

Florida New Juvenile Defender Attorney Manual

by The Juvenile Justice Center



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Published by: The Juvenile Justice Center at Barry University School of Law

Preface

The primary goal of this manual is to assist attorneys who represent juveniles by providing an overview of issues that may impact them in their work. It should be noted that this manual is meant to be an overview, and although it is comprehensive, it is not all-inclusive. An appendix of other useful references is included on page 20 and should be referred to in order to gain more knowledge on specific issues. Also, this manual is meant to highlight issues that are juvenile specific and does not include information regarding general trial skills (e.g. opening statements, cross examinations, and rules of evidence) that all public defenders should be competent in their practice as a lawyer.

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EVOLUTION OF THE JUVENILE SYSTEM

The 1820s and 1830s saw the first establishment of special institutions for children in the United States.¹ These “Houses of Refuge” accepted children for a variety of reasons, including delinquency.² The first statewide juvenile court was established in Illinois in 1899.³ Other states soon followed and by 1945 all states had established juvenile courts, which had jurisdiction over some combination of delinquency, status offense, and dependency cases. These early juvenile courts were founded under the doctrine of *parens patriae* (parent of the country), which viewed the state as the child’s “guardian” and resolved cases in an informal, non-adversarial setting with the child’s best interests as the guiding standard for the decision making. Florida first established a juvenile court in 1914; however, they did not bring delinquency into that court system until 1950.

The 1960s changed the court’s traditional view by creating a more adversarial system and affording juveniles more constitutional rights, while still attempting to keep the rehabilitative focus of the previous era of courts.⁴ Fear existed amongst child advocates that while the informal setting was created to try to protect the best interests of the child, in practice, an atmosphere was developing that was unfair to the child. As Justice Fortas observed in *Kent v. United States*: “[T]here may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”⁵

Thereafter, a number of landmark court decisions followed the trend of affording children more legal rights and creating a more adversarial system.

- ***Kent v. United States***, 38 U.S. 541 (1966) – The Court held that a child facing the possibility of transfer to adult court must receive a hearing. At the hearing the juvenile is entitled to representation by an attorney and a written ruling from the court regarding the transfer decisions.
- ***In re Gault***, 387 U.S. 1 (1967) – The Court expanded some of the due process protections afforded to adults to children. The Court held that children in juvenile court have a right to notice of the charges against them, the right to an attorney, the right to remain silent, and the right to confront and cross-examine witnesses.
- ***In re Winship***, 397 U.S. 358 (1970) – The Court held that the standard for adjudicating a child delinquent is proof beyond a reasonable doubt.
- ***McKeiver v. Pennsylvania***, 403 U.S. 528 (1971) – The Court held that children in the juvenile justice system have no federal constitutional right to trial by jury.
- ***Breed v. Jones***, 421 U.S. 519 (1975) – The Court held that the double jeopardy clause applies to juveniles and prevents a child from being subjected to charges in criminal court after being subjected to charges on the same offense in delinquency court.
- ***Woodard v. Wainwright***, 556 F.2d 781 (5th Cir. 1977) – The Fifth Circuit Court of Appeal held that it was not necessary to have a waiver hearing before indicting a child in the adult criminal justice system. The United States Supreme Court later denied certiorari in this case.
- ***Fare v. Michael C.***, 442 U.S. 707 (1979) – The Court held that the appropriate test for determining whether a child’s waiver of rights was voluntary and knowing is a totality of the circumstances test.
- ***Schall v. Martin***, 467 U.S. 253 (1984) – The Court held that the preventive detention of children accused of delinquent acts, while pending an adjudication, does not violate due process.

Florida followed the national trend of moving towards a more adversarial nature of juvenile proceedings.⁶ Not only did the court system follow these landmark United States Supreme Court cases, but the legislature also instituted changes that reinforced the adversarial system. In 1994, the Department of Juvenile Justice (DJJ) was created to handle juvenile

¹ Dialogue on Youth and Justice, *The History of Juvenile Justice*, American Bar Association Division for Public Education (2007), 5, <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Kent v. United States*, 38 U.S. 541 (1966).

⁶ *History*, Florida Department of Juvenile Justice (2012), <http://www.djj.state.fl.us/about-us/history>.

cases that had previously been handled under the Department of Health and Rehabilitative Services.⁷ In 1997, juvenile delinquency statutes were moved to Florida Statutes Chapter 985 and out of Florida Statutes Chapter 39, where statutes pertaining to dependency are located.⁸ The organization of the DJJ was overhauled in 2000 by legislation known as the “Tough Love” plan, which moved the system even closer to the punitive model used for adult criminal court.⁹

Despite changes towards a more adversarial system, the underlying goal of the juvenile justice system has remained rehabilitative, not retributive. “The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.”¹⁰ Also, recent cases by the United States Supreme Court have indicated a possible return to a more rehabilitative model.

- **Roper v. Simmons**, 543 U.S. 551 (2005) – The Court held that it was cruel and unusual punishment and thus, unconstitutional for the death penalty to be applied for a crime committed while a juvenile.
- **Graham v. Florida**, 560 U.S. ____ (2010) – The Court held that it was cruel and unusual punishment and thus, unconstitutional to sentence life in prison without the possibility of parole for a non-homicide crime committed while under the age of 18.
- **J.D.B. v. North Carolina**, 564 U.S. ____ (2011) – The Court held that age is relevant when determining if a person is in police custody for Miranda purposes.
- **Miller v. Alabama**, 567 U.S. ____ (2012) – The Court held that it was unconstitutional to have a mandatory life without parole sentence for a homicide committed by a minor.

