

**Children's Law Center**

University of South Carolina School of Law

# **The Family Court Process for Children Charged with Criminal and Status Offenses**

A Brief Overview of South Carolina's Juvenile Delinquency Proceedings

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**Children's Law Center**  
School of Law

## **THE CHILDREN'S LAW CENTER**

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

The Children's Law Center 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 involved in court proceedings in South Carolina.

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The information presented in this publication is intended for educational and informational purposes only. It is not intended to provide legal advice or legal opinion on any specific issue. Readers should not rely on this guide as a primary source of legal authority, but should consult official versions of South Carolina statutes, rules, and cases prior to making decisions or taking action in legal proceedings.

Citations to South Carolina statutes and cases used throughout this document are formatted as concisely as possible, and therefore, are not necessarily appropriate for formal citations in pleadings and papers filed with the family court. South Carolina statutes are cited as § \_\_-\_\_-\_\_ (e.g., § 63-3-651 instead of S.C. Code Ann. § 63-3-651 (2010)). All S.E.2d cases referred to are South Carolina cases unless otherwise noted. When full statutes are included, emphasis has been added (with bold or underlined font) to some of the statutory language to draw attention to important details or recent changes in the laws.

## **TABLE OF CONTENTS**

I.	<b>INTRODUCTION</b> .....	2
II.	<b>PETITION</b> .....	2
III.	<b>TAKING INTO CUSTODY</b> .....	2
IV.	<b>DETENTION</b> .....	2
V.	<b>INTAKE</b> .....	3
VI.	<b>DIVERSION</b> .....	3
VII.	<b>WAIVER (OR TRANSFER OF JURISDICTION)</b> .....	4
VIII.	<b>ADJUDICATION</b> .....	5
IX.	<b>DISPOSITION</b> .....	6
X.	<b>PAROLE</b> .....	7
XI.	<b>RIGHT TO APPEAL</b> .....	7
XII.	<b>EXPUNGEMENT OF A CHILD'S RECORDS</b> .....	7

## 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 charged with criminal 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 criminal court. South Carolina law defines "child," for juvenile justice purposes, as a person less than 18 years of age, but the definition excludes a 17-year-old charged with a Class A, B, C, or D felony or a felony that provides for a maximum term of imprisonment of 15 years or more. However, a 17-year-old excluded under this definition may be remanded or transferred to the family court at the solicitor's discretion. § 63-19-20(1).

## PETITION

Any person who believes a child has committed a criminal or status offense, may initiate a family court proceeding involving the child. Under most circumstances, the solicitor or someone authorized by the family court will prepare a petition and file it with the family court. A petition, which is similar to an indictment in the adult system, is a formal document alleging that a child committed a delinquent act. The petition must clearly identify:

- the facts alleging the child's delinquency;
- the child's name, age, and address; and
- the names and addresses of the child's parents or guardian. § 63-19-1030.

After the petition is filed, the child and the child's parents or guardian are notified of the charges against the child. The court will then set a date and time for the adjudicatory hearing, which is the hearing where the judge decides whether the juvenile is "guilty" or "not guilty" of the alleged offense(s).

## 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. Children who are in police custody and not "free to leave" must be warned of their rights pursuant to *Miranda v. Arizona* before being questioned about an alleged delinquent act. The Miranda warning (also referred to as *Miranda* rights) is a formal warning given by police to suspects in police custody before they are interrogated to preserve the admissibility of their statements in criminal or delinquency court proceedings. The *Miranda* warning includes informing a suspect that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. *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 a parent or 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." § 63-19-820(A).

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 or the public. § 63-19-820(B). A child must be at least 11 to be detained in a detention facility. In addition, children 11 or 12 years of age may only be detained by order of the family court. § 63-19-820(F).

A child taken into custody for a status offense should 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 the child being securely detained in a juvenile detention facility. A child ordered detained for violating a valid court order may be held in secure confinement in a juvenile detention facility for not more than 72 hours, excluding weekends and holidays. § 63-19-820(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 after consulting with an attorney at least once. The court will appoint an attorney to represent the child if the child does not have one. § 63-19-830(A). 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:

- whether probable cause exists to justify the detention of the child; and

- whether it is appropriate and necessary to detain the child further. § 63-19-830(A).

A child who has been ordered detained must be screened by a social worker or psychologist within 24 hours to determine if the child is in need of any services. § 63-19-830(B).

A child who is ordered detained is entitled to another hearing:

- 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. § 63-19-830(A).

A child must not be detained in a detention facility for more than 90 days unless the court determines exceptional circumstances warrant additional detention. § 63-19-830(A).

### **INTAKE**

When a child is referred to the family court for prosecution, the child will go through a screening process called "intake." The function of intake, which is conducted by DJJ, is to independently assess the circumstances and needs of the child. § 63-19-1010.

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 drug court, arbitration, or a behavior contract. 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 (TRANSFER OF JURISDICTION)**

Under certain circumstances, a juvenile who is alleged to have committed a serious offense may be waived to adult criminal court. 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 general sessions court where the child is tried as an adult.

