

Guide for Lawyers Appointed to Represent Juveniles in Family Court Cases

The Children's Law Office, University of South Carolina School of Law, has prepared this information to assist attorneys appointed to represent juveniles in family court.

Attorneys may receive reimbursement for their court appointed cases. Contact the Office of Indigent Defense at (803) 734-1343, www.scoid.state.sc.us for information.

About the Children's Law Office

The Children's Law Office is a resource center for South Carolina professionals who are involved in juvenile justice or child maltreatment court proceedings. The overall purpose of the Children's Law Office is to help professionals to enhance their knowledge and skills, so that court proceedings will have the best possible outcomes for children.

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 S.C. Bar Foundation.

The Juvenile Division of the Children's Law Office has staff available to discuss legal issues with attorneys appointed to represent juveniles and provide general technical assistance regarding family court procedure. CLE trainings on juvenile justice issues are offered by the Children's Law Office; newsletters and other publications are also available.

The information provided in this publication gives a brief overview of juvenile court proceedings in South Carolina. If you need more detailed information about the juvenile justice system, log on to our web site at <http://childlaw.sc.edu>, go to Juvenile Justice Publications and look up *Training and Resource Manual for Attorneys Representing Juveniles*. Printed copies of the manual are also available for the cost of printing from the Children's Law Office.

If you would like more information about juvenile justice issues in South Carolina, contact Blanche Richey at (803) 576-5575.

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BASICS FOR ATTORNEYS REPRESENTING JUVENILES

The following summarizes the process that takes place after a juvenile is charged with an offense and identifies steps that the defense attorney should take.

1. TAKING INTO CUSTODY

When a juvenile is taken into custody (the equivalent of an arrest), he may be detained by law enforcement or released to a parent or guardian. If released, the first contact the juvenile has with the court system is when DJJ conducts its Intake. If detained, the first contact will be with DJJ's detention screening agent and then with the Court at the detention hearing.

2. INTAKE

- a. The juvenile will receive a notice in the mail regarding the intake interview date and time.
- b. The juvenile and his/her guardian will meet with a DJJ intake officer at the county office. The juvenile's attorney may also be present. The intake officer will provide information to the juvenile and parent/guardian about the system, collect background information from the juvenile and parent/guardian, and have the parent/guardian sign releases for school and medical records.
- c. The information gathered at intake, along with school records, past involvement in the juvenile justice system, and other available information, will be used by the DJJ intake officer when making recommendations to the solicitor and to the Court.

3. DISCOVERY

- a. Once appointed to the case, the attorney for the juvenile should file a Rule 5 (Motion for Discovery) and Brady Motion with the Clerk of Court.
- b. The attorney should receive the petition, incident reports, and any written or recorded oral statements, along with any other discoverable information from the solicitor.

4. ATTORNEY/CLIENT CONFERENCE

- a. The attorney should get background information to learn as much about the child as possible, including: the child's full name, age, address, information regarding family members (especially those in the home), telephone numbers, enrolled in school?, grade level, grades, special classes? (Emotionally Handicapped (EH) or Learning Disabled (LD)), school attendance record, disciplinary problems at school?, extra-curricular activities, church activities, prior court history, work history, is child a parent or pregnant?, drug or alcohol use?, DSS involvement?, any history of out of home placements?, medical history (on any meds?, past hospitalizations, psychological problems, counseling?), and behavior at home (Ask the parents this one because the judge usually does!).
- b. Don't let the parent/guardian answer your questions for your client. This is your opportunity to get to know your client and assess the child's competency. *Remember: you represent the juvenile, NOT the parent. The attorney-client privilege does not extend to the parents.* DJJ should have all of your client's school records, including grades, attendance, and disciplinary record in court.
- c. Have the child explain his/her account of the incident to include:
 - (1) Time, date, and place of offense
 - (2) Details of the events that led up to the offense

- (3) Names, addresses, and telephone numbers of potential witnesses and what they witnessed
- (4) Any statements, written or oral, made by the juvenile or co-defendants
- (5) Was your client given Miranda warnings? What were the circumstances? Who gave the warnings? Did your client sign anything?
- d. Explain all the applicable options: trial, plea, diversion, drug court, etc.
 - (1) You must give your client a clear understanding of the options and the players, as many juveniles won't know the difference between a trial and a plea or what a solicitor is. If you have questions about what services and options are available for your client, check with the DJJ intake counselor.
 - (2) Explain the court proceeding for a guilty plea.
 - (3) Answer any questions your client or parent may have.
 - (4) Obtain guardian's signature on release forms to allow access to school, medical, psychiatric and other records.
 - (5) Make sure your client knows how to properly address the judge and knows to dress appropriately for court. Never assume you're giving too much advice.
 - (6) Instruct your client not to discuss the case with anyone without you present.