COMPARISON OF ADULT AND JUVENILE SYSTEMS

The following is an overview of the similarities and differences between the adult and juvenile systems.

	Adult	Juvenile
Burden of Proof	Beyond a Reasonable Doubt	Beyond a Reasonable Doubt ¹¹
Right to Notice of Charges	Yes	Yes ¹²
Right to Attorney	Yes	Yes ¹³
Right to Confront and Cross-Examine Witnesses	Yes	Yes ¹⁴
Right to Remain Silent	Yes	Yes ¹⁵
Right to a Jury Trial	Yes	No ¹⁶
Elements of Charge Defined in Criminal Code	Yes	Yes
Purpose of the System	Retribution	Rehabilitation
Fact Finding Hearing	Trial	Adjudicatory Hearing ¹⁷
Accused	Defendant	Respondent
Sentencing Hearing	Sentencing Hearing	Disposition Hearing ¹⁸
Adversarial	Yes	Yes
Rules of Professional Conduct Apply	Yes	Yes
Miranda v. Arizona applies	Yes	Yes ¹⁹

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Kent*, 38 U.S. 541, 554.

¹¹ *In re Winship*, 397 U.S. 358 (1970).

¹² *In re Gault*, 387 U.S. 1 (1967).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

¹⁷ FLA. STAT. § 985.03(2) (2012).

¹⁸ FLA. STAT. § 985.03(21) (2012).

¹⁹ *Miranda v. Arizona*, 384 U.S. 436 (1966). *J.D.B. v. North Carolina*, 564 U.S. ____ (2011)

ROLE OF A JUVENILE DEFENDER

A juvenile defender has a duty to zealously advocate for their client.²⁰ This requires the defender to treat the case as seriously as they would in an adult criminal case. Also, the juvenile defender must follow the child's express interests in the conducting of the case.²¹ It is not the role of the juvenile defender to advocate for what they *feel* is in the child's best interests. The juvenile defender should counsel the child and present the advantages and disadvantages of his/her options. At the end of the day, the juvenile defender must follow the child's expressed wishes when it comes to decisions on the objectives of representation. An attorney may also request the court to appoint a guardian ad litem, a court appointed advocate for the best interests of the child, if they feel it is necessary.²²

Related Florida Bar Rules of Professional Conduct:

Rule 4-1.2:

"Subject to subdivisions (c) [where a client can limit the scope of representation under certain circumstances] and (d) [if a client wishes to pursue criminal or fraudulent conduct], a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify."

Comment to Rule 4-1.2:

"Subdivision (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected."

Rule 4-1.4:

"(a) Informing Client of Status of Representation. A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

²⁰ R. Regulating Fla. Bar Preamble.

²¹ R. Regulating Fla. Bar 4-1.2.

²² Fla. R. Juv. P. 8.170.

Comment to Rule 4-1.4:

“Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See rule 4-1.14.”

Rule 4-1.14 (a):

“Maintenance of Normal Relationship. When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”

Comment to Rule 4-1.14:

“When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”

Not only should a juvenile defender ensure that he/she respects the expressed interests of the child, the defender should also ensure that competent representation is provided for the child. To be able to provide competent representation, the defender should have the requisite knowledge of legal resources, know how a delinquency case proceeds, understand the roles and personalities of the personnel involved in the delinquency process, and be familiar with the options for disposition and the pros and cons of each. The defender should also be familiar with the different collateral consequences, adolescent development, and how that relates to their representation, trial and appellate advocacy, and ethical obligations.

ETHICAL ISSUES

While it is important to keep in mind how children and the juvenile justice system differ from adults and the criminal justice system, a juvenile defender owes the same professional conduct and ethical considerations to their child clients as they would to their adult clients. The juvenile defender must let the child determine the goals of the representation (as detailed above in **Role of a Juvenile Defender**), preserve attorney-client privilege, keep the client informed about their case, avoid conflicts of interest and all other ethical issues that arise with adult clients.

Attorney-client privilege is an important cornerstone of the legal profession that allows attorneys to build a relationship of trust and confidence with their clients. It can be especially important with young clients that are often mistrustful of attorneys and adults in general; therefore, it is important that a juvenile defender explains this privilege to the child from the beginning, using developmentally appropriate language that the child can understand (see the section below **Interviewing a Child** for more information on this concept). It is also especially important to remember and explain to the child that they are the client and the privilege extends only to them. The juvenile defender cannot share what the child tells them with their parents, teachers, family members, or any other interested adults. Very few limited circumstances exist in which the attorney can reveal information given to them by their client, under Florida Rules of Professional Conduct 4-1.6:

“(b) When Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent a client from committing a crime; or
- (2) to prevent a death or substantial bodily harm to another.

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;
- (3) to establish a defense to a criminal charge or civil claim against the lawyer based upon the conduct in which the client was involved;
- (4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (5) to comply with the Rules of Professional Conduct."

