

Training & Resource Manual for Juvenile Defense Attorneys

A Guide for Representing Children in
South Carolina's Family Courts

2014 EDITION

CHILDREN'S LAW CENTER
UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF LAW

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INTRODUCTION

The purpose of the Training and Resource Manual for Juvenile Defenders is to provide juvenile defense attorneys with a comprehensive overview of the juvenile justice system and the legal and collateral issues that arise in juvenile delinquency proceedings in South Carolina's family courts. The information presented in the Manual is intended for educational and informational purposes only. It is not intended to provide legal advice or legal opinion on any specific issue. Readers should not rely on this guide as a primary source of legal authority, but should consult official versions of South Carolina statutes, rules, and cases prior to making decisions or taking action in legal proceedings.

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

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

If you have any questions concerning information contained in the Manual, or to report errors or suggestions for future updates, please contact me at the Children's Law Center at 803-777-1646.

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THE CHILDREN'S LAW CENTER

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

The Children's Law Center provides a full array of training, technical assistance, resource materials, and research activities addressing a broad spectrum of law and court-related topics affecting children involved in court proceedings in South Carolina.

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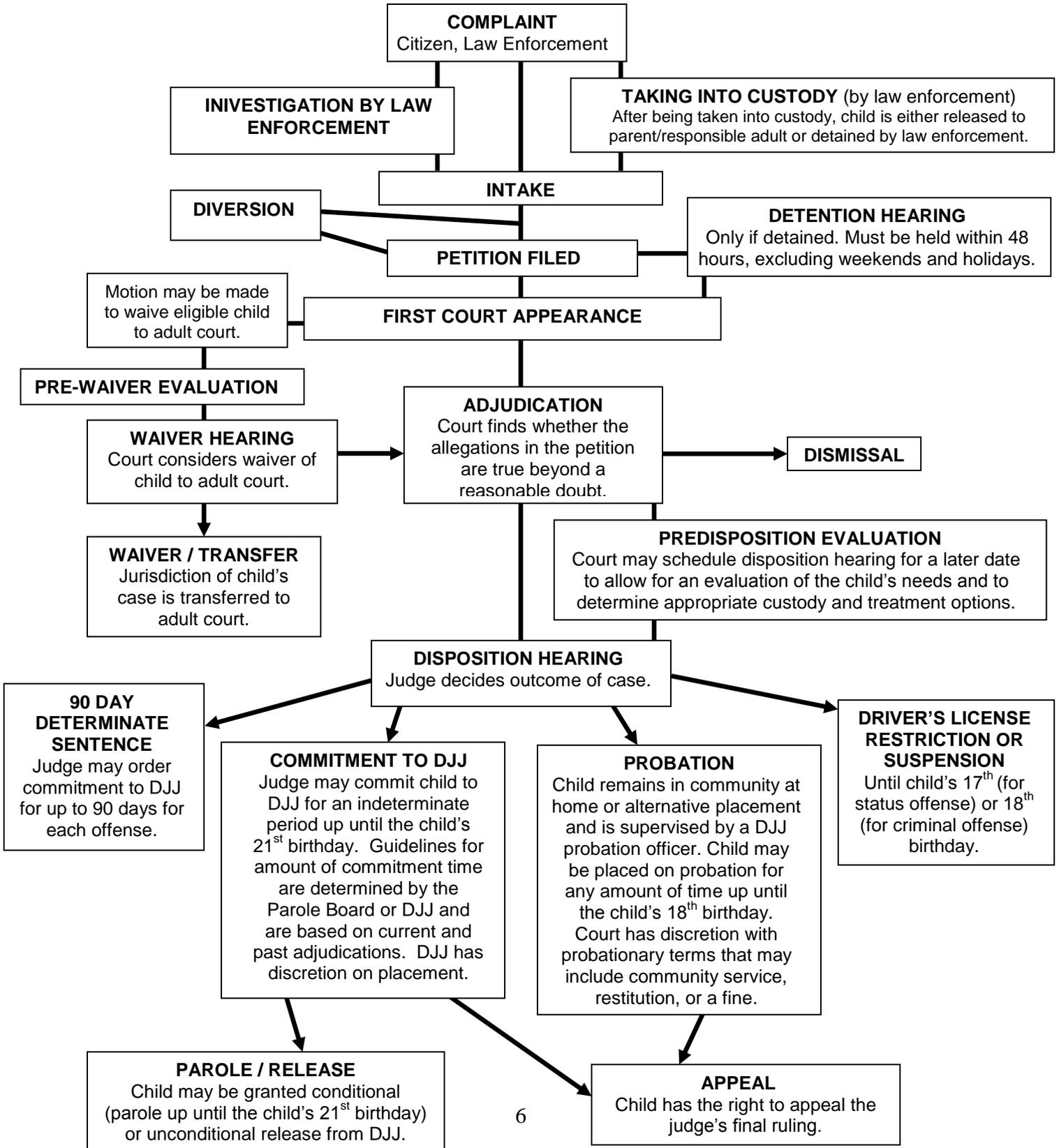
BASICS OF JUVENILE COURT

DEFINITION OF “CHILD”

While the legal age of majority in South Carolina is 18 years of age under § 63-7-20(3), for purposes of the juvenile justice system, “child” or “juvenile” is defined by § 63-19-20(1) of the Juvenile Justice Code as follows:

- "Child" or “juvenile” means a person less than 17 years of age.
- "Child" or “juvenile” does not mean a person 16 or older who is charged with a Class A, B, C or D felony or a felony which provides for a maximum term of imprisonment of 15 years or more.
- However, a 16-year-old charged with a Class A, B, C or D felony or a felony which provides for a maximum term of imprisonment of 15 years or more may be remanded to the family court for disposition of the charge at the solicitor’s discretion.
- Note: § 63-19-20(1) also states that “[a]n additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.” (E.g., If a 16-year-old is charged with burglary in the first degree and petit larceny arising out of the same circumstance, both charges should be heard in general sessions court.)

CASE FLOW CHART



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

INTRODUCTION

Children have special needs and are treated differently than adults by the court system. In South Carolina, the family court has jurisdiction over children charged with criminal and status offenses. Status offenses are those offenses which would not be a crime if committed by an adult, such as incorrigibility (beyond the control of the parents), running away, and truancy (failure to attend school as required by law). A person's age determines whether he or she will be treated as a child and tried in family court, or treated as an adult and tried in adult criminal court. South Carolina law defines "child," for juvenile justice purposes, as a person less than 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 / 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).

These hearings are closed to the general public, and only those individuals who have a direct interest in the case or who work for the court may be admitted. § 63-3-590.

DISPOSITION

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

Predisposition Evaluation

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

The predisposition evaluation includes psychological, social, and educational assessments that are conducted in the community (community evaluation) or at a DJJ evaluation center. If the child is sent to a DJJ evaluation center, the child will also receive a medical examination and attend school while at the evaluation center. A child may not be committed to an evaluation center for more than 45 days. § 63-19-1440(C).

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

Dispositional Hearing

While the purpose of the adjudicatory hearing is to determine whether the child is guilty or not guilty of the alleged offense, the purpose of the dispositional hearing is to determine what sentence is most appropriate for the child, taking into consideration the child’s best interest and the protection of the community.

At the dispositional hearing, the judge will generally decide between a probationary sentence 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 state Board of Juvenile Parole (the Parole Board) or DJJ, depending on the adjudicated offense(s). The guidelines set out the minimum and maximum number of months that the child will remain at DJJ and range from 1-3 months to 36-54 months. Guidelines are based on the seriousness of the current offense(s) for which the child is adjudicated and the child's history of previous adjudications. These guidelines, along with information regarding the child's behavior and progress while at DJJ, determine how long the child will be incarcerated. Children may be incarcerated at DJJ longer than their maximum guidelines, up to the child's twenty-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.

INTAKE

DJJ INTAKE SERVICES

DJJ is required to provide intake services for children brought before South Carolina's family courts. The function of intake is to "independently assess the circumstances and needs of children referred for possible prosecution in the family court." § 63-19-1010(A).

While the solicitor must review DJJ's recommendations as to intake, it is the solicitor who must make the final decision regarding whether or not to prosecute. If the solicitor decides circumstances do not warrant prosecution, the intake counselor must assist the child and family by making referrals for services as appropriate. If the child is adjudicated delinquent or found by the court to have violated probation, the intake counselor is responsible for recommending appropriate dispositional options to the court, including services available to the child. § 63-19-1010.

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

THE INTAKE PROCESS

During the intake process, DJJ gathers information about the child. The law states that before the hearing of a child's case, the judge shall "cause an investigation of all facts pertaining to the issue to be made." § 63-19-1030(C). The investigation should consist of an examination of the child's age, habits, surroundings, home environment, prior court history, and parents' habits and character. Prior to the hearing, the court may also order that the child undergo a mental examination by a psychologist or psychiatrist. If the child attends school, a report on the child must be obtained from the school that the child attends. § 63-19-1030(C).

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

NOTICE AND SERVICE OF SUMMONS

NOTICE

“In any case where the delinquency proceedings may result in the commitment to an institution in which the child’s freedom is curtailed, the child or the child’s parents or guardian must be given notice with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation.” § 63-19-1030(D).

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

SERVICE OF SUMMONS

Under § 63-3-570:

- Service of summons and process of the family court in delinquency proceedings shall be made as provided by law for service in the court of common pleas.
- If the judge determines that personal service is impracticable, the judge may order service by registered or certified mail, addressed to the last known address, or by publication thereof, or both.
- It shall be sufficient to confer jurisdiction if service is effected at least 48 hours before the time fixed in the summons or process for the return thereof.
- Service of summons, process, or notice may be made by any suitable person under the court’s direction.

Anyone summoned who fails to appear without reasonable cause may be proceeded against for contempt of court. If the summons or process cannot be served, the court finds that the service will be ineffectual, or the court finds that the child’s welfare requires that child be brought into the court’s custody, a warrant may be issued for the child, parent or guardian of the child, or any person who has control or possession of the child, to immediately bring the child before the court. § 63-3-580.

PROSECUTION

PROSECUTION, DIVERSION, OR DISMISSAL

The solicitor or the solicitor's "authorized assistant" is given authority to determine whether or not a child should be prosecuted in family court. In making this decision, the solicitor must review DJJ's recommendations regarding the child, which are based on information gathered at intake. § 63-19-1010(A).

Upon receiving a case referred for prosecution, the solicitor should review the child's court records and case information to ensure that the child was properly charged. If the solicitor determines, based on the available information, the charges are appropriate, the solicitor will make a determination as to whether the case should be prosecuted, referred to a diversion program, or dismissed.

If the solicitor determines that the case should be referred to a diversion program, it is not necessary to file a juvenile petition. If prosecution is appropriate, the case continues and an adjudicatory hearing is scheduled.

MOTION FOR DISMISSAL

Children, like adults, have the constitutional right to a speedy trial. Although there is no requirement regarding the time frame in which a case must be prosecuted in family court, the 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.

SPECIAL RESPONSIBILITIES OF A PROSECUTOR

RULE 3.8 of the South Carolina Rules of Professional Conduct provides standards for solicitors in criminal cases. The Rule states that a prosecutor must:

- refrain from prosecuting a charge the prosecutor knows is not supported by probable cause;
 - A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to

see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

- make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- refrain from trying to obtain a waiver of important pretrial rights from an unrepresented defendant;
- make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the court all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order;
 - The exception stated above recognizes that a prosecutor may seek an appropriate protective order from the court if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.
- except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or Rule 3.8.
 - This rule supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. A prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. This is not intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

PLEA AGREEMENTS

In *Santobello v. New York*, 404 U.S. 257 (1971), the Court established that state prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty." See *Sprouse v. State*, 585 S.E.2d 278 (S.C. 2003).

INDIGENT DEFENSE

RIGHT TO COUNSEL

A child has the right to counsel in any case “where the delinquency proceedings may result in commitment to an institution in which the child’s freedom is curtailed.” The child or the child’s parent must be advised of this right to counsel in the written notice of the court proceedings and allegations against the child. This notice must also advise the child or child’s parent that an attorney will be appointed to represent the child if they are unable to hire an attorney. § 63-19-1030(D).

DETERMINATION OF INDIGENCY

When determining whether a child qualifies for an appointed attorney, the court considers the parents’ financial ability to hire an attorney for the child. This is usually handled through a screening process that determines indigency according to a baseline weekly income that increases according to the number of dependents. If the parents are able but refuse to hire an attorney, the court is authorized to appoint an attorney and order the parents to reimburse the Indigent Defense Fund or pay the court-appointed attorney in an amount determined by the court. § 63-19-1040.

CONFLICTS

If a child qualifies for an appointed attorney and a conflict arises in the public defender’s office preventing the public defender from representing the child, a member of the private bar will be appointed to represent the child. Generally, the clerk of court has the judge sign an order appointing the next attorney on the criminal appointment list. If the case is unusually complicated or involves a more serious offense, the judge may decide to appoint a specific attorney.

WAIVER OF RIGHT TO COUNSEL

In a case where the proceedings may result in commitment to an institution in which the child’s freedom is curtailed, the judge must inform the parent and child of their right to counsel, and specifically ask them to consider whether they do or do not waive this right. § 63-19-1030(D). While the statute allows for the waiver of right to counsel, it is standard practice for family court judges to require children to be represented by an attorney at all court hearings to ensure the child’s rights are protected. A child may waive the right to counsel at the detention hearing only after consulting at least once with an attorney. § 63-19-830(A).

RULES FOR CONDUCT OF HEARINGS

CONDUCT OF HEARINGS. § 63-3-590.

All cases of children must be dealt with as separate hearings by the court and without a jury. The hearings must be conducted in a formal manner and may be adjourned from time to time. The general public must be excluded and only persons the judge finds to have a direct interest in the case or in the work of the court may be admitted. The presence of the child in court may be waived by the court at any stage of the proceedings. Hearings may be held at any time or place within the county designated by the judge. In any case where the delinquency proceedings may result in commitment to an institution in which the child's freedom is curtailed, the privilege against self-incrimination and the right of cross-examination must be preserved. In all cases where required by law, the child must be accorded all rights enjoyed by adults, and where not required by law the child must be accorded adult rights consistent with the best interests of the child.

RULES FOR CONDUCT OF HEARINGS. § 63-3-600.

Hearings shall be conducted in accordance with the rules of court and the court may consider and receive as evidence the result of any investigation had or made by the probation counselor; provided that either party shall be entitled to examine the probation counselor under oath thereon. The court may adjourn the hearing from time to time for proper cause. Where a petitioner's needs are so urgent as to require it, the court may make a temporary order for support pending a final determination.

ADMISSIBILITY OF DOCUMENTS INTO EVIDENCE

Rule 7, SCRFC, is relied upon frequently in family court proceedings involving children. Under this rule, the following documents and written statements are admissible into evidence without requiring that the persons or institutions issuing the documents or statements be present in court:

- A written statement of a child's school attendance signed by the school principal or duly authorized school official;
- The school report card showing a child's records of attendance, grades, and other pertinent information, provided that such report is released at periodic intervals by the school;
- A physician's written statement showing that a patient was treated at certain times and the type of ailment;
- A written DSS or other agency report, reporting the home investigation or any other report required by the court (unless the agency is party); and
- An employer's written statement showing wages, W-2 statement, income tax returns, and other reports of like nature.

CHECKLIST OF IMPORTANT ISSUES TO CONSIDER

IS THE CHILD COMPETENT?

If the court has reason to believe a child lacks the capacity to understand the proceedings against him or to assist counsel in his defense, the court should order that the child undergo a competency evaluation. § 44-23-410. (*See section on Competency.*)

The following indicators may warrant a referral for an evaluation:

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

IS THE CHILD SAFE?

If there are any indicators that the child is being abused or neglected, the child may need to be taken into emergency protective custody (EPC) by the court and placed with Department of Social Services (DSS).

A DSS home investigation should be ordered if:

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

SHOULD A GUARDIAN AD LITEM BE APPOINTED FOR THE CHILD?

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

A GAL should be appointed when:

- the child's parent is the victim;
- the parent cannot be found or willfully fails to come to court;
- the parent does not seem to be concerned with the child's best interests; or

- the parent cannot understand the proceedings because of mental incapacity.

SHOULD A PSYCHOEDUCATIONAL EVALUATION BE ORDERED?

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

IS THERE A NEED TO DESIGNATE A LEAD AGENCY?

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

The court will conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and further the best interests of the child. In developing a comprehensive plan, the court should consider: additional testing or evaluation that may be needed; economic services available to the family; counseling services; and any other programs or services appropriate to the child's and family's needs. *Id.*

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

ROLE & DUTIES
OF
JUVENILE
DEFENSE COUNSEL

ROLE & DUTIES OVERVIEW

As an attorney representing a juvenile in family court, you have an ethical obligation to represent your client's **expressed interests** at all stages of the delinquency proceedings.

You owe the same duties required by the South Carolina Rules of Professional Conduct to your juvenile client as you would to an adult client. You have a responsibility to provide your juvenile client with a clear understanding of his or her legal rights and obligations, zealously assert your client's position, and ensure that your client has a clear understanding of the court proceedings and possible outcomes, including the collateral consequences of a juvenile adjudication.

While maintaining a relationship with your client's parents or guardian is important, that relationship should never interfere with your duty to your juvenile client or the expressed interests of your client. This is true whether you were appointed by the court to represent the juvenile or retained and paid by the juvenile's parent or some other person. It is important to remember that the attorney-client privilege does not extend to the child's parents.

Juvenile defenders, in addition to being familiar with all applicable constitutional law, state statutes, case law, and court rules, should have an understanding of issues specific to the representation of children, including DJJ's policies and procedures, available community-based alternatives and services, brain and adolescent development research, special education, and collateral consequences of juvenile adjudications and dispositions.

On June 7, 2013, the South Carolina Commission on Indigent Defense formally adopted the *Performance Standards for Indigent Defense in Juvenile Cases*, along with the general *Performance Standards for Public Defenders and Assigned Counsel*. Both sets of Standards became effective July 1, 2013.

In addition to the above-mentioned Performance Standards, the following publications provide additional analysis of the role of the juvenile defender and best practices:

- ❖ National Juvenile Defense Standards (2012, National Juvenile Defender Center)
- ❖ Role of Juvenile Defense Counsel in Delinquency Court (2009, National Juvenile Defender Center)
- ❖ American Bar Association Model Rules of Professional Conduct

SC COMMISSION ON INDIGENT DEFENSE PERFORMANCE STANDARDS FOR INDIGENT DEFENSE IN JUVENILE CASES

Effective July 1, 2013

The following Performance Standards for Indigent Defense (Public Defenders and Assigned Counsel) were formally adopted by the SC Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. Counsel in juvenile cases should also refer to the general Performance Standards for Public Defenders and Assigned Counsel as adopted by the Commission on June 7, 2013, effective July 1, 2013.

These performance standards are not intended to provide a new basis for a claim of ineffective assistance of counsel. They are benchmarks taken from existing national standards, and do not and cannot redefine the existing precedents that set forth the basis for determining when reversible error has occurred.

Section 1. Purpose of Standards

Juvenile delinquency proceedings in the South Carolina Family Court are fundamentally different than adult criminal cases. Judges are charged by the South Carolina Code of Laws with acting in the “best interests of the child,” this emphasis on the rehabilitation of the child contrasts with the more punitive model used by the adult criminal justice system. These standards aim to provide guidance to appointed counsel in juvenile matters with particular emphasis on the distinctive requirements of the South Carolina juvenile justice system.

Section 2. Attorney Role

Guideline 2.1 *Function of Defense Counsel.* The participation of counsel for juveniles subject to delinquency proceedings in Family Court is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of these proceedings.

Guideline 2.2 *Role of Counsel.* Counsel’s role is to insure that the interests and rights of the juvenile client are fully protected and to insure that the juvenile is afforded due process. Additionally, counsel in juvenile cases should be familiar with dispositional alternatives and services, should investigate the client’s social, educational, and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.

Guideline 2.3 *Attorney Qualification and Training.*

a. In order to provide competent representation, counsel should know the South Carolina Code of Laws, the South Carolina Rules of Evidence, the South Carolina Rules of Family Court, and the South Carolina Rules of Criminal Procedure.

- b. Counsel should be cognizant of the roles of the Department of Juvenile Justice (DJJ), the Department of Social Services (DSS), the Department of Disabilities and Special Needs (DDSN), and the Department of Mental Health (DMH). Counsel should be aware of the various service delivery systems and placement processes for these agencies.
- c. Counsel should be encouraged to attend continuing legal education seminars devoted specifically to the function and procedures of representing juveniles subject to Family Court proceedings.
- d. Counsel should review and follow the Performance Standards for noncapital representation as they apply to qualification and training.

Guideline 2.4 *Independence of Counsel*. It is essential that the professional independence of counsel and the integrity of the attorney-client relationship be maintained at all times.

Section 3. Attorney Responsibilities

Guideline 3.1 *Acting Diligently and Promptly*. Counsel is bound by Rule 1.3 of the Rules of Professional Conduct to act with reasonable diligence and promptness in representing the client. Counsel should be prompt in all dealings with the court, including attendance, submissions of motions briefs and proposed orders, and in dealing with clients and other interested parties.

Guideline 3.2 *Acting Ethically*. Counsel in a juvenile case must know and follow the standards of professional conduct set forth in the Rules of Professional Conduct and decisions of the South Carolina Supreme Court.

Section 4 Lawyer-Client Relationship

Guideline 4.1 *Client Meetings*. A lawyer should meet with the client as soon as practicable and as often as necessary to ascertain all relevant facts and matters related to the defense known to the client.

Guideline 4.2 *Keeping Client Informed*. The lawyer has a duty to keep the client informed on all developments in the case and of the lawyer's efforts and progress with respect to all phases of the representation. This duty may extend also to a parent or guardian whose interests are not adverse to the juvenile, subject to the confidentiality requirements of the South Carolina Rules of Professional Conduct

Guideline 4.3 *Confidentiality*. Counsel should seek to establish a relationship of trust and confidence with the client. The lawyer should explain to the client that full disclosure to counsel of all facts known to the client is necessary for effective representation and, at the same time, explain that the lawyer's obligation of confidentiality makes the client's disclosures to counsel privileged.

Guideline 4.4 *Client Duty and Responsibility*. A lawyer has a duty to his juvenile client to protect confidentiality and to consult with his client just as in an adult case. This duty to

determine how to best approach the case and any plea negotiations must be undertaken with the client being fully informed. In juvenile cases this must be done with the client's best possible legal resolution of the case in mind and not the best interest of the parent or guardian, which may at times conflict with the client's interest.

Guideline 4.5 *Resolving Conflicts of Interest*. The lawyer's principal duty is always first and foremost the representation of the client's legitimate interest and not personal or professional advantage or convenience. Conflicts of Interest rules should always be followed. The potential for conflict of interest between a juvenile and his or her parents should be clearly recognized and acknowledged. All parties should be informed that counsel represents the juvenile and that in the event of a disagreement between a parent or guardian and the juvenile, the attorney is required to serve the interests of the juvenile.

Guideline 4.6 *Advice to Give Client*. A lawyer should advise the juvenile client with complete candor concerning all aspects of the case. This includes a frank estimate of the probable outcome.

Guideline 4.7 *Testimony by Juvenile*. It is the duty of the attorney to protect the juvenile defendant's privilege against self-incrimination. If the client elects not to testify then the attorney should insist on the recognition of this right.

Guideline 4.8 *Decision Making*. Certain decisions related to the conduct of the case are to be made by the lawyer and others by the client. The client is ordinarily responsible, after being fully advised and consulting with Counsel for determining:

- i. The plea to be entered at adjudication;
- ii. Whether to cooperate in diversion program;
- iii. Whether to be tried as a juvenile or an adult, where the client has the choice;
- iv. Whether to testify on his or her own behalf.

Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what motions should be made, and similar strategic and tactical decisions are the exclusive province of the lawyer after full consultation with the client.

Section 5 Attorneys' Initial Duties

Guideline 5.1 *Early Release*. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of diversion from the formal juvenile court process.

If the client is detained, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody. At detention hearings the lawyer should be present and prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place and criteria used for detention, and any non-compliance with procedures for referral to court or for detention. The attorney should also be

prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile. Counsel must be familiar with and able to use the DJJ guidelines for release in preparation for and presentation at detention hearings.

Guideline 5.2 *Visiting Detention Facility*. Whenever the juvenile is detained, the attorney should regularly and periodically visit the juvenile. The attorney should keep records of these visits.

Section 6 Pretrial Duties

Counsel should be held to the same standards set forth in the non-capital representation regarding Pretrial Duties.

Section 7 Transfer Hearings

Counsel is responsible for being familiar with the provisions of SC Code of Laws Section 63-19-1210 and its application to the client. Counsel should be ready to argue for or against transfer of jurisdiction to or from the Family Court based on the best interests of the client. Counsel must prepare for Transfer Hearings and consider the need for expert witnesses or other witnesses necessary to support the position of the client regarding the transfer of jurisdiction.

Section 8 Plea Negotiations

Guideline 8.1 The client should be made aware of any plea negotiations. Clients should be aware of any plea negotiations as soon as practical to inform them. Counsel is responsible for explaining and making sure the juvenile understands the concept of plea bargaining in general as well as the details of any specific plea offer made to the client. Counsel must advise the client on all possible consequences of an adjudication, including collateral consequences. Where it appears that the client's participation in a psychiatric, medical, social, or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and seek the client's consent to participation in such a program.

Section 9 Trial/Adjudication

Guideline 9.1 *Trial/Adjudication Standards*. The trial of a case in Juvenile Court requires much if not all the same skills and preparation as required in any noncapital trial handled by an attorney. Therefore, close attention should be paid to the provisions for handling a trial set forth in these Performance Standards for noncapital cases by indigent defense attorneys.

Guideline 9.2 *Disposition without Trial*. Counsel must be aware of any alternative programs, along with inquiring if the minor would qualify for such diversion program, which may be available and allow the case to be disposed of without trial. This would

include, but not be limited to, negotiated guilty pleas, alternative dispositions, deferrals and diversion programs. As noted above, this requires counsel to be informed about all these possible resolutions and to have fully investigated them in the context of the client's case.

The client must also be fully informed regarding the alternatives to trial and the advantages and possible disadvantages of a trial versus a negotiated plea or diversion program or other disposition.

If the client elects to enter into any plea or any of the other dispositions available to him or her it is the attorney's responsibility to be sure the client is properly informed and prepared for the Court hearing that will impose this resolution short of trial, including the Court procedures and format, his or her expected conduct and the possible outcomes/sentences.

Guideline 9.3 *Trial of the case*. Counsel must prepare for the trial just as described in the Performance Standards for non-capital cases except for matters relating to juries since a jury is not available in juvenile adjudications.

Section 10 Disposition/Sentencing

Guideline 10.1 *Counsel's Role at Disposition Hearings*. The active participation of counsel at disposition is often essential to the protection of clients' rights and to furtherance of their legitimate interest. Counsel must know and be ready to address the DJJ Guidelines for disposition as they relate to the client's case. Counsel must prepare for the disposition just as described in the sentencing provisions of the Performance Standards for non-capital cases while being aware of all the various options available for disposition in the juvenile's case. This can be the most valuable service to a client by an attorney.

Guideline 10.2 *Duty to Investigate*. Counsel should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention, including all witnesses who are material to the disposition decision. Whether or not social and other dispositional reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition. The lawyer should look to secure the assistance of expert personnel needed for purposes of evaluation, consultation, or testimony with respect to formation of a dispositional plan.

Guideline 10.3 *Client Counseling*. Prior to disposition counsel should explain to the client the nature of the disposition hearing, the issues involved, and the alternatives open to the court. When psychological or psychiatric evaluations are ordered by the State or used by defense counsel, Counsel should fully discuss and explain the process of these procedures to the client.

Guideline 10.4 *Hearing Duties*. It is Counsel's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

Guideline 10.5 *Counseling After Disposition*. At disposition counsel should urge the Court to apply dispositional requirements that fit the client and avoid placing a counterproductive burden on the client and his or her parent or guardian. Counsel has a duty to obtain the Court's Final Order and review it carefully. Counsel should file objections to any errors or irregularities in the order and seek a hearing. If the Court refuses to correct its order after the hearing, Counsel should consider filing an appeal on behalf of the client seeking appropriate relief. When a dispositional decision has been reached, it is Counsel's duty to explain the nature, obligations and consequences of the disposition to the client and his or her parent or guardian and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

Guideline 10.6 *Continuing Duty to Client*. The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render assistance to the juvenile in securing appropriate legal services for the client in matters arising from the original proceeding. No matter the outcome, if Counsel feels that counseling services are necessary for the juvenile and/or the parent or guardian, Counsel should do everything in his/her power to assist them in receiving this assistance. Counsel should embrace a holistic approach to the client that not only addresses the immediate legal needs of the client but also seeks to place the client in the best position possible to succeed after the Court matters are resolved.

Section 11 Post-Dispositional Hearing Duties

Guideline 11.1 *Post-Trial Matters*. Counsel must be informed about and be able to handle contempt proceedings and probation violation matters. The Performance Standards for non-capital representation apply to Counsel in these matters as well.

End of Document

BASIC STEPS OF REPRESENTATION PRIOR TO THE ADJUDICATORY HEARING

This section briefly discusses the steps defense counsel should take prior to the adjudicatory hearing. It is very general and does not address the representation of juveniles in detention, at risk of being transferred to adult court, or with special circumstances (e.g., mental health issues; juvenile sex offenders; and lesbian, gay, bisexual, and transgender [LGBT] youth).

- * *The final section of this manual, Resources for Juvenile Defenders, lists several excellent publications that address juvenile defense and trial advocacy, and provide a much more detailed and in-depth look at handling juvenile court cases.*

Upon being appointed or hired to represent a juvenile:

1. Meet with your client as soon as practicable in order to gather information about your client's background and the alleged offense to assess your client's competency and prepare for court hearings.
2. File a Rule 5 Motion for Discovery and a Brady Motion with the clerk of the family court and serve it on the solicitor.
3. 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, but 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.
4. Contact the local DJJ office to discuss your client's case.
 - Find out what DJJ will be recommending to the court regarding potential evaluations and sentencing.
 - Inquire about available and appropriate community services for your client and client's family.
 - DJJ should also have your client's school records and prior court history available for your review.
5. Review the discovery received from the solicitor.
 - This 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.

6. Retain independent experts for mental health evaluations or other evaluations as needed, instead of relying on the reports of DJJ or DMH.
7. Visit and familiarize yourself with the scene of the alleged delinquent act.
8. Determine the need to enlist the assistance of an investigator.
9. Explore all possible defenses.
10. Interview all potential defense witnesses and character witnesses and prepare them for court.
11. If after thoroughly investigating the facts of the case and exploring all possible defenses there appears to be sufficient evidence to prove the child committed the alleged offense, discuss with your client the possibility of entering a guilty plea.
12. 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.
13. 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, be creative and offer suggestions for sentencing options that are the least restrictive for your client but that address the solicitor's concerns.
 - When discussing a plea offer with your client, explain the family court judge always has discretion as to sentencing, and that, even if there is a negotiated plea, the judge may refuse to accept the negotiated terms, but then must allow the child to withdraw his or her plea.
 - You must inform your client of any plea offers made by the solicitor even if your client makes it clear that he or she does not wish to plead guilty.
14. If your client wishes to go to trial, refer to the *Trial Manual for Defense Attorneys in Juvenile Delinquency Cases*, 2012 Edition by Randy Hertz, Martin Guggenheim, and Anthony G. Amsterdam of New York University School of Law. This excellent resource is a detailed guide for handling all aspects of juvenile court cases from initial steps of representation to post dispositional advocacy.
15. See *Disposition Planning and Advocacy* section for steps to prepare for the Dispositional Hearing.

ATTORNEY-CLIENT COMMUNICATIONS

It is important to meet with your client well in advance of the child's first hearing to adequately prepare and provide your client with meaningful representation.

When you meet with your client for an initial interview, while you will have questions for the child's parent or guardian, 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. Also, make it clear that there is no exception to the duty of attorney-client confidentiality in juvenile cases for parents. You must have your client's informed consent, before revealing any information related to the representation, even to the child's parent or guardian. In addition, the attorney-client privilege does not extend to parents, so when discussing the facts of the case with your client, do so in private, without the parent present to preserve the privilege.

Here are the basics to cover during the initial meeting(s) with your client:

- (1) Introduce yourself and explain your role.
 - Make sure the child understands you are his or her attorney; that you do not work for the state, the court, or DJJ; and everything he or she tells you in private is confidential.
- (2) Assess your client's competency. If you do not believe your client is competent to go to trial or to assist you in his or her defense, take steps to have a competency evaluation conducted. (See *Competency* section.)
- (3) Interview your client to gather as much relevant background information as possible in preparation for requesting diversion, plea negotiations, and court hearings.
- (4) Make sure your client understands the charge(s) he or she is facing and question your client about the facts surrounding the alleged offense(s).
- (5) Explain the court proceedings including the roles of the judge, solicitor, DJJ staff, court reporter, and bailiffs.
- (6) Explain all the possible outcomes of the case including collateral consequences.

INTERVIEWING YOUR CLIENT

To effectively represent your client, you need to know all the relevant background information about your client and client's circumstances, as well as the facts surrounding the case.

When interviewing your client be mindful of the child's age and ability to understand your questions. Use age appropriate language and avoid legalese.

The National Juvenile Defender Center (NJDC) has prepared an excellent treatment of attorney-client communications included in the NJDC's Juvenile Defender Delinquency Notebook (2d ed. Spring 2006), which is available free of charge on the NJDC website at www.njdc.info/delinquency_notebook/interface.swf.

Interview Questions

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?
 - Also, 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? 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 the Department of Social Services/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?

PREPARING YOUR CLIENT AND CLIENT'S PARENTS FOR COURT

COURTROOM ETIQUETTE

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 parents or guardian:

- Be punctual for all court hearings. Arrive before you are summoned to appear to ensure you are not late.
- When in the courthouse and waiting for your case to be called, conduct yourself in a quiet and orderly manner.
- Dress appropriately for court - 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.
- No cell phones or other devices in the courtroom.
- Stand when the judge enters or exits the courtroom.
- Do not approach the bench.
- When speaking to the judge or when the judge is speaking directly to you, always stand unless the judge tells you to sit. Make eye contact with the judge; do not look down at the floor.
- Speak clearly and loud enough so that the judge and court reporter can hear what you are saying.
- Always respond verbally; do not answer questions by shaking or nodding your head or shrugging your shoulders.
- Always speak to the judge respectfully (e.g., "Yes, sir," "No Ma'am," or "Yes, Your Honor").

ADDRESSING THE COURT

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.

The judge may also ask the child's parents or guardian to speak in court or answer questions. It is critical that you convey to the parent the impact his or her comments may have on the judge and the judge's decision regarding sentencing. While parents may be inclined to vent their frustrations with their child in open court while they have the court's attention, you should make sure they understand that once a judge rules, there is nothing that parent can do to change that ruling.

DISCOVERY

DISCOVERY & DISCLOSURE OF EVIDENCE

When appointed or hired to represent a child in family court, the defense attorney should file a Rule 5 Motion for Discovery and Brady Motion. Rule 5, SCRCrimP, which addresses the disclosure of evidence in criminal cases, is also applicable in juvenile actions under Rule 2, SCRFC. Rule 5 identifies the types of information subject to disclosure by both the prosecution and the defense, and also identifies information that is not subject to disclosure.

DISCLOSURE REQUIREMENTS

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Court addressed the prosecution's obligation to disclose evidence to the defense. The *Brady* disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. *State v. Kennerly*, 503 S.E.2d 214, 220 (S.C. Ct. App. 1998) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. *United States v. Bagley*, 473 U.S. 667 (1985). Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. *Kennerly*, 503 S.E.2d at 220. "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Bagley*, 473 U.S. at 678. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused *United States v. Agurs*, 427 U.S. 97, 107 (1976).

