



**YOU  
AND THE  
JUVENILE  
JUSTICE SYSTEM**

**A GUIDE FOR YOUTHS, PARENTS AND VICTIMS**

**FIFTH EDITION  
FALL 2000**

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FALL 2000**

**State of North Carolina**  
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# Acknowledgments

This booklet is an update of the Fourth Edition published by the Governor's Crime Commission in May 1995. The recent changes in law make this a necessary advocacy guide and useful tool for juveniles, their parents and the public at large. We hope this guide will help give readers a better understanding of how the new Juvenile Code works and how the new cabinet-level Department of Juvenile Justice and Delinquency Prevention (DJJDP) is working to ensure public safety, build prevention programs for young people and spur community leaders across our state to work together to put children first. The Juvenile Code calls for swifter action for first-time offenders, tougher sanctions for repeat offenders, better prevention efforts and a more efficient juvenile justice system for our state. DJJDP's goal is to **"work together to STAY FOCUSED ON YOUTH!"**

The Governor's Crime Commission funded the project. This update is made possible by cooperation among the Youth Advocacy and Involvement Office of the Department of Administration, the Department of Juvenile Justice and Delinquency Prevention and the Office of the North Carolina Attorney General.

You can get more information by contacting your local juvenile court counselor (a listing is usually in the telephone book under the county government pages under Court, Juvenile Court Counselors or Department of Juvenile Justice and Delinquency Prevention) or by contacting one of the agencies listed below:

Department of Juvenile Justice and Delinquency Prevention  
1801 Mail Service Center  
Raleigh, North Carolina 27699-1801  
(919) 733-3388  
Web site at [www.juvjus.state.nc.us/](http://www.juvjus.state.nc.us/)

The Youth Advocacy and Involvement Office has a booklet, *Youth Rights and Responsibilities: A Handbook for North Carolina's Youth*, which has information on many issues of interest to young people and their parents. You can get a copy by contacting:

Youth Advocacy and Involvement Office  
1319 Mail Service Center  
Raleigh, North Carolina 27699-1319  
(919) 733-9296  
Web site at [www.doa.state.nc.us/doa/yaio/yaio.htm](http://www.doa.state.nc.us/doa/yaio/yaio.htm)

You can access the Web sites on the Internet by using computers that are usually available for your use at most public libraries and libraries at colleges, universities and community colleges across North Carolina.

# About This Guide

This guide to North Carolina's juvenile justice system will help you get a basic understanding of the system and how it works for juveniles, their families and the community.

The purpose of our Juvenile Code is:

- To provide procedures to hear juvenile cases that assure fairness and protect the rights of juveniles and parents;
- To make decisions in each juvenile case that show consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family;
- To provide services for the protection of the juvenile by means that respect the family and the juvenile's needs for safety, continuity and permanence; and
- To provide standards for removal of the juvenile from his/her home when necessary and for his/her return, preventing unnecessary or improper separation of juveniles and their parents.

## Juvenile Justice

The juvenile justice system is separate and different from the adult criminal justice system. Adults are held fully responsible for their behavior. They can be arrested, charged with a specific crime, tried before a jury of their peers, found guilty or not guilty, and, if found guilty, sentenced according to the seriousness of the crime and the interest of the state.

Young people are treated differently, having many, but not all, the rights of adults. Juveniles are not arrested, but rather are taken into temporary custody. Juveniles have no right to a trial by jury but instead are subject to a hearing before a judge, at which time the juvenile may be adjudicated as undisciplined or delinquent.

The judge's decision on the disposition (or sentence) is based on meeting the juvenile's needs and interests *and* the interests of the state. The court attempts to do what is best for the juvenile to help make sure he/she is not brought into the juvenile justice system again or the adult system later.

*Youth Rights and Responsibilities*  
Fall 2000  
Youth Advocacy and Involvement Office

# Juveniles in North Carolina

A juvenile in North Carolina is a person who is not yet 18 years old and is not married, emancipated (legally free from parental custody) or a member of the armed forces of the United States.

A juvenile may enter the juvenile court system when someone makes a complaint that he/she is undisciplined or delinquent. The District Court has jurisdiction or the right and power to interpret and apply the law to juveniles. All court proceedings are held in the courthouse in the county where the offense is alleged to have occurred.

