



The Family Court Process for Children Charged with Criminal and Status Offenses in South Carolina

The Children's Law Office is a training, project, and resource center in child protection and juvenile justice for attorneys, judges, case workers, law enforcement, child advocates, guardians ad litem, and other child serving professionals.

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INTRODUCTION

Children have special needs and are treated differently than adults by the court system. In South Carolina, the family court has jurisdiction over children who are charged with criminal offenses and status offenses. Status offenses are those offenses which would not be a crime if committed by an adult, such as incorrigibility (beyond the control of the parents), running away, and truancy (failure to attend school as required by law). A person's age determines whether he or she will be treated as a child and tried in family court, or treated as an adult and tried in adult (general sessions) court. South Carolina law defines "child," for juvenile justice purposes, as a person less than seventeen years of age, but the definition excludes sixteen year olds who are charged with felonies that provide for a maximum term of imprisonment of fifteen years or more. Sixteen year olds excluded under this definition, however, may be remanded or transferred to the family court at the solicitor's (prosecutor's) discretion.

Family court delinquency cases differ from adult criminal cases, procedurally and with respect to terminology. These differences, as well as things unique to the juvenile justice system, are addressed below.

PETITION

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

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

TAKING INTO CUSTODY

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

Custodial Interrogation

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

DETENTION

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

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

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

Detention Hearing

If the officer who took the child into custody has not released the child to a parent or responsible adult, the family court must hold a detention hearing within 48 hours from the

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

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

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

INTAKE

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

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, juvenile pre-trial intervention, or a mentor program. Criteria that would make a child eligible for a diversion program might include being a first time offender, a nonviolent offender, or drug/alcohol

dependent. If the child successfully completes the diversion program, the charges against the child will be dismissed.

WAIVER (OR TRANSFER OF JURISDICTION)

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

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

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

Waiver Hearing

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

The U.S. Supreme Court has identified eight factors that may be considered by the judge when deciding whether or not to waive the child to adult court. The eight factors are: (1) the seriousness of the alleged offense and whether waiver is necessary to protect the community; (2) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the alleged offense was against persons or property; (4) whether there is sufficient evidence for a Grand Jury to return an indictment; (5) the desirability of trial and disposition of the entire case in one court when the child's co-defendants in the alleged offense are adults; (6) the level of sophistication and maturity of the child; (7) the child's record and previous criminal or adjudicative history; and (8) the prospects

for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of services currently available to the court. *Kent v. United States*, 383 U.S. 541 (1966).

ADJUDICATION

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

Children's Rights

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 adults in criminal prosecutions, however, are not guaranteed children in South Carolina family court adjudications. These rights include the right to a jury trial and the right to bail. 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).

The Plea

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

Adjudicatory Hearing

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

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

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

DISPOSITION

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

Predisposition Evaluation

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

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

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

Disposition Hearing

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

The court has the authority to: dismiss the petition; order that the child be examined or treated by a physician, psychiatrist, or psychologist and placed in a hospital if necessary; order the child to participate in a community mentor program; designate a state agency as the lead agency to provide a family assessment to the court; suspend or restrict the child's driver's license; place the child on probation; and/or commit the child to a DJJ institution. The judge takes the following into account when sentencing the adjudicated child: evaluation reports, seriousness of the offense(s), school records, behavior at home, and prior court history.

Probation

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

Commitment

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

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

guidelines, up to the child's twenty-first birthday, for reasons including refusal to comply with a treatment plan, negative behavior, or an additional charge. Children may also be released prior to their minimum guidelines for good behavior. A child who has reached his minimum guidelines has the right to appear before the Parole Board periodically for the purpose of parole consideration (eligibility for release). A child appearing before the Parole Board has the right to an attorney, and an attorney will be appointed for the child if the child's family cannot afford to hire an attorney.

Transfer to Department of Corrections (DOC)

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

PAROLE

The Parole Board may grant a child committed to DJJ a conditional or unconditional release. If a child is granted a conditional release, the child will be supervised by the local DJJ county office for a period of time determined by the Parole Board. The specified period of conditional release may not exceed the child's 21st birthday. A child on conditional release may be required to pay restitution, perform community service, or complete a local aftercare program in the community. S.C. Code Ann. § 20-7-8320 (Supp. 2005).

RIGHT TO APPEAL

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

EXPUNGEMENT OF A CHILD'S RECORD

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