DISCLOSURE OF ALIBI DEFENSE

Upon written request of the solicitor, stating the time, date and place of the alleged offense, the defendant has 10 days to notify the solicitor in writing of the intent to offer an alibi defense. The notice must specify the place where the defendant claims to have been at the time of the alleged offense and the names and addresses of any alibi witnesses. Rule 5(e)(1), SCRCrimP.

After receiving such notice, the solicitor has 10 days (must be at least 10 days prior to trial date) to notify the defense attorney of the names and addresses of any witnesses the State intends to present to establish defendant's presence at the scene of the alleged crime. Rule 5(e)(2), SCRCrimP.

Failure to comply with the requirements of Rule 5 may result in the exclusion of testimony of any undisclosed witnesses. Rule 5(e)(4), SCRCrimP.

DISCLOSURE OF INSANITY DEFENSE OR GUILTY BUT MENTALLY ILL PLEA

Upon written request of the solicitor, the defendant has 10 days to notify the prosecution in writing of the defendant's plan to rely on an insanity defense or to enter a plea of guilty but mentally ill. If the defendant fails to comply with this requirement, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state. The court may, for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as is appropriate. Rule 5(f), SCRCrimP.

WAIVER OF DISCLOSURE REQUIREMENTS

Upon a showing of good cause, the court has the authority to waive the requirements of Rule 5. Rule 5(g), SCRCrimP.

RULE 5, SCRCrimP DISCLOSURE IN CRIMINAL CASES

Rule 5, Disclosure in Criminal Cases (Applicable to family court cases, per Rule 2(b), SCRFC)

(a) Disclosure of Evidence by the Prosecution.

(1) Information Subject to Disclosure.

(A) Statement of Defendant. Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

(B) Defendant's Prior Record. Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

(C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Reports of Examinations and Tests. Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

(2) Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the

court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

(3) Time for Disclosure. The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.

(b) Disclosure of Evidence by the Defendant.

(1) Information Subject to Disclosure.

(A) Documents and Tangible Objects. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

(2) Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, his agents or attorneys.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) Regulation of Discovery.

(1) Protective and Modifying Orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply With a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply

with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Notice of Alibi.

(1) Notice of Alibi by Defendant. Upon written request of the prosecution stating the time, date and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such time as the court may direct, upon the prosecution a written notice of his intention to offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(2) Disclosure by Prosecution. Within ten days after defendant serves his notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged crime.

(3) Continuing Duty to Disclose. Both parties shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses whose identity, if known, should have been included in the information furnished under subdivisions (1) or (2).

(4) Failure to Disclose. If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either party. Nothing in this rule shall limit the right of the defendant to testify on his own behalf.

(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill. Upon written request of the prosecution, the defendant shall within ten days or at such time as the court may direct, notify the prosecution in writing of the defendant's intention to rely upon the defense of insanity at the time of the crime or to enter a plea of guilty but mentally ill. If the defendant fails to comply with the requirements of the subdivision, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state. The court may, for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as is appropriate.

(g) Waiver. The court may, for good cause shown, waive the requirements of this rule.

JURISDICTION
&
VENUE

JURISDICTION & VENUE

EXCLUSIVE ORIGINAL JURISDICTION

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

- whose behavior places himself or others at risk of danger;
- who is beyond the control of his parent or other custodian (incorrigible); or
- who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in § 63-3-520 (traffic and wildlife jurisdiction).

The family court also has exclusive original jurisdiction and shall be the sole court for initiating action:

- for the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child - as long as it doesn't conflict with the probate court's authority in dealing with such cases;
- concerning any child 17 or older who allegedly violated or attempted to violate any state or local law or municipal ordinance before reaching the age of 17; and
- for the detention of a child charged with committing a criminal offense when detention in a secure facility is found to be necessary. § 63-3-510.

TIMING

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

TRANSFER OF CASE FROM CIRCUIT COURT TO FAMILY COURT

The circuit court must immediately transfer any case to family court involving a child erroneously charged as an adult for committing a criminal offense. § 63-19-1210(1).

A 16-year-old charged as an adult for allegedly committing a Class A, B, C or D felony, or a felony which provides for a maximum term of imprisonment of fifteen years or more, can be remanded to the family court for disposition of the charge at the solicitor's discretion. § 63-19-20.

TERMINATION OF JURISDICTION

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

The court retains jurisdiction over any child adjudicated delinquent who was placed on probation until the specified term of probation expires. This may be before but not after the child’s **eighteenth birthday**. § 63-3-510(B).

TRAFFIC & FISH, GAME & WATERCRAFT VIOLATIONS

The family court has concurrent jurisdiction with the magistrate and municipal courts for the trial of children charged with traffic or Title 50 (relating to fish, game, and watercraft) violations. All adjudications for moving traffic violations and other violations affecting a child’s driving privileges, including drug and alcohol violations, must be reported to the Department of Motor Vehicles by the court. All adjudications for Title 50 violations must be reported to the Department of Natural Resources. § 63-3-520.

POST CONVICTION PROCEEDINGS

Post conviction proceedings, including habeas corpus actions, are instituted in the court in which the original action was concluded. However, the family court also has original jurisdiction of habeas corpus actions if the person who is the subject of the action would otherwise be within the family court’s jurisdiction. § 63-3-640.

VENUE

Venue of family court actions “shall be in such county as provided by law.” Family court trials are to be held in the county of venue, unless a change of venue is granted as provided by law. § 63-3-560.

TRANSFER OF VENUE

When a petition is filed that involves a child who is a resident of another county in the state, the judge may transfer the case to the county where the child lives if the child has returned home and it appears that the petitioner and witnesses will not be inconvenienced. If the judge orders a transfer, a copy of the order and all other documents and papers in the file shall be forwarded to the court in the county in which the child resides and shall be received and processed in the same manner as if filed initially in the latter county. Rule 33(a), SCRFC.

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

CUSTODY
&
PRE-TRIAL DETENTION

DETENTION OVERVIEW

INTRODUCTION

When a child is taken into custody by law enforcement for committing a delinquent offense, the officer who takes the child into custody makes the initial decision as to whether or not to detain the child. If detained, the child is placed in a secure detention facility while awaiting trial.

Children in South Carolina are not afforded the right to bail; however, they are entitled to a hearing within a specified amount of time to determine whether probable cause exists to justify detention and whether the child's continued detention is appropriate and necessary. If the court orders that a child remain in detention following the initial detention hearing, the child is entitled to periodic review hearings on continued detention.

TAKING INTO CUSTODY

When a child is taken into custody for violating a law or ordinance:

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

When an officer determines a child taken into custody needs to be placed outside of the home, the authorized DJJ representative is required to make a "diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available." § 63-19-820(A).

DETENTION ELIGIBILITY

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

AGE REQUIREMENTS

- Children who are **ten** or younger must not be incarcerated in a jail or detention facility for any reason. § 63-19-820(F).
- Children who are **eleven** and **twelve** may only be incarcerated in a jail or detention facility by order of the family court. *Id.*

EX PARTE ORDER OF RELEASE

If the officer does not consent to the child's release, the parents or other responsible adult may apply to any family court judge within the circuit for an ex parte order of release of the child. The officer's written report must be provided to the family court judge who may establish conditions for the child's release. § 63-19-810(B).

PREVENTIVE DETENTION

As with adults, children who have been charged with crimes are presumed innocent, and it is a violation of the due process clause to use pretrial detention as punishment for children. *Bell v. Wolfish*, 441 U.S. 520 (1979). However, "preventive detention" may be justified if there is a legitimate state interest in protecting the community or the child. *Schall v. Martin*, 467 U.S. 253 (1984).

SCREENING FOR SERVICES

A child ordered detained in a facility must be screened within **24 hours** by a social worker or psychologist to determine whether the child is emotionally disturbed, mentally ill, or otherwise in need of services. If it is determined that the child is in need of services, the services must be provided immediately. § 63-19-830(B).

TIME LIMIT

No juvenile should be detained in secure confinement for more than **90 days**, absent exceptional circumstances. § 63-19-830(A).

DETENTION ALTERNATIVES

- **House Arrest:** House arrest is often used as an alternative to detention. The child is court ordered to remain in the home and may only participate in outside activities which have been approved by the court.
- **Voice Monitoring:** The child receives computerized calls and must answer and verify that he or she is at home. The system allows the child a window of time to call back before it alerts DJJ that the child has not responded (in case the child is in the shower, etc.).
- **Electronic Monitoring:** The child is released from secure detention under a special court order of electronic monitoring which offers 24-hour oversight. A curfew can be set by the court for any time of the day or night and for any length of time. If electronic monitoring is ordered, the child wears an ankle bracelet which functions as a transmitter, sending signals to a unit in the home. The unit reports movement through the phone system to a computer which faxes information to the local DJJ office each day. Violations are monitored by DJJ staff and reported to the court. A phone line must be available in the child's home, and the parents must sign releases and an agreement that they will not destroy the equipment.

DJJ contracts with a private provider to have access to electronic monitoring (EM) equipment. Every county in the state has access to EM equipment, and the county director for each DJJ office will know how to access units if they do not have any in their office, generally by contacting another county office to borrow any available units.

Electronic monitoring costs DJJ up to \$10 per day, while the cost of detaining a child at DJJ's secure detention facility is \$150.00 per day (\$50.00 of which is charged back to the county). There is no cost to the child or the county for electronic monitoring.

- **GPS Monitoring:** GPS (Global Positioning Satellite) Monitoring, which is similar to EM, utilizes a GPS device to track the child's location. GPS costs roughly \$10.00 per day. DJJ utilizes passive GPS. With passive GPS, the company contracting with DJJ to provide the monitoring service provides DJJ with a "next day printout" of the child's status from the previous day.
- **Jail Removal Home (JRH):** As an alternative to secure detention, the child may be placed by DJJ or ordered by the court to be placed in a JRH – a non-secure placement such as Therapeutic Foster Care, Temporary De-escalation Intensive Group Care, or Shelter Care.

DETENTION HEARING

TIME REQUIRMENTS

A detention hearing must be held within **48 hours** from the time a child is taken into custody, excluding Saturdays, Sundays and holidays. § 63-19-830(A). However, a child taken into custody because of a status offense must not be detained more than **24 hours**, unless a previously issued court order notified the child that further violation of the court's order may result in detention. If a child is ordered detained for violating a valid court order, the child may be held in secure confinement in a juvenile detention facility for up to **72 hours**, excluding weekends and holidays. § 63-19-820(E).

A child ordered detained is entitled to “further and periodic review:”

- within **10 days** following the initial hearing;
- within **30 days** following the 10-day hearing; and
- at any other time with a showing of good cause. § 63-19-830(A).

RIGHT TO COUNSEL

A child has the right to an attorney in the detention hearing. The court must appoint an attorney for the child if none is retained. A child may not proceed without an attorney unless the child waives the right to counsel after consulting at least once with an attorney. § 63-19-830(A).

PRESENCE OF PARENTS

Rule 32, SCRFC provides that the detention hearing may be held without the presence of the child's parents if they cannot be located after reasonable effort. If the parents are not located, the court must appoint a guardian *ad litem* for the child.

PURPOSE OF HEARING

The court makes a determination as to whether: (1) probable cause exists to justify detention; and (2) it is appropriate and necessary for the child to remain in detention.

EVIDENCE

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

DETENTION HEARING PROCEDURE

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

- The detention hearing begins with the solicitor calling the case and presenting the State's witnesses. The State has the burden of proving probable cause exists to justify detention and that continued detention is appropriate and necessary.
 - Potential witnesses for the State may include a law enforcement officer, a DJJ community specialist, witnesses of the alleged incident, and the victim.
 - Generally, the law enforcement representative (may be an officer without any direct knowledge of the case who reads from incident reports or notes from the reporting officer, since hearsay is admissible in this hearing) will testify as to probable cause and reasons why the child should be detained.
 - The DJJ representative may testify regarding the child's prior court history and school records and present DJJ's recommendation regarding continued detention.
- After the solicitor questions each witness on direct examination, the defense attorney has the opportunity to question each witness.
- After the State has presented its case, the defense will present its witnesses.
 - Potential witnesses may include parents/guardians and character witnesses who may testify regarding: the child's home environment (level of structure, supervision, and stability in the home); the child's behavior in the home and at school; any special needs or disabilities the child may have; and how the child will be monitored if allowed to return home while awaiting trial.
 - As with the State's witnesses, defense witnesses are also subject to cross-examination.
- Following the defense's case, the judge will usually hear from the attorneys as to why the child should be detained or released. The judge may also want to hear from parents who have not testified.
- The judge will make a ruling as to whether the child will remain in detention or be released while awaiting trial.

DETENTION STATUTES

SECTION 63-19-820. Out-of-home placement.

(A) When the officer who took the child into custody determines that placement of a juvenile outside the home is necessary, **the authorized representative of the Department of Juvenile Justice shall make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available.**

(B) A child is eligible for detention in a secure juvenile detention facility only if the child:

- (1) is charged with a violent crime as defined in Section 16-1-60;
- (2) is charged with a crime which, if committed by an adult, would be a felony or a misdemeanor other than a violent crime, and the child:
 - (a) is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;
 - (b) has a demonstrable recent record of wilful failures to appear at court proceedings;
 - (c) has a demonstrable recent record of violent conduct resulting in physical injury to others; or
 - (d) has a demonstrable recent record of adjudications for other felonies or misdemeanors; and
- (i) there is reason to believe child is a flight risk or poses a threat of serious harm to others; or
- (ii) the instant offense involved the use of a firearm;
- (3) is a fugitive from another jurisdiction;
- (4) requests protection in writing under circumstances that present an immediate threat of serious physical injury;
- (5) had in his possession a deadly weapon;
- (6) has a demonstrable recent record of wilful failure to comply with prior placement orders including, but not limited to, a house arrest order;
- (7) 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 public, or both; or
- (8) is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity.

A child who meets the criteria provided in this subsection is eligible for detention.

Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer's written report must be furnished to the family court judge who may establish conditions for the release.

(C) No child may be placed in secure confinement or ordered detained by the court in secure confinement in an adult jail or other place of detention for adults for more than **six hours**. However, the prohibition against the secure confinement of juveniles in adult jails does not apply to juveniles who have been waived to the court of general sessions for the purpose of standing trial as an adult. Juveniles placed in secure confinement in an adult jail during this six-hour period must be confined in an area of the jail which is **separated by sight and sound** from adults similarly confined.

(D) Temporary holdover facilities may hold juveniles during the period between initial custody and the initial detention hearing before a family court judge for a period up to **forty-eight hours**, excluding weekends and state holidays.

(E) A child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained more than **twenty-four hours** in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies 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 juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than **seventy-two hours**, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.

(F) Children **ten** years of age and younger must not be incarcerated in a jail or detention facility for any reason. Children **eleven or twelve** years of age who are taken into custody for a violation of law which would be a criminal offense under the laws of this State if committed by an adult or who violates conditions of probation for such an offense must be incarcerated in a jail or detention facility only by order of the family court.

(G) For purposes of this section, "adult jail" or other place of detention for adults includes a state, county, or municipal police station, law enforcement lockup, or holding cell. "Secure confinement" means an area having bars or other restraints designed to hold one person or a group of persons at a law enforcement location for any period of time and for any reason. Secure confinement in an adult jail or other place of detention does not include a room or a multipurpose area within the law enforcement center which is not secured by locks or other security devices. Rooms or areas of this type include lobbies, offices, and interrogation rooms. Juveniles held in these areas are considered to be in nonsecure custody as long as the room or area is not designed for or intended for use as a residential area, the juvenile is not handcuffed to a stationary object while in the room or area, and the juvenile is under continuous visual supervision by facility staff while in this room or area which is located within the law enforcement center. Secure confinement also does not include a room or area used by law enforcement for processing "booking" purposes, irrespective of whether it is determined to be secure or

nonsecure, as long as the juvenile's confinement in the area is limited to the time necessary to fingerprint, photograph, or otherwise "book" the juvenile in accordance with state law.

SECTION 63-19-830. Detention hearings; screenings.

(A) If the officer who took the child into custody has not released the child to the custody of the child's parents or other responsible adult, the court shall hold a detention hearing within **forty-eight hours** from the time the child was taken into custody, excluding Saturdays, Sundays, and holidays. At this hearing, the authorized representative of the department shall submit to the court a report stating the facts surrounding the case and a recommendation as to the child's continued detention pending the adjudicatory and dispositional hearings. The court shall appoint counsel for the child if none is retained. No child may proceed without counsel in this hearing, unless the child waives the right to counsel and then only after consulting at least once with an attorney. At the conclusion of this hearing, the court shall determine whether probable cause exists to justify the detention of the child and the appropriateness of, and need for, the child's continued detention. If continued detention of a juvenile is considered appropriate by the court and if a juvenile detention facility exists in that county which meets state and federal requirements for the secure detention of juveniles or if that facility exists in another county with which the committing county has a contract for the secure detention of its juveniles and if commitment of a juvenile by the court to that facility does not cause the facility to exceed its design and operational capacity, the family court shall order the detention of the juvenile in that facility. A juvenile must not be detained in secure confinement in excess of ninety days except in exceptional circumstances as determined by the court. A detained juvenile is entitled to further and periodic review:

- (1) within **ten days** following the juvenile's initial detention hearing;
- (2) within **thirty days** following the ten-day hearing; and
- (3) at any other time for good cause shown upon motion of the child, the State, or the department.

If the child does not qualify for detention or otherwise require continued detention under the terms of Section 63-19-820(A) or (B), the child must be released to a parent, guardian, or other responsible person.

(B) A juvenile ordered detained in a facility **must be screened within twenty-four hours** by a social worker or if considered appropriate by a psychologist in order to determine whether the juvenile is emotionally disturbed, mentally ill, or otherwise in need of services. The services must be provided immediately.

WAIVER /
TRANSFER
OF
JURISDICTION

WAIVER OVERVIEW

INTRODUCTION

Waiver is one of the most significant actions that can occur in the early stages of a case involving a child charged with a criminal offense. Waiver is the transfer of jurisdiction of a child's case from family court to a court which would have trial jurisdiction if the offense was committed by an adult.

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

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

ELIGIBILITY

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

- any age and charged with murder;
- 16 and charged with a misdemeanor, a Class E or F felony as defined in § 16-1-20, or a felony which, if committed by an adult, would carry a maximum term of imprisonment of 10 years or less, after full investigation;
- 14 or 15 and charged with an offense which, if committed by an adult, would be a Class A,B,C, or D felony or a felony which provides for a maximum term of imprisonment of 15 years or more, after full investigation and a hearing; and
- 14 or older and charged with §16-23-430(1) (carrying a weapon on school property), §16-23-20 (unlawful carrying of a handgun), or §44-53-445 (unlawful distribution of drugs within a half-mile of a school), after full investigation and a hearing. § 63-19-1210(4)-(6),(9).

A family court judge is required to waive a child 14 or older charged with an offense which, if committed by an adult provide for a term of imprisonment of ten years or more and the child previously has been adjudicated or convicted for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more. (An adjudication or conviction is considered a second

adjudication or conviction only if the second offense was committed after the sentence for the first offense was imposed.) § 63-19-1210(10).

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

MURDER AND CRIMINAL SEXUAL CONDUCT CASES

When a child is charged with murder or with criminal sexual conduct, the solicitor has **30 days** after filing the petition to request in writing that the case be transferred to general sessions court. The family court judge is authorized to determine this request. If the judge denies the request, the solicitor has **5 days** to appeal the decision to the circuit court. The circuit court judge who hears the appeal has the discretion to retain jurisdiction in general sessions or relinquish jurisdiction to the family court. § 63-19-1210(6).

A child under 14 cannot be waived to general sessions court on a criminal sexual conduct charge. § 16-3-659; *Slocumb v. State*, 522 S.E.2d 809 (S.C. 1999). Section 16-3-659 states that the "common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State. Provided, that any person under the age of 14 shall be tried as a juvenile for any violations of §§ 16-3-651 to 659.1 (criminal sexual conduct offenses)."

PRE-WAIVER EVALUATION REPORT

After moving to waive, the solicitor will generally move that the child undergo a pre-waiver evaluation.

The report is typically divided into 2 parts:

- One part is conducted by a community specialist in the county. This part contains a social history of the child, including prior court history, a family description, a report on social agencies involved with the child, a physical description, school information, early development/medical history, information regarding community and home adjustments, etc.
- The second part is conducted by a DJJ psychologist. This part contains a referral statement, sources of information, a mental status examination, a psychological summary, and conclusions. These conclusions are drawn from an analysis of the factors the court will consider in determining whether or not to waive the child. These factors include the level of sophistication and maturity of the child; the likelihood of reasonable rehabilitation; adequate protection of the public; and procedures, services, and facilities currently available to the family court which could benefit the child.

WAIVER HEARING

The waiver hearing is generally the most serious of all hearings for a child involved in the juvenile justice system. At the conclusion of this hearing, the family court judge rules on whether the child is to be prosecuted in family court or in a court which would have trial jurisdiction of the offense(s) if committed by an adult. In *Kent v. United States*, 383 U.S. 541 (1966), the U.S. Supreme Court ordered that a full investigation must be conducted on children who the State intends to waive. The Court also identified eight factors to be taken into consideration when making the determination of whether or not to waive the child. (See “The Eight Determinative Factors of *Kent v. U.S.*”)

The solicitor has the burden of proving that the child should be waived. The solicitor will present witnesses and enter the pre-waiver evaluation report into evidence. Hearsay is admissible as this is not a trial on the merits.

Following the State’s case, the defense will present its case in an effort to show the court that the child should be treated as a child and remain in family court instead of being prosecuted as an adult. After hearing all the evidence and reviewing the pre-waiver evaluation report, the court will make its ruling based on the *Kent* factors and the factual findings.

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

POST WAIVER HEARING ISSUES

If the family court does not waive the child and retains jurisdiction, the judge who presided over the waiver hearing should not preside over the adjudicatory hearing. Rule 34, SCRFC.

If the family court waives the child and relinquishes jurisdiction to another court, the family court has full authority to grant bail and hold a preliminary hearing (although in practice, this is rarely done by the family court judge).

Waiver or transfer of certain charges against a child does not result in all pending charges being transferred. If a charge is not transferred, it remains a family court charge and the child retains all of the protection of the juvenile system as to that charge. *Johnson v. State*, 437 S.E.2d 20 (S.C. 1993).

**WAIVER
UNDER § 63-19-1210**

CHARGE	UNDER AGE 14	14 YEARS OLD	15 YEARS OLD	16 OR OLDER
Class A Misdemeanor				
Class B Misdemeanor				
Class C Misdemeanor				
Class E Felony				
Class F Felony				
Felony - maximum of 10 years or less				
Class A Felony				
Class B Felony				
Class C Felony				
Class D Felony				
Felony - maximum of 15+ years				
Carrying Weapon on School Property § 16-23-430				
Unlawful Carrying of Handgun § 16-23-20				
Distribution of Controlled Substance within ½ Mile Radius of School § 44-53-445				
CSC				
Murder				
Offense which, if committed by an adult, provides for 10+ years, if child previously adjudicated or convicted for 2 prior offenses which, if committed by an adult, provide for 10+				

- No Waiver Allowed
- Waiver Allowed / Court's Discretion
- Mandatory Waiver
- Automatic Jurisdiction in General Sessions Court (may be remanded to family court at solicitor's discretion)

THE EIGHT DETERMINATIVE FACTORS OF KENT

In *Kent v. United States*, 383 U.S. 541 (1966), the United States Supreme Court established the following criteria for determining whether jurisdiction should be waived:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if injury resulted;
4. The merit of prosecuting the complaint, i.e., whether there is evidence upon which a grand jury may be expected to return an indictment;
5. The desirability of trial and disposition of the entire offense in one court when the child's co-defendants are adults;
6. The sophistication and maturity of the child as determined by consideration of his home, environmental situation, emotional attitude and living pattern;
7. The child's prior record and involvement with the juvenile justice system; and
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available to the family court.

WAIVER STATUTE

SECTION 63-19-1210. Transfer of jurisdiction.

In accordance with the jurisdiction granted to the family court pursuant to Sections 63-3-510, 63-3-520, and 63-3-530, jurisdiction over a case involving a child must be transferred or retained as follows:

(1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this chapter. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a **child sixteen years of age or older** is charged with an offense which, if committed by an adult, would be a **misdemeanor, a Class E or F felony** as defined in Section 16-1-20, **or a felony which provides for a maximum term of imprisonment of ten years or less**, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

(5) If a child **fourteen or fifteen years of age** is charged with an offense which, if committed by an adult, would be a **Class A, B, C, or D felony** as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of **murder or criminal sexual conduct**, the person

executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 63-19-2020 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a **child fourteen years of age or older is charged with a violation of Section 16-23-430(1), Section 16-23-20, assault and battery of a high and aggravated nature, or Section 44-53-445**, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child **fourteen years of age or older** is charged with an offense which, if committed by an adult, provides for a term of imprisonment of **ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more**, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

ADJUDICATION

ADJUDICATORY HEARING

The adjudicatory hearing is the hearing/trial held by a family court judge to determine whether a child engaged in a delinquent act.

HEARING DATE

Under the South Carolina Rules of Family Court, the adjudicatory hearing must be scheduled for the “earliest practicable date but no later than 40 days from the filing of the petition unless otherwise delayed by order of the court.” If the hearing is delayed by order of the court, the order must identify the reasons for the delay. Failure to schedule the adjudicatory hearing within the prescribed 40 days may be a ground for dismissal, but only if there is an “affirmative showing of material prejudice.” Rule 35(a), SCRFC.

NOTICE OF HEARING

Notice of the adjudicatory hearing must be served on both parents and both must be ordered to be present. If the child is not living with the parents, notice is to be served on the guardians or persons with whom the child resides. The parent or guardian must be present at the hearing and excused only by the judge upon a showing of sickness or other justifiable cause. Rule 35(b), SCRFC.

ADJUDICATORY HEARING PROCESS

The South Carolina Rules of Evidence apply in adjudicatory hearings. Rule 1101, SCRE. The South Carolina Rules of Criminal Procedure also apply in adjudicatory hearings insofar as practicable and to the extent they are not inconsistent with the statutes and rules governing family court. Rule 37, SCRCrimP.

Prior to hearing any testimony, the judge, upon motion of any party, may sequester or exclude witnesses from the courtroom. The victim in the case may not be sequestered.

Since the judge is the trier of law and fact in family court cases, if opening statements are made, they are usually brief. The hearing generally begins with the solicitor presenting the State’s case against the child by presenting witnesses to testify. The State has the burden of proving **beyond a reasonable doubt** that the child committed the delinquent act as charged. The child’s attorney will have the opportunity to cross examine the state’s witnesses, and the solicitor will be given the option to re-direct on any issues raised by the defense attorney on cross-examination.

MOTION FOR DIRECTED VERDICT

After the solicitor presents the case against the child, the defense attorney should move for a directed verdict on the grounds that the State has not presented competent evidence to prove its case. “On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the [petition] after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the [petition].” Rule 19(a), SCRCrimP. In ruling on the motion, the judge only considers the existence or non-existence of evidence and not the weight of the evidence. *Id.* The judge must view the evidence in the light most favorable to the State, when determining if there is any “direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced.” *State v. Williams*, 400 S.E.2d 131, 132 (1991).

If the judge grants the motion for a directed verdict, the trial ends and the child is found not guilty. If a defendant's motion for directed verdict at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right. Rule 19(b), SCRCrimP.

ADJUDICATORY HEARING PROCESS, Continued

On advice of counsel, the child may or may not take the stand and testify. As with the State's witnesses, defense witnesses are also subject to cross-examination, by the solicitor.

Following the defense's case, the solicitor may call rebuttal witnesses to discredit statements and facts presented by the defense witnesses. At the end of the adjudicatory hearing, the solicitor and the defense attorney will make their closing arguments to the judge.

After hearing all the evidence presented, the judge will make a ruling. If the judge determines that the State did not meet its burden of proving the case beyond a reasonable doubt, the judge will find the child “not guilty.” If the verdict is “not guilty,” the child is released from the court's jurisdiction. This verdict cannot be appealed by the State and the case cannot be retried. If the judge determines that the child is guilty, the dispositional hearing is set for a future date following an evaluation, or is held immediately if the judge determines an evaluation is not required or necessary.

GUILTY PLEA

OVERVIEW

In family court, a child enters into a guilty plea by formally admitting to the allegations in the petition. A guilty plea must be made voluntarily and should only be accepted by the court after the child has been informed of and understands his or her rights. A guilty plea has the same effect as an adjudication following a trial on the merits.

PLEA NEGOTIATIONS

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

- dismiss the charge(s);
- allow the child to take part in a diversion program;
- reduce or change the pending charge(s) named in the petition(s);
- agree to enter into a "Negotiated Plea" (whereby the judge, although not bound to the agreement, must allow defendant to withdraw the plea, if unwilling to accept the plea as negotiated);
- agree to recommend a favorable sentence to the judge (different from entering into a negotiated plea); or
- agree to take no position as to sentencing (if unwilling to recommend a favorable sentence).

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

GUILTY PLEA PROCEDURE

Generally (though it may vary county to county), the process begins with the solicitor calling the case and indicating that the child wishes to plead guilty. The judge will ask the defense attorney if she or he has had a full opportunity to discuss the case with the child and if the child has indicated that he or she wishes to admit the charges as stated by the solicitor. The judge will then question the child to ensure that the child understands the charges, his or her rights, the implications of pleading guilty, and that the child is pleading guilty freely and voluntarily.

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

- What is your full name?
- How old are you?
- Do you go to school?
- What grade are you in? (The judge may question the child further if the child was held back.)
- Are you making good grades or bad grades?
- Are you working?
- You were in the courtroom when the solicitor and your attorney told me that you wish to plead guilty and admit to these charges. Is that correct?
- Do you understand that by pleading guilty, you are giving up your right to a trial?
- Do you understand that if you go to trial, you would be presumed innocent of the charges and the state would have to prove your guilt beyond a reasonable doubt? That you would not have to testify against yourself at trial? That your lawyer may question and cross-examine the witnesses who will testify against you at the hearing? That you have a right to have witnesses present to testify on your behalf?
- Who is here with you today?
- Have you had enough time to talk with your parent/guardian about why you are here today?
- Have you had enough time to talk with your lawyer about your case?
- Do you understand the charges against you?
- Has your lawyer answered all of your questions?
- Has your lawyer done everything you have asked her/him to do?
- Are you satisfied with her/his services?
- Has anyone in any way forced, threatened, or pressured you or promised you anything to get you to plead guilty?
- Are you under the influence of any medication, alcohol, or drugs that would keep you from understanding what we are doing here today?
- Are you pleading guilty freely and voluntarily?
- Do you understand that, if I find you guilty and adjudicate you delinquent, I have the authority to sentence you to the Department of Juvenile Justice for an indeterminate period not to exceed your 21st birthday?
- Do you still wish to plead guilty?
- Are you pleading guilty because you are guilty?

Following these questions, the judge will direct the solicitor to state the facts of the case. The solicitor will read out the petition, and the judge will ask the child if the child agrees with what was stated in the petition.

The judge will then ask to hear from the DJJ community specialist who will report on the child's school records and prior court history. The community specialist will also make a sentencing recommendation to the court on behalf of DJJ.

At this point, the judge may give the victim an opportunity to address the court. The defense attorney will then be allowed to speak on behalf of her/his client. The defense attorney may also ask the judge to hear from the child and/or family members or friends of the child who wish to speak on the child's behalf.

The judge may ask further questions of the child, the defense attorney, the solicitor, or the DJJ community specialist. The solicitor may also request the opportunity to respond to statements made by the defense or recommendations regarding disposition of the case.

The judge may then ask the child if he or she has any further questions and will accept the plea by stating the following (or something similar): "The Court finds that your decision to plead guilty in this case is freely, voluntarily and intelligently made and that you have had the advice of a competent lawyer with whom you say you are satisfied. I accept your guilty plea and adjudicate you delinquent."

VALIDITY OF GUILTY PLEA

In *Gaines v. State*, 517 S.E.2d 439 (S.C. 1999), the South Carolina Supreme Court held that the test for a valid guilty plea is whether the record establishes that a guilty plea was voluntarily and understandingly made, citing *Boykin v. Alabama*, 395 U.S. 238 (1969). Generally, "the [court] must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea." In *State v. Armstrong*, 211 S.E.2d 889 (S.C. 1975), the court also acknowledged that the "court's warning should include an explanation of the defendant's waiver of constitutional rights and a realistic picture of all sentencing possibilities." The trial judge will usually question the defendant about the facts surrounding the case to ensure the defendant understands the implications of pleading guilty. See, e.g., *State v. Lambert*, 225 S.E.2d 340 (S.C. 1976).

TYPES OF PLEAS

Guilty Plea - A guilty plea consists of a waiver of the right to a trial and an express admission of guilt.

Negotiated Plea - A negotiated plea is a plea where the defense attorney and solicitor have reached an agreement as to sentencing. If the judge does not accept the plea as negotiated, the judge must allow the defense attorney to withdraw the plea, or it is automatically appealable.

Nolo Contendere or No Contest – In a *nolo contendere* (Latin for “I do not wish to contend,” often shortened to *nolo*) or no contest plea, the child does not admit guilt but does not dispute the charges either. The no contest plea has the same effect as a guilty plea, but the child does not have to admit guilt. Section 17-23-40 specifically allows no contest pleas to be entered on misdemeanor charges with consent of the court; however, many judges will allow a no contest plea on almost any degree of crime. Even if the charge is a misdemeanor, the defense attorney should approach the judge before the plea begins to determine if the judge is willing to accept a no contest plea.

Alford Plea – In *North Carolina v. Alford*, 400 U.S. 25 (1970), the Supreme Court held that a defendant may enter a plea of guilty while actually maintaining his innocence. In order to enter an *Alford* plea, the defendant must be convinced, after being informed of the evidence against him, that he would be found guilty if he went to trial. The defendant must also receive some benefit from the plea, such as a reduced charge or favorable sentence recommendation. Acceptance of an *Alford* plea is in the court’s discretion.

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

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

DUTY TO WITHDRAW FROM PLEA

In *Santobello v. New York*, 404 U.S. 257, (1971) the Court established that “state prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty.” See *Sprouse v. State*, 585 S.E.2d 278 (S.C. 2003). If the defense enters into an agreement with the solicitor and the solicitor appears to stray from the pre-arranged terms of the plea, the defense must move to withdraw from the plea. In *Jordan v. State*, 374 S.E.2d 683 (S.C. 1988), the court held that counsel was ineffective for failure to attempt to withdraw from the plea where the solicitor opposed probation after promising to remain silent on the issue. The court stated that counsel’s failure to protect defendant’s right to enforce the plea agreement with the solicitor’s office fell below “prevailing professional norms.” The court also held that there was a reasonable probability that “but for the fact that counsel failed to object to the continuation of the guilty plea proceeding once the solicitor reneged on the plea bargaining agreement, that defendant would not have pleaded guilty, but would have insisted on going to trial.”

The defense attorney must also move to withdraw if the judge appears to deviate from the terms of a negotiated plea. *Brooks v. State*, 481 S.E.2d 712 (S.C. 1997).

DISPOSITION

DISPOSITION PLANNING & ADVOCACY

Disposition planning and advocacy should begin at the initiation of the attorney-client relationship. The ultimate goal is to get the most appropriate and least restrictive sentence possible for your client if he or she is adjudicated delinquent.

When interviewing your client and client's guardian, obtain as much relevant information about your client and his surrounding circumstances as possible, such as background information regarding family dynamics, school history, employment history, mental health issues, prior record, and extra-curricular activities. When available, obtain corroborating evidence such as DJJ, DSS, school, medical and mental health records, which may have to be subpoenaed.

Keep your client informed and involved in the development of the disposition plan throughout the process. Identify services and programs available in the community that would benefit your client and client's family, and help your client understand and weigh his or her options. If your client wishes to take part in the services or programs you have identified, contact those services providers and determine what needs to be done to apply for admission.

When preparing for disposition, keep in mind that your role as a defense counsel is to represent your client's expressed interests. You also have a responsibility to fully explain to your client:

- the nature of the dispositional hearing;
- the sentencing options available to the court;
- the nature, obligations, and consequences of any proposed disposition plan and the possible duration of his or her responsibilities under the plan;
- the meaning of terms or conditions of probation and the implications of violating those terms; and
- what to expect if commitment to a DJJ facility or other out-of-home placement is a possibility.

