

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), 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 practice at each stage of the proceedings, which have been provided by experienced juvenile defenders in North Carolina who volunteered their time as members of the manual’s advisory board.

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 Department of Juvenile Justice and Delinquency Prevention 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 at www.ncids.org 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

The manuals in the series are available for purchase at www.indigentdefense.unc.edu.

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

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. Following a period in which juveniles were seen as wards of the state with few recognized rights, the United States Supreme Court issued several rulings affirming the constitutional rights of juveniles alleged to be delinquent. The North Carolina General Assembly has incorporated these and other juvenile 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 by *In re Gault* in 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. 387 U.S. 1 (1967). 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). 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.

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.

1.4

Office of the Juvenile Defender

A. Creation of the Office

The Office of the Juvenile Defender (OJD) was created in January 2005, following a comprehensive study of juvenile representation in North Carolina. The OJD is a valuable source of information for attorneys representing juveniles in delinquency proceedings. Case law, sample motions, and other materials may be found on its website at www.ncids.org (Juvenile Defender).

There are four parts of the mission of the OJD: (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.

B. Mission

Provide services and support to juvenile defense counsel. The OJD has helped organize and has participated in several trainings on introductory, intermediate, and advanced topics. Upcoming training sessions are listed on the OJD website and on the indigent defense education website of the School of Government (www.indigentdefense.unc.edu). The website also includes a case bank organized by topic, which is updated every three months, a motions bank, training materials, recent legislative changes, and links to other agencies and organizations. The Juvenile Defender listserv allows juvenile defense attorneys to discuss case problems, systemic issues, and other relevant topics, and it is used to post important North Carolina appellate cases and recent legislation. Attorneys may consult with OJD staff on pending cases.

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), and have included recommendations to enter into contracts with local counsel to represent juveniles. A statement on the role of defense counsel as well as model qualification standards were issued by the OJD, with the approval of the IDS Commission. Most recently 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 available on the OJD website.

Elevate the stature of juvenile delinquency representation. Juvenile defense representation is promoted by the OJD through presentations at law schools, response to the media, and participation of staff on boards and committees involved with juvenile delinquency issues.

Work with juvenile justice advocates to promote positive change. Important issues in juvenile law, such as age of jurisdiction, shackling, gang activity, and treatment of sex offenders have been addressed by the OJD in conjunction with juvenile justice and child advocacy groups. The OJD works with the juvenile defense bar to strengthen the quality of representation statewide.

Upcoming OJD projects include exploring representation of juveniles committed to youth development centers, developing caseload standards, and developing protocols for using experts in juvenile delinquency cases.