



# Guide for Juvenile Defense Attorneys

## *Representing Children in South Carolina's Family Courts*

The Children's Law Center serves as a statewide resource center for attorneys and other professionals involved in juvenile justice and child protection court proceedings. The Children's Law Center is a 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 and child protection issues are also available on the Center's website.

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 website at <http://childlaw.sc.edu>.

The Children's Law Center, University of South Carolina School of Law has developed this guide to assist attorneys appointed and hired to represent juveniles in family court. 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 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)).

For more detailed information about the juvenile justice system and the representation of juveniles, refer to the *Training and Resource Manual for Juvenile Defense Attorneys* which can be found on our website 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.

### **RULE 608 APPOINTMENTS**

Attorney appointments are made pursuant to Rule 608, SCACR. Rule 608 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.

Upon appointment by the court in an indigent case, the attorney must notify the Office of Indigent Defense (OID) within 15 days of the appointment by registering the case online at [www.sccid.sc.gov](http://www.sccid.sc.gov). 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 or visit their website at [www.sccid.sc.gov](http://www.sccid.sc.gov) for information.

# **PART ONE:**

## **Overview of South Carolina's Juvenile Justice System**

### **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 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 seventeen years of age, but the definition excludes a sixteen-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 sixteen-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, 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 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. Arizona* before being questioned about an alleged delinquent act. The *Miranda* warning (also referred to as *Miranda* rights) is a formal warning given by police to suspects in police custody before they are interrogated to preserve the admissibility of their statements in criminal or delinquency court proceedings. The *Miranda* warning includes informing a suspect that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be

appointed for him prior to any questioning if he so desires. *Miranda v. Arizona*, 384 U.S. 436 (1966). The law does not require a child's parents to be present in order for the police to question the child.

## **DETENTION**

When a child is taken into custody by law enforcement, the officer who took the child into custody decides whether to release the child to a parent or responsible adult, or to detain the child, pending a hearing. If the officer determines it is necessary to place the child outside the home until the court hearing, the authorized Department of Juvenile Justice (DJJ) representative must "make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when appropriate and available." § 63-19-820(A).

Children are eligible for detention only if they meet certain criteria defined by law. For example, the law allows for detention of a child who has been charged with a statutory violent crime; had possession of a deadly weapon; or has no suitable alternative placement and it is determined that detention is in the child's best interest or is necessary to protect the child or the public. § 63-19-820(B). A child must be at least 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 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 arbitration or juvenile pre-trial intervention. 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)**

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 16-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- or 15-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 is required to 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. § 63-19-1210(10).

### ***Waiver Hearing***

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

The U.S. Supreme Court has identified eight factors that may be considered by the judge when deciding whether or not to waive a child to adult criminal court. The eight factors are: (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 or not the child is guilty of the alleged offense. At this stage, the child will either admit or deny the allegations in the petition. The child has the right to a trial where the solicitor has the burden of proving beyond a reasonable doubt that the child committed the alleged offense(s). The child also has the option of admitting the allegations and pleading guilty.

### ***Children's Rights***

The U.S. Supreme Court has held that children are entitled to fundamental due process rights which are guaranteed to adults by the United States Constitution in proceedings that could result in confinement to an institution in which their freedom would be curtailed. These rights include: (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).

## **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 or 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 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 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-first birthday. Once committed, the child is given a set of "guidelines," determined by the 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-first 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 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. § 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-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. § 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**

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, has successfully completed any dispositional sentence imposed upon him, and has not been subsequently charged with committing any criminal offense. § 63-19-2050.



## **PART TWO: Role and Responsibilities of Juvenile Defense Attorney**

When appointed or hired to represent a child charged with a delinquent offense, you have a duty to advocate for the child's **expressed interests** at every stage of the case, acting as the child's voice in the proceedings. You do not represent the child's "best interests" as determined by you, the parents or guardian, or anyone else. In addition, even if you are being paid by a child's parents to represent their child, the child is your client, not the parents.

The following steps should be taken prior to going to court:

- Set up an appointment to meet with your client and your client's parent or guardian.
- File a Rule 5 Motion for Discovery and a Brady Motion with the clerk of the family court and serve a copy on the solicitor.
- 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. Until you meet with your client, you will not know if pleading guilty is an option. However, it can be helpful to have an idea of what the solicitor is willing to consider, 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 will be recommending to the court regarding evaluations and 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 discovery received from the solicitor which should include the petition, incident reports, your client's prior record, any written or recorded oral statements, and any other discoverable information under Rule 5, SCRCrimP or *Brady v. Maryland*, 373 U.S. 83 (1963), which requires the disclosure of exculpatory evidence.
- Meet with your client to discuss the case, options, and possible sentencing outcomes.

### **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.

Be clear about the attorney-client relationship. Make certain your client and client's parent understand that you represent the child, not the parent and that there is no exception to the duty of attorney-client confidentiality in juvenile cases for parents. Without your client's informed consent, you must not reveal information related to the representation, even to the

child's parent or guardian. In addition, the attorney-client privilege does not extend to parents. When discussing the facts of the case with your client, do so in private, without the parent present to preserve the privilege.

