

1.3 Brief Overview of Juvenile Delinquency Proceedings

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Overview. Juvenile law in the United States evolved from the English common law, which held that juveniles under a certain age were not culpable for their acts, and those over that age were tried as adults. Beginning in the early 20th century, many courts followed the doctrine of *parens patriae*. Under this doctrine, courts provided rehabilitation and protective supervision, but few legal rights, for delinquent and dependent children. In 1919, the North Carolina General Assembly enacted the Juvenile Court Act, which reflected many of the goals of the doctrine of *parens patriae* and was upheld in *State v. Burnett*, 179 N.C. 735 (1920). In the 1960s and 1970s, the United States Supreme Court issued several rulings that departed from many of the informal procedures associated with the doctrine of *parens patriae* and extended constitutional rights traditionally associated with adult criminal cases to juveniles alleged to be delinquent. Based on those rulings, the North Carolina General Assembly has incorporated these and other rights in the North Carolina Juvenile Code.

Constitutional milestones. The United States Supreme Court recognized in 1966 that juveniles have the constitutional right to due process in delinquency proceedings. *Kent v. U.S.*, 383 U.S. 541 (1966). This holding was affirmed and expanded in 1967 by *In re Gault*, 387 U.S. 1 (1967), which held that due process required that the juvenile receive notice of the allegations in the petition and due notice of the adjudicatory hearing. The Court further held that juveniles have the right to be represented by counsel and to confront the witnesses against them. Finally, the Court held that the Fifth Amendment right against self-incrimination applied to juveniles in delinquency proceedings. In 1970, the United States Supreme Court held that juveniles have the constitutional right under the Due Process Clause to have delinquency allegations proven beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970). Five years later, the Court held that juveniles have the right to be free from double jeopardy. *Breed v. Jones*, 421 U.S. 519, 541 (1975). Practice in North Carolina juvenile delinquency proceedings is based on these important constitutional holdings and subsequent appellate cases recognizing the rights of juveniles alleged to be delinquent, as well as on the statutory rights and procedures provided by the North Carolina Juvenile Code.

Evolution of the juvenile's right to counsel in North Carolina. Soon after the Supreme Court issued its decision in *Gault*, the North Carolina General Assembly enacted former G.S. 110-29.1 (1967 Cum. Supplement), which guaranteed the right to counsel for juveniles facing the possibility of commitment to a training school, as well as the right to appointed counsel for indigent juveniles. Appellate decisions interpreting *Gault* also required affirmative evidence in the record that the trial court advised both the juvenile and the juvenile's parents of these rights. *In re Garcia*, 9 N.C. App. 691, 694 (1970) (reversing adjudication order because the trial court failed to advise juvenile and his parents of the right to appointed counsel); *In re Stanley*, 17 N.C. App. 370, 371 (1973) (same).

In 1979, the Juvenile Code Revision Committee, part of the former Department of Crime Control and Public Safety, recommended the enactment of a statute guaranteeing juveniles the right to counsel in all proceedings. The committee also recommended requiring the appointment of counsel for juveniles unless counsel was retained or the juvenile voluntarily, knowingly, and intelligently waived the right to counsel. The General Assembly determined that juveniles must have the right to counsel at all stages of delinquency proceedings and that the trial court must appoint counsel in any proceeding in which delinquency is alleged unless counsel was retained for the juvenile. *See* former G.S. 7A-584 (1980). The statute did not contain any provisions permitting juveniles to waive the right to counsel. *Id.* Since 1980, juveniles in North Carolina have automatically been afforded counsel in delinquency cases unless counsel has been retained. G.S. 7B-2000.

The public defender system in North Carolina has played an important role in representing juveniles in delinquency cases. The first two public defender offices, located in Guilford and Cumberland counties, provided representation to juveniles when the offices began operating in 1970. Currently, all but two public defender offices represent juveniles. The Office of the Appellate Defender also provides representation to juveniles who appeal.

The Counsel for Children's Rights (CFCR), a non-profit law firm in Mecklenburg County, has maintained a contract to represent juveniles since 1987, making it one of the oldest indigent defense contracts in the state. CFRC promotes best practices in juvenile defense, including the use of in-house investigators and social workers.

For a further discussion of the evolution of the right to counsel, see LaToya Powell, [*Due Process Rights and Children: Fifty Years of In re Gault – Part Two, the Right to Counsel*](#), ON THE CIVIL SIDE, UNC SCH. OF GOV'T BLOG, (Sep. 14, 2016).

Juvenile court jurisdiction. Juvenile court proceedings are held in district court before a judge sitting without a jury. The juvenile court has jurisdiction over juveniles alleged to be delinquent who are at least six years old and less than 16 years old at the time the alleged offense occurred. Delinquency allegations are generally the same acts described as criminal offenses under the Criminal Code. Jurisdiction over juveniles who are 13, 14, or 15 years old and who are alleged to have committed a felony may be transferred to superior court for trial of the juvenile as an adult.

Juvenile delinquency proceedings. A delinquency case is commenced in juvenile court by the filing of a petition. If a felony is alleged there must be a first appearance hearing as well as a subsequent probable cause hearing. A secure or nonsecure custody hearing must be held if the juvenile is placed in custody pending the adjudicatory hearing. A transfer hearing is held if the juvenile is 13, 14, or 15 years old, is alleged to have committed a felony, and either a party or the court requests that the matter be transferred to superior court for trial.

Adjudication is the evidentiary hearing before a district court judge to determine whether the allegations in the petition have been proven beyond a reasonable doubt. The State is represented by the district attorney, and the juvenile must be represented by counsel. If a juvenile is adjudicated to be delinquent, a dispositional hearing will be held to determine the disposition to be ordered. Post-dispositional hearings include those for alleged violations of probation or post-release supervision, hearings on request for extended commitment, and review hearings.

Legislative note: This chapter reviews the laws in effect at the time of completion of this manual in Fall 2017. During the 2017 legislative session, the General Assembly enacted the Juvenile Justice Reinvestment Act, which expanded the jurisdiction of juvenile court to include crimes committed by 16 and 17-year-olds, except for motor vehicle offenses. Most of the changes apply to offenses committed on or after December 1, 2019. For a discussion of the changes that take effect in 2017, see *infra* Ch. 19, Raise the Age Legislation. For a discussion of the changes that take effect in 2019, see LaToya Powell, [2017 Juvenile Justice Reinvestment Act](#).
