority than adults, that they are more susceptible to suggestions than adults, and that an assessment of “voluntariness” requires close scrutiny to ensure that youth are not coerced. However, in *Colorado v. Connelly*, 449 U.S. 157 (1986), the Supreme Court held that absent police coercion, a defendant’s mental state alone would not make a confession involuntary. The Court has never addressed the circumstances under which police conduct that would not be coercive for adults might be coercive with adolescents. Rather, it has left lower courts to determine “voluntariness” under the “totality of circumstances” test.

Unlike adjudicative competence, competence to waive *Miranda* rights requires a *retrospective* evaluation. What did the youth understand *at the time* he or she was interrogated? Current capacities are more relevant if the youth has permanent deficits, such as mental retardation.

Empirical studies show that most juveniles who receive a *Miranda* warning do not understand it well enough to waive their constitutional rights in a “knowing and intelligent” manner. For example, Dr. Thomas Grisso conducted tests to determine whether juveniles could paraphrase the words in the *Miranda* warning, whether they could define six critical words in the *Miranda* warning such as “attorney,” “consult,” and “appoint,” and whether they could give correct true-false answers to twelve re-wordings of the *Miranda* warnings. Compared to adults, juveniles were far less able to understand the four components of a *Miranda* warning. Juveniles demonstrated significantly less comprehension of at least one of the four components of the warning.

Juveniles most frequently misunderstood the *Miranda* advisory that they had the right to consult with an attorney and to have one present during interrogation. Other research has made similar findings. Younger juveniles

exhibit even greater difficulties understanding their rights. Juveniles younger than 15 demonstrate significantly poorer comprehension of the nature and significance of *Miranda* rights. The level of comprehension exhibited by youths 16 and older, although more comparable to that of adults, left much to be desired.

### Analyzing Legal Competencies

Every evaluation of a youth's capacities - whether to waive *Miranda* rights or to participate in the trial process - must be done within a framework that evaluates the three basic components of legal competency. These components are functional, causal, and interactive.

- **Functional abilities.** This includes the specific capacities, skills, and abilities relevant to each of the areas of the legal standard being evaluated; in the context of waiving *Miranda* rights, these are the:
  - Ability to **comprehend** *Miranda* warning (KNOWING what the words mean).
  - Ability to **grasp the significance** of rights in the context of the legal process (KNOWING that you do not have to speak to the police, that anything you say can be used against you in court).
  - Ability to **process information** in arriving at a decision about waiver (INTELLIGENTLY determining whether under the present circumstances it is in your best interest to talk to the police).
- **Causal factors.** Does the youth have cognitive or developmental deficits, or suffer from emotional disturbance, learning disabilities, mental retardation or other mental disorders, that interfere with his or her ability to understand the situation and decide whether to waive *Miranda* rights?
- **Interaction of abilities and situational demands.** Competency evaluations must consider the abilities of the youth in the context of the demands of the interrogation. What is the impact on the youth's abilities of factors such as the duration of the interrogation, whether a parent was present, the time of day, location, availability of food, bathroom breaks, etc.?

**\*See page 178 for COMPETENCY CASE LAW**

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# COMPETENCY CASE LAW

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***Dusky v. United States*, 362 U.S. 402 (1960).**

In 1960, the U.S. Supreme Court in *Dusky v. United States* adopted the legal standard of competence that is followed in the states. The *Dusky* standard asks: "whether the defendant has sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceeding against him." (Cited by *State v. Reed*, 503 S.E.2d 747 (S.C. 1998), *State v. Hill*, 604 S.E.2d 696 (S.C. 2004)).

***Drope v. Missouri*, 420 U.S. 162 (1975).**

In *Drope v. Missouri*, the U.S. Supreme Court held that a person "whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial."

***Jeter v. State*, 417 S.E.2d 594 (S.C. 1992).**

In *Jeter v. State*, the Court held that due process prohibits the conviction of a person who is mentally incompetent. (Citing *Bishop v. United States*, 350 U.S. 961, (1956)).

***State v. Blair*, 273 S.E.2d 536 (S.C. 1981).**

*Blair* established that defendant is entitled to a pretrial hearing on competency to stand trial (Blair Hearing).

***State v. Lambert*, 225 S.E.2d 340 (S.C. 1976).**

The *Lambert* Court held that the test of competency to enter a plea is the same as required to stand trial.

***State v. Reed*, 503 S.E.2d 747 (S.C. 1998).**

In *State v. Reed*, the Court held that the defendant bears the burden of proving his incompetence by a "preponderance of the evidence."

***State v. Locklair*, 535 S.E.2d 420 (2000).**

In *State v. Locklair*, the Court held that the decision of whether to order a competency examination rests in the trial judge's discretion, and the trial judge's decision will not be overturned on appeal absent a clear showing of an abuse of that discretion. (See also S.C. Code Ann. § 44-23-410 (2005)).

***Mohanan v. State*, 616 S.E.2d 422 (2005).**

In *Mohanan*, the Court held that S.C. Code Ann. § 44-23-410 governs only evaluations to determine competency to stand trial, not evaluations for criminal responsibility. These are separate mental health issues. The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial. (Citing *State v. Lee*, 264 S.E.2d 418 (1980)).

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# PRE-TRIAL EVALUATIONS OF JUVENILES: CAPACITY TO STAND TRIAL

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By Mark Binkley, General Counsel, SCDMH

## OVERVIEW

### A. Time, Place and Manner

The statute providing for pretrial evaluations of a juvenile or adult defendant's capacity to stand trial is found at S.C. Code Ann. § 44-23-410. If the family court has reason to believe a juvenile before the court charged with a crime lacks the capacity to understand the nature of the proceedings or assist counsel due to mental illness, the court may order an evaluation by two examiners selected by the South Carolina Department of Mental Health (DMH). (If the defendant is believed to be mentally retarded and not mentally ill, the South Carolina Department of Disabilities and Special Needs (DDSN) appoints the examiners. If both disorders appear, the defendant is examined by examiners from each agency.) S.C. Code Ann. § 44-23-410(1) provides that the evaluation is to be conducted within fifteen days of receipt of the court's order and the court may permit the state agency doing the evaluation to select the site for the evaluation.

S.C. Code Ann. § 44-23-410(2) appears to give the court the option of committing the juvenile to DMH or DDSN for up to fifteen days for purposes of the evaluation (with the option of extending the commitment for an additional fifteen days upon written request of the facility director). However, § 44-23-410 is supplemented by an administrative procedure mandated by the South Carolina Supreme Court. By Administrative Order dated September 25, 1987, the Supreme Court ordered that all circuit and family courts use a particular form order (South Carolina Court Administration Form 221, updated August 2005) for the commitment of juveniles to the Department of Mental Health for capacity to stand trial (CST). The form order includes a paragraph for the solicitor to schedule the evaluation to be done on an outpatient basis. In accordance with § 44-23-410(1), and at the option of the DMH staff, the juvenile may be admitted to a DMH facility for up to fifteen days, which may be extended upon request by DMH staff for another fifteen days.

### B. Private Experts

Section 44-23-410(2) also provides that the juvenile may arrange for his own examination by an independent examiner.

### C. Substance of Evaluation Report

Section 44-23-420 describes the format of the evaluation report which is to be rendered. It reads as follows:

Within five days of examination under § 44-23-410(1) or at the conclusion of the observation period under § 44-23-410(2), the designated examiners shall make a written report to the court which shall include:

- (1) A diagnosis of the person's mental condition; and
- (2) Clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

## **HEARING**

Section 44-23-430 requires that a hearing be held following the evaluation on the issue of the juvenile's capacity to stand trial. See also State v. Blair, 273 S.E.2d 536 (1981). If the court finds the juvenile has the capacity to stand trial, the delinquency proceedings resume. However, the court, as part of its continuing obligation to ensure a fair trial, may take up the issue of the defendant's capacity at any point in the proceedings if it again has reason to question the defendant's ability to understand the proceedings and assist counsel. See In the Interest of Antonio H., 461 S.E.2d 825 (Ct. App. 1995), *reversed*, 477 S.E.2d 713 (S.C. 1996). Having a factual and rational understanding of the proceedings and the ability to assist counsel - capacity to stand trial - is a "fundamental right" of a criminal defendant's right to due process of law. Cooper v. Oklahoma, 517 U.S. 348 (1996). Because it is a fundamental right, it's a right which is equally applicable in juvenile proceedings. In re Gault, 387 U.S. 1 (1967).

### **A. Admissibility of Designated Examination Reports without foundation**

Section 44-23-410 provides: "The report of the examination is admissible as evidence in subsequent hearings pursuant to § 44-23-430." See also State v. Franklin, 456 S.E.2d 357 (1995): "the report is a statutory exception to the rule against hearsay."

### **B. Inadmissibility of Report for purposes other than determination of capacity**

Information in a court-ordered mental health examination is inadmissible "for purposes other than that ordered by the court." Hudgins v. Moore, 524 S.E.2d 105 (S.C. 1999).

## **COMMITMENT TO DMH**

If the court determines at the hearing that the juvenile lacks capacity to stand trial, the court must make a further determination as to whether the juvenile is *unlikely or likely* to be restored to capacity through further treatment.

a. **Unlikely.** If the court finds the juvenile unlikely to be restored to capacity, the court is to order the solicitor to initiate a Petition for Judicial Admission (civil commitment proceedings) in the probate court. In the case of a juvenile found incapable due to serious mental illness, such proceedings take place in probate court pursuant to §§ 44-24-90 to 140, or the family court may conduct the judicial admission proceedings using the statutory procedures and forms applicable in the probate court. S.C. Code Ann. § 44-24-150 (C).

b. **Likely.** If the court finds that the juvenile is currently incapable of standing trial due to mental illness, but is likely to be restored to capacity, the court is to commit the juvenile to DMH for treatment designed to restore the defendant to capacity for a period of up to 60 days. If the defendant is found unfit to stand trial at the conclusion of the additional period of treatment, the solicitor is to initiate a Petition for Judicial Admission in the probate court. Again, the family court has the option to retain jurisdiction of the commitment proceedings, but must use the statutory procedure and forms applicable in the probate court. *Id.*

If committed to DMH, the juvenile is to "have all the rights and privileges of other involuntarily hospitalized patients." If not committed, the juvenile "shall be released." See, generally, Jackson v. Indiana, 406 U.S. 715 (1972).

The juvenile's charges may remain pending, and the question of the juvenile's capacity to stand trial can be reevaluated at any time on the motion of either party or the court's own motion. S.C. Code Ann. § 44-23-450.

## **TREATMENT PROGRAM**

Section 44-23-430 does provide that such individuals "have all the rights and privileges of other involuntarily committed hospitalized patients." Chapters 22 and 24 of Title 44 specify a number of treatment conditions, including several Sections specifying the manner in which treatment plans are to be designed and documented.

## **DISCHARGE**

If the charges remain pending against the juvenile following civil commitment to DMH, Section 44-23-460 provides that after the hospital finds the juvenile no longer in need of hospitalization, but prior to discharge, the court in which the charges remain pending shall conduct a new hearing on the juvenile's capacity to stand trial. If found to still lack such capacity, the court must order the juvenile discharged. If found to have the capacity to stand trial, the court may direct the proceedings resume, or dismiss the charges and order the juvenile released.



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# FITNESS TO STAND TRIAL STATUTES

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## **SECTION 44-23-410. Determination of capacity of persons charged with crime to stand trial; duty of judge.**

Whenever a judge of the Circuit Court or Family Court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

(1) order examination of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of being mentally retarded or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and mental retardation or a related disability; the examination must be made within fifteen days after the receipt of the court's order and may be conducted in any suitable place unless otherwise designated by the court; or

(2) order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disabilities and Special Needs for a period not to exceed fifteen days. If at the end of fifteen days the examiners have been unable to determine whether the person is fit to stand trial, the director of the facility shall request in writing an additional period for observation not to exceed fifteen days. If the person or his counsel requests, the person may be examined additionally by a designated examiner of his choice. The report of the examination is admissible as evidence in subsequent hearings pursuant to Section 44-23-430. However, the court may prescribe the time and conditions under which the independent examination is conducted. If the examiners designated by the Department of Mental Health find indications of mental retardation or a related disability but not mental illness, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person is "not mentally ill" and recommend that the person should be evaluated for competency to stand trial by the Department of Disabilities and Special Needs. If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not mental retardation or a related disability, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person does "not have mental retardation or a related disability" and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health. If either the Department of Mental Health or the Department of Disabilities and Special Needs finds a preliminary indication of a dual diagnosis of mental illness and mental retardation or a related disability, this preliminary finding must be reported to the court with the recommendation that one examiner from the Department of Mental Health and one examiner from the Department of Disabilities and Special Needs be designated to further evaluate the person and render a final report on his mental capacity.

### **SECTION 44-23-420. Designated examiners' report.**

Within five days of examination under Section 44-23-410(1) or at the conclusion of the observation period under Section 44-23-410(2), the designated examiners shall make a written report to the court which shall include:

- (1) A diagnosis of the person's mental condition, and
- (2) Clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

The report of the designated examiners shall not contain any findings nor shall the examiners testify on the question of insanity should it be raised as a defense unless further examination on the question of insanity is ordered by the court.

### **SECTION 44-23-430. Hearing on fitness to stand trial; order of court.**

Upon receiving the report of the designated examiners the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:

- (1) The person is fit to stand trial, it shall order the criminal proceedings resumed; or
- (2) The person is unfit to stand trial for the reasons set forth in Section 44-23-410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450 within sixty days during which time the court shall order him hospitalized; or
- (3) The person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized for an additional sixty days. If the person is found to be unfit at the conclusion of the additional period the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Article 1 of Chapter 21 of this title within fourteen days during which time the person shall remain hospitalized.

Subject to the provisions of Section 44-23-460, patients against whom criminal charges are pending shall have all the rights and privileges of other involuntarily hospitalized patients.

Persons against whom criminal charges are pending but who are not ordered hospitalized following judicial admission proceedings shall be released.

### **SECTION 44-23-440. Finding of unfitness to stand trial shall not preclude defense on merits.**

A finding of unfitness to stand trial under Section 44-23-430 does not preclude any legal objection to the prosecution of the individual which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

If either the person found unfit to stand trial or his counsel believes he can establish a defense of not guilty to the charges other than the defense of insanity, he may request an opportunity to offer a defense on the merits to the court. The court may require affidavits and evidence in support of such request. If the court grants such request, the evidence of the State and the defendant shall be heard before the court sitting without a jury. If after hearing such petition the court finds the evidence is such as would entitle the defendant to a directed verdict of acquittal, it shall dismiss the indictment or other charges.

**SECTION 44-23-450. Reexamination of finding of unfitness.**

A finding of unfitness to stand trial under Section 44-23-430 may be reexamined by the court upon its own motion, or that of the prosecuting attorney, the person found unfit to stand trial, his legal guardian, or his counsel. Upon receipt of the petition, the court shall order an examination by two designated examiners whose report shall be submitted to the court and shall include underlying facts and conclusions. The court shall notify the individual, his legal guardian, and his counsel of a hearing at least ten days prior to such hearing. The court shall conduct the proceedings in accordance with Section 44-23-430, except that any petition that is filed within six months after the initial finding of unfitness or within six months after the filing of a previous petition under this section shall be dismissed by the court without a hearing.

