



Guide for Attorneys Appointed to Represent Children Charged with Criminal and Status Offenses

The Children's Law Center serves as a statewide resource center for attorneys and other professionals involved in judicial proceedings related to juvenile justice and child protection. The Children's Law Center is a special grant-funded program of the University of South Carolina School of Law.

Resource attorneys at the Children's Law Center are available to provide general technical assistance regarding family court procedure and discuss legal issues with attorneys who represent children in family court cases.

Numerous publications addressing juvenile justice issues are also available and can be found on the Children's Law Center web site.

For more information about juvenile justice issues in South Carolina or to schedule a training session, contact the Children's Law Center at (803) 777-1646 or visit the Children's Law Center web site at <http://childlaw.sc.edu>.



The Children's Law Center is funded in part by the SC Bar Foundation

School of Law
University of South Carolina

The Children's Law Center, University of South Carolina School of Law has prepared this information to assist attorneys appointed to represent juveniles in family court. The appointments are made pursuant to Rule 608, SCACR.

Rule 608(A), SCACR requires the South Carolina Bar to prepare a list of all active members eligible for appointment in the county who normally represent at least three clients before the court of general sessions during a calendar year. This list is used to appoint counsel for indigents in juvenile delinquency matters.

Attorneys may receive reimbursement for their court appointed cases, as well as funding for pre-approved evaluations and investigative, expert, or other services. Contact the Office of Indigent Defense at (803) 734-1343, www.sccid.sc.gov, for information.

Upon appointment by the court in an indigent case, counsel must notify the Office of Indigent Defense (OID) within 15 days of the appointment by registering the case online at www.sccid.sc.gov. Every court appointed case must be registered even if the attorney does not intend to apply for payment of attorney fees and/or expenses. (In addition to being an electronic voucher processing system, the system is also the exclusive data collection and tracking system for all indigent defense cases.)

This publication provides a brief overview of juvenile court proceedings in South Carolina. For more detailed information about the juvenile justice system and the representation of juveniles, refer to the Training and Resource Manual for Attorneys Representing Juveniles which can be found on our web site at <http://childlaw.sc.edu> under Juvenile Justice Publications. Printed copies of the manual are also available from the Children's Law Center for the cost of printing.

PART ONE:

Overview of the Juvenile Justice System in South Carolina

FAMILY COURT JURISDICTION

Children have special needs and are treated differently than adults by the court system. In South Carolina, the family court has jurisdiction over children who are charged with criminal offenses and status offenses. Status offenses are those offenses which would not be a crime if committed by an adult, such as incorrigibility (beyond the control of the parents), running away, and truancy (failure to attend school as required by law). A person's age determines whether he or she will be treated as a child and tried in family court, or treated as an adult and tried in general sessions court. South Carolina law defines "child," for juvenile justice purposes, as a person less than seventeen years of age, but the definition excludes sixteen year olds who are charged with felonies that provide for a maximum term of imprisonment of fifteen years or more. Sixteen year olds excluded under this definition, however, may be remanded or transferred to the family court at the solicitor's discretion. S.C. Code Ann. § 20-7-6605(1) (Supp. 2005). An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item. For example, if a 16 year old is charged with burglary, first degree and petit larceny arising out of the same circumstance, both charges should be heard in general sessions court.

PETITION

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

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

TAKING INTO CUSTODY

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

Custodial Interrogation

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

DETENTION

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

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

A child who is taken into custody because of a status offense should not be detained more than 24 hours in a juvenile detention facility, unless a previously issued court order notified the child that further violation of the court's order may result in the secure detention of that child in a juvenile detention facility. If a child is ordered detained for violating a valid court order, the child may be held in secure confinement in a juvenile detention facility for not more than 72 hours, excluding weekends and holidays. § 20-7-7210(E).