In addition to keeping the child client information confidential, communicating often with the child is another important part in building a relationship that is essential to providing competent representation.²³ The juvenile defender should meet with the child as soon as possible after being appointed to the case to learn from the child what led to their alleged charge, what the child's goals and objectives are for the representation, and what the child is to expect to happen and the roles of others in the process (such as the prosecutor and the judge). The attorney also needs to explain his/her role to the child, since many children are unfamiliar with the court system and even those that are familiar may have confusion over the different roles.²⁴ It is also important to stress to the child that the attorney's role is to represent the expressed interest of the child, not the parents, teachers, courts, or anyone else. The juvenile defender should continue to communicate with the child throughout the process, updating the child on what is happening in the case, getting additional information from the child as needed, making sure the child has no questions, and explaining what the child is to expect throughout the process. This is required under the Florida Rules of Professional Conduct 4-1.4 as well:

"(a) Informing Client of Status of Representation. A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules;
- (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) Keep the client reasonably informed about the status of the matter;
- (4) Promptly comply with reasonable requests for information; and
- (5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

The communication with the child should be at a developmentally appropriate level and use language that the child can understand. After explaining these various issues to the child, asking them to explain it back to the attorney in their own words can be a useful tool to see if the child understands the relationship. The juvenile defender should also remember that, unlike working with an adult client, he/she may need to take more initiative to start communication keeping the communication lines open and ensuring that the child understands what is unfolding in court. A juvenile defender should also consider practical issues when scheduling times to communicate with the child client. For example, a child may not have easy access to transportation to go to meetings at the defender's office or a child may have school obligations during the day. A juvenile defender must do their best to facilitate communication and work around these obstacles.

As with any client, the defender has a duty to avoid conflict of interests. Conflicts can arise due to joint representation of co-defendants, relationships between the child and former clients, personal interests or anything else that could adversely impact the child's representation.²⁵

²³ R. Regulating Fla. Bar 4-1.4.

²⁴ Emily Buss, "You're My What?" *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 *FORDHAM L. REV.* 1699, (1996).

²⁵ R. Regulating Fla. Bar 4-1.7.

ADOLESCENT DEVELOPMENT

Children are not simply “miniature adults”, but are developmentally different. The mere existence of a separate juvenile court is evidence that the legal system acknowledges that differences exist between juveniles and adults. Statutory and case law language often further point out the differences and recent examples of this can be seen in the United States Supreme Court cases of *Roper v. Simmons*, *Graham v. Florida*, *J.D.B. v. North Carolina*, and *Miller v. Alabama*.²⁶ “*Roper* established that because juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a ‘lack of maturity and an underdeveloped sense of responsibility’; they ‘are more vulnerable or susceptible to negative influences and outside pressures including peer pressure’; and their characteristics are ‘not as well formed.’”²⁷

The common sense idea that juveniles think differently has been confirmed by the brain science that has been developed in recent years. “The adolescent’s mind works differently from ours. Parents know it. This Court has said it. Legislatures all over the world have presumed it for decades or more. And scientific evidence now sheds light on how and why adolescent behavior differs from adult behaviors.”²⁸ Recent studies have revealed that, on average, the human brain is not fully formed until the age of 25.²⁹ These developmental differences cause children to often be more likely to engage in risky behaviors without recognizing the risks, unlike adults who may be more capable of recognizing the risks of such behaviors.³⁰

The prefrontal cortex is the primary area of the brain that regulates decision making; it is also one of the last areas of the brain to develop.³¹ In addition, the area of the brain that coordinates cognitive thinking, the cerebellum, is one of the latter areas of the brain to develop (not fully developing until the early 20s).³² The lack of development in these brain areas can affect juveniles in many ways such as:

- more prone to emotional decision making,
- more unable to anticipate future consequences,
- more impulsive,
- more likely to engage in risky behavior (due to overweighing possible gains and minimizing risk),
- more unable to fully consider all options in a situation, and
- more susceptible to peer pressure (especially if the child is searching for self-identity and acceptance).

Children also tend to place a higher emphasis on fairness than adults. As a result, getting a chance to tell their side in court and feel that people are listening to their experience and reasons for action may be more important to them than adults. This involvement of the child is why it is critical for a juvenile defender to explain the legal process to the child and stress to them the importance of remembering that the other side gets a chance to present evidence as well, even if the child may feel that someone is being untruthful or that the proceeding is unfair.

A stressful situation can exacerbate these traits. While these traits are generalized by age, it is important to remember that an individual’s developmental maturity may be lesser or greater than what’s indicated by their age.

The majority of children in the delinquency system have faced serious adversity or undergone traumatic experiences in his/her life. These experiences can exacerbate the traits mentioned above and raise additional issues such as making a child less trustful of authority figures, more likely to reoffend due to lack of support from home life, more likely to have problems in school, and many others. If there is a lack of structure in their home life, issues may exist with the child not being able to attend court at the proper time and his/her inability to complete certain probationary tasks. This can be observed especially in younger children who are likely to rely on their family for transportation.

All of these factors should be remembered when interacting with the child as well as investigated fully to see if any of these traits are present and could provide mitigation during the disposition phase of the proceedings.

²⁶ *Roper v. Simmons*, 543 U.S. 551 (2005). *Graham v. Florida*, 560 U.S. ____ (2010). *J.D.B. v. North Carolina*, 564 U.S. ____ (2011). *Miller v. Alabama*, 567 U.S. ____ (2012).

²⁷ *Graham v. Florida*, 560 U.S. ____ (2010).

²⁸ Brief for the American Medical Association and the Academy of Child and Adolescent Psychiatry as Amicus Curiae, *Miller v. Alabama*, 567 U.S. ____ (2012)

²⁹ Interview with Dr. Jay Geidd, Frontline: Inside the Teenage Brain, PBS television broadcast (Jan. 1, 00), available at www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interview/s/geidd.html

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

INTERVIEWING A CHILD

When speaking with the child, it is important to ensure that you are using appropriate language that the child can understand. Words and questions should be as simple and clear as possible. Also, pay attention to the language the child uses to determine what level of language is appropriate for them.

If the child appears to be confused, it is important to ask the child if he/she understands or can clarify the issue. The child may not be proactive in voicing their questions about their confusion. The juvenile defender should ask the child to clarify if the child says something that the juvenile defender finds confusing; this can be especially common if the child is using slang terms.