**SECTION 44-23-460. Procedure when superintendent believes person charged with crime no longer requires hospitalization.**

When the superintendent of a hospital or mental retardation facility believes that a person against whom criminal charges are pending no longer requires hospitalization, the court in which criminal charges are pending shall be notified and shall set a date for and notify the person of a hearing on the issue of fitness pursuant to Section 44-23-430. At such time, the person shall be entitled to assistance of counsel.

- (1) If upon the completion of the hearing, the court finds the person unfit to stand trial, it shall order his release from the hospital; and
- (2) If such a person has been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged, the court shall order the charges dismissed and the person released; or
- (3) The court may order that criminal proceedings against a person who has been found fit to stand trial be resumed, or the court may dismiss criminal charges and order the person released if so much time has elapsed that prosecution would not be in the interest of justice.

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# PROCEDURES FOR JUDICIAL COMMITMENT

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## **SECTION 44-17-510. Petition for judicial commitment; certificate of designated examiner.**

Proceedings for involuntary hospitalization by judicial procedure may be commenced by filing a written petition with the probate court of the county where he is present or where he is a resident by any interested person or the superintendent of any public or private mental institution in which he may be. The petition shall be served on the person and his attorney and if he has no attorney then on him and a member of his immediate family.

The petition shall be accompanied by a certificate of a designated examiner stating that he has examined the person and is of the opinion that he is mentally ill and should be hospitalized or a written statement by the petitioner that the person has refused to submit to an examination by a designated examiner. The certificate or the written statement shall state the underlying facts upon which the examiner or petitioner, if the person has refused to submit to an examination, bases his conclusions and not merely the conclusions themselves.

## **SECTION 44-17-520. Notice of petition and right to counsel.**

Upon receipt of a petition the court shall give notice thereof to the proposed patient, to his legal guardian, if any, and to any other interested person. This notice shall also indicate the proposed patient's right to counsel.

## **SECTION 44-17-530. Appointment of counsel; examination and record thereof.**

Within three days after the petition for judicial commitment set forth in Section 44-17-510 is filed, exclusive of Saturdays, Sundays, and legal holidays, the court shall appoint counsel to represent the person if counsel has not been retained and the court shall appoint two designated examiners, one of whom must be a licensed physician, to examine the person and report to the court their findings as to the person's mental condition and need for treatment. The examination must be made at a suitable place not likely to have a harmful effect upon the person's health. On a report of the designated examiners of refusal to submit to examination, the court shall order the person to submit to examination. If the person refuses to obey the court's order the court may require a state or local law enforcement officer to take the person into custody for a period not exceeding twenty-four hours during which time the person must be examined by the two designated examiners. The person's attorney must be notified before the person's confinement. If the examiners do not execute the certification provided for in this section within twenty-four hours, the proceeding must be terminated and the person must be released. An adequate record of the examination must be made and offered to the person's counsel. If the conclusions of the examination are that the person is mentally ill the underlying facts must be recorded as well as the

conclusions. The person must be given the opportunity to request an additional examination by an independent designated examiner. If the court determines that the person is indigent the examination must be conducted at public expense.

**SECTION 44-17-540. Hearing shall be held if examiners find mental illness.**

If the report of the two designated examiners, other than the independent designated examiner, is to the effect that they are of the opinion that the person is not mentally ill to the extent that involuntary treatment is required, the court shall terminate the proceedings and dismiss the petition immediately upon receipt of the report. If the report of the two designated examiners, other than the independent designated examiner, is divided, the court may terminate the proceedings or may designate a third examiner, who must be a psychiatrist, and charge the three examiners to render a majority opinion within five days. If the report of the designated examiners is to the effect that they are of the opinion that the person is mentally ill and involuntary treatment is required, the court shall conduct a hearing. For persons admitted pursuant to Section 44-17-410, the hearing may be held on the same day as the designated examinations unless the person or his counsel objects. Upon objection by the person or his counsel, the court shall delay the hearing. For persons whose admission is sought under Section 44-17-510, the court immediately shall fix a date for and give notice of a hearing, to be held not less than five nor more than seven days, excluding Saturdays, Sundays, and legal holidays, from receipt of the report.

**SECTION 44-17-550. Notice of hearing and rights.**

Notice of the hearing must be given to the person, his counsel, and other interested persons at least five days before the hearing. Notice must include the time, date, and place of the hearing, the underlying facts, and the standards under which the person is sought to be committed. A copy of the designated examiners report must be provided to the person's counsel. The notice of hearing also must include a statement advising the recipient that the person may request the names of the designated examiners and other persons who may testify in favor of his commitment and the substance of their proposed testimony.

**SECTION 44-17-580. Hospitalization of person if court finds mental illness and other conditions.**

(A) If, upon completion of the hearing and consideration of the record, the court finds upon clear and convincing evidence that the person is mentally ill, needs involuntary treatment and because of his condition:

- (1) lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or
- (2) there is a likelihood of serious harm to himself or others, the court shall order in-patient or out-patient treatment at a mental health facility, public or private, designated by the Department of Mental Health and may order out-patient treatment

following in-patient treatment. If the court finds that the person is not mentally ill and not in need of involuntary treatment, the court shall dismiss the proceedings.

(B) If the court orders out-patient treatment and the respondent fails to adhere to the prescribed out-patient treatment order or program, the treatment facility shall report the failure to the court and the court upon notice to the respondent and his counsel shall order a supplemental hearing and may further order in-patient treatment in a designated facility as needed. The probate court issuing the order for out-patient treatment shall maintain jurisdiction over the person for the purpose of supplemental proceedings as set forth in this chapter and every order issued pursuant to this subsection must be so conditioned. An order for in-patient treatment at a mental health facility does not raise a presumption of incompetency and no rights may be denied a person unless specifically ordered by the court.

MENTAL HEALTH  
ISSUES AND  
PSYCHOLOGICAL  
REPORTS

This section contains excerpts from the MacArthur Juvenile Court Training Curriculum. The John D. and Catherine T. MacArthur Foundation funded the development of Understanding Adolescents: A Juvenile Court Training Curriculum, training materials for juvenile justice professionals, as a joint project of the Youth Law Center, Juvenile Law Center, and the American Bar Association Juvenile Justice Center. The result was a training curriculum that applies the findings of adolescent development and relates research to practice issues confronted by juvenile court practitioners at the various decision-making stages of the juvenile justice process.

The National Juvenile Defender Center has used the modules for training across the country and continues to organize sessions for defenders, prosecutors, probation officers, judges, and other juvenile justice professionals. If you are interested in hosting a training session in your area, please contact NJDC. **Please note that the MacArthur Curriculum may not be used for training without the permission of the National Juvenile Defender Center.**

The Curriculum is comprised of the following six modules:

- **Kids are Different:**  
How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court
- **Talking to Teens in the Justice System:**  
Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims
- **Mental Health Assessments in the Justice System:**  
How to Get High-Quality Evaluations and What to Do With Them in Court
- **The Pathways to Youth Violence:**  
How Child Maltreatment and Other Risk Factors Lead Children to Chronically Aggressive Behavior
- **Special Ed Kids in the Justice System:**  
How to Recognize and Treat Young People with Disabilities that Compromise their Ability to Comprehend, Learn, and Behave
- **Evaluating Youth Competence in the Justice System**

**A complete set of the MacArthur Juvenile Court Training Curriculum can be found on the National Juvenile Defender Center web site at <http://njdc.info>.**

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# LEGAL CONTEXTS IN WHICH A MENTAL HEALTH EVALUATION MAY BE INDICATED

~ Excerpts from the MacArthur Juvenile Court Training Curriculum ~

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## I. Competence to Confess/Waive Miranda Rights

A. Legal Issue (*Miranda v. Arizona*, 1966): was the confession knowing, voluntary and intelligent?

B. Factors that might suggest referral for evaluation:

1. youth
2. limited intellectual functioning
3. poor verbal skills
4. difficulty communicating with child
5. history of poor academic achievement
6. under influence of substances at time of interrogation
7. history of emotional and/or behavioral problems
8. interrogation in absence of parents if one or more of the above factors exist

## II. Waiver to Adult Court

A. Legal Issue: Whether the child presents a risk to the public and whether he/she shows a likelihood of reasonable rehabilitation (i.e., is the child amenable to treatment?).

B. Factors that might suggest referral for evaluation:

1. history of emotional/behavioral problems
2. history of violence
3. significant delinquency history
4. nature of the instant alleged offense
5. young age
6. history of abuse/neglect

## III. Competence to Proceed

A. Legal Issues:

1. Is the child competent to stand trial? (Is the child able to consult with his/her lawyer with a reasonable degree of rational understanding, and

- does he/she have a rational, as well as factual understanding of the proceedings? - *Dusky v. U.S.*, United States Supreme Court, (1960).
2. Is the child competent to enter a plea?
  3. Is the child competent to be sentenced?

B. Factors that might suggest referral for evaluation:

1. difficulty communicating about the case
2. age, in particular for younger adolescents
3. limited intellectual functioning
4. history of poor academic achievement
5. history of emotional/behavioral problems
6. being tried in adult court

**IV. Mental State at the Time of the Offense / Sanity**

A. Legal Issue: At the time of the offense was the child's ability to distinguish between right and wrong, or appreciate the nature and consequences of his/her actions, impaired due to mental disease or defect?

B. Factors that might suggest referral for evaluation:

1. age, in particular for younger adolescents
2. limited intellectual functioning
3. history of poor academic achievement
4. history of emotional/behavioral problems
5. third-party accounts alleging unusual/bizarre/disorganized behavior by the child at or around the time of the offense

**V. Disposition/Sentencing**

A. Legal Issue: What are the child's treatment and programming needs given his/her involvement in the juvenile justice process?

B. Factors that might suggest referral for evaluation:

1. offense committed under influence of substances or history of substance abuse suggested
2. history of emotional/behavioral problems
3. history of abuse/neglect
4. history of poor academic achievement
5. limited intellectual functioning
6. history of violence

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# DE-MYSTIFYING MENTAL HEALTH ASSESSMENTS

~ Excerpts from the MacArthur Juvenile Court Training Curriculum ~

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## I. Professions and Their Distinctions

- A. Psychiatrists (MDs/Doctors of Osteopathy) are physicians and the focus of their training is on psychopathology and its treatment. They are authorized to prescribe medication. They have a particular expertise with respect to: distinguishing physical disorders with emotional manifestations from psychiatric disorders, psychopharmacological treatment, and neurological impairment.
- B. Psychologists (PhDs/PsyDs) are doctoral level psychologists and the focus of their training is assessment and treatment of psychopathology. They have a particular expertise with respect to: psychological testing and standardized assessment of psychopathology, intellectual functioning, behavioral functioning, academic achievement, and verbal and behavioral therapies and interventions.
- C. Clinical Social Workers (MSWs) have masters level social work training and the focus of their training is on assessment and treatment of psychopathology, with an emphasis on social and family systems as they affect the individual. They have a particular expertise with respect to: social and family systems as they affect the individual, and social services and programs available for persons with emotional/behavioral problems.

## II. The Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV)

- A. **Overview:** DSM-IV is a manual published by the American Psychiatric Association. It lists the diagnostic criteria for, and prevalence rates of, mental disorders, which reflect a consensus of those in the field. This is a classification system that aids in the collection of statistical information about mental disorders and in the diagnosis and treatment of those disorders. It is used by psychiatrists and psychologists, and it is routinely accepted by courts.
- B. **DSM-IV** is organized to allow for assessment and description of disorders. When psychiatrists or psychologists conduct evaluations and rely on DSM-IV, they classify the disorders that people have, allocating the disorder to five different domains. Each domain is called an “axis.” For purposes of juvenile court practitioners, the first two axes are usually the most important.

1. **Axis I looks at Clinical Disorders**, which includes Depression, Anxiety Disorders, Schizophrenia, Oppositional Defiant Disorder, and Attention Deficit Hyperactivity Disorder. It also includes other conditions that may be a focus of clinical attention, including physical abuse of child, sexual abuse of child, parent-child problems, and borderline intellectual functioning.
  2. **Axis II looks at Personality Disorders**, which are more ingrained, long-standing aspects of a person's personality that are typically not expected to change over time. Children typically should NOT receive personality disorder diagnoses because their personalities are still developing. Examples include antisocial personality disorder and borderline personality disorder. Also included in Axis II is mental retardation, which may be relevant in many cases.
  3. **Axis III: General Medical Conditions Relevant to Emotional /Behavior Functioning**. Examples include seizure disorder and head injury.
  4. **Axis IV: Psychosocial and Environmental Problems**. Examples include educational problems, occupational problems, housing problems, and problems related to interactions with the legal system.
  5. **Axis V: Global Assessment of Functioning (GAF)**. The examiner's judgment of the examinee's overall level of functioning ranging from 0 to 100. This information is useful in planning treatment and measuring its impact.
- C. **Disorders by Category**. It is important to note that DSM-IV does not classify people. Rather, it classifies disorders that people have. It is also important to note that one does not give a diagnosis by category, but rather by specific disorder.
1. Disorders usually first diagnosed in infancy, childhood, or adolescence. Examples include: Mental Retardation, Learning Disabilities, Attention-Deficit and Disruptive Behavior Disorders, and Pervasive Developmental Disorders.
  2. Delirium, Dementia, and Amnesic and other Cognitive Disorders.
  3. Substance-related Disorders. Examples include: Alcohol Dependence or Abuse, Cocaine Dependence or Abuse, and Polysubstance Dependence.
  4. Schizophrenia and other Psychotic Disorders. Examples include Schizophrenia, Schizophreniform Disorder, Schizoaffective Disorder, and Delusional Disorder.
  5. Mood Disorders. Examples include: Major Depressive Disorder, Bipolar Disorder-Manic, and Dysthymic Disorder.
  6. Anxiety Disorders. Examples include: Panic Disorder, Posttraumatic Stress Disorder, and Obsessive-Compulsive Disorder.

7. Somatoform Disorders. Examples include: Pain Disorder, Hypochondriasis, Somatization Disorder, and Conversion Disorder.
8. Factitious Disorders.
9. Dissociate Disorders. Examples include: Dissociative Identify Disorder and Dissociative Amnesia.
10. Sexual and Gender Identify Disorders. Examples include: Gender Identity Disorder of Childhood or Adolescence, Exhibitionism, Voyeurism, and Pedophilia.
11. Eating Disorders. Examples include: Anorexia Nervosa and Bulimia Nervosa.
12. Sleep Disorders. Examples include: Sleep Terror Disorder, Nightmare Disorder, and Primary Insomnia.
13. Impulse Control Disorders. Examples include: Pyromania, Tricotillomania, and Kleptomania.
14. Adjustment Disorders. Examples include: Adjustment Disorder with Depressed Mood and Adjustment Disorder with Anxiety.
15. Personality Disorders (TYPICALLY NOT DIAGNOSED UNTIL AGE 18 OR ABOVE). Examples include: Antisocial Personality Disorder, Borderline Personality Disorder, and Narcissistic Personality Disorder.