BEFORE YOUR CLIENT ENTERS A GUILTY PLEA OR GOES TO TRIAL

Discuss with your client the disposition options available to the court and the possible outcomes of the case.

Standard Options Available to the Court at Disposition

- **Dismissal** of the petition or termination of jurisdiction. § 63-19-1410(7).
- **Probation.** § 63-19-1410(A)(3).
The court may place the child on probation for any amount of time up until the child's eighteenth birthday.

- The court may order straight probation, probation with a suspended commitment to DJJ, or probation to follow a determinate sentence.
 - Conditions of probation may include monetary restitution, community service, participation in a community mentor program, and/or a fine of up to \$200 for an offense that carries a fine in adult court.
 - Advise your client of the possible length and terms of probation and the implications of violating the terms of probation.
- **Commitment to DJJ.**
The court may order that the child be committed to the custody of DJJ:
 - for an indeterminate period not to exceed the child's 21st birthday. § 63-19-1440(B).
 - A child committed for an indeterminate period will receive Parole Guidelines of a minimum and maximum number of months the child may remain committed. Familiarize yourself with the Guidelines so you can advise your client regarding the potential length of commitment. Make sure your client understands that these are only guidelines (there is a rebuttable presumption against release prior to minimum and retention after maximum) and his or her behavior while committed will also impact the date of release. (See Parole section for additional information and an explanation of how the guidelines are determined.)
 - for a determinate sentence of up to ninety days for each adjudicated delinquent offense. *Id.*
 - A child committed to DJJ for a determinate or indeterminate sentence is entitled to receive credit for time served "for each day...detained in or temporarily committed to any secure pre-dispositional facility, center or program." § 63-19-1440(I).

Collateral Consequences of an Adjudication and Disposition

Advise your client of any possible collateral consequences of the adjudication and disposition, such as:

- Fingerprinting. §§ 63-19-2030(G)-(L)
- Photographing. § 63-19-2030(F)
- DNA testing. § 23-3-620.
- Driver's license suspension. § 63-19-1420)
- School notification. § 63-19-2020 (E)
- Transfer from DJJ to Department of Corrections at age 17 or 19. § 63-19-1440(E)
- Conditional release following DJJ commitment. § 63-19-1850
- Sex offender registry (Article 7 Chapter 3 of Title 23)
- Sexually Violent Predator Act (Article 7 Chapter 48 of Title 44)
- Impact on immigration status, including deportation
- Loss of scholarships (e.g., Hope and LIFE)

BEFORE YOUR CLIENT UNDERGOES A PREDISPOSITION EVALUATION

Prior to sentencing a child who has been adjudicated delinquent, the court may order that the child undergo a community or residential evaluation by DJJ. (See *Dispositional Hearing* section for more information regarding the predisposition evaluation.) Fully explain the implications of the evaluation and the impact that findings in the evaluation report will have on the child's sentencing. Ensure that your client and his or her parents understand the nature of the predisposition evaluation process and the importance of statements the child and child's family may make in interviews with DJJ officers and evaluators.

Your client needs to understand that his or her behavior will be closely monitored during the entire evaluation period. If the evaluation is conducted at a DJJ center, staff observations, both positive and negative, will be recorded in the evaluation report, which will be read and relied upon by the judge ruling on disposition. The child's behavior during the 30- to 45-day evaluation period will likely impact the judge's decision regarding disposition.

BEFORE THE DISPOSITIONAL HEARING

Understanding the child's needs, strengths, and challenges is crucial to developing the most appropriate disposition plan and advocating for your client at the hearing. 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 offense(s) 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 experienced any type of trauma? Has the child exhibited any violent, runaway or incorrigible behavior?

While you will want to focus on your client's strengths, you need to be prepared to address the court's concerns for safety, for the community and the child, and any real or perceived shortcomings on the part of the child's parents or guardian such as lack of appropriate supervision, structure and support.

If your client is returning to court for a dispositional hearing following an evaluation, contact the DJJ caseworker who will be preparing the predisposition evaluation report and provide any relevant information favorable to your client, including any mitigating factors and the child's version of the offense and surrounding circumstances, if appropriate.

You should receive the evaluation report from DJJ several days before going to court to ensure you have adequate time to prepare for the hearing. Review the

report and discuss it with your client. If the report contains any incorrect or misleading information, contact DJJ and try to get that information corrected or deleted before the court hearing or prepare to challenge the inaccurate information at the hearing. Refer to the next section, “Effective Use of Evaluation Reports,” for tips on using the information in the report to advocate for your client.

Prior to the hearing, you should also:

- Collect affidavits and letters of support from appropriate members of the community, such as teachers, coaches, pastors, neighbors, extended family members, and family friends.
- Contact any potential character witnesses willing to speak on your client’s behalf at the hearing and meet with them to discuss what they will say.
- Prepare your client and his parent or guardian for what they should expect as far as courtroom procedures, the judge’s practices, dispositional options available to the court, and the likely outcome of the dispositional hearing (i.e., what you think the judge will do as far as sentencing). Make it clear that there is no way to know for sure what the judge’s sentence will be until the judge makes the final order for disposition.
- Prepare your client to speak briefly at the hearing if he or she wishes to do so and in anticipation of the judge asking your client to speak.
- Prepare your client's parent or guardian to speak briefly at the hearing and answer questions the judge may ask regarding the juvenile’s behavior at home. If your client’s relationship with his or her parent or guardian is strained, carefully explain the possible implications the parent’s statements may have on the judge’s sentencing decision. Discourage the parents from venting their frustrations with their child to the judge, as their statements could greatly influence the judge’s decision to allow the child to return home and may result in the child being committed to DJJ. Make sure they understand that if the judge orders out of home placement or commitment to DJJ, the parent will have lost all control to bring their child home.

Pre-hearing Negotiations

Both the prosecutor and the DJJ representative in court will make recommendations to the judge as to disposition, so contact them prior to court, determine what they intend to recommend, and try to come to an agreement as to an appropriate disposition plan. You may be able to persuade the prosecutor and or DJJ to change their recommendations or to agree with your proposed plan if you provide additional information favorable to your client to back up your position.

DEVELOPING A PLAN

When developing a disposition plan to present to the court, involve your client and make sure he or she is in agreement with all aspects of the proposed plan. You should not make or agree to any recommendations without your client's informed consent. The plan should entail the least restrictive disposition alternatives based on the child's strengths that also address the court's concerns.

Familiarize yourself with options available to the court by state statute, community services and resources, and out-of-home placement options that may be useful in developing a plan tailored to your client's needs and circumstances. A judge who is inclined to commit a child to DJJ may be persuaded to allow the child to return home or place the child in an alternative setting in the community if enough safeguards and services are put in place.

- Contact staff at the local DJJ office and/or the Children's Law Center, USC School of Law for guidance regarding community-based services, programs, and resources.

Consider whether an independent private evaluation or assessment is needed to assist in the development of a plan.

Additional information regarding creative approaches to dispositional planning can be found in *Creative Sentencing in Juvenile Court*, another Children's Law Center publication available on the Children's Law Center website at <http://childlaw.sc.edu> under Juvenile Justice Publications.

Advocating for Probation

If requesting probation for your client, present the court with a comprehensive plan tailored specifically to meet your client's needs and address the court's concerns. Advocate for probationary terms that are reasonable given the offense(s) for which the child has been adjudicated and feasible for your client and his or her family, taking into account availability of transportation to services and activities, and. Argue against terms that set your client up to fail and sanctions that allow your client to be sent to placement for violations without another hearing.

Refer to the following language found in § 63-19-1410(3) to bolster arguments for appropriate terms and conditions of probation:

- "Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family."
- "Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources of the community."

FOLLOWING THE DISPOSITION HEARING

Carefully review the final order. If the order contains any errors, file objections and request a hearing to get the order corrected.

Thoroughly explain the court's ruling as to disposition to your client and his or her parents or guardian. Make sure your client understands the implications of the disposition, what will be expected of him or her, and the consequences of not cooperating with the order.

Discuss with your client his or her right to appeal the court's final ruling and make sure that right is protected until appellate counsel is substituted or your client decides not to exercise this privilege. Inform your client that the appellate counsel will guide him or her through the appellate process and will explain whether there are grounds for appeal, the likely results of an appeal, and the potential advantages and disadvantages associated with appeal.

If your client was adjudicated for a status or nonviolent offense, inform him/her of the availability of expungement of his/her juvenile record upon turning 18 under § 63-19-2050.

EFFECTIVE USE OF PREDISPOSITION EVALUATION REPORTS

This section examines the various parts of the DJJ evaluation report and provides tips on using the information presented to effectively advocate for your client at the disposition hearing. Because judges rely heavily on these reports when sentencing juveniles, it is critical that you read the report in its entirety and not rely on the summary or merely skim over the report. In addition to highlighting all the positive points presented in the report, you should also be prepared to address any seemingly negative points at the disposition hearing.

There are two types of predisposition evaluations conducted by DJJ - the Community Psychological Evaluation (Community Evaluation) and the Residential Evaluation (also referred to as the Secure Evaluation). This section follows the formatting used by DJJ for the Residential Evaluation reports, which include additional attachments and information not presented in the Community Evaluation reports.

When preparing for disposition, keep in mind that you are tasked with representing your juvenile client's expressed interests. See below:

*ABA Model Rules of Professional Conduct (Model Rules): Preamble;
1.14(a) Client with Diminished Capacity; 1.2(a) Scope of Representation
and Allocation of Authority between Client and Lawyer*

At each stage of the case, juvenile defense counsel acts as the client's voice in the proceedings, advocating for the client's expressed interests, not the client's "best interest" as determined by counsel, the client's parents or guardian, the probation officer, the prosecutor, or the judge. With respect to the duty of loyalty owed to the client, the juvenile delinquency attorney-client relationship mirrors the adult criminal attorney-client relationship. In the juvenile defender's day-to-day activities, the establishment of the attorney-client relationship is animated by allocating the case decision-making, and practicing the special training required to represent clients with diminished capacity.

I. Evaluation Report Cover Sheet

A. Date of Commitment & Date of Release (for residential evaluations)

The length of time a juvenile spends at an evaluation center is important for several reasons:

1. Even though time spent at an evaluation center is for evaluation and not intended to be "punishment," from the juvenile's perspective, this is no different than being committed to DJJ. The juvenile is away from his or her

home and family, locked up in a secure institutional facility, surrounded by a barbed wire fence, and the juvenile is required to comply with all the rules of the facility or face consequences. However long the evaluation period is, generally 35 – 45 days, to a 14 or 15 year old, it is a very long time. Use this information to bolster your argument for allowing the juvenile to return home or to the community if alternative placement is the only viable option.

2. If the juvenile is subsequently committed to DJJ at the disposition hearing, he or she will receive credit for each day temporarily committed to the evaluation center, per S.C. Code Ann. § 63-19-1440(I).

B. Disposition Recommendation

If you are privy to information that was not included in the evaluation report that could feasibly change the recommendation to one resulting in a more positive outcome for your client, contact the DJJ staff prior to the scheduled court hearing to see if you can influence a change in their recommendation to the court.

C. Placement Recommendation

The three options include Home Placement, Alternative Placement, and DJJ Institution.

As stated in the introduction, you are required to advocate for your client's expressed interests, not what you or others perceive as the juvenile's "best interests." If DJJ is recommending alternative placement and your client wishes to go home, you have to present your client's wishes to the court. In situations where it is unlikely that the judge will allow the juvenile to return home (e.g., the parents are unable to provide sufficient supervision or the judge makes it clear at adjudication that home placement is not an option), it would be prudent to discuss possible alternative placement options with your client to determine what might be agreeable.

If Alternative Placement is the recommendation, check the Needs and Recommendations section at the end of the report to determine if a specific alternative placement has been identified and if bed space is likely to be available at the time of the disposition hearing.

- If there is an application that needs to be completed, make sure that process has been initiated to avoid delays that could potentially result in the unnecessary detention of the juvenile in a secure facility pending placement. Contact the county DJJ office to check on an application or to encourage initiation of an application.
- Detention of the juvenile pending alternative placement can also be avoided by presenting the court with available options such as voice or electronic monitoring or house arrest.

D. Attachments

As soon as you receive your copy of the evaluation report, make sure all attachments that are checked off are included with the report so you have adequate time to obtain any missing information.

II. Form 5

The Form 5 was developed by DJJ to provide basic information about the juvenile. You should already have the majority of this information from your initial interview with your client and the child's parent/guardian, but there may be additional useful information included, as well.

- Closely examine this form to check for possible errors, especially in the "Legal History" section. Make sure it accurately reflects court outcomes affected by negotiated pleas, such as reduction of charges to lesser included offenses or dismissals of certain charges. DJJ's recommendation for disposition is based in part on the juvenile's legal history, so any errors or discrepancies identified should be discussed with DJJ prior to court to determine if correcting the information could positively affect their recommendation.
- This form also provides the child's Medicaid number if applicable. When planning for disposition, you should know if your client has insurance or Medicaid which may be required when applying to certain programs in the community, especially private residential treatment facilities. If the child does not have insurance, is eligible for Medicaid, but has not yet applied, make sure the child's guardian applies for Medicaid as soon as possible before the disposition hearing to avoid unnecessary delays in placement or acceptance to a treatment program.

Applications for Medicaid can be obtained from the South Carolina Department of Health and Human Services or from the county health departments, most hospitals, and the county DSS offices. Applications for Medicaid may be filed in person or by mail.

- The "DJJ Personnel" section identifies the names of DJJ Intake Counselors and Social Workers assigned to the child who you may want to contact. They can often provide additional insight regarding a child's behavior while being evaluated and may be able to identify positive points you can present to the court on behalf of your client.
- The "Juvenile Traits," indicates whether DNA testing was conducted on the child or if the child was required to register as a sex offender. Again, review for accuracy.

III. Court Order / Commitment Order for Evaluation

You should have already received a copy of the court order and thoroughly reviewed it for any discrepancies from your notes or recollection of the court's order at the

adjudicatory hearing, especially with regard to any handwritten notes added to a standard order.

When preparing your disposition arguments for the court, include any information regarding the adjudicated offense favorable to the juvenile, such as mitigating factors and relative culpability.

Make sure that any agencies or service providers included in the order have complied with the applicable terms. Was the DSS home study or investigation conducted as ordered by the court? Was an interagency staffing conducted, and did all the identified agencies participate? Have services been provided during the evaluation period as ordered?

IV. Psychosocial Evaluation

A. Reason for Referral

If there are specific referral questions posed by the court in the order for evaluation, make sure that they are addressed in the evaluation report.

B. Notice

The following statement of confidentiality is standard in all evaluation reports and should be read thoroughly and taken very seriously.

This report is confidential and meant for use by qualified professionals only and others involved from a legal perspective with this evaluation for disposition. No unauthorized disclosure of this report or information contained in this report is allowed. Any person who, without proper authorization, discloses information contained in the report assumes all liability associated therewith. Some individuals and family members may tend to misunderstand and/or distort the information enclosed in this report. This may result in significant psychological distress to the individual or may interfere with any treatment and eventual recovery from psychological illness, if present. For individuals with self-destructive or assault tendencies, the consequences of ill-advised disclosure of this report may be serious. Release should be limited to that information pertinent to the needs of the requesting party and jargon and scores may need to be omitted or explained thoroughly.

(Juvenile's name) was informed of the purpose of the evaluation and was informed that the results would be shared with SCDJJ staff, family court officials, qualified professionals, and others involved from a legal perspective. He was informed that suspected child abuse or neglect must be reported to the proper authorities. He indicated that he understood the limits of confidentiality.

You should obtain your client's permission before revealing any information contained in the report, even if it is to the child's parent or guardian. **Even with**

your client's permission, it is almost never a good idea to give a full copy of the report to the juvenile's parent or guardian, or anyone else, for reasons identified in the confidentiality statement above. If there is information from the report you believe the parent needs to know in order to help the child's legal situation, then, after obtaining the child's permission, discuss those parts of the report with the parent as needed.

DJJ has a procedure whereby parents who are interested in obtaining a copy of the Psychosocial Evaluation (or Community Evaluation) have a meeting with a Community Psychologist who goes through the evaluation with the parent, explains any information that might be confusing, and answers any questions the parent may have.

C. Sources of Information

Possible sources include interviews with parents and other interested parties; interagency staffings; DJJ file information, including previous treatment records; behavioral observations; and psychological tests administered during the predisposition evaluation period, as well as available reports from previous testing when available.

Check for any glaring omissions, such as the noncustodial parent who is still involved in the juvenile's life or the absence of an agency representative at an interagency staffing, if applicable.

This may also list other evaluations of the juvenile previously conducted that were considered as part of the current evaluation process. Request a copy of any evaluations you have not previously reviewed, as they may provide valuable insight regarding services provided in the past and whether or not they were effective in helping the juvenile.

D. Summary of Current Offense and Offense History

Check for accuracy. This information generally is obtained from the juvenile petition and the police incident report.

E. Juvenile's Account of Offenses

Be on guard for misrepresentations. Discuss with your client any information reported that may have been misinterpreted by the evaluator that needs clarification.

F. Family Functioning / Juvenile's Report of Family Functioning

Family involvement and support is a crucial part of an effective dispositional plan and the juvenile's future success, so pay close attention to this section. When the information in this section is thorough and derived from different accounts of various family members, it can provide insight into the needs of the juvenile, and can also be a good indicator of counseling needs of the parents and family as a whole. However, if only one parent or family member is interviewed, exercise

caution when relying on the reported information, as it could be distorted by that individual's perception.

This section may also provide information about other relatives the juvenile may be able to live with if returning to the home is problematic or unlikely.

G. Adolescent Functioning

When reviewing this section, does any of the information provided bring into question the juvenile's competency? Even though the juvenile has been adjudicated, remember that competency can be raised at any point in the court process.

▪ **Relevant history**

This provides extensive reports of everything known to the evaluator from the child's history possibly affecting his or her mental health, including: complications of mother's pregnancy or at birth; developmental delays; history of head injuries, serious illnesses, or seizures; physical or sexual abuse; neglect; DSS involvement; mental health services received, hospitalizations, diagnoses, and medications.

▪ **Current Symptomatology**

This includes self reports (and reports by the juvenile's parent or guardian) of symptoms, behaviors and attitudes of the juvenile.

▪ **Behavioral Observations**

This includes information relative to the juvenile's mental status, such as mood, affect, demeanor, orientation, attention/concentration, responsiveness, memory, thought processes, observed or reported distress, and level of cooperation with the examiner during the interview and testing.

▪ **Behavioral/Emotional/Personality Measures**

This section reports results from several assessments conducted as part of the evaluation process, including:

- The **MACI** (Millon Adolescent Clinical Inventory) - a self-report measure of adolescent personality and psychopathology.
- The **BASC-2** (Behavior Assessment System for Children, 2nd Edition) - a comprehensive assessment of personality, behavior, emotions and relationships. This is a self-report measure of personal, clinical and school adjustment.
- The **RADS-2** (Reynolds Adolescent Depression Scales, 2nd Edition) - a measure of depression and depressive symptoms.
- The **SASSI-A2** (Substance Abuse Subtle Screening Inventory - Adolescent 2) - an inventory that screens for substance related problems.
- The **RISB** (Rotter Incomplete Sentences Blank) - a self-report semi-projective technique that permits juveniles to express conscious concerns directly using their own words.

- **Cognitive Functioning and Academic Achievement**
 - The **WISC-IV** (Wechsler Intelligence Scale for Children)
 - The **WASI** (Wechsler Abbreviated Scale of Intelligence) is briefer than a Full Scale IQ test, so scores from it tend to vary more over time than scores from a Full Scale IQ test.
 - The **WIAT-II** (Wechsler Individual Achievement Test, 2nd Edition) is an achievement test that provides Grade Equivalent for Reading Comprehension and Numerical Operations.
 - The **VMI-5** (Beery-Buktenica Developmental Test of Visual Motor Integration) is a measure of visual motor integration

- **School/Job Functioning**

This information is gathered from self-reports, interviews with parents, and school records.

If a juvenile has been suspended for the duration of the school year or expelled from school and unable to reenroll due to statutory or policy barriers, this will likely impact the recommendations by DJJ, as well as the judge's ruling regarding disposition and placement. Be prepared to offer alternatives to show the court that the expelled juvenile will be keeping busy (i.e., staying out of trouble). Encourage your client, if old enough, to enroll in an adult education program, take a GED course, or find a job so you have something to report to the court.

- **Peer Relations**

This tends to be self-reported. It can be an indicator of the need for more positive peer influences and exposure to extracurricular activities such as sports, music, theater or community park activities that may be available to the juvenile, either through the juvenile's school or within safe walking distance to the juvenile's home if lack of transportation is a limiting factor.

Reports of gang involvement will also be included in this section.

- **Community Functioning**

This generally includes a brief description of the juvenile's home and neighborhood (including crime and gang activity).

A positive change in the juvenile's living arrangements can bolster an argument for allowing the juvenile to remain in the community instead of being committed to DJJ. For example, the juvenile lived with his mother in a high-crime area but is moving in with his father in a neighborhood with much less crime and away from the negative peer influences from his former neighborhood. Be prepared to respond to questioning from the court as to how the juvenile plans to avoid future involvement with negative peers in the new neighborhood.

- **Adjustment at the Evaluation Center Placement**

Judges generally tend to pay special attention to this section. Obviously, you will want to emphasize any reports of positive behaviors in the residential

and/or educational settings and respond to statements regarding negative behavior. Reports of negative and disruptive behavior at the evaluation center could influence a judge's decision on sentencing and increase the likelihood of commitment to a DJJ facility for disposition. Contact the juvenile's social worker or teacher at the evaluation center to see if there is any helpful information that was left out of the report. For example, if the report includes a negative incident involving the juvenile in the school setting, contact the teacher at the center and see if you can gain any insight into the surrounding circumstances or if perhaps the juvenile's behavior improved following the writing of the report but prior to release from the center.

- **Summary**

The judge may rely more on the summary as a guide during the actual hearing, especially on court days when presiding over numerous disposition hearings. Highlight important parts included in the summary and add any points found in other parts of the report that are not reiterated in the summary.

- **Strengths**

When addressing the court, focus on emphasizing the strengths listed in this section as well as other unlisted strengths you have identified while representing the juvenile. Identify all the juvenile's positive attributes you have personally witnessed in your dealings with your client, such as good manners, honesty, remorse and responsibility for misbehavior, and a desire to stay out of future trouble.

H. DSM-IV Diagnostic Impression

This section lists the juvenile's diagnosed mental health disorders from the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV). The DSM-IV, published by the American Psychiatric Association, lists the diagnostic criteria for mental disorders and is organized into five axes.

- **Axis I** includes Clinical Disorders, such as Depression, Anxiety Disorders, Schizophrenia, Oppositional Defiant Disorder (ODD), and Attention Deficit Hyperactivity Disorder (ADHD). It also includes other conditions that may be a focus of clinical attention such as physical abuse of child, sexual abuse of child, parent-child problems, and borderline intellectual functioning.
- **Axis II** includes Personality Disorders and mental retardation.
- **Axis III** includes general medical conditions relevant to emotional /behavior functioning. Examples include seizure disorder and head injury.
- **Axis IV** includes Psychosocial and Environmental Problems. Examples include educational problems, problems with primary support group, problems related to social environment, housing problems, and problems related to interaction with the legal system.

- **Axis V** identifies the Global Assessment of Functioning (GAF), which is the examiner's judgment of the juvenile's overall level of functioning ranging from 0 to 100. This information is useful in planning treatment and measuring its impact.

If your client has a mental health diagnosis, you will want to have at least a basic understanding of the disorder and the implications of that diagnosis as far as needs of the juvenile and beneficial services that are available. Also, consider whether information revealed in this section brings into question the juvenile's competency.

I. Needs and Recommendations

Review this section closely with your client and determine if your client is willing to comply with the recommendations as listed. If not, be prepared to argue to the court why your client should not have to comply or at least be prepared to present your client's wishes to the court.

If community service is recommended, discuss with your client possible community service options that correspond to the juvenile's interests. If, for example your client loves animals, you might request that the community service ordered by the court be performed at an animal shelter. Discuss possible options with your local DJJ representative.

V. Psychiatric Evaluation

A psychiatric evaluation will be conducted only if specifically ordered by the court or if there are indicators of a psychiatric problem. Juveniles who are prescribed psychotropic medication or are believed to be in need of psychotropic medication will be referred to the DJJ consulting psychiatrist for medication monitoring or assessment. This information will be referenced in the Psychosocial Evaluation report under "Relevant History."

VI. Student Transcript

If the juvenile performed well in class, it may be helpful to contact the lead teacher (name and phone number should be included on the form) to see if he or she has any positive comments that could be shared with the court. The teacher may also be able to provide you with some insight into the educational needs of the juvenile.

VII. Health Examination Record

The vision test may reveal a need for glasses or contacts. Consider the possibility that untreated eyesight problems could be contributing to poor academic performance.

VIII. Medical Lab Report / Physical Examination Form

DISPOSITIONAL HEARING

OVERVIEW

The dispositional hearing is the sentencing phase of the family court process. It is the hearing where the judge determines what is most appropriate regarding treatment and custody for a child who has been adjudicated delinquent, while addressing concerns of community safety. In making this determination, the judge will consider the seriousness of the offense, the child's prior record, the child's family background, school records, and any available social reports or evaluations.

The dispositional hearing may be held immediately following the adjudicatory hearing, or it may be scheduled for a later date, pending an evaluation of the child and the child's circumstances.

PREDISPOSITION EVALUATION

There are two reasons why the judge may order a child to undergo a predisposition evaluation: (1) the judge may determine that he or she needs more information about the child and the child's needs before sentencing the child; or (2) it may be required by law.

Before committing a child to DJJ, the court must order the child to undergo an evaluation unless one of the exceptions described below applies. There are two types of predisposition evaluations: the community evaluation, where the child remains at home or in alternative placement in the community while undergoing the evaluation; and the residential evaluation, where the child is committed to DJJ for not more than **45 days** while undergoing the evaluation. § 63-19-1440(C).

Both types of evaluation include psychological, social, and educational assessments. A child who undergoes a residential evaluation will also receive a medical examination and attend school while at the evaluation center. § 63-19-1440(C).

Following either type of evaluation, DJJ will submit an evaluation report to the court. The evaluation report includes: information gathered from interviews with the child and the child's parents or guardian; psychological evaluations, psychiatric evaluations and tests when deemed necessary; information gathered from the child's teachers and school officials; an overview of the child's school and court records; and recommendations regarding treatment and services that would benefit the child.

The court may waive the evaluation in writing and move straight into disposition of the case if the child:

- has already undergone a community or residential evaluation and the evaluation is available to the court;
- has been released from DJJ within the past year and the child's previous evaluation or other equivalent information is available to the court; or
- receives a sentence of probation or if committed to DJJ, it is for a determinate sentence of 90 days or less. § 63-19-1440(C).

DISPOSITIONAL HEARING PROCEEDINGS

Rule 37, SCRFC, requires the judge who presided over the adjudicatory hearing to preside over the disposition hearing as well, unless a change of venue is made pursuant to Rule 33(b), SCRFC, or unless "otherwise unavailable." In practice, and especially in larger counties with several family court judges, the judge assigned to juvenile cases the day the child is scheduled for the dispositional hearing is the judge who will preside, as opposed to the judge who actually presided over the adjudicatory hearing.

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

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

- The hearing generally begins with the solicitor calling the case.
- The judge will then ask to hear from the DJJ community specialist who will report on the child's school records and prior court history. The DJJ representative will also highlight the evaluation report if an evaluation was conducted, which the judge will have read in full prior to the hearing, and make a recommendation on behalf of DJJ as to sentencing.
- The solicitor will address the court and make a recommendation regarding sentencing.
- The court will hear from the defense attorney who will speak on the child's behalf and request a sentence for the child.
- The court may also ask the child and the child's parents questions before sentencing the child.

DISPOSITIONAL POWERS OF THE COURT STATUTES

SECTION 63-19-1410. Adjudication.

(A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall 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.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child's and family's needs.

The lead agency is responsible for monitoring compliance with the court-ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child's own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A

child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child's probation. This specified term of probation may expire before but not after the **eighteenth birthday** of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources

of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63-19-1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child's particular role in causing this loss, and the child's ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court-ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 63-19-1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child's **twenty-first birthday**;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23-3-430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; and

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.

(B) Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court information concerning the child which the court may require. Counsel of record, if any, must be notified by the court of an adjudication under this section, and in the event there is no counsel of record, the child or the child's parents or guardian must be notified of the adjudication by regular mail from the court to the last address of the child or the child's parents or guardian.

(C) No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 63-19-1210(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment.

SECTION 63-19-1420. Driver's license suspension.

(A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child's driver's license until the child's **seventeenth birthday**.

(B) If a child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a term or condition of probation, the court may suspend or restrict the child's driver's license until the child's **eighteenth birthday**.

(C) If the court suspends the child's driver's license, the child must submit the license to the court, and the court shall forward the license to the Department of Motor Vehicles for license suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child's driver's license, the court may restrict the child's driving privileges to driving only to and from school or to and from work or as the court considers appropriate. Upon the court restricting a child's driver's license, the child must submit the license to the court and the court shall forward the license to the Department of Motor Vehicles for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a "child" as provided for in Section 63-19-20, the court may suspend or restrict the driver's license of a child under the age of seventeen until the child's eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child's driver's license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Motor Vehicles.

SECTION 63-19-1430. Youth Mentor Act.

(A) This section may be cited as the "Youth Mentor Act".

(B) The Attorney General's Office shall establish a Youth Mentor Program to serve juvenile offenders under the jurisdiction of the family court. The program shall consist of a church mentor program and a community mentor program. Participation in the program may be required as a pretrial diversion option by a solicitor or as an optional, alternative disposition by a family court judge. The circuit solicitor may charge a juvenile offender who participates in the Youth Mentor Program a fee to offset the actual cost of administering the program; however, no juvenile offender is barred from the program because of indigence. This program must be available for juveniles who commit nonviolent offenses. For purposes of this subsection, nonviolent offenses mean all offenses not listed in Section 16-1-60.

(C) When a child is charged with a nonviolent offense which places him under the jurisdiction of the family court and the solicitor is of the opinion that justice would be better served if the child completed a church mentor program, the solicitor may divert

the child to such a program. Upon completion of the program, the proceedings in family court must be dismissed.

Participation in the church mentor program is voluntary, and the child or his parents or guardians may refuse to participate based upon their religious beliefs or for any other reason.

The Attorney General must establish guidelines for the program, the mentors, and the churches, mosques, masjids, synagogues, and other religious organizations that participate in the church mentor program.

(D) When a child is adjudicated delinquent for a nonviolent offense in family court, the family court judge may order the child to participate in the community mentor program. When a child is ordered to participate in the community mentor program, he must be assigned to a community organization which shall assign a mentor to the child. The mentor shall monitor the academic and personal development of the child for a minimum period of six months and a maximum period not exceeding one year as ordered by the court. Failure to complete the program shall result in the child being brought before the family court for appropriate sanctions or revocation of suspended commitment.

The Attorney General must establish guidelines for the program, the mentors, and the community organizations that participate in the community mentor program.

SECTION 63-19-1440. Commitment.

(A) A child, **after the child's twelfth birthday** and before the seventeenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child's seventeenth birthday, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of seventeen years may be committed or sentenced to any other penal or correctional institution of this State.

(B) All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 63-3-510, 63-3-520, 63-3-580, 63-3-600, 63-3-650, and this chapter, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department, commitment must be for an indeterminate sentence, not extending beyond the **twenty-first birthday** of the child unless sooner released by the department, or for a determinate commitment sentence **not to exceed ninety days**.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty-five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is

not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow any child adjudicated delinquent for a status offense, a misdemeanor offense, or violation of probation or contempt for any offense who is temporarily committed to the department's custody for a residential evaluation, to reside in that child's home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

- (1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;
- (2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child's previous evaluation or other equivalent information is available to the court; or
- (3) receives a determinate commitment sentence not to exceed **ninety days**.

(D) When a juvenile is adjudicated delinquent or convicted of a crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the juvenile may be committed for an indeterminate period until the juvenile has reached age twenty-one or until sooner released by the releasing entity or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile's nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the releasing entity, the juvenile must be released by age twenty-one according to the provisions of the juvenile's commitment; however, notwithstanding the above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(E) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16-1-60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his seventeenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Board of Juvenile Parole, a juvenile transferred pursuant to this subsection must be released by his twenty-first birthday according to the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an

adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(F) Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:

(1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 63-19-20, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 63-19-20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 63-19-20 including truancy.

Orders issued pursuant to this subsection must acknowledge:

(a) that the child has been advised of all due process rights afforded to a child offender; and

(b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.

(G) A child committed under this section may not be confined with a child who has been determined by the department to be violent.

(H) After having served at least two-thirds of the time ordered by a court, a child committed to the Department of Juvenile Justice for a determinate period pursuant to this section may be released by the department prior to the expiration of the determinate period for "good behavior" as determined by the department. The court, in its discretion, may state in the order that the child is not to be released prior to the expiration of the determinate period ordered by the court.

(I) Juveniles detained in any temporary holding facility or juvenile detention center or who are temporarily committed for evaluation to a Department of Juvenile Justice evaluation center for the offense for which they were subsequently committed by the family court to the custody of the Department of Juvenile Justice shall receive credit toward their parole guidelines, if indeterminately sentenced, or credit toward their date of release, if determinately sentenced, for each day they are detained in or temporarily committed to any secure pre-dispositional facility, center, or program.

SECTION 63-19-1450. Commitment of juvenile with mental illness or mental retardation.

(A) No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or retardation. If, after a juvenile is referred to the Reception and Evaluation Center, it is determined that

the juvenile is mentally ill, as defined in Section 44-23-10, or a person with intellectual disability to an extent that the juvenile could not be properly cared for in its custody, the department through the voluntary admission process or by instituting necessary legal action may accomplish the transfer of the juvenile to another state agency which in its judgment is best qualified to care for the juvenile in accordance with the laws of this State. This legal action must be brought in the juvenile's resident county. The department shall establish standards with regard to the physical and mental health of juveniles whom it can accept for commitment.

(B) When the state agency to which a juvenile is transferred determines that it is appropriate to release from commitment that juvenile, the state agency must submit a request for release to the releasing entity. If the releasing entity does not grant the request to release the juvenile, the juvenile must be placed in an environment consistent with the provisions of this section.

(C) If a juvenile transferred to another state agency pursuant to this section is absent from a treatment facility without proper authorization, any state or local law enforcement officer upon the request of the director, or a designee, of the state agency to which the juvenile has been transferred and without the necessity of a warrant or a court order, may take the juvenile into custody and return the juvenile to the facility designated by the agency director or the designee.

APPEALS

JUVENILE APPEALS OVERVIEW

APPELLATE COURT RULES

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

DIVISION OF APPELLATE DEFENSE

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

PROPER ERROR PRESERVATION AT TRIAL LEVEL

General principles of preserving error for appellate review apply to juvenile cases just as they do to adult criminal appeals:

- An issue must be raised to and ruled upon by the trial judge. State v. Williams, 401 S.E.2d 168 (S.C. 1991).
- Objections must be on a specific ground. State v. Bailey, 170 S.E. 2d 376 (S.C. 1969).

NOTICE OF INTENT TO APPEAL

The notice of intent to appeal a juvenile action from the family court must be filed within 10 days after receipt of written notice of entry of the order or judgment. Rules 203(b)(2) and b(3), SCACR. Because the notice of intent to appeal confers subject matter jurisdiction upon the appellate courts, it is critical that the notice be filed in a timely manner.

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

USE OF EXTRAORDINARY WRITS IN JUVENILE CASES

One obstacle to providing juveniles with adequate post-dispositional representation is the difficulty of challenging a very short sentence in a slow appellate system. The average appeal may take a year or longer. A sentence of three, six, or even nine months may well be completed, and the issue will be

moot before the appellate court decides the case. Extraordinary writs are can be used to challenge these juvenile sentences.