4. PLEA NEGOTIATIONS

- a. The attorney meets with the solicitor (in person or over the phone) to try to negotiate a plea, which may involve the solicitor agreeing to drop some of the charges or drop a charge down to a lesser offense.
- b. Make sure that you always let your client know what plea offers have been made by the solicitor, even if the juvenile has made it completely clear that he or she wants a trial.
- c. The judge does not have to accept the negotiated plea; however, she must allow you to withdraw the plea if she does not accept the negotiations.

5. CHECKLIST: Prior to going to court, be sure to answer the following questions:

- a. Do you need to request a competency evaluation to be done by DMH (if there are signs of mental illness) or DDSN (if there are signs of mental retardation) for your client?
- b. Do you need to request that DSS do a home investigation or take the child into emergency protective custody (EPC) because you believe that the child may be in danger or at risk?
- c. Do you need to request that a psychoeducational evaluation be performed by the school to ensure that the child is properly placed and is receiving the attention he/she needs?
- d. Does a guardian need to be appointed for the child?

HEARINGS INVOLVING JUVENILES IN FAMILY COURT

DETENTION HEARING: This hearing is the family court equivalent of a combination of the preliminary hearing (to determine if probable cause exists) and the bond hearing (to determine if the child should be detained). In South Carolina, juveniles are not afforded the right to bond.

1. Overview

- a. If an officer takes a child into custody and determines that it is necessary to place the child outside the home until the court hearing, the authorized 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 these alternatives are appropriate and available. S.C. Code Ann. § 20-7-7210.

- b. The law currently allows for detention under almost any circumstances. See S.C. Code Ann. §20-7-7210 for a list of situations in which detention is allowed.
- c. A detention hearing must be held within **48 hours** of the time the child was taken into custody, excluding weekends and holidays, and no juvenile should be detained in secure confinement for more than **90 days**, absent exceptional circumstances. (See S.C. Code Ann. §20-7-7210 (E) regarding detention for status offenders.)
- d. At the detention hearing, the DJJ representative 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 disposition hearings. 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. S.C. Code Ann. §20-7-7215.

2. Preparation

Since detention hearings must take place no more than **48 hours** after a juvenile has been taken into custody (unless defense counsel requests more time), you will usually have very limited time to prepare. Be sure to take the following steps prior to the hearing:

- a. Get a copy of the petition, incident report, and any other available discovery from the solicitor.
- b. Interview your client.
- c. Speak with your client's parent or guardian.
- d. Discuss with the solicitor why she/he is seeking detention.
- e. Explore detention alternatives, other than home or confinement, in case the judge is not agreeable to letting the child return home.
- f. Discuss with the DJJ staff whether they think detention is appropriate and why.

3. Detention Hearing Procedure

- a. At the detention hearing, the family court may admit any evidence relevant to the necessity for detaining the child. Rule 32, SCRFC (Hearsay is admissible.)
- b. Direct-examination of the state's witnesses will usually include the law enforcement representative, who will testify as to probable cause and reasons why the juvenile should be detained, and the DJJ representative, who may testify about the juvenile's prior court history and school records. (Note: The law enforcement representative may be an officer with no direct knowledge of the case who reads from incident reports or notes from the reporting officer.)
- c. Cross-examination of the state's witness: The detention hearing is an excellent discovery tool. It is an opportunity early on to gather information regarding the strengths and weaknesses of the state's case. The hearing will also provide sworn testimony regarding additional witnesses, written and oral statements, lineups, and other evidence.
- d. Direct-examination of defense witnesses:
 - i) Areas of testimony:
 - (1) Home environment: If possible, it is important to show the court that the juvenile has a structured and stable home environment to which the child can safely return. Be sure to explain the nature of supervision available in the home and what steps the parent will take to ensure that the juvenile does not get into any more trouble. Ideally, you want to show the court that the juvenile will be supervised 24 hours a day by a responsible adult. (If the parent(s) work, it may be another family member or close friend of the family.)

- (2) Child's behavior in the home: The child's parent/guardian can testify as to the child's background and will *hopefully* be able to highlight the absence of prior runaway or incorrigible behavior.
 - (3) Child's special needs and disabilities
 - (4) Character witnesses: neighbors, clergy, teachers, coaches, counselors, employers, psychologists, etc. Because of the short notice given before a detention hearing, it may be difficult to gather these witnesses; however, be sure to make every effort to have them there since they can be a valuable source of information regarding the child's nature and positive character traits.
- ii) It is essential for the juvenile's parent or guardian to attend the detention hearing and make a request that the juvenile be released to his/her custody if that is what the defense is requesting.