While significant with all clients to avoid long and complex questions with multi parts, it is especially vital when dealing with children. The defender should also remember that children are often very literal when answering questions, so while the language should be simple enough for the child's developmental level, it should also be precise to avoid any confusion.

COMPETENCY

If the defender believes that the child is incompetent, he/she may file a motion for examination of the child which details (without violating the attorney-client privilege) the reasons why the attorney feels the child is incompetent.³³ The juvenile defender may also request a confidential competency evaluation in order to protect any incriminating statements by the child to the evaluator. If then found incompetent by the confidential evaluator, the defender may file the motion for competency. Filing this motion tolls speedy trial until the child is declared competent.³⁴ The court and state attorney may also file a motion to determine competency. After a motion is filed, an evaluation is then ordered and a hearing set. At the hearing, competency is determined and must be based on an evaluation of two or three experts.

The standard for competency is if the child has "sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings." The six issues that must be included in the report are set out in the statute.³⁵ If the court finds the child competent, an order is entered to that effect and the case proceeds as normal.³⁶

If an evaluation determines that the child is incompetent, it must state the facts and reasons underlying that decision, the nature of the incompetency (mental illness, mental retardation, age, immaturity, etc.), and whether secure or nonsecure treatment is required.³⁷

A child declared incompetent may only be committed to the Department of Children and Families (DCF) if the child is charged with what would be a felony for an adult.³⁸ If the child is incompetent to proceed due to mental illness or retardation and is charged with what would be a felony for an adult, the child must be committed to DCF. The child may not be committed to DCF if the charge is a misdemeanor.³⁹ If the child is incompetent because of age or immaturity, the child must not be committed. If the child is committed to DCF and meets certain strict criteria⁴⁰ by clear and convincing evidence, then the child must be placed in secure placement.

JURISDICTION

In Florida, the circuit court has exclusive original jurisdiction of delinquency cases.⁴¹ A delinquency petition must be filed in the county where the delinquent act occurred, but the court may transfer the case to the circuit court of where the child lives or will live at the time of detention or placement for dispositional purposes.⁴² After obtaining jurisdiction, the court can retain jurisdiction until the child is 19 years old.⁴³ In certain circumstances the court can retain jurisdiction for

³³ Fla. R. Juv. P. 8.095(a)(1)(A).

³⁴ Fla. R. Juv. P. 8.095(a)(9); 8.095(a)(9).

³⁵ FLA. STAT. § 985.19(f) (2012).

³⁶ FLA. STAT. § 985.19(3) (2012).

³⁷ *Id.*

³⁸ FLA. STAT. § 985.19(2) (2012).

³⁹ *Id.*

⁴⁰ FLA. STAT. § 985.19(3) (2012).

⁴¹ FLA. STAT. § 985.0301(1) (2012).

⁴² FLA. STAT. § 985.0301(4)(a) (2012).

⁴³ FLA. STAT. § 985.0301(5)(a) (2012).

even longer if the child is in transition-to-adulthood services and voluntarily participates the jurisdiction can be extended until their 20th birthday.⁴⁴ Also, if placed in a commitment program, the court may hold the child in that program until they are 21 or if it is a juvenile prison, high- or maximum-risk facility until the child is 22.⁴⁵ Jurisdiction may also be retained if there is an outstanding restitution order until the restitution order is paid (note: this can apply to the child's parent or legal guardian in addition to the child).⁴⁶

RIGHT TO COUNSEL

The constitutional right to counsel is extended to juveniles and is codified in statute which states that "[a] child is entitled to representation by legal counsel at all stages of any delinquency court proceedings."⁴⁷ This right is quite broad and applies to not just the adjudicatory hearing but the various stages of the proceedings prior to it; it is also not limited to situations in which imprisonment is a possible penalty, as it is in adult cases.

The child may waive the right to counsel, but "only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel."⁴⁸ The court must conduct an inquiry to ascertain that the child understands the waiver decision and the waiver must be in writing.⁴⁹

TRANSFER TO ADULT COURT

There are three ways for a juvenile case to be transferred to adult court: waiver hearing, grand jury indictment for offenses punishable by death or life imprisonment, and direct file.

A child can voluntarily waive into the adult system by a request in writing by the child and the child's parent, guardian, or guardian ad litem.⁵⁰ Prior to a child waiving into the adult system, the child should be carefully counseled on their rights in both systems and possible outcomes in both systems. If the child was 14 years or older at the time of the offense, then the state can file an involuntary waiver motion.⁵¹ Under certain statutory conditions, the state is required to file a waiver, direct file, or provide written reasons to the court for not transferring the case.⁵² After filing a motion for waiver, a hearing then must be held on the matter. If the waiver was discretionary on the part of the state, then the court must consider all of the factors set forth in the statute.⁵³ DJJ must submit a report on the factors prior to the hearing for all parties to examine as well. At the hearing for a mandatory waiver and after the state shows that the conditions for a mandatory waiver exist, the burden is then on the defense to give reasons that a waiver should not be ordered.

A grand jury indictment can be sought for a child of any age for an offense punishable by death or life imprisonment and the decision to seek it is up to the state attorney.⁵⁴ A child transferred by indictment is handled as an adult in every aspect, which includes being held in an adult facility while awaiting trial.⁵⁵ A child transferred to adult court by indictment must be sentenced as an adult, unlike the other two methods where juvenile sanctions can still be imposed at the sentencing phase.⁵⁶

Direct file is by far the most common way juveniles are transferred to adult court in Florida. This method allows the state attorney to file the case directly in adult court and this may be discretionary or mandatory depending on the age of the child and the charges.⁵⁷ The age restrictions on direct file vary depending on the charges issued; however, a discretionary waiver is always an option if the child is 16 or 17 years old.⁵⁸

An important thing to note: Once a child is in adult court, any future charges must be heard in adult court even if the child voluntarily waived to adult court.

