

**Children's Law Center**

Joseph F. Rice School of Law

University of South Carolina

# **Quick Reference Guide to Juvenile Court in South Carolina**

An Overview of Juvenile Delinquency Proceedings & Related Issues for  
Family Court Judges and Attorneys

2023 Edition



**Children's Law Center**

Joseph F. Rice School of Law

UNIVERSITY OF SOUTH CAROLINA

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

The Children's Law Center, University of South Carolina Joseph F. Rice 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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## **INTRODUCTION**

This guide is intended to provide family court judges and attorneys with an overview of the juvenile justice system and the legal and collateral issues that arise in juvenile delinquency proceedings. The information presented in the Guide 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 guide 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.

The materials contained in this guide are as complete and current as possible as of the date of publication, but laws and policies are subject to change at any time without notice. While I have made every attempt to ensure accuracy, errors are inevitable. I would like to be notified of any errors detected so that I can make corrections as needed in future updates.

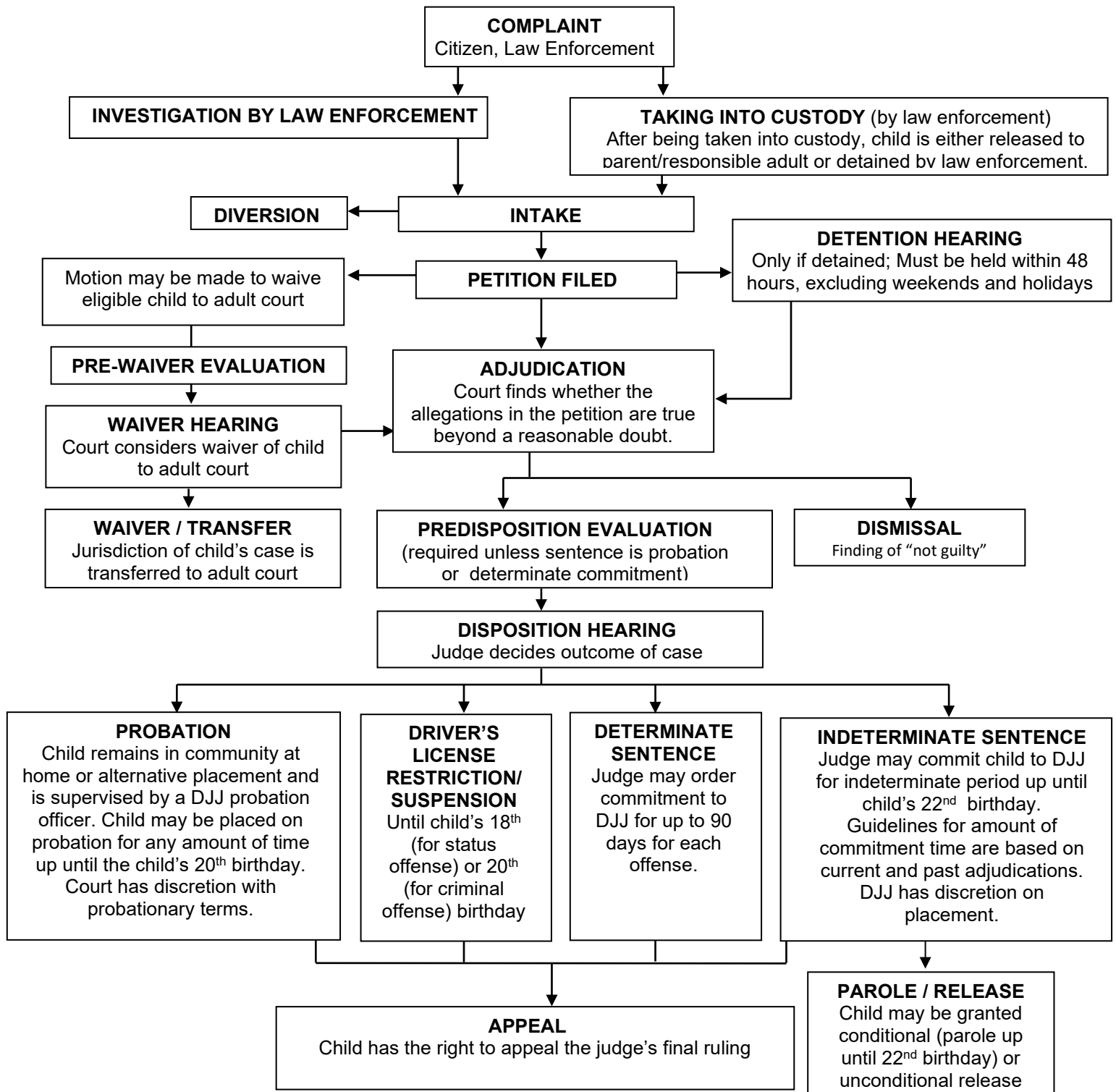
In addition to this guide, I developed a publication titled Training and Resource Manual for Juvenile Defense Attorneys which contains all the information found in this guide, along with additional sections including "Preparing for Court" and "Disposition Advocacy." Both of these publications are available on the Children's Law Center's website at <http://childlaw.sc.edu>. If you have any questions concerning information contained in the Guide, or to report errors or suggestions for future updates, please contact me at the Children's Law Center at 803-777-1646.

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*- Updated September 2023 -*

# CASE FLOW CHART



# BASICS OF JUVENILE COURT

## DEFINITION OF CHILD

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Child” or “juvenile” is defined by § 63-19-20(1) as follows:

- "Child" or “juvenile” means a person less than 18 years of age.
- "Child" or “juvenile” does not mean a person 17 or older who is charged with a Class A, B, C or D felony or a felony which provides for a maximum term of imprisonment of 15 years or more.
- However, a 17-year-old charged with a Class A, B, C or D felony or a felony which provides for a maximum term of

imprisonment of 15 years or more may be remanded to the family court for disposition of the charge at the solicitor’s discretion.

- Note: § 63-19-20(1) also states that “[a]n 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.” (E.g., If a 17-year-old is charged with burglary in the first degree and petit larceny arising out of the same circumstance, both charges should be heard in general sessions court.)

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

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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 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 fifteen

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, 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, 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: (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. § 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. 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 eleven to be detained in a detention facility. In addition, children eleven or twelve 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

*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 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: (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. § 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: (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. 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, the juvenile arbitration program, 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: (1) a child of any age charged with murder; (2) 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; (3) 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; and (4) a child 14 or older charged with carrying a weapon on school property, unlawful carrying of a handgun, or unlawful distribution of drugs within a half-mile of a school, after full investigation and a hearing. § 63-19-1210(4)-(6),(9).

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 has previously 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. § 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 to waive a child to adult criminal 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 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: (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 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 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-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 (1) being taken into custody; (2) the charges filed against the person; (3) the adjudication; and (4) 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.

## **DJJ INTAKE**

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### **DJJ INTAKE SERVICES**

DJJ is required 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." § 63-19-1010(A).

While the solicitor must review DJJ's recommendations as to intake, it is the solicitor who must make the final decision regarding whether to prosecute. If the solicitor decides circumstances do not warrant prosecution, the intake counselor must assist

the child and family by making referrals for services as appropriate. If the child is adjudicated delinquent or found by the court to have violated probation, the intake counselor is responsible for recommending appropriate dispositional options to the court, including services available to the child. § 63-19-1010.

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

## 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." § 63-19-1030(C). 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 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. § 63-19-1030(C).

Statements of the child contained in DJJ's files "MUST NOT be furnished to the solicitor's office as part of the intake review procedure, and the solicitor's office MUST not be privy to these statements in connection with its intake review." § 63-19-1010(A) (emphasis added).

## NOTICE OF SERVICE AND 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 the child's 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." § 63-19-1030(D).

Rule 35(b), SCRFC requires notice of the adjudicatory hearing to be served on both parents, and if the child is not living with the parents, the guardians or persons with whom the child resides.

### SERVICE OF SUMMONS

Under § 63-3-570:

- Service of summons and process of the family court in delinquency proceedings shall be made as provided by law for service in the court of common pleas.

- If the judge determines that personal service is impracticable, the judge may order service by registered or certified mail, addressed to the last known address, or by publication thereof, or both.
- 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, the court finds that the service will be ineffectual, or the court finds 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. § 63-3-580.

## PROSECUTION

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### PROSECUTION, DIVERSION, OR DISMISSAL

The solicitor or the solicitor's "authorized assistant" is given authority to determine whether 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. § 63-19-1010(A).

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 available information, the charges are appropriate, the solicitor will decide 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 requirement regarding the time frame in which a case must be prosecuted in family court, the SC 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 must:

- refrain from prosecuting a charge the prosecutor knows is not supported by probable cause; (A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This includes specific obligations to see that the defendant is accorded procedural justice and that guilt is decided on the basis of sufficient evidence.)
- make reasonable efforts to assure the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- refrain from trying to obtain a waiver of important pretrial rights from an unrepresented defendant;
- 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 court all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order; (A prosecutor may seek an appropriate protective order from the court if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.)
- except for statements 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. (This rule supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. A prosecutor should avoid

comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. This is not intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).)