**D. Disorders most prevalent in delinquency populations:** Conduct Disorder, Attention-Deficit/Hyperactivity Disorder, Substance Abuse and Dependence, Affective disorders, and Posttraumatic Stress Disorder.

**E. The Conduct Disorder Diagnosis in Juvenile Delinquency Cases.**

Thomas Grisso, in *Forensic Evaluations of Juveniles* (1998), pays particular attention to the diagnosis of Conduct Disorder. Because the prevalence of Conduct Disorder as a diagnosis in delinquency cases is so high, it is important to be aware of the following three pitfalls, cited verbatim, that are identified by Grisso:

1. Some clinicians have a tendency to stop the diagnostic process when they find that the youth meets the formal criteria for Conduct Disorder [thus missing other problems a youth might have.] This ignores the fact that Conduct Disorder is often comorbid with one or more other psychiatric disorders. The job is not to find “a diagnosis” but to discover and describe the youth’s psychological condition. Rarely is this job completed by establishing a diagnosis of Conduct Disorder.
2. Clinicians should recognize that not all youth who meet the formal criteria for Conduct Disorder—even perfectly—should be given a diagnosis of Conduct Disorder....DSM-IV commentary points out...that “the Conduct Disorder diagnosis should be applied only when the behavior in question is symptomatic of an underlying dysfunction within the individual and not simply a reaction to the immediate social context.” This requires that the clinician explore the causal relationship between the criterion behaviors

and (a) the youth's personality, as well as (b) the social and cultural conditions in which the youth's past criterion behaviors occurred. In at least some instances, youth who meet all of the formal criteria for Conduct Disorder should not be given the diagnosis.

3. Clinicians who are unaccustomed to diagnostic work with adolescents should very carefully identify the relation of Conduct Disorder to Antisocial Personality Disorder. [Grisso cites examples of false claims by testifying mental health professionals, such as: children with Conduct Disorder become adults with Antisocial Personality Disorder; or Conduct Disorder is the adolescent version of Antisocial Personality Disorder; or Antisocial Personality Disorder is what youths with Conduct Disorder become— “after all, according to DSM-IV criteria, an adult can be APD only if he was CD in adolescence.”] The majority of youths who can be diagnosed Conduct Disorder “remit by adulthood.” [citing DSM-IV]

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# PSYCHOLOGICAL ASSESSMENT AND TESTING

~ Excerpts from the MacArthur Juvenile Court Training Curriculum ~

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## I. Basic Information

- A. Although psychological tests vary in their types and purposes, generally speaking they all can be described as standardized ways of assessing various aspects or abilities of a person (e.g., mood, intelligence, quality of thought process, adaptive behaviors, memory, knowledge, visual motor coordination) which allow for comparing that person to others.
- B. Tests assess skills, abilities, or traits that are measurable. Those attributes that are measurable are called “constructs,” which may or may not be relevant, or may be indirectly related to, the question(s) at issue in court. For example, an instrument that measures competence to stand trial will measure constructs of “appreciation,” “understanding” and “ability to communicate,” which together inform the judge who has to decide whether the youth’s capacities for appreciation, understanding and ability to communicate meet the legal standard for competence.
- C. Many of the tests that are widely administered to children (and that are reviewed below) do not directly answer the relevant legal questions.
- D. A few psychological tests have been designed for forensic purposes and specifically assess psycholegal constructs (e.g., Grisso’s Miranda Waiver measures, Competence Screening Test, MacArthur Competency Assessment Tool-Criminal Adjudication, Competency Assessment for Standing Trial-Mental Retardation.)
- E. No matter what test is being used, practitioners should know basic information about the test’s validity. Basic questions include:
1. What does the test purport to assess? (e.g., intelligence is not the same thing as competency to proceed).
  2. For what purposes has the test been demonstrated to be valid?
  3. Is it appropriate to use with children? Have norms been developed for children?
  4. Was the test developed specifically for children? For children involved in the juvenile and/or criminal justice systems?
  5. Is there any reason to believe that the test is biased with respect to race or gender?
  6. Has the most recent version been employed? Why or why not?

II. **Focus of testing.** Consumers should ensure that the mental health professionals conducting the evaluations are familiar with the instruments most relevant to the legal questions at issue.

A. **Competence to Waive Miranda Rights.** In 1966, in *Miranda v. Arizona*, the U.S. Supreme Court required procedural safeguards to protect the rights of an accused person to be free from compelled self-incrimination when they are being questioned while in custody. An accused can “waive” (give up) Miranda rights and give a statement to police, but such waivers must be knowledgeable and voluntary. Psychologist Thomas Grisso has developed a standardized assessment of a youth’s competence to waive Miranda rights.

B. **Competence to Stand Trial.** In 1960, the U.S. Supreme Court, in *Dusky v. United States*, adopted the legal standard of competence that is followed in the states. The Dusky standard asks “whether he [the defendant] has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him.” Tests for competency include the MacArthur Competence Assessment Tool – Criminal Adjudication (MCAT-CA) and the Interdisciplinary Fitness Interview. It should be noted, however, that these tests have only been validated with adults; they have not been validated for juveniles.

### III. **General Measures**

#### A. **Overview**

1. These measures were developed to diagnose patients in order to provide appropriate treatment or therapy.
2. Because these general measures were not developed specifically to be used in forensic contexts, inferences have to be made about how they apply to the question at hand. However, when something can be assessed directly, it must be done that way. For example, if the judge wants to know whether a child has the cognitive abilities to understand Miranda warnings, it would be useful to have the results of one or more of the intelligence tests listed in the next paragraph. Red flags should go off in the consumer’s mind when a huge leap must be made in order to answer the legal question, for example, taking the results of an achievement test and inferring that a child a) had the capacities to waive rights, and b) that those capacities were not interfered with by personality or emotional problems.

## B. Types

### 1. Intelligence (cognitive) testing.

- a) A cognitive evaluation can be conducted by either a clinical, counseling or certified school psychologist.
- b) The two most commonly administered intelligence tests are:
  - (1) **WAIS-III** (Wechsler Adult Intelligence Scale-III). The WAIS-III assesses capacity for intelligent behavior of adolescents and adults ages 17-74 (Harrington, 1986). It consists of two major scales: Verbal and Performance, each of which contains six subtests. IQ scores are derived for each of these scales as well as a composite Full Scale IQ score. The WAIS-III is available in Spanish.
  - (2) **WISC-III** (Wechsler Intelligence Scale for Children- Third Edition). The WISC-III assesses mental ability in children ages 6-16. It is used to measure a child's capacity to understand and cope with the world (Harrington, 1986). It consists of two major scales: Verbal and Performance, each of which contains six subtests. IQ scores are derived for each of these scales as well as a composite Full Scale IQ score. The WISC-III is available in Spanish.
- c) For these intelligence tests, a score of 100 is the average, with a standard deviation of 10 points. Accordingly, the following IQ ranges apply:

Very Superior	130 and above
Superior	120-129
High Average	110-119
Average	90-109
Low Average	80-89
Borderline	70-79
Mentally Retarded	69 and below

#### **Ranges of Mental Retardation**

Mild	56-69
Moderate	41-55
Severe	26-40
Profound	0-25

- d) There are other less widely used intelligence tests that may be employed as part of the evaluation. The IQ ranges for the following

tests and the normative samples upon which they are based are different than the Wechsler scales. Thus, an IQ number derived from these tests may have slightly different meaning than one from the WAIS-III or WISC-III. It is preferable to have a client evaluated using either the WAIS-III or WISC-III, depending upon the client's age. These less widely used intelligence tests include:

- (1) The Slosson Intelligence Test (SIT)
- (2) Kaufman Brief Intelligence Test (KBIT)
- (3) Stanford-Binet Intelligence Scale: Fourth Edition (SB:FE)

## 2. Academic achievement tests.

- a) Academic achievement tests are often administered in conjunction with intelligence tests. This allows the examiner to determine whether an individual suffers from a learning disability.
- b) Such tests include the Wide Range Achievement Test - Third Edition (WRATIII), the Wechsler Individual Achievement Tests (WIAT) and the Woodcock Johnson Psycho-educational Battery-Revised (WJEB-R).
- c) The results of these tests will include a grade-equivalent score and a standard score. The standard score can be compared to the IQ scores (Verbal, Performance, Full Scale) to determine if there are significant differences in level of functioning.

## 3. Emotional/personality functioning tests.

- a) Court evaluations will also usually include some measures designed to provide an index of a client's emotional/personality functioning. These can include both highly structured self-report measures and loosely structured "projective" techniques.
- b) Clinical psychologists typically have more training in the administration and interpretation of these types of tests than either counseling or school psychologists.
- c) Commonly employed measures of emotional/personality functioning include:
  - (1) **Beck Depression Inventory (BDI)**. The BDI is a 21-item inventory that measures the degree of depressive

symptoms found in adolescents and adults. Scales for this inventory include: sadness, pessimism, sense of failure, suicidal ideas, social withdrawal and work difficulty, etc. (Harrington, 1986).

- (2) **MMPI-A** (Minnesota Multiphasic Personality Inventory-Adolescent Edition). The MMPI-A (used with children and adolescents up to age 18) is a standardized questionnaire that elicits a wide range of self descriptions scored to give a quantitative measurement of an individual's level of emotional adjustment and attitude toward test-taking (Groth-Marnat, 1984). The MMPI-A has a total of 13 scales, 3 of which relate to validity, and 10 which relate to clinical or personality indices. An individual's score is based on these 13 different categories of responses and is represented in graph form on a profile sheet. This score can be compared with the scores obtained from different normative samples (Groth-Marnat, 1984).
- (3) **Rorschach Psycho-diagnostic Test.** The Rorschach evaluates an individual's personality (usually ages 10 to adult), as one is asked to interpret what one sees in ten inkblot cards. This technique is based on the assumption that an individual's responses are rooted in aspects of personality unique to him or her. Extensive scoring systems have been developed, and an individual's responses can be compared to normative samples (Harrington, 1986), although this method is considered controversial by some.



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# QUICK REFERENCE GUIDE TO DISORDERS COMMON IN PSYCHOLOGICAL REPORTS OF CHILDREN

~ Prepared by Bill Haxton, Ph.D. ~

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*(Revised 2006)*

## **DISORDERS**

These descriptions are borrowed from the Diagnostic and Statistics Manual of Mental Disorders, Forth Edition (1994). Included here are those disorders, which are most likely to appear in the psychological reports of juveniles.

### **Adjustment Disorder**

The essential feature is the development of clinically significant emotional or behavioral systems in response to an identifiable psychosocial stressor or stressors. The stressor(s) is generally identified on Axis IV. Adjustment Disorders are coded according to the subtype that best fits the predominant symptoms:

With Depressed Mood - This is used when the predominant features include systems such as depressed mood, tearfulness, or feelings of hopelessness.

With Anxiety - This specifier is used when the main features are systems such as nervousness, worry, or jitteriness.

With Mixed Anxiety and Depressed Mood - This subtype is used to reflect combination of depression and anxiety.

With Disturbance of Conduct - This is used when the predominant feature is a disturbance in conduct in which there is a violation of the rights of others or major age-appropriate societal norms and rules (e.g., truancy, vandalism, reckless driving, fighting).

With Mixed Disturbance of Emotions and Conduct - This subtype is used when the predominant manifestations are both emotional systems (e.g., depression, anxiety) and a disturbance of conduct.

### **Attention - Deficit/Hyperactivity Disorder**

The essential feature is a persistent pattern of inattention and / or hyperactivity-impulsivity that is more frequent and severe than is typically observed in individuals at a comparable level of development. Some hyperactive-impulsive or inattentive systems that cause impairment must have been present before age

seven. Associated features may include low frustration tolerance, temper outburst, bossiness, stubbornness, moodiness, and excessive insistence that requests be met. (This disorder used to be referred to as ADD).

Combined Type - Multiple systems of both inattention and hyperactivity-impulsivity.

Predominantly Inattentive Type - Symptoms of hyperactivity-impulsivity are minimal or absent.

Predominantly Hyperactive-Impulsive Type - Symptoms of inattention are minimal.

### **Bipolar Affective Disorder**

A mood disorder characterized by mood swings that either fluctuate rapidly or over longer periods. Individuals with this disorder typically experience periods of depression or dysthymia alternating with periods of mania or hypomania (periods of elevated mood or agitation, expansiveness, less need for sleep).

### **Child or Adolescent Antisocial Behavior**

Used when a focus of clinical attention is antisocial behavior in a child or adolescent that is not due to a mental disorder (e.g., Conduct Disorder or an Impulse-Control Disorder). Examples include isolated delinquent acts, which are not part of a pattern and may not be typical for that child.

### **Conduct Disorder**

The essential feature is a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated. The behavior pattern is usually present in a variety of settings such as home, school, or the community. Because individuals with Conduct Disorder are likely to minimize their conduct problems, the clinician often must rely on additional informants. Individuals with this disorder characteristically demonstrate relatively serious disruptive behaviors such as, initiating aggressive behavior, destruction of others property, deceitfulness or theft, or frequently running away from home.

Childhood-Onset Type - At least one symptom began prior to age ten. These individuals are more likely to have persistent Conduct Disorder and to develop adult Antisocial Personality Disorder than are those with Adolescent-Onset Type.

Adolescent-Onset Type - Symptoms of Conduct Disorder are absent prior to age ten. These individuals are less likely to display aggressive behaviors and tend to have more normative peer relationships than those with Childhood-Onset Type.

Severity of the disorder is rated Mild, Moderate, or Severe.

Older diagnostic systems (prior to 1994) used the following descriptors:

Group Type or Socialized Nonaggressive Type - Conduct problems occur mainly as a group activity with peers. Aggression may or may not be present.

Solitary Aggression Type or Undersocialized Aggressive Type - Aggressive physical behavior predominates, usually toward both adults and peers, and the individual usually acts alone.

Undifferentiated Type - The child or adolescent has a mixture of clinical features that cannot be classified as either of above VM.

### **Depression**

Along with other symptoms of depression, individuals with this disorder display either a depressed mood or loss of interest or pleasure. Other symptoms include weight loss or gain, sleep disturbance, psychomotor agitation or retardation, fatigue, feelings of worthlessness or guilt, inability to concentrate and/or thoughts of death.

### **Depression with Psychotic Features**

Besides displaying the characteristics of depression, individuals with this disorder also experience hallucinations or delusions. These typically involve depressive themes such as hearing voices that berate them for shortcomings or sins, or delusions of being responsible for something bad that happened.

### **Disruptive Behavior Disorder NOS**

Used for disorders characterized by a pattern of conduct or oppositional defiant behaviors that does not meet full criteria for Conduct Disorder or Oppositional Defiant Disorder.