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

- *In the Interest of Vincent J.*, 509 S.E. 2d 261 (S.C. 1998). Holding: § 20-7-7810(F) (§ 63-19-1440(F)) does not limit a family court's power to commit non-status offenders for greater than 90 days for contempt. In footnote three, the Supreme Court noted the family court can not commit a contemnor to an indeterminate sentence because it would trigger the right to a jury trial and the family court does not conduct jury trials.
- *In re Tonisha G.*, 520 S.E. 2d 807 (S.C. 1999), the court confirmed that where a status offender is charged with contempt of court, the sentence cannot exceed ninety days.

ADVERSE COLLATERAL CONSEQUENCES AND RIGHT OF REVIEW

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

Examples of adverse collateral consequences identified by the Court:

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

APPELLATE PRACTICE FROM THE COURT'S PERSPECTIVE

by *The Honorable H. Bruce Williams*

TIPS FOR THE TRIAL STAGE

- Preserving error requires not only that you raise an issue to the trial court, but that the trial court also rule upon the issue
- If the trial judge has made an important ruling off the record (i.e., in chambers or at a sidebar), ask the judge to recap the ruling on the record when a court reporter is present.
- If trying your case with a co-counsel, designate one person on the trial team with the task of preserving errors.
 - Co-counsel's duties are to make sure: (1) key rulings are on the record; (2) proper instructions are submitted; (3) objections to testimony are made at the proper time and on the proper grounds; (4) excluded evidence is proffered; and (5) trial motions are made.
- Do not be afraid to object for cause during opposing counsel's closing argument for fear of tactics. You may miss an opportunity to argue an error on appeal.
- Even if you are worried the trial judge is going to "shh" you, a contemporaneous objection is critical for purposes of your appeal.
- If you have a motion in limine, remember it is generally not a final ruling. If you win the motion in limine, but opposing counsel later presents the excluded evidence, you must then object and ask for a mistrial. If evidence you want introduced is excluded in limine, you must proffer the evidence at trial for the appellate court to determine whether the exclusion is reversible error.
- Prepare your post-trial motions *before* the end of the trial. You want to be prepared to present them even if the court returns a surprise verdict.

IF YOU LOSE AT TRIAL

- Determine whether sufficient grounds for an appeal exist before filing.
- Consider the potential consequences of an appeal (a new trial may ultimately result in a harsher sentence).
- If you decide to appeal, read the appellate court rules thoroughly. The most important rule is the service of the notice of appeal because that goes to subject matter jurisdiction.
- Begin preparing your brief, paying attention to error preservation and scope of review.

STEPS FOR APPEAL

Step 1: File your notice of appeal, which must be served on all respondents within ten (10) days after the sentence is imposed. SCACR, Rule 203.

Step 2: The Brief Writing Process

- Carefully identify the issues on appeal; most successful appeals have only a few good issues.
- Acknowledge opposing counsel's strongest points, and introduce (without arguing) the facts you will later use to counter the other side - A judge will be more inclined to accept the fairness of your statement under these conditions.
- Know your standard of review.
- Do not include lengthy quotes from one precedent after another without fitting the precedents into an overall pattern.
- Provide the court with an adequate record on appeal. Resist the temptation to include everything in the record on appeal, but do make sure you include all important information, such as passages which demonstrate the issues on appeal were raised at trial.

For Reply Briefs:

- Reply briefs can be less extensive than the first brief and should briefly discount Respondent's arguments.
- These are optional, but recommended, and are particularly essential if Respondent raises new matters (such as preservation) in his or her brief.

Step 3: Preparing for Oral Argument

- Master your record on appeal so you are able to respond to judges' questions by referring to specific cites in the record.
- Be specific in responding to the court's question; if unsure of the answer, be forthright with the Court.
- Have a thorough understanding of the law applicable to your case.
- Do not limit your understanding to simply the cases cited in your brief and your opponent's brief. Rather, pay particular attention to any opinions issued since the briefs were filed.
- If arguing a principle which has not yet been addressed in South Carolina, be prepared to address cases in other jurisdictions which have spoken on the issue.
- Canned speeches are rarely effective; HOWEVER, it is wise to prepare an opening that captures the court's attention, and a closing that leaves the court with no doubt as to the relief you are seeking.
- *Opening:* What is this case about? Why is this case important? Explain to the court why it should rule in your favor.
- *Middle:* Consider every question from an appellate judge as a gift. Pay attention to the questions asked of you. Do not assume every question is adversarial to your position. Your argument is to the court, not to the other side.
- *Closing:* Be brief! When your time is up, conclude with your relief.

JUVENILE APPEAL CHECKLIST

****Appeal must be filed within 10 Days of Disposition**

Name of Client: _____
File Number: _____
Docket Number: _____
Disposition Date: _____

1. Prepare "Notice of Appeal" (Duplicate original & make 4 copies).
2. Prepare "Proof of Service" (Duplicate original & make 4 copies).
3. File an original of the Notice of Appeal and an original of the Proof of Service with the family court. Have the four sets of copies certified as true copies of the originals filed. **(Do this within 10 days of disposition.)**
DATE FILED _____
4. Serve a certified true copy of the Notice of Appeal and Proof of Service on opposing counsel on the same date as the filing with the family court.
DATE OF SERVICE _____
5. File the original of the Notice of Appeal and Proof of Service with the South Carolina Court of Appeals by mailing them together. Also, include a certified true copy of any dispositional order issued in the case. **(Do this within 10 days of service on opposing counsel.)**
DATE MAILED _____
6. The Office of Appellate Defense will need the following documents if handling the appeal:
 - Certified true copies of the Notice of Appeal and Proof of Service;
 - Date of filing with the Court of Appeals and Clerk of Court;
 - Juvenile Petition, Adjudicatory Order, Commitment Order, and all accompanying written motions, affidavits, search warrants, confessions, statements, and other relevant documents;
 - Certified true copies of any and all written exhibits introduced at trial and any written motions filed by the defense or prosecution;
 - Certified true copy of any dispositional order issued in the case;
 - A list of the dates of all hearings and the name(s) and addresses of the presiding judge(s) and court reporters; and
 - Order of Appointment OR Affidavit of Indigency provided by Appellate Defense, which can be found on the SC Office of Indigent Defense website at <http://www.sccid.sc.gov/>.
DATE MAILED _____
7. Mail copies of all associated documents to client.

RULE 203 - NOTICE OF APPEAL

**Rule 203, SCACR was last amended January 2009, effective April 2009. The following segments of Rule 203 are applicable to juvenile cases:

(a) Notice. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

(b) Time for Service.

(2) Appeals from the Court of General Sessions. After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

(3) Appeals from the Family Court. A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

(d) Filing.

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

(ii) Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(B) When and What to File. The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on all respondents;

(ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing;

(iii) A filing fee as set by order of the Supreme Court; this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies;

(iv) If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed;

(v) If the notice of appeal is from a post-conviction relief case and the lower court determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the written explanation required by Rule 243(c), SCACR; and,

(vi) If the notice of appeal is from a habeas corpus proceeding and the lower court determined that habeas corpus relief was improper because the issues could have been raised in a timely application under the Post-Conviction Relief Act (see Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998)), a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.

(3) Effect of Failure to Timely File. If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.

(e) Form and Content. The notice of appeal shall be substantially in the form designated in the Appendix to these Rules.

(1) Appeals from the Circuit Court, Family Court and Probate Court. In appeals from lower courts, the notice of appeal shall contain the following information:

(A) The name of the court, judge, and county from which the appeal is taken.

(B) The docket number of the case in the lower court.

(C) The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

(D) The name of the party taking the appeal.

(E) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

PAROLE

PAROLE OVERVIEW

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

RELEASE AUTHORITY

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

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

THE PAROLE BOARD

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

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

DJJ RELEASE AUTHORITY

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

GUIDELINES

The releasing entities have established “guidelines” for determining the length of commitment for children serving indeterminate sentences at DJJ. Guidelines are a range of time with a minimum and maximum number of months the child will likely serve during the commitment period. The guidelines run anywhere from 1-3 months to 36-54 months.

The releasing entities use these guidelines, along with reports of the child’s behavior and progress, to determine the length of commitment. The releasing entities may keep indeterminately committed children at DJJ beyond their maximum guidelines, but not past their **twenty-first birthday**. They may also release children prior to their minimum guidelines for good behavior.

A child who is conditionally released or released on parole will be under the releasing entity’s authority for a specified period of time not to exceed the child’s **twenty-first birthday**. A child conditionally released is “subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release.” § 63-19-1850(A).

PAROLE CONDITIONS

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

COMPUTATION OF PAROLE GUIDELINES

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

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

1. You need to know exactly what charges the child is being adjudicated for at the present hearing, as well as all the charges for which the child has been adjudicated in the past.
2. Refer to the chart of “Offense Codes Sorted by Category” and find the category for the most serious, present, pending charge for which the child is being adjudicated - that will determine the CATEGORY on the left side of the grid.

3. Refer to the Point Assignments for Other Adjudications - each category is allocated a number of points.
 - a. Add up all the points for any other adjudications for the present hearing and all the adjudications in the child's history.
 - b. Use the Conversion Table to come up with a number 0-6. That determines where you come down from the top of the grid.

Remember, these are just GUIDELINES! The Parole Board or DJJ, depending on the committing offenses, determines when the child is released.

PAROLE GUIDELINES GRID

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

Review Schedule: 1st Review: _____ **Min:** _____ **Max:** _____

SPECIAL NOTE: Per Proviso 39.17: Pre-Dispositional Confinement Credit reflected in minimum and maximum review dates, days credit.

Parole Examiner:

County:

CC: Juvenile & Institution:

JUVENILE: _____

PAROLE GUIDELINES COMPUTATION SHEET

I) **Most Serious Current Adjudication/Offense** **Category**

II) **Point Assignments for Adjudications other than Most Serious Current Offense:**

Category VI	1
Category V	2
Category IV	3
Category III	5
Category II	8
Category I	15
Category X	21
Category XX	25

Adjudications Other Than Most Serious Current Offense and Points Assigned:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

TOTAL POINTS: _____

III) **Conversion of Total Points to Guideline Grid:**

1-4	0
5-8	1
9-13	2
14-18	3
19-23	4
24-28	5
29-over	6

Grid Assignment: _____ **Guideline Range:** _____

**Sample from Chart of
OFFENSE CODES SORTED BY CATEGORY**

*** Changes may be made to the offense categories
periodically by DJJ or the Parole Board at their discretion.

CODE	CLASS	DESCRIPTION	ACRONYM	CAT	SCORE
01312	LYNCHING	LYNCHING, 1ST DEGREE	LYNCH1	XX	25
01116	MURDER	MURDER	MURDER	XX	25
07184	PROBATION	PROB VIOL FOR CAT XX	PRBVXX	XX	25
01905	ACCESSORY	ACCESS BEF/AFT CAT XX	ACBAXX	X	21
01907	AIDING	AIDING/ABETTING CAT. X	AIDX	X	21
02006	ARSON	ARSON 1ST DEGREE	ARSON1	X	21
01253	SEX	ASLT W/INT,CSC,1ST DEGR	INTCS1	X	21
01899	ATTEMPT	ATTEMPT CATEGORY X	ATMPX	X	21
02079	BURGLARY	BURGLARY 1ST DEGREE	BURGL1	X	21
07177	PROBATION	PROBATION VIOL. CAT X	PRBVX	X	21
02458	MALICIOUS	MAL.INJ.PLACE WORSHIP	WRSHPV	III	05
03046	WEAPONS	MFG/POSSESS FIREBOMB	FIRBMB	III	05
03496	COIN	MFG/SALE OF SLUGS	MFSLGS	III	05
02493	MALICIOUS	ML.INJ.ANML/PP,1001-4999	MLIPP1	III	05
02510	MALICIOUS	ML.INJ.RL.PRP,1001-4999	MALRP1	III	05
03121	PERJURY	PERJURY	PERJRY	III	05
03497	COIN	PLAYER TAMPER W/GAME	VIDTMP	III	05
02538	VEHICLE	POS.STLN VEH,\$1001-4999	PSAUT1	III	05
03180	DRUGS	POSS.NARC.(I,II)--2ND	DRUG2	III	05
03181	DRUGS	POSS.NARC.(I,II)--3RD &	DRUG3	III	05
02529	SHOPLIFTING	SHOPLIFTING,\$1001-4999	SHLFT1	III	05
05655	SCHOOL	THREAT TO SCHOOL TEACHER	TEACHR	III	05
05260	THREAT	THREATEN A PUBLIC EMPLOYEE	PUBLIC	III	05
03659	DRUGS	SIMPLE POSS.MARIJUANA--1	SMPLMJ	V	02
03185	DRUGS	SIMPLE POSSESS MJ/HH--2N	DRUG7	V	02
01315	STALKING	STALKING/HARRASSMENT	STALKG	V	02
05660	ALCOHOL	TRANSPORT ALCOHOL IN VEH	TRAALC	V	02
03503	TRESPASS	TRESPASSING	TRESPTS	V	02
05015	TRESPASS	UNLAWFUL ENTRY INTO ENC	UNLENT	V	02
05604	ALCOHOL	UNLAWFUL POSESSION OF AL	POSALC	V	02
05605	ALCOHOL	UNLAWFUL POSS/CNSMP ALCH	CONSAL	V	02
02226	VEHICLE	USE CAR W/O, W/O INTENT	AUTOTN	V	02
06609	JUVENILE	VIOL OF HOUSE ARREST ORD (crim.)	HOUSER	V	02
06605	JUVENILE	CURFEW VIOLATION	CURFEW	VI	01
06603	JUVENILE	INCORRIGIBLE	INCORR	VI	01
07183	PROBATION	PROBATION VIOL.CAT.VI	PBVLVI	VI	01
06601	JUVENILE	RUNAWAY	RUNAWY	VI	01
06602	JUVENILE	TRUANCY	TRUNCY	VI	01
06609	JUVENILE	VIOL HOUSE ARREST ORDER (status)	HOUSER	VI	01
05176	JUVENILE	CONTEMPT OF COURT (STATUS)	CNTMPS	VI	01

PAROLE STATUTES

SECTION 63-19-610. Board of Juvenile Parole.

(A) There is created under the Department of Juvenile Justice the Board of Juvenile Parole. The parole board is composed of ten members appointed by the Governor with the advice and consent of the Senate. Of these members, one must be appointed from each of the six congressional districts and four members must be appointed from the State at large. If a vacancy occurs on the parole board when the Senate is not in session, the Governor may appoint a member to fill the vacancy and the appointee is a de facto member until the Senate acts upon the appointment.

(B) Members of the parole board shall serve four-year terms and until their successors are appointed and qualify and these terms expire on June 30th of the appropriate year.

(C) No member may be reappointed to the parole board until two years after the expiration of a full four-year term.

SECTION 63-19-1810. Determination of release.

(A) The release and revocation of release of juveniles adjudicated delinquent and committed to the department must be determined by:

(1) the department for juveniles adjudicated delinquent and committed after March 31, 2007, for an indeterminate period for a status offense or a misdemeanor, other than assault and battery of a high and aggravated nature or assault with intent to kill, and for juveniles who have violated probation for a status offense or a misdemeanor, other than assault and battery of a high and aggravated nature or assault with intent to kill;

(2) the Board of Juvenile Parole for juveniles adjudicated delinquent and committed for an offense other than an offense provided for in item (1).

(B) For purposes of this chapter, "releasing entity" means:

(1) the department for juveniles described in subsection (A)(1);

(2) the Board of Juvenile Parole for juveniles described in subsection (A)(2).

SECTION 63-19-1820. Board of Juvenile Parole; review & appearance procedures.

(A)(1) The Board of Juvenile Parole shall meet monthly and at other times as may be necessary to review the records and progress of juveniles committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these juveniles. The board shall make periodic inspections, at least quarterly, of the records of these juveniles and may issue temporary and final discharges or release these juveniles conditionally and prescribe conditions for release into aftercare. Before a juvenile is conditionally released, the juvenile must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile's person, any vehicle the juvenile owns or is driving, and any of the juvenile's possessions by:

(a) the juvenile's aftercare counselor; (b) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (c) any other law enforcement officer.

A juvenile may not be conditionally released by the parole board if he fails to comply with this provision. However, a juvenile who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile's person, any vehicle the juvenile owns or is driving, or any of the juvenile's possessions.

Immediately before each search or seizure conducted pursuant to this item, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the

individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this item shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this item, he is subject to discipline pursuant to the employing agency's policies and procedures.

(2)(a) It is the right of a juvenile who has not committed a violent offense, as defined by Section 16-1-60, and for whom the board is the releasing entity, to appear personally before the board every three months for the purpose of parole consideration, but no appearance may begin until the board determines that an appropriate period of time has elapsed since the juvenile's commitment.

(b) The board may waive the quarterly review of juveniles committed to the department, for whom the board is the releasing entity, for the commission of a violent crime, as defined in Section 16-1-60, until the juvenile reaches the minimum parole guidelines the board establishes for the juvenile. At that point, the board may schedule its first review of the juvenile from three months up to twelve months after the juvenile reaches the minimum parole guidelines established by the board. The scheduling of subsequent reviews is in the discretion of the board but must occur within three to twelve months of the juvenile's last appearance.

(3) In order to allow reviews and appearances by juveniles, for whom the board is the releasing entity, the board may assign the members or individuals to meet in panels of not less than three members or individuals, to receive progress reports and recommendations, review cases, meet with juveniles, meet with counselors, and to hear matters and consider cases for release, parole, and parole revocation. Membership on these panels must be periodically rotated on a random basis. At the meetings of the panels, a unanimous vote must be considered the final decision. A panel vote that is not unanimous must not be considered as a final decision, and the matter must be referred to the full parole board, which shall determine the matter by a majority vote of its membership.

(4) The board may conduct parole hearings by means of a two-way, closed circuit television system.

(5) The board shall develop written guidelines for the consideration of parole release of juveniles committed to the department for offenses for which the parole board is the releasing entity. The board shall provide these guidelines to juveniles, for whom the board is the releasing entity, upon commitment and periodically reviewed with each juvenile to assess the progress made toward achieving release on parole.

(B) In the cases of juveniles for whom the department is the releasing entity, the department shall establish policies and procedures governing the review and release procedures for these juveniles.

(C) In the determination of the type of discharges or conditional releases granted, the releasing entity shall consider the interests of the person involved and the interests of society and shall employ the services of and consult with the personnel of the Department of Juvenile Justice. The releasing entity may from time to time modify the conditions of discharges or conditional releases previously granted.

SECTION 63-19-1830. Legal representation before board.

The parole board shall permit legal representation of a juvenile who appears before it for the purpose of parole or parole revocation. The department shall allocate funds to contract with a public defender corporation or similar type legal program for legal assistance for the purpose of appearing before the parole board for a juvenile who desires this service but who cannot either personally or through the juvenile's family afford the assistance.

SECTION 63-19-1835. Compliance reductions for probationers and parolees.

The department may grant up to a ten-day reduction of the probationary or parole term to probationers and parolees who are under the department's supervision for each month they are compliant with the terms and conditions of their probation or parole order."

SECTION 63-19-1840. Aftercare investigations.

(A) The department shall conduct aftercare investigations to determine suitable placement for juveniles considered for conditional release from the correctional schools. The department also shall supervise the aftercare program, making revocation investigations and submitting findings to the releasing entity.

(B) The director and such staff as the director shall designate in the performance of their duties of investigation, counseling and supervision, and revocation investigations are considered official representatives of the releasing entity.

(C) The directors and their staff are subject to the regulations for parole and parole revocation promulgated by the releasing entity and shall meet with the releasing entity at its meetings when requested. Community-based counselors, or their supervisors, with assigned clients committed to institutions of the department shall periodically visit the institutions in order to counsel their clients and accomplish the duties as outlined in this subarticle.

(D) Recognizing the need to maintain autonomy and to provide a check and balance system, the parole board shall employ a director of parole and other staff necessary to carry out the duties of parole examinations, victim liaison, and revocation hearings. The director serves at the will and pleasure of the parole board. All staff are employees of the parole board and are directly responsible to the parole board both administratively and operationally. Funds allocated for the functions designated in this section must be incorporated as a line item within the department's budget and are subject to administrative control by the parole board.

(E) The department shall continue to provide the budgetary, fiscal, personnel, and training information resources and other support considered necessary by the parole board to perform its mandated functions.

SECTION 63-19-1850. Conditional release; search and seizure.

A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the releasing entity until the expiration of the specified term imposed in the juvenile's conditional aftercare release. The specified period of conditional release may expire before but not after the twenty-first birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release. The conditions of release must include the requirement that the juvenile parolee must permit the search or seizure, without a search warrant, with or without cause, of the juvenile parolee's person, any vehicle the juvenile parolee owns or is driving, and any of the juvenile parolee's possessions by:

(1) his aftercare counselor; (2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (3) any other law enforcement officer.

However, the conditions of release of a juvenile parolee who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the juvenile parolee agree to be

subject to search or seizure, without a search warrant, with or without cause, of the juvenile parolee's person, any vehicle the juvenile parolee owns or is driving, or any of the juvenile parolee's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this subsection, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency's policies and procedures.

(B) As a condition of release, the releasing entity may enforce participation in restitution, work ordered by the court, and community service programs established or approved by the Department of Juvenile Justice.

SECTION 63-19-1860. Conditional release violation.

(A) At any time during the period of conditional release, an aftercare counselor or the counselor's supervisor or a probation or parole agent may issue or cause to be issued a warrant for the juvenile to be taken into custody for violating any of the conditions of the release. A police officer or other officer with power to arrest, upon request of an aftercare counselor or a probation or parole agent, may take the juvenile into custody. The arresting officer shall obtain a warrant signed by the aftercare counselor or a probation or parole agent setting forth that the juvenile, in the counselor's judgment, violated the conditions of the release which is authority for the detention of the juvenile in an appropriate place of detention. If an aftercare release revocation is necessary, the aftercare counselor or a probation or parole agent shall submit in writing a thorough report to the releasing entity, showing in what manner the delinquent juvenile has violated the conditional release. A juvenile returned to the custody of a correctional school by aftercare revocation shall have a hearing or review of the juvenile's case by the releasing entity. The releasing entity is the final authority to determine whether or not the juvenile failed to abide by the aftercare rules and conditions of release.

(B) An aftercare counselor or probation or parole agent who has successfully completed Class I or II law enforcement officer training and received a certificate from the Department of Public Safety pursuant to the provisions of Article 9, Chapter 6 of Title 23 has the power, when commissioned by the department, to take a juvenile conditionally released from the custody of the department and subject to the jurisdiction of the releasing entity into custody upon the issuance of a warrant for violating the conditions of his release.

SECTION 63-19-1870. Revocation of conditional release.

The order of revocation of a conditional release may be issued and made effective after the period of aftercare supervision prescribed in the release has expired when the violations of the conditions or release occurred during the aftercare supervision period.

DJJ POLICIES
&
PROCEDURES

AGENCY OVERVIEW

INTRODUCTION

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

Note: The information in this section was obtained from the DJJ website November 2012 (with non-substantive editorial changes). Internal agency policies are subject to change. If you have a question concerning a particular policy, it is advised that you confirm its current content with a DJJ representative or the DJJ website.

DIVISION OF COMMUNITY SERVICES

The Division of Community Services is responsible for a wide range of direct services to youth and their families, as well as victims of crime, in the community through 43 DJJ county offices, servicing all 46 counties in the state. Among these services are a number of programs and initiatives aimed at providing effective supervision of youth on probation or parole and support for their families, with the goals of reducing juvenile crime and recidivism, and providing for safer communities.

Case managers are involved with juveniles from the moment they enter the system until they complete probation and/or parole. In addition, they conduct detention screenings and intake interviews, complete risk/needs assessments, and make recommendations to the family court judges regarding case disposition. They also coordinate case diversion and supervise juveniles on probation or parole.

Additional support services are available to the community through collaboration or partnership with the family court system, schools, and local organizations throughout South Carolina. The Juvenile Arbitration Program, for example, works through solicitors' offices in 16 judicial circuits to utilize community volunteers who, after being approved and trained by the Solicitors' Office, act as arbitrators in the resolution of cases involving non-violent first-time criminal offenders.

DJJ has also embraced the restorative justice model and established a Victim Services Program (VSP), which is responsible for contacting victims of juvenile crime prior to making disposition recommendations, informing victims of any post-adjudicatory hearing or juvenile release or transfer, referring victims to community resources, and advocating on behalf of victims.

DJJ also provides alternative treatment programs for nonviolent offenders, including:

- *Family preservation programs*—empowers parents with skills and resources needed to raise their children.
- *Interstate compact*—arranges for supervision of delinquent youth who move to or from South Carolina.
- *Therapeutic foster care*—helps juveniles overcome a variety of emotional and behavioral problems within a family setting.
- *Community Residence Programs*—specialized programs offer education, skill building, and residential services.

The Office of Consultation and Evaluation Services is responsible for conducting psychological evaluations and consulting with case managers about individual cases. The psychologists are also charged with performing pre-waiver evaluations for those youths who are being considered for waiver to General Sessions Court.

DIVISION OF REHABILITATIVE SERVICES

The Division of Rehabilitative Services is made up of three campuses within the Broad River Road Complex (BRRC) that provide juveniles committed by the family courts with around-the-clock custodial care and individualized treatment and rehabilitation, as well as DJJ's pre-trial evaluation centers and detention center.

Campuses provide on-site:

- education services through an independent school district;
- psychological and social work services by licensed clinical staff;
- medical/dental and mental healthcare services;
- psychiatric services provided by contracted licensed practitioners;
- custodial care by certified correctional staff;
- recreational activities by trained staff; and
- religious services by certified clinical chaplains.

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

DIVISION OF EDUCATIONAL SERVICES

DJJ operates its own school district with academic programs that are fully accredited by the South Carolina Department of Education. The juveniles committed to DJJ can earn either a high school diploma or a GED. The agency's school district offers educational programs in Columbia at Birchwood High School and Birchwood Middle School. Other satellite programs attached to these two schools are operated at DJJ's three regional evaluation centers, as well as the agency's Detention Center. Specialized school programs are also available at community residence programs located throughout the state. Additionally, the district offers vocational courses, extensive special education services, and the

nation's first Army JROTC and Communities in Schools (CIS) programs in a juvenile correctional facility setting.

DIVISION OF ADMINISTRATIVE SERVICES

DJJ's Division of Administrative Services provides a broad range of services to DJJ personnel. The division is comprised of the following offices: Fiscal Affairs, Human Resources, Information Technology, Medicaid Administration, Staff Development and Training, and Support Services.

OFFICE OF PLANNING AND PROGRAMS

The Office of Planning and Programs provides support to the divisions through programs and grants development, research and statistics, and planning and evaluation. The office's mission is to develop departmental efforts to strategically plan for agency growth, as well as to provide necessary information to effectively manage the agency's resources for quality service delivery.

Essential functions of the office include the promotion of best practices as evidenced in research and evaluation; the continuous improvement of programs and services; the promotion of data-based decision making by DJJ staff and agency stakeholders through publication of statistical analysis and trends in juvenile crime; the development of tools and technologies to improve the department's performance and efficiency; and long-term, strategic planning.

OFFICE OF THE INSPECTOR GENERAL

DJJ's Inspector General ensures compliance with applicable state and federal laws, regulations, and policies and to promote professional accountability within the agency. Functions of the Office of Inspector General include public safety, internal affairs, internal audits, compliance and inspection, and juvenile and family relations.

The Event Reporting Management Information System (ERMIS), a state-of-the-art computer system managed by the Office of the Inspector General, ensures the comprehensive tracking, reporting, and managing of events occurring within the agency on a statewide basis 24 hours a day, 7 days a week. Monthly reports of specific events are reported to SLED. In its juvenile and family relations function, the office advocates on behalf of DJJ juveniles and families by addressing juvenile and family concerns or questions, representing their rights, conducting disciplinary hearings, and inviting family involvement throughout a juvenile's rehabilitative progress.

DETENTION & EVALUATION CENTERS

JUVENILE DETENTION CENTER

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

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

DJJ's Juvenile Detention Center is a centralized pretrial detention facility, serving juveniles from most of South Carolina's 46 counties (Richland and Charleston, operate their own long-term and short-term detention facilities). The Detention Center is a secure, short-term facility providing custodial care and treatment to male and female juveniles ages 11 to 17 detained by law enforcement agencies and the family courts prior to disposition. Youths awaiting trial on serious and violent charges reside at DJJ's Detention Center to ensure public safety and the juveniles' immediate availability for court proceedings.

MIDLANDS REGIONAL EVALUATION CENTER

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

DJJ's Midlands Regional Evaluation Center provides court-ordered evaluations for adjudicated juveniles from the midlands area prior to final disposition of their cases. The facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. The facility serves male and female juveniles ages 11 to 17 from 19 midlands counties and is one of three regionalized evaluation centers around the state. By law, the length of stay for adjudicated juveniles cannot exceed 45 days. The center opened in 1997.

UPSTATE REGIONAL EVALUATION CENTER

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

DJJ's Upstate Regional Evaluation Center provides residential court-ordered evaluations for adjudicated juveniles from the upstate area prior to final disposition of their cases. The facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. The facility serves male and female juveniles ages 11 to 17 from 15 upstate counties and is one of three regionalized evaluation centers around the state. By law, the length of stay for adjudicated juveniles cannot exceed 45 days. The center opened in 1997.

COASTAL REGIONAL EVALUATION CENTER

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

DJJ's Coastal Regional Evaluation Center provides residential court-ordered evaluations for adjudicated juveniles from the coastal area prior to final disposition of their cases. The facility provides comprehensive psychological, social, and educational assessments to guide the court's disposition of cases. The facility serves male and female juveniles ages 11 to 17 from 16 lowcountry counties and is one of three regionalized evaluation centers around the state. By

law, the length of stay for adjudicated juveniles cannot exceed 45 days. The center opened in 2002.

LONG-TERM CAMPUSES

There are three long-term campuses operated by DJJ, all of which are located within the Broad River Road Complex in Columbia.

WILLOW LANE PROGRAM FOR GIRLS—is a gender responsive program comprised of educational, clinical and independent living experiences for girls. The program houses a Transition House, which incorporates transitional living into the rehabilitative process.

BIRCHWOOD—offers programs for boys with special needs, including the Sex Offender Treatment Program (SOTP), Pre-Release program, and Youthful Offender Program, Stabilizing Treatment to Enhance Potential Success (STEPS) program, and DJJ's Communities in Schools (CIS), program—one of the first in the nation in a juvenile correctional setting, offering skills/character development and specializing in educational services that prepare boys for postsecondary education. DJJ's Birchwood School is also located on the Birchwood campus.

JOHN G. RICHARDS—provides treatment services to drug and alcohol related behaviorally challenged boys and houses the Systemic Treatment for Aggression Replacement program (STAR) and DJJ's Junior Reserve Officer Training Corps (JROTC), a cooperative effort between DJJ's school district and the U.S. Army.

TRANSFER TO DEPARTMENT OF CORRECTIONS

TRANSFER AT AGE SEVENTEEN

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

TRANSFER AT AGE NINETEEN

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

DMH SERIOUSLY MENTALLY ILL (SMI) STATUS

OVERVIEW

Children who have been committed to DJJ are screened to determine if they qualify for SMI status and should therefore be transferred to DMH. To be eligible, a child must be “seriously mentally ill” or “developmentally disabled.” Only children who have been committed to a long-term DJJ institution may be considered for SMI status; children committed to a DJJ evaluation center are not eligible for consideration. SMI children are transferred to DMH where their needs can be better met, although they remain committed to DJJ.

The “Agreement between DJJ & DMH for the Identification and Transfer of DJJ Juveniles with Serious Mental Illness,” provides a complete outline of the process, including eligibility requirements, by which children with a serious mental illness who are committed to DJJ are transferred to and treated by DMH.

****NOTE:** This agreement is still in effect as of the date of this publication; however, it is presented in its original form and refers to the former Title 20 statute citations instead of Title 63.

AGREEMENT BETWEEN DJJ & DMH FOR THE IDENTIFICATION AND TRANSFER OF DJJ JUVENILES WITH SERIOUS MENTAL ILLNESS

WHEREAS, THE South Carolina Department of Juvenile Justice, hereinafter referred to as DJJ, is responsible for providing community-based and institutional services to juveniles charged with or adjudicated delinquent for having committed a criminal offense as delineated in Title 20, Chapter 7, of the S.C. Code of Laws; and

WHEREAS, DJJ is authorized by state law (20-7-7815) to transfer juveniles committed to its custody who are seriously handicapped by mental illness and who because of such illness cannot be adequately cared for in its custody, to the state agency best suited to care for and treat such juveniles; and

WHEREAS, the South Carolina Department of Mental Health, hereinafter referred to as DMH, is authorized to provide community and hospital services to promote the mental health of children and adolescents pursuant to Title 44 of the S.C. Code of Laws; and

WHEREAS, DJJ and DMH acknowledge their shared responsibility to identify delinquent juveniles with a serious mental illness as early as possible in order to minimize their penetration into the juvenile justice system; and

WHEREAS, DJJ and DMH acknowledge their shared responsibility to serve delinquent juveniles with a serious mental illness and recognize that the care and treatment of such children can best and most economically be done through a collaborative effort involving not only their limited resources but also the resources, expertise and financial assistance of other federal, state and local agencies as well; and

WHEREAS, DJJ and DMH believe that such services for juveniles committed to DJJ custody who are seriously handicapped by mental illness and who because of such illness cannot be adequately cared for in DJJ custody can best be provided in programs separate from secure correctional institutions, which house other incarcerated delinquent youth, in programs with a treatment milieu which have been designed and are operated by treatment professionals who can promptly, professionally and, when necessary, securely, identify, serve and treat the mental health needs of these juveniles;

NOW THEREFORE, based on these shared responsibilities and the goal of better serving these juveniles in DJJ custody who are seriously handicapped by mental illness and who because of such illness cannot be adequately cared for in DJJ custody, DJJ and DMH enter into the agreement set forth below.

PURPOSE/APPLICATION

The purpose of this Memorandum of Agreement is to outline the process by which juveniles with a serious mental illness committed to the custody of the State for having committed criminal or status offenses who are seriously handicapped by mental illness and are transferred to and treated by the Department of Mental Health, the state agency best suited to address the treatment needs of such juveniles. This agreement is applicable to any juvenile in the custody of SCDJJ, excluding only those juveniles who are temporarily committed solely for the purpose of evaluation at one of the Department's three secure evaluation centers.

A. CRITERIA FOR INCLUSION: DJJ juveniles served under this agreement will meet the following diagnostic criteria as having a serious mental illness, as updated by DSM-IV criteria:

Category I: The following diagnoses are presumptively considered by diagnosis as requiring treatment services beyond the capability of DJJ. A juvenile must be determined to have a seriously mental illness in accord with criteria established by the American Psychiatric Association and be unable to interpret their environment in an acute and realistic manner and require intense specialized care. Using diagnoses as delineated in the DSM IV, any juvenile who has been professionally diagnosed as having any of the following illnesses shall be considered seriously mentally ill:

1. Pervasive Developmental Disorder (Autism, Rhett's, and Childhood Disintegrative Disorder)
2. Cognitive Disorders (Delirium, Dementia, and Amnestic Disorder)
3. Psychotic Disorders (Schizophrenia, Schizophreniform, Schizoaffective, Delusional Disorder, and Psychotic Disorder Not Otherwise Specified)
4. Dissociative Identity Disorder
5. Major Depression Recurrent and Single Episode (Active)
6. Bipolar Disorders (All Subtypes)

Category II: In addition, other juveniles who carry DSM-IV diagnoses may require further assessment to determine the degree of debilitation caused by their illness as requiring treatment services beyond the capability of DJJ. Axis V (the global

assessment scale) of the DSM-IV shall be used to determine the status of these juveniles. A score of fifty or below on this axis usually indicates that a juvenile is handicapped by his illness to the degree that he cannot be adequately cared for at DJJ facilities. Accordingly, juveniles who score fifty or below on this axis and who have the following professionally diagnosed illnesses will be considered seriously mentally ill requiring treatment services beyond the capability of DJJ after they have been unsuccessfully treated (behavioral interventions and psychotropic medications as prescribed by the treating physician) in a DJJ facility:

1. Asperger's Disorder
2. Pervasive Developmental Disorder NOS
3. Eating Disorders
4. Attention Deficit/ Hyperactivity Disorder
5. Mental Disorder due to a general medical condition (Personality Change, Mood, and Anxiety); and Mental Disorder Not Otherwise Specified due to a general medical condition.
6. Personality Disorders (Borderline, Paranoid, Schizoid, and Personality Disorder, N.O.S.).
7. Cyclothymic or Dysthymic Disorder
8. Post Traumatic Stress Disorder

Regardless of the presumptive inclusion or exclusion of a juvenile by diagnosis under Category I or II, DJJ or DMH may initiate a case-by-case staffing of any juvenile diagnosed with a mental illness and in need of treatment for a mental illness, to otherwise consider inclusion or exclusion for services under this agreement.