⁴⁴ *Id.*

⁴⁵ Fla. Stat. § 985.0301(5)(d) (2012).

⁴⁶ Fla. Stat. § 985.0301(5)(h) (2012).

⁴⁷ Fla. Stat. § 985.033(1) (2012).

⁴⁸ Fla. R. Juv. P. 8.165.

⁴⁹ *Id.*

⁵⁰ Fla. Stat. § 985.556(1) (2012).

⁵¹ Fla. Stat. § 985.556(2)-(3) (2012).

⁵² Fla. Stat. § 985.556(3) (2012).

⁵³ Fla. Stat. § 985.556(4)(c) (2012).

⁵⁴ Fla. Stat. § 985.56 (2012).

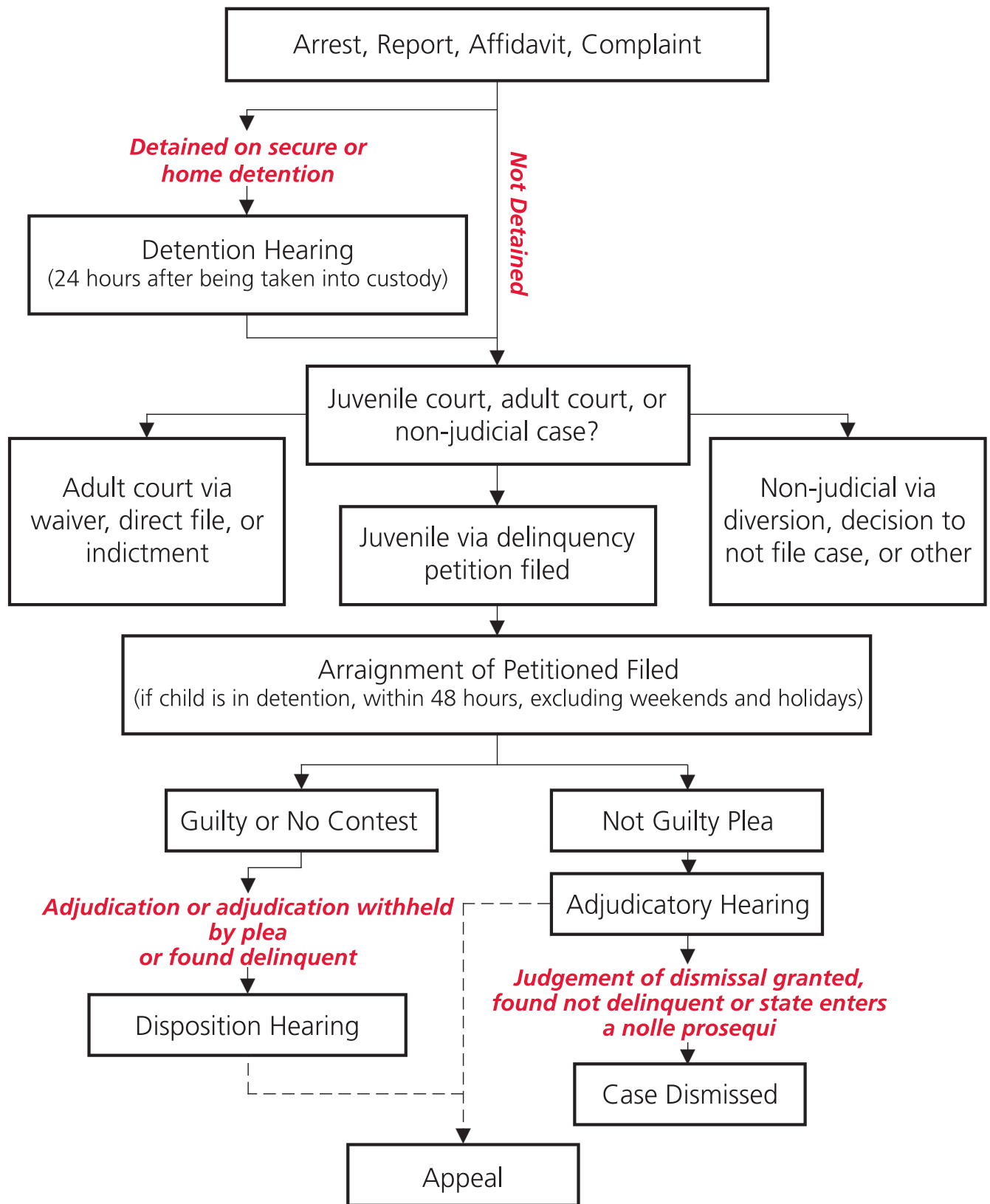
⁵⁵ Fla. Stat. § 985.56(4) (2012).

⁵⁶ *Id.*

⁵⁷ Fla. Stat. § 985.557 (2012).

⁵⁸ *Id.*

CASE PROCEEDINGS



CUSTODY, INTAKE, AND DETENTION

A written affidavit, complaint or report is the first step in delinquency proceedings and may be made to DJJ by any person or agency with knowledge of the facts.⁵⁹ Law enforcement is the leader in the written reports to DJJ.