### **Dysthymic Disorder**

The essential feature is a chronically depressed mood that occurs for most of the day more days than not for at least 2 years. Individuals with this disorder often describe their mood as "sad." In children, the mood may be irritable rather than depressed, and the duration is only one year. During periods of depressed mood, some of the following symptoms are seen: poor appetite or overeating, insomnia or hypersomnia, low energy or fatigue, low self-esteem, poor concentration or difficulty making decisions.

### **Intermittent Explosive Disorder**

The essential feature is the occurrence of discrete episodes of failure to resist aggressive impulses that result in serious assaultive acts or destruction of property. The degree of aggressiveness expressed during an episode is grossly out of proportion to any provocation or precipitating stressor. This diagnosis is made only after other mental disorders that might account for these episodes have been ruled out (e.g., a personality disorder, Conduct Disorder, a Manic Episode, or ADHD).

### **Learning Disorders**

The essential feature is inadequate development of specific academic, language, speech, or motor skills that is not due to a general medical condition. Often, the individual has average intelligence, but manifests difficulty in one specific area. These are now diagnosed individually, for example:

- Mathematics Disorder
- Reading Disorder (Dyslexia)
- Disorder of Written Expression, etc.

### **Malingering**

The essential feature of Malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding responsibility or evading prosecution.

### **Mental Retardation**

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning that is accompanied by significant symptoms in adaptive functioning, with onset prior to age 18.

Mild (IQ level 50 -55 to approx. 70) - Typically develop social and communication skills during the preschool years, have impairment in sensorimotor areas, and often are not distinguishable from children without Mental Retardation until a later age. By their late teens, they can acquire academic skills up to approximately the six-grade level. During adult years, they usually achieve social and vocational skills adequate for minimum self-support, but may need supervision, guidance, and assistance, especially when under unusual social or economic stress. With appropriate supports, individuals with Mild Mental Retardation can usually live successfully in the community, either independently or in supervised settings.

Moderate (IQ level 35 - 40 to 50-55) - Most of the individuals with this level of Mental Retardation acquire communication skills during early childhood years. They profit from vocational training, and with moderate supervision, can attend to their personal care. They can also benefit from training in social and occupation skills but are unlikely to progress beyond the second-grade level in academic subjects. They may learn to travel independently in familiar places. During adolescent, their difficulties in recognizing social conventions may interfere with peer relationships. In their adult years, the majority are able to perform unskilled or semiskilled work under supervision in sheltered workshops or in the general work force. They adapt well to life in the community, usually in supervised settings.

Severe and Profound - These individuals are not seen in the DJJ system due to their high level of need.

### **Oppositional - Defiant Disorder**

The essential feature is a recurrent pattern of negativistic, defiant, disobedient, and hostile behavior toward authority figures that persists for at least 6 months. These behaviors may be expressed by persistent stubbornness, resistance to directions, and unwillingness to compromise. Hostility may be directed at adults or peers and is shown by deliberately annoying others or by verbal aggression. Symptoms are usually more evident in interactions with adults or peers the individual knows well and are typically justified as responses to unreasonable demands or circumstances.

### **Personality Disorder**

A Personality Disorder is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Personality Disorders are not often diagnosed in adolescents since this is generally recognized as a period of development and change. They are diagnosed on Axis I, and include the following:

Paranoid - a pattern of distrust and suspiciousness such that others' motives are interpreted as malevolent.

Schizoid - a pattern of detachment from social relationships and restricted range of emotional expression.

Schizotypal - a pattern of acute discomfort in close relationships, cognitive or perceptual distortions, and eccentricities of behavior.

Antisocial - a pattern of disregard for, and violation of, the rights of others.

Borderline - a pattern of instability in interpersonal relationships, self image, and affects, and marked impulsivity.

Histrionic - a pattern of excessive emotionality and attention seeking.

Narcissistic - a pattern of grandiosity, need for admiration, and lack of empathy.

Avoidant - a pattern of social inhibition, feelings of inadequacy, and hypersensitive to negative evaluation.

Dependent - a pattern of submissive and clinging behavior related to an excessive need to be taken care of.

Obsessive-Compulsive - a pattern of preoccupation with orderliness, perfectionism, and control.

### **Post-traumatic Stress Disorder**

The essential feature of this disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor. The traumatic event may involve witnessing or causing a death, surviving a serious car accident, or learning about an unexpected or violent death or injury to a family member. Symptoms include persistent re-experiencing of the event (e.g., nightmares, persistent memories, or “flashbacks”), persistent avoidance of stimuli associated with the trauma (e.g., trying not to think about it, or being unable to recall certain aspects of the event), and increased arousal (e.g., difficulty sleeping, exaggerated startle response, irritability or outbursts of anger)

### **Schizophrenia**

A group of psychotic disorders characterized by withdrawal from reality with highly variable accompanying affective, behavioral and cognitive disturbances. Common symptoms include delusions and hallucinations.

**School Phobia:** See Separation Anxiety Disorder

### **Separation Anxiety Disorder**

Developmentally inappropriate and excessive anxiety concerning separation from home or from those to whom the individual is attached. This may take the form of persistent and excessive worry about something bad happening to a loved one, refusal to go to school because of fear, or repeated nightmares involving the theme of separation.

### **Sexual Abuse of a Child**

Unfortunately, this wording is used in the DSM-IV for both victims and perpetrators; the main distinction is the diagnostic code:

995.5	when focus of clinical attention is on the victim
V61.21	when focus is on the perpetrator

### **“V” Codes**

Diagnoses which may be the focus of clinical attention but which do not warrant a clinical diagnosis are preceded by the letter “V.” Examples include:

V61.20	Parent-Child Relational Problem
V61.21	Sexual Abuse of Child
V65.2	Malingering
V71.02	Child or Adolescent Antisocial Behavior

## **MISCELLANEOUS TERMS**

**Acute:** Term used to describe a disorder of sudden onset and relatively short duration, usually with intense symptoms.

**Affect:** Experience of emotion or feeling.

**Anhedonia:** Inability to experience pleasure or joy; often seen in depressed and schizophrenic individuals.

**Aphasia:** Loss or impairment of ability to express and/or understand language.

**Ataxia:** Muscular incoordination.

**b.i.d.:** Used in prescribing medications; specifies taking the medication twice daily.

**By History:** Used to indicate that the diagnosis is being made on the basis of a previous evaluation, e.g., the discharge summary from a recent hospitalization.

**“Cluster B. Traits”:** Used in place of a personality disorder diagnosis when the client displays characteristics of Antisocial, Borderline, Histrionic, and/or Narcissistic Personality Disorder, but it is believed that a full-blown personality disorder is not yet developed, or the child is too young to be diagnosed with a personality disorder.

**Cognitive:** Having to do with thinking, understanding, and reasoning.

**Decompensation:** Ego or personality disorganization under excessive stress.

**DSM-IV-TR:** Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. This is the classification system used by most psychologists and psychiatrists in the U.S.

**Enuresis:** Bed-wetting; involuntary release of urine.

**Fetal Alcohol Syndrome:** Observed pattern in children of alcohol mothers in which there is characteristic facial or limb irregularity, low birth weight, and behavioral abnormalities.

**h.s.:** Used in prescribing medications; specifies taking the medication each night at bedtime.

**Hypomania:** Mild form of mania reaction, characterized by moderate psychomotor activity and/or feelings of euphoria. Can be a symptom of Bipolar Disorder.

**Hypoxia**: Insufficient delivery of oxygen, typically to the brain.

**ICD-9**: International Classification of Diseases, Ninth Edition. This classification system is similar to the DSM and is used when completing Medical Necessity Statement.

**In Full Remission**: There are no longer any signs or symptoms of disorder.

**In Partial Remission**: The full criteria for the disorder were previously met, but currently only some of the symptoms or signs of the disorder remain.

**Labile**: Tending to change affective states quickly, e.g., shifting from laughing to crying and back again as the topic of conversation changes. Also used to indicate inappropriate and/or exaggerated laughing or crying.

**Malingering**: Consciously faking an illness or disability.

**Mania**: Emotional state characterized by intense and unrealistic feelings of excitement and euphoria. In juveniles, this often presents as irritability instead of euphoria.

**Mental Status Examination**: An evaluation (both by observation and interview) of the client's current mental state, including factors such as mood, attention span, quality of speech, memory, level of consciousness, and presence or absence of psychotic signs.

**Narcolepsy**: Disorder characterized by transient, compulsive states of sleepiness. A form of epilepsy.

**Neurological examination**: Examination to determine the presence and extent of organic damage to the nervous system. Evaluates reflexes, eye movements, muscular coordination, and related functions of the nervous system.

**Neuropsychological assessment**: Use of psychological tests that measure cognitive, perceptual and motor performance to determine the extent and locus of possible brain damage or central nervous system dysfunction.

**NOS**: Not Otherwise Specified. This term is used when the presentation conforms to the general guidelines for the disorder, but the client does not meet enough of the criteria to warrant the full diagnosis.

**p.o.**: Used in prescribing medications; specifies taking the medication by mouth.

**Premorbid**: Existing prior to the onset of mental disorder.

**Prior history:** Used when it is useful to indicate that the client had carried the diagnosis at some time in the past, since this information might elucidate current functioning.

**Psychomotor epilepsy:** (Also referred to as temporal lobe epilepsy). State of disturbed consciousness in which an individual may perform various actions, sometimes of a violent nature, which he or she cannot remember later.

**q.d.:** Used in prescribing medications; specifies taking the medication every day (i.e., once a day).

**Rule Out (R/O):** Used when the client displays symptoms of a disorder and it is not yet clear whether he or she actually has the disorder. (Example: 'R/O Bipolar Disorder' means the juvenile appears to have symptoms of Bipolar Disorder and this diagnosis is yet to be confirmed.)

**Sequelae:** The symptoms remaining as the aftermath of a disorder.

**Somatic:** Pertaining to the body, e.g., "somatic complaints" typically means complaints of aches and pains.

**Temporal lobe epilepsy:** See psychomotor epilepsy.

**Trichotillomains:** The nervous habit of pulling out one's hair.

## **MEDICATIONS**

The following medications are listed according to their typical uses; many have multiple uses that may overlap with other categories. New medications are introduced every so often, so this does not represent an exhaustive list.

### **Anti-psychotics**

Haldol  
Mellaril  
Navane  
Prolixin  
Stelazine  
Thorazine  
Zyprexa

### **Minor Tranquilizers**

Ativan  
Buspar  
Valium  
Vistaril (also used as a sleep aid)  
Xanax

**Antidepressants**

Anafranil  
Asendin  
Desyrel  
Imipramine (also used to treat enuresis)  
Lexapro  
Nardil  
Paxil  
Prozac  
Serzone  
Tofranil  
Wellbutrin  
Zoloft

**Bipolar Affective Disorder**

Lithium (Lithium Carbonate)  
Depakote ( Valproate)  
Tegretol

**Stimulants** (Commonly used for ADHD)

Ritalin  
Cylert  
Dexedrine  
Adderall

**Non-stimulant used for ADHD**

Strattera

**Anticonvulsants** (Also sometimes used as a mood stabilizer or to reduce aggression)

Depakote  
Dilantin  
Klonopin  
Tegretol

## **DIAGNOSTICS**

The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised (DSM-IV-TR) uses a multi-axial diagnostic system. This means that clients are assessed on several axes, each of which refers to a different domain of information that may aid in treatment planning. There are five axes included in the DSM-IV diagnostic classification:

- Axis I      Clinical Disorders: Other conditions that may be a focus of Clinical Attention (i.e., V Codes)
- Axis II     Personality Disorders; Mental Retardation
- Axis III    General Medical Conditions
- Axis IV    Psychosocial and Environmental Problems
- Axis V     Global Assessment of Functioning

## **PSYCHOLOGICAL TESTS**

The following is a list of commonly used psychological tests, with brief descriptions of their purpose(s):

Bender Visual- Motor Gestalt Test - Neuropsychological screening, visual-motor coordination

DAP (Draw-A-Person) - Personality

Developmental Test of Visual-Motor Integration (DTVMI or VMI)  
Neuropsychological screening, visual-motor coordination

H-T-P (House-Tree-Person) - Personality

Incomplete Sentences Blank – Personality

Jesness – Juvenile delinquency typology

K-Bit (Kaufman Brief Intelligence Test) - Intelligence estimate

Kinetic Family Drawing - Personality/family functioning

MACI (Million Adolescent Clinical Inventory) - Personality

MMPI-A (Minnesota Multiphasic Personality Inventory-Adolescent) - Personality

Mooney Problem Checklist - List of Potential symptoms/problems

PIAT-R (Peabody Individual Achievement Test- Revised) - Academic Achievement

PPVT-R (Peabody Picture Vocabulary Test-Revised) - Receptive Vocabulary

Rorschach – Personality

SBIS-V (Stanford-Binet Intelligence Scale, Fifth Edition) – Intelligence

TAT - (Thematic Apperception Test) – Personality

VABS (Vineland Adaptive Behavioral Scales) - Adaptive Functioning

WAIS-R (Wechsler Adult Intelligence Scale - Revised) - Intelligence

WAIS-III (Wechsler Adult Intelligence Scale- Third Edition) - Intelligence

WASI (Wechsler Abbreviated Scale of Intelligence) – Estimated IQ

WIAT (Wechsler Individual Achievement Test) - Academic Achievement

WISC-R (Wechsler Intelligence Scale for Children- Revised) - Intelligence

WISC-IV (Wechsler Intelligence Scale for Children - Forth Edition) - Intelligence

Woodstock-Johnson - Academic Achievement

WRAT-3 (Wide Range Achievement Test, 3rd Edition) - Academic Achievement

# DIFFERENCES BETWEEN MENTAL RETARDATION & MENTAL ILLNESS

<b>MENTAL RETARDATION</b>	<b>MENTAL ILLNESS</b>
1. Refers to below average intellectual functioning.	Has nothing to do with IQ. A person with mental illness may be a genius or may be below average.
1. Refers to impairment in social adaptation.	May be very competent socially but may have a character disorder or other aberration.
3. Incidence: 3% of general population	16-20% of general population
4. Is present at birth or usually occurs during the period of development.	May have its onset at any age.
5. Impairment is permanent but can be aided through full development of the person's potential.	Is often temporary and in many instances is reversible. Seldom meets the definition of a development disability.
6. Person can usually be expected to behave rationally at his/her operational level.	Person may fluctuate between normal and irrational behavior.
7. Erratic and/or violent behavior are rarely noted in persons with mental retardation secondary to the cause of their retardation.	The presence of erratic behavior is a hallmark in some types of mental illness, and violence may be a characteristic of a certain specific mental illness.
8. Symptoms of failure to adjust to societal demands are secondary to limited intelligence and social adaptive responses.	Symptoms are secondary to a break with reality and/or emotional interference with responses.
9. Person often has impaired communication skills.	Person may communicate in very idiosyncratic manner.
10. Person can also have mental illness.	Person can also have impaired intellectual functioning as a result of the mental illness.