Juvenile court counselors in the Department of Juvenile Justice and Delinquency Prevention evaluate complaints and decide if a petition should be filed that requires a juvenile to appear in court. A petition describes the facts made in a complaint and asks the court to make a decision whether a juvenile is undisciplined or delinquent.

An **undisciplined juvenile** is one who is at least 6 years old but less than 16 years old and

- is unlawfully absent from school; or
- is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian or custodian; or
- is regularly found in places where it is unlawful for a juvenile to be; or
- has run away from home for more than 24 hours.

An **undisciplined juvenile is also a juvenile who is 16 or 17 years of age** who is regularly disobedient to and beyond the control of the juvenile's parent, guardian or custodian; is found in places where it is unlawful for a juvenile to be; or has run away from home for more than 24 hours.

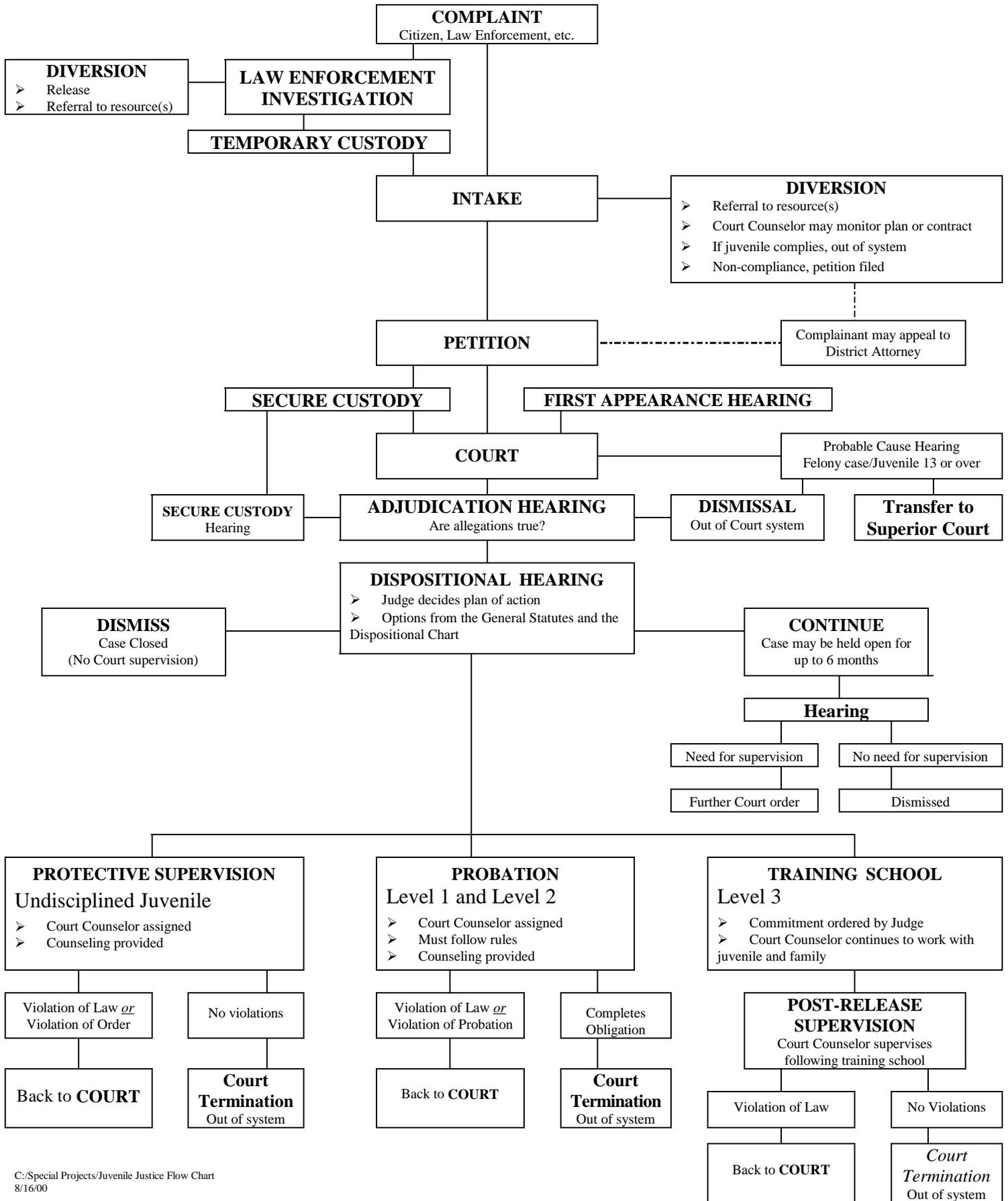
A **delinquent juvenile** is any juvenile who, while at least 6 years of age but not yet 16, commits an offense that would be a crime under state law or under an ordinance of local government, including violation of the motor vehicle laws, if committed by an adult.

