



Juvenile Detention Guide for Law Enforcement

The Children's Law Center serves as a statewide resource center for attorneys and other professionals involved in juvenile justice and child protection court proceedings. The Children's Law Center is a program of the University of South Carolina School of Law.

Resource attorneys at the Children's Law Center are available to provide general technical assistance regarding state laws and family court procedure to child-serving professionals. Numerous publications addressing juvenile justice and child protection issues are also available and can be found on the Center's website.

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The Children's Law Center, USC School of Law, designed this guide specifically for law enforcement officers. It is intended to provide a single source of information regarding the taking into custody and pre-trial detention of juveniles charged with violating a state law. This guide focuses on the detention process and procedures only, and does not address other duties officers may have in juvenile justice cases.

Custody & Detention Overview

When a law enforcement officer takes a child into custody for violating a law or ordinance:

- the taking into custody is not an "arrest";
- the family court's jurisdiction attaches immediately;
- the officer who took the child into custody is authorized to make the initial decision as to whether or not to detain the child; and
- unless otherwise ordered by the court, the officer has the option of releasing the child to a parent or responsible adult.¹

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.²

A child who is detained is placed in a secure detention facility while awaiting trial. Children are not afforded the right to bail in South Carolina; however, they are entitled to a hearing within a specified amount of time to determine if probable cause exists to justify detention and whether the child's continued detention is appropriate and necessary. If the family court judge orders that the child remain in detention following the initial detention hearing, the child is entitled to periodic review hearings on continued detention.

If the officer does not consent to the child's release, the parents or other responsible adult may apply to any family court judge within the circuit for an ex parte order of release of the child. The officer's written report must be provided to the family court judge who may establish conditions for the child's release.³

The purpose of pre-trial detention is to protect the child, protect the public, and ensure that the child appears in court. Children are eligible for detention only if they meet certain criteria defined by law. Even if a child is eligible for secure detention, detention is not mandatory if the child can be adequately supervised at home or in a less secure setting.⁴

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. The following *Miranda* warnings must be given prior to questioning a child about an alleged delinquent act to preserve the admissibility of the child's statements in court proceedings:

- that the child has the right to remain silent;
- that 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 court to represent the child if the child cannot afford an attorney.⁵

In South Carolina, children can be questioned and interrogated by law enforcement without their parents being present or notified.

Detention Eligibility Criteria

South Carolina law⁶ authorizes law enforcement officers to place a child in a secure juvenile detention facility only if the child:

- is charged with a violent crime as defined in § 16-1-60;
- is charged with a felony or a misdemeanor other than a violent crime and the child is already detained, on probation or conditional release, or awaiting adjudication in another delinquency proceeding;
- is charged with a felony or a misdemeanor other than a violent crime, and has a demonstrable recent record of:
 - willful failures to appear at court proceedings;
 - violent conduct resulting in physical injury to others; or
 - adjudications for other felonies or misdemeanors and (1) there is reason to believe the child is a flight risk or poses a threat of serious harm to others, or (2) the instant offense involved the use of a firearm;
- is a fugitive from another jurisdiction;
- requests protection in writing under circumstances that present an immediate threat of serious physical injury;
- had in his possession a deadly weapon;
- has a demonstrable recent record of willful failure to comply with prior placement orders including, but not limited to, a house arrest order;
- 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 or public, or both; or
- is charged with an assault and battery on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity.

Detention is not mandatory for a child meeting the criteria if the child can be supervised adequately at home or in a less secure setting or program.

Age Restrictions⁷

- Children **ten** or younger may not be incarcerated in a detention facility or jail for any reason.
- Children **eleven** and **twelve** who are taken into custody for committing a criminal offense or who violate probation for a criminal offense may only be incarcerated in a jail or detention facility by order of the family court.