JUVENILE  
CONFESSIONS



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# JUVENILE CONFESSIONS

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## ADMISSIBILITY OF JUVENILE CONFESSIONS

Generally, a child's confession is admissible as evidence in juvenile delinquency proceedings as long as it was given "freely and voluntarily."

In *Bram v. United States*, 168 U.S. 532 (1897), the Court held that the Fifth Amendment protection against self incrimination requires that a confession be made voluntarily in order to be admissible. Also, the Fourteenth Amendment prohibits states from persuading a person to confess through insincere sympathy, imprisonment or threats of imprisonment, or other like forms of persuasion. The *Bram* Court stated that a confession is inadmissible unless made freely and voluntarily; that is: "(it) must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." *Bram v. United States*, 168 U.S. at 542-543.

## TOTALITY OF CIRCUMSTANCES TEST

When reviewing whether a child knowingly waived his Miranda rights and made a voluntary confession, the court should consider the totality of the circumstances standard which is applicable to adults.

In *In re Williams*, 217 S.E.2d 719 (S.C. 1975), the Court recognized the "totality of circumstances test" to determine the admissibility of a statement or confession of a minor and held that "[w]hile the age of the individual is a factor to be taken into consideration, the admissibility of a statement or confession of a minor depends upon its voluntariness, to be determined from the totality of the circumstances under which it is made." In *Williams*, the Court espoused the general rule established by *People v. Laura*, 432 P.2d 202, 215 (Cal. 1967) that "...a minor has the capacity to make a voluntary confession, even of capital offenses, without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement." *Williams*, 217 S.E.2d at 722.

## **Factors to Consider When Determining Voluntariness**

Factors that should be considered when determining the voluntariness of a child's confession include:

- the child's age, intelligence, education, background, prior experience with police, mental capacity, and physical condition at the time of questioning;
- the legality and duration of the detention;
- the length of questioning; and
- any physical or mental abuse by police, including the existence of threats or promises.

## **Admissibility of Statements Made by Child Held in Illegal Custody**

In *State v. Funchess*, 179 S.E. 2d 25 (S.C. 1971), the Court held that every statement or confession made by a person in custody as the result of an illegal arrest, is not involuntary and inadmissible, but "the facts and circumstances surrounding such arrest and the in-custody statement should be considered in determining whether the statement is voluntary and admissible."

## **JACKSON V. DENNO HEARING**

*Jackson v. Denno*, 378 U.S. 368 (1964), established that a defendant is entitled to a pre-trial hearing on the question of voluntariness of a confession. However, due process does not require a separate hearing as to the voluntariness of a statement or confession absent a proper objection to the admission of such statement or confession. The *Jackson v. Denno* Court held that the defendant had a constitutional right at some stage in the proceedings to object to the use of a confession and was entitled to a fair hearing in which both underlying factual issues and voluntariness of confession are actually and reliably determined.

At a pretrial hearing concerning the suppression of a statement, the state has the burden of proving, based on the totality of the circumstances surrounding the statement, that the statement was voluntary. Proof must be by a preponderance of the evidence. *State v. Smith*, 234 S.E.2d 19 (S.C. 1977).

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# IN RE WILLIAMS

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In re Wyman WILLIAMS and Gregory Alvin Jenkins, children under the age of  
seventeen years.

**Gregory Alvin JENKINS, Appellant,**

**v.**

**STATE of South Carolina, Respondent.**

**217 S.E.2d 719**

**1975**

From judgment of the Family Court, Richland County, J. McNary Spigner, J., that minor was a delinquent, minor appealed. The Supreme Court, Lewis, J., held that Family Court Act provision that if a child is taken into custody for violation of any law, the officers shall notify parent as soon as possible, had not been violated, that inculpatory statement obtained from minor was not per se inadmissible due to fact that it was obtained in absence of counsel, parent or other friendly adult, but that where determination that statement was voluntary and thus admissible was not made on a full inquiry into the facts, adjudication of delinquency would be reversed and case would be remanded for new trial.

Reversed and remanded for new trial.

William T. Toal, Columbia, for appellant.

Atty. Gen. Daniel R. McLeod, Asst. Atty. Gen Joseph R. Barker and Staff Atty. Sidney S. Riggs, III, Columbia, for respondent.

LEWIS, Justice:

Appellant, a minor, was arrested and charged on April 15, 1974, with delinquency based upon charges of breaking and entering and theft from a place of business in Columbia, South Carolina. He was subsequently found guilty of the charges, adjudged a delinquent by the Family Court of Richland County, and placed on probation for twelve (12) months. A statement signed by appellant following his arrest was introduced into evidence over his objection. The admissibility of that statement is the sole issue in this appeal.

Appellant, age 15, and his cousin Wyman Williams, age 14, spent the night of April 14, 1974 at the home of their grandmother. They were awakened at about 3:00 a.m. on Monday, April 15, 1974, by appellant's father who carried them with him to the premises of Pearce-Young-Angel Co., a wholesale food distributor. They entered the premises where appellant and his cousin were shortly thereafter arrested by an officer of the Richland County Sheriff's Department, who was investigating a report from the night manager of the business that a man was in the meat freezer. When the officer approached and someone shouted: "Police," appellant and his cousin ran but were unable to escape. The officer testified that they stopped after he fired a warning shot. Appellant testified that he ran only after a shot was fired and not because he thought he was doing anything illegal.

At the time of appellant's arrest, meat of the approximate value of \$1100.00 had been removed from the freezer and placed on the loading platform.

Appellant was carried to the premises by his father, and it is clearly inferable that the father escaped when the officers arrived. Therefore, the conclusion is inescapable that the father

knew of the plight of his son without being notified by the officers. Following his arrest about 3:30 a.m., appellant was taken to the Richland County jail and held until about 9:00 a.m. when he was put under the custody of a juvenile investigator of the Sheriff's Department. Shortly thereafter this investigator read to him the *Miranda* warnings, after which he signed a waiver form. Appellant then made an inculpatory statement which was reduced to writing on a form containing the requirements of *Miranda*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694, and signed. Appellant and his co-defendant testified that the statement was signed because he was told that he could go home when he did so.

The statement signed by appellant was admitted into evidence, over objection. The exceptions challenge the admissibility of the statement upon the grounds (1) that the statement was made while appellant was in illegal custody in violation of Code (Supplement) Section 15-1095.17 and (2), since appellant was a juvenile, he could not make an intelligent waiver of his constitutional right against self incrimination in the absence of a parent or a friendly adult.

Appellant's first contention is that his statement was made during a period of illegal custody because his parents were not notified of his arrest "as soon as possible" as required by Code Section 15-1095.17. This section is a part of the Family Code Act and provides that when a child is taken into custody for violation of any law the "officers shall notify the parent, guardian or custodian of the child as soon as possible."

Appellant and his cousin were taken into custody about 3:30 a.m. on the premises of Pearce-Young-Angel Company where the father of appellant was also present but apparently escaped. Since the father was aware of the plight of his son, we assume that the claim of failure to notify the parents has reference to appellant's mother. While the officers could not specifically recall whether the parents were notified that night, appellant's brief concedes that the mother of appellant appeared at the jail "around 8 or 9 a.m.," about five (5) hours after the arrest, to see about her son. She evidently received information of the arrest at some time prior to her appearance at the jail. It is most significant that neither the father nor mother of appellant, witnesses peculiarly available to him, were called to testify that they had received no notice of the arrest of their son.

In view of the presence of the father on the premises when appellant was arrested and the appearance of the mother at the jail within about five (5) hours of the arrest which occurred in the early morning hours (about 3:30 a.m.), we conclude that the record fails to sustain the claim that the parents of appellant were not notified of his arrest "as soon as possible" within the meaning of Section 15-1095.17.

Assuming however that appellant was held in illegal custody, such fact alone does not render his inculpatory statement inadmissible. We have held that every statement or confession made by a person in illegal custody is not involuntary and inadmissible, "but the facts and circumstances surrounding such arrest and the in-custody statement should be considered in determining whether the statement is voluntary and admissible. Voluntariness remains as the test of admissibility." *State v. Funchess*, 255 S.C. 385, 179 S.E.2d 25; *State v. Bishop*, 256 S.C. 158, 181 S.E.2d 477.

Under the next contention of appellant, we are asked to adopt a rule under which any inculpatory statement obtained from a minor in the absence of counsel, parent or other friendly adult would be *per se* inadmissible regardless of the circumstances surrounding the making of such statement. This we decline to do.

It is conceded in this case that the purported waiver of appellant's constitutional right against self-incrimination and the subsequent statement were made in the absence of parents or other friendly adult.

While the age of the individual is a factor to be taken into consideration, the admissibility of a statement or confession of a minor depends upon its voluntariness, to be determined from the totality of the circumstances under which it is made. Recognizing the "totality of circumstances" test approved in *Haley v. Ohio*, 332 U.S. 596, 68 S.Ct 302, 92 L.Ed. 224, and *Gallegos v. Colorado*, 370 U.S. 49, 82 S.Ct 1209, 8 L.Ed.2d 325, the correct general rule has been thus stated:

" . . . a minor has the capacity to make a voluntary confession, even of capital offenses, without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement." *People v. Lara*, 67 Cal.2d 365, 62 Cal.Rptr. 586, 432 P.2d 202, 215:

The question of whether a minor can knowingly waive his constitutional rights is analogous to the question of whether the confession of a mentally subnormal person is admissible. The inquiry in both cases is the ability or capacity to comprehend the meaning and effect of the waiver or statement. We have consistently held that mental deficiency alone is not sufficient to render a confession involuntary but that it is a factor to be considered along with all of the other attendant facts and circumstances in determining the voluntariness of the confession. *State v. Cain*, 246 S.C. 536, 144 S.E.2d 905; *State v. Callahan*, 263 S.C. 35, 208 S.E.2d 284.

The objections to the admissibility of the statement because of the age of appellant and the fact that the statement was made while he was allegedly in illegal custody were properly overruled. However, we are not satisfied that the determination in the lower court of the issue of voluntariness was made upon a full inquiry into the facts.

Although the record is not very clear on the question, it is inferable that the statement from appellant was not taken until after the mother appeared at the jail about 8:00 or 9:00 a.m., and the release of appellant had been refused. This conclusion may be drawn from the fact that the officer who took the statement did not come to work until 9:00 a. m. The statement therefore would have been signed after that hour, which was after the mother had made inquiry about her son between 8:00 and 9:00 a.m. There was testimony that she was told that she could not obtain the release of appellant at that time but would have to return later. Appellant was subsequently released about 4 p.m. or about thirteen (13) hours after his arrest. In addition, when the officer who took the statement was asked if he had used "any coercion at all to obtain these statements," the court admonished: "No need to go into that. I've already ruled on that."

The issue of the voluntariness of appellant's statement should not be resolved upon the cursory inquiry revealed by this record. Ordinarily, remand would be limited to a further determination of this issue but, in view of the nature of the proceedings in Family Court, we think it proper to reverse the judgment under appeal and remand for a new trial, at which time a full inquiry can be had into the entire matter and the issues determined in the light of the facts so developed.

Reversed and remanded for a new trial.

MOSS, C. J., LITTLEJOHN and NESS, JJ., and BRAILSFORD, Acting Associate Justice, concur.



INTERSTATE  
COMPACT ON  
JUVENILES



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# ICJ OVERVIEW

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The Interstate Compact on Juveniles (ICJ), written in 1955, established procedures for the return of runaways, absconders and escapees found in other states, and also established a system under which juvenile offenders could be supervised in other states. It is the only legal way to transfer supervision of a child on probation or parole to another state. It also provides for the return of children who have charges pending in a state in which they have never lived, under the Rendition Amendment. Under the ICJ law, a state may be required to treat an individual who would be an adult under that state's law as a child in juvenile court.

The Basic Compact consists of 15 Articles, and there are three Amendments. The Basic Compact law has been adopted by every state, as well as the District of Columbia, Guam and the U.S. Virgin Islands; however, some states have not signed all of the three Amendments which are titled Runaway, Rendition and Out-of-State Confinement. The ICJ law is uniform in all 50 states and territories and supersedes any state law which is in direct conflict with the ICJ law. (South Carolina has only agreed to 2 of the 3 amendments. South Carolina and most states did not pass the Out-of-State Confinement Amendment, and it is only valid between the states that did pass it. It calls for the transfer of a juvenile committed in one state to another state's institution/training school to complete the commitment time, when the juvenile's parents move to that other state.)

## **New Interstate Compact for Juveniles**

The new "Interstate Compact for Juveniles" was signed by Governor Sanford on May 24, 2006. The new compact becomes effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states.

## **RUNAWAYS**

A runaway who is not on probation or committed, and who does not have any outstanding warrants may be released to his or her parent or guardian within 24 hours of being detained if willing to voluntarily return. A child not willing to voluntarily return must be returned via the ICJ.

## **ABSCONDERS AND ESCAPEES**

A child who is an absconder or escapee must appear before a family court judge within 48 business hours. The judge will advise the child of his or her rights under the ICJ and give the child the opportunity to sign the

Consent for Voluntary Return (ICJ Form III). If the child voluntarily signs the form, the court will contact the ICJ office to provide applicable information and fax the completed ICJ Form III. The ICJ office will work with the home state to set up travel for the child's return.

If the child refuses to sign the ICJ Form III, the court will return the child to detention and should contact the state ICJ office for further guidance.

## **AGE / STATUS OF JUVENILES**

Under the ICJ, in order to make the compact work, the holding state must honor the demanding state's age/status in cases of runaways, absconders, escapees or juveniles charged with delinquent acts (rendition) (e.g., in South Carolina, probation cases are closed at age 18, but many of the probation cases for other states can go to age 21 or even older). Also, the receiving state must honor the sending state's orders when providing supervision services. There is an age grid on the AJCA web site (<http://ajca.us>) that lists the ages for each state. There is also a grid for sex offender laws for each state showing if they require juveniles to register as a sex offender or not.

## **COMPACT SERVICES**

There are four basic services provided by the ICJ and all requests for these services and documentation about services must be sent through the compact offices:

- (1) Transfer of cooperative supervision of probation/parole juveniles** who request to live with their legal guardian or other family members in another state. The sending state may only transfer supervision of these cases to another state (never jurisdiction). Orders worded with both "supervision" and "jurisdiction" must be amended to remove "jurisdiction." (You can only transfer jurisdiction over county lines, not state lines.) The sending state's probation officer must keep an open file to receive home studies, progress reports, requests for violation, etc. from the receiving state. The sending state retains all violation powers. The receiving state may not close the sending state's order without permission of that state. A receiving state must accept supervision if the legal guardian resides in the receiving state. The receiving state may, but is not required to approve placements with other relatives. If a juvenile placed with relatives disrupts the placement, the sending state must return the juvenile to the legal guardian.

When requesting a transfer, the sending state's probation officer must complete ICJ Forms IV and IA-VI and submit these forms in a package with documents listed on the IV (court orders, petitions, evaluations, etc.) to their ICJ office. All exchanging of reports and communication

between the sending and receiving states is conducted through the ICJ offices.