DJJ juveniles meeting the above criteria and served under this agreement will be referred to as "DJJ Juveniles with a Serious Mental Illness."

B. IDENTIFICATION OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS: All juveniles upon commitment to DJJ will be screened for mental illness. If after the initial screening, or at any time prior to release, serious mental illness is suspected, a referral to DJJ psychological staff shall be made. DJJ's psychological staff shall interview, assess and, if deemed necessary, test all juveniles referred to them for possible serious mental illness. They will also consult with the appropriate DMH Community Mental Health Center (CMHC) Children, Adolescents and Families (CAF) Director in all cases where the juvenile has been a client of DMH, prior to referral to the DJJ contract psychiatrist. At the time of any such referral to a DJJ contract psychiatrist, a copy of the referral (Inclusion Form), with copies of supporting documents to include DJJ social work and psychology reports, psychiatric records, reports or evaluations, available school records or medical records, incident reports and other relevant information, will be sent to DMH CAF Director and applicable CMHC(s) having served the juvenile. The DJJ contract with the DJJ contract psychiatrist will reflect the applicable procedures in this section and those following. DJJ agrees to notify DMH upon any change of contract psychiatrist.

After the DJJ contract psychiatrist's diagnostic determination that the juvenile is a DJJ Juvenile with a Serious Mental Illness, DMH may separately or in conjunction with DJJ and/or the DJJ contract psychiatrist, provide consultation and/or evaluate the juvenile. If face-to-face evaluation is needed, DJJ will make arrangements for designated DMH

personnel to interview the juvenile in his or her current setting. If at any time DMH disagrees with DJJ's determination that the juvenile is a DJJ Juvenile with a Serious Mental Illness, DMH may start the exclusion process as described in G following. If DMH initiates this process prior to transfer, diagnostic resolution will be reached prior to the inter-agency staffing held within 45 days of identification (see Section G). Unless the exclusion consideration process results in a final determination that a juvenile is not a DJJ juvenile with a serious mental illness, said juvenile must transfer to DMH for needed treatment within 90 days of the initial determination as described above.

C. INTERAGENCY STAFFING: Within 45 days of a juvenile being identified as a DJJ Juvenile with a Serious Mental Illness DJJ will facilitate a treatment team staffing to identify treatment/placement needs of the identified juvenile. This team will consist of at a minimum, the DMH state and community representative, a DJJ psychologist, DJJ social worker, a representative from DJJ's education division, DJJ's Coordinator of Special Needs Case Management (CSNCM), an advocate from Protection and Advocacy, the juvenile's Parole Board Examiner, the juvenile's DJJ Community Specialist and his or her parents or guardian. The absence of one or more invited individual treatment team member shall not require a rescheduling. Upon the meeting's conclusion, DMH will assume primary case management responsibility.

D. TRANSFER OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS: The authority for and the process by which DJJ Juveniles with a Serious Mental Illness are transferred to DMH is found in Section 20-7-7815 of the S.C. Code of Laws. Utilizing this authority, and having determined that juveniles identified as seriously mentally ill cannot be properly cared for, due to their mental health needs, within DJJ's secure correctional facilities, and that DMH is the state agency best qualified to meet and address these juveniles' mental health needs, the DJJ CSNCM will ensure that DJJ transfers all DJJ Juveniles with a Serious Mental Illness within 90 days of such designation. The CSNCM will utilize the Transfer Document for DJJ Juveniles with a Serious Mental Illness (Attachment A) for this purpose.

As set forth in this document, although transferred to the custody of DMH, all DJJ Juveniles with a Serious Mental Illness remain in a DJJ commitment status and can be released from such status only by the Board of Juvenile Parole or the expiration of a determinate sentence. This means that while DMH has complete authority for determining appropriate treatment, appropriate levels of restriction and security, and to move these juveniles between any facilities or programs they operate or with which they contract (private placements), such juveniles cannot be released to their home, or placed in non-residential programs in their home community, by DMH without the consent and approval of the Juvenile Parole Board or the expiration of a determinate sentence. Both parties understand and agree that placement options available to DMH include therapeutic foster care and that DMH has the authority to consider and place juveniles in foster care placements close to the juvenile's or victim's home if clinically indicated for family treatment and reunification. DJJ will not oppose placement decisions made by DMH or release recommendations made by DMH to the Juvenile Parole Board on DJJ juveniles with serious mental illness who have been transferred to DMH, consistent with terms set forth above.

In those cases where a DJJ Juvenile with a Serious Mental Illness has been placed

within a psychiatric inpatient placement prior to his or her transfer to DMH, DMH will make every reasonable effort to secure an appropriate placement in lieu of returning the juvenile to DJJ.

For those DJJ Juveniles with a Serious Mental Illness who are required to register in South Carolina's Sex Offender Registry, pre-initial registration shall continue to be the responsibility of DJJ. Upon the transfer of such juveniles to DMH, all subsequent registration requirements or notifications of pre-registration updates caused by a change in placement, etc., shall be the responsibility of DMH.

E. PROGRAMMING FOR DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:

DMH recognizes the necessity for a dual approach to treatment plans for transferred DJJ Juveniles with a Serious Mental Illness, which meets both the needs of the juveniles and the need for public safety. DJJ Juveniles with a Serious Mental Illness in the custody of DMH may receive passes and furloughs consistent with appropriate treatment and therapeutic practices as determined and established by DMH, consistent with the Order of Judge Donna Strom, dated October 15, 1996, and with the "Blanding" Decree, which is referred to therein.

This order states in effect that DJJ Juveniles with a Serious Mental Illness transferred to DMH custody from DJJ shall be treated by DMH as they treat all other involuntarily committed mentally ill juveniles and that DMH shall be guided in making their placement and treatment decisions for such juveniles by what they determine to be the most suitable and appropriate therapeutic environment for the juvenile.

After a juvenile is transferred to DMH and following DMH progressive treatment, care and management, if the DMH treating psychiatrist believes that the identified juvenile is in need of short-term behavioral health treatment, care and management beyond DMH capability, the DMH DJJ Liaison will facilitate an interagency staffing. This staffing will be attended by at least the treating physician and other clinical staff, DJJ's Director of Clinical and Professional Services and CSNCM, a state level DMH representative, the assigned JPB parole examiner, a P&A advocate, and the juvenile's parents. Procedures for these staffings, once agreed to, shall be made an attachment to this Agreement.

F. PLACEMENT AND MOVEMENT OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS:

DJJ Juveniles with a Serious Mental Illness transferred by DJJ to DMH pursuant to Section 20-7-7815 may be subsequently transferred to any placement deemed appropriate by DMH. Furthermore, DJJ Juveniles with a Serious Mental Illness will fully participate in programs to which they are assigned, to include off-campus passes and overnight furloughs home. Such placement may include therapeutic foster care if clinically indicated (see Section D, above). Such therapeutic foster care placements close to the juvenile's or victim's home may be considered appropriate on a case-by-case basis as such placements may be clinically indicated for family treatment and reunification.

Whenever a DJJ Juvenile with a Serious Mental Illness is moved to a different facility or program from which he/she was originally assigned following transfer from DJJ, the DMH DJJ Liaison will notify DJJ's Coordinator of Special Needs Case Management and the Parole Board of the placement within one working day after it occurs. Initial notification may be verbal followed within 48 hours with written notification. This and any

subsequent movement will be the responsibility of DMH. However, when DMH determines that placement with the juvenile's family, or placement in non-residential therapeutic program in the juvenile's home community is appropriate, this placement can be implemented only by a conditional or unconditional release by the Juvenile Parole Board or upon the end of the juvenile's determinate sentence. (See Section D)

For those DJJ juveniles with a serious mental illness who are arrested and detained for charges accrued in placement, DMH will engage in a reasonable effort (considering the severity of the offense) to find, secure and transport such juveniles to an appropriate treatment setting until those charges are resolved. If a new adjudication occurs, DMH will pursue placement in order to avert a return to DJJ. If unavoidable, DMH has 90 days upon the new date of commitment to find and place such a juvenile within an appropriate alternative placement. All recommitted juveniles who have not received DMH services for the preceding 90 days, and who are returned to DJJ, will be reevaluated to determine whether or not they continue to have a serious mental illness that would prevent them from being adequately cared for in DJJ custody. DMH Public Safety and the juvenile's local Mental Health Center CAF Director will track the juvenile's progress through the judicial system and prepare for alternative placement as needed.

G. RECONSIDERATION / REVIEW PROCESS: The transfer of a DJJ Juvenile with a Serious Mental Illness to the custody of DMH, pursuant to Section 20-7-7815 and this agreement, is intended to be a permanent movement of that juvenile from confinement within the juvenile correctional system. Only in cases where a juvenile's psychiatric diagnosis is changed to one not considered a serious mental illness, as listed in Section A, may a juvenile remain in, or be returned to a correctional confinement. However, even in such cases, options short of confinement in a secure correctional institution will be considered and determined to be inappropriate before re-incarceration is sought.

If, prior to a transfer to DMH under this agreement, a DJJ contract psychiatrist changes a juvenile's diagnosis to one that is not listed in Section A above, the juvenile simply remains within a DJJ facility or program. If prior to a transfer to DMH under this agreement, DMH disagrees with the DJJ contract psychiatrist's diagnosis and need for transfer, DMH may initiate the reconsideration process. This sequence is identical to the one described below except that the Community Mental Health Center acts in lieu of the "treating psychiatrist." Furthermore, resolution will be reached prior to the "45 Day" interagency staffing described in section B. To insure this, the CSNCM will share all relevant psychiatric information with the local mental health center Children, Adolescents and Families (CAF) Director within 5 days of identification. Prior to considering exclusion, CMHC staff will consider all DJJ provided psychological and other relevant information. Moreover, a reconsideration staffing, if needed, will be scheduled within 15 days of identification.

If after transfer, the treating psychiatrist believes that the juvenile does not have a serious mental illness, the treating psychiatrist will make a reasonable attempt to contact the DJJ contract psychiatrist. If, after such consultation, the treating psychiatrist continues to believe that the juvenile is not seriously mentally ill and changes the diagnoses to one not on the list, the DMH DJJ Liaison will facilitate an interagency staffing. This staffing will be attended by at least the treating physician and other clinical

staff, DJJ's Director of Clinical and Professional Services and CSNCM, a state level DMH representative, the assigned JPB parole examiner, a P&A advocate, and the juvenile's parents. If the staffing results in the DJJ Director of Clinical and Professional Services concurring with the treating psychiatrist's diagnosis, the juvenile will be either returned to a DJJ facility or treatment transferred to an alternative placement.

If there is a lack of consensus among members of the treatment team regarding whether the juvenile is appropriately diagnosed with a serious mental illness, a review of this decision may be sought. The review process will consist of the disagreeing entity contacting and reviewing the juvenile's case with the Associate Director of Child and Adolescent Psychiatry at the Hall Institute. If the disagreeing entity is not an employee of the Department of Juvenile Justice, then DJJ's Director of Clinical and Professional Services and the CSNCM shall also be included in this review. Should these individuals not reach consensus, then a further review can be pursued to the DMH Medical Director. The DMH Medical Director's decision will be the final decision in regards to this change in diagnosis.

DMH and DJJ agree that if a juvenile is identified as having a serious mental illness, such status and prescribed transfer will supersede a reassignment to the Youthful Offender Division of the Department of Corrections, Pursuant to 20-7-7810. Once identified as having a serious mental illness, inclusion for transfer and DMH services under this agreement will only be lost given a release by the Juvenile Parole Board, determinate sentence expiration or a diagnostic change. The latter two of the three are delineated above.

H. RECORDS: Subject to applicable law and respective privacy practices, DJJ/DMH clinical staff and treatment team members shall upon reasonable request have access to and may be provided copies at no charge, all relevant records (community institutional, medical, etc.) on juveniles who are seriously mentally ill or who are suspected of being seriously mentally ill as needed to provide, treatment or care services under this agreement including referral and coordination of such treatment or care services. Additional information on such juveniles not reduced to writing, but known to DJJ/DMH staff, shall also be provided by staff of either agency.

I. TRACKING THE STATUS AND PLACEMENT OF DJJ JUVENILES WITH A SERIOUS MENTAL ILLNESS: A master list of all DJJ juveniles with a serious mental illness served by SCDMH under this agreement will be kept by DJJ's Office of Clinical and Professional Services. This list will contain the juvenile's name, his/her committing offense, his/her mental health diagnosis and date of this diagnosis, the juvenile's status (i.e., committed, confined within DJJ; transferred to DMH); the facility/program the juvenile is located in and the dates of placement. In order to keep this master list current, within one working day after a DJJ Juvenile with a Serious Mental Illness is moved by DMH within its system, or within its network of private providers, or released by the Juvenile Parole Board, notice of such movement shall be provided to DJJ's Office of Clinical and Professional Services.

J. OTHER RELATED SERVICES: Inpatient hospital psychiatric services for DJJ Juveniles, both those who are designated as seriously mentally ill or otherwise, will continue to be available as needed at William S. Hall Psychiatric Institute or DMH

inpatient programs through voluntary, judicial involuntary, and emergency involuntary admission pursuant to the Children's Commitment Act (Section 44-22-10, et seq., S.C. Code of Laws).

K. ESCAPES: As required by applicable contract with a residential treatment provider, when such provider has confirmation that a DJJ Juvenile with a Serious Mental Illness has escaped from or has failed to return to an assigned placement, that provider, within 30 minutes, will complete a Notice of Escape form and will fax it to DMH Public Safety and DMH/DJJ Liaison. DMH Public Safety will immediately enter the information in the NCIC as well as contact local law enforcement and DJJ Police. DJJ Police will then immediately notify the DJJ Director of Communications and Victims' Service Office who will then contact the victim(s) as required.

On the following business day, the DMH/DJJ Liaison will notify the assigned Juvenile Parole Board Examiner as well as the DJJ Coordinator of Special Needs Case Management and/or Director of Clinical and Professional Services.

DMH has primary responsibility for the apprehension efforts, and either the placement or DMH may file escape charges against the juvenile if applicable. If so, DMH Public Safety and the juvenile's local mental health center CAF Director or designee, together with the local DJJ Community Specialist, will track the juvenile's progress through the judicial system, obtain the Detainer Orders and prepare for alternative placement as needed. If recommitted escape charges are filed, refer to Section F above regarding Placement and Subsequent Movement of Juveniles with a Serious Mental Illness. Once the juvenile is apprehended, the above notification procedure will be followed.

If escape charges are filed, DMH Public Safety and the juvenile's local mental health center will track the juvenile's progress through the judicial system, obtain the Detainer Orders and prepare for alternative placement as needed. If recommitted, please refer to Section F, herein, regarding Placement and Movement of Seriously Mentally Ill Juveniles.

L. VICTIM NOTIFICATION: When a DJJ Juvenile with a Serious Mental Illnesses is transferred from DJJ to DMH, victim notification, if such has been requested, will be provided to the victim by DJJ's Victims Services Section.

In addition, DJJ's Victim Services Section will notify DMH of victim notification requirements, if any, at the time of transfer of a DJJ Juvenile with a Serious Mental Illness and will handle all required victim notification in the case of a seriously mentally ill juvenile's escape from DMH custody once notified of the escape. As reflected in a separate agreement between DMH and the Juvenile Parole Board, following the initial transfer, all subsequent victim notificants (except for escapes), brought about by the movement of a juvenile within the continuum of DMH and private provider placements, or brought about due to the furlough or the granting of passes to the juvenile, or due to the release of the juvenile, will be provided by the Victim Notification Section of the Juvenile Parole Board, following their notification of this event (in the case of transfers furloughs, and passes) by DMH.

DMH acknowledges that because of the role of the Juvenile Parole Board in regards to the release of juvenile offenders for Victim Notification purposes, DMH will notify the

Juvenile Parole Board whenever a seriously mentally ill juvenile is placed in a facility or program that may grant the juvenile a pass or furlough unaccompanied by a staff member.

If a DJJ Juvenile with a Serious Mental Illness who has not been released from commitment status escapes/absconds from the facility/program in which the juvenile has been placed by DMH, DMH or the private provider in whose program DMH has placed the juvenile, shall immediately contact DJJ's Public Safety Division (803-896-9100) and the Board of Juvenile Parole (803-896-5614). Upon receipt of notification, DJJ's Public Safety Division shall enter the juvenile's name and other appropriate data on the NCIC and assure that local law enforcement and DJJ Victim Services are contacted regarding the escape. However, DMH will be the lead agency responsible for coordinating the apprehension efforts. DJJ will refer all contacts and questions from local law enforcement agencies to DMH.

M. MEDIA NOTIFICATION: Contacts with the media by DMH/DJJ shall be governed by their respective confidentiality laws, and release of information policies and practices. DJJ will inform the press (if contacted) that the juvenile in question was committed to DJJ and was transferred pursuant to Section 20-7-7815, Code of Laws of South Carolina to the custody of DMH, the agency best suited to meet the treatment needs of the juvenile. All further inquiries from the media will be referred to DMH Office of Public Affairs for handling.

N. TRANSPORTATION: Once DJJ transfers a DJJ Juvenile with a Serious Mental Illness to his or her initial DMH placement, DMH is responsible for providing or arranging any subsequent transports as related to treatment or care of the child while transferred to DMH for treatment. Unless DMH permits a juvenile's parent to transport the juvenile to the juvenile's Juvenile Parole Board hearings, DMH shall provide such transportation, either by its own staff or under contract, for juveniles served under this agreement from the juvenile's treatment facility-or program as may be required for the juvenile's attendance at Juvenile Parole Board hearings.

Upon commitment expiration and a return home, transportation to and from local mental health centers shall be the responsibility of the juvenile's parent or guardian. In the event that the parent or guardian is unable/unwilling to transport then the primary case manager at DMH and the assigned community specialist at DJJ will collaborate to resolve the transportation issue.

O. SUPERVISION UPON RELEASE - RELEASE PLANNING PROCESS STAFFINGS: DMH and DJJ acknowledge that the authority to release a DJJ Juvenile with a Serious Mental Illness, as with any other juvenile indeterminately committed by the family court for commission of a crime, rests exclusively with the Board of Juvenile Parole. DMH and DJJ further acknowledge that to effectively manage release opportunities, both Agencies must be involved in the release planning process and in the supervision of and provision of treatment services to the juvenile upon release. DJJ agrees that for all DJJ Juveniles with a Serious Mental Illness conditionally released by the Board of Juvenile Parole, it will provide supervision at the level specified by the Board of Juvenile Parole. DMH agrees that ordered or needed mental health services will be provided to these juveniles, through its local mental health centers, on a priority basis, and that the

provision of these services will be coordinated and monitored by the assigned case manager at DMH. DMH further agrees that its local mental health centers will provide prioritized services to these juveniles, and will not deny, restrict or modify such services because they do not agree with the diagnosis which rendered the juvenile as seriously mentally ill.

Prior to release by the Juvenile Parole Board, DJJ further agrees that the juvenile's assigned community specialist will continue to submit to the Juvenile Parole Board, community board reports, which emphasize primarily the suitability and readiness of the juvenile's family, home and community to accept the juvenile upon his release. Prior to release, periodic staffing will be held on all seriously mentally ill juveniles. Prior to recommending release, a final staffing will be held and a unified recommendation of the juvenile's anticipated future treatment needs and the best way to address these needs will be presented to the Board. DJJ agrees that it will defer to the clinical expertise of DMH staff regarding a juvenile's readiness for release. The juvenile's parole examiner shall be invited to all staffings.

For juveniles age eighteen and over, the joint staffing will include a review of mental health and other services available to individuals age eighteen and over, including adult services.

DMH agrees that while it is solely responsible for coordinating discharge planning, making applications to step-down programs, and arranging for transportation to and from all placements, DMH will coordinate doing so with all appropriate agencies. DJJ commits to assisting in this process through their attendance and participation at all called staffings and meetings involving committed DJJ Juveniles with a Serious Mental Illness.

The purpose of the periodic staffings will be to discuss the juvenile's treatment progress in placement, the anticipated course of treatment in the community and placement needs upon the juvenile's release. After these staffings occur, local efforts will be undertaken by both agencies to either secure the necessary service for the juvenile or prepare the existing services to admit the juvenile upon release. Prior to the anticipated release of the juvenile, a final staffing will be scheduled to discuss the actual course of treatment and to finalize the clinical recommendations and the discharge and placement plan. At this time, appointments will be made with the local agencies to ensure a smooth transition to the community. Throughout this process, the local mental health center case manager will be responsible for clinical case management, while the DJJ community specialists will be responsible for the matters associated with the juvenile's supervision. After release, the juvenile will be contacted by the local agencies within a week after the release date.

P. FISCAL RESPONSIBILITY: Prior to the transfer of seriously mentally ill juveniles, DJJ will assume fiscal responsibility for all care and treatment provided at the South Carolina Department of Juvenile Justice. All costs associated with the care and treatment of subclass juveniles will be governed by DMH laws and procedures after the transfer.

Q. CONTINUED INTERAGENCY COLLABORATION: DMH and DJJ Directors agree to meet at least quarterly and more frequently, if necessary, to address the immediate

and long-term interagency service needs of DJJ Juveniles with Serious Mental Illness.

The parties to this Agreement further agree to participate in continuing meetings and discussions on further refinements to, and improvement of, this Agreement. Should any such agreement be reached, it will be reduced to writing and made an attachment to this Agreement.

R. AMENDMENTS AND TERMS OF AGREEMENT: The term of this agreement shall remain in effect from the date of signing by both parties unless amended in writing by mutual agreement of the Directors of DJJ and DMH. Either party may terminate the Agreement within 90 days written notice provided to the other Agency, addressed to the Director of that Agency, which notifies the other Agency of its intent to terminate this Agreement.

DDSN SERIOUSLY INTELLECTUALLY DISABLED (MENTALLY RETARDED (SMR)) STATUS

Children who have been committed to DJJ are screened to determine if they qualify for SMR status and should therefore be transferred to DDSN. To be eligible, a child must be diagnosed with “serious intellectual disability (mentally retardation).” Only children who have been committed to a long-term DJJ institution may be considered for SMR status; children committed to a DJJ evaluation center are not eligible for consideration. SMR children are transferred to DDSN where their needs can be better met, although they remain committed to DJJ.

The following Agreement between DJJ and DDSN provides a complete outline of the process, including eligibility requirements by which children diagnosed with serious intellectual disability (mental retardation) who are committed to DJJ are transferred to and treated by DDSN.

****NOTE:** This agreement is still in effect as of the date of this publication; however, the last time it was updated was June 12, 2006. It is presented in its original form and therefore, uses the term “mental retardation” instead of “intellectual disability” and refers to the former Title 20 statute citations.

AGREEMENT BETWEEN DJJ AND DDSN FOR THE TREATMENT OF JUVENILE DELINQUENTS WITH SERIOUS MENTAL RETARDATION

The South Carolina Department of Juvenile Justice, hereinafter referred to as DJJ, is responsible for providing community based and institutional services to juveniles charged with, or adjudicated delinquent for, having committed an offense as delineated in Title 20, Chapter 7, of the S. C. Code of Laws; and

DJJ is authorized by the state law (20-7-7815) to transfer juveniles committed to its custody who are seriously handicapped by serious mental illness or mental retardation and who, because of such disabilities, cannot be adequately cared for in its custody, through the voluntary admission process or by instituting necessary legal action to accomplish the transfer of such juveniles to another state agency which in its judgment is best qualified to care for them in accordance with the laws of this State; and

The South Carolina Department of Disabilities and Special Needs, hereinafter referred to as DDSN, is authorized to provide and/or procure institutional or community based residential services to promote the well-being of adolescents with mental retardation as delineated in Title 44, Chapter 20, of the S.C. Code of Laws; and

DJJ and DDSN acknowledge their responsibility to serve delinquent juveniles with serious mental retardation and recognize that the care and treatment of such children can best and most economically be done through a collaborative effort involving not only their limited resources and expertise, but the resources, expertise and financial assistance of other federal, state, local and private agencies; and

DJJ and DDSN believe that services for committed delinquent juveniles with serious mental retardation should be provided in facilities separate from those which house other incarcerated delinquent youth. When such juveniles are identified, appropriate placement by DDSN will be secured. DJJ and DDSN further agree that these juveniles with serious mental retardation should be placed into programs with a treatment milieu which has been designed and is operated by treatment professionals who can promptly, professionally and, when necessary, securely, identify, serve and treat the cognitive and adaptive deficits of these juveniles until these juveniles' commitments end; and

Now, based on these shared responsibilities and the goals of better serving these delinquent youth with serious mental retardation, DJJ and DDSN enter into the agreement established below.

PURPOSE / APPLICATION

The purpose of the Memorandum of Agreement is to outline the process by which those juveniles diagnosed with serious mental retardation (SMR) committed to the custody of the State for having committed offenses are transferred for treatment to the South Carolina Department of Disabilities and Special Needs.

DJJ and DDSN jointly embrace several philosophical and procedural concepts which support this document. These are:

- The goal of attaining for each juvenile maximum mental, physical, and social development while minimizing the reoccurrence of a delinquent act;
- The belief that juveniles with mental retardation accused of an illegal act should be prosecuted when found legally competent unless there are other circumstances mitigating against prosecution;
- To support and assist each juvenile offender with serious mental retardation in remaining within or returning to their family and home, or in the community environment;

Out of home placements from a DJJ institution require careful planning and must take into account needs for structure, supervision, training, and public safety; consequently, a 90-day time frame will be in effect, beginning with the date that the DDSN Liaison Psychologist diagnoses a juvenile with SMR, for locating appropriate placement and completing the transfer;

When out-of-home placements are necessary for supervision, management and treatment, the principle of least restrictive alternative should be followed. Institutional placement should be the last alternative, and should be considered only if no other available and appropriate community alternative exists;

That in addressing the procedures and concepts of this agreement, accurate, effective and timely communications, information sharing, and cooperative agency actions are necessary to ensure the best management and treatment decisions and outcomes for juveniles;

That in the matter of assessing the presence and evaluating the extent of mental retardation of individuals falling under this agreement, DDSN's findings shall generally be accepted by DJJ. However, in those cases where DJJ does not accept DDSN's

findings as to their determination, the case will be referred to an independent reviewer pursuant to the review procedure provided in this agreement; and

That nothing in this agreement should be understood to preclude, supplement, or substitute the respective responsibilities that DJJ and DDSN are required to discharge under the South Carolina Code and/or Judge Anderson's orders of March 31, 1992 and April 24, 1992, nor does this agreement supersede other relevant provisions, procedures, or due process requirements under the S.C. Code.

A. CRITERIA FOR INCLUSION: Mental retardation is herein defined as significantly sub-average intellectual functioning (i.e., an IQ of approximately 70 or below on an individually administered IQ test) with concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. Mental retardation will be considered present when the individual's measured IQ is approximately 70 or below, is considered a valid estimate of current intellectual functioning, and is accompanied by deficits in adaptive functioning as listed above that are consistent with the individual's history. When measures of adaptive functioning cannot be administered in the standardized manner prescribed by the authors/publishers of the instrument(s), an estimate of adaptive functioning will be made based on available data and clinical judgment in a manner agreed upon by clinical staff from both agencies.

Once the presence of mental retardation has been established for a given juvenile, his or her identification as a juvenile with SMR will be determined on the basis of Judge Anderson's Court Order dated March 31, 1992 and the Supplemental Order dated April 24, 1992. Juveniles who are found to have Moderate Mental Retardation or below (i.e., IQs of approximately 55 or below with concurrent deficits in adaptive functioning) will be identified as juveniles with SMR. Juveniles who are found to have Mild Mental Retardation (i.e., IQs of approximately 55 to approximately 70 with concurrent deficits in adaptive functioning) will be further assessed with regard to their adjustment to the demands of institutional living. Such juveniles will qualify if and when they fail to demonstrate the ability to:

1. Care for self in the DJJ environment;
2. Protect self and not be victimized because of mental condition; or
3. Demonstrate sufficient judgement and ability to follow and understand instructions so as to benefit from DJJ programs.

Determination of the above competencies will be made following interviews with DJJ personnel who work directly with the juvenile, to include Juvenile Correctional Officers, teachers, social workers, and/or psychologists. Results of these interviews, including names of respondents, will be documented.

B. IDENTIFICATION OF SUBCLASS MEMBERS: All juveniles committed to DJJ will be screened for possible referral to DDSN. If after the initial screening or at any time prior to release SMR is suspected, a referral to the appropriate DJJ Supervising Psychologist shall be made for further review. DJJ's psychology staff may elect to interview, further assess and, if deemed necessary, test all juveniles referred to them. On the basis of the results of this assessment, the Supervising Psychologist will refer to

the DDSN Liaison Psychologist those cases which are believed to qualify. The referral and staffing protocol between DJJ and DDSN shall include the following: 1) Completion of a standard referral form (see Attachment A) by DJJ to DDSN with all the required information; 2) A packet of information attached to the referral form to include DJJ social work and psychological reports, psychiatric reports (if completed), any available school records or medical information and any other pertinent data. After receiving completed referrals from DJJ, DDSN will determine eligibility within 30 days and notify DJJ of its findings. In those cases where the DDSN Liaison Psychologist determines that the juvenile does not meet criteria for SMR designation, the DDSN Liaison will document the reasons for denial and will forward that finding along with pertinent clinical documentation, to include staff interviewed and tests administered, to the DJJ Director of Clinical and Professional Services. If DJJ disagrees and consensus cannot be reached by the DJJ team, the DJJ Coordinator of Special Needs Case Management (CSNCM), and the DDSN Liaison Psychologist, DJJ appeals shall be first channeled to the DJJ Director of Clinical and Professional Services and DDSN Liaison Psychologist for resolution in consultation with the principal designees of the State Directors of DDSN and DJJ. If the appeal issue(s) cannot be resolved by these professionals and between the principal designees within fifteen (15) working days from the receipt of the appeal to DDSN, then a referral will be made to a qualified independent reviewer agreed upon by the Agencies. The reviewer, after reviewing all available documentation and testing, conducting additional testing, if necessary, and utilizing this agreement's established criteria, shall make recommendations to the State Director of DDSN who will then make a final determination regarding inclusion/eligibility as delineated in Section 44-20-430. Should DJJ appeal and an independent reviewer is needed, DJJ and DDSN State Directors will determine how payment will be made for the reviewer on a case by case basis.

C. LOSS OF INCLUSION STATUS: Once the DDSN Liaison Psychologist diagnoses a juvenile with SMR, this status will be removed only if the juvenile's commitment ends or if the juvenile's diagnosis is changed to a diagnosis other than SMR.

D. INTERAGENCY STAFFING: Within 30 days of SMR designation, DJJ will initiate a treatment team staffing with DDSN to identify treatment/placement needs of such juveniles. This team will consist of those individuals identified under Section H of this document. Upon conclusion of this treatment team meeting, DDSN will assume primary case management responsibility.

E. JUVENILE TRANSFERS: The authority for and the process by which juveniles diagnosed with SMR are transferred to DDSN is found in Section 20-7-7815 of the S. C. Code of Laws. DJJ, through the voluntary admission process or by instituting necessary legal action in the family court, as delineated in Section 20-7-7815 and Section 44-20-450, and through use of a Transfer Document (Attachment B) shall accomplish the transfer of the juvenile to DDSN. As set forth in this document, although transferred to the jurisdiction of DDSN, all qualifying juveniles remain in a DJJ commitment status and can be released from such status only by the Board of Juvenile Parole or the expiration of a determinate sentence. DDSN has authority for determining appropriate treatment

and placement, appropriate levels of restriction and security, and may move these juveniles between any placement or programs operated by DDSN or with which DDSN contracts. Juveniles cannot be released to their home or placed in non-residential programs in their home community by DDSN without consent and approval of the S.C. Juvenile Parole Board. In the event that DDSN is unable to secure a transfer date for a juvenile diagnosed with SMR, whose age warrants movement to South Carolina Department of Corrections, DJJ has the authority to hold juveniles for up to six months beyond their transfer date. As a result, DJJ will retain, for up to 90 days, a juvenile already diagnosed with SMR until he or she transfers to an appropriate treatment program.

For those juveniles diagnosed with SMR who are required to register in South Carolina's Sex Offenders Registry, registration shall continue to be the responsibility of DJJ. Upon the transfer of such juveniles to the jurisdiction of DDSN, all subsequent registration requirements or notifications of registration updates caused by a change in placement, etc., shall be the responsibility of DDSN.

F. PROGRAMMING: DDSN recognizes the necessity for a dual approach to treatment plans for juveniles diagnosed with SMR which meets both the individual needs of the juveniles and the need for public safety. These juveniles placed under the jurisdiction of DDSN may receive off-site visitation with family and for individual or group activities consistent with appropriate treatment and therapeutic practices as determined by DDSN.

G. PLACEMENT/MOVEMENT OF QUALIFYING JUVENILES: Juveniles diagnosed with SMR transferred by DJJ to DDSN pursuant to Section 20-7-7815 may be placed by DDSN in any appropriate placement. Such placement may include, if clinically indicated, therapeutic foster care, so long as the therapeutic foster home in which the juvenile is placed is not located in the juvenile's and/or victim's home community, or county, if ordered by the Court. Such therapeutic foster care placements close to the juvenile's or victim's home may be considered appropriate on a case-by-case basis as such placements may be clinically indicated for family treatment and reunification.

When a juvenile diagnosed with SMR is moved to a different placement or program from which he/she was originally assigned following placement by DDSN, DDSN will notify DJJ's CSNCM and a S.C. Juvenile Parole Board representative of the placement within one working day after it occurs. Initial notification may be verbal followed within 48 hours with written notification.

In the event a juvenile escapes from a DDSN residential facility or a DDSN contractual provider's facility, DDSN will immediately notify DJJ's Public Safety Office (803-896-9100) and the DJJ CSNCM (803-896-9593). In the event a juvenile is removed from such a facility for crisis, DDSN will immediately notify DJJ's CSNCM. In both cases, DDSN will also notify a S.C. Juvenile Parole representative.

Should a juvenile diagnosed with SMR incur criminal charges while in a DDSN facility or privately contracted facility, and such juvenile is consequently placed in Detention

awaiting his or her hearing on those charges, DDSN will prepare an alternate placement plan so the juvenile may be placed upon disposition of the charges or release from detention, given that the juvenile commitment continues. DDSN will be able to secure another alternative placement for any such juvenile diagnosed with SMR once the criminal charges have been resolved.

H. INTERAGENCY TREATMENT TEAM MEMBERSHIP: A subclass juvenile's treatment team shall consist of, at a minimum, the DDSN Liaison Psychologist, the DDSN state and DSN community representative, a DJJ psychologist, a DJJ social worker, a representative from DJJ's education division, and DJJ's CSNCM. An advocate from Protection and Advocacy, the juvenile's S.C. Juvenile Parole Board Examiner, the juvenile's DJJ Community Specialist and a representative from the juvenile's home school district will also be invited to attend. The absence of one or more invited individual treatment team members shall not require the rescheduling of team meetings.