GUILTY PLEA

1. Courtroom Procedure (may vary in different counties)
 - a. The solicitor reads out the petition.
 - b. The judge asks the juvenile a series of questions and, absent unusual circumstances, accepts the plea.
 - c. The DJJ intake officer reports on the juvenile's school records and prior court history and will make a recommendation to the Court.
 - d. The solicitor makes a recommendation.
 - e. The defense counsel speaks on juvenile's behalf and makes a recommendation.
 - f. The judge makes a ruling as to sentencing and may order that a community or residential evaluation be done by DJJ prior to disposition, or the judge may move straight into disposition and order a determinate sentence or probation. (See sentencing options below.)
2. Variations, which have the same effect as a guilty plea, include the No Contest Plea and the Alford Plea.

TRIAL

1. There are no jury trials in family court, only bench trials.
2. Opening statements are rarely made in family court trials, so trials usually begin with the state putting up evidence/witnesses.
3. Juveniles are afforded all the rights of due process.
4. If the juvenile is found guilty, the juvenile comes back to court for a disposition hearing after a DJJ community or residential evaluation, unless the judge moves straight into disposition following the adjudication (finding of guilt) and orders a determinate sentence or probation. (See sentencing options below.)

DISPOSITION HEARING: This hearing may take place following a community or residential evaluation by DJJ or may take place immediately following the adjudicatory phase of a guilty plea or trial.

1. This is the hearing following the adjudicatory phase (i.e., the taking of a guilty plea, or the finding of guilt in a trial) where the judge makes a ruling as to the final disposition / sentencing for the adjudicated juvenile.
2. The judge takes into account evaluation reports, seriousness of charge, school records, behavior at home, and prior court history and decides whether to:
 - a. place the juvenile on probation (may include alternative residential placement or a suspended commitment to DJJ as well);

- b. commit to DJJ for a determinate sentence of up to **90 days**; or
 - c. commit the juvenile to DJJ for an indeterminate period not to exceed his **21st birthday**.
3. In preparing for the disposition hearing, the defense counsel should:
- a. find out the juvenile's "risk score", which is calculated by DJJ. Ask the DJJ intake counselor what this is and what it means to your client.;
 - b. be aware of options and services available to your client. Check with the intake counselor or DJJ County Manager for more information; and
 - c. determine what the parole guidelines will be for the juvenile if committed to DJJ for an indeterminate period. Check with the Juvenile Parole Board for specific information regarding the applicable guidelines.

PROBATION VIOLATION HEARING

1. A juvenile may violate probation for any number of reasons, such as new charges, problems at school, bad behavior in the home, or noncompliance with the judge's order.
2. Argue *why* the juvenile should be given another chance; for example, explain that the juvenile recently moved to a different neighborhood, away from the negative influences/peers, or has been doing really well since the violation, has just started counseling, or is now living with an aunt and uncle who can provide more structure.
3. Make sure that your client has received the services previously ordered by the judge. If counseling and a mentor were ordered and DJJ failed to set that up, argue that your client has not been given the support he or she needs to succeed on probation and needs another chance with those services in place.

WAIVER HEARING: This is a critical hearing where the court must make a ruling as to whether the juvenile should stay in family court or be waived to general sessions to be tried as an adult.

1. The prosecutor will make the motion to waive the juvenile to general sessions and will generally make a motion that DJJ conduct a pre-waiver evaluation. Waiver evaluations by DJJ are not required, but are usually ordered by the court when requested by the Defense or the State. Defense counsel should request that the pre-waiver evaluation report be made available to defense counsel at least two weeks prior to the hearing to allow for preparation. Also, make sure the following language is in the order:

The State further stipulates that any and all oral or written statements made by the Respondent concerning the above charges and communicated to the psychologist in conjunction with the evaluation shall not be admissible as evidence against the Respondent in any criminal trial concerning these charges, excluding the waiver hearings, pursuant to the South Carolina Supreme Court case of State v. Hitopoulus, 309 S. E. 2d 747 (1983).
2. At the waiver hearing, the solicitor: (1) will enter the pre-waiver evaluation report if favorable, (2) must establish probable cause, and (3) will try to establish that the offense was malicious, serious, premeditated, etc.
3. Hearsay is admissible.
4. In Kent v. United States, 383 U.S. 541(1966), the U.S. Supreme Court laid out eight factors to be taken into consideration when making the determination of whether or not to waive the juvenile, including the seriousness of the offense, whether the offense was against persons or property, and whether it was committed in an aggressive, violent, premeditated, or willful manner. Other factors outlined in Kent include the juvenile's level of sophistication and maturity, prior record, the likelihood of reasonable rehabilitation and the protection of the public.