**\*\*Note:** when a South Carolina judge orders the probation officer to seek placement for a juvenile in a private treatment facility in another state (i.e., Lighthouse in GA, Eckerd Camps in NC), those do not go through the compact; they go through the ICPC. There are ICPC forms that the probation officer must complete at their local DSS office, and the SC probation officer will supervise the case through calls to that program.

- (2) **Return of runaways, absconders, escapees and juveniles charged with delinquent acts** who have left the state (rendition) and are located in another state. The holding state should immediately report all of these cases to their ICJ office who will make a report to the demanding or home state's ICJ office.

**Voluntary Returns:** The holding state takes the juvenile before a family court judge (usually within 48 hours) and offers the juvenile the opportunity to sign a Form III (consent to return voluntarily / it must be signed voluntarily). The judge may use the Form III hearing to question the juvenile about reasons for running away (abuse issues, etc.).

Once a Form III is signed, the judge should order a return to detention pending a transport plan. A copy of the Form III is faxed to the holding state's ICJ office, who in turn faxes it to the demanding or home state. A plan is then implemented to return the juvenile within five working days or as close to that as possible.

A pure runaway with no secure detainer showing in NCIC from the other state may be released to the legal guardian within 24 hours of being taken into custody without a Form III hearing. The screening agent should still interview the juvenile and ensure that the juvenile is signing voluntarily and there are no abuse issues (if there are concerns about potential abuse issues, a hearing should be held). Only a legal guardian can return a juvenile without a Form III.

For all returns, the law prohibits law enforcement from crossing state lines (or meeting at a state line) to take a juvenile into custody without a signed Form III or an order honoring an extradition. Juveniles (even runaways) are to be afforded the same rights to waive extradition as adults are.

**Non-Voluntary Returns:** A juvenile who refuses to sign a Form III should be returned to detention on an order to await extradition by the demanding state. The ICJ extradition forms are the Requisition Form I for runaways and Requisition Form II for absconders, escapees or rendition situations. The demanding state has 90 days by law to send these forms, which must be mailed in two sets and must have

supporting documents (e.g., birth certificates, divorce decrees, petitions, detainers, etc.) through the ICJ offices, though it generally only takes a few days. When the Requisition is received, a second hearing is scheduled and the judge "shall" honor it if all is in order. If honored, the judge issues an order to that effect and orders the juvenile to return to detention to await transportation by the compact process.

(3) **Travel Permits:** Juveniles on active probation, parole or commitment status who request to travel over state lines must sign a travel permit with the probation officer. (A judge's signature is not required.) The signed permit is faxed to ICJ office in the home state and to the ICJ office in the state where the visit will take place. The permit is good for up to 30 days. It is provided to the other state for public safety reasons and courtesy notification.

(4) **Record Checks:** All requests for record checks from other states must go through the ICJ offices.

## **CASES INVOLVING CHILDREN FROM OTHER COUNTRIES**

Cases regarding delinquent or runaway juveniles from other countries are becoming more frequent in South Carolina. Generally, if the guardian is also in South Carolina, then the case proceeds like any other juvenile case. If the guardian is not in South Carolina, law enforcement should notify the appropriate Consulate Office & Homeland Security (especially for undocumented aliens). The SC ICJ office does not have any compact agreement for returns or supervision transfers with other countries. The Consulate of Mexico office for South Carolina is Felix Herrera, Raleigh, NC. He can be reached at (919) 754-0046, ext. 214.

## **SOUTH CAROLINA CONTACT INFORMATION**

Your local DJJ representatives are trained on the interstate compact and should be able to handle any situation involving a child who comes under the ICJ.

**Dawne Gannon** is the Program Coordinator for the South Carolina Interstate Compact on Juveniles (as of September 2006). She is employed by DJJ and can be reached at (803) 896-9351 or [dsgann@scdj.net](mailto:dsgann@scdj.net). Her fax number is (803) 896-9358. If you have any questions or need assistance regarding the Interstate Compact on Juveniles, she is there to assist you.

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# ICJ FORMS

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~ THE FOLLOWING FORMS ARE AVAILABLE ON THE ASSOCIATION OF JUVENILE COMPACT ADMINISTRATORS WEB SITE AT [WWW.AJCA.US](http://WWW.AJCA.US) ~

## Article VII - Request for Cooperative Supervision Forms

### **ICJ Form IV: Parole or Probation Investigation Request**

ICJ Form IV is to be executed by the sending juvenile worker as the summary transmittal sheet for all supervision transfer requests. When properly filled out, the form contains all relevant and pertinent information regarding the juvenile. The referring juvenile worker must fill in his/her name in the bottom left corner, and the ICJ official signs to the right.

### **ICJ Form IA/VI: Application for Compact Services/Memorandum of Understanding and Waiver**

ICJ Forms IA and VI have been consolidated into one form to reduce the amount of signatures required in an ICJ application. The first section of ICJ Form IA/VI is the application to the sending court or agency whereby the juvenile is requesting Compact services. The juvenile acknowledges and accepts any differences in supervision between the sending and receiving states in order to gain the benefits of compact services. The second section is the Memorandum of Understanding and Waiver. This section constitutes the legal document whereby juveniles waive their respective right for a hearing when involuntarily returned to the sending state in order to partake in compact services and compact benefits. This form is signed by the juvenile, custodial parent/legal guardian, and the sending state's judge, in probation cases, or compact official, in parole cases.

### **ICJ Form V: Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State**

ICJ Form V is to be executed when the parolee or probationer has been accepted by the receiving state and has departed for the receiving state. The form clearly notes reporting instructions and departure dates. It also provides a summary checklist of materials attached which were not previously sent to the receiving state.

### **ICJ Travel Permit**

The ICJ travel permit, dependent upon whether the form is utilized by the sending state as a Provisional or Temporary travel form, is executed when a parolee or probationer is traveling to establish residence in a member state prior to formal acceptance or just visiting a member state.

## Article VII - Supervision Forms

### **ICJ Home Evaluation Report**

This is an optional form. This report may be executed by the receiving juvenile worker as the official reply to a transfer of supervision investigation. The form provides space for reporting instructions when the receiving state has accepted a case.

### **ICJ Quarterly Progress Report**

This is an optional form. This form is a summary/transmittal reporting the adjustment of an ICJ client. The form is prepared by the receiving state on a quarterly basis and is routed to the sending state for review.

### **Article IV - Return of Runaways Forms**

### **ICJ Form A: Petition for Requisition to Return a Runaway Juvenile**

The petition is to state the juvenile's name, date of birth, the status of the juvenile's custody, the circumstances of his/her running away, the location of the juvenile, if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his/her own welfare or the welfare of others. The petition is to be verified by affidavit in the presence of a notary public with the notary affixing the seal/stamp required by the home state's law. The petition is to be executed in duplicate and accompanied by two certified copies of the document(s) on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificate, letters of guardianship or custody decrees.

### **ICJ Form I: Requisition for Runaway Juvenile**

ICJ Form I - Requisition for Runaway Juvenile is completed and executed if the judge of the home court agrees with the petition. The requisition must be completed, in duplicate, with the judge's original signature on each document. The requisition with the petition and certified true accompanying documents are sent to the ICJ Office in the home state.

## **Article V - Return of Escapees and Absconders Forms**

### **ICJ Form II: Requisition for Escapee or Absconder/Juvenile Charged with Being Delinquent**

ICJ Article V is used for delinquents who have escaped from institutional custody or absconded from probation supervision. ICJ Form II - Requisition for Escapee or Absconder/Juvenile Charged with Being Delinquent is used. For the purposes of Article V, box number one is checked, Requisition for Escapee or Absconder. The authority of the demanding state from whom the juvenile has escaped or absconded may issue the requisition without a petition. The requisition must be completed in duplicate, with original signatures, in the presence of a notary public with the notary affixing the seal/stamp required in the demanding state. Two original certified true copies of adjudication and/or disposition orders and pick up orders must accompany the requisition.

## **Article VI - Voluntary Return Procedure Forms**

### **Juvenile Rights**

The juvenile rights relate exclusively to the Interstate Compact on Juveniles, Article VI, Voluntary Return Procedure. These rights should not be considered a substitute for any other notice of rights required by law. The form used herein to notify the juvenile of his/her rights is optional. Under the law, the juvenile must be advised of his/her rights by the juvenile judge. This form must be signed and dated by the judge.

### **ICJ Form III: Consent for Voluntary Return by Runaway, Escapee or Absconder**

After being advised of his/her rights, the juvenile is requested to sign ICJ Form III. The form is also signed by the judge and legal counsel/guardian ad litem, if appointed.

## **Rendition Amendment Forms**

This amendment may be utilized only by those states who are signatory to the amendment. The Rendition Amendment provides for the return of youth (1) who are not yet adjudicated, and/or (2) to a third state.

### **ICJ Form II: Requisition for Escapee or Absconder/Juvenile Charged with Being Delinquent**

ICJ Form II - Requisition for Escapee or Absconder/Juvenile Charged with Being Delinquent is used. For the purposes of the Rendition Amendment, box number two is checked, Requisition for Juvenile Charged with Being Delinquent. The requisition must be completed in duplicate, with original signatures, in the presence of a notary public with the notary affixing the seal/stamp required in the demanding state. Two original certified true copies of adjudication and/or petitions and pick up orders must accompany the requisition.

### **ICJ Form III: Consent for Voluntary Return by Runaway, Escapee or Absconder**

In the event the juvenile would return voluntarily, ICJ Form III may be used for the Rendition Amendment. (See instructions listed above under Article VI.)

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# INTERSTATE COMPACT ON JUVENILES STATUTE

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## **SECTION 20-7-8705.** Interstate Compact on Juveniles.

The State of South Carolina hereby contracts to enter into the "Interstate Compact on Juveniles" according to the terms set forth in this subarticle and solemnly agrees:

Subsection 1. That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return from one state to another of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Subsection 2. That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Subsection 3. That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Subsection 4. (a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the

consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency

entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this subsection shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile", as used in this subsection, means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

Subsection 5. (a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded, or from whose institutional custody he has escaped, shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and

detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this subsection. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this subsection shall be responsible for the payment of the transportation costs of such return.

Subsection 6. That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of subsection 4(a) or of subsection 5(a), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or

delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which such juvenile or delinquent juvenile is ordered to return.

Subsection 7. (a) That the duly constituted judicial and administrative authorities of a state party to this compact [compact] (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact [compact] (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall

be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this subsection for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Subsection 8. (a) That the provisions of item (b) of subsection 4 and item (b) of subsection 5 and item (d) of subsection 7 of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and offices of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefore.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to item (b) of subsection 4 and item (b) of subsection 5 and item (d) of subsection 7 of this compact.

Subsection 9. That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

Subsection 10. That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

- (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
- (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
- (5) provide for reasonable inspection of such institutions by the sending state;
- (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of such delinquent juvenile shall be secured prior to his being sent to another state; and
- (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Subsection 11. That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment and services from the federal or any local government, or any agency thereof, and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Subsection 12. That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Subsection 13. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed, it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

Subsection 14. That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under subsection 7 hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under subsection 10 hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present subsection.

Subsection 15. This subsection provides remedies, and is binding only among those party states which specifically execute this subarticle.

All provisions and procedures of subsections 5 and 6 of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, must be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in this case must be

filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the State before or after the filing of the petition. The requisition described in subsection 5 of the Interstate Compact on Juveniles must be forwarded by the judge of the court in which the petition has been filed.

Subsection 16. This subsection provides additional remedies, and is binding only among those party states which specifically execute this subarticle.

For purposes of this subsection, "child" means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which the child is not a resident, and the state is willing to permit the child's return to the child's home state, the home state, upon being so advised by the state in which the proceeding is pending, must immediately institute proceedings to determine the residence and jurisdictional facts as to the child in the home state. Upon finding that the child is in fact a resident of the home state and subject to the jurisdiction of the court of the home state, the home state must within five days authorize the return of the child to the home state, and to the parent or custodial agency legally authorized to accept custody in the home state. The home state must pay the expenses for the return of the child.

# MEDIA ISSUES



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# MEDIA OVERVIEW

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## RIGHT OF ACCESS TO COURT PROCEEDINGS BY THE PRESS

Article I, Section 9 of the Constitution of South Carolina provides that all courts shall be public. This means that the public, which includes the press, has a right of access to juvenile court proceedings. *Ex parte Columbia Newspapers*, 333 S.E. 2d 337 (S.C. 1985).

Article I, § 9 does not render S.C. Code Ann. § 20-7-755, which provides that the general public shall be excluded from cases involving children, unconstitutional. *Id.* However, if a family court judge's decision to close any court proceeding is challenged by the public or the press, the judge must make specific findings which explain the balancing of interests and justify the need for closure of the proceeding. *Id.*

A defendant who opposes the public's right of access to court proceedings bears the burden of proof to justify closure. *Ex Parte the Island Packet*, 417 S.E.2d 575 (S.C. 1992). This is in line with the general rule that "[c]losed proceedings...must be rare and only for cause shown that outweighs the value of openness." *Id.*

## RELEASE OF INFORMATION TO NEWSPAPER, TV OR RADIO STATION

S.C. Code Ann. § 20-7-8520(A) (Supp. 2005) prohibits providing a newspaper or radio or television station the name, identity, or picture of a child under the court's jurisdiction unless:

- authorized by court order;
- the solicitor has petitioned the court to waive the child to circuit court;
- the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or
- the child has been adjudicated delinquent in court for one of the following offenses:
  - a violent crime, as defined in S.C. Code Ann. § 16-1-60;
  - grand larceny of a motor vehicle;
  - a crime in which a weapon, as defined in S.C. Code Ann. § 59-63-370, was used; or
  - distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.



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# EX PARTE COLUMBIA NEWSPAPERS, INC.

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**Ex parte Columbia Newspapers, Inc.**  
286 S.C. 116, 333 S.E.2d 337, 1985.

The Juvenile Court of Richland County, Carol Conner, J., issued an order closing motion hearing to determine whether two juveniles accused of murder would be tried in family court or the court of general sessions, and newspaper appealed. The Supreme Court held that: (1) although sole issue on appeal had been rendered moot, issue was considered because dispute was one capable of repetition yet evading review, and (2) once newspaper had challenged closure of proceedings, family court judge was required to make specific findings justifying closure, and judge's conclusory statement that closure was necessary to protect juveniles' chances of rehabilitation was not a sufficient finding.

Order vacated.

Jay Bender, of Belser, Baker, Barwick, Ravenel, Toal & Bender, Columbia, for appellant.

Douglas K. Kotti, of the Law Offices of Harvey L. Golden, P.A., and John R. Lester, Columbia, for respondents. Sol. James C. Anders and Asst. Sol. Stanley D. Ragsdale, Columbia, for the State.