I. RETURN TO DJJ – REMOVAL FROM THE SUBCLASS: The transfer of a juvenile diagnosed with SMR to the jurisdiction of DDSN is intended to be a movement of that juvenile from confinement within the juvenile correctional system. Only in cases where a juvenile's diagnosis is changed to a diagnosis which does not qualify him/her will a juvenile, once transferred to DDSN, be returned to correctional confinement at DJJ. In such cases, options short of re-confinement in a secure correctional institution will be considered and must be determined inappropriate before re-incarceration is sought.

A juvenile already designated as having SMR and transferred to DDSN will not be returned to DJJ prior to a treatment team staffing to include clinical staff from both agencies. If DDSN believes a juvenile does not meet the qualifications for SMR, DDSN will notify the DJJ CSNCM. Prior to a change in diagnosis occurring which could result in a return to DJJ, the designated DDSN Liaison Psychologist shall be consulted and a staffing with the juvenile's treatment team shall occur. If as a result of this staffing it is agreed that the juvenile does not meet the qualifications for SMR, a DDSN/DJJ Removal Form will be completed by those present; this form will clearly outline the reasons the juvenile does not qualify and will specify appropriate placement and treatment for the juvenile. Should DJJ and DDSN fail to agree, the appeal process outlined in Section B (Identification of Subclass Members) shall be followed.

If a conditional release has been granted by the S.C. Juvenile Parole Board and revocation is subsequently initiated, a juvenile may be returned to DJJ's institutional facilities or placed in some other secure correctional facility or program only after a preliminary hearing conducted by the S.C. Juvenile Parole Board's hearings officer has been held and a decision has been made by the hearings officer or S.C. Juvenile Parole Board to do so has occurred.

If a juvenile who has been diagnosed with SMR returns to DJJ either because parole is revoked or because the juvenile has committed a new offense, the juvenile will retain his or her SMR designation if he or she has been diagnosed with Moderate Mental Retardation or below (i.e., an IQ of approximately 55 or below with concurrent deficits in

adaptive functioning), and DDSN will secure placement within 90 days of being notified of the revocation or recommitment. Should such a juvenile have a diagnosis of Mild Mental Retardation (i.e., an IQ of approximately 55 to approximately 70 with concurrent deficits in adaptive functioning), he or she will be further assessed with regard to institutional adjustment. Such juveniles will be diagnosed with SMR if they demonstrate poor institutional adjustment as described in Section A, "Criteria for Inclusion." Such a determination will be made by the DDSN Liaison Psychologist within 30 days of notification of the juvenile's return to a DJJ institution. DDSN reserves the right to re-assess any juvenile if any new information becomes available that may impact the juvenile's continued status as a subclass member.

J. RECORDS/COMMUNICATION: DJJ and DDSN clinical staff and treatment team members shall have access to and may copy, upon request, all community, institutional, medical, test data, etc. on juveniles who may be or are diagnosed with SMR. Additional information on such juveniles not reduced to writing, but known to DJJ or DDSN staff, shall also be provided by staff of either agency to staff of the other agency.

K. COORDINATION AND RECORD OF MOVEMENT: A master list of all juveniles diagnosed with SMR, which contains the juvenile's name, his/her committing offense, his/her diagnosis and date of this diagnosis, the juvenile's commitment status (i.e., commitment, confined within DJJ; transferred to DDSN; conditionally released by the S.C. Juvenile Parole Board; expiration of determinate sentence), the placement/program the juvenile is located in and the dates of placement will be kept by DJJ's Office of Clinical and Professional Services. A master list of all DJJ institutional referrals to DDSN which contains the juvenile's name, date of birth, committing offense, date of referral to DDSN, date of inclusion, eligibility status, and placement/program services will be kept by DDSN's Office of Behavioral Supports. Therefore, in order to keep these master lists current, within one working day after a juvenile diagnosed with SMR is moved by DDSN within its network of private providers or released by the S.C. Juvenile Parole Board, notice of such movement will be provided to DJJ's CSNCM and DDSN's Office of Behavioral Supports and included on these master lists.

L. TRANSPORTATION: When a juvenile diagnosed with SMR is transferred from a DJJ institution into a placement secured by DDSN, DJJ will transport the juvenile from the DJJ institution to the designated placement facility. The placement facility, the local DSN board, and DDSN will then be responsible for coordinating transportation for the juvenile after he/she is placed outside the DJJ institution. If a juvenile diagnosed with SMR in a DJJ institution has been conditionally or unconditionally released by the S.C. Juvenile Parole Board, or has completed a determinate sentence at DJJ, DDSN will be responsible for coordination of transportation for the juvenile from the DJJ institution.

M. VICTIM NOTIFICATION: When a juvenile diagnosed with SMR is placed under the jurisdiction of DDSN pursuant to 20-7-7815, DJJ's Office of Victim Services will provide notification to the victim, if requested. In addition, DJJ's Victims Services Office will notify DDSN of victim notification requirements, if any, at the time of the initial placement staffing (described in Section D). DJJ will handle all required victim

notification in the case of an escape from a DDSN placement. DDSN agrees to notify the DJJ Office of Victim Services at (803) 896-9544, [fax: (803) 896-6917; pager: 1-800-614-4407] of escapes. All subsequent victim notifications (except for escapes) brought about by the movement of a juvenile within DDSN or private provider's placements or brought about due to furloughs or the granting of passes to the juvenile, will be handled by the S.C. Juvenile Parole Board. DDSN will notify the S.C. Juvenile Parole Board's Victim Assistance Program and the DJJ Community Specialist whenever a juvenile diagnosed with SMR is placed in a facility or program that may grant the juvenile a pass or furlough unaccompanied by a staff member. DDSN will ensure that the facilities within its jurisdiction provide timely advance notification (at least two weeks) to the Juvenile Parole Board Victim Assistance Program of a juvenile's unsupervised pass/furlough, and also direct its private provider placements to provide such advance notification. The Juvenile Parole Board's Victim Assistance Program will, in turn, provide advance notification of any passes/furloughs to the victim. Similarly, DDSN agrees to notify the DJJ Office of Victims Services of escapes, off-site visitation and passes, or movement of a juvenile diagnosed with SMR so that victim notification can occur.

N. SUPERVISION UPON RELEASE – PLANNING PROCESS STAFFINGS: DDSN and DJJ acknowledge that the authority to release a juvenile diagnosed with SMR, as with any other juvenile indeterminately committed by the family court for commission of a crime, rests exclusively with the S.C. Juvenile Parole Board. DDSN and DJJ further acknowledge that to effectively manage release opportunities, both Agencies must be involved in the release planning process and in the supervision of, and provision of treatment services to, the juvenile upon release. DJJ agrees that for all juveniles conditionally released by the S.C. Juvenile Parole Board, it will provide supervision at the level specified by the S.C. Juvenile Parole Board. DDSN agrees that ordered and needed services will be provided to juveniles diagnosed with SMR through its local DSN Provider Networks on a priority basis, and that provision of these services will be coordinated and monitored through the DDSN State office.

DJJ further agrees that the juvenile's assigned community specialist will continue to submit to the S.C. Juvenile Parole Board community board reports which emphasize primarily the suitability and readiness of the juvenile's family, home and community to accept the juvenile upon release. Prior to recommending release, a final staffing will be held and recommendations of the juvenile's anticipated future treatment needs and the best way to address these needs will be presented to the S.C. Juvenile Parole Board. DJJ agrees that it will defer to the clinical expertise of DDSN staff regarding a juvenile's readiness for release whenever the two Agencies disagree. The juvenile's parole examiner shall be invited to all staffings. DDSN will be notified and shall have access to any board hearings or reviews by the S.C. Juvenile Parole Board.

For juveniles age eighteen and over, the joint staffings will include a review of the individual's needs and services available. DDSN agrees that while it is primarily responsible for coordinating discharge planning, making applications to step-down placements/programs, and arranging for transportation to and from all placements, DDSN will coordinate these activities with all appropriate agencies including DJJ. DJJ

commits to assisting in this process as requested by DDSN and through DJJ's attendance and participation at called staffings and meetings involving juveniles diagnosed with SMR.

O. IDENTIFICATION OF OTHER POPULATIONS: DDSN and DJJ recognize that some delinquent juveniles needing DDSN services may not qualify for SMR diagnosis. DJJ will continue to refer to DDSN those individuals who appear to meet the criteria for DDSN Community Services. DJJ and DDSN will work cooperatively to obtain parental permission for DDSN to complete the intake process. After receiving completed referrals from DJJ as outlined in Section B, DDSN will determine eligibility within 90 days and notify DJJ of its decision. In making its determination, DDSN may use acceptable data derived from other sources, including DJJ, in determining intellectual status and adaptive functioning and certification of an individual to have mental retardation. If additional information is necessary to make such a determination, DDSN will contact DJJ to seek such information. If eligibility criteria are not met for DDSN Community services, DJJ will follow its own internal guidelines to assure that the juvenile's needs are met and appropriate services provided.

P. COST SHARE AGREEMENT: DDSN and DJJ will continue to pursue cost share agreements for juveniles who are identified as having mental retardation and adjudicated as delinquent who are on probation and/or conditionally released from DJJ. These cost share agreements will be in accordance with the cost share formula originated by the Children's Case Resolution System but which may vary in terms of the percentage of funding amounts shared as agreed upon by the agencies.

Q. CONTINUED INTERAGENCY COLLABORATION: DDSN and DJJ Agency Directors or their designees agree to meet at least twice yearly, and more frequently if necessary, to address the immediate and long-term interagency service needs of juvenile delinquents with mental retardation as well as continued development and improvement of this Agreement.

DJJ and DDSN will provide joint trainings to their respective staff on the content of this agreement. Training content will be approved by both agencies to assure consistency in information delivery.

R. AMENDMENTS AND TERMS OF AGREEMENT: The terms of this Agreement shall remain in effect from the date of signing by both parties unless amended in writing by mutual agreement of the Directors of DJJ and DDSN. Either party may terminate the Agreement with 90 days written notice provided to the other Agency, addressed to the Director of that agency, which notifies the other Agency of its intent to terminate this Agreement.

Signed June 12, 2006

JUVENILE
RECORDS

JUVENILE RECORDS OVERVIEW

CONFIDENTIALITY OF COURT AND DJJ RECORDS

The court is required to keep records of every case involving a child who comes before the family court. DJJ also gathers information and prepares records regarding each child. All of these records are confidential and can only be disclosed to the judge, the child's attorney, someone who needs access to the records in order to defend against an action initiated by the child, and to those with a legitimate interest who obtain a court order. §§ 63-19-2010, 2020(A).

AUTHORIZED RELEASE OF INFORMATION BY DJJ

- DJJ's Director is required to develop policies for sharing "necessary and appropriate" information with service providers, other state agencies, and school districts as necessary to assist a child under DJJ's supervision. § 63-19-2020(B).
- Reports and recommendations produced by DJJ for the court's consideration at a dispositional hearing must be provided to the court, the solicitor, and the child's attorney by DJJ. § 63-19-2020(D).
- DJJ must notify the principal of a school in which a child is enrolled, intends to be enrolled, or was last enrolled upon final disposition of a case in which the child is charged with certain listed offenses. Each school is responsible for developing a policy to keep such information confidential. § 63-19-2020(E).
- Upon request, DJJ must provide the victim with defendant child's name, basic descriptive information, information about the juvenile justice system, the status of the case, available victim services, and DJJ's disposition recommendations. § 63-19-2020(F).
- Upon request, DJJ and/or SLED must provide to the Attorney General, a solicitor, or a law enforcement agency, a copy of a child's offense history for criminal justice purposes, and may provide other information pursuant to an ongoing criminal investigation or prosecution. § 63-19-2020(G), (H).
- DJJ may fingerprint and photograph a child upon the filing of a petition, release from detention, release on house arrest, or commitment to DJJ. Fingerprints and photographs taken by DJJ are confidential and must not be transmitted to SLED, the FBI, or another agency or person, except for the purpose of: aiding DJJ in apprehending an escapee; assisting the Missing Persons Information Center in finding a missing or runaway child; locating a

child who fails to appear in court as summoned; or locating a child subject to a house arrest order. § 63-19-2020 (I).

CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS

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

AUTHORIZED RELEASE OF INFORMATION BY LAW ENFORCEMENT

- Law enforcement information or records of children created pursuant to the provisions of the Juvenile Justice Code may be shared among law enforcement agencies, solicitors' offices, the Attorney General, DJJ, DMH, SCDC, and the Department of Probation, Parole and Pardon Services for criminal justice purposes without a court order. § 63-19-2030(D).
- Incident reports are to be provided to the victim pursuant to § 16-3-1520. § 63-19-2030(E).
- Incident reports, including information identifying a child, must be provided by law enforcement to the principal of the school in which the child is enrolled when the child has been charged with:
 - a violent crime;
 - an offense that would carry a maximum term of imprisonment of fifteen years or more if committed by an adult;
 - a crime involving a weapon;
 - assault and battery against school personnel;
 - assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or
 - distribution or trafficking unlawful drugs. *Id.*
- Incident reports involving other offenses must be provided to the principal upon request. This information must be maintained by the principal in the manner set forth in § 63-19-2030(E) and must be forwarded with the child's permanent school records if the child transfers to another school. *Id.*

PHOTOGRAPHS

A child charged with any offense may be photographed by the law enforcement agency that takes the child into custody. If the child is detained, the detention facility must photograph the child upon admission. These photographs may only be disseminated for criminal justice purposes or to assist the Missing Persons Information Center in locating or identifying a missing or runaway child. § 63-19-2030(F).

FINGERPRINTS

- A child charged with an offense that would carry a maximum term of imprisonment of **five years** or more if committed by an adult must be fingerprinted by the law enforcement agency that takes the child into custody. If the child is detained, the detention facility must fingerprint the child upon admission. § 63-19-2030(G).
- A law enforcement agency may petition the court for an order to fingerprint a child when the child is charged with any other offense or the law enforcement agency has probable cause to suspect the child of committing any offense. *Id.*
- A child's fingerprint records must be kept separate from the adult fingerprint records and transmitted to SLED's files. § 63-19-2030(H).
- When a child has been **adjudicated delinquent** for an offense that would carry a maximum term of imprisonment of **five years** or more if committed by an adult, the child's fingerprint records:
 - may be transmitted by SLED to the FBI files. § 63-19-2030(I).
 - must be provided by SLED or the law enforcement agency that took the child into custody to a law enforcement agency upon request for criminal justice purposes or to assist the Missing Person Information Center in locating or identifying a missing or runaway child. § 63-19-2030(J).
- A child's fingerprints and any SLED records regarding the fingerprints must not be disclosed for any purpose not specifically authorized by law or court order. § 63-19-2030(K).
- Upon notification that a child **has not been adjudicated** delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult, SLED and the law enforcement agency who took the child into custody must destroy the fingerprints and all records created as a result of such information. § 63-19-2030(L).

RELEASE OF INFORMATION TO NEWSPAPER, TV OR RADIO STATION

The name, identity, or picture of a child under the court's jurisdiction must not be provided to a newspaper, radio station, or television station unless:

- authorized by court order;
- the solicitor has petitioned the court to waive the child to circuit court;
- the child has been bound over to adult court; or
- the child has been adjudicated delinquent for:
 - a violent crime;
 - grand larceny of a motor vehicle;
 - a crime involving a weapon; or
 - unlawful drug distribution or trafficking. § 63-19-2040(A).

JUVENILE RECORDS STATUTES

SECTION 63-19-2010. Records.

The court shall make and keep records of all cases brought before it. The records of the court are confidential and open to inspection only by court order to persons having a legitimate interest in the records and to the extent necessary to respond to that legitimate interest. These records must always be available to the legal counsel of the child and are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

SECTION 63-19-2020. Confidentiality.

(A) Except as provided herein, all information obtained and records prepared in the discharge of official duty by an employee of the court or department are confidential and must not be disclosed directly or indirectly to anyone, other than the judge, the child's attorney, or others entitled under this chapter or any other provision of law to receive this information, unless otherwise ordered by the court. The court may order the records be disclosed to a person having a legitimate interest and to the extent necessary to respond to that legitimate interest. However, these records are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

(B) The director of the department must develop policies providing for the transmission of necessary and appropriate information to ensure the provision and coordination of services or assistance to a child under the custody or supervision of the department. This information must include that which is required for the admission or enrollment of a child into a program of services, treatment, training, or education. The information may be provided to another department or agency of state or local government, a school district, or a private institution or facility licensed by the State as a child-serving organization. This information may be summarized in accordance with agency policy.

(C) The director is authorized to enter into interagency agreements for purposes of sharing information about children under the supervision or in the custody of the department. The agencies entering into these agreements must maintain the confidentiality of the information.

(D) Reports and recommendations produced by the department for the court for the purpose of a dispositional hearing must be disseminated by the agency to the court, the solicitor, and the child's attorney.

(E)(1) The department must notify the principal of a school in which a child is enrolled, intends to be enrolled, or was last enrolled upon final disposition of a case in which the child is charged with any of the following offenses:

- (a) a violent crime, as defined in Section 16-1-60;
- (b) a crime in which a weapon, as defined in Section 59-63-370, was used;
- (c) assault and battery against school personnel, as defined in Section 16-3-612;

(d) assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or

(e) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(2) Each school district is responsible for developing a policy for schools within the district to follow to ensure that the confidential nature of a child offense history and other information received is maintained. This policy must provide for, but is not limited to:

(a) the retention of the child offense history and other information relating to the child offense history in the child's school disciplinary file or in some other confidential location;

(b) the destruction of the child offense history upon the child's completion of secondary school or upon reaching twenty-one years of age; and

(c) limiting access to the child's school disciplinary file to school personnel. This access must only occur when necessary and appropriate to meet and adequately address the educational needs of the child.

(F) When requested, the department must provide the victim of a crime with the name of the child and the following information retained by the department concerning the child charged with the crime:

(1) other basic descriptive information, including but not limited to, a photograph;

(2) information about the juvenile justice system;

(3) the status and disposition of the delinquency action including hearing dates, times, and locations;

(4) services available to victims of child crime; and

(5) recommendations produced by the department for the court for the purpose of a dispositional hearing.

(G) The department or the South Carolina Law Enforcement Division, or both, must provide to the Attorney General, a solicitor, or a law enforcement agency, upon request, a copy of a child offense history for criminal justice purposes. This information must not be disseminated except as authorized in Section 63-19-2030. The department and the South Carolina Law Enforcement Division must maintain the child offense history of a person for the same period as for offenses committed by an adult.

(H) Other information retained by the department may be provided to the Attorney General, a solicitor, or a law enforcement agency pursuant to an ongoing criminal investigation or prosecution.

(I) The department may fingerprint and photograph a child upon the filing of a petition, release from detention, release on house arrest, or commitment to a juvenile correctional institution. Fingerprints and photographs taken by the department remain confidential and must not be transmitted to the State Law Enforcement Division, the Federal Bureau of Investigation, or another agency or person, except for the purpose of:

(1) aiding the department in apprehending an escapee from the department;

(2) assisting the Missing Persons Information Center in the location or identification of a missing or runaway child;

(3) locating and identifying a child who fails to appear in court as summoned;

(4) locating a child who is the subject of a house arrest order; or (5) as otherwise provided in this section.

(J) Nothing in this section shall be construed to waive any statutory or common law privileges attached to the department's internal reports or to information contained in the file of a child under the supervision or custody of the department.

SECTION 63-19-2030. Law enforcement records.

(A) Except as provided herein, law enforcement records and information identifying children pursuant to this chapter are confidential and may not be disclosed directly or indirectly to anyone, other than those entitled under this chapter to receive the information.

(B) Law enforcement records of children must be kept separate from records of adults. Information identifying a child must not be open to public inspection, but the remainder of these records are public records.

(C) Law enforcement agencies must maintain admission and release records on children held in secure custody, nonsecure custody, or both. The records must include the times and dates of admission and release from secure and nonsecure custody and, if appropriate, the times and dates of transfer from one custody status to another.

(D) Law enforcement information or records of children created pursuant to the provisions of this chapter may be shared among law enforcement agencies, solicitors' offices, the Attorney General, the department, the Department of Mental Health, the Department of Corrections, and the Department of Probation, Parole and Pardon Services for criminal justice purposes without a court order.

(E) Incident reports in which a child is the subject are to be provided to the victim of a crime pursuant to Section 16-3-1520. Incident reports, including information identifying a child, must be provided by law enforcement to the principal of the school in which the child is enrolled when the child has been charged with any of the following offenses:

(1) a violent crime, as defined in Section 16-1-60;

(2) an offense that would carry a maximum term of imprisonment of fifteen years or more if committed by an adult;

(3) a crime in which a weapon, as defined in Section 59-63-370, was used;

(4) assault and battery against school personnel, as defined in Section 16-3-612;

(5) assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity; or

(6) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

Incident reports involving other offenses must be provided upon request of the principal. This information must be maintained by the principal in the manner set forth in Section 63-19-2020(E) and must be forwarded with the child's permanent school records if the child transfers to another school or school district.

(F) A child charged with any offense may be photographed by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must photograph the child upon admission. These photographs may only be disseminated for criminal justice purposes or to assist the Missing Persons Information Center in the location or identification of a missing or runaway child.

(G) A child charged with an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be fingerprinted by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must fingerprint the child upon admission. In addition, a law enforcement agency may petition the court for an order to fingerprint a child when:

- (1) the child is charged with any other offense; or
- (2) the law enforcement agency has probable cause to suspect the child of committing any offense.

(H) The fingerprint records of a child must be kept separate from the fingerprint records of adults. The fingerprint records of a child must be transmitted to the files of the State Law Enforcement Division.

(I) The fingerprint records of a child may be transmitted by the State Law Enforcement Division to the files of the Federal Bureau of Investigation only when the child has been adjudicated delinquent for having committed an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.

(J) The fingerprint records of a child adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be provided by the State Law Enforcement Division or the law enforcement agency who took the child into custody to a law enforcement agency upon request by that agency for criminal justice purposes or to assist the Missing Person Information Center in the location or identification of a missing or runaway child.

(K) The fingerprints and any record created by the South Carolina Law Enforcement Division as a result of the receipt of fingerprints of a child pursuant to this section must not be disclosed for any purpose not specifically authorized by law or court order.

(L) Upon notification that a child has not been adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult, the South Carolina Law Enforcement Division and the law enforcement agency who took the child into custody must destroy the fingerprints and all records created as a result of such information.

SECTION 63-19-2040. Release of information.

(A) The name, identity, or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be provided to a newspaper or radio or television station unless:

(1) authorized by court order;

(2) the solicitor has petitioned the court to waive the child to circuit court;

(3) the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or

(4) the child has been adjudicated delinquent in court for one of the following offenses:

(a) a violent crime, as defined in Section 16-1-60;

(b) grand larceny of a motor vehicle;

(c) a crime in which a weapon, as defined in Section 59-63-370, was used; or

(d) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(B) When a child is bound over to the jurisdiction of the circuit court, the provisions of this section pertaining to the confidentiality of fingerprints and identity do not apply.

(C) The provisions of this section do not prohibit the distribution of information pursuant to the provisions of Article 7, Chapter 3 of Title 23.

EXPUNGEMENT OF JUVENILE RECORDS

OVERVIEW

Expungement is the destruction of a juvenile's official records relating to being taken into custody, the charges filed against the child, the adjudication, and disposition. A person wishing to have his juvenile record expunged must petition the court for an order of expungement. If an expungement order is granted, that person's records must be completely destroyed. The effect of an expungement order is to "restore the person in the contemplation of the law to the status he occupied before being taken into custody." § 63-19-2050(C).

Once the court grants a person an order of expungement, the person may not be found guilty of perjury or giving false statement for failing to acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose. *Id.*

ELIGIBILITY REQUIREMENTS

Anyone seeking to have his juvenile record expunged:

- must be at least 18;
- must have successfully completed any court-ordered sentence; and
- must be free of any subsequent criminal charges. § 63-19-2050(A).

Even if someone is eligible to have his juvenile records expunged, expungement is discretionary with the judge. § 63-19-2050(A).

RESTRICTIONS

- No one under 18 may petition the court to have his juvenile record expunged. § 63-19-2050(A).
- No one who has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult may petition the court to have his juvenile record expunged. *Id.*
- Only status and nonviolent offenses can be expunged. An adjudication for a violent crime cannot be expunged. § 63-19-2050(B).

EXPUNGEMENT APPLICATION PROCESS

The Motion and Order for the Expungement of Juvenile Arrest Records (SCCA 492) was revised and approved for use in the Family Courts by order of Chief Justice Toal in July 2009. This form is available on the South Carolina Judicial Department website at www.sccourts.org.

The following steps must be taken to expunge a juvenile's record:

1. The applicant must apply to the solicitor in the circuit in which the offense was committed.
2. The applicant must pay the solicitor in the form of separate certified checks or money orders:
 - a. a non-refundable administrative fee of \$250 made payable to the solicitor,
 - b. a non-refundable SLED verification fee of \$25 made payable to SLED, when applicable,
3. a filing fee of \$35.00 made payable to the county clerk of court, when applicable.
4. The solicitor will send the application to DJJ and DJJ will return the application to the solicitor, either granting or denying approval.
5. If the application is approved by DJJ, the solicitor will send the application to SLED to verify that the offense is eligible for expungement, as provided by state law.
6. SLED will return the application to the solicitor and indicate if the offense is eligible for expungement.
7. If the offense is deemed eligible by SLED, the solicitor will obtain all necessary signatures, including the family court judge's signature.
8. Once the order is signed by the family court judge, the solicitor will file the order with the clerk of court.
9. The solicitor will provide copies of the expungement order to all pertinent governmental agencies as well as the applicant or the applicant's attorney.

EXPUNGEMENT STATUTE

SECTION 63-19-2050. Petition for record destruction.

(A) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status or a 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) disposition.

The granting of the order is in the court's discretion. However, a person may not petition the court if he has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult. In addition, the court must not grant the order unless it finds that the person who is seeking to have the records destroyed is at least eighteen years of age, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense.

(B) An adjudication for a violent crime, as defined in Section 16-1-60, must not be expunged.

(C) If the expungement order is granted by the court, no evidence of the records may be retained by any law enforcement agency or by any municipal, county, state agency, or department. The effect of the order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody. No person to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

(D) For purposes of this section, an adjudication is considered a previous adjudication only if it occurred prior to the date the subsequent offense was committed.

COMPETENCY

ADJUDICATIVE COMPETENCE

OVERVIEW

Due process requires that a defendant be competent to stand trial, which includes capacity to sufficiently understand the nature of the proceedings and to assist counsel in his defense. In *Drope v. Missouri*, 420 U.S. 162 (1975), the Court held that “[a] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel and to assist in preparing his defense may not be subjected to trial.” *State v. Bell*, 360 S.E.2d 706 (S.C. 1987).

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

STANDARD FOR ADJUDICATIVE COMPETENCE

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

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

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

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

1. Abilities related to “factual understanding” and “rational understanding” of the trial process.
 - a. *Factual understanding* refers to the youth’s basic understanding of the nature of the proceedings, including:
 - Nature and seriousness of the charges

- The purpose of a trial process and possible penalties
 - Possible pleas, and the nature of plea agreements
 - The role of various participants in the process, especially defense counsel and, including, the youth himself as the defendant
 - Rights of the youth throughout the process
- b. *Rational understanding* (sometimes called “appreciation” of the significance of what one factually understands) refers to the youth’s ability to apply this information in a manner that does not impair decision making. Several reasons for limitations often seen in youth’s rational understanding may be relevant:
- Understanding is often limited by the youth’s auditory and visual processing problems.
 - Immaturity may impair some youth’s abilities to perceive risks of various decisions realistically, to weigh their long-range consequences, or to decide autonomously rather than on the basis of perceptions of their peers.
 - Mental disorders that may distort or “override” factual understanding (for example, if they involve beliefs that distort the youth’s perceptions of the significance of the trial process).
2. Abilities associated with assisting counsel.
- a. *Abilities associated with communication and trust.* For example:
- Ability to comprehend counsel’s inquiries
 - Ability to discern what is relevant to counsel’s inquiry
 - Ability to articulate the relevant information related to counsel’s inquiry
- b. *Must be able to manage the demands of trial process.* For example:
- Must be able to endure stress of trial
 - Must be able to maintain demeanor
 - Must be able to testify relevantly, if necessary
3. *The role of decision making ability.* Deficits in abilities to make autonomous decisions may arise because of problems related to immaturity in all of the above areas. They may also arise due to an inability to understand factually or to apply the information rationally to one’s case. Any of these may reduce the youth’s ability to assist counsel. Thus, an examination of the youth’s ability to use information in a decision making process is especially important.

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

1. *Functional abilities.* What does the youth actually know, or what can the youth actually do, that is related to the factual and rational understanding components of competence to stand trial?

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

COMPETENCY EVALUATION

Authorization for Evaluation

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

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

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

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

If the DMH examiners find indications of intellectual disability or a related disability but not mental illness, DMH shall inform the court that the juvenile is "not mentally ill" and should be evaluated by DDSN instead of DMH. Likewise, if the DDSN examiners find indications of mental illness but not intellectual disability or a related disability, DDSN shall inform the court that the juvenile does "not have intellectual disability" and should be evaluated for competency to stand trial by DMH instead of DDSN. If either DMH or DDSN finds a preliminary indication of dual diagnosis of mental illness and intellectual disability or a related disability, this must be reported to the court with a recommendation that one

DMH examiner and one DDSN examiner be designated to further evaluate the juvenile and render a final report on the juvenile's mental capacity. §44-23-410(D).

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

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

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

Time Requirements

The evaluation is to be conducted within thirty days of receipt of the court's order. § 44-23-410(A)(1). The court may commit the juvenile to a DMH or DDSN facility for up to 15 days for "examination and observation." § 44-23-410(A)(2). DMH or DDSN may apply for an extension of up to 15 more days to complete the examination or the "examination and observation" if necessary. § 44-23-410(B).

Evaluation Report

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

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

The report shall include:

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

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

COMPETENCY HEARING (BLAIR HEARING)

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

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

Finding that juvenile is fit to stand trial

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

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

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

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

If the court finds the juvenile unfit to stand trial but likely to become fit to stand trial in the foreseeable future, the court shall order him hospitalized up to an additional 60 days. If the juvenile is found to be unfit at the conclusion of the additional period of treatment, the solicitor shall initiate judicial admission proceedings within 14 days, excluding weekends and holidays, during which time the juvenile shall remain hospitalized. §44-23-430(3).

A finding of unfitness to stand trial:

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

DISCHARGE FOLLOWING CIVIL COMMITMENT

When the hospital determines a juvenile with pending charges no longer requires hospitalization, the family court shall be notified and shall conduct a new hearing

on the juvenile's fitness to stand trial. If the court finds the juvenile remains unfit to stand trial, it must order the juvenile's release from the hospital. If the court finds the juvenile fit to stand trial, it may order that delinquency proceedings be resumed, or dismiss the charges and order the juvenile released. § 44-23-460.

COMPETENCY CASE LAW

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

In *Dusky*, the Court adopted the legal standard of competence that asks whether the defendant “has sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceeding against him.” (cited in *State v. Reed*, 503 S.E.2d 747 (S.C. 1998), *State v. Hill*, 604 S.E.2d 696 (S.C. 2004)).

***Drope v. Missouri*, 420 U.S. 162 (1975).**

In *Drope v. Missouri*, the Court held that a person “whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.”

***Jeter v. State*, 417 S.E.2d 594 (S.C. 1992).**

The court held that due process prohibits the conviction of a person who is mentally incompetent (citing *Bishop v. United States*, 350 U.S. 961 (1956)).

***State v. Blair*, 273 S.E.2d 536 (S.C. 1981).**

Blair established that defendant is entitled to a pretrial hearing on competency to stand trial (*Blair* Hearing).

***State v. Lambert*, 225 S.E.2d 340 (S.C. 1976),**

The *Lambert* Court held that the test of competency to enter a plea is the same as required to stand trial.

***State v. Reed*, 503 S.E.2d 747 (S.C. 1998).**

In *State v. Reed*, the court held that the defendant bears the burden of proving his incompetence by a “preponderance of the evidence.”

***State v. Locklair*, 535 S.E.2d 420 (2000).**

In *State v. Locklair*, the court held that the decision of whether to order a competency examination rests in the trial judge's discretion, and the trial judge's decision will not be overturned on appeal absent a clear showing of an abuse of that discretion. See also § 44-23-410.

FITNESS TO STAND TRIAL STATUTES

SECTION 44-23-410. Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.

(A) Whenever a judge of the circuit court or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

(1) order examination of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of having intellectual disability or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and intellectual disability or a related disability. The examination must be made within thirty days after the receipt of the court's order and may be conducted in any suitable place unless otherwise designated by the court; or

(2) order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disabilities and Special Needs for a period not to exceed fifteen days.

(B) Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen days to complete the examination or the examination and observation.

(C) If the person or the person's counsel requests, the court may authorize the person to be examined additionally by a designated examiner of the person's choice. However, the court may prescribe the time and conditions under which the independent examination is conducted.

(D) If the examiners designated by the Department of Mental Health find indications of intellectual disability or a related disability but not mental illness, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person is "not mentally ill" and recommend that the person should be evaluated for competency to stand trial by the Department of Disabilities and Special Needs. If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not intellectual disability or a related disability, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person does "not have intellectual disability or a related disability" and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health. If either the Department of Mental Health or the Department of Disabilities and Special Needs finds a preliminary indication of a dual diagnosis of mental illness and intellectual disability or a related disability, this preliminary finding must be reported to the court with the recommendation that one examiner from the Department of Mental Health and one examiner from the Department

of Disabilities and Special Needs be designated to further evaluate the person and render a final report on the person's mental capacity.

SECTION 44-23-420. Designated examiners' report.

(A) Within ten days of examination under Section 44-23-410(A)(1) or at the conclusion of the observation period under Section 44-23-410(A)(2), the designated examiners shall make a written report to the court which shall include:

- (1) a diagnosis of the person's mental condition; and
- (2) clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

(B) The report of the designated examiners shall not contain any findings nor shall the examiners testify on the question of insanity should it be raised as a defense unless further examination on the question of insanity is ordered by the court.

(C) The report is admissible as evidence in subsequent hearings pursuant to Section 44-23-430.

SECTION 44-23-430. Hearing on fitness to stand trial; effect of outcome.

Upon receiving the report of the designated examiners, the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:

- (1) the person is fit to stand trial, it shall order the criminal proceedings resumed; or
- (2) the person is unfit to stand trial for the reasons set forth in Section 44-23-410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the court may order the person hospitalized, may order the person to continue in detention if detained, or, if on bond, may permit the person to remain on bond; or
- (3) the person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized up to an additional sixty days. If the person is found to be unfit at the conclusion of the additional period of treatment, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the person shall remain hospitalized.

Subject to the provisions of Section 44-23-460, persons against whom criminal charges are pending shall have all the rights and privileges of other involuntarily hospitalized persons. Persons against whom criminal charges are pending but who are not involuntarily committed following judicial admission proceedings shall be released.

SECTION 44-23-440. Finding of unfitness to stand trial shall not preclude defense on merits.

A finding of unfitness to stand trial under Section 44-23-430 does not preclude any legal objection to the prosecution of the individual which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

If either the person found unfit to stand trial or his counsel believes he can establish a defense of not guilty to the charges other than the defense of insanity, he may request an opportunity to offer a defense on the merits to the court. The court may require affidavits and evidence in support of such request. If the court grants such request, the evidence of the State and the defendant shall be heard before the court sitting without a jury. If after hearing such petition the court finds the evidence is such as would entitle the defendant to a directed verdict of acquittal, it shall dismiss the indictment or other charges.

SECTION 44-23-450. Reexamination of finding of unfitness.

A finding of unfitness to stand trial under Section 44-23-430 may be reexamined by the court upon its own motion, or that of the prosecuting attorney, the person found unfit to stand trial, his legal guardian, or his counsel. Upon receipt of the petition, the court shall order an examination by two designated examiners whose report shall be submitted to the court and shall include underlying facts and conclusions. The court shall notify the individual, his legal guardian, and his counsel of a hearing at least ten days prior to such hearing. The court shall conduct the proceedings in accordance with Section 44-23-430, except that any petition that is filed within six months after the initial finding of unfitness or within six months after the filing of a previous petition under this section shall be dismissed by the court without a hearing.