## **PLEA AGREEMENTS**

In *Santobello v. New York*, 404 U.S. 257 (1971), the Court established that state prosecutors must 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).

## **INDIGENT DEFENSE**

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### **RIGHT TO COUNSEL**

A child has the 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. § 63-19-1030(D).

### **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. § 63-19-1040.

### **CONFLICTS**

The SC Commission on Indigent Defense contracts with attorneys (referred to as 608 contract attorneys) to handle conflicts that arise in the public defenders' offices. If a child qualifies for a public defender and there is a conflict, a 608 contract attorney will be appointed to represent the child. If a 608 contract attorney is not available, a member of the private bar will be appointed. If the case is unusually complicated or involves a more serious offense, the judge may decide to appoint a specific attorney.

### **WAIVER OF RIGHT TO COUNSEL**

In a case where the proceedings may result in commitment to an institution in which the child's freedom is curtailed, 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. § 63-19-1030(D). While the statute allows for the waiver of right to counsel, it is standard practice for family court judges to 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. § 63-19-830(A).

## **RULES FOR CONDUCT OF HEARING**

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### **CONDUCT OF HEARINGS. § 63-3-590.**

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. § 63-3-600.**

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 documents and written statements are admissible into evidence without requiring that the persons or institutions issuing the documents or statements be present in court:

- A written statement of a child's school attendance 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;
- A written DSS or other agency report, reporting the home investigation or any other report required by the court (unless the agency is party); and
- An employer's written statement showing wages, W-2 statement, income tax returns, and other reports of like nature.

## **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 his defense, the court should order that the child undergo a competency evaluation. § 44-23-410. (*See section on Competency.*)

The following indicators may warrant a referral for an evaluation:

- The child is under 12 years of age.
- The 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.
- The child has a history of mental health problems, has been in and out of hospitals, or is or has been on medication.
- The 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 court and placed with Department of Social Services (DSS).

A DSS home investigation should be ordered if:

- there are signs of abuse or neglect; or
- 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 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;
- 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; or

- 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 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 at least include: the family's strengths and weaknesses; problems interfering with the family's functioning and the child's best interests; and recommendations for a comprehensive service plan to strengthen the family and help resolve these issues. The lead agency is required to provide the family assessment to the court in a timely manner. § 63-19-1410(2).

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. *Id.*

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

# DISCOVERY

## DISCOVERY AND 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 under 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 OF 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(e)(4), SCRCrimP.

### DISCLOSURE OF INSANITY DEFENSE OR GUILTY BUT MENTALLY ILL PLEA

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. If the defendant fails to comply with this requirement, 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. 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.

## **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(b), 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

## EXCLUSIVE ORIGINAL JURISDICTION

The family court has exclusive original jurisdiction over any action concerning a child living or found within the geographical limits of its jurisdiction:

- whose behavior places himself or others at risk of danger;
- who is beyond the control of his parent or other custodian (incorrigible); or
- 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 § 63-3-520 (traffic and wildlife jurisdiction).

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 18 or older who allegedly violated or attempted to violate any state or local law or municipal ordinance before reaching the age of 18; and
- for the detention of a child charged with committing a criminal offense when detention in a secure facility is found to be necessary. § 63-3-510.

## TIMING

Although there is a common misunderstanding that jurisdiction attaches only after the petition is filed, jurisdiction attaches from the time a child is taken into custody. § 63-19-810(A).

## 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. § 63-19-1210(1).

A 17-year-old charged as an adult for allegedly committing a Class A, B, C or D felony, or a felony which provides for a maximum term of imprisonment of fifteen years or more, can be remanded to the family court for disposition of the charge at the solicitor's discretion. § 63-19-20.

## TERMINATION OF JURISDICTION

Once the court has acquired jurisdiction over a child, jurisdiction continues as long as the court finds it necessary to retain jurisdiction for the "correction or education" of the child. Jurisdiction terminates on the child's **twenty-second birthday** if not sooner. § 63-3-510(B).

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 **twentieth birthday**. § 63-3-510(B).

## TRAFFIC & FISH, GAME & WATERCRAFT VIOLATIONS

The family court has concurrent jurisdiction with the magistrate and municipal courts for the trial of persons under 17\* 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 by the court. All adjudications for Title 50 violations must be reported to the Department of Natural Resources. § 63-3-520. (\* The SC

Office of the Attorney General issued an opinion on 6/25/19 stating that “a court ... would hold that summary courts have concurrent jurisdiction over persons less than 18 years of age charged on or after July 1, 2019 with traffic offenses and violation of provisions of Title 50 offenses.”)

### **POST CONVICTION PROCEEDINGS**

Post conviction proceedings, including habeas corpus actions, are 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. § 63-3-640.

### **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. § 63-3-560.

### **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 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(a), SCRFC.

If the judge decides an immediate transfer should not be made and an adjudicatory hearing is held, the judge may order transfer to the county of the child's residence for disposition. Rule 33(b), SCRFC.

# CUSTODY & PRE-TRIAL DETENTION

## DETENTION OVERVIEW

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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 to detain the child. If detained, the child 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 detention and whether the child's continued detention is appropriate and necessary. If the court orders that a 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 is taken into custody for violating a law or ordinance:

- the taking into custody is not an "arrest";
- the family court's jurisdiction attaches from the time of the taking into custody;
- the officer who took the child into custody is required to notify the child's parent as soon as possible; and
- unless otherwise ordered by the court, the officer has the option of either releasing the child to a parent or responsible adult or detaining the child. § 63-19-810(A).

When an officer determines a child taken into custody 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." § 63-19-820(A).

### DETENTION ELIGIBILITY

A child who meets the criteria provided in § 63-19-820(B) is eligible for detention. However, detention is not mandatory for a child meeting the criteria if that child can be adequately supervised at home or in a less secure setting. *Id.*

### AGE RESTRICTIONS

Children who are **ten** or younger must not be incarcerated in a jail or detention facility for any reason. § 63-19-820(F).

Children **11** and **12** who are taken into custody for committing a criminal offense or who violate conditions of probation for such an offense 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 any family court judge within the circuit 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. § 63-19-810(B).

### 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 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. § 63-19-830(B).

## TIME LIMITS

A child must not be detained in secure confinement for more than 90 days, absent exceptional circumstances. § 63-19-830(A).

A child taken into custody because of a status offense must not be placed or ordered 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. § 63-19-820(E).

If a child is ordered detained for violating a valid court order, the child may be detained for no more than 72 hours, excluding weekends and holidays. § 63-19-820(E).

## DETENTION ALTERNATIVES

The following alternatives to secure pre-trial detention provide for the supervision and safety of a child while reducing the negative impact on the child and the costs associated with detention. Most counties have multiple options available that can be combined to best suit the needs of the child and his or her family.

- **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 leave the home to

participate in outside activities approved by the court.

- **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 by the court for any time of the day or night and for any length of time. If electronic monitoring is ordered, the child wears an ankle bracelet that functions as a transmitter, sending signals to a unit in the home. The unit reports movement through a GPS (Global Positioning Satellite) system to a computer that DJJ can access and at any time. Violations are monitored by DJJ staff and reported to the court.

DJJ contracts with a private provider to have access to electronic monitoring (EM) equipment. Every county in the state has access to EM equipment. Each regional office also has an inventory of units. The DJJ county 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 \$3.25 per day (active unit), while the cost of detaining a child at DJJ's secure detention facility is \$150 per day (\$50 of which is charged back to the county). There is no cost to the child or county for electronic monitoring.

- **Short Term Alternative Placements (STAP):** As an alternative to secure detention, the child may be placed by DJJ or ordered by the court to be placed in a STAP. These non-secure alternatives to detention include shelter care, therapeutic foster homes, and intermediate or intensive group homes. County DJJ staff have information regarding the availability of STAPs.

## 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. § 63-19-830(A).

- However, 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. § 63-19-820(E).
- 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. § 63-19-820(E).

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. § 63-19-830(A).

### 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. A child may not proceed without an attorney unless the child waives the right to counsel after consulting at least once with an attorney. § 63-19-830(A).

### 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

The court may admit "any evidence relevant to the necessity of detaining a child." Rule 32, SCFCR. Therefore, evidence such as hearsay may be presented by the State when arguing for detention.

### DETENTION HEARING PROCEDURE

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

- 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 officer, 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 present DJJ's recommendation regarding continued detention.

- After the solicitor questions each witness on direct examination, the defense attorney has the opportunity to question each witness.
- After the State has presented its case, the defense will present its witnesses.
  - 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.
- 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 may 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.

# WAIVER / TRANSFER OF JURISDICTION

## WAIVER OVERVIEW

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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. Waiver is the transfer of jurisdiction of a child's case from family court to a court which would have trial jurisdiction if the offense was committed by an adult.

### INTRODUCTION

The waiver process is initiated by the solicitor who makes a motion to transfer jurisdiction and waive the child to adult court. The solicitor will also make a motion that DJJ conduct a pre-waiver evaluation. The defense may also have the child undergo an independent expert evaluation.