SENTENCING OPTIONS/ JURISDICTIONAL POWERS OF THE COURT

Pursuant to S.C. Code Ann. §20-7-7805, the court may exercise its jurisdiction over the juvenile and:

1. order that the child 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 for the child and may designate a state agency as the lead agency to provide a family assessment to the court.
3. dismiss the petition on the motion of either party or on its own motion.

Once the juvenile is adjudicated delinquent, the court may:

1. place the child on probation for any amount of time up until the **18th** birthday. The judge may order any number of terms to be followed while on probation, such as drug or alcohol counseling or inpatient treatment, alternative residential placement, restitution, community service, and school attendance;
2. order the child to participate in a community mentor program;
3. commit the child to the custody or guardianship of an institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person, for an indeterminate period but in no event beyond the child's 21st birthday;
4. require that a child under 12 who is adjudicated delinquent for an offense listed in Section 23-3-430(C) be given appropriate psychiatric or psychological treatment. S.C. Code Ann. §20-7-7805.
5. commit the child to DJJ for a determinate sentence not to exceed **90 days**. S.C. Code Ann. §20-7-7810(B).
6. commit the child to DJJ for an indeterminate period not to exceed the 21st birthday.
 - A child must be **12** to be committed to DJJ. Children **under 12** may be committed only to the custody of the department, which shall arrange for placement in a suitable corrective environment other than institutional confinement. S.C. Code Ann. §20-7-7810(A).
 - Guidelines, based on current and past adjudications, are set up at DJJ.
 - The court, before committing a child, shall first order a community evaluation or temporarily commit the child to DJJ for **not more than 45 days** for evaluation, and the department shall make a recommendation to the court before final disposition.
 - The court may waive, in writing, temporary commitment for evaluation if the child:
 - (1) has previously received a residential or 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 and the child's previous evaluation or other equivalent information is available to the court; or
 - (3) receives a determinate sentence not to exceed 90 days.
SC Code Ann. §20-7-7810(C).

DJJ EVALUATIONS

RESIDENTIAL EVALUATION

The judge may temporarily commit a juvenile to a DJJ facility for an evaluation prior to disposition. The residential evaluation usually takes place over a 35 - 40 day period, but can not take more than 45 days.

The following takes place over the evaluation period: The juvenile receives a physical, meets with a psychologist, takes a series of tests, and attends school Monday - Friday. Every teacher writes a report on the juvenile, as do the social worker, the psychologist, and the residential staff. This information is then compiled into one report that is provided to the judge, the prosecutor, and the defense attorney for the disposition hearing; therefore, be sure to stress to your client the importance of getting an excellent report.

COMMUNITY EVALUATION

If ordered to undergo a Community Evaluation (CE), the juvenile remains at home (or in some cases in a DJJ group home) for the evaluation period which usually takes 30-90 days. The juvenile meets with DJJ staff at the county office, usually twice; on one visit the juvenile meets with a psychologist and takes a series of tests, and on another visit, the evaluator gets background information from the juvenile's guardian and the juvenile by asking a series of questions. A report is compiled from the information obtained, and the judge uses the report at the disposition hearing. If the juvenile violates the terms of the CE, which is like being on probation, he or she may be committed to DJJ for a residential evaluation.

JUVENILE JUSTICE STATUTES

Competency

Determination of Capacity (S.C. Code Ann. §44-23-410)
Hearing on Fitness to Stand Trial (S.C. Code Ann. §44-23-430)
Procedure for Involuntary Admission (S.C. Code Ann. §44-20-450)
Petition for Judicial Commitment (S.C. Code Ann. §44-17-510)

Dispositional Powers of the Court

Adjudication (S.C. Code Ann. §20-7-7805)
Suspension/Restriction of Driver's License (S.C. Code Ann. §20-7-7807)
Commitment (S.C. Code Ann. §20-7-7810)
Commitment of Mentally Ill or Retarded (S.C. Code Ann. §20-7-7815)

Detention

Out of Home Placement (S.C. Code Ann. §20-7-7210)
Detention Hearing/Psychological Screening (S.C. Code Ann. § 20-7-7215)

Waiver (S.C. Code Ann. §20-7-7605)

Expungement of Juvenile Records (S.C. Code Ann. §20-7-8525)