SECTION 44-23-460. Procedure when superintendent believes person charged with crime no longer requires hospitalization.

When the superintendent of a hospital or intellectual disability facility believes that a person against whom criminal charges are pending no longer requires hospitalization, the court in which criminal charges are pending shall be notified and shall set a date for and notify the person of a hearing on the issue of fitness pursuant to Section 44-23-430. At such time, the person shall be entitled to assistance of counsel:

- (1) if upon the completion of the hearing, the court finds the person unfit to stand trial, it shall order his release from the hospital; and
- (2) if such a person has been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged, the court shall order the charges dismissed and the person released; or
- (3) the court may order that criminal proceedings against a person who has been found fit to stand trial be resumed, or the court may dismiss criminal charges and order the person released if so much time has elapsed that prosecution would not be in the interest of justice.

JUDICIAL COMMITMENT STATUTES

SECTION 44-24-90. Notification to child and guardian of petition; contents of petition; right to counsel; examination and conclusions.

(A) Proceedings for judicial admission to a treatment program or facility begin by an interested person filing a written petition with the court of the county where the child is present or where the child is a resident. The petition must state the factual basis of the person's belief that:

- (1) the child is in need of treatment;
- (2) treatment may be obtained only through an involuntary admission.

(B) The petition may be accompanied by a certificate of an examiner stating that he has examined the child and is of the opinion the child is a child in need of treatment. The certificate or written statement must contain the underlying facts upon which the examiner or petitioner bases his conclusions.

(C) Upon receiving a petition the court shall give the child and his legal guardian, the guardian ad litem, if one has been appointed, and other interested persons notice by certified mail of the petition and of the child's right to counsel. Every reasonable effort must be made to notify the child's natural parents of the petition.

(D) Within three days after a petition for judicial commitment is filed, exclusive of Saturdays, Sundays, and legal holidays, the court shall appoint counsel to represent the child if counsel has not been retained in the child's behalf. The court shall appoint two examiners, one of whom must be a licensed physician, to examine the child and report to the court their findings as to the child's mental condition and the need, if any, for treatment. If the child refuses examination, the court may require a law enforcement officer to take the child into custody and to transport him for examination by the two examiners. After the examination, the child must be released. A record of the examination must be made and offered to his counsel. If the conclusions of the examination are that the child is a child in need of treatment, the underlying facts must be recorded as well as the conclusion. The child or his guardian may request an additional examination by an independent examiner. The examination must be conducted at public expense.

SECTION 44-24-100. Notice of hearing for emergency or judicial admission.

Notice of the hearing for an emergency admission or a judicial admission must be given to the child or his guardian, his counsel, and other interested persons at least five days before the hearing, exclusive of Saturdays, Sundays, and legal holidays. The notice must include the time, date, and place of the hearing, a clear statement in plain and simple language of the purpose of the proceedings, and the possible consequences to the individual for whom involuntary admission is sought and a copy of the petition or affidavit and supporting certificates of the examining physician.

SECTION 44-24-110. Examiners' reports; disposition of child where report does not recommend judicial admission, recommends judicial admission, or is divided.

(A) The written reports filed with the court by the designated examiners must include, but are not limited to, questions relating to whether or not the child poses an imminent danger to himself or others, whether or not recent overt acts are indicative of a child in need of treatment, and whether or not a less restrictive placement is recommended and available.

(B) If the report of the examiners is that the child is not in need of judicial admission, the court shall dismiss the petition and the child must be discharged immediately by the place of admission if the child has been admitted to a treatment facility or program.

(C) If the report of the examiners is that the child is a child in need of judicial admission, the court may order that the child be detained at the place of his admission or in another treatment facility or program.

(D) If the report of the examiners is divided, the court may terminate the proceedings or shall designate a third examiner, who must be a psychiatrist or psychologist trained or experienced in the treatment of children, and order that the three examiners render a majority opinion within three days exclusive of Saturdays, Sundays, and legal holidays.

SECTION 44-24-120. Removal of proceedings to another county.

The child or the child's guardian may request removal of the proceedings to another county of the State when the convenience of witnesses and the ends of justice require it. When the place of the proceedings is changed, all other proceedings must be held in the county to which the place of hearing is changed, unless otherwise provided by the filed consent of the parties in writing or order of the court. The papers must be filed or transferred accordingly.

SECTION 44-24-130. Hearing; location; testimony; rules of evidence; transcript.

A person to whom notice is required may appear at the hearing, testify and, within the discretion of the court, present and cross-examine witnesses, and the court may receive the testimony of other persons. The court may hold the hearing in a suitable location in the State, without regard to whether the location is in the county of the court conducting the hearing, when the judge is satisfied that the health and welfare of the child concerned is best served by conducting the hearing in a location other than the court. The hearing may be conducted in an informal manner consistent with orderly procedure. The court shall follow the rules of evidence applicable to the probate courts in receiving evidence. The child or his legal guardian may have a free transcript of the record of the proceedings.

SECTION 44-24-140. Determination after presentation of evidence.

(A) If the court finds, after presentation of all the evidence, that the child is not in need of judicial admission, the court shall order that he must be discharged if he has been hospitalized before the hearing.

(B) If upon completion of the hearing and consideration of the record the court finds upon clear and convincing evidence that the child is in need of judicial admission, the court may order treatment in the department or at another program or facility that agrees to accept the child.

SECTION 44-24-150. Psychiatric evaluations of children; notification of victims.

(A) A family court may order that a child, who is otherwise before the court on another matter, be given a psychiatric evaluation by the appropriate community mental health center. The community mental health center shall schedule the child for the ordered evaluation as soon as possible and shall provide the family court with a written report of the results of the evaluation within five working days following the evaluation.

(B) If the community mental health center reports to the family court that the child is in need of an inpatient psychiatric evaluation, the family court may commit the child to a hospital designated by the department for a psychiatric evaluation. An order of commitment for psychiatric evaluation may not exceed fifteen days. Upon written request by the department to the court, the evaluation period may be extended for no more than an additional fifteen days. Upon notification by the department to the court that the evaluation has been completed, the court shall issue an order to implement the immediate discharge of the child from the hospital.

(C) If a psychiatric evaluation indicates a child is in need of judicial admission, the family court may:

- (1) defer to the probate court for purposes of commitment to a range of services; or
- (2) commit to a range of services utilizing the procedures and forms applicable to the probate court pursuant to Chapter 23 and Sections 44-24-90 through 44-24-140.

(D) Any victim of a child charged with a crime and held in detention who is ordered to a mental health facility for a psychiatric evaluation must be notified pursuant to Article 15, Chapter 3, Title 16 of the child's transfer to or discharge from a mental health facility.

MENTAL HEALTH ISSUES

MACARTHUR FOUNDATION'S JUVENILE COURT TRAINING CURRICULUM

To gain a better understanding of adolescent development and mental health issues affecting juveniles involved in the family court system, request a copy of *Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum* from the National Juvenile Defender Center.

Intended for juvenile court judges, defense attorneys, prosecutors, and probation staff, the curriculum provides in-depth training materials on the most up-to-date adolescent development research and its application to juvenile court practice. As a part of the MacArthur Foundation's project, *Models for Change: Systems Reform in Juvenile Justice*, this curriculum is available to jurisdictions across the country to enhance the capacity of professionals to make high-quality, developmentally appropriate decisions about the court-involved youth with whom they work.

Each of the five training modules that comprise the curriculum contains comprehensive substantive material, as well as interactive training exercises. The modules are organized as follows:

- **Module One: Adolescent Development** provides participants with a working knowledge of key aspects of adolescent development and their application to decision making at critical junctures in the juvenile court process.
- **Module Two: Screening, Assessing, and Evaluating Youth** provides professionals with information about forensic evaluations, as well as screening and assessment instruments used in juvenile justice systems.
- **Module Three: Special Education and Disability Rights** provides an overview of education-related disabilities, the laws pertaining to special education and disability rights, and the relevance of special education and disability rights for juvenile courts.
- **Module Four: Legal Questions about Youth's Capacities** reviews the legal questions in delinquency cases that require information about youth's capacities, including the validity of waivers of *Miranda* rights, the voluntariness of confessions, the competence of youth to participate in the legal process, and the transfer of youth to criminal court.
- **Module Five: Communicating with Youth: Interviews and Colloquies** describes techniques for effective communication with youth involved in the juvenile court system, including respondents, witnesses and complaining witnesses. In particular, the module covers how professionals can incorporate developmental considerations into their communications with youth, whether they are trying to get information from, or impart information to, youth.

To obtain a copy of the Curriculum or to request training based on the Curriculum, go to the National Juvenile Defender Center website at <http://www.njdc.info/>.

DMH INTER-AGENCY INITIATIVES

** The following information was obtained from SCDMH's website January 2013.*

The DMH-Division of Children, Adolescents and Their Families (CAF) has partnered with other child serving agencies, forming inter-agency initiatives to expand and enhance the system of care available to the children and families of South Carolina. Several of these initiatives are discussed below.

CHILD MENTAL HEALTH/DJJ INITIATIVES

These initiatives represent a partnership between mental health and juvenile justice. They serve to divert youth with serious mental illness and/or serious emotional disturbance from the criminal justice system and to ensure that children and adolescents who have already penetrated the system have access to appropriate care and services.

DMH serves children and adolescents at all levels of the juvenile justice spectrum including youth on probation, parole and those committed to the DJJ institutions. Mental health professionals are out stationed in county DJJ offices in several catchment areas. Diversion programs targeting status offenders are available at eight (8) CMHCs. These early intervention programs strive to keep youth in home, in school and out of trouble (DJJ). Additionally, the department partners with DJJ to provide intensive family services using the Multi-Systemic Therapy Model at six (6) CMHCs.

DMH provides services to seriously mentally ill youth committed to DJJ. A federal class action law suit filed against DJJ resulted in the formation of a subclass of youth classified as seriously mentally ill. The court found that these youth, though committed to DJJ, must be transferred to the agency best qualified to treat them, DMH. These youth are transferred to DMH for placement in a therapeutic setting. However, they remain committed to DJJ and are under the jurisdiction of the SC Board of Juvenile Parole.

DJJ AND DSS FAMILY PRESERVATION/MULTI-SYSTEMIC THERAPY INITIATIVES

These programs work closely with DJJ and DSS to prevent the removal of children from the home and to stabilize and strengthen the child/family's functioning and adjustment. Family preservation is an important clinical intervention that is often used to reunite children with their families.

SHARED PURCHASE OF RESIDENTIAL TREATMENT SERVICES

This service is primarily a fiscal vehicle through which DMH secures proportionate funding from all agencies having some programmatic responsibility for the child being served (i.e., the child is eligible for the services of multiple

state agencies). Upon making a determination that a child has multiple needs that require the services of other child-serving agencies, a staffing is convened by the "lead agency" for the purposes of developing a comprehensive and coordinated treatment plan, and determining each agency's proportionate share of the costs. In the case of children in DSS custody, agencies contribute annually to a legislatively-mandated pooled services fund, which can then be accessed to pay service costs for eligible consumers.

INTERAGENCY SYSTEM OF CARE FOR EMOTIONALLY DISTURBED CHILDREN (ISCEDC)

The purpose of this program is to establish a pooled services fund, and prescribe an interagency service planning process for addressing the needs of emotionally-disturbed children in DSS custody. ISCEDC is a legislatively-mandated program aimed at placing the decision-making responsibility and funding authority for therapeutic residential placements at the local level. County-based Interagency Staffing Teams (IST), which include a representative from DMH, review clinical information to determine ISCEDC eligibility and the initial level of therapeutic care that is needed. Interagency Staffing Teams (IST) have been established in each county. They include, at a minimum, DSS/Managed Treatment Services, DSS/Regular Foster Care and DMH. Other agencies such as COC, DJJ, school districts, local drug abuse and alcohol (DAODAS), and DDSN would participate if they are involved or are expected to become involved with the child.

A child may be referred for an ISCEDC staffing if he/she is either at-risk or in need a therapeutic residential placement. The goals of the ISCEDC program are to ensure that children are placed in therapeutic residential placement only when necessary, and to ensure that such placement is the least restrictive, most appropriate level of care for addressing their treatment needs. Services paid from this fund include therapeutic placement services and wraparound.

SPECIALIZED RESIDENTIAL PROGRAMS FOR UNDER-SERVED POPULATIONS OF YOUTH

DMH partners with public and private agencies to meet the needs of severely emotionally disturbed children and adolescents whose needs are too complex to be met by the State's current service delivery system. DMH partnered with the Governor's Office, Office of Children's Affairs to provide start up funding for the development of high management rehabilitative services for deaf and emotionally disturbed youth. This program is operated by the Center for Change. DMH also partnered with the Governor's Office of Children's Affairs, DDSN and the DSS/Division of Managed Treatment Services in the development of New Pathways, a high management rehabilitative services for dually diagnosed severely emotionally disturbed youth. New Pathways is located in House 5 on DMH grounds and is operated by Mentor, Inc.

QUICK REFERENCE GUIDE TO DISORDERS COMMON IN PSYCHOLOGICAL REPORTS OF CHILDREN

Prepared by:
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These descriptions are summarized from the Diagnostic and Statistics Manual of Mental Disorders, Fourth Edition – Text Revision (2000). Included here are those disorders that are most likely to appear in the psychological reports of children and adolescents.

Adjustment Disorder

The essential feature is the development of clinically significant emotional or behavioral symptoms in response to an identifiable psychosocial stressor or stressors. The stressor(s) is generally identified on Axis IV of the DSM multi-axial system. Adjustment Disorders are coded according to the subtype that best fits the predominant symptoms:

- With Depressed Mood - This is used when the predominant features include symptoms such as depressed mood, tearfulness, or feelings of hopelessness.
- With Anxiety - This specifier is used when the main features are symptoms such as nervousness, worry, or jitteriness.
- With Mixed Anxiety and Depressed Mood - This subtype is used to reflect combination of depression and anxiety.
- With Disturbance of Conduct - This is used when the predominant feature is a disturbance in conduct in which there is a violation of the rights of others or violation of major age-appropriate societal norms and rules (e.g., truancy, vandalism, reckless driving, fighting).
- With Mixed Disturbance of Emotions and Conduct - This subtype is used when the predominant manifestations are both emotional systems (e.g., depression, anxiety) and a disturbance of conduct.

Attention - Deficit/Hyperactivity Disorder

The essential feature is a persistent pattern of inattention and/or hyperactivity-impulsivity that is more frequent and severe than is typically observed in individuals at a comparable level of development. Some hyperactive-impulsive or inattentive symptoms that cause impairment must have been present before age seven. Associated features may include low frustration tolerance, temper outburst, bossiness, stubbornness, moodiness, and excessive insistence that requests be met.

- Combined Type - Multiple symptoms of both inattention and hyperactivity-impulsivity.
- Predominantly Inattentive Type - Symptoms of hyperactivity-impulsivity are minimal or absent. (This is sometimes informally referred to as ADD).
- Predominantly Hyperactive-Impulsive Type - Symptoms of inattention are minimal.

Bipolar Affective Disorder

A mood disorder characterized by mood swings that either fluctuate rapidly or over longer periods. Individuals with this disorder typically experience periods of depression or dysthymia alternating with periods of mania or hypomania (periods of elevated mood or agitation, expansiveness, less need for sleep).

Child or Adolescent Antisocial Behavior

Used when a focus of clinical attention is antisocial behavior in a child or adolescent that is not due to a mental disorder (e.g., Conduct Disorder or an Impulse-Control Disorder). Examples include isolated delinquent acts that are not part of a pattern and may not be typical for that child.

Conduct Disorder

The essential feature is a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated. The behavior pattern is usually present in a variety of settings such as home, school, or the community. Because individuals with Conduct Disorder are likely to minimize their conduct problems, the clinician often must rely on additional informants. Individuals with this disorder characteristically demonstrate relatively serious disruptive behaviors such as, initiating aggressive behavior, destruction of others' property, deceitfulness or theft, or frequently running away from home.

- Childhood-Onset Type- At least one symptom began prior to age ten. These individuals are more likely to have persistent Conduct Disorder and to develop adult Antisocial Personality Disorder than are those with Adolescent-Onset Type.
- Adolescent-Onset Type- Symptoms of Conduct Disorder are absent prior to age ten. These individuals are less likely to display aggressive behaviors and tend to have more normative peer relationships than those with Childhood-Onset Type.
- Severity of the disorder is rated Mild, Moderate, or Severe.

Older diagnostic systems (prior to 1994) used the following descriptors:

- Group Type or Socialized Nonaggressive Type - Conduct problems occur mainly as a group activity with peers. Aggression may or may not be present.
- Solitary Aggression Type or Undersocialized Aggressive Type- Aggressive physical behavior predominates, usually toward both adults and peers, and the individual usually acts alone.
- Undifferentiated Type- The child or adolescent has a mixture of clinical features that cannot be classified as either of above.

Depression

Individuals with this disorder display either a depressed mood or loss of interest in pleasurable activities. Other symptoms may include weight loss or gain, sleep disturbance, psychomotor agitation or retardation, fatigue, feelings of worthlessness or guilt, inability to concentrate and/or thoughts of death. Also in children, chronic boredom can be a sign of depression.

Depression with Psychotic Features

Besides displaying the characteristics of depression, individuals with this disorder also experience hallucinations or delusions. These typically involve depressive themes such as hearing voices that berate them for shortcomings or sins, or delusions of being responsible for something bad that happened.

Disruptive Behavior Disorder NOS

Used for disorders characterized by a pattern of conduct or oppositional defiant behaviors that does not meet full criteria for Conduct Disorder or Oppositional Defiant Disorder.

Dysthymic Disorder

The essential feature is a chronically depressed mood that occurs for most of the day more days than not for at least 2 years. Individuals with this disorder often describe their mood as "sad." In children, the mood may be irritable rather than depressed, and the duration is only one year. During periods of depressed mood, some of the following symptoms are seen: poor appetite or overeating, insomnia or hypersomnia, low energy or fatigue, low self-esteem, poor concentration or difficulty making decisions.

Intellectual Disability (formerly "Mental Retardation")

The essential feature of Intellectual Disability is significantly subaverage general intellectual functioning that is accompanied by significant symptoms in adaptive functioning, with onset prior to age 18.

- Mild (IQ level 50 -55 to approx. 70) - Typically develop social and communication skills during the preschool years, have impairment in sensorimotor areas, and often are not distinguishable from children without Intellectual Disability until a later age. By their late teens, they can acquire academic skills up to approximately the six-grade level. During adult years, they usually achieve social and vocational skills adequate for minimum self-support, but may need supervision, guidance, and assistance, especially when under unusual social or economic stress. With appropriate supports, individuals with Mild Intellectual Disability can usually live successfully in the community, either independently or in supervised settings.
- Moderate (IQ level 35 - 40 to 50-55) - Most of the individuals with this level of Intellectual Disability can acquire communication skills during early childhood years. They profit from vocational training, and with moderate supervision, can attend to their personal care. They can also benefit from training in social and occupational skills but are unlikely to progress beyond the second-grade level in academic subjects. They may learn to travel independently in familiar places. During adolescence, their difficulties in recognizing social conventions may interfere with peer relationships. In their adult years, the majority are able to perform unskilled or semiskilled work under supervision in sheltered workshops or in the general work force. They adapt well to life in the community, usually in supervised settings.
- Severe and Profound - These individuals typically require institutional care.

Intermittent Explosive Disorder

The essential feature is the occurrence of discrete episodes of failure to resist aggressive impulses that result in serious assaultive acts or destruction of property. The degree of aggressiveness expressed during an episode is grossly out of proportion to any provocation or precipitating stressor. This diagnosis is made only after other mental disorders that might account for these episodes have been ruled out (e.g., a personality disorder, Conduct Disorder, a Manic Episode, or ADHD).

Learning Disorders

The essential feature is inadequate development of specific academic, language, speech, or motor skills that is not due to a general medical condition. Often, the individual has average intelligence, but manifests difficulty in one specific area. These are now diagnosed individually, for example:

- Mathematics Disorder
- Reading Disorder (Dyslexia)
- Disorder of Written Expression, etc.

Malingering

The essential feature of Malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding responsibility or evading prosecution.

Oppositional - Defiant Disorder

The essential feature is a recurrent pattern of negativistic, defiant, disobedient, and hostile behavior toward authority figures that persists for at least 6 months. These behaviors may be expressed by persistent stubbornness, resistance to directions, and unwillingness to compromise. Hostility may be directed at adults or peers and is shown by deliberately annoying others or by verbal aggression. Symptoms are usually more evident in interactions with adults or peers the individual knows well and are typically justified as responses to unreasonable demands or circumstances.

Personality Disorder

A Personality Disorder is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Personality Disorders are generally not diagnosed in adolescents since this is recognized as a period of development and change.

- Paranoid - a pattern of distrust and suspiciousness such that others' motives are interpreted as malevolent.
- Schizoid - a pattern of detachment from social relationships and restricted range of emotional expression.
- Schizotypal - a pattern of acute discomfort in close relationships, cognitive or perceptual distortions, and eccentricities of behavior.
- Antisocial - a pattern of disregard for, and violation of, the rights of others.
- Borderline - a pattern of instability in interpersonal relationships, self image, and affects, and marked impulsivity.

- Histrionic - a pattern of excessive emotionality and attention seeking.
- Narcissistic - a pattern of grandiosity, need for admiration, and lack of empathy.
- Avoidant - a pattern of social inhibition, feelings of inadequacy, and hypersensitive to negative evaluation.
- Dependent - a pattern of submissive and clinging behavior related to an excessive need to be taken care of.
- Obsessive-Compulsive - a pattern of preoccupation with orderliness, perfectionism, and control.

Post-traumatic Stress Disorder

The essential feature of this disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor. Examples include sexual abuse or rape, witnessing or causing a death, surviving a serious car accident, or learning about an unexpected or violent death or injury to a family member. Symptoms include persistent re-experiencing of the event (e.g., nightmares, persistent memories, or "flashbacks"), persistent avoidance of stimuli associated with the trauma (e.g., trying not to think about it, or being unable to recall certain aspects of the event), and increased arousal (e.g., difficulty sleeping, exaggerated startle response, irritability or outbursts of anger)

Schizophrenia

A group of psychotic disorders characterized by withdrawal from reality with highly variable accompanying affective, behavioral and cognitive disturbances. Common symptoms include delusions and hallucinations.

Separation Anxiety Disorder / School Phobia

Developmentally inappropriate and excessive anxiety concerning separation from home or from those to whom the individual is attached. This may take the form of persistent and excessive worry about something bad happening to a loved one, refusal to go to school because of fear, or repeated nightmares involving the theme of separation.

Sexual Abuse of a Child

Unfortunately, this wording is used in the DSM-IV for both victims and perpetrators; the main distinction is the diagnostic code:

- 995.5 when the focus of clinical attention is on the victim
- V61.21 when focus is on the perpetrator

"V" Codes

Diagnoses which may be the focus of clinical attention but which do not warrant a clinical diagnosis are preceded by the letter "V." Examples include:

- V61.20 Parent-Child Relational Problem
- V61.21 Sexual Abuse of a child
- V65.2 Malingering
- V71.02 Child or Adolescent Antisocial Behavior

MISCELLANEOUS TERMS

Acute: Term used to describe a disorder of sudden onset and relatively short duration, usually with intense symptoms.

Affect: Experience of emotion or feeling.

Anhedonia: Inability to experience pleasure or joy; often seen in depressed and schizophrenic individuals.

Aphasia: Loss or impairment of ability to express and/or understand language.

Ataxia: Muscular dyscoordination.

b.i.d.: Used in prescribing medications; specifies taking the medication twice daily.

Bv History: Used to indicate that the diagnosis is being made on the basis of a previous evaluation, e.g., the discharge summary from a recent hospitalization.

"Cluster B Traits": Used in place of a personality disorder diagnosis when the client displays characteristics of Antisocial, Borderline, Histrionic, and/or Narcissistic Personality Disorder, but it is believed that a full-blown personality disorder is not yet developed, or the child is too young to be diagnosed with a personality disorder. Sometimes used for an individual with a tendency to self-mutilate.

Cognitive: Having to do with thinking, understanding, and reasoning.

Decompensation: Ego or personality disorganization under excessive stress.

DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. This is the classification system used by most psychologists and psychiatrists in the U.S. Another diagnostic system is the ICD-9 (see below).

Enuresis: Bed-wetting; involuntary release of urine.

Fetal Alcohol Syndrome: An observed pattern in the children of mothers who drank alcohol while pregnant, in which there is characteristic facial or limb irregularity, low birth weight, and behavioral and cognitive abnormalities.

h.s.: Used in prescribing medications; specifies taking the medication each night at bedtime.

Hypnagogic: A sensory or motor phenomenon occurring during the transition from wakefulness to sleep, sometimes mistaken for a hallucination.

Hypnopompic: A sensory or motor phenomenon occurring as one is waking up, sometimes mistaken for a hallucination.

Hypomania: Mild form of manic reaction, characterized by moderate psychomotor activity and/or feelings of euphoria. Can be a symptom of Bipolar Disorder II.

Hypoxia: Insufficient delivery of oxygen, typically to the brain.

ICD-9: International Classification of Diseases, Ninth Edition. This classification system is similar to the DSM and is used when completing Medical Necessity Statements.

In Full Remission: There are no longer any signs or symptoms of the disorder.

In Partial Remission: The full criteria for the disorder were previously met, but currently only some of the symptoms or signs of the disorder remain.

Labile: Tending to change affective states quickly, e.g., shifting from laughing to crying and back again as the topic of conversation changes. Also used to indicate inappropriate and/or exaggerated emotional expression.

Malingering: Consciously faking an illness or disability.

Mania: Emotional state characterized by intense and unrealistic feelings of excitement and euphoria. In children and adolescents, this often presents as irritability instead of euphoria.

Mental Status Examination: An evaluation (both by observation and interview) of the client's current mental state, including factors such as mood, attention span, quality of speech, memory, level of consciousness, and presence or absence of psychotic signs.

Narcolepsy: Disorder characterized by transient, compulsive states of sleepiness. A form of epilepsy.

Neurological examination: Examination to determine the presence and extent of organic damage to the nervous system. Evaluates reflexes, eye movements, muscular coordination, and related functions of the nervous system.

Neuropsychological assessment: Use of psychological tests that measure cognitive, perceptual and motor performance to determine the extent and locus of possible brain damage or central nervous system dysfunction.

NOS: Not Otherwise Specified. This term is used when the presentation conforms to the general guidelines for the disorder, but the client does not meet enough of the criteria to warrant the full diagnosis.

P.O.: Used in prescribing medications; specifies taking the medication by mouth.

Premorbid: Existing prior to the onset of mental disorder.

Prior history: Used when it is useful to indicate that the client had carried the diagnosis at some time in the past, since this information might elucidate current functioning.

Psychomotor epilepsy: (Also referred to as temporal lobe epilepsy). State of disturbed consciousness in which an individual may perform various actions, sometimes of a violent nature, which he or she cannot remember later.

QD: Used in prescribing medications; specifies taking the medication every day (i.e., once a day).

qid: In prescribing medications, signifies taking the medication four times per day.

Rule Out (R/O): Used when the client displays symptoms of a disorder and it is not yet clear whether he or she actually has the disorder. (Example: 'R/O Bipolar Disorder' means the child or adolescent appears to have symptoms of Bipolar Disorder and this diagnosis is yet to be confirmed.)

Sequelae: The symptoms remaining as the aftermath of a disorder.

Somatic: Pertaining to the body, e.g., "somatic complaints" typically means complaints of aches and pains.

Temporal lobe epilepsy: See psychomotor epilepsy.

Trichotillomains: The nervous habit of pulling out one's hair.

MEDICATIONS

The following medications are listed according to their typical uses; many have multiple uses that may overlap with other categories. This does not represent an exhaustive list. These are listed by brand name (generic names in parentheses).

Anxiety Disorders

Atarax (hydroxyzine)
Ativan (lorazepam)
BuSpar (buspirone)
Compazine (prochlorperazine)
Effexor XR (venlafaxine)
Librium (chlordiazepoxide)
Paxil (paroxetine)
Tranxene (chlorazepate)
Valium (diazepam)
Vistaril (also known as a sleep aid)
Xanax (alprazolam)

Attention Deficit-Hyperactivity Disorder

Adderall
Concerta (one of several time-released versions)
Cylert (pemoline)
Dexedrine (dextroamphetamine)
Focalin (dexamethylphenidate)
Ritalin (metadate) (methalin)
(methylphenidate)
Strattera

Bed-wetting

DDAVP (desmopressin)
Tofranil (imipramine)

Bipolar Disorder

Some are seizure disorder medications as well
Depakote (divalproex)
Depakene (valproic acid)
Klonopin (clonazepam)
Eskalith (lithium, lithium)

Lamictal (lamotrigine)
Topamax (topiramate)
Tegretol (carbamazepine) (Carbatrol)
Tripleptal (oxcarbazepine)
Zyprexa (olanzapine)

Depression

Aventyl (Pamelor) (nortriptyline)
Celexa (citalopram)
Desyrel (trazodone) (also used for sleep problems)
Effexor (venlafaxine)
Elavil (amitriptyline)
Imipramine (also used to treat enuresis)
Lexapro (escitalopram)
Luvox (used especially for OCD)
Nardil (phenelzine)
Norpramin (desipramine)
Pamelor (nortriptyline)
Parnate (tranylcypromine)
Paxil (paroxetine)
Prozac (fluoxetine)
Remeron (mirtazapine)
Serzone (nefazodone)
Sinequan (doxepine)
Tofranil (imipramine)
Trazadone (desyrel) (also used to treat sleep disorder)
Vivactil (protriptyline)
Wellbutrin (bupropion)
Zoloft (sertraline)

Insomnia

Some antidepressants are also used for sleep problems
Ambien (zolpidem)

Dalmane (flurazepam)
Doral (quazepam)
Halcion (triazolam)
Restoril (temazepam)
Sonata (zaleplon)

Obsessive-Compulsive Disorder

Anafranil (clomipramine)
Paxil (paroxetine)
Prozac (fluoxetine)
Zoloft (sertraline)

Panic Disorder

Klonopine (clonazepam)
Paxil (paroxetine)
Xanax (alprazolam)
Zoloft (sertraline)

Post-traumatic Stress Disorder

Paxil (paroxetine)
Zoloft (sertraline)

Psychosis and Schizophrenia

Abilify (aripiprazole)
Clozaril (clozapine)
Compazine (prochlorperazine)
Geodon (zipraxidone)
Haldol (haloperidol)
Mellaril (thioridazine)
Moban (molindone)
Navane (thiothixene)
Risperdal (risperidone)
Serentil (mesoidazine)
Seroquel (quetiapine)
Stelazine (trifluoperazine)
Thorazine (chlorpromazine)
Triavil (amitriptyline with perphenazine)
(Etrafon)
Trilafon (perphenazine)
Zyprexa (olanzapine)

Severe Behavior Problems in Children

Thorazine (chlorpromazine)
Haldo (haloperidol)

DIAGNOSTICS

The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised (DSM-IV-TR) uses a multiaxial diagnostic system. This means that clients are assessed on several axes, each of which refers to a different domain of information that may aid in treatment planning. There are five axes included in the DSM-IV diagnostic classification:

- | | |
|----------|---|
| Axis I | Clinical Disorders and other conditions that may be a focus of clinical attention |
| Axis II | Personality Disorders / Mental Retardation |
| Axis III | General Medical Conditions |
| Axis IV | Psychosocial and Environmental Problems |
| Axis V | Global Assessment of Functioning |

PSYCHOLOGICAL TESTS

The following is a list of commonly used psychological tests, with brief descriptions of their purpose(s):

Bender Visual- Motor Gestalt Test - Neuropsychological screening, visual-motor coordination

DAP (Draw-A-Person) - Personality

Developmental Test of Visual-Motor Integration (DTVMI or VMI)
Neuropsychological screening, visual-motor coordination

H-T-P (House-Tree-Person) - Personality (No longer held to be reliable)

Incomplete Sentences Blank - Personality

Jesness - Juvenile delinquency typology

K-Bit (Kaufman Brief Intelligence Test) - Intelligence estimate

Kinetic Family Drawing - Personality/family functioning

MACI (Million Adolescent Clinical Inventory) - Personality

MMPI-A (Minnesota Multiphasic Personality Inventory-Adolescent) - Personality

Mooney Problem Checklist - List of Potential symptoms/problems

PIAT-R (Peabody Individual Achievement Test, Revised) - Academic Achievement

PPVT-IV (Peabody Picture Vocabulary Test, Forth Edition) - Receptive Vocabulary

Rorschach - Personality

SB-V (Stanford-Binet Intelligence Scale, Fifth Edition) - Intelligence

TAT - (Thematic Apperception Test) - Personality

VABS (Vineland Adaptive Behavioral Scales) - Adaptive Functioning

WAIS-IV (Wechsler Adult Intelligence Scale, Forth Edition) - Intelligence

WASI (Wechsler Abbreviated Scale of Intelligence) - Estimated IQ

WIAT-3 (Wechsler Individual Achievement Test, Third Edition) - Academic Achievement

WISC-IV (Wechsler Intelligence Scale for Children, Fourth Edition) - Intelligence

Woodcock-Johnson - Academic Achievement

WRAT-3 (Wide Range Achievement Test, Third Edition) - Academic Achievement

DIFFERENCES BETWEEN INTELLECTUAL DISABILITY AND MENTAL ILLNESS

INTELLECTUAL DISABILITY	MENTAL ILLNESS
1. Refers to below average intellectual functioning.	Has nothing to do with IQ. A person with mental illness may be a genius or may be below average.
2. Refers to impairment in social adaptation.	May be very competent socially but may have a character disorder or other aberration.
3. National incidence: 3% of general population	16-26% of general population
4. Is present at birth or usually occurs during the period of development.	May have its onset at any age.
5. Some degree of intellectual impairment can be expected to be permanent but can be aided through full development of the person's potential.	Is often temporary and in many instances is reversible. Seldom meets the definition of a development disability.
6. Person can usually be expected to behave rationally at his/her functional level.	Person may fluctuate between normal and irrational behavior.
7. Erratic and/or violent behavior is rarely noted in persons with intellectual disability secondary to the cause of their disability.	The presence of erratic behavior is a hallmark in some types of mental illness, and violence may be a characteristic of a certain specific mental illness.
8. Symptoms of failure to adjust to societal demands are secondary to limited intelligence and social adaptive responses.	Symptoms are secondary to a break with reality and/or emotional interference with responses.
9. Person often has impaired communication skills.	Person may communicate in very idiosyncratic manner.
10. Person can also have mental illness.	Person can also have impaired intellectual functioning as a result of the mental illness.

JUVENILE
CONFESSIONS

JUVENILE CONFESSIONS OVERVIEW

ADMISSIBILITY OF JUVENILE CONFESSIONS

Generally, a child's confession is admissible as evidence in juvenile delinquency proceedings as long as it was given freely and voluntarily. In *Bram v. United States*, 168 U.S. 532 (1897), the Court held that the Fifth Amendment protection against self incrimination requires that a confession be made voluntarily in order to be admissible. Also, the Fourteenth Amendment prohibits states from persuading a person to confess through insincere sympathy, imprisonment or threats of imprisonment, or other like forms of persuasion. The *Bram* Court stated that a confession is inadmissible unless made freely and voluntarily; that is: "(it) must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." 168 U.S. at 542-543.

MIRANDA RIGHTS AND WARNINGS

In *Miranda v. Arizona*, the Court required procedural safeguards to protect the rights of an accused person to be free from compelled self-incrimination when being questioned while in custody. The *Miranda* Court held that:

[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and...the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

Miranda v. Arizona, 384 U.S. 436, 478-479 (1966).