A juvenile is subject to **adult criminal prosecution** when he/she is alleged to have committed a crime while age 16 or 17, or while he/she is married, emancipated or in the armed services. A **juvenile who is 13, 14 or 15 years of age who is alleged to have committed a felony** may be transferred to Superior Court and tried as an adult. A District Court judge follows procedures for juvenile court cases and decides whether to keep the matter in District Court or to transfer the case to the adult Superior Court. If the case is transferred to adult court, the juvenile has all of the constitutional rights of an adult and may be sent to prison if convicted. Some of the

constitutional rights of adults include the right to a jury trial and bail. If tried as an adult, the juvenile has no protection of keeping the record of the trial confidential. A juvenile will be prosecuted as an adult for any other offenses that happen after conviction in Superior Court.

The chart on the next page provides an overview of how the North Carolina juvenile justice process works.

# NORTH CAROLINA JUVENILE JUSTICE PROCESS



# For Juveniles In the Juvenile Court System

## Complaint, Investigation and Determination Of Whether to File a Petition in District Court

When a person files a complaint that a juvenile has committed an act that is delinquent or undisciplined, the intake counselor at the Department of Juvenile Justice and Delinquency Prevention evaluates it and decides if it should go to court. The intake counselor first decides whether the complaint shows acts by the juvenile that would be undisciplined or delinquent if proved true. When possible, the intake process includes interviews with the person(s) making the complaint, interviews with the juvenile and his/her parent(s) or legal guardian, and interviews with others having information about the juvenile and his/her family. The evaluation process takes 15 to 30 days to determine whether to file a petition. A petition states the facts in the complaint and indicates whether the juvenile is alleged to be delinquent or undisciplined.

In the **most serious delinquency cases**, the intake counselor must approve the filing of a petition if there are grounds to believe the juvenile committed the offense. In all other delinquency and all undisciplined cases, the intake counselor may **divert** the case - that is, refer the juvenile and the juvenile's family to resources in the community to assist them in dealing with behaviors and problems instead of taking the case to court. The intake counselor, the juvenile and the juvenile's family may enter into a **diversion contract**, a written agreement that sets out what each of them will do. The intake counselor will monitor the agreement. If the juvenile does the things in the diversion contract, a petition is not filed and he/she does not have to go to court. If the juvenile does not complete the terms of the diversion contract, the intake counselor can still take the case to court any time within six months.

When a juvenile enters the juvenile justice system, the District Court has jurisdiction or the right and power to interpret and apply the law. All court proceedings are held at the courthouse in the county where the offense is alleged to have occurred.

## Right to an Attorney

If the juvenile is involved in a **delinquency** case, he/she **must** be represented by an attorney. In fact, if the juvenile is alleged to be delinquent for committing a crime, he/she is not allowed to give up or do without an attorney, according to the North Carolina Juvenile Code. Juveniles are considered indigent (unable to afford an attorney) and may have a court-appointed attorney. The juvenile's parents may hire their own attorney if they wish to do so instead of accepting the court-appointed attorney.

On the other hand, if the juvenile is alleged to be an **undisciplined juvenile**, he/she does not ordinarily have a right to a court-appointed attorney. If an undisciplined juvenile is alleged to be in contempt for violating the conditions of protective supervision, however, the court must

appoint an attorney for him/her. This is because the juvenile may be sent to detention if the court finds him/her in contempt.