Upon a motion to transfer jurisdiction, the family court must determine if it is in the best interest of both the child and the community before granting the transfer request. *State v. Kelsey*, 331 S.C. 50, 64, 502 S.E.2d 63, 70 (1998). The family court must consider eight factors, as approved by the United States Supreme Court in *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), in making this determination. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144, (2007).

### ELIGIBILITY

A family court judge has the authority to waive a child who is:

- any age and charged with murder;
- 17 and 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;
- 14, 15 or 16 and charged with an offense which, if committed by an adult, would be a Class A,B,C, or D felony or a felony which provides for a maximum term of

imprisonment of 15 years or more, after full investigation and a hearing;

- 14 or older and charged with §16-23-430(1) (carrying a weapon on school property), §16-23-20 (unlawful carrying of a handgun), or §44-53-445 (unlawful distribution of drugs within a half-mile of a school), after full investigation and a hearing. § 63-19-1210(4)-(6),(9); and
- 14 or older charged with an offense which, if committed by an adult provide 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, after full investigation and a hearing. (An adjudication or conviction is considered a second adjudication or conviction only if the second offense was committed after the sentence for the first offense was imposed.) § 63-19-1210(10).

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

### 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. § 63-19-1210(6).

A child under 14 cannot be waived to general sessions court on a criminal sexual conduct charge. § 16-3-659; *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 violations of §§ 16-3-651 to 659.1 (criminal sexual conduct offenses)."

## 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 a community specialist in the county. This part contains a social history of the child, including prior court history, 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 jurisdiction of the case should be transferred or retained in family court. 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 to waive the child. (See below.)

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 as 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.

If the court determines the child's case should be transferred to general sessions court, the court's order must sufficiently state the reasons for the transfer. The order should also contain language demonstrating that "the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court." *State v. Avery*, 509 S.E.2d 476, 481 (S.C. 1998). The decision to transfer jurisdiction lies within the discretion of the family court. *Id.*, *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144, (2007)

## **THE 8 DETERMINATIVE FACTORS OF KENT**

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; and
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.

## **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.

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 § 63-19-1210**

CHARGE	Under Age 14	14 Years Old	15 Years Old	16 Years Old	17 Years Old
Class A Misdemeanor					
Class B Misdemeanor					
Class C Misdemeanor					
Class E Felony					
Class F Felony					
Felony - maximum of 10 years or less					
Unlawful Carrying of Handgun (§ 16-23-20 / C Misdemeanor)					
Distribution of Controlled Substance within ½ Mile Radius of School (§ 44-53-445 / E Felony)					
Carrying Weapon on School Property (§ 16-23-430 / F Felony)					
Offense that carries 10+ years, if previously adjudicated for 2 prior offenses that carry 10+ years					
Class A Felony					
Class B Felony					
Class C Felony					
Class D Felony					
Felony - maximum of 15+ years					
CSC	Prohibited under § 16-3-659				Jurisdiction depends on degree; CSC 3 <sup>rd</sup> – waiver allowed
Murder (prosecutor must file waiver motion within 30 days of filing petition)					

No Waiver Allowed

Waiver Allowed / Court's Discretion

Automatic Jurisdiction in Adult Criminal Court (Not a child under § 63-19-20; accompanying charges are processed in adult court also; may be remanded to family court at solicitor's discretion)

# ADJUDICATION

## ADJUDICATORY HEARING

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The adjudicatory hearing is the hearing/trial held by a family court judge to determine whether a child engaged in 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 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 should move for a directed verdict on the grounds that the State has not presented competent evidence to prove its case. “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].” Rule 19(a), SCRCrimP. In ruling on the motion, the judge only considers the existence or non-existence of evidence and not the weight of the evidence. *Id.* 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 a defendant's motion for directed verdict at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right. Rule 19(b), SCRCrimP.

### **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. If the judge determines 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 dispositional hearing is set for a future date following an evaluation, or it is held immediately if the judge determines an evaluation is not required or necessary.

## **GUILTY PLEA**

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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.

### **PLEA NEGOTIATIONS**

Before a child pleads guilty, the child's attorney and the solicitor usually meet to discuss the case and possible plea negotiations. When negotiating a plea, the solicitor has the authority to:

- dismiss the charge(s);
- allow the child 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); or

- agree to take no position as to sentencing (if unwilling to recommend a favorable sentence).

Evidence of any statement made during plea discussions with the prosecutor which do not result in a guilty plea, or which result in a guilty plea that is later withdrawn, is not, in any civil or criminal proceeding admissible against the defendant who made the plea or was a participant in the plea discussions. Rule 410(40), SCRE.

### **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.

Examples of common questions asked of the child by the judge prior to accepting a plea include:

- What is your full name?
  - How old are you?
  - Do you go to school?
  - What grade are you in? (The judge may question the child further if the child was held back.)
  - 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 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, threatened, 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 stated in the petition.

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 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, the defense attorney, the solicitor, or the 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 the right to a 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.

**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 admit guilt. Section 17-23-40 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 determine if the judge is willing to accept a no contest plea.

**Alford Plea** – In *North Carolina 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 found guilty if he went to trial. The defendant must also receive some benefit from the plea, such as a reduced charge or favorable sentence recommendation. Acceptance of an *Alford* plea is in the court’s discretion.

South Carolina does NOT recognize **conditional guilty pleas**. *State v. Rice*, 737 S.E.2d 485 (S.C. 2013). See also *In re Johnny Lee W.*, 638 S.E.2d 682, 684 (S.C. 2006) (“A trial court may not accept a conditional plea.”).

- In South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights. *Rivers v. Strickland*, 213 S.E.2d 97 (S.C. 1975).

## 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 the defense enters into an agreement with the solicitor and the solicitor appears to stray from the pre-arranged terms of the plea, the defense 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." The defense attorney 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).

# DISPOSITIONAL HEARING

The dispositional 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, while addressing concerns of community safety. 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.

## TIMING

The dispositional 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. § 63-19-1440(C).

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. § 63-19-1440(C).

Following either type of evaluation, DJJ will submit an evaluation report to the court. The evaluation report includes: information gathered from interviews with the child and

the child's parents or guardian; psychological evaluations, psychiatric evaluations and tests when deemed necessary; 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.

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 sentence of probation or if committed to DJJ, it is for a determinate sentence of 90 days or less. § 63-19-1440(C).

## DISPOSITIONAL 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 dispositional hearing is the judge who will preside, as opposed to the judge who actually presided over the adjudicatory hearing.

The SC Rules of Evidence (other than with respect to privileges) do not apply in dispositional hearings in juvenile delinquency matters. Rule 1101(d)(3), SCRE.

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

- The hearing generally 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.
- 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.

## **DISPOSITIONAL POWERS OF THE COURT**

The dispositional powers of the court are controlled by statute, §§ 63-19-1410 to -1450. Standard options available to the court include:

- Dismissal of the petition or termination of jurisdiction. § 63-19-1410(7).
- Probation for any amount of time up until the child's 20<sup>th</sup> birthday, with conditions as determined by the court which may include alternative placement. § 63-19-1410(A)(3).
- Commitment to DJJ for an indeterminate period not to exceed the child's 22<sup>nd</sup> birthday. § 63-19-1440(B).
- Commitment to DJJ for a determinate sentence of up to 90 days for each adjudicated delinquent offense. § 63-19-1440(B).

# JUVENILE APPEALS

## JUVENILE APPEALS OVERVIEW

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### APPELLATE COURT RULES

Generally, final orders of the family court are appealable to the Court of Appeals. The South Carolina Appellate Court Rules apply to appeals from family court orders. Section 63-3-630 states that a juvenile's right to appeal "must be governed by the same rules, practices, and procedures that govern appeals from the circuit court."

### DIVISION OF APPELLATE DEFENSE

The Division of Appellate Defense, South Carolina Commission on Indigent Defense (SCCID) represents indigent juvenile defendants in appeals to the South Carolina Supreme Court and Court of Appeals.

### PROPER ERROR PRESERVATION AT 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*, 401 S.E.2d 168 (S.C. 1991).
- Objections must be on a specific ground. *State v. Bailey*, 170 S.E. 2d 376 (S.C. 1969).

### NOTICE OF INTENT TO APPEAL

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 filed in a timely manner.

The notice of intent to appeal should be filed from the dispositional order rather than the adjudicatory order. *In re Lorenzo B.*, 415 S.E. 2d 795 (S.C. 1992).

### EXTRAORDINARY WRITS

One obstacle to providing juveniles with adequate post-dispositional representation is the difficulty of challenging a very short sentence in a slow appellate system. The average appeal may take a year or longer. A sentence of three, six, or even nine months may well be completed, and the issue will be moot before the appellate court decides the case. Extraordinary writs can be used to challenge these juvenile sentences.