Taking a child into custody is statutorily defined when “temporary physical control over the child is attained by a person authorized by law, pending the child’s release, detention, placement, or other disposition.”⁶⁰ It is often equated with being arrested although the statute distinguishes that it is “not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence in conjunction therewith is lawful.”⁶¹ The statute also lays out the four situations in which a child may be taken into custody and who has to be notified if the child is taken into custody.⁶² A child should be released from custody as “soon as is reasonably possible” unless the child scores for detention.⁶³

Intake is the “initial acceptance and screening by the department of a complaint or a law enforcement report or probable cause affidavit of delinquency.”⁶⁴ The goal of intake is to determine the least restrictive service available for the child and proceed appropriately. When a child is brought to intake, a juvenile probation officer (JPO) completes a risk assessment instrument (RAI) which determines whether detention is appropriate for the child, and if so, what type of detention is appropriate for the child. The RAI contains multiple questions about the child’s current and past charges and adds up to a score which directs the detention status for the child. A score of over 12 points results in the child being held in secure detention where the child is held in a detention center and is the most restrictive of the detention options.

A detention hearing must be held within 24 hours.⁶⁵ The juvenile defender should meet with the child as early as possible prior to this hearing in order to learn what occurred and what the child’s goal is (in most cases the child wishes to be released from detention as soon as possible, however, this should be confirmed with the child and not just assumed). Also, the juvenile defender should conduct an investigation to confirm the accuracy of the RAI scoring and to ascertain if there are any factors that would cause a deviation from the RAI. The juvenile defender may do this by gathering records and speaking to the appropriate people (although courts generally do not deviate from the recommendation).⁶⁶ At the detention hearing, the court will also determine if probable cause exists so the juvenile defender should be prepared to make any arguments available regarding the lack of probable cause.⁶⁷ If the child is detained and the attorney learns of grounds for the child’s release at a later time, then a motion may be filed to have the child released.

⁵⁹ FLA. STAT. § 985.101 (2012).

⁶⁰ FLA. STAT. § 985.03(53) (2012).

⁶¹ FLA. STAT. § 985.101(4) (2012).

⁶² FLA. STAT. § 985.101 (2012).

⁶³ *Id.*

⁶⁴ FLA. STAT. § 985.03(27) (2012).

⁶⁵ FLA. STAT. § 985.255 (2012).

⁶⁶ FLA. STAT. § 985.245 (2012).

⁶⁷ FLA. STAT. § 985.255 (2012).

CUSTODY, INTAKE, AND DETENTION *(CONTINUED)*

Type of Detention	Description
Secure Detention ⁶⁸	<ul style="list-style-type: none"> Physical detention in a detention center Most restrictive option
Nonsecure Detention ⁶⁹	<ul style="list-style-type: none"> Physically nonrestrictive residential home in the community Child is able to attend school and work in the community
Home Detention ⁷⁰	<ul style="list-style-type: none"> Child is released to the care of their parent/guardian Cannot go anywhere other than school and home
Straight Release	<ul style="list-style-type: none"> Least Restrictive No conditions required on the child

Case Status	Maximum amount of time child may be held in detention
Intake to Detention Hearing	<ul style="list-style-type: none"> 24 hours If no probable cause is shown at the detention hearing the child may be held for 72 hours from time of intake or 96 hours if good cause is shown for an extension
After Detention Hearing	<ul style="list-style-type: none"> 21 days Unless the delay is caused by the child, in which case the child may be held longer but a hearing must be held every 72 hours to determine if continued detention is necessary 30 days if good cause is shown and the child is charged with what would be for an adult a capital felony, life felony, first degree felony or second degree felony involving violence
Adjudicatory Hearing to Disposition Hearing	<ul style="list-style-type: none"> 15 days, not including weekends or legal holidays May be extended upon showing of good cause, but a hearing must be held every 72 hours (not including weekends or legal holidays) to determine if continued detention is necessary
Post Disposition	<ul style="list-style-type: none"> Awaiting placement in low risk facility: 5 days (not counting weekends or legal holidays) Awaiting placement in moderate risk facility: 5 days (not counting weekends or legal holidays); DJJ may request an extension for up to 10 days (not counting weekends or legal holidays) if necessary for finding a placement Awaiting placement in high or maximum risk facility: held in detention care until placement If the child is on home detention or nonsecure detention and violates home detention, the child may be held in secure detention for 5 days

DIVERSION

If the state attorney agrees, a child may take part in a diversion program, such as teen court, drug counseling programs, and others. The successful completion of a diversion program results in dismissal of the charges, while a failure to complete the diversion program results in the case going back to the arraignment stage.⁷²

Another option available in Florida is the issuance of a civil citation by a law enforcement officer instead of taking the child into custody.⁷³ A civil citation is available if the child admits to committing a misdemeanor and requires the child to do community service hours (less than 50) in lieu of the case going through the juvenile court system.⁷⁴ The child will not have an arrest record if civil citation is completed successfully by the child.

PETITION TO ADJUDICATORY HEARING

Petition

The detailed requirements as to what the petition must contain are set forth in Florida Rules of Juvenile Procedure 8.035(a). It must contain the basic information of the alleged charge including the pertinent facts, cite of statute allegedly violated, degree of the charge offense, signed by the state attorney or assistant state attorney, state that the act occurred before the child's 18th birthday and verification that the child has not yet reached their 19th birthday. The petition may be amended by the state attorney prior to the adjudicatory hearing.⁷⁵

Arraignment

The arraignment hearing must be held providing an opportunity for the child to respond to the allegations of the petition.⁷⁶ If the child is detained (including home, non-secure, or secure detention) then the arraignment must be held within 48 hours (not counting weekends or holidays) of the petition being filed.⁷⁷ At the arraignment, counsel is appointed.⁷⁸ The hearing may be waived by entering a written plea prior to the arraignment hearing.⁷⁹

Pleas & Walker Plan

Similar to adult court, a juvenile may plead not guilty, no contest, or guilty. Juvenile defenders usually have not had a chance to fully investigate the case, make discovery requests and fully communicate and explore all of the child's options by arraignment. As a result, pleas at arraignment should be a rare instance.