VOLUNTARINESS

In *Gallegos v. Colorado*, 370 U.S. 49 (1962), the Court recognized that youth may fear police or give greater deference to authority than adults, that they are more susceptible to suggestions than adults, and that an assessment of “voluntariness” requires close scrutiny to ensure that youth are not coerced. However, in *Colorado v. Connelly*, 479 U.S. 157 (1986), the Court held that absent police coercion, a defendant’s mental state alone would not make a confession involuntary. The Court has never addressed the circumstances under which police conduct that would not be coercive for adults might be coercive with adolescents. Weighing voluntariness requires a “totality of circumstances” analysis involving the conditions of the waiver situation and the characteristics of the youth.

Totality of Circumstances Test

When reviewing whether a child knowingly waived his *Miranda* rights and made a voluntary confession, the court should consider the totality of the circumstances standard which is applicable to adults. In *In re Williams*, 217 S.E.2d 719 (S.C. 1975), the court recognized the “totality of circumstances test” to determine the admissibility of a statement or confession of a minor and held that “[w]hile the age of the individual is a factor to be taken into consideration, the admissibility of a statement or confession of a minor depends upon its voluntariness, to be determined from the totality of the circumstances under which it is made.” 217 S.E.2d at 722. In *Williams*, the court espoused the general rule established by *People v. Laura*, 432 P.2d 202, 215 (Cal. 1967) that “a minor has the capacity to make a voluntary confession, without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement.” *Williams*, 217 S.E.2d at 722.

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

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

1. **Current capacities of the youth, including:**
 - a. *Functional abilities.* These include the specific capacities, skills, and abilities relevant to each of the areas of the legal standard being evaluated; including:

- Ability to comprehend *Miranda* warnings (e.g., knowing that he can have a defense attorney to advise him at the time he decides whether or not to waive *Miranda* rights).
 - Ability to grasp the significance of rights in the context of the legal process (e.g., knowing what a defense attorney is and the role he plays in relation to the youth and the legal process).
 - Ability to process information in arriving at a decision about waiver (e.g., ability to put the information together to reach a decision independently).
- b. **Causal factors.** This includes information about the youth's mental condition that would explain any deficits in functional abilities to understand *Miranda* rights. "Causal" explanations can include cognitive or developmental deficits, emotional disturbances and mental disorders, learning disabilities, mental retardation [intellectual disability], and/or immaturity.
2. **Circumstances at the time of the interrogation, including:**
- a. Information about the mental and physical conditions of the youth at the time of the *Miranda* waiver (which may be different from mental condition at the time of the evaluation of the youth's capacities).
 - b. Details about the chronological history of events leading up to and during the presentation of the *Miranda* warnings.
 - c. Information about all persons present during the events as well as their roles and behaviors, and precisely how the warnings were presented.
3. **Interaction of abilities and situational demands.** Given these two types of information, the analysis must consider the abilities of the youth in the context of the demands of the interrogation.

FACTORS TO CONSIDER WHEN DETERMINING VOLUNTARINESS

Factors that should be considered when determining the voluntariness of a child's confession include:

- the child's age, intelligence, education, background, prior experience with police, mental capacity, and physical condition at the time of questioning;
- the legality and duration of the detention;
- the length of questioning; and
- any physical or mental abuse by police, including the existence of threats or promises.

ADMISSIBILITY OF STATEMENTS MADE BY CHILD HELD IN ILLEGAL CUSTODY

"The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence

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

In *State v. Funchess*, 179 S.E. 2d 25 (S.C. 1971), the court held that “every statement or confession made by a person in custody as the result of an illegal arrest, is not involuntary and inadmissible, but the facts and circumstances surrounding such arrest and the in-custody statement should be considered in determining whether the statement is voluntary and admissible. Voluntariness remains as the test of admissibility.” *Id.* at 28.

JACKSON V. DENNO HEARING

Jackson v. Denno, 378 U.S. 368 (1964), established that a defendant is entitled to a pre-trial hearing on the question of voluntariness of a confession. However, due process does not require a separate hearing as to the voluntariness of a statement or confession absent a proper objection to the admission of such statement or confession. The *Jackson v. Denno* Court held that the defendant had a constitutional right at some stage in the proceedings to object to the use of a confession and was entitled to a fair hearing in which both underlying factual issues and voluntariness of confession are actually and reliably determined.

At a pretrial hearing concerning the suppression of a statement, the state has the burden of proving, based on the totality of the circumstances surrounding the statement, that the statement was voluntary. Voluntariness must be proven by a preponderance of the evidence. *State v. Smith*, 234 S.E.2d 19 (S.C. 1977).

U.S. SUPREME COURT DECISIONS

Miranda v Arizona, 384 U.S. 436 (1966): A criminal suspect has constitutional rights to avoid self incrimination and to advice of counsel prior to and during custodial interrogations. Unless the suspect has made a “knowing and intelligent” waiver of these rights, his or her statements may not be used in subsequent delinquency or criminal proceedings.

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

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

IN RE WILLIAMS

In re Wyman WILLIAMS and Gregory Alvin Jenkins, children
under the age of seventeen years.

Gregory Alvin JENKINS, Appellant,

v.

STATE of South Carolina, Respondent.

217 S.E.2d 719 (S.C. 1975)

William T. Toal, Columbia, for appellant.

Atty. Gen. Daniel R. McLeod, Asst. Atty. Gen. Joseph R. Barker and Staff Atty. Sidney S. Riggs, III, Columbia, for respondent.

LEWIS, Justice:

Appellant, a minor, was arrested and charged on April 15, 1974, with delinquency based upon charges of breaking and entering and theft from a place of business in Columbia, South Carolina. He was subsequently found guilty of the charges, adjudged a delinquent by the Family Court of Richland County, and placed on probation for twelve (12) months. A statement signed by appellant following his arrest was introduced into evidence over his objection. The admissibility of that statement is the sole issue in this appeal.

Appellant, age 15, and his cousin Wyman Williams, age 14, spent the night of April 14, 1974 at the home of their grandmother. They were awakened at about 3:00 a.m. on Monday, April 15, 1974, by appellant's father who carried them with him to the premises of Pearce-Young-Angel Co., a wholesale food distributor. They entered the premises where appellant and his cousin were shortly thereafter arrested by an officer of the Richland County Sheriff's Department, who was investigating a report from the night manager of the business that a man was in the meat freezer. When the officer approached and someone shouted: 'Police,' appellant and his cousin ran but were unable to escape. The officer testified that they stopped after he fired a warning shot. Appellant testified that he ran only after a shot was fired and not because he thought he was doing anything illegal.

At the time of appellant's arrest, meat of the approximate value of \$1100.00 had been removed from the freezer and placed on the loading platform.

Appellant was carried to the premises by his father and it is clearly inferable that the father escaped when the officers arrived. Therefore, the conclusion is inescapable that the father knew of the plight of his son without being notified by the officers. Following his arrest about 3:30 a.m., appellant was taken to the Richland County jail and held until about 9:00 a.m. when he was put under the custody of a juvenile investigator of the Sheriff's Department. Shortly thereafter this investigator read to him the Miranda warnings, after which he signed a waiver form. Appellant then made an inculpatory statement which was reduced to writing on a form containing the requirements of Miranda, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, and signed. Appellant and his co-defendant testified that the statement was signed because he was told that he could go home when he did so.

The statement signed by appellant was admitted into evidence, over objection. The exceptions challenge the admissibility of the statement upon the

grounds (1) that the statement was made while appellant was in illegal custody in violation of Code (Supplement) Section 15--1095.17 and (2), since appellant was a juvenile, he could not make an intelligent waiver of his constitutional right against self-incrimination in the absence of a parent or a friendly adult.

Appellant's first contention is that his statement was made during a period of illegal custody because his parents were not notified of his arrest 'as soon as possible' as required by Code Section 15--1095.17. This section is a part of the Family Code Act and provides that when a child is taken into custody for violation of any law the 'officers shall notify the parent, guardian or custodian of the child as soon as possible.'

Appellant and his cousin were taken into custody about 3:30 a.m. on the premises of Pearce-Young-Angel Company where the father of appellant was also present but apparently escaped. Since the father was aware of the plight of his son, we assume that the claim of failure to notify the parents has reference to appellant's mother. While the officers could not specifically recall whether the parents were notified that night, appellant's brief concedes that the mother of appellant appeared at the jail 'around 8 or 9 a.m.,' about five (5) hours after the arrest, to see about her son. She evidently received information of the arrest at some time prior to her appearance at the jail. It is most significant that neither the father nor mother of appellant, witnesses peculiarly available to him, were called to testify that they had received no notice of the arrest of their son.

In view of the presence of the father on the premises when appellant was arrested and the appearance of the mother at the jail within about five (5) hours of the arrest which occurred in the early morning hours (about 3:30 a.m.), we conclude that the record fails to sustain the claim that the parents of appellant were not notified of his arrest 'as soon as possible' within the meaning of Section 15--1095.17.

Assuming however that appellant was held in illegal custody, such fact alone does not render his inculpatory statement inadmissible. We have held that every statement or confession made by a person in illegal custody is not involuntary and inadmissible, 'but the facts and circumstances surrounding such arrest and the in-custody statement should be considered in determining whether the statement is voluntary and admissible. Voluntariness remains as the test of admissibility.' *State v. Funchess*, 255 S.C. 385, 179 S.E.2d 25; *State v. Bishop*, 256 S.C. 158, 181 S.E.2d 477.

Under the next contention of appellant, we are asked to adopt a rule under which any inculpatory statement obtained from a minor in the absence of counsel, parent or other friendly adult would be Per se inadmissible regardless of the circumstances surrounding the making of such statement. This we decline to do.

It is conceded in this case that the purported waiver of appellant's constitutional right against self-incrimination and the subsequent statements were made in the absence of parents or other friendly adult.

While the age of the individual is a factor to be taken into consideration, the admissibility of a statement or confession of a minor depends upon its voluntariness, to be determined from the totality of the circumstances under which it is made. Recognizing the 'totality of circumstances' test approved in *Haley v. Ohio*, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224, and *Gallegos v. Colorado*, 370 U.S. 49, 82 S.Ct.

1209, 8 L.Ed.2d 325, the correct general rule has been thus stated: “[a] minor has the capacity to make a voluntary confession, even of capital offenses, without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement.” *People v. Lara*, 67 Cal.2d 365, 62 Cal.Rptr. 586, 432 P.2d 202, 215.

The question of whether a minor can knowingly waive his constitutional rights is analogous to the question of whether the confession of a mentally subnormal person is admissible. The inquiry in both cases is the ability or capacity to comprehend the meaning and effect of the waiver or statement. We have consistently held that mental deficiency alone is not sufficient to render a confession involuntary but that it is a factor to be considered along with all of the other attendant facts and circumstances in determining the voluntariness of the confession. *State v. Cain*, 246 S.C. 536, 144 S.E.2d 905; *State v. Callahan*, 263 S.C. 35, 208 S.E.2d 284.

The objections to the admissibility of the statement because of the age of appellant and the fact that the statement was made while he was allegedly in illegal custody were properly overruled. However, we are not satisfied that the determination in the lower court of the issue of voluntariness was made upon a full inquiry into the facts.

Although the record is not very clear on the question, it is inferable that the statement from appellant was not taken until after the mother appeared at the jail about 8:00 or 9:00 a.m., and the release of appellant had been refused. This conclusion may be drawn from the fact that the officer who took the statement did not come to work until 9:00 a.m. The statement therefore would have been signed after that hour, which was after the mother and made inquiry about her son between 8:00 and 9:00 a.m. There was testimony that she was told that she could not obtain the release of appellant at that time but would have to return later. Appellant was subsequently released about 4 p.m. or about thirteen (13) hours after his arrest. In addition, when the officer who took the statement was asked if he had used 'any coercion at all to obtain these statements,' the court admonished: 'No need to go into that. I've already ruled on that.'

The issue of the voluntariness of appellant's statement should not be resolved upon the cursory inquiry revealed by this record. Ordinarily, remand would be limited to a further determination of this issue but, in view of the nature of the proceedings in Family Court, we think it proper to reverse the judgment under appeal and remand for a new trial, at which time a full inquiry can be had into the entire matter and the issues determined in the light of the facts so developed.

Reversed and remanded for a new trial.

MOSS, C.J., LITTLEJOHN and NESS, JJ., and BRAILSFORD, Acting Associate Justice, concur.

INTERSTATE
COMPACT FOR
JUVENILES

INTERSTATE COMPACT FOR JUVENILES

The Interstate Compact for Juveniles is a legal agreement between 49* states, the District of Columbia, and the U.S. Virgin Islands that regulates the interstate movement of children who:

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

*Georgia does not currently participate in ICJ, and coordinates juvenile movement and supervision with South Carolina under a Memorandum of Agreement.

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

ICJ'S BENEFITS

The compact is overseen by the national Interstate Commission for Juveniles. Its goals are to preserve child welfare and promote public safety, victim's rights, enhanced juvenile accountability and safety, and enforcement of protocols and communication among commission members.

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

INTERSTATE COMMISSION FOR JUVENILES WEBSITE

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

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

SOUTH CAROLINA CONTACT INFORMATION

Your local DJJ representatives are trained on the interstate compact and should be able to handle any situation involving a child who comes under the ICJ.

For more information please contact your local DJJ County Office or:

Dawne Gannon
ICJ Commissioner/Coordinator
Office of Community Justice
S.C. Department of Juvenile Justice
4900 Broad River Rd., PO Box 21069
Columbia, SC 29221-1069
Office (803) 896-9351, Fax (803) 896-6917
DSGANN@scdjj.net

MEDIA ISSUES

MEDIA OVERVIEW

RIGHT OF ACCESS TO COURT PROCEEDINGS BY THE PRESS

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

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

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

In *Ex parte Columbia Newspapers*, 333 S.E. 2d 337 (S.C. 1985), the court held that Article I, § 9 does not render § 63-3-590 unconstitutional. The court found that “the public, which includes the press, has a right of access to juvenile court proceedings **subject to a balancing of interests** with the parties involved.” The court also held that if a judge’s decision to close any court proceeding is challenged by the public or the press, it must be supported by findings explaining the balancing of interests and the need for closure of the proceeding. (*See also, Steinle v. Lollis*, 307 S.E.2d 230 (S.C. 1983) – the right of access to court proceedings is not absolute but subject to a proper balancing of competing interests.)

A defendant who opposes the public’s right of access to court proceedings bears the burden of proof to justify closure. This is in line with the general rule that “[c]losed proceedings...must be rare and only for cause shown that outweighs the value of openness.” *Ex parte The Island Packet*, 417 S.E.2d 575 (S.C. 1992).

RELEASE OF INFORMATION TO NEWSPAPER, TV OR RADIO STATION

Section 63-19-2040(A) prohibits providing a newspaper or radio or television station with the name, identity, or picture of a child under the court’s jurisdiction unless:

- authorized by court order;
- the solicitor has petitioned the court to waive the child to circuit court;
- the child has been waived to adult court; or
- the child has been adjudicated delinquent for a violent crime, grand larceny of a motor vehicle; a crime in which a weapon was used; or distribution or trafficking in unlawful drugs.

EX PARTE COLUMBIA NEWSPAPERS, INC.

286 S.C. 116, 333 S.E.2d 337, 1985.

The Juvenile Court of Richland County, Carol Conner, J., issued an order closing motion hearing to determine whether two juveniles accused of murder would be tried in family court or the court of general sessions, and newspaper appealed. The Supreme Court held that: (1) although sole issue on appeal had been rendered moot, issue was considered because dispute was one capable of repetition yet evading review, and (2) once newspaper had challenged closure of proceedings, family court judge was required to make specific findings justifying closure, and judge's conclusory statement that closure was necessary to protect juveniles' chances of rehabilitation was not a sufficient finding.

Order vacated.

Jay Bender, of Belser, Baker, Barwick, Ravenel, Toal & Bender, Columbia, for appellant.

Douglas K. Kotti, of the Law Offices of Harvey L. Golden, P.A., and John R. Lester, Columbia, for respondents. Sol. James C. Anders and Asst. Sol. Stanley D. Ragsdale, Columbia, for the State.

PER CURIAM:

Fifteen-year-old twin brothers were charged with the murder of their mother. Under [§ 63-19-1210(5)] of the Code of Laws of South Carolina (1976), it became the duty of the Family Court Judge to determine whether the cases would be tried in Family Court or transferred to the Court of General Sessions where the accused persons would be tried as if the offense had been committed by an adult. At the time of the motion hearing, the Family Court Judge excluded the press relying upon [§ 63-3-590], which states in pertinent part:

All cases of children shall be dealt with as separate hearings by the [Family] court and without a jury.... The general public shall be excluded and only such persons admitted as the judge shall find to have a direct interest in the case or in the work of the court.

Columbia Newspapers, Inc., through this appeal, challenges the constitutionality of this section. That is the only issue before the Court. While the trial of the case on its merits has been finalized in the Court of General Sessions, we will not treat the issue as moot because the dispute is one which is capable of repetition yet evading review. *Gannett v. DePasquale*, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608; *Steinle v. Lollis*, 279 S.C. 375, 307 S.E.2d 230 (1983). We review the case in order to provide guidelines for the bench, bar and the press at future hearings.

The newspaper contends that the statute is in direct contradiction with Article I, Section 9 of the Constitution of South Carolina which states: All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. The right of the public and of news media are the same. The newspaper argues that

this provision of the Constitution guarantees the general public access to all courts of the State such that anyone may attend any proceeding. We disagree.

In *Steinle v. Lollis*, supra, we stated "... such right of access to trials as does exist is not absolute but subject to a proper balancing of competing interests."

We interpret Article I, Section 9 of the Constitution of South Carolina as we did in *Steinle* to mean that the public, and likewise the press, has a right of access to court proceedings subject to a balancing of interests with the parties involved. The Legislature may impose limitations on the right of access to court proceedings as was done by [§63-3-590]. However, when and if challenged by the public or the press, the decision of a judge to close any proceeding must be supported by findings, which explain the balancing of interests and the need for closure of the proceeding. It would be unduly burdensome to require a Family Court judge to make specific findings in every case where children are involved. Therefore, we require that findings be made only when the closure of a particular case is challenged.

We hold the Family Court judge erred in failing to make specific findings that the closure of the hearing was necessary to protect the rights of the juveniles involved. The judge's conclusory statement that opening the proceedings to the public would have an adverse effect upon the chances of rehabilitation of the juveniles is not a sufficient finding. The order under appeal is accordingly, VACATED.

EX PARTE THE ISLAND PACKET

Ex parte THE ISLAND PACKET and The Beaufort Gazette, Appellants.

In re CHRISTOPHER F., a minor Under the Age of Seventeen, Defendant.

308 S.C. 198, 417 S.E.2d 575, 1992

Newspapers requested transcripts of closed detention hearing and access to closed transfer hearing regarding juvenile charged with murdering his father and stepmother. The Family Court, Beaufort County, John T. Black, J., denied the request, and newspapers appealed. The Supreme Court, Moore, J., held that: (1) failure to challenge closure of hearing does not bar subsequent consideration of request for access to transcript of hearing; (2) accused who opposes public's right of access to hearing bears burden of proof to justify closure; and (3) closure of hearing was not justified.

Reversed.

Jay Bender, of Baker, Barwick, Ravenel & Bender, Columbia, for appellants.

Atty. Gen. T. Travis Medlock, Asst. Attys. Gen., Harold M. Coombs, Jr. and Amie L. Clifford, Columbia, and Sol. Randolph Murdaugh, III, Hampton, for respondent.

Kathy D. Lindsay, of Garber, Baldwin, Fairbanks & Lindsay, Beaufort, guardian ad litem, for defendant.

MOORE, Justice:

This appeal is from a family court order denying appellants access to transcripts of two hearings held in a juvenile matter and closing a pending hearing in the same case. We reverse.

FACTS

Defendant Christopher F. was fifteen years old when he was charged in juvenile petitions with murdering his father and stepmother. A detention hearing, closed to the public, was held in family court on May 2, 1990. A transfer hearing, also closed to the public, was begun May 18 in family court and continued to June. On May 23, appellants (Newspapers) filed a request for access to the transfer hearing scheduled for June and for transcripts of the May 2 and May 18 hearings. A hearing was held June 8 to consider Newspapers' request for access which was denied. The transfer hearing was held later that day and was closed to the public.

ISSUES

1. Is access to a hearing transcript barred by failure to challenge closure of the hearing before it is held?
2. Who bears the burden of proof in determining whether closure should be allowed?
3. Was closure in this case properly allowed?

DISCUSSION

The family court ruled Newspapers' request for access to transcripts of the May 2 detention hearing and the May 18 transfer hearing was not timely because Newspapers did not challenge closure of those hearings before they were held. Newspapers contend access should not be barred on this procedural ground. We agree.

The request for a transcript implicates the same first amendment rights that protect the public's access to the actual proceeding. See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106

S.Ct. 2735, 92 L.Ed.2d 1 (1986) (*Press-Enterprise (II)*); see also *State v. Sinclair*, 275 S.C. 608, 274 S.E.2d 411 (1981). We hold the fact that closure of the hearing was unchallenged at the time is not a bar to consideration of a request for access to a transcript of the hearing.

Newspapers also contest the family court's ruling they had the burden of proof in challenging closure of the transfer hearing and the finding that closure was justified.

In *Press-Enterprise (II)*, *supra*, the United States Supreme Court set out the analysis to be applied in determining whether the First Amendment requires public access to a criminal proceeding when the accused opposes it. First, the threshold inquiry is whether there exists a right of access to the particular type of proceeding in question. 106 S.Ct. at 2740. In making this determination, the court may consider (1) whether the proceeding has historically been an open one and (2) whether public scrutiny plays a significant role in the functioning of the proceeding. *Id.* For instance, in non-jury matters the public's presence is considered a safeguard against the "overzealous prosecutor" and the "eccentric judge." 106 S.Ct. at 2742.

Once there has been a threshold determination that a qualified first amendment right of access applies to the particular proceeding, the court must then consider whether the rights of the accused override it. 106 S.Ct. at 2741. To justify closure, the court must make specific findings that closure is "essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* Where the accused asserts his right to a fair trial to justify closure, the court must make specific findings (1) that there is a substantial probability of prejudice from publicity that closure would prevent and (2) there are no reasonable alternatives to closure that would adequately protect the defendant's fair trial rights. 106 S.Ct. at 2743. "[E]ven when a right of access attaches, it is not absolute." 106 S.Ct. at 2740.

We hold under *Press-Enterprise (II)* the accused who opposes the public's right of access bears the burden of proof to justify closure. This allocation of the burden of proof is consistent with the general rule that "[c]losed proceedings... must be rare and only for cause shown that outweighs the value of openness." *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 104 S.Ct. 819, 823, 78 L.Ed.2d 629 (1984) (*Press-Enterprise (I)*).

The family court properly found a qualified right of access to the transfer hearing as previously held by this Court in *Ex parte Columbia Newspapers, Inc.*, 286 S.C. 116, 333 S.E.2d 337 (1985). In denying Newspapers' request for access, however, the family court found: (1) publicity would affect the defendant's right to a fair trial; and (2) confidential information regarding the defendant's psychiatric status would be revealed. It also noted the defendant's "anxiety" about press coverage.

Under the *Press-Enterprise (II)* analysis, we find none of these findings sufficient to justify closure here. First, the record does not support a finding of a substantial probability of prejudice from publicity since extensive details had already been disclosed in the press regarding the defendant and the crimes with which he was charged. Second, a reasonable alternative to closure would be in camera testimony regarding matters of a confidential nature. Finally, lessening a defendant's "anxiety," even a juvenile's, does not promote a higher value than protection of the public's constitutional right of access.

Accordingly, we hold the family court erred in refusing Newspapers' request for access to the transcripts of the May 2 and May 18 hearings and in closing the June 8 hearing. REVERSED. HARWELL, C.J., CHANDLER and FINNEY, JJ., and JOHN P. GARDNER, Acting Associate Justice, concur.

LANDMARK JUVENILE CASES

UNITED STATES SUPREME COURT CASES

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

Established that, in order to protect a child's constitutional rights, the child is entitled to: a full hearing on the issues of waiver to adult court; assistance of counsel at the hearing; full access to social records used by the court to determine whether the child should be waived; and a statement of the reasons for any decision to waive jurisdiction to adult court.

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

Established that due process rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments apply to juvenile court proceedings and that a juvenile has the right to adequate and timely notice of charges, the right to counsel, the right against self incrimination, and the right to confront and cross-examine witnesses.

In re Winship, 397 U.S. 358 (1970).

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

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

Established that a child being adjudicated delinquent in juvenile court is not guaranteed the right to a jury trial.

Breed v. Jones, 421 U.S. 519 (1975).

Established that the Double Jeopardy Clause of the Fifth Amendment prevents a juvenile who has been adjudicated delinquent in juvenile court from being subsequently tried in an adult court for the same offense.

Schall v. Martin, 467 U.S. 253 (1984).

Established that preventive detention fulfills a legitimate state interest of protecting society and juveniles by detaining those who might be dangerous to society or to themselves.

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

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

SOUTH CAROLINA SUPREME COURT CASES

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

Established that the common law presumption that a child between the ages of seven and fourteen is rebuttably presumed incapable of committing a crime is inapplicable to family court proceedings. The practical effect is that there is no age limit for bringing a delinquency proceeding in family court.

In re Williams, 217 S.E.2d 719 (S.C. 1975).

Established that the absence of a parent, counsel, or other friendly adult does not make a statement given by a child to the police inadmissible. The admissibility of a statement given by a minor is based upon the “totality of the circumstances” to include such factors as age, intelligence, education, experience, and ability to comprehend the meaning and effect of the statement.

In Interest of Christopher W., 329 S.E.2d 769 (S.C. 1985).

Established that the voluntariness of a minor's inculpatory statement must be proved by preponderance of evidence.

State v. McCoy, 328 S.E.2d 620 (S.C. 1985).

Established that *Brady v. Maryland*, 373 U.S. 83 (1963) does not apply in a waiver hearing.

State v. Sparkman, 339 S.E. 2d 865 (S.C. 1986).

Held that a person's juvenile record may be used in a subsequent court proceeding to impeach the person (as a defendant or witness) and at sentencing.

Ex parte Columbia Newspapers, Inc., 333 S.E.2d 337 (S.C. 1985).

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

AGENCIES AND ORGANIZATIONS SERVING CHILDREN IN SOUTH CAROLINA

STATE AGENCIES

Department of Alcohol and Other Drug Abuse Services (DAODAS)

<http://www.daodas.state.sc.us/>

The South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS) is the cabinet-level agency charged with ensuring the provision of quality services to prevent or reduce the negative consequences of substance use and addictions. DAODAS partners with public, private and social sector organizations to provide quality prevention, intervention and treatment services for the citizens of South Carolina.

SC Department of Disabilities and Special Needs (DDSN)

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

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

SC Department of Education (DOE)

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

SC Department of Juvenile Justice (DJJ)

<http://www.state.sc.us/djj/>

DJJ is a state cabinet agency, and by law, it is also a treatment and rehabilitative agency for the state's juveniles. DJJ is responsible for providing custodial care and rehabilitation for the state's children who are incarcerated, on probation or parole, or in community placement for a criminal or status offense. DJJ's goal is to protect the public and reclaim juveniles through prevention, community programs, education, and rehabilitative services in the least restrictive environment possible.

S.C. Department of Mental Health (DMH) - Division of Children, Adolescents and Their Families (CAF)

<http://www.state.sc.us/dmh/caf/services>

DMH provides a wide range of treatment services to children, adolescents and their families. These services are provided through the department's network of 17 local community mental health centers. DMH seeks to make

these services accessible to families by "meeting families where they are." Consequently, many of the services are provided in those natural environments—such as in the school or home—that are most comfortable for the child and his or her family. Information regarding available services can be accessed on their website.

S.C. Department of Social Services (DSS)

<http://dss.sc.gov>

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

CHILD ADVOCACY ORGANIZATIONS

Protection and Advocacy for People with Disabilities, Inc. (P&A)

3710 Landmark Drive, Suite 208, Columbia, SC 29204

1-866-275-7273; 803-782-0639

<http://pandasc.org>

P&A is an independent, statewide, non-profit corporation that protects and advances the legal rights of people with disabilities. Under annual priorities set by a volunteer board of directors, P&A investigates reports of abuse and neglect and advocates for disability rights in areas such as health care, education, employment and housing. P&A serves people of all ages and disabilities. P&A does not charge for its services.

While P&A does not provide direct legal representation to juveniles in delinquency proceedings, their advocates and attorneys are available for consultation and support to assist children in obtaining the services and supports necessary to rehabilitate and maintain them safely and successfully in the community. If you know or suspect a juvenile who has pending charges may be disabled, you may call P&A at 1-866-275-7273 for assistance.

Continuum of Care

State Office, Governor's Office

1205 Pendleton Street, Suite 372, Columbia, South Carolina 29201

Office: (803) 734-4500 Fax: (803) 734-4538

<http://www.continuum.sc.gov>

The Continuum of Care is a program that serves children with severe emotional disturbance. It is housed within the Governor's Office of Executive Policy and Programs. The Continuum has one administrative office (State Office) in Columbia and four regional offices located in Columbia, North Charleston, Greenville and Florence that provide services throughout the state. The Continuum is funded primarily with state revenues and Medicaid funds.

The mission of the Continuum of Care is to ensure continuing development and delivery of appropriate services to those children with severe emotional disturbance and their families in SC whose needs are not being adequately met by existing services and programs. It will meet this mission by supplementing existing services available to this population and promoting support that encourages family strength and self-sufficiency.

The Continuum can serve as a valuable resource to the family court providing information regarding treatment and services that the court may not have considered. Often, the Continuum can develop individualized services to meet the specific needs of a client and family. The Continuum can access in-home treatment programs, residential programs, and community wrap-around services to provide the needed treatment to a client and family. The Continuum will advocate for the client to receive treatment in the least restrictive setting possible.

The Children's Trust of South Carolina

1634 Main Street, Suite 100 Columbia, SC 29201

803.733.5430

<http://www.scchildren.org>

In 2008, to eliminate duplication of programs and to fortify sustainability for initiatives supporting children and families, The Children's Trust of South Carolina became the state's designated 501(c)(3) organization for the prevention of child abuse, neglect and unintentional injuries. This was the result of a merger between Prevent Child Abuse South Carolina, Voices for South Carolina's Children, Children's Trust Fund of South Carolina and Safe Kids South Carolina.

IN-PATIENT ADOLESCENT TREATMENT FACILITIES

William J. McCord Adolescent Treatment Facility

910 Cook Road, Orangeburg, SC 29118

(803) 534-2328

www.mccordcenter.com

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

William S. Hall Psychiatric Institute / Child and Adolescent

1800 Colonial Drive, Columbia, SC 29203

(803) 898-1662

This hospital is licensed by the state of South Carolina as a Specialized Hospital with a separately-licensed Residential Treatment Facility for Children and Adolescents. It provides in-patient psychiatric services, treatment for alcoholism and drug abuse or addiction, and residential treatment for

adolescents. Patients are admitted from throughout the state with referrals from community mental health centers, juvenile parole boards, Department of Social Services, the family court system and the Department of Juvenile Justice. The majority of patients are admitted through probate court, family court, or are voluntary admissions. Outpatient services include the Assessment and Resource Center.

JUVENILE JUSTICE WEBSITES

SOUTH CAROLINA

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

<http://childlaw.sc.edu>

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

South Carolina Department of Juvenile Justice

<http://www.state.sc.us/djj>

Provides an overview of all services offered by the agency.

South Carolina Legislature Online

<http://www.scstatehouse.gov>

Provides access to South Carolina laws and legislative updates.

NATIONAL

ABA's Juvenile Justice Committee (Criminal Justice Section)

<http://www.americanbar.org>

Contains state and federal legislative updates, juvenile justice standards and articles. Includes links to over 500 juvenile justice websites and research information for judges, defenders, prosecutors, and parents.

Center for Children's Law and Policy

<http://www.cclp.org>

CCLP is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems.

Children's Defense Fund

<http://www.childrensdefense.org>

The mission of the Children's Defense Fund is to "Leave No Child Behind" and to ensure every child a successful passage to adulthood with the help of caring families and communities.

Coalition for Juvenile Justice (CJJ)

<http://www.juvjustice.org>

CJJ is a national association of governor-appointed state advisory groups tasked with informing policy makers, advocates and the public about the interplay of prevention, rehabilitation and accountability in reducing juvenile crime and delinquency.

The Equity Project

<http://www.equityproject.org/>

The Equity Project examines issues of sexual orientation, gender identity, and gender expression (SOGI/E) that impact youth during the entire delinquency process, ranging from arrest through post-disposition.

Interstate Commission for Juveniles

<http://www.juvenilecompact.org>

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

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

Juvenile Collateral Consequences

<http://www.beforeyouplea.com>

The Juvenile Collateral Consequences Project is an endeavor undertaken by the American Bar Association to document and analyze the significant hardships experienced by youth who have come in contact with the juvenile justice system. These hardships, known as collateral consequences affect youth who have successfully completed a sentence imposed by the court and include barriers to education, employment, and public benefits.

Juvenile Info Network

<http://www.juvenilenet.org>

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

Juvenile Justice Resource Hub (Juvenile Justice Information Exchange)

<http://jjie.org/hub/>

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

Juvenile Law Center

<http://www.jlc.org>

Provides access to numerous publications and training opportunities.

Legal Information Institute

<http://www.law.cornell.edu>

Provides access to family law statutes from all 50 states.

National Center for Juvenile Justice

<http://www.ncjj.org>

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

National Center for Mental Health and Juvenile Justice

National Council of Juvenile and Family Court Judges

<http://www.ncjfcj.org>

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

Available publications:

- *NCTSN Bench Card for the Trauma-Informed Judge*, July 2013
- *Seven Things Juvenile Courts Should Know About Learning **Disabilities***, January 2012
- *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, July 2010

National Criminal Justice Reference Service

<http://www.ncjrs.gov>

NCJRS is a federally funded resource offering justice and substance abuse information to support research, policy, and program development worldwide.

Office of Juvenile Justice and Delinquency Prevention, US DOJ

<http://ojjdp.gov>

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

Vera Institute of Justice, Center on Youth Justice

<http://www.vera.org/centers/youth-justice>

RECOMMENDED RESOURCES FOR JUVENILE DEFENDERS

I. **The National Juvenile Defender Center (NJDC)**

<http://www.njdc.info/>

The NJDC is an excellent resource for juvenile defenders. Be sure to visit their website and sign up to be on one or more of their listservs (as well as the listserv of the Southern Juvenile Defender Center, our regional Center that includes SC, NC, GA, FL, LA, MS, AL).

Useful publications available on the NJDC website include:

- **Trial Manual for Defense Attorneys in Juvenile Delinquency Cases**, 2012 Edition by Randy Hertz, Martin Guggenheim, and Anthony G. Amsterdam of New York University School of Law. This EXCELLENT resource is a how-to-do-it guidebook for handling juvenile court cases from beginning to end. It deals exclusively with the tasks, skills, rules of law, and issues of strategic judgment involved in representing clients in juvenile court. Rather than ignoring those aspects of juvenile proceedings that mirror adult criminal practice, the MANUAL examines them at every stage.
- **Juvenile Defender Delinquency Notebook**, June 2006
- **Role of Juvenile Defense Counsel**, Spring 2009
- **National Juvenile Defense Standards**, 2012

II. **Juvenile Indigent Defense** section of the **Juvenile Justice Resource Hub**

<http://jjie.org/hub/juvenile-indigent-defense/>

III. **Vera Institute of Justice, Center on Youth Justice**

<http://www.vera.org/centers/youth-justice>

Status Offense Reform Center

SORC, a project of the Center on Youth Justice at the Vera Institute of Justice, assists policymakers and practitioners create effective, community-based responses for keeping status offenders out of the juvenile justice system and safely in their homes and communities.

IV. **American Bar Association** publications:

- **Representing Juvenile Status Offenders**
www.abanet.org/child/jso.shtml
- **Collateral Consequences in the State of South Carolina**
<http://www.beforeyouplea.com/sc>
- **ABA Model Rules of Professional Conduct** (Adopted by SC 10/1/2005)