### ***Talking to the Attorney***

The juvenile's attorney represents the juvenile in court. Whatever the juvenile tells this attorney is confidential and will not be repeated to anyone, including his/her parents. The juvenile can discuss what he/she wants done in court with the attorney. The attorney is in court to protect and defend the juvenile's rights.

### **Law Enforcement**

Law enforcement or police may investigate complaints about juveniles. Juveniles are not arrested. Juveniles are sometimes taken into **temporary custody** by law enforcement or police for questioning about the complaint. Before questioning by law enforcement or police, any juvenile must be advised of these things:

- That the juvenile has the right to remain silent and not answer questions;
- Any statement made by a juvenile can be and may be used against him/her in court;
- The juvenile has a right to have a parent, guardian or custodian present during questioning; and
- The juvenile has the right to consult with an attorney and that an attorney be appointed if the juvenile wants to be represented.

### ***Fingerprinting and Photographing Juveniles***

Law enforcement or police fingerprint and photograph any juvenile who is 10 years old or older at the time the juvenile allegedly committed a nondivertable offense. A nondivertable offense is:

- Murder;
- First-degree rape or second-degree rape;
- First-degree sexual offense or second-degree sexual offense;
- Arson;
- Any drug offense that would be a felony if committed by an adult;
- First-degree burglary;
- Crime against nature; or

- Any felony that involves the willful infliction of serious bodily injury on another person or that was committed by using a deadly weapon.

### ***Temporary Custody***

The term “arrest” is not used in reference to juveniles. Law enforcement or police can take a juvenile into temporary custody for 12 hours without an order from a judge unless it is a Saturday, Sunday or holiday. Then a juvenile may be held for 24 hours without a court order.

When a juvenile is taken into temporary custody, law enforcement or police have physical care and supervision of the juvenile.

Law enforcement or police must notify parents, guardians or custodians that the juvenile has been taken into custody and tell them that they have the right to be present with the juvenile until the court order is in place. Juveniles can be taken into temporary custody if:

- The juvenile has committed a crime;
- Law enforcement or police believe the juvenile is undisciplined; or
- The juvenile ran away from a detention center, training school or other facility in the juvenile justice system.

### ***Secure and Non-Secure Custody***

The court may decide that a juvenile must remain in custody. A court will decide whether to place a juvenile in secure custody or non-secure custody.

If **non-secure** custody is requested, the court will consider releasing the juvenile to a parent, guardian, custodian or other adult. The court will order non-secure custody when it believes the charges in the petition and

- The juvenile is a runaway and agrees to non-secure custody; or
- The court decides that it is best to place the juvenile in non-secure custody.

If **secure custody** is requested, the court must believe the juvenile committed the offense in the petition and also one of the following:

- The juvenile is charged with a felony and is a danger to property or persons;
- The juvenile is charged with a misdemeanor that includes assault on a person and is a danger to persons;
- The juvenile failed to come to court on a pending delinquency charge;
- The court believes the juvenile will not come to court on a pending charge;

- The juvenile has run away from a training school or detention center;
- The court believes the juvenile has or will harm himself/herself;
- The juvenile is undisciplined by being a runaway and may need secure custody.

The court can order secure custody when it finds the juvenile is delinquent but has not yet entered an order regarding treatment, punishment or disposition.

Even if the court is not deciding the issues raised in the petition, the court must review orders for secure and non-secure custody. A juvenile cannot be held longer than five days in secure custody or seven days in non-secure custody without a hearing to determine if custody should be continued.

## **Hearing Procedures**

In addition to the hearing on custody, the court must conduct a hearing on a juvenile petition and decide whether a juvenile is undisciplined or delinquent. For a discussion about the juvenile's "Right to an Attorney," see page 4.

### ***Location of Hearing***

All hearings take place at the courthouse in the county where the alleged conduct or offenses occurred. All hearings are open to the public unless the judge closes the hearing or part of the hearing for good cause. If the juvenile requests that the hearing be open to the public, it must be open.

### ***Process of Hearing***

In a hearing to decide whether a juvenile is delinquent or undisciplined, the court protects the rights of the juvenile and the parent such as:

- The right to have written notice of the facts in the petition;
- The right to an attorney even if the juvenile cannot afford one when in court on a delinquency petition and in matters involving an undisciplined juvenile who is alleged to be in contempt for violating the conditions of protective supervision;
- The right to confront and cross-examine (ask questions of) witnesses;
- The right to remain silent and not testify against oneself;
- The right to have information regarding the petition prior to the hearing; and
- The rights given to adults with the exception of the right to bail, right to represent oneself and the right to a jury trial.