Detention Hearing

If the officer who took the child into custody has not released the child to a parent or responsible adult, the family court must hold a detention hearing within 48 hours from the time the child was taken into custody, excluding weekends and holidays. A child must be

represented by an attorney at this hearing and may only waive this right if he has consulted at least once with an attorney. The court will appoint an attorney to represent the child if the child does not have one. S.C. Code Ann. § 20-7-7215(A) (Supp. 2005). The detention hearing may be held without the child's parents or guardian if they cannot be located after a "reasonable effort," and the court will appoint a guardian *ad litem* for the child. Rule 32, SCRFC.

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

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

INTAKE

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

The child will receive a notice in the mail regarding the intake interview date and time. During the intake process, a DJJ caseworker at the local DJJ county office interviews the child and the child's parent or guardian. As the child's attorney, you may also be present for the intake interview and this is encouraged, especially if the child is facing serious charges. The caseworker will provide information to the child and the parent about the system, collect background information from the child and parent, and have the parent sign releases for school and medical records. The caseworker will also attempt to identify appropriate services that might be available for the child and the child's family. The information gathered at intake, along with the child's school records, past involvement in the juvenile justice system, and other available information, will be used by the DJJ caseworker when making recommendations to the solicitor and to the court.

DIVERSION

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

WAIVER (OR TRANSFER OF JURISDICTION)

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

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

A family court judge has the authority to waive:

- (1) a child of any age charged with murder;
 - (2) a child 16 or older charged with any criminal offense (not status offense), after full investigation;
 - (3) a 14 or 15 year old charged with an offense which, if committed by an adult, would carry a maximum term of imprisonment of 15 years or more, after full investigation and a hearing; and
 - (4) a child 14 or older charged with carrying a weapon on school property, unlawful carrying of a handgun, assault and battery of a high and aggravated nature, or unlawful distribution of drugs within a half-mile of a school, after full investigation and a hearing.
- A family court judge is required to waive a child 14 or older charged with an offense which, "if committed by an adult, provides for a term of imprisonment of ten years or more, if the child has previously been adjudicated...or convicted...of committing two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, and the second offense was committed after the sentence for the first offense was imposed." S.C. Code Ann. § 20-7-7605 (Supp. 2005).

Waiver Hearing

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

In *Kent v. United States*, 383 U.S. 541 (1966), the Supreme Court identified eight factors that may be considered by the judge when deciding whether or not to waive a child to adult court. The eight factors are:

- (1) the seriousness of the alleged offense and whether waiver is necessary to protect the community;
- (2) whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) whether the alleged offense was against persons or property;
- (4) whether there is sufficient evidence for a Grand Jury to return an indictment;
- (5) the desirability of trial and disposition of the entire case in one court when the child's co-defendants in the alleged offense are adults;
- (6) the level of sophistication and maturity of the child;
- (7) the child's record and previous criminal or adjudicative history; and
- (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of services currently available to the court.

ADJUDICATION

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

Children's Rights

In re Gault, 387 U.S. 1 (1967), established 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.

The Supreme Court also held that children are guaranteed the right to the adult criminal court standard of “beyond a reasonable doubt” when determining guilt and the right against double jeopardy. *In re Winship*, 397 U.S. 358 (1970), *Breed v. Jones*, 421 U.S. 519 (1975).

Some rights guaranteed adults in criminal prosecutions, however, are not guaranteed children in South Carolina family court adjudications. These rights include the right to a jury trial and the right to bail. According to *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), 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.

The Plea

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

Adjudicatory Hearing

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

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

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

DISPOSITION

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

Predisposition Evaluation

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

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

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

Disposition Hearing

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

The court has the authority to: dismiss the petition; order that the child be examined or treated by a physician, psychiatrist, or psychologist and placed in a hospital if necessary;

order the child to participate in a community mentor program; designate a state agency as the lead agency to provide a family assessment to the court; suspend or restrict the child's driver's license; place the child on probation; and/or commit the child to a DJJ institution. The judge takes the following into account when sentencing the adjudicated child: evaluation reports, seriousness of the offense(s), school records, behavior at home, and prior court history.