If the child pleas guilty or no contest, then the court must ensure that the plea is being made "knowingly, freely, and voluntarily" by conducting a plea colloquy.⁸⁰ The plea colloquy is a series of questions to ensure that the child understands the proceedings, his or her decision, and the rights the child is giving up. The plea colloquy should be conducted by the judge to ensure the record is accurately preserved.

If a child decides to enter a no contest or guilty plea, the juvenile defender should keep in mind that children are susceptible to making decisions to please others (such as their attorney, parents, or the court) and should ensure that this is the child's expressed wishes to enter a plea. The child should be counseled on the possible consequences of their decision, including all collateral consequences that may arise. If the child's plea is voluntary and is the child's decision, the attorney should also make sure to negotiate with the state to lessen the charges, to minimize the disposition sentencing such as an adjudication withheld instead of adjudicated delinquent and/or recommended appropriate sanctions in exchange for the no contest or guilty plea. The juvenile defender should also eliminate or minimize any collateral consequences that may result because of the entrance of the plea.

⁶⁸ FLA. STAT. § 985.03(18)(a) (2012).

⁶⁹ FLA. STAT. § 985.03(18)(b) (2012).

⁷⁰ FLA. STAT. § 985.03(18)(c) (2012).

⁷¹ FLA. STAT. § 985.26 (2012).

⁷² FLA. STAT. § 985.125 (2012).

⁷³ FLA. STAT. § 985.12 (2012).

⁷⁴ *Id.*

⁷⁵ Fla. R. Juv. P. 8.035(c).

⁷⁶ FLA. STAT. § 985.35 (2012).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Fla. R. Juv. P. 8.080.

A plea may be withdrawn at any time prior to its acceptance by the court.⁸¹ After the court accepts the plea, but prior to the disposition hearing, a guilty plea may be withdrawn on a showing of a good cause.⁸² An inadequate plea colloquy may constitute good cause if prejudice to the child is shown.

Another avenue for the child is the acceptance of a Walker Plan. A Walker Plan is a plan of proposed treatment, training, or conduct in writing, signed by the state attorney, child, child's counsel, and the child's parents. An agency must be designated to supervise the plan, such as DJJ, after the plan has been put into effect. The agency must be involved in the development of the plan and give a recommendation to the court about its adoption. While the Walker Plan is ongoing, the state attorney agrees to defer prosecution of the delinquency petition. If the child complies with the plan, the petition may be dismissed. A plan may be submitted to the court, instead of a plea, any time prior to an adjudicatory hearing. Submission of a Walker Plan is not an admission of guilt.

Right to Speedy Trial

Speedy trial is a right given to juveniles, although it can be waived by the child. The state has 90 days from the date the child was taken into custody or the date of the summons issued when the petition is filed (whichever date is earlier) to bring the case to an adjudicatory hearing.⁸³ Also, a child may demand an earlier adjudicatory hearing date as well.⁸⁴ If the speedy trial right has not been waived and an adjudicatory hearing has not been held in the required time, a motion to discharge should be filed. A hearing on the motion will be held within five days (5) and the state will then be given ten (10) more days to bring the case to trial.⁸⁵ After 15 days, if the state fails to bring the child to trial, the child will be discharged after a hearing on the matter.⁸⁶

INVESTIGATION

In order to competently represent the child, the juvenile defender must conduct a thorough investigation to learn all of the relevant information about the case. The juvenile defender should investigate even if the child has expressed an interest in entering a plea of guilty or no contest. The child may change their plea to not guilty and the defender will be prepared to go forward at the adjudicatory hearing. Additionally, through competent investigation, important evidence may be revealed to cause the child to reconsider his/her options. Key testimony may also be discovered for mitigation for disposition. The child should be interviewed as to what happened and to find out their goals of the representation as soon as possible.

One of the first steps in investigating the case should be to review the court file, any prior court records, and any other relevant records. Other relevant records can include anything relating to the child and their life including, but not limited to, records pertaining to dependency actions, education, and mental health. The charging documents should also be examined closely as well as the statutes that they reference paying particular attention to the elements of the crime and any potential defenses.

After speaking with the child and examining all of the relevant documents, the juvenile defender should have a good idea of any potential defense witnesses. These potential witnesses should be interviewed, in the presence of a third person if possible, who, if necessary, could testify at trial. Ideally, a third person, an investigator, should conduct the interview instead of the attorney. The juvenile defender may also depose any state witnesses to learn what he/she plans to testify to in court.

In addition to the above, all relevant evidence should be reviewed. This can vary from 911 tapes, to drug and alcohol tests, to police records, to anything else that may be relevant to the case. It should not be limited to this list since it varies greatly depending on the circumstances of the case. If possible, the scene of the alleged delinquent act should also be visited, in circumstances similar to those at the time of the alleged act.

Investigators and experts should be employed as needed throughout this investigation to ensure that the juvenile defender has the requisite knowledge and experience to understand the variety of evidence.

⁸¹ Fla. R. Juv. P. 8.075(e).

⁸⁴ *Id.*

⁸² *Id.*

⁸⁵ *Id.*

⁸³ Fla. R. Juv. P. 8.090.