State law dictates when a child is eligible to be waived to adult court, 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 (when waiver is within the court's discretion), 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:

- a child of any age charged with murder;
- a 17-year-old charged with a misdemeanor, a Class E or F felony as defined in § 16-1-20, or a felony which, if committed by an adult, would carry a maximum term of imprisonment of 10 years or less, after full investigation;
- a 14-, 15-, or 16-year-old charged with a Class A, B, C, or D felony or a felony which, if committed by an adult, would carry a maximum term of imprisonment of 15 years or more, after full investigation and a hearing; &
- a child 14 or older charged with carrying a weapon on school property, unlawful carrying of a handgun, or unlawful distribution of drugs within 1/2 mile of a school, after full investigation and a hearing. § 63-19-1210.

A family court judge may waive a child 14 or older charged with an offense which, if committed by an adult, would carry 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, would carry a term of imprisonment of ten years or more, after full investigation and hearing, if it considers it contrary to the child's or public's best interest to retain jurisdiction. § 63-19-1210(10).

## ***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 a child to adult criminal court. The eight factors are:

- the seriousness of the alleged offense and whether waiver is necessary to protect the community;
- whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- whether the alleged offense was against persons or property;
- whether there is sufficient evidence for a grand jury to return an indictment;
- 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;
- the level of sophistication and maturity of the child;
- the child's record and previous criminal or adjudicative history; and
- 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 or not the child is guilty of the alleged offense. At this stage, the child will either admit or deny the allegations in the petition. The child has the right to a trial where the solicitor has the burden of proving beyond a reasonable doubt that the child committed the alleged offense(s). 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:

- the right to notice of the charges and time to prepare for the case;
- the right to an attorney;
- the right to confront and cross-examine witnesses; and
- 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 to adults in criminal prosecutions, however, are not guaranteed to 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).

### **Guilty 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 before adjudicating the child delinquent.

### **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 not guilty. 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 determine that the state failed to prove its case beyond a reasonable doubt and find the child not guilty, or the judge may find the child guilty and adjudicate the child delinquent. 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." This distinction is important because state law specifically states that an adjudication does not result in civil disabilities that would ordinarily result from a conviction of the same offense. In addition, the disposition of a child or any evidence given in court does not disqualify the child in future civil service applications or appointments. § 63-19-1410(C).



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. § 63-3-590.

## **DISPOSITION**

The final phase of the court process is the dispositional hearing. At this hearing, the judge determines what type of sentence the child will receive to hold the child accountable for his or her actions and prevent future violations of the law.

### ***Predisposition Evaluation***

After adjudicating a child delinquent, the family court judge may move directly into the sentencing phase or dispositional 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. In making this determination, the judge will take into account the needs and best interests of the child.

The predisposition evaluation includes 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. § 63-19-1440(C).

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.

### ***Dispositional Hearing***

While the purpose of the adjudicatory hearing is to determine whether the child is guilty or not guilty of the alleged offense, the purpose of the dispositional 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.

At the dispositional hearing, the judge will generally decide between a probationary sentence and a commitment to DJJ. The judge will take 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 twentieth 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 it 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-second birthday (unless sooner released by DJJ or the Juvenile Parole Board). 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. § 63-19-1440.



A child who receives an indeterminate commitment will be held at DJJ for an indefinite period of time, not to exceed the child's twenty-second birthday. Once committed, the child is given a set of "guidelines," determined by the state Board of Juvenile Parole (the Parole Board) or DJJ, depending on the adjudicated offense(s). 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(s) for which the child is adjudicated and the child's history of previous adjudications. These guidelines, along with information regarding the child's behavior and progress while at DJJ, 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-second birthday, for reasons including refusal to comply with a treatment plan, negative behavior while committed, 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. If the child's family cannot afford to hire an attorney, an attorney will be appointed for the child

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

A child serving a commitment to DJJ for a violent offense, who has not been released by his eighteenth 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 19. § 63-19-1440(E).

### **PAROLE**

The release of a child committed to DJJ for an indeterminate period is determined by either DJJ or the Board of Juvenile Parole (Parole Board). DJJ is the releasing entity if the child was adjudicated delinquent and committed for a status offense, misdemeanor, or probation violation for a

status offense or misdemeanor. The Parole Board is the releasing entity if the child was adjudicated delinquent and committed to DJJ for any other offense. The releasing entity may grant a child 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 releasing entity. The specified period of conditional release may not exceed the child's twenty-second birthday. A child on conditional release may be required to pay restitution, perform community service, or complete a local aftercare program in the community. § 63-19-1850.

### **RIGHT TO APPEAL**

A child has the right to appeal the family court judge's decision regarding disposition. 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**

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

- being taken into custody;
- the charges filed against the person;
- the adjudication; and
- the disposition.

A person 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 not petition the court. The court will only grant the expungement order if it finds the person is at least 18, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any pending criminal charges. If the person was found not guilty in a family court adjudicatory hearing, the court shall grant the expungement order regardless of the person's age and the person must not be charged a fee for the expungement. § 63-19-2050.



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