Juvenile hearings are a two-part process. In the first part of the hearing, the **adjudication**, the judge listens to all facts from the prosecutor and the juvenile and makes a decision whether the juvenile actually committed the offense(s) in the petition. If the petition is proved, the judge decides if the juvenile is undisciplined or delinquent. In the second part of the hearing, the **disposition**, the judge determines which disposition (similar to a sentence in adult court) best meets the needs of the juvenile and the interests of the state.

The court then asks for a report called a “predisposition report” which has social, medical, educational and other information regarding the juvenile, including any facts that show the juvenile may commit more delinquent acts.

After the court reviews the report, it will enter a **disposition** or decision regarding the juvenile. This is the second part of the hearing process. The court can enter orders that affect the rights of juveniles and their parents, guardians or custodian.

At the dispositional hearing, the court may consider written reports or other evidence concerning the juvenile’s needs. The juvenile and his/her parents, guardians or custodians can present evidence and may tell the court what they believe is best.

The court will decide what is best for the juvenile while protecting the public. The court considers the seriousness of the offense, the need to hold the juvenile responsible, the importance of protecting the public and the juvenile’s treatment needs in making its decision.

### ***Decisions About Undisciplined Juveniles***

If the judge decides that a juvenile is an undisciplined juvenile, the following can happen:

- The juvenile may be ordered to get treatment, such as counseling.
- The juvenile may be put under supervision and care of a court counselor for up to six months. The counselor will help the juvenile get treatment and will help his/her family give supervision, like setting a curfew and study time.
- The juvenile may be allowed to go to a special school.
- The juvenile may be excused from public school attendance if the judge approves alternative education plans.
- Parents may be ordered to get treatment, such as counseling.
- The juvenile may be put in the custody of someone other than his/her parents.
- The juvenile may be ordered not to associate with specified people or be in specified places.

## ***Decisions About Delinquent Juveniles***

If the judge decides that a juvenile is delinquent, any one or more of the following may be ordered:

- *Custody* - A juvenile may be placed in another's custody if the court decides that is best.
- *Probation* - This means a juvenile must report to a court counselor at regular times and do other things including going to school regularly, showing good behavior, and not breaking the law. One year is the longest probation term a juvenile can get. If a juvenile breaks the rules of probation, he/she must go to court. The judge can add more time to probation, add more rules to probation or possibly send a juvenile to training school.
- *Restitution* - This means working to pay back, in some way, the person or group injured. There are two kinds of restitution, community service and monetary. Community service means doing a supervised and scheduled activity like washing police cars, sweeping floors, or raking leaves. Monetary restitution means earning money to pay back the victim.
- *Counseling and Other Community Programs* - The judge can order a juvenile to get counseling, tutoring or to be part of a volunteer program in the community.
- *Group Homes and Other Kinds of Care* - A judge may order that a juvenile be placed in a group home. At these homes, there are strict rules to follow, along with mandatory counseling. A juvenile will attend school in the community. Other kinds of care, which also have strict rules and counseling, are special foster homes and wilderness camps.
- *Delayed Driver's License* - The judge can decide that the juvenile cannot get a driver's license for as long as the court has jurisdiction over him/her or for a shorter period of time as determined by the judge.
- *Training School* - A juvenile may be committed to a training school if a judge finds that he/she committed a violent offense or if he/she committed a serious offense and/or has a history of delinquent behavior. A juvenile who is committed to training school must stay at least six months and may stay until his/her 18<sup>th</sup> birthday if continued treatment is needed. Juveniles committed for violent offenses may stay until either their 19<sup>th</sup> or 21<sup>st</sup> birthday, depending on the offense. North Carolina has five training schools designed to educate and train juveniles so they may function in society. While in training school a juvenile must attend classes and counseling sessions.
- *Other Decisions* - A judge may also order substance abuse treatment, intensive

probation, house arrest, fines, curfew, that the juvenile not associate with specified people or be in specified places, confinement in detention facility for five-day periods, and any other condition(s) determined appropriate by the court.