Probation

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

Commitment

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

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

the right to appear before the Parole Board periodically for the purpose of parole consideration (eligibility for release). A child appearing before the Parole Board has the right to an attorney, and an attorney will be appointed for the child if the child's family cannot afford to hire an attorney.

Transfer to Department of Corrections (DOC)

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

PAROLE

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

RIGHT TO APPEAL

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

EXPUNGEMENT OF A CHILD'S RECORD

Upon reaching the age of 18, a child who was taken into custody for, charged with, or adjudicated delinquent for having committed a status or nonviolent offense may petition the court for an order destroying all official records relating to: (1) being taken into custody; (2) the charges filed against the child; (3) the adjudication; and (4) the disposition. The granting of the order is in the court's discretion. The court will only grant the order for expungement if it finds that the child seeking to have the records expunged is at least 18 years old, has successfully completed any dispositional sentence imposed upon him, and has not been subsequently charged with committing any criminal offense. S.C. Code Ann. § 20-7-8525 (Supp. 2005).

PART TWO:

Overview of steps that should be taken prior to going to court

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

- Set up an appointment to meet with your client and the child's parent or guardian.
- File a Motion for Discovery.
- Contact the solicitor handling the case to discuss the status of the case, possible diversion programs that may be appropriate for your client, and potential plea negotiations. (At this point, you may not have met with your client and may not know if pleading guilty is an option, but it can be helpful to have an idea of what the solicitor is willing to offer, as far as plea negotiations, when you meet with your client.) You must discuss with your client any plea offers made by the solicitor even if your client makes it clear that he or she does not wish to plead guilty.
- Contact your local DJJ office to find out what DJJ is recommending to the court regarding sentencing and to learn about any community services that may be appropriate and available for your client and client's family. DJJ should also have your client's school records and prior court history available for your review.
- Review the petition, incident reports, and other discovery received from the solicitor, as well as the child's school records.
- Meet with your client to discuss the case, options and possible outcomes.

DISCOVERY

File a Rule 5 Motion for Discovery and Brady Motion with the family court. In response to the Motion, the solicitor should provide you with the petition, incident reports, your client's prior record, and any written or recorded oral statements, along with any other discoverable information under Rule 5, SCRCrimP.

ATTORNEY/CLIENT CONFERENCE

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

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

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

Interview Process

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

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

- What is your full name?
- How old are you?
- When is your birthday?
- What is your address? Is that the address where you always stay? (If not, be sure to get the addresses and phone numbers of all the places your client stays for extended periods of time, e.g., father's, grandmother's, or aunt's home.)
- What is your phone number? (Also ask if there are additional numbers of relatives or neighbors where you can contact your client in case your client's number is disconnected.)
- Who else is in your family? (Siblings, grandparents, etc.)
- Are your parents employed? Where?
- Are you enrolled in school? Where?
- What grade?
- What kind of grades are you making this year? (Explain that the judge will have access to the child's school records, so it is important that you, as the child's attorney, have accurate information regarding school records. Verify any school information you are relying on, prior to court, by reviewing DJJ's records, or have the child's parent sign a release allowing you to access the records directly from the school.)
- Are you in regular or special classes? (e.g., Emotionally Handicapped (EH), Learning Disabled (LD), or other special education classes)
- Did you miss any days of school this school year? Any class cuts or tardies?
- Have you had any disciplinary problems at school? How many times have you been suspended this year? Have you ever been expelled from school?
- Are you involved in any extra-curricular or after-school activities?
- Do you go to church? Are you involved in any church activities?
- Have you ever been to court before? Explain.
- Do you have a job?
- Are you pregnant? Do you have any children?
- Do you drink alcohol or take any drugs? (You may get a more honest answer by asking "When is the last time you drank alcohol?" "How often?" "How much?" and "When is the last time you smoked marijuana?" "If you got drug tested today, would you test positive?" Explain that the judge may order the child to take a drug test.)