SC Supreme Court cases involving successful attempts to obtain writs of supersedes to proceed with appeals on the basis of capable of repetition yet evading review:

- *In the Interest of Vincent J.*, 509 S.E. 2d 261 (S.C. 1998). Holding: § 20-7-7810(F) (§ 63-19-1440(F)) 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 can not 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 re Tonisha G.*, 520 S.E. 2d 807 (S.C. 1999), the court confirmed that where a status offender is charged with contempt of court, the sentence cannot exceed ninety days.

## **ADVERSE COLLATERAL CONSEQUENCES AND RIGHT OF REVIEW**

“Where adverse collateral consequences may arise from an adjudication of delinquency, a juvenile may not be foreclosed from appeal simply because he is no longer in custody.”  
*In re Willie H.*, 327 S.E.2d 76 (S.C. 1985).

Examples of adverse collateral consequences identified by the Court:

- Use of a juvenile adjudication to impeach a witness in a subsequent legal proceeding. *State v. Mallory*, 242 S.E.2d 693 (S.C. 1978).
- Consideration by sentencing judge of adult defendant's juvenile record in imposing a sentence. *Hayden v. State*, 322 S.E.2d 14 (S.C. 1984).



# PAROLE

## PAROLE OVERVIEW

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When a juvenile is committed to DJJ for an indeterminate sentence, the length of commitment is determined by several factors discussed below, which are reviewed by an authorized releasing entity. When releasing a child from an indeterminate commitment, the releasing entity has the option of granting the child an unconditional or a conditional release. A juvenile conditionally released remains under the releasing entity's authority until the specified term imposed in the juvenile's conditional aftercare release expires. § 63-19-1850(A).

### RELEASE AUTHORITY

The release and revocation of release of juveniles committed to DJJ for an indeterminate period is determined by one of two releasing entities under § 63-19-1810:

- DJJ - for juveniles committed after March 31, 2007 for a status offense or a misdemeanor, and for juveniles who have violated probation for a status offense or a misdemeanor; or
- Board of Juvenile Parole (Parole Board) - for juveniles committed for any other offense.

### THE PAROLE BOARD

The Parole Board is composed of 10 members who are appointed by the Governor for four-year terms. § 63-19-610. The Parole Board is required to:

- meet at least monthly to review the records and progress of juveniles committed to DJJ for the purpose of deciding the release or revocation of release of these juveniles.
- inspect, at least quarterly, the records of these juveniles and, as deemed appropriate, issue temporary and final discharges or release these juveniles conditionally and prescribe their parole conditions. 63-19-1820(A)(1).

### DJJ RELEASE AUTHORITY

The DJJ internal Release Authority consists of three panel members appointed by the

Director. The release process, including the computation of guidelines, mirrors that of the Parole Board for the most part. DJJ generally handles the release for category III through VI offenses (most misdemeanors, status offenses, and probation violations for those offenses). One difference is that the "internal release" guidelines are shorter than those of the Parole Board. (e.g., instead of 1-3, 3-6, and 6-12 months, they are 1-3, 2-5, and 5-10 months.

### GUIDELINES

The releasing entities have established "guidelines" for determining the length of commitment 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. The guidelines run anywhere from 1-3 months to 36-54 months.

The releasing entities use these guidelines, along with reports of the child's behavior and progress, to determine the length of commitment. The releasing entities 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.

A child who is conditionally released or released on parole will be under the releasing entity's authority for a specified period of time

not to exceed the child's **twenty-first birthday**. A child conditionally released is "subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release." § 63-19-1850(A).

## PAROLE CONDITIONS

A child released on parole may be required to pay restitution, participate in work ordered by the court, and/or participate in community service programs. § 63-19-1850(B).

## PAROLE GUIDELINES

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

The Parole Guidelines Computation Sheet, which can be found following the Parole Guidelines Grid, will take you through the process.

1. You 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 chart of "Offense Codes Sorted 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 or DJJ, depending on the committing offenses, determines when the child is released.

<b>Sample from Chart of OFFENSE CODES SORTED BY CATEGORY</b> *** Changes may be made to the offense categories periodically by DJJ or the Parole Board at their discretion.					
<b>CODE</b>	<b>CLASS</b>	<b>DESCRIPTION</b>	<b>ACRONYM</b>	<b>CAT</b>	<b>SCORE</b>
01312	LYNCHING	LYNCHING, 1ST DEGREE	LYNCH1	XX	25
01116	MURDER	MURDER	MURDER	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

**PAROLE GUIDELINES GRID**

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

Grid Assignment: \_\_\_\_\_

Guideline Range: \_\_\_\_\_

# DJJ POLICIES & PROCEDURES

## AGENCY OVERVIEW

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The South Carolina Department of Juvenile Justice (DJJ), a state cabinet agency, is responsible for providing rehabilitation and custodial care for the state's children who are on probation, incarcerated, on parole, or in community placement for a criminal or status offense. DJJ is organized within four divisions and four offices. The following information highlights the agency's responsibilities and organizational structure.

Note: The information in this section was obtained from the DJJ website June 2019 (with non-substantive editorial changes). Internal agency policies 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 website.

### DIVISION OF COMMUNITY SERVICES

DJJ's Division of Community Services is responsible for a wide range of direct services to youth and their families, as well as victims of crime, in the community across the state. Among these services are programs and initiatives aimed at providing effective supervision of youth in the least restrictive environment, who are on probation or parole and support for their families, with the goals of reducing juvenile crime and recidivism, and providing for safer communities.

#### ***Field Services***

DJJ provides services to juveniles and their families in the community through 43 DJJ county offices, servicing all 46 counties in the state. Community case managers are involved with juveniles from the moment they enter the system until they complete probation and/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 juveniles on probation or parole, and participate in prevention initiatives.

#### ***Community Justice***

The primary focus of the Office of Community Justice is to develop a continuum of effective programmatic initiatives that lead to creating a restorative justice system for all who are 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 and Intervention Services - partners with the family court system, schools, and local organizations throughout South Carolina to develop and implement a variety of delinquency prevention and intervention initiatives for at-risk youth, such as eliminating truancy
- Victim Services - offers a variety of services, ranging from contacting victims (prior to making recommendations to the Solicitor's Office) to informing victims of any post-adjudicatory hearings. Victim Services seeks to give victims a sense of justice, as well as to assist them in the recovery process
- Interstate Compact Services - arranges for supervision of delinquent juveniles 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 multiagency private providers (group homes)

## **DIVISION OF REHABILITATIVE SERVICES**

DJJ's Division of Rehabilitative Services operates three long-term campuses, providing juveniles committed by the family courts with around-the-clock custodial care and individualized treatment/rehabilitation programs and services.

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 clinical chaplains

The Division of Rehabilitative service also supervises DJJ's front gate security and juvenile transportation.

The campuses providing supervision for committed juveniles are: Willow Lane Program for Girls, Birchwood, and John G. Richards (See Long-term Campuses).

## **DIVISION OF EDUCATIONAL SERVICES**

All of the educational entities of the DJJ School System are organizations that provide education and treatment services in residential settings in South Carolina for adjudicated youth. DJJ provides these services to every county in the state and serves students according to the mandates of the judicial systems in the respective

counties. The district is charged with serving a very fluid and transient population of youth in 15 separate sites. Schools are in session year-round (enabling students to make up absences and close learning gaps).

The DJJ school district is responsible for all educational programs operated by the agency, including those in private provider programs and alternative school sites in community residential placement facilities.

Juveniles committed to DJJ can earn either a high school diploma or a GED. DJJ's school district also offers students 10 CATE 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.

DJJ operates its own independent school district. The school district consists of one long-term facility and three regional evaluation centers, one detention center and ten satellite programs. These school sites provide education for approximately 700 students in grades 6-12. All schools provide basic academic classes and courses necessary to earn a high school diploma. The General Equivalency Development (GED) Program is also provided for juveniles selected as appropriate candidates.

## **DIVISION OF ADMINISTRATIVE SERVICES**

DJJ's Division of Administrative Services provides a broad array of services to agency personnel that are the underpinning for the day-to-day operations of the agency.

## **DIVISION OF PLANNING AND PROGRAMS**

DJJ's Division of Planning and Programs helps to further DJJ's efforts to strategically plan for growth. This division also provides DJJ staff with the latest, most up-to-date research and statistical information to help them effectively manage the agency's

resources and deliver services of the highest quality.

## **OFFICE OF THE INSPECTOR GENERAL**

DJJ's Office of the Inspector General (OIG) is responsible for numerous safety services for employees and juveniles, as well as criminal investigations and management reviews. The

Event Reporting Management Information System (ERMIS), a state-of-the-art computer system managed by the OIG, 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. The OIG also makes monthly reports of specific events to SLED.

## **DETENTION & EVALUATION CENTERS**

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### **JUVENILE DETENTION CENTER**

\* For more detailed information (including visitation rules and procedures), see the Detention Center brochure on the DJJ website.

1725 Shivers Road, Columbia, SC 29212  
(803) 896-9440

DJJ's Juvenile Detention Center is a centralized pretrial detention facility, serving juveniles from most of SC's 46 counties (several counties, including 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.