### ***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, including the solicitor, DJJ, and the judge.

The following is a sample list of questions to 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 places your client stays for extended periods of time, e.g., relative's or friend's home.)
- What is your phone number? (Ask for additional numbers of relatives or neighbors where you can contact your client in case your client's phone service is disconnected.)
- Who else lives in your home? (Siblings, grandparents, mother's boyfriend, etc.)
- Are your parents employed? Where?
- Are you enrolled in school? Where?
- What grade are you in?
- Are you in regular or special classes? (e.g., Emotionally Handicapped (EH), Learning Disabled (LD), or other special education classes)
- What kind of grades are you making this year? (Explain that the judge will have access to the child's school records prior to and during the court proceedings. Verify any school information you are relying on by reviewing DJJ's records or have the child's parent sign a release allowing you to access the records directly from the school.)
- 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 serious head injuries.)
- Have you been diagnosed with any mental health problems?
- Are you receiving counseling or therapy? 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 you think I should know?
- Also ask the child's parent if the child has experienced any significant trauma or loss (e.g., witnessed violent acts or experienced the loss of a family member or close friend).

After interviewing the child regarding background information, question the child as to his or her account of the alleged delinquent act(s). It may be helpful to read the petition aloud 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 question 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 all the possible options that are available, such as going to trial, pleading guilty, or participating in a diversion program such as Juvenile Arbitration, Juvenile Pre-trial Intervention (JPTI), or Juvenile Drug Court. Ensure that your client has a clear understanding of all the options prior to making a decision regarding a course of action.

Explain 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).
- Hair should be neat and groomed.
- No chewing gum, cell phones, or pagers 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. 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").

Encourage your client to thoughtfully consider what he or she may want to say to the presiding judge in court and provide guidance. 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.

Prepare your client and client's parent for the possibility of 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. Make sure your client and client's parent understand that if they do not show up for court, the judge will most likely issue a bench warrant for their arrest.

Answer any questions your client or client's parent may have, and instruct your client not to discuss the case with anyone without you present or without discussing it with you first. If you think you will need access to any of the child's school, medical, or psychiatric records, ask your client's parent to sign release forms before leaving your office.

## **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. 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 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 solicitor's concerns. When discussing a plea offer with your client, explain that the family court judge does not have to accept a negotiated plea, but will have discretion as to sentencing.
- Contact the local DJJ representative about services in the community 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. (See Guilty Plea section of *Training and Resource Manual for Juvenile Defense Attorneys* on the Children's Law Center website for a list of common questions.)
- Explain all possible sentencing options, likely outcomes, and collateral consequences that may impact your client upon entering a guilty plea. If probation is a possibility, make sure your client understands the implications of violating the terms of probation.

- In preparation for the dispositional hearing, it is critical to gain a clear understanding of how the child is doing at home and in school. In family court, a judge's decision regarding sentencing may be 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?
- Finally, make certain your client clearly understands the importance of behaving appropriately 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.

## **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 delinquent act.
- Explore all possible defenses.
- Interview all potential defense witnesses 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.
- Advise your client as to the pros and cons of testifying in court.
- Prepare your client for testifying, if he or she chooses to testify.
- Organize all relevant materials, applicable statutes, and case law in a trial notebook for easy access during the trial.
- Prepare pre-trial motions.

## **PART THREE: Checklist of Important Issues to Consider**

### **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 the 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.*

## **PART FOUR: Juvenile Justice Statutes**

### Definitions

Definition of “child” or “juvenile” (§ 63-19-20(1))

Definition of “status offense” (§ 63-19-20(9))

### Fitness to Stand Trial/Competency

Determining fitness to stand trial (§ 44-23-410)

Hearing on fitness to stand trial (§ 44-23-430)

### Dispositional Powers of the Court

Adjudication (§ 63-19-1410)

Driver’s license suspension (§ 63-19-1420)

Commitment (§ 63-19-1440)

Commitment of juvenile with mental illness or intellectual disability (§ 63-19-1450)

### Detention

Taking into Custody (§ 63-19-810)

Out-of-home placement (§ 63-19-820)

Detention hearings; Screenings (§ 63-19-830)

### Intake

Intake and probation (§ 63-19-1010)

Prehearing inquiry (§ 63-19-1030)

Transfer of Jurisdiction / Waiver (§ 63-19-1210)

### Juvenile Records

Records (§ 63-19-2010)

Confidentiality (§ 63-19-2020)

Law enforcement records (§ 63-19-2030)

Release of information (§ 63-19-2040)

Petition for record destruction/Expungement (§ 63-19-2050)

## **PART FIVE: Useful Resources**

- Training and Resource Manual for Juvenile Defense Attorneys  
(Children’s Law Center, January 2013 - <http://childlaw.sc.edu>)
- Role of Juvenile Defense Counsel in Delinquency Court  
(National Juvenile Defender Center, 2012 - <http://www.njdc.info/>)
- Trial Manual for Defense Attorneys in Juvenile Delinquency Cases  
(National Juvenile Defender Center, Spring 2009 - <http://www.njdc.info/>)
- Think Before You Plead: Collateral Consequences in the State of South Carolina  
(American Bar Association, 2011 - <http://www.beforeyouplea.com/sc>)
- Representing Juvenile Status Offenders  
(American Bar Association, 2010 - <http://americanbar.org/aba.html>)