- Has DSS ever been involved with your family? Have you ever been in DSS custody or lived in a home without your parents/guardians?
- Are you currently taking any medication? Have you taken any medication in the past? If so, what?
- Have you ever been hospitalized? (You are mainly concerned with any psychiatric stays or any serious head injuries.)
- Have you been diagnosed with any mental health problems?
- Are you going to any counseling? Have you ever?
- How is your behavior at home? (Ask the parents this one, too, because the judge often will, and you want to be prepared for their response.)
- Is there anything else about you or your family that you think I should know?
- Also ask the child's parent if the child has experienced any significant trauma or loss (e.g., the loss of a family member or close friend).

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

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

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

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

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

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

Explain to your client the importance of acting appropriately when appearing before the judge and while in the courthouse. Review the following with your client and client's parent:

- When in the courthouse and waiting for your case to be called, conduct yourself in a quiet and orderly manner.
- Dress appropriately for court (i.e., church clothes; shirts tucked in; pants pulled up; no hats, shorts, sleeveless shirts, t-shirts, short skirts, short dresses or flip flops; and no excessive jewelry - for males, no jewelry is better.)
- Hair should be neat and groomed.
- No chewing gum, cell phones or beepers in the courtroom.
- When speaking to the judge, or when the judge is speaking directly to you, always stand unless the judge tells you to sit down, and make eye contact with the judge; do not look down at the floor.
- Always speak to the judge respectfully (i.e., "Yes, sir," "No Ma'am" or "Yes, Your Honor").

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

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

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

PREPARING FOR A GUILTY PLEA

If, after thoroughly investigating the facts of the case and exploring all possible defenses, there appears to be sufficient evidence to prove that the child committed the alleged offense, discuss with your client the possibility of entering a guilty plea. The decision to plead guilty or go to trial is ultimately the client's decision, but as the child's attorney, you should advise your client of the benefits of a plea and give your professional opinion as to what the best course of action would be under the circumstances.

If your client wishes to plead guilty (and you feel confident that your client is competent and understands the implications of giving up the right to a trial):

- Negotiate with the solicitor for a plea agreement that will result in the best possible outcome for your client. When negotiating with the solicitor, be creative and offer suggestions for sentencing options that will address the concerns of the solicitor.
- Contact the local DJJ representative about services that would be appropriate for your client and client's family.
- Discuss with your client and client's parent the possibility of bringing other people from the community to show support and speak on your client's behalf (e.g., extended family members, family friends, neighbors, minister, coach, etc.). Contact any

potential character witnesses willing to speak on your client's behalf to discuss what they will say.

- Explain the plea process to your client and prepare your client for the questions that the judge will ask when taking the plea. Explain to your client all the possible outcomes and possible sentencing options. If probation is a possibility, make sure your client understands the implications of violating the terms of probation.
- In preparation for the disposition hearing, be sure to find out as much as you can about how the child is doing at home and in school. In family court, a judge's decision regarding sentencing maybe influenced as much by the child's behavior at home and school as by the nature of the offenses for which the child is being adjudicated. Therefore, it is very important to have an accurate account of how the child is performing in school, both behaviorally as well as academically, and at home. What kind of attendance and disciplinary record does the child have at school? Is the child well behaved at home? Does the child seem to respect authority? Has the child exhibited any violent, runaway or incorrigible behavior?
- Make sure your client understands the importance of behaving in an appropriate manner while in the courtroom and showing the judge that he is remorseful for the offenses to which he is pleading guilty and accepts responsibility for his behavior.
- When discussing a plea offer with your client, make sure your client understands that the family court judge does not have to accept a negotiated plea, but will have discretion as to sentencing.

PREPARING FOR TRIAL

If your client wishes to go to trial:

- Review the discovery received from the solicitor's office.
- Investigate the facts surrounding the case; use an in-house investigator or hire one to assist you if needed.
- Visit and become familiar with the scene of the alleged crime.
- Explore all possible defenses.
- Interview all potential defense witness and prepare them for court.
- Determine if there is a need for expert testimony or if it would be beneficial to have an expert testify for the defense and, if so, locate and engage an expert witness.
- Prepare your client for testifying (if you determine that your client should testify).
- Organize all relevant materials, applicable statutes, and case law in a trial notebook for easy access during the trial.