### **MIDLANDS REGIONAL EVALUATION CENTER**

1721 Shivers Road; Columbia, SC 29210  
(803) 896-7455

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 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.

### **UPSTATE REGIONAL EVALUATION CENTER**

1585 Jonesville Highway; Union, SC 29379  
(864) 429-3610

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. .

### **COASTAL REGIONAL EVALUATION CENTER**

331 Campbell Thickett Road; Ridgeville, SC 29472  
(843) 821-3073

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.

## **LONG-TERM COMMITMENT INSTITUTION**

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### **BROAD RIVER ROAD COMPLEX (BRRC)** 4900 Broad River Road, Columbia, SC 29212

The BRRC in Columbia is the agency's long-term commitment facility. The more than 200-acre complex is paramount in DJJ's mission of protecting the public and reclaiming juveniles in the least restrictive environment.

The secure facility offers programs for boys and girls of all backgrounds and needs, including programs for kids with special needs, youth sex offenders, and those struggling with substance abuse.

BRRC is also home to the Communities in Schools (CIS) program, one of the first in the nation in a juvenile correctional setting. DJJ's

fully accredited school district provides continued education for juveniles, preparing students for post-secondary education. Birchwood School is where boys and girls attend middle and high school.

This campus houses the Systemic Treatment for Aggression Replacement program (STAR) and DJJ's Junior Reserve Officer Training Corps (JROTC) program, a cooperative effort between DJJ's school district and the U.S. Army.

Female juveniles at BRRC live in the Willow Lane Transition House, which incorporates transitional living into the rehabilitative process.

## **TRANSFER TO DEPARTMENT OF CORRECTIONS**

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### **TRANSFER AT AGE 18**

A child committed to DJJ following an adjudication for a violent offense contained in § 16-1-60, who has not been paroled or released from the custody of DJJ by his or her 18<sup>th</sup> birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. § 63-19-1440(E).

In addition, DJJ must temporarily transfer to the custody of the YOD a child over 17 "whose presence in the custody of [DJJ]

appears to be seriously detrimental to the welfare of others in custody," when authorized by an order of a circuit judge. § 63-19-1650.

### **TRANSFER AT AGE 19**

Any child who has not been paroled or released from the custody of DJJ by his or her 19<sup>th</sup> birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. § 63-19-1440(E).



# JUVENILE RECORDS

## 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. §§ 63-19-2010, 2020(A).

### 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 under DJJ's supervision. § 63-19-2020(B).
- Reports and recommendations produced by DJJ for the court's consideration at a dispositional hearing must be provided to the court, the solicitor, and the child's attorney by DJJ. § 63-19-2020(D).
- 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. § 63-19-2020(E).
- Upon request, DJJ must provide the victim with defendant child's name, basic descriptive information, information about the juvenile justice system, the status of the case, available victim services, and

DJJ's disposition recommendations. § 63-19-2020(F).

- 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. § 63-19-2020(G), (H).
- 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 subject to a house arrest order. § 63-19-2020 (I).

### CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS

Law enforcement records and information identifying children pursuant to the Juvenile Justice Code are confidential, must not be open to public inspection, and must be kept separate from records of adults. § 63-19-2030(A), (B).

### AUTHORIZED RELEASE OF INFORMATION BY LAW ENFORCEMENT

- Law enforcement information or records of children created pursuant to the provisions of the Juvenile Justice Code 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. § 63-19-2030(D).

- Incident reports are to be provided to the victim pursuant to § 16-3-1520.
- § 63-19-2030(E).
- 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 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;
  - 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 § 63-19-2030(E) and must be forwarded with the child's permanent school records if the child transfers to another school. *Id.*

## 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 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

locating or identifying a missing or runaway child. § 63-19-2030(F).

## 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. § 63-19-2030(G).
- 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 SLED's files. § 63-19-2030(H).
- 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. § 63-19-2030(I).
  - 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. § 63-19-2030(J).
- 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. § 63-19-2030(K).
- 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. § 63-19-2030(L).

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

The name, identity, or picture of a child under the court's jurisdiction must not be provided to a newspaper, radio station, or television station 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 adult court; or
- the child has been adjudicated delinquent for:
  - a violent crime;
  - grand larceny of a motor vehicle;
  - a crime involving a weapon; or
  - unlawful drug distribution or trafficking. § 63-19-2040(A).

### **EXPUNGEMENT OF JUVENILE RECORDS**

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Expungement is the destruction of a juvenile's official records relating to being taken into custody, the charges filed against the child, the adjudication, and the disposition. A person wishing to have his juvenile record expunged must petition the court for an order of expungement. If an expungement order is granted, that person's records must be destroyed or retained by any law enforcement, municipal, county, or state agency pursuant to § 17-1-40. § 63-19-2050(D).

The effect of an expungement order is to "restore the person in the contemplation of the law to the status he occupied before being taken into custody." Once the court grants a person an order of expungement, the person may not be found guilty of perjury or giving false statement for failing to acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose. §63-19-2050(E).

### **ELIGIBILITY REQUIREMENTS**

Anyone seeking to have his juvenile record expunged:

- must be at least 18;
- must have successfully completed any court-ordered sentence;
- must be free of any subsequent adjudications or convictions of a criminal offense; and
- must be free of any pending criminal charges. § 63-19-2050(C)(3).

If the person was found not guilty in an adjudicatory hearing, the court shall grant the expungement order regardless of the person's age and the person must not be charged a fee. § 63-19-2050(C)(3).

The granting of the expungement order for eligible offenses is discretionary with the judge except in cases where the person has been found not guilty in an adjudicatory

hearing or where the person is petitioning the court regarding a single status offense. § 63-19-2050(C)(1), (3).

### **RESTRICTIONS**

- No person under 18 may petition the court to have his juvenile record expunged. However, this age restriction does not apply if the person has been found not guilty in an adjudicatory hearing. § 63-19-2050(C)(3).
- 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. § 63-19-2050(A)(2).
- An adjudication for a violent crime cannot be expunged. § 63-19-2050(C)(3).

## **EXPUNGEMENT APPLICATION PROCESS**

The Motion and Order for the Expungement of Juvenile Arrest Records (SCCA 492) and Motion and Order for the Expungement of Juvenile Arrest Records – Not Guilty (SCCA 492NG) were approved for use in the family courts by order of Chief Justice Toal in July 2015. These forms are available on the South Carolina Judicial Department website at [www.sccourts.org](http://www.sccourts.org).

Except with a finding of not guilty (see below), the following steps must be taken to expunge a person's juvenile records:

1. The applicant will apply to the solicitor in the circuit in which the offense(s) was committed.
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 \$250.00 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 the Department of Juvenile Justice (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.
9. A prosecution or law enforcement agency may file an objection to the expungement. If an objection is filed, the expungement must be heard by the court. The prosecution or law enforcement agency's reason for objecting must be that the person has other charges pending or the charges are not eligible for expungement. The prosecution or law enforcement agency shall notify the person of the objection. The notice must be given in writing at the most current address on file with the court, or through the person's counsel of record.

## **EXPUNGEMENT APPLICATION PROCESS UPON FINDING OF NOT GUILTY IN AN ADJUDICATORY HEARING**

1. The applicant will apply to the solicitor in the circuit in which the offense(s) was committed.
2. The applicant must not be charged a fee for the expungement.
3. The solicitor will obtain all necessary signatures, including the signature of the family court judge.
4. Once the order is signed by the family court judge, the solicitor will file the order with the clerk of court.
5. The solicitor will provide copies of the expungement order to all pertinent governmental agencies as well as the applicant or the applicant's attorney.

# COMPETENCY

## ADJUDICATIVE COMPETENCE

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### OVERVIEW

Due process requires that a defendant be competent to stand trial, which includes capacity to sufficiently understand the nature of the proceedings and to assist counsel in his defense. In *Drope v. Missouri*, 420 U.S. 162 (1975), the 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 trial.” *State v. Bell*, 360 S.E.2d 706 (S.C. 1987).

Adjudicative competence is usually raised at the pretrial stage of delinquency proceedings, but it can be raised at any point in the proceedings, including post-trial.

### STANDARD FOR ADJUDICATIVE COMPETENCE

In *Dusky v. United States*, the Court adopted the standard for competence to stand trial which is followed across the country: whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960); cited in *State v. Reed*, 503 S.E.2d 747 (S.C. 1998), *State v. Hill*, 604 S.E.2d 696 (S.C. 2004).

In *Godinez v. Moran*, 509 U.S. 389 (1993), the Court held that the competency standard for pleading guilty (or waiving the right to counsel) is the same as the competency standard for standing trial established in *Dusky*.

### ELEMENTS OF COMPETENCE TO STAND TRIAL - Excerpted from the National Juvenile Defender Center’s “*Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum*.”

Analyses of competence to stand trial in individual cases typically require information related to two major elements of competence as provided in definitions. These are abilities related to “factual understanding” and abilities related to “rational understanding.”