**PER CURIAM:**

Fifteen-year-old twin brothers were charged with the murder of their mother. Under § 20-7-430(5) of the Code of Laws of South Carolina (1976), it became the duty of the Family Court Judge to determine whether the cases would be tried in Family Court or transferred to the Court of General Sessions where the accused persons would be tried as if the offense had been committed by an adult. At the time of the motion hearing, the Family Court Judge excluded the press relying upon § 20-7-755, which states in pertinent part:

All cases of children shall be dealt with as separate hearings by the [Family] court and without a jury.... The general public shall be excluded and only such persons admitted as the judge shall find to have a direct interest in the case or in the work of the court.

Columbia Newspapers, Inc., through this appeal, challenges the constitutionality of this section. That is the only issue before the Court. While the trial of the case on its merits has been finalized in the Court of General Sessions, we will not treat the issue as moot because the dispute is one which is capable of repetition yet evading review. *Gannett v. DePasquale*, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608; *Steinle v. Lollis*, 279 S.C. 375, 307 S.E.2d 230 (1983). We review

the case in order to provide guidelines for the bench, bar and the press at future hearings.

The newspaper contends that the statute is in direct contradiction with Article I, Section 9 of the Constitution of South Carolina which states: All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. The right of the public and of news media are the same. The newspaper argues that this provision of the Constitution guarantees the general public access to all courts of the State such that anyone may attend any proceeding. We disagree.

In *Steinle v. Lollis*, supra, we stated "... such right of access to trials as does exist is not absolute but subject to a proper balancing of competing interests."

We interpret Article I, Section 9 of the Constitution of South Carolina as we did in *Steinle* to mean that the public, and likewise the press, has a right of access to court proceedings subject to a balancing of interests with the parties involved. The Legislature may impose limitations on the right of access to court proceedings as was done by § 20-7-755. However, when and if challenged by the public or the press, the decision of a judge to close any proceeding must be supported by findings, which explain the balancing of interests and the need for closure of the proceeding. It would be unduly burdensome to require a Family Court judge to make specific findings in every case where children are involved. Therefore, we require that findings be made only when the closure of a particular case is challenged.

We hold the Family Court judge erred in failing to make specific findings that the closure of the hearing was necessary to protect the rights of the juveniles involved. The judge's conclusory statement that opening the proceedings to the public would have an adverse effect upon the chances of rehabilitation of the juveniles is not a sufficient finding. The order under appeal is accordingly, VACATED.

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# EX PARTE THE ISLAND PACKET

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## **Ex parte THE ISLAND PACKET and The Beaufort Gazette, Appellants.**

In re CHRISTOPHER F., a minor Under the Age of Seventeen, Defendant.

308 S.C. 198, 417 S.E.2d 575, 1992

Newspapers requested transcripts of closed detention hearing and access to closed transfer hearing regarding juvenile charged with murdering his father and stepmother. The Family Court, Beaufort County, John T. Black, J., denied the request, and newspapers appealed. The Supreme Court, Moore, J., held that: (1) failure to challenge closure of hearing does not bar subsequent consideration of request for access to transcript of hearing; (2) accused who opposes public's right of access to hearing bears burden of proof to justify closure; and (3) closure of hearing was not justified.

Reversed.

Jay Bender, of Baker, Barwick, Ravenel & Bender, Columbia, for appellants.  
Atty. Gen. T. Travis Medlock, Asst. Attys. Gen., Harold M. Coombs, Jr. and Amie L. Clifford, Columbia, and Sol. Randolph Murdaugh, III, Hampton, for respondent.  
Kathy D. Lindsay, of Garber, Baldwin, Fairbanks & Lindsay, Beaufort, guardian ad litem, for defendant.

MOORE, Justice:

This appeal is from a family court order denying appellants access to transcripts of two hearings held in a juvenile matter and closing a pending hearing in the same case. We reverse.

### FACTS

Defendant Christopher F. was fifteen years old when he was charged in juvenile petitions with murdering his father and stepmother. A detention hearing, closed to the public, was held in family court on May 2, 1990. A transfer hearing, also closed to the public, was begun May 18 in family court and continued to June. On May 23, appellants (Newspapers) filed a request for access to the transfer hearing scheduled for June and for transcripts of the May 2 and May 18 hearings. A hearing was held June 8 to consider Newspapers' request for access which was denied. The transfer hearing was held later that day and was closed to the public.

### ISSUES

1. Is access to a hearing transcript barred by failure to challenge closure of the hearing before it is held?
2. Who bears the burden of proof in determining whether closure should be allowed?
3. Was closure in this case properly allowed?

### DISCUSSION

The family court ruled Newspapers' request for access to transcripts of the May 2 detention hearing and the May 18 transfer hearing was not timely because Newspapers did not challenge closure of those hearings before they were held. Newspapers contend access should not be barred on this procedural ground. We agree.

The request for a transcript implicates the same first amendment rights that protect the public's access to the actual proceeding. See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (*Press-Enterprise (II)*); see also *State v. Sinclair*, 275 S.C. 608, 274 S.E.2d 411 (1981). We hold the fact that closure of the

hearing was unchallenged at the time is not a bar to consideration of a request for access to a transcript of the hearing.

Newspapers also contest the family court's ruling they had the burden of proof in challenging closure of the transfer hearing and the finding that closure was justified.

In *Press-Enterprise (II)*, *supra*, the United States Supreme Court set out the analysis to be applied in determining whether the First Amendment requires public access to a criminal proceeding when the accused opposes it. First, the threshold inquiry is whether there exists a right of access to the particular type of proceeding in question. 106 S.Ct. at 2740. In making this determination, the court may consider (1) whether the proceeding has historically been an open one and (2) whether public scrutiny plays a significant role in the functioning of the proceeding. *Id.* For instance, in non-jury matters the public's presence is considered a safeguard against the "overzealous prosecutor" and the "eccentric judge." 106 S.Ct. at 2742.

Once there has been a threshold determination that a qualified first amendment right of access applies to the particular proceeding, the court must then consider whether the rights of the accused override it. 106 S.Ct. at 2741. To justify closure, the court must make specific findings that closure is "essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* Where the accused asserts his right to a fair trial to justify closure, the court must make specific findings (1) that there is a substantial probability of prejudice from publicity that closure would prevent and (2) there are no reasonable alternatives to closure that would adequately protect the defendant's fair trial rights. 106 S.Ct. at 2743. "[E]ven when a right of access attaches, it is not absolute." 106 S.Ct. at 2740.

We hold under *Press-Enterprise (II)* the accused who opposes the public's right of access bears the burden of proof to justify closure. This allocation of the burden of proof is consistent with the general rule that "[c]losed proceedings... must be rare and only for cause shown that outweighs the value of openness." *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 104 S.Ct. 819, 823, 78 L.Ed.2d 629 (1984) (*Press-Enterprise (I)*).

The family court properly found a qualified right of access to the transfer hearing as previously held by this Court in *Ex parte Columbia Newspapers, Inc.*, 286 S.C. 116, 333 S.E.2d 337 (1985). In denying Newspapers' request for access, however, the family court found: (1) publicity would affect the defendant's right to a fair trial; and (2) confidential information regarding the defendant's psychiatric status would be revealed. It also noted the defendant's "anxiety" about press coverage.

Under the *Press-Enterprise (II)* analysis, we find none of these findings sufficient to justify closure here. First, the record does not support a finding of a substantial probability of prejudice from publicity since extensive details had already been disclosed in the press regarding the defendant and the crimes with which he was charged. Second, a reasonable alternative to closure would be in camera testimony regarding matters of a confidential nature. Finally, lessening a defendant's "anxiety," even a juvenile's, does not promote a higher value than protection of the public's constitutional right of access.

Accordingly, we hold the family court erred in refusing Newspapers' request for access to the transcripts of the May 2 and May 18 hearings and in closing the June 8 hearing. REVERSED.

HARWELL, C.J., CHANDLER and FINNEY, JJ., and JOHN P. GARDNER, Acting Associate Justice, concur.

LANDMARK  
JUVENILE  
CASES



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# LANDMARK JUVENILE CASES

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## UNITED STATES SUPREME COURT CASES

**Kent v. United States**, 383 U.S. 541 (1966).

*Kent v. US* established that, in order to protect a child's constitutional rights, the child is entitled to: a full hearing on the issues of waiver to adult court; assistance of counsel at the hearing; full access to social records used by the court to determine whether the child should be waived; and a statement of the reasons for any decision to waive jurisdiction to adult court.

**In re Gault**, 387 U.S. 1 (1967).

*In re Gault* established that due process rights guaranteed by the Fifth, Sixth and Fourteenth Amendments apply to juvenile court proceedings and that a juvenile has the right to adequate and timely notice of charges, the right to counsel, the right against self incrimination and the right to confront and cross-examine witnesses.

**In re Winship**, 397 U.S. 358 (1970).

*In re Winship* established proof beyond a reasonable doubt as the standard for juvenile adjudication proceedings.

**McKeiver v. Pennsylvania**, 403 U.S. 528 (1971).

*McKeiver v. Pennsylvania* established that a child being adjudicated delinquent in juvenile court is not guaranteed the right to a jury trial.

**Breed v. Jones**, 421 U.S. 519 (1975).

*Breed v. Jones* established that the Double Jeopardy Clause of the Fifth Amendment prevents a juvenile who has been adjudicated delinquent in juvenile court from being subsequently tried in an adult court for the same offense.

**Schall v. Martin**, 467 U.S. 253 (1984).

*Schall v. Martin* established that preventive detention fulfills a legitimate state interest of protecting society and juveniles by detaining those who might be dangerous to society or to themselves.

## SOUTH CAROLINA SUPREME COURT CASES

**In the Matter of Skinner**, 249 S.E.2d 746 (S.C. 1978).

*In the Matter of Skinner* established that the common law presumption that a child between the ages of seven and fourteen is rebuttably presumed incapable of committing a crime is inapplicable to family court proceedings. The practical effect is that there is no age limit for bringing a delinquency proceeding in family court.

**In re Williams**, 217 S.E.2d 719 (S.C. 1975).

*In re Williams* established that the absence of a parent, counsel or other friendly adult does not make a statement given by a child to the police inadmissible. The admissibility of a statement given by a minor is based upon the "totality of the circumstances" to include such factors as age, intelligence, education, experience and ability to comprehend the meaning and effect of the statement.

**In Interest of Christopher W.**, 329 S.E.2d 769 (S.C. 1985).

*In Interest of Christopher W.* established that the voluntariness of a minor's inculpatory statement must be proved by preponderance of evidence.

**State v. McCoy**, 328 S.E.2d 620 (S.C. 1985).

*State v. McCoy* established that *Brady v. Maryland*, 373 U.S. 83 (1963) does not apply in a waiver hearing.

**State v. Sparkman**, 339 S.E. 2d 865 (S.C. 1986).

The *Sparkman* Court held that a person's juvenile record may be used in a subsequent court proceeding to impeach the person (as a defendant or witness) and at sentencing.

**Ex Parte Columbia Newspapers, Inc.**, 333 S.E.2d 337 (S.C. 1985).

*Ex Parte Columbia Newspapers* established that family court proceedings are open to the press unless the judge makes a specific finding justifying closure.

AGENCIES  
&  
ORGANIZATIONS  
SERVING  
CHILDREN



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# AGENCIES & ORGANIZATIONS SERVING CHILDREN IN SOUTH CAROLINA

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## STATE AGENCIES

### **Department of Alcohol and Other Drug Abuse Services (DAODAS)**

<http://www.daodas.state.sc.us>

The South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS) is the cabinet-level agency charged with ensuring the provision of quality services to prevent or reduce the negative consequences of substance use and addictions. DAODAS partners with public, private and social sector organizations to provide quality prevention, intervention and treatment services for the citizens of South Carolina.

### **S.C. Department of Disabilities and Special Needs (DDSN)**

<http://www.state.sc.us/ddsn>

DDSN, as defined in the South Carolina Code of Law, serves persons with mental retardation, autism, traumatic brain injury and spinal cord injury and conditions related to each of these four disabilities.

### **S.C. Department of Education (DOE)**

<http://www.sde.state.sc.us/>

### **S.C. Department of Juvenile Justice (DJJ)**

<http://www.state.sc.us/djj/>

DJJ is a state cabinet agency, and by law, it is also a treatment and rehabilitative agency for the state's juveniles. DJJ is responsible for providing custodial care and rehabilitation for the state's children who are incarcerated, on probation or parole, or in community placement for a criminal or status offense. DJJ's goal is to protect the public and reclaim juveniles through prevention, community programs, education, and rehabilitative services in the least restrictive environment possible.

### **S.C. Department of Mental Health (DMH)**

[www.state.sc.us/dmh/](http://www.state.sc.us/dmh/)

DMH gives priority to adults and children with serious mental illnesses and serious emotional disturbances. Information regarding available services can be accessed on their web site.

### **S.C. Department of Social Services (DSS)**

<http://www.state.sc.us/dss>

The mission of the South Carolina Department of Social Services is to ensure the safety and health of children and adults who cannot protect themselves, and to assist those in need of food assistance and temporary financial assistance while transitioning into employment.

Managed Treatment Services (MTS), provides intensive case management for children in DSS custody who have severe emotional disturbances.

## **CHILD ADVOCACY ORGANIZATIONS**

### **Protection and Advocacy for People with Disabilities, Inc. (P&A)**

[www.protectionandadvocacy-sc.org](http://www.protectionandadvocacy-sc.org)

Protection and Advocacy for People with Disabilities, Inc. (P&A) is authorized by state and federal law to protect the rights of people with disabilities in South Carolina. P&A promotes this mission by enabling individuals to advocate for themselves, by speaking on their behalf when they have been discriminated against or denied a service to which they are entitled, and by promoting policies and services which respect their choices.

### **Continuum of Care (C of C)**

<http://www.coc.state.sc.us/>

The Continuum of Care is an office in the Children's Services Division within the Office of the Governor that serves children with severe emotional disturbance. The Continuum has one administrative office (State Office) in Columbia and four regional offices located in Columbia, North Charleston, Greenville and Florence that provide services throughout the state. The Continuum is funded primarily with state revenues and Medicaid funds.

The mission of the Continuum of Care is to ensure continuing development and delivery of appropriate services to those children with severe emotional disturbance and their families in SC whose needs are not being adequately met by existing services and programs. It will meet this mission by supplementing existing services available to this population and promoting support that encourage family strength and self-sufficiency.

### **Voices for South Carolina's Children**

<http://www.scchildren.org>

Voices for South Carolina's Children, founded in 1991 as "Alliance for South Carolina's Children," is an independent, nonprofit child advocacy organization that works to improve the lives of children in the Palmetto State by providing information and resources to families, child advocates, lawmakers and concerned citizens on current children's issues. Voices also leads the Partners – a coalition of statewide nonprofit organizations that works to improve the status of children through public policy change.

## OVERVIEW AND ELIGIBILITY REQUIREMENTS FOR DDSN, CCONTINUUM OF CARE AND PROTECTION & ADVOCACY

### S.C. Department of Disabilities and Special Needs (DDSN)

Definition and Eligibility Criteria for Mental Retardation and Related Disabilities:

**Mental Retardation:** All three of the conditions listed below must be met. The presence of one condition alone before 18 years of age is not sufficient to make a diagnosis of mental retardation.