Custody & Detention Time Limits

- A child may be held in nonsecure custody within a law enforcement center for **only the time necessary** for purposes of identification, investigation, detention, intake screening, awaiting release to parents or other responsible adult, or awaiting transfer to a juvenile detention facility or to the court for a detention hearing.⁸
- A child may not be placed or ordered detained by the court in secure confinement in an adult jail or adult detention facility for more than **6 hours**.⁹
 - This prohibition does not apply to juveniles who have been waived to adult court.
 - Juveniles placed in secure confinement in an adult jail during this six-hour period must be confined in an area separated by sight and sound from confined adults.
 - A child taken into custody for violating a status offense must not be placed or ordered detained in an adult detention facility for any length of time.¹⁰
- If a child who has been taken into custody has not been released to a parent or other responsible adult, a detention hearing must be held within **48 hours** from the time the child was taken into custody, excluding weekends and holidays.¹¹
 - A child ordered detained must be screened by a social worker or a psychologist within **24 hours** to determine whether the juvenile is emotionally disturbed, mentally ill, or otherwise in need of services. If needed, such services must be provided **immediately**.¹²
 - Temporary holdover facilities may hold juveniles during the period between initial custody and the initial detention hearing for up to **48 hours**, excluding weekends and state holidays.¹³ Preadjudicatory juveniles who are subsequently transferred to a juvenile detention center may be housed in a temporary holdover facility when returned to the community for a court appearance as long as the temporary housing does not exceed forty-eight hours.¹⁴ It is important to note, however, that while SC law allows for the detaining of a child for up to 48 hours in a “temporary holdover facility” as stated above, SC may be at risk for losing federal funding if not in compliance with federal law.
- A child taken into custody for a status offense violation must 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 order may result in the secure detention of that child in a juvenile detention facility.¹⁵
- A child ordered detained for violating a valid court order may be held in secure confinement in a juvenile detention facility for not more than **72 hours**, excluding weekends and holidays.¹⁶
- 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.¹⁷
- A child must not be detained in secure confinement for more than **90 days**, absent exceptional circumstances as determined by the court.¹⁸

Transportation to and from Detention Facility¹⁹

- A child may not be transported to a juvenile detention facility in a vehicle which also contains adults under arrest.
- When a child is to be transported to or from a juvenile detention facility following a detention screening review conducted by DJJ or after the court issues a detention order, the local law enforcement agency which originally took the child into custody is responsible for transporting the child.
- DJJ is responsible for transporting juveniles between DJJ facilities.

Checklist for Custody & Detention

If you take a child into custody for violating a criminal law or ordinance:

- Notify the child's parent, guardian, or custodian as soon as possible.
- Give *Miranda* Warnings prior to questioning or interrogating the child regarding the alleged delinquent act.
- Complete the written incident report.
- Notify DJJ of taking the child into custody.
- Provide DJJ with a copy of the incident report indicating, at a minimum, the child's name, address, birth date, parents' names, and description and narrative of the charges.
- Consider DJJ's recommendation regarding detention. The authorized DJJ representative will advise whether the child is eligible for detention based on the child's age and state law, and will recommend that you release or detain based on the surrounding circumstances and necessity of detention.
- Determine whether to release the child to a parent or other responsible adult or detain the child.
 - Does the child meet the age and eligibility criteria for secure detention? (see below)
 - Can the child be supervised adequately at home or in a less secure setting or program?
 - Is detention necessary to ensure the child appears in court or to protect the child or someone in the community?
- Notify the principal of the child's school of the nature of the offense if the child was charged with a misdemeanor or felony, other than a traffic or wildlife violation over which courts other than the family court have concurrent jurisdiction as provided in § 63-3-520.
 - The principal must keep this information confidential and use it for monitoring and supervisory purposes only.

If you decide to release the child to a parent or responsible adult:

- Make sure there is no court order requiring detention.
- Require the person (to whom the child is being released) to sign a written promise to bring the child to court at a stated time or as directed by the court.
- Notify the person that failure to bring the child to court as promised may result in the issuance of a summons or a warrant for the apprehension of the person or the child.
- Submit the written promise and written incident report to DJJ no later than 24 hours after the child is taken into custody.

If you do not release the child:

- Immediately notify the authorized DJJ representative who then has one hour to respond by phone or in person to review the facts and advise as to whether or not detention is needed.

- Provide the DJJ representative with a written incident report stating the facts of the offense and the reason why the child was not released to the parent.
- Provide the family court judge with the written incident report if the parents or other responsible adult applies for an ex parte release of the child.
- Prepare to testify at the detention hearing.

Detention Hearing

Time of hearing:

- Hearing must be held within 48 hours from the time the child was taken into custody, excluding weekends and holidays.

Purpose of hearing:

- Determine whether probable cause exists to justify the detention of the child.
- Determine whether it is appropriate and necessary to detain the child further.

Conduct of hearing:

- This hearing is held before a family court judge and is similar to a combination of a bond hearing and a preliminary hearing in the adult criminal process.
- Any evidence relevant to the necessity for detaining the child is admissible.
- The DJJ representative will generally 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.
- The child must be represented by an attorney at this hearing and may only waive this right after consulting with an attorney at least once. The court will appoint an attorney to represent the child if the child does not have one.
- The detention hearing may be held without the child's parents or guardian if they cannot be located after a reasonable effort; if they are not located prior to the hearing, the court must appoint a guardian *ad litem* for the child.

