

Chapter 1

Overview of Manual and Juvenile Delinquency Proceedings

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1.1 Purpose of Manual

With support from the Office of Indigent Defense Services, which includes the Office of the Juvenile Defender (*see infra* § 1.4, Office of the Juvenile Defender), the School of Government at the University of North Carolina at Chapel Hill has created a series of manuals designed to assist indigent defense attorneys representing defendants and respondents in a variety of proceedings. The purpose of this manual is to provide a thorough review of juvenile delinquency law and proceedings for the attorney new to practice in juvenile court, as well as to serve as a statutory and case law reference for seasoned juvenile defenders. Incorporated in the legal authority, the reader will find practice tips or suggestions for best practices at each stage of the proceedings, which have been provided by experienced juvenile defenders in North Carolina.

This manual contains a discussion of the role of counsel in juvenile proceedings as well as information from the National Juvenile Defender Center on the special challenges and approaches to communicating with a juvenile client. The jurisdiction of juvenile court and the parties and other participants to the proceeding are reviewed. Each stage of a delinquency proceeding is examined, from the intake process, through the filing of a petition, custody hearings, probable cause and transfer hearings, and discovery in juvenile court, to the adjudicatory and dispositional hearings.

Important issues, such as the juvenile's capacity to proceed, motions to suppress statements of the juvenile or evidence seized, probation and violation of probation hearings in juvenile proceedings, and commitment of juveniles to the Division of Adult Correction and Juvenile Justice are addressed in separate chapters. Procedures for appeals of juvenile cases and expunction of juvenile court records are also covered briefly.

Other indigent defense manuals in the series, which may be viewed on the School of Government's [defender manuals website](#) at no charge, are sources of more in-depth information in their respective areas of law:

- North Carolina Defender Manual (Vol. 1, Pretrial; Vol. 2, Trial)
- North Carolina Civil Commitment Manual
- North Carolina Guardianship Manual
- Immigration Consequences of a Criminal Conviction in North Carolina
- Raising Issues of Race in North Carolina Criminal Cases

Manuals on other topics, including child support contempt proceedings and abuse, neglect, dependency, and termination of rights proceedings, are also available on that site under the Other Manuals tab.

1.2 Basic Terminology

While juveniles enjoy many of the same rights as adults in the criminal justice system, juvenile delinquency cases have been referred to as civil proceedings in North Carolina case law. The juvenile is referred to as a respondent to the proceeding, not a defendant. A delinquency case is initiated by the filing of a petition and proceeds to an adjudicatory hearing, not a trial, before a district court judge. The judge does not sentence the juvenile who has been adjudicated delinquent, but instead is required to craft a disposition after a dispositional hearing that is carefully tailored to address the unique circumstances of the juvenile. Other terms used in various areas of juvenile law are highlighted at the beginning of each chapter.

1.3 Brief Overview of Juvenile Delinquency Proceedings

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. CFCR 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*](#).

1.4 Office of the Juvenile Defender

A. Creation of the Office

The Office of the Juvenile Defender (OJD) began operations in January 2005 following a [comprehensive study](#) of juvenile representation in North Carolina prepared by the American Bar Association, the National Juvenile Defender Center, and the Southern Juvenile Defender Center. The study identified deficiencies in the North Carolina juvenile justice system and made several recommendations. In response, the North Carolina Commission on Indigent Defense Services formed a Juvenile Committee to review the study. After several meetings, the Juvenile Committee released a [report](#) in which it recommended the creation of a statewide Juvenile Defender as a “positive first step” toward improving the representation of juveniles in North Carolina. In July 2004, the North Carolina General Assembly issued a [budget](#) authorizing the creation of OJD.

B. Mission

There are four parts of the mission of the OJD, which stem from the report prepared by the Juvenile Committee: (1) to provide services and support to juvenile defense attorneys, (2) to evaluate the current system of representation and make recommendations as needed, (3) to elevate the stature of juvenile delinquency representation, and (4) to work with juvenile justice advocates to promote positive change in the juvenile justice system.

Provide services and support to juvenile defense counsel. The OJD helps organize trainings on introductory, intermediate, and advanced topics for juvenile defense attorneys. The OJD has partnered with the School of Government to establish an annual one-day conference that includes updates on recent case law and new legislation and sessions on specific topics, as well as a biennial three-day intensive program for juvenile defense attorneys. Upcoming training sessions are listed on the [OJD website](#) and on the School of Government’s [indigent defense education website](#).

The OJD also provides several online resources for juvenile defense attorneys. The OJD website provides case summaries of North Carolina appellate decisions in juvenile delinquency appeals, a motions bank, training materials, a blog, information on recent legislative changes, and links to other agencies and organizations. In addition, the OJD uses a listserv for juvenile defense attorneys across the state. The listserv provides a forum for the OJD to announce relevant appellate decisions and for juvenile defense attorneys to discuss case problems, systemic issues, and other relevant topics. Juvenile defense attorneys can also follow the OJD on [Twitter](#) and [Facebook](#).

Finally, the OJD is available to consult with juvenile defense attorneys on individual cases. The OJD often strategizes with attorneys on trial and appellate cases and can provide information on experts and other resources that might assist attorneys in defending juveniles.

Evaluate the current system and make recommendations. The OJD visits judicial districts across the state, gathering information from juvenile defense counsel, judges, and other court officials. Recommendations to improve the quality of juvenile defense representation are made to the Office of Indigent Defense Services (IDS), including recommendations to enter into contracts with local counsel to represent juveniles. In 2006, the OJD issued a [statement](#) on the role of defense counsel in juvenile delinquency cases and model qualification standards for juvenile defense attorneys. The model qualification standards are used by IDS and public defender offices to determine whether an attorney has sufficient experience and training to represent juveniles in delinquency cases. In 2007, the OJD, in conjunction with a committee of defense attorneys, judges, and educators, developed performance guidelines for juvenile defense counsel, which are included in Chapter 18 of this manual and are available on the OJD website.

Elevate the stature of juvenile delinquency representation. The OJD promotes juvenile defense representation through presentations at law schools, responses to the media, and participation of staff on boards and committees involved with juvenile delinquency issues. The OJD worked with the North Carolina State Bar Board of Legal Specialization to create a subspecialty in juvenile delinquency law. The first attorneys to earn the subspecialty were certified in 2012. Additionally, the OJD collaborated with the North Carolina Advocates for Justice to create a section of members dedicated to juvenile defense. From 2010 through 2014, the Juvenile Defender acted as Director of the Southern Juvenile Defender Center, providing resources and support for juvenile defense attorneys in seven southeastern states.

Work with juvenile justice advocates to promote positive change. The OJD regularly works to strengthen the rights of juveniles in the juvenile justice system. Since its inception, the OJD has worked with stakeholders to address systemic issues, such as overrepresentation of minorities in the juvenile justice system, overutilization of criminal and juvenile proceedings to address conduct that occurs in schools, and shackling of juveniles during court proceedings. Over the past decade, the OJD has supported efforts to raise the age of juvenile jurisdiction in North Carolina. The OJD worked with the North Carolina Commission on the Administration of Law and Justice on legislation to handle offenses by 16- and 17-year olds in juvenile court.