1. Significantly below-average intellectual functioning (a valid IQ of approximately 70 or below as determined by an individually-administered IQ test for children and adults and a clinical judgment for infants).
2. Impaired below-average adaptive functioning (how effectively an individual copes with common life demands for his or her age and cultural group) in at least two of the following areas: communication, self care, home living, social/interpersonal skills, use of community resources, self-direction (e.g., ability to make decisions, seek assistance), functional academic skills, work, leisure, health and safety. Adaptive functioning refers to how well an individual copes with common life demands.
3. Onset of these conditions occurs before 18 years of age.

It is the consistency with which these deficits are present across all criteria that renders the diagnosis of mental retardation either appropriate or inappropriate.

**Related Disabilities:** A related disability is a severe, chronic condition found to be closely related to mental retardation or to require treatment similar to that required for persons with mental retardation. All four of the following conditions must be met:

1. The disability is attributable to cerebral palsy, epilepsy or any condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires similar treatment or services.
2. The disability is likely to continue indefinitely.
3. The disability results in substantial functional limitations in three or more of the following areas of major life activity: self care, understanding and use of language, learning, mobility, self-direction and capacity for independent living.
4. The onset of the disability is before 22 years of age.

\*\*\*Diagnosed learning disabilities such as Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD), in the absence of other qualifying criteria, do not constitute eligibility as "related disabilities" for DDSN eligibility. Your service coordinator can provide information on agencies that may offer services for these disabilities.

## **Continuum of Care (C of C)**

***by Kathy Speed***

The Continuum of Care is an office in the Children's Service Division within the Office of the Governor that serves children with serious emotional disturbance. The Continuum of Care provides intensive case management for children who have severe emotional disturbance. There is one administrative office in Columbia and four regional offices located in Columbia, North Charleston, Greenville and Florence that provide services throughout the state.

The mission of the Continuum of Care is to ensure that a range of services is available to those seriously emotionally disturbed children of South Carolina whose needs are not being adequately met by existing services and programs.

Once a child is selected as a client, the Continuum of Care will begin gathering information in preparation for the Total Service Plan (TSP), the comprehensive plan of services for the child. The TSP for each child is developed by an interagency team of professionals who work with the parents and/or legal guardians. The Department of Juvenile Justice becomes involved as an agency when the client is in DJJ intake, on probation, in a DJJ institution, or on parole.

Once a client becomes involved with DJJ and the family court, the primary role of the Continuum of Care Service Coordinator is that of client and family advocate. The first response of the Service Coordinator should be to share information with DJJ and the court and request to be notified of all court related activity that involves the client. When possible, the Service Coordinator should participate with the client and family in the DJJ Intake to provide information and support. If a client has been ordered by the court to have an evaluation in the community by DJJ, Continuum of Care staff should give input to the psychologist conducting the evaluation and also make recommendations to address the treatment services that meet the individual needs of the client. The Continuum should make DJJ aware of any services that are available to the client and family through the Continuum. This information should be included in the report to the court. If the client is ordered to have a secure evaluation at DJJ, the Continuum should also make contact with the staff at the Evaluation Center to give information and make recommendations for the disposition hearing. If possible, the Continuum should meet with the DJJ staff prior to the disposition hearing and develop a plan to present to the court that meets the treatment needs of the client and family.

The Continuum can serve as a valuable resource to the family court providing information regarding treatment and services that the court may not have considered. Often the Continuum can develop individualized services to meet the specific needs of a client and family. The Continuum can access in-home treatment programs, residential programs, and community wrap-around services to provide the needed treatment to a client and family. The Continuum will advocate for the client to receive treatment in the least restrictive setting

possible. It is the belief of the Continuum that clients should not be confined to a state institution unless that confinement is in the best interest of the client and offers the most appropriate setting for the delivery of needed services.

If a client is committed to a DJJ institution, the Continuum will participate as a member of the DJJ treatment team. If the client makes a positive adjustment to the DJJ institution and DJJ determines it is appropriate, the Continuum will work to secure an appropriate treatment setting so the client can leave the DJJ institution on a treatment transfer and be placed in a residential treatment setting. The decision to allow a treatment transfer is made completely by DJJ authority. Once a client is eligible for parole, the Continuum should be in contact with DJJ and the Juvenile Parole Board to make them aware of the services that the Continuum will offer to the client and family upon release.

For clients who are supervised by DJJ on probation or parole, the Continuum will invite DJJ to participate in all TSP meetings for that client as well as encourage DJJ to be an active participant in the Service Plan. The goal will be to provide individualized services to the client and family that will allow them to successfully complete the requirements of the probation and parole.

Appropriate services can help prevent children from committing delinquent offenses and from re-offending. These services are most effective when integrated at the local level with other service providers. Children whose offenses are minor or non-violent should, whenever possible, be diverted from incarceration and directed towards treatment services in their local communities. The Continuum can serve a vital role in educating the court in the array of services available to meet the needs of children and families with severe emotional disturbance.

## **Protection and Advocacy for People with Disabilities, Inc.**

### **by Rochelle Caton, Esq.**

Protection & Advocacy for People with Disabilities, Inc. is a private, non-profit organization that advocates on behalf of people with disabilities. Under our current organizational structure, the Conditions in Facilities team may be of assistance to children who are involved with the juvenile justice system.

The *Conditions in Facilities Team* monitors the type and quality of treatment and services provided to children who are committed to DJJ or who are at risk of being committed. Many children who come into the juvenile justice system have developmental disabilities or mental illness. State law recognizes that these children are not appropriately served in the DJJ system. SC Code Ann. § 20-7-7815 (Supp. 2005). Nevertheless, many children with disabilities are committed to DJJ. The *Conditions Team* strives to be involved in the child's case as early in the process as possible to ensure that the child's needs are met by the system. The *Conditions Team* makes sure that competency issues are addressed if

necessary. The *Conditions Team* also works with DJJ, DDSN and DMH to explore all treatment and service options available to the child to prevent commitment. If a child has already been committed, the *Conditions Team* works with the agencies to find an appropriate placement for the child based upon the juvenile's special needs.

P&A does not provide direct legal representation to juveniles in delinquency proceedings. Our advocates and attorneys are available for consultation and support to assist children in obtaining the services and supports necessary to rehabilitate and maintain them safely and successfully in the community. If you know or suspect a juvenile who has pending charges may be disabled, you may call P&A at 1-866-275-7273 for assistance.

## **IN-PATIENT ADOLESCENT TREATMENT FACILITIES**

### **William J. McCord Adolescent Treatment Facility**

The William J. McCord Adolescent Treatment Facility, located in Orangeburg, is a CARF (Commission on Accreditation of Rehabilitation Facilities) accredited and DHEC licensed inpatient facility that treats adolescents, 13-17 years old, who have an alcohol and/or other drug problem. With a capacity of 15 beds (8 designated for males, 7 for females), the McCord Facility is staffed with licensed full-time medical and clinical personnel, experienced in the treatment of adolescent addiction and other psychological/psychiatric disorders. Length of stay is always dependent on the individual adolescent's issues and progress, however, the average length of stay is 5-7 weeks. During this time the adolescent will be assessed and treated clinically, medically and psychiatrically to learn new patterns of thinking and responding to life's stressors.

Many of the adolescents treated at McCord come from homes that are not conducive to recovery. Therefore, a major part of treatment is focused on educating the parents/guardians about adolescent addiction, effective parenting, and establishing open lines of communication.

For more information, contact Michael Dennis, Director, at (803) 534-2328, ext. 113 or visit the web site at [www.mccordcenter.com](http://www.mccordcenter.com).

### **William S. Hall Psychiatric Institute's Adolescent Recovery Program**

The Adolescent Recovery Program is a twenty bed chemical dependency / dual diagnosis treatment unit for adolescents. The Program is part of the Columbia Behavioral Health System, in the Child and Adolescent division, located at William S. Hall Psychiatric Institute.

The program accepts admission of both male and female youth, from 13 to 17, experiencing signs and symptoms of chemical dependency consistent with

established admission criteria for this level of care. This program is able to treat persons with co-occurring substance use and psychiatric disorders, provided that the psychiatric condition is sufficiently stabilized to allow participation in an intensive cognitively based treatment program.

There are 3 ways to make referrals: voluntary admissions, judicial admissions and emergency admissions. All required paperwork must be completed prior to being placed on the list. If a juvenile has been committed to DJJ (pending placement in an inpatient treatment facility), the social worker at DJJ can fill out the necessary paperwork and provide the required documents to Hall.

If you have any questions or would like to learn more about this program or would like to make a referral, you can contact Chuck Vilord, LISW, CCJS, MAC, the Program Director at (803) 898-1779, or Admissions at (803) 898-1247.



JUVENILE  
JUSTICE  
WEB SITES



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# JUVENILE JUSTICE WEB SITES

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## ***SOUTH CAROLINA***

### **Children's Law Office, University of South Carolina School of Law**

<http://childlaw.sc.edu>

Contains downloadable pdf files of Children's Law Office (CLO) publications, summaries of case decisions relevant to children in South Carolina, updates on child related issues, legal forms, updated information regarding trainings and projects of the CLO, and links to numerous child-serving agencies and organizations.

### **South Carolina Department of Juvenile Justice**

<http://www.state.sc.us/djj>

Provides an overview of all services offered by the agency.

### **South Carolina Legislature Online**

<http://www.scstatehouse.net>

Provides access to South Carolina laws and legislative updates.

## ***NATIONAL***

### **American Bar Association's Juvenile Justice Center**

<http://www.abanet.org/crimjust/juvjus>

Contains state and federal legislative updates, juvenile justice standards and articles. Includes links to over 500 juvenile justice web sites and research information for judges, defenders, prosecutors, and parents.

### **Association of Juvenile Compact Administrators**

<http://ajca.us>

ACJA is the governing body of the Interstate Compact on Juveniles, which provides statutory authority for regulating the transfer of juvenile probation and parole supervision across state boundaries, provides for the return of non-adjudicated runaway youth to their home states, and provides for the return of non-adjudicated, allegedly delinquent youth.

### **Building Blocks for Youth**

<http://www.buildingblocksforyouth.org>

The Building Blocks for Youth initiative is an alliance of children and youth advocates, researchers, law enforcement professionals and community organizers seeking to reduce overrepresentation and disparate treatment of youth of color in the justice system and promote fair, rational and effective juvenile justice policies. Site includes juvenile justice fact sheets and resources.

**Center for Children's Law and Policy (CCLP)**

<http://www.cclp.org>

CCLP is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems.

**Children's Defense Fund**

<http://www.childrensdefense.org>

The mission of the Children's Defense Fund is to "Leave No Child Behind" and to ensure every child a successful passage to adulthood with the help of caring families and communities.

**Coalition for Juvenile Justice (CJJ)**

<http://www.juvjustice.org>

CJJ is a national association of governor-appointed state advisory groups tasked with informing policy makers, advocates and the public about the interplay of prevention, rehabilitation and accountability in reducing juvenile crime and delinquency.

**Juvenile Info Network**

<http://www.juvenilenet.org>

Includes news, links, and research on juvenile justice issues.

**Juvenile Law Center**

<http://www.jlc.org>

Provides access to numerous publications and training opportunities.

**Legal Information Institute**

<http://www.law.cornell.edu>

Provides access to family law statutes from all 50 states.

**National Center for Juvenile Justice**

<http://www.ncjj.org>

Provides detailed profiles on each state's juvenile justice system.

**National Council of Juvenile and Family Court Judges**

<http://www.ncjfcj.org>

Includes reviews of recent events in juvenile justice and many links.

**National Criminal Justice Reference Service (NCJRS)**

<http://www.ncjrs.org>

NCJRS is a federally funded resource offering justice and substance abuse information to support research, policy, and program development worldwide.

**Office of Juvenile Justice and Delinquency Prevention, US Department of Justice**

<http://ojjdp.ncjrs.org>

Provides facts and figures on juvenile justice, delinquency prevention, violence and victimization.

NATIONAL  
JUVENILE  
DEFENDER  
CENTER



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# NATIONAL JUVENILE DEFENDER CENTER

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## OVERVIEW

The National Juvenile Defender Center (NJDC) was created in 1999 to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. In 2005, the National Juvenile Defender Center separated from the American Bar Association to become an independent organization. NJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime.

NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

## NJDC MISSION AND VISION STATEMENT

The mission of NJDC is to ensure excellence in juvenile defense and promote justice for all children.

NJDC believes that:

- All children in the justice system must have ready and timely access to capable, well-resourced, well-trained legal counsel;
- All children are entitled to legal representation that is: individualized; developmentally and age appropriate; and free of racial, ethnic, gender, social, and economic bias;
- All children have strengths and the potential to become productive members of society and each has the right to constitutional and statutory protections;
- The juvenile defense bar must build its capacity, develop leadership and demonstrate a commitment to professionalism;
- The juvenile defense bar must promote accountability and bring about reform in the juvenile justice system;
- The juvenile defense bar's role in the justice system will be advanced through collaboration and partnership; and
- The juvenile defense system will be enhanced by greater community involvement.

The NJDC works to create an environment in which:

- Children are treated with respect, dignity and fairness;
- Juvenile courts are knowledgeable, sensitive and responsive to the needs of children;

- Excellence is routine in juvenile defense;
- Juvenile defenders have the capacity to fully protect children's rights, including adequate resources and compensation, manageable caseloads, and sufficient access to investigation, expert and other ancillary and administrative support;
- Juvenile defenders have resources and pay parity with juvenile prosecutors; and
- The representation of children is specialized and adequate opportunities exist for juvenile defenders to fully exercise and enhance their legal, political, organizational, research and advocacy skills.

The NJDC produces reports, training guides, and practice-focused fact sheets to provide defenders with timely, useful information. Most of these materials are available on the NJDC web site as PDF files; to receive hard copies, request additional information, be added to the mailing list, or arrange a related training session contact the NJDC.

The NJDC has created and continues to expand a network of juvenile defenders. They administer a number of email listservs to distribute information and encourage dialogue among attorneys who represent youth. You can join the following listservs by signing up for them on the NJDC web site.

- JuvGeneral—This list is for anyone with an interest in juvenile justice issues, including defenders, prosecutors, judges, probation officers, academics, parents, students, and others. Members will receive periodic announcements of major news in the field of juvenile justice.
- JuvDefend—This list is designed solely for juvenile defenders. Members will receive emails relating news of interest to those in the defense field, such as updates on cases or state reforms.
- JuvDiscuss—This list provides a forum for defenders to discuss issues that arise in their daily practice or that have broader policy implications. Members can post questions or announcements to seek feedback from other juvenile defenders.
- Regional Defender Center Listservs—Each region of the country has its own listserv to cater to a smaller, geographically connected audience. South Carolina is part of the Southern Juvenile Defender Center, along with Alabama, Florida, Georgia, Louisiana, Mississippi, and North Carolina.

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