PART THREE:

Practice Tips for Attorneys Representing Children

MOTION FOR DISMISSAL

Children, like adults, have the constitutional right to a speedy trial. Although there is no statutory requirement regarding the time frame in which a case must be prosecuted in family court, the South Carolina Rules of Family Court establish a time frame. Under Rule 35,

SCRFC, the adjudicatory hearing must be set at the "earliest practicable date but no later than 40 days from the filing of petition unless delayed by order of the court, which order shall set forth the reasons for the delay."

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

COMPETENCY EVALUATIONS

If you have reason to believe that your client may lack the competency to understand the court proceedings or to assist the defense as a result of a lack of mental competence, you should request that the child undergo a competency evaluation. The solicitor prosecuting the case may be willing to consent and sign an order for competency evaluation (that you will also have the judge sign), or you may have to make a motion before a family court judge requesting that the child undergo a competency evaluation to determine if the child is competent to go to court. A copy of the "Order for Competency to Stand Trial Evaluation Pursuant to Section 44-23-410 (1976)" can be accessed on the SC Judicial web site under Family Court Forms.

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

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

INVOLVING CHILD PROTECTIVE SERVICES

If there are any indicators that your client has been or is at risk of being abused or neglected, it may be appropriate for the judge to order that a home investigation be conducted by the Department of Social Services (DSS) or that the child be taken into emergency protective custody (EPC).

A DSS home investigation should be ordered if:

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

Due to the confidential nature of the attorney client relationship, your client may confide in you about abuse or neglect in the child's home. As the child's attorney, you are not a mandated reporter pursuant to S.C. Code Ann. § 20-7-510(A), and you must adhere to confidentiality rules. If the child discloses information regarding abuse or neglect but indicates that he does not want the information revealed, discuss with the child a course of action to help protect the child without alerting the parents that the child has revealed such information, such as meeting with the judge in chambers so that no allegations are made in open court.

APPOINTMENT OF A GUARDIAN AD LITEM

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

A GAL should be appointed when:

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

PSYCHOEDUCATIONAL EVALUATION

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

DESIGNATION OF A LEAD AGENCY

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

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

PART FOUR: Juvenile Justice Statutes

Definitions

Definition of “Child” (S.C. Code Ann. § 20-7-6605(1))

Definition of “Status Offense” (S.C. Code Ann. § 20-7-6605(8))

Competency

Determination of Capacity (S.C. Code Ann. § 44-23-410)

Hearing on Fitness to Stand Trial (S.C. Code Ann. § 44-23-430)

Procedure for Involuntary Admission (S.C. Code Ann. § 44-20-450)

Petition for Judicial Commitment (S.C. Code Ann. § 44-17-510)

Dispositional Powers of the Court

Adjudication (S.C. Code Ann. § 20-7-7805)

Suspension/Restriction of Driver’s License (S.C. Code Ann. § 20-7-7807)

Commitment (S.C. Code Ann. § 20-7-7810)

Commitment of Mentally Ill or Retarded (S.C. Code Ann. § 20-7-7815)

Detention

Taking into Custody (S.C. Code Ann. § 20-7-7205)

Out of Home Placement (S.C. Code Ann. § 20-7-7210)

Detention Hearing/Psychological Screening (S.C. Code Ann. § 20-7-7215)

Intake

Intake and Probation Services (S.C. Code Ann. § 20-7-7405)

Pre-hearing Inquiry and Investigation; Notice (S.C. Code Ann. § 20-7-7415)

Waiver (S.C. Code Ann. § 20-7-7605)

Juvenile Records

Confidentiality & Release of Information (S.C. Code Ann. § 20-7-8505, 8510, 8515 & 8520)

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



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