## **The Juvenile's Record**

The record of the juvenile's court hearing is closed to the public. This means that employers or teachers cannot see the juvenile's record.

### ***Having Records Destroyed or Expunged***

**Expunction** is the destruction of juvenile legal records. There are three basic types of juvenile records: (1) law-enforcement records; (2) legal records, or juvenile file, kept at the courthouse by the clerk of Superior Court, and (3) social records, kept in the files of the chief court counselor (and sometimes in training schools, departments of social services, or other agencies). Only the law enforcement and legal records will be destroyed if the request for expunction is granted. Social records are destroyed according to a schedule set by the agency that keeps the records. Records that a person was adjudicated delinquent for one of the most serious offenses - any offense that would be a Class A, B1, B2, C, D or E felony if committed by an adult - **may not be expunged**.

If the juvenile has a record because he/she was found to be **undisciplined**, after age 18, he/she can ask the court to destroy the record. The petition must include a sworn statement that the juvenile has had good behavior since he/she was found undisciplined. This must be proved by two people who know the juvenile, not including relatives.

If the juvenile was found to be **delinquent**, he/she may ask the court to destroy his/her records provided that all of the following requirements have been met:

- The crime the juvenile committed would have been a crime if it had been committed by an adult.
- The juvenile has not been convicted of a crime as an adult. (A traffic violation does not count as a crime.)
- The juvenile has had good behavior since the time he/she was found delinquent.
- At least 18 months have passed since the juvenile was released from the court's jurisdiction.

Having the juvenile's record destroyed means that he/she and his/her parents can tell anyone (for example, a school or an employer) that he/she has never been in court and has never been delinquent or undisciplined. In any case, the juvenile record cannot be used against the juvenile in criminal proceedings if he/she is later charged as an adult. **THERE IS ONE EXCEPTION TO THIS.** If the juvenile testifies in a case in juvenile court, he/she may be required to testify about whether he/she was ever adjudicated delinquent.

# For Parents

This part of the guide will tell you about some of your responsibilities and rights as parents of a child in the juvenile justice system.

## *Giving Care and Supervision to Your Child*

Until your child reaches the age of 18 (unless the child is legally emancipated, married or a member of the armed forces of the United States), you are responsible for giving food, clothing, shelter, medical care, supervision and discipline to your child.

## *Sending Your Child to School*

Your child **must** go to school until the age of 16. The school must tell you when your child has three unexcused absences. After six unexcused absences, the principal must contact you by mail. After 10 accumulated unexcused absences, the principal must meet with you to determine whether you have made a good faith effort to comply with the law. If not, the principal must contact the district attorney. At this point, you are legally responsible if your child is not going to school. In a District Court hearing, the judge can find you guilty of a misdemeanor. The penalty is a fine of up to \$50 or 30 days in jail or both. If you have made good effort, the principal may contact the intake counselor of the Department of Juvenile Justice and Delinquency Prevention to file a complaint that your child is an undisciplined juvenile.

## *The Court Counselor*

If the court decides your child is an undisciplined juvenile, your child's counselor will offer you help. The counselor can help you set limits, like setting a time your child should be home at night. Counselors cannot control your child for you. They can give you advice about what you can do to control your child.

If the court decides your child is delinquent, a court counselor will work with you and your child. If your child is put on probation, you must cooperate with the court counselor to help your child follow the rules of probation.

## *Attorneys in Juvenile Court*

If your child is accused of being a delinquent, then he or she **must** have an attorney. If you cannot pay for one, then the court will appoint one for your child. Juveniles are considered indigent (unable to afford an attorney) and may have a court-appointed attorney. You may hire your own attorney to represent your child if you wish to do so instead of accepting the court-appointed attorney.

Ordinarily, an **undisciplined juvenile** does not have a right to a court-appointed attorney. If an undisciplined juvenile is alleged to be in contempt for violating the conditions of protective supervision, however, the court must appoint an attorney for the juvenile. This is because the

juvenile may be sent to detention if the court finds him/her in contempt.

A juvenile's attorney represents **THE JUVENILE** in court. Whatever the juvenile tells his/her attorney is confidential and will not be repeated to anyone, including the parents.