Testifying at hearing:

- You may be called upon to explain your reasoning for not releasing the child to a parent or a responsible adult, whether probable cause exists to justify detaining the child, and whether continued detention is appropriate and necessary.
 - Your presence at this hearing is not necessarily required. Since hearsay is admissible, a law enforcement representative, who may be another officer without any direct knowledge of the case, may read from incident reports or notes from the reporting officer and testify as to probable cause and reasons why the child should be detained.
- Do not feel that you need to exaggerate or justify your actions. Judges will consider what information was available to you at the time you made the decision to detain.

Detention Alternatives

The following alternatives to secure pre-trial detention provide for the supervision and safety of a child while reducing the negative impact on the child and the costs associated with detention. Most counties have multiple options available that can be combined to best suit the needs of the child and his or her family.

- **House Arrest:** House arrest is often used as an alternative to detention. The child is court ordered to remain in the home and may only leave the home to participate in outside activities approved by the court.
- **Electronic Monitoring:** The child is released from secure detention under a special court order of electronic monitoring which offers 24-hour oversight. A curfew can be set by the court for any time of the day or night and for any length of time. If electronic monitoring is ordered, the child wears an ankle bracelet that functions as a transmitter, sending signals to a unit in the home. The unit reports movement through a GPS (Global Positioning Satellite) system to a computer that DJJ can access and at any time. Violations are monitored by DJJ staff and reported to the court.

DJJ contracts with a private provider to have access to electronic monitoring (EM) equipment. Every county in the state has access to EM equipment, and the county director for each DJJ office will know how to access units if they do not have any in their office, generally by contacting another county office to borrow any available units. Electronic monitoring costs DJJ up to \$10 per day, while the cost of detaining a child at DJJ's secure detention facility is \$150 per day (\$50 of which is charged back to the county). There is no cost to the child or county for electronic monitoring.

- **Voice Monitoring:** The child receives computerized calls and must answer and verify that he or she is at home. The system allows the child a window of time to call back before it alerts DJJ that the child has not responded. Because this alternative requires a landline phone, it is rarely used any more.
- **Detention Alternative Placements (DAP):** As an alternative to secure detention, the child may be placed by DJJ or ordered by the court to be placed in a DAP. These non-secure alternatives to detention include Shelter Care, Therapeutic Foster Homes, Intermediate or Intensive Group Homes, and Temporary De-escalation Care Placements. County DJJ staff have information regarding the availability of DAPs.

Relevant Statutes

Definition of "child" or "juvenile." § 63-19-20(1).

Definition of "status offense." § 63-19-20(9).

Taking a child into custody. § 63-19-810.

Out-of-home placement. § 63-19-820.

Detention hearings; screenings. § 63-19-830.

Detention homes; temporary care and custody. § 63-19-840.

Transportation to detention facility. § 63-19-850.

Institutional services. § 63-19-360.

Violent crimes defined. § 16-1-60.

Definitions

Adult jail or “other place of detention for adults” (§ 63-19-820(G)) includes a state, county, or municipal police station, law enforcement lockup, or holding cell.

Nonsecure custody (See exclusions under “Secure confinement.”)

Secure confinement (§ 63-19-820(G)) refers to an area having bars or other restraints designed to hold people at a law enforcement location for any period of time and for any reason.

- Secure confinement in an adult jail or other place of detention does not include a room or area not secured by locks or other security devices, which may include lobbies, offices, and interrogation rooms.
- Children held in these areas are considered to be in nonsecure custody as long as the area is not designed for or intended for use as a residential area, the child is not handcuffed to a stationary object, and the child is under continuous visual supervision by facility staff.
- Secure confinement also does not include a room or area used by law enforcement for processing or "booking" purposes, whether secure or nonsecure, as long as the confinement is limited to the time necessary to fingerprint, photograph, or otherwise "book" the child.

Status Offense (§ 63-19-20(9)) means an offense which would not be a misdemeanor or felony if committed by an adult including, but not limited to, incorrigibility or beyond the control of parents, truancy, running away, playing or loitering in a billiard room, playing a pinball machine, or gaining admission to a theater by false identification.

Temporary holdover facilities: a county, municipality, or regional subdivision may provide temporary holdover facilities for juveniles only if the facilities comply with § 63-19-360 and with all standards created under § 24-9-20.