1. Abilities related to “factual understanding” and “rational understanding” of the trial process.
  - a. *Factual understanding* refers to the youth’s basic understanding of the nature of the proceedings, including:
    - Nature and seriousness of the charges
    - The purpose of a trial process and possible penalties
    - Possible pleas, and the nature of plea agreements
    - The role of various participants in the process, especially defense counsel and, including, the youth himself as the defendant
    - Rights of the youth throughout the process
  - b. *Rational understanding* (sometimes called “appreciation” of the significance of what one factually understands) refers to the youth’s ability to apply this information in a manner that does not impair decision making. Several reasons for limitations often seen in youth’s rational understanding may be relevant:
    - Understanding is often limited by the youth’s auditory and visual processing problems.

- Immaturity may impair some youth's abilities to perceive risks of various decisions realistically, to weigh their long-range consequences, or to decide autonomously rather than on the basis of perceptions of their peers.
  - Mental disorders that may distort or "override" factual understanding (for example, if they involve beliefs that distort the youth's perceptions of the significance of the trial process).
2. Abilities associated with assisting counsel.
- a. *Abilities associated with communication and trust.* For example:
- Ability to comprehend counsel's inquiries
  - Ability to discern what is relevant to counsel's inquiry
  - Ability to articulate the relevant information related to counsel's inquiry
- b. *Must be able to manage the demands of trial process.* For example:
- Must be able to endure stress of trial
  - Must be able to maintain demeanor
  - Must be able to testify relevantly, if necessary
3. *The role of decision-making ability.* Deficits in abilities to make autonomous decisions may arise because of problems related to immaturity in all of the above areas. They may also arise due to an inability to understand factually or to apply the information rationally to one's case. Any of these may reduce the youth's ability to assist counsel. Thus, an examination of the youth's ability to use information in a decision-making process is especially important.

Thinking about a youth's competence to stand trial requires three broad considerations.

1. *Functional abilities.* What does the youth actually know, or what can the youth actually do, that is related to the factual

and rational understanding components of competence to stand trial?

2. *Causal explanation.* If the youth has deficits in relevant functional abilities, what is their cause?
- a. The causes may be disabilities, immature cognitive or psychosocial development, intellectual disabilities, or mental disorders.
  - b. The mere presence of deficits together with one of these possible causes is not sufficient for the analysis. One must show a logical connection between the deficits and the presumed cause.
3. *Situational factors.* Are the demands of the youth's trial situation such that the deficits are sufficiently significant to warrant a finding of incompetence? Not all delinquency proceedings are alike in their demands. Certain delinquency proceedings may require the youth to understand and appreciate different concepts.

## COMPETENCY EVALUATION

### *Authorization for Evaluation*

Judges have a duty to order a competency examination if there is reason to believe that a person charged with a criminal offense is not fit to stand trial. Section 44-23-410 provides for pretrial evaluations of a juvenile's competence to stand trial as follows:

When a family court judge has reason to believe a juvenile is unable to understand the nature of the proceedings against him or to assist in his defense due to lack of mental capacity, he or she shall order a competency evaluation:

- by two examiners designated by DMH, if the juvenile is believed to have a mental illness;
- by two examiners designated by DDSN if the juvenile is believed to have intellectual disability or a related disability; or
- by examiners from each agency, if the juvenile is believed to have both mental

illness and intellectual disability or a related disability.

\*\* The judge also has the option of committing the juvenile to a DMH or DDSN facility for up to 15 days for “examination and observation.” § 44-23-410(A)(2).

If the DMH examiners find indications of intellectual disability or a related disability but not mental illness, DMH shall inform the court that the juvenile is “not mentally ill” and should be evaluated by DDSN instead of DMH. Likewise, if the DDSN examiners find indications of mental illness but not intellectual disability or a related disability, DDSN shall inform the court that the juvenile does “not have intellectual disability” and should be evaluated for competency to stand trial by DMH instead of DDSN. If either DMH or DDSN finds a preliminary indication of dual diagnosis of mental illness and intellectual disability or a related disability, this must be reported to the court with a recommendation that one DMH examiner and one DDSN examiner be designated to further evaluate the juvenile and render a final report on the juvenile’s mental capacity. §44-23-410(D).

Despite the mandatory language of § 44-23-410, the ordering of a competency examination is within the judge’s discretion, and absent a clear showing of an abuse of this discretion, a refusal to grant an examination will not be disturbed on appeal. *State v. Singleton*, 472 S.E.2d 640 (S.C. App. 1996).

The juvenile may also arrange for his own examination by an independent examiner. § 44-23-410(C).

SCCA487 - Order for Competency to Stand Trial Evaluation can be found on the South Carolina Judicial website.

### **Time Requirements**

The evaluation is to be conducted within thirty days of receipt of the court's order. § 44-23-410(A)(1). The court may commit the juvenile to a DMH or DDSN facility for up to 15 days for “examination and observation.” § 44-23-

410(A)(2). DMH or DDSN may apply for an extension of up to 15 more days to complete the examination or the “examination and observation” if necessary. § 44-23-410(B).

### **Evaluation Report**

The examiners are required to issue a written report to the court:

- within 10 days of the examination under § 44-23-410(A)(1), or
- at the conclusion of the observation period under § 44-23-410(A)(2).

The report shall include:

- a diagnosis of the juvenile’s mental condition; and
- clinical findings regarding whether or not the juvenile is capable of understanding the proceedings against him and assisting in his own defense, and if not, whether there is a substantial probability that he will attain that capacity in the foreseeable future. § 44-23-420(A).

The report shall not contain any findings regarding insanity unless further examination on the question of insanity is ordered by the court. § 44-23-420(B).

### **COMPETENCY HEARING (BLAIR HEARING)**

Upon receiving the evaluation report from the designated examiners, the court is required to set a date for a competency hearing and provide the juvenile and his attorney with notice of the hearing. § 44-23-430. *See also State v. Blair*, 273 S.E.2d 536 (1981).

The examination report is admissible as evidence in the competency hearing under § 44-23-420(C), and it is a statutory exception to the rule against hearsay. *State v. Franklin*, 456 S.E.2d 357 (1995). However, in *Hudgins v. Moore*, 524 S.E.2d 105 (S.C. 1999), the court stated that information in a court-ordered mental health examination is inadmissible “for purposes other than that ordered by the court.” (citing *State v. Myers*, 67 S.E.2d 506 (1951)); *See also State v. Thompson*, 495 S.E.2d 437 (1998) (attorney-client privilege prohibits use of defendant's

communications to a mental health expert for impeachment).

***Finding that juvenile is fit to stand trial***

If the court finds the juvenile fit to stand trial, the delinquency proceedings resume. § 44-23-430. It is important to note, however, that if at any subsequent point in the proceedings, the court has reason to question the juvenile's ability to understand the proceedings or assist counsel in his defense, the issue of competency may be revisited.

***Finding that juvenile is unfit and unlikely to become fit to stand trial in the foreseeable future***

If the court finds the juvenile unfit to stand trial and unlikely to become fit to stand trial in the foreseeable future, the solicitor is required to initiate judicial admission proceedings within 14 days excluding weekends and holidays, during which time the court may order the juvenile hospitalized or continued in detention if already detained. §44-23-430(2).

***Finding that juvenile is unfit but likely to become fit to stand trial in the foreseeable future***

If the court finds the juvenile unfit to stand trial but likely to become fit to stand trial in the foreseeable future, the court shall order him hospitalized up to an additional 60 days. If the

juvenile is found to be unfit at the conclusion of the additional period of treatment, the solicitor shall initiate judicial admission proceedings within 14 days, excluding weekends and holidays, during which time the juvenile shall remain hospitalized. §44-23-430(3).

A finding of unfitness to stand trial:

- "does not preclude any legal objection to the prosecution of the [juvenile] which is susceptible of fair determination prior to trial" and without the defendant's participation. § 44-23-440.
- may be reexamined at any time on the motion of the court or either party. § 44-23-450.

**DISCHARGE FOLLOWING CIVIL COMMITMENT**

When the hospital determines a juvenile with pending charges no longer requires hospitalization, the family court shall be notified and shall conduct a new hearing on the juvenile's fitness to stand trial. If the court finds the juvenile remains unfit to stand trial, it must order the juvenile's release from the hospital. If the court finds the juvenile fit to stand trial, it may order that delinquency proceedings be resumed, or dismiss the charges and order the juvenile released. § 44-23-460.



## COMPETENCY CASE LAW

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

In *Dusky*, the Court adopted the legal standard of competence that 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 in *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 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).

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 § 44-23-410.

# JUVENILE CONFESSIONS

## 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 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." 168 U.S. at 542-543.

### MIRANDA RIGHTS AND WARNINGS

In *Miranda v. Arizona*, the 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. The *Miranda* Court held that:

[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and...the following measures are required. He must be warned prior to any questioning 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. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him. *Miranda v. Arizona*, 384 U.S. 436, 478-479 (1966).

### VOLUNTARINESS

In *Gallegos v. Colorado*, 370 U.S. 49 (1962), the Court 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*, 479 U.S. 157 (1986), the 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. Weighing voluntariness requires a "totality of circumstances" analysis involving the conditions of the waiver situation and the characteristics of the youth.