### ***Going to Court Hearings***

You have the right to know when and where the court hearing will be held. You will get a written notice that tells you when and where to go. You **MUST** attend all hearings unless the judge says you do not have to go. If you do not go to the hearing and have not been excused, the judge may find you in contempt of court. The penalty for contempt of court is up to 30 days in jail, \$50 fine or both. North Carolina General Statute 7B-2705 prohibits employers from discharging, demoting or denying a promotion or other benefit of employment because an employee attends juvenile court hearings or complies with other juvenile court orders.

### ***Your Rights at the Hearing***

You have the right to speak to your child's attorney and to the judge at the hearing. If you want to speak to the judge in open court, you must ask permission.

### ***Court-Ordered Counseling for Parents***

During a court hearing the judge can order you to get counseling. During the hearing, you can agree to go to counseling or tell the judge why you should not have to go. If the judge orders you to go, you must go or the judge can say you are in contempt of court. Contempt of court means that you get a fine and/or jail sentence.

### ***Restitution***

In juvenile court, the judge cannot order you as a parent to pay restitution, which is compensation to a victim for loss or damage to property caused by your child. You should know that (1) you can help your child pay restitution and (2) if your child does not pay and is on probation, the probation could last longer.

You should also know that you could be sued by the victim in Small Claims, District or Superior Court for the loss or damage to property or other bills that your child has caused. Parents are held strictly liable for willful, malicious damage to persons and property. This means that you are personally liable to pay for loss or damage even if you could not prevent your child's actions.

There are no court costs in juvenile court.

### ***Costs You May Have To Pay***

When your child needs to see the court counselor, you are responsible for seeing that he/she gets there and for providing and paying for transportation. The judge may order you to pay a "reasonable sum" for treatment for your child, like counseling or physical check-ups.

# For Victims/Witnesses

This part of the guide will explain your role as a victim or witness in the juvenile justice system. You will learn the following:

- Your role at the hearings and how to testify.
- The two kinds of restitution.
- How you get your money if the judge orders monetary restitution.
- Your right to sue in civil court.

## ***Subpoena***

If you are a victim/witness, you will get a subpoena (a court order that says you must come to the hearing) telling you the time, date and place. If you get subpoenaed, you must attend the hearing.

## ***At the Hearing***

At the hearing, a district attorney represents the state against the juvenile. If no district attorney is there, you may ask permission to speak to the judge in open court.

When testifying at the hearing, you should:

- Answer each question clearly, directly and truthfully.
- Answer only what you know to the best of your memory.
- Not anticipate questions. Wait until you are asked.

## ***Restitution***

If you are a victim who has a financial loss, the judge may order the juvenile to make restitution.

There are two kinds of restitution. The first is called community service. The court should tell you that the juvenile is doing community service restitution.

The second kind is monetary. It means the judge may order the juvenile to pay you for all or part of your loss. At the hearing, you have the right to tell the judge that you think the juvenile should pay you for the loss or damage. You should keep a record of expenses that come about because of the juvenile's wrong-doing. If the judge orders monetary restitution, the juvenile must pay within one year of the date the court orders it. The judge is never required to order the juvenile to pay restitution.

### ***Process for Paying Monetary Restitution***

The money is paid to the Clerk of Court's office. It is not paid directly to you. The clerk's office usually pays the money to you after the juvenile has paid the whole amount. If you want the money as it comes in to the clerk's office, you can ask for it. If you do not get your money, you have the right to call the juvenile court counselor and ask about it.

### ***Your Right to Sue the Juvenile's Parents in District Court***

You have the right to sue the juvenile's parents in District Court under a special law for actual damages or loss of property that you can show. Under North Carolina General Statute 1-138.1, parents can be held liable for expenses up to \$2,000 for willful or malicious damage to your person or property, theft and/or medical bills. You may be able to recover additional damages under common law remedies.

Small Claims Court is an option for damages up to \$3,000. You may want to consult with an attorney regarding any rights you may have against the juvenile or his family.

The North Carolina Juvenile Code can be found in the North Carolina General Statutes, Chapter 7B.

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The philosophy of the new Juvenile Code concentrates on the protection of the public while trying to balance the needs of the juvenile and his/her family.

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