- These facilities may hold juveniles during the period between initial custody and the initial detention hearing for up to 48 hours, excluding weekends and state holidays.
- Preadjudicatory juveniles who are subsequently transferred to a juvenile detention center may be housed in a temporary holdover facility when returned to the community for a court appearance for not more than 48 hours.

Violent crimes include the following offenses listed in § 16-1-60:

- murder and attempted murder, §§ 16-3-10 & 16-3-29
- assault and battery by mob, first degree, resulting in death, § 16-3-210(B)
- criminal sexual conduct in the first and second degree, §§ 16-3-652 & 16-3-653
- criminal sexual conduct with minors, first, second, and third degree, § 16-3-655
- assault with intent to commit criminal sexual conduct, first and second degree, § 16-3-656
- assault and battery with intent to kill, § 16-3-620
- assault and battery of a high and aggravated nature, § 16-3-600(B)
- kidnapping, § 16-3-910
- trafficking in persons, § 16-3-930
- voluntary manslaughter, § 16-3-50
- armed robbery and attempted armed robbery, § 16-11-330(A) & (B)
- carjacking, § 16-3-1075
- drug trafficking or trafficking cocaine base, §§ 44-53-370(e) & 44-53-375(C)
- manufacturing or trafficking methamphetamine, § 44-53-375
- arson in the first and second degree, § 16-11-110(A) & (B)
- burglary in the first and second degree, §§ 16-11-311 & 16-11-312(B)

- engaging a child for a sexual performance, § 16-3-810
- homicide by child abuse / aiding and abetting, § 16-3-85(A)(1) & (2)
- inflicting / allowing great bodily injury upon a child, § 16-3-95(A) & (B)
- criminal domestic violence of a high and aggravated nature, § 16-25-65
- abuse/neglect of vulnerable adult resulting in death/great bodily injury, § 43-35-85(F) & (E)
- taking of a hostage by an inmate, § 24-13-450
- spousal sexual battery, § 16-3-615
- producing, directing, or promoting sexual performance by a child, § 16-3-820
- sexual exploitation of a minor in the first and second degree, §§ 16-15-395 & 16-15-405
- promoting or participating in prostitution of a minor, §§ 16-15-415 & 16-15-425
- aggravated voyeurism, § 16-17-470(C)
- detonating a destructive device resulting in death with or without malice, §§ 16-23-720(A) & 10-11-325(B)(1)
- boating under the influence resulting in death, § 50-21-113(A)(2)
- vessel operator's failure to render assistance resulting in death, § 50-21-130(A)(3)
- damaging an airport facility or removing equipment resulting in death, § 55-1-30(3)
- failure to stop resulting in death, § 56-5-750(C)(2)
- interference with traffic-control devices resulting in death, § 56-5-1030(B)(3)
- hit and run resulting in death, § 56-5-1210(A)(3)
- felony DUI resulting in death, § 56-5-2945(A)(2)
- putting destructive or injurious materials on a highway resulting in death, § 57-7-20(D)
- obstruction of a railroad resulting in death, § 58-17-4090
- accessory before the fact to commit any of the above offenses, § 16-1-40
- attempt to commit any of the above offenses, § 16-1-80

Endnotes

- 1 S.C. Code Ann. § 63-19-810(A).
- 2 S.C. Code Ann. § 63-19-820(A).
- 3 S.C. Code Ann. § 63-19-820(B).
- 4 S.C. Code Ann. § 63-19-820(B),(F).
- 5 *Miranda v. Arizona*, 384 U.S. 436 (1966).
- 6 S.C. Code Ann. § 63-19-820(B).
- 7 S.C. Code Ann. § 63-19-820(F).
- 8 S.C. Code Ann. § 63-19-810(D).
- 9 S.C. Code Ann. § 63-19-820(C).
- 10 S.C. Code Ann. § 63-19-820(E).
- 11 S.C. Code Ann. § 63-19-830(A).
- 12 S.C. Code Ann. § 63-19-830(B).
- 13 S.C. Code Ann. § 63-19-820(D).
- 14 S.C. Code Ann. § 63-19-360(6).
- 15 S.C. Code Ann. § 63-19-820(E).
- 16 S.C. Code Ann. § 63-19-820(E).
- 17 S.C. Code Ann. § 63-19-830(A).
- 18 S.C. Code Ann. § 63-19-830(A).
- 19 S.C. Code Ann. § 63-19-850.