### *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." 217 S.E.2d at 722. 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, 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.

Analyzing the Totality of Circumstances- Excerpted from the National Juvenile Defender Center's "Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum." See the full Curriculum for further explanation and examples.

Analysis must consider two types of information: capacities of the youth, and circumstances of the interrogation.

1. Current capacities of the youth, including:
  - a. *Functional abilities*. These include the specific capacities, skills, and abilities relevant to each of the areas of the legal standard being evaluated; including:
    - Ability to comprehend *Miranda* warnings (e.g., knowing that he can have a defense attorney to advise him at the time he decides whether or not to waive *Miranda* rights).

- Ability to grasp the significance of rights in the context of the legal process (e.g., knowing what a defense attorney is and the role he plays in relation to the youth and the legal process).
  - Ability to process information in arriving at a decision about waiver (e.g., ability to put the information together to reach a decision independently).
- b. Causal factors. This includes information about the youth's mental condition that would explain any deficits in functional abilities to understand *Miranda* rights. "Causal" explanations can include cognitive or developmental deficits, emotional disturbances and mental disorders, learning disabilities, mental retardation [intellectual disability], and/or immaturity.
2. Circumstances at the time of the interrogation, including:
    - a. Information about the mental and physical conditions of the youth at the time of the *Miranda* waiver (which may be different from mental condition at the time of the evaluation of the youth's capacities).
    - b. Details about the chronological history of events leading up to and during the presentation of the *Miranda* warnings.
    - c. Information about all persons present during the events as well as their roles and behaviors, and precisely how the warnings were presented.
  3. Interaction of abilities and situational demands. Given these two types of information, the analysis must consider the abilities of the youth in the context of the demands of the interrogation.

**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**

"The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded." *State v. Plath*, 284 S.E.2d 221, 226 (1981) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)), *overruled on other grounds by State v. Short*, 511 S.E.2d 358 (1999). However, the fruit of the poisonous tree doctrine will not apply to a confession if it is freely and voluntarily given, even if the arrest was illegal." *Id.* at 226.

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. Voluntariness remains as the test of admissibility." *Id.* at 28.

### **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. Voluntariness must be proven by a preponderance of the evidence. *State v. Smith*, 234 S.E.2d 19 (S.C. 1977).

### **U.S. SUPREME COURT DECISIONS**

*Miranda v Arizona*, 384 U.S. 436 (1966): A criminal suspect has constitutional rights to avoid self-incrimination and to advice of counsel prior to and during custodial interrogations. 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.

*J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011):

Age is a factor to be considered in determining whether an individual is "in custody."

*In re Gault*, 387 U.S. 1 (1967): Juveniles have the same constitutional privilege against self-incrimination and right to counsel as adults.

Juveniles' confessions require special scrutiny. (*Fare v. Michael C.*, 442 U.S. 707 (1979); *Gallegos v. Colorado*, 370 U.S. 49 (1962), *Haley v. Ohio*, 332 U.S. 596 (1948).

# INTERSTATE COMPACT FOR JUVENILES

## INTERSTATE COMPACT FOR CHILDREN

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The Interstate Compact for Juveniles (ICJ) is a legal agreement between the states that regulates the interstate movement of children.

### ICJ APPLICABILITY

The Interstate Compact for Juveniles applies when children:

- have run away from home and left their state of residence without permission;
- are under court supervision on probation, parole, and have absconded to another state;
- have been accused of an offense in another state;
- are in need of institutionalization or special services in another state; and/or
- require probation/parole supervision services when they relocate to another state.

South Carolina adopted the new Interstate Compact for Juveniles law, which was enacted nationally in 2008, replacing the original 1955 compact. Working through DJJ's ICJ Commissioner/Coordinator, DJJ staff complete the standardized ICJ paperwork and follow compact procedures to ensure the proper supervision of juveniles across state lines, coordinating their transport or return to the home state, and if necessary their detention. (See § 63-19-2220.)

### ICJ'S BENEFITS

The compact is overseen by the national Interstate Commission for Juveniles. Its goals are to preserve child welfare and promote

public safety, victim's rights, enhanced juvenile accountability and safety, and enforcement of protocols and communication among commission members. ICJ strengths are that it opens communication between participating states and establishes a uniform system of data collection and forms pertaining to a juvenile's movement and supervision across state lines. The compact ensures that solicitors, judges, and other juvenile justice professionals involved in the process have a consistent approach to working with these juveniles. The individual members work cooperatively in the administration and management of the program.

### ICJ WEBSITE

Additional information on the Interstate Compact for Juveniles, including required and optional forms, as well as a complete list of the ICJ Rules, can be found at <http://www.juvenilecompact.org/>.

\*\* The ***Benchbook for Judges and Court Personnel*** is also an excellent resource that can be accessed on the ICJ website. It provides a detailed overview of the ICJ rules.

### SC 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.

### MEDIA ISSUES

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#### RIGHT OF ACCESS TO COURT PROCEEDINGS BY THE PRESS

The “free press” right of access to court proceedings claim is generally based upon the First and Fourteenth Amendments to the United States Constitution and Section 2, Article I of the South Carolina Constitution which prohibit the making of laws which would diminish the freedom of the press.

- The First Amendment to the United States Constitution provides that “Congress shall make no law...abridging the freedom of...the press” (made applicable to the states by the 14 Amendment).
- Section 2, Article I of the South Carolina Constitution provides that the “General Assembly shall make no law... abridging the freedom of ...the press.”
- Section 9, Article I of the SC Constitution provides that “all courts shall be public.”

While Section 9, Article I of the South Carolina Constitution provides that “all courts shall be public,” state law provides that the “general public must be excluded [from hearings involving cases of children] and only persons the judge finds to have a direct interest in the case or in the work of the court may be admitted.” § 63-3-590.

In *Ex parte Columbia Newspapers*, 333 S.E. 2d 337 (S.C. 1985), the court held that Article I, § 9 does not render § 63-3-590 unconstitutional. The court found that “the public, which includes the press, has a right of access to juvenile court proceedings subject to a balancing of interests with the parties

involved.” The court also held that if a judge’s decision to close any court proceeding is challenged by the public or the press, it must be supported by findings explaining the balancing of interests and the need for closure of the proceeding. (See also, *Steinle v. Lollis*, 307 S.E.2d 230 (S.C. 1983) – the right of access to court proceedings is not absolute but subject to a proper balancing of competing interests.)

A defendant who opposes the public’s right of access to court proceedings bears the burden of proof to justify closure. 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.” *Ex parte The Island Packet*, 417 S.E.2d 575 (S.C. 1992).

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

Section 63-19-2040(A) prohibits providing a newspaper or radio or television station with 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 waived to adult court; or
- the child has been adjudicated delinquent for a violent crime, grand larceny of a motor vehicle; a crime in which a weapon was used; or distribution or trafficking in unlawful drugs.

## JUVENILE JUSTICE CASE LAW

### UNITED STATES SUPREME COURT CASES

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***Kent v. United States***, 383 U.S. 541 (1966).

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).

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).

Established proof beyond a reasonable doubt as the standard for juvenile adjudication proceedings.

***McKeiver v. Pennsylvania***, 403 U.S. 528 (1971).

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).

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).

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.

***Roper v. Simmons***, 543 U.S. 551 (2005).

Established that it is unconstitutional to impose capital punishment for crimes committed prior to a person's 18<sup>th</sup> birthday.

***Graham v. Florida***, 130 S.Ct. 2011 (2010).

Juveniles cannot be sentenced to life without parole for nonhomicide offenses. While "a state need not guarantee the offender eventual release...it must provide...some realistic opportunity to obtain release before the end of that term."

***Miller v. Alabama***, 567 U.S. 460 (2012).

Held that juveniles cannot be sentenced to life without parole for homicide crimes, where such a sentence is the only option. Mitigating factors must be taken into account before a juvenile can be sentenced to life without the possibility of parole.

***J.D.B. v. North Carolina***, 131 S. Ct. 2394 (2011).

Concluded that age is a factor to be considered in determining whether an individual is "in custody."

## SOUTH CAROLINA SUPREME COURT CASES

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***In the Matter of Skinner***, 249 S.E.2d 746 (S.C. 1978).

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).

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).

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). 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).

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).

Established that family court proceedings are open to the press unless the judge makes a specific finding justifying closure.



# S.C. CODE OF LAWS

## RELEVANT STATE STATUTES

### DEFINITIONS ---

- § 63-19-20. Definitions.
- § 63-19-20. (1) Definition of "child" or "juvenile"

### DETENTION ---

- § 63-19-810. Taking a child into custody.
- § 63-19-820. Out-of-home placement.
- § 63-19-830. Detention hearings; screenings.
- § 63-19-840. Detention homes; temporary care and custody.
- § 63-19-850. Transportation to detention facility.
- § 63-19-360. Institutional services.
- § 16-1-60. Violent crimes defined.
- § 16-3-1525. Detention of person accused of committing offense; notification to victims; protection of witnesses; juvenile detention hearings.

### INTAKE AND INITIATION OF PROCEEDINGS ---

- § 63-19-1010. Intake and probation.
- § 63-19-1020. Instituting proceedings.
- § 63-19-1030. Prehearing inquiry.
- § 63-19-1040. Indigent defense.

### WAIVER / TRANSFER OF JURISDICTON ---

- § 63-19-1210. Transfer of jurisdiction.

### ADJUDICATION & DISPOSITIONAL POWERS OF THE COURT ---

- § 63-19-1410. Adjudication.
- § 63-19-1420. Driver's license suspension.
- § 63-19-1430. Youth Mentor Act.
- § 63-19-1435. Use of restraints on juveniles in court.
- § 63-19-1440. Commitment.
- § 63-19-1450. Commitment of juvenile with mental illness or intellectual disability.
- § 63-19-1460. Conveyance by sheriff.

### DJJ COMMITMENT RESPONSIBILITIES ---

- § 63-19-1640. Furloughs.
- § 63-19-1650. Youthful Offender Division transfer.
- § 63-19-1680. Child support payments.

### PAROLE & AFTERCARE ---

- § 63-19-610. Board of Juvenile Parole.
- § 63-19-1810. Determination of release.
- § 63-19-1820. Board of Juvenile Parole; review & appearance procedures.
- § 63-19-1830. Legal representation before board.
- § 63-19-1835. Compliance reductions for probationers and parolees.
- § 63-19-1840. Aftercare investigations.

- § 63-19-1850. Conditional release; search and seizure.
- § 63-19-1860. Conditional release violation.
- § 63-19-1870. Revocation of conditional release.
- § 63-19-1880. Probation counselors.

## **JUVENILE RECORDS**

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- § 63-19-2010. Records.
- § 63-19-2020. Confidentiality.
- § 63-19-2030. Law enforcement records.
- § 63-19-2040. Release of information.
- § 63-19-2050. Petition for expungement of official records.

## **INTERSTATE COMPACT FOR JUVENILES**

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- § 63-19-2220. Interstate Compact for Juveniles.

## **OFFENSES INVOLVING MINORS**

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- § 63-19-2410. Misrepresentation of age for admission to theater.
- § 63-19-2420. Loitering in a billiard room.
- § 63-19-2440. Beer and wine purchase, consumption, or possession.63-19-2430. Playing pinball.
- § 63-19-2450. Alcoholic beverages purchase, consumption, or possession.
- § 63-19-2460. Alcoholic beverages in home; religious use exception.

## **COMPETENCY STATUTES**

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### ***Fitness to Stand Trial***

- § 44-23-410. Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.
- § 44-23-420. Designated examiners' report.
- § 44-23-430. Hearing on fitness to stand trial; effect of outcome.
- § 44-23-440. Finding of unfitness to stand trial shall not preclude defense on merits.
- § 44-23-450. Reexamination of finding of unfitness.
- § 44-23-460. Procedure when superintendent believes person charged with crime no longer requires hospitalization.

### ***Judicial Commitment***

- § 44-24-90. Notification to child and guardian of petition; contents of petition; right to counsel; examination and conclusions.
- § 44-24-100. Notice of hearing for emergency or judicial admission.
- § 44-24-110. Examiners' reports; disposition of child where report does not recommend judicial admission, recommends judicial admission, or is divided.
- § 44-24-120. Removal of proceedings to another county.
- § 44-24-130. Hearing; location; testimony; rules of evidence; transcript.
- § 44-24-140. Determination after presentation of evidence.
- § 44-24-150. Psychiatric evaluations of children; notification of victims.

# AGENCIES & ORGANIZATIONS SERVING CHILDREN IN SOUTH CAROLINA

## STATE AGENCIES

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### **Department of Alcohol and Other Drug Abuse Services (DAODAS)**

<https://www.daodas.sc.gov>

DAODAS is the state 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 SC citizens.

### **SC Department of Disabilities and Special Needs (DDSN)**

<https://ddsn.sc.gov/>

SCDDSN is the state agency that plans, develops, oversees and funds services for South Carolinians with severe, lifelong disabilities of intellectual disability, autism spectrum disorder, traumatic brain injury and spinal cord injury and conditions related to each of these four disabilities. Their mission is to assist people with disabilities and their families in meeting needs, pursuing possibilities and achieving life goals, and to minimize the occurrence and reduce the severity of disabilities through prevention.

### **SC Department of Education (DOE)**

<http://ed.sc.gov/>

### **SC Department of Juvenile Justice (DJJ)**

<https://djj.sc.gov/>

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) – Child, Adolescent and Family Services (CAF)**

CAF provides an array of mental and behavioral health services to children and their families within their communities when needed..

DMH is the leading School Mental Health Services (SMHS) provider across SC. SMHS provide school children diagnostic services, intervention services, and a range of treatments including individual, group, and family therapy.

### **S.C. Department of Social Services (DSS)**

<https://dss.sc.gov>

The mission of DSS is to ensure the safety of children and adults who cannot protect themselves and assist families with achieving stability through child support, child care, financial and other temporary benefits while transitioning into employment.

## CHILD ADVOCACY ORGANIZATIONS

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### **Continuum of Care The SC Department of Children's Advocacy**

<https://coc.sc.gov>

The Continuum of Care is a South Carolina state program that serves children with serious emotional or behavioral health diagnoses whose families need help keeping them in their home, school or community. The Continuum helps children and families using Wraparound, a team-based approach to caring for families with complicated needs.

### **The Children's Trust of South Carolina**

<https://scchildren.org>

Children's Trust of South Carolina is the statewide organization focused on the prevention of child abuse and neglect.

### **Disability Rights of South Carolina**

<https://www.disabilityrightssc.org/>

Disability Rights of South Carolina is the Protection and Advocacy system (P&A) and the Client Assistance Program (CAP) for South Carolina. They are here to help people with disabilities understand and defend their rights. They provide a variety of services to include client assistance, training, abuse & neglect investigation, legal assistance, and advocacy for change. While P&A does not provide direct legal representation to juveniles in delinquency proceedings, their 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 Disability Rights at 1-866-275-7273 for assistance.

## IN-PATIENT ADOLESCENT TREATMENT FACILITIES

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### **William S. Hall Psychiatric Institute / Child and Adolescent**

(803) 898-1662

This hospital provides in-patient psychiatric services for children and adolescents and substance use treatment for adolescents. Patients are admitted from throughout the state primarily through Emergency Departments. However, referrals may come from community mental health centers, DSS, the family court system, and DJJ. The majority of patients are admitted through

probate court, family court, or voluntary admissions.

### **William J. McCord Adolescent Treatment Facility**

<https://tccada.com>

The William J. McCord Adolescent Treatment Facility offers a 24-hour structured regime of medical and clinical services to adolescents with presenting alcohol and/or other drug problems.

## JUVENILE JUSTICE WEBSITES

### SOUTH CAROLINA

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#### **Children's Law Center, University of South Carolina School of Law**

<https://childlaw.sc.edu>

Contains downloadable pdf files of Children's Law Center (CLC) publications, summaries of case decisions relevant to children in South Carolina, updates on child related issues, updated information regarding trainings and projects of the CLC, and links to numerous child-serving agencies and organizations.

#### **South Carolina Department of Juvenile Justice**

<https://djj.sc.gov>

Provides an overview of all services offered by the agency.

#### **South Carolina Legislature Online**

<https://www.scstatehouse.gov>

Provides access to South Carolina laws and legislative updates.

### NATIONAL

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#### **Center for Children's Law and Policy**

<https://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)**

<https://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.

#### **Interstate Commission for Juveniles**

<https://juvenilecompact.org>

The ICJ, the governing body of the Interstate Compact for Juveniles provides enhanced accountability, enforcement, visibility, and communication in the return of juveniles who have left their state of residence without permission and in the cooperative supervision of delinquent juveniles who travel or relocate across state lines.

- *Bench Book for Judges and Court Personnel*
- *Interstate Compact Rules*

#### **Juvenile Info Network**

<http://www.juvenilenet.org>

Includes news, links, and research on juvenile justice issues.

#### **Juvenile Justice Resource Hub (Juvenile Justice Information Exchange)**

<https://jjie.org/jjie-hub/>

A comprehensive source of information on cutting-edge juvenile justice issues and reform trends.

#### **Juvenile Law Center**

<https://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**

<https://www.ncjj.org>

Provides detailed profiles on each state's juvenile justice system. The NCJJ, located in Pittsburgh, PA. is the research division of the National Council of Juvenile and Family Court Judges and is the oldest juvenile justice research group in the US.

**National Council of Juvenile and Family Court Judges**

<https://www.ncjfcj.org>

Includes reviews of recent events in juvenile justice and many links.

**National Criminal Justice Reference Service**

<https://www.ncjrs.gov>

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 DOJ**

<https://ojjdp.ojp.gov>

Provides facts and figures on juvenile justice, delinquency prevention, violence and victimization.