⁸⁶ *Id.*

MOTIONS TO SUPPRESS

As noted above, the Fourth Amendment applies to juveniles; therefore, motions to suppress for search and seizure violations can be an important tool in a juvenile defender's toolbox. There are no additional protections for children afforded in Florida regarding search and seizure, so the rules for lawful search and seizure as dictated under the U.S. Constitution is what is at issue.

The issue that comes up most commonly involving children is whether the child consented to the search or not. Despite their age, a child is capable of consenting to a search, but that consent must be freely and voluntarily given.⁸⁷ It is the burden of the state to prove that the consent is given freely and voluntarily.⁸⁸ The juvenile defender should remember that a child is often more susceptible to coercion by police than adults. The juvenile defender should consider, and if appropriate, present evidence on the matter to the court describing the child's age, education, emotional maturity, experience with police, the surrounding circumstances and the words used by the police to determine if the search and seizure was consented to by the child.

It should also be noted that a lower standard is required for searches by school administrators in school settings. The standard for a police search without a warrant is probable cause.⁸⁹ The standard for a search by a school administrator without a warrant is reasonable suspicion due to the unique role and nature of schools in society.⁹⁰

Motions may also need to be filed to suppress statements and confessions if obtained illegally by law enforcement. Miranda rights apply to children, although they may be waived.⁹¹ Age must be considered when determining if the child was in custody and if Miranda applies.⁹² A totality of circumstances test should be applied to determine if there was a valid waiver of rights.⁹³ The waiver must be knowing, voluntary and intelligently made and the state must prove this by a preponderance of the evidence.⁹⁴

ADJUDICATORY HEARING

The adjudicatory hearing in a juvenile case is very similar to that of an adult trial. The main differences are the lack of a constitutional right to a jury and the rehabilitative instead of the punitive goal of the system. The same care and time given to preparing for an adult trial should be given for a juvenile adjudicatory hearing. The intellectual and emotional maturity of the child should be kept in mind when formulating a defense. Arguments based on lesser culpability should be considered as well as considerations as to making sure the child understands their rights and what is happening in the trial.⁹⁵

PREPARATION FOR DISPOSITION

A juvenile defender's work is not done at the declaration of a delinquent adjudication; there is still the important phase of the proceedings of disposition. Disposition is analogous to the sentencing phase of an adult criminal trial and it is important to bring up mitigating factors to lessen the disposition. As in all phases of the delinquency proceedings, the attorney should also make sure the child is consulted and advocate for their client's wishes in regards to placement, any services provided and adjudication withheld as well as any other issues the child deems appropriate.

If the juvenile defender has not already done so in earlier phases of the court process, he/she should investigate all evidence that could be brought up during disposition. The defender also should examine the circumstances of the child's home life, including previous history, family relations, economic conditions, and educational background to see if there are any mitigating factors that can be presented to the court. The attorney should be prepared for the disposition hearing as if he/she would be for any other evidentiary hearing, which includes considering calling relevant witnesses and preparation of evidence, if appropriate.

Throughout this preparation time, the juvenile defender should still be maintaining regular contact with the child. The defender should also talk extensively with the child about their options and the possible consequences of each to make sure he/she is advocating for the child's wishes. The goal of the attorney going into a disposition hearing should be to obtain the disposition plan that is the least restrictive and burdensome alternative and most acceptable to the child that can reasonably be obtained.⁹⁶

⁸⁷ Fla. R. Juv. P. 8.085(3).

⁸⁸ *Id.*

⁸⁹ *Safford Unified School District v. Redding*, 557 U.S. 364 (2009).

⁹⁰ *Id.*

⁹¹ *J.D.B. v. North Carolina*, 564 U.S. ____ (2011).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Fla. R. Juv. P. 8.110.

⁹⁶ Fla. R. Juv. P. 8.115.

DISPOSITION

Prior to the disposition hearing, DJJ may prepare a predisposition report (PDR). A PDR is required in cases where residential commitment disposition is anticipated and may be ordered by the court for other cases as well.⁹⁷ It is vital for the attorney to attend the DJJ staffings that determine the recommendation to the court since this recommendation often has a large impact on the judge's final decision at disposition. The attorney for the child should be involved in the staffing and preparation of the report. The PDR must be submitted to the court, the juvenile defender and state attorney at least 48 hours prior to the disposition hearing, thus giving time for it to be analyzed by all of the parties.⁹⁸

Whether a child is held in detention pending the disposition hearing is determined by the RAI (see the **Detention** section on pages 11 & 12 for more information). Both legal and social mitigation factors should be argued to try to obtain the child's release or lower detention type if they are to be detained. If the child remains detained, they cannot be held for more than fifteen days (not including weekends or legal holidays), unless cause is shown at a hearing, following an adjudication of delinquency while awaiting disposition.

A child may be adjudicated delinquent or adjudication may be withheld at the disposition hearing. If the child is committed to a residential program, they must be adjudicated delinquent.⁹⁹ An adjudication of delinquency can carry with it additional consequences that are not present if the adjudication is withheld.

During the disposition hearing, the court will consider the PDR, available multidisciplinary assessments and/or records of earlier judicial proceedings and may consider any other "relevant and material evidence helpful in determining the proper disposition."¹⁰⁰ If the evidence has probative value, it may be relied on even if it would not be competent at an adjudicatory hearing.¹⁰¹

The options available to the court at disposition are varied and may include probation conditions or sending the child to a commitment program. If placed on probation, the sanctions will vary depending on the individual needs of the child and factors in the case but may include curfew, community service requirements, counseling, and restitution. If committed to a residential program, the court has three different levels of commitment available for disposition and the court must decide which is the most appropriate.¹⁰² As a juvenile defender, the attorney should be prepared to argue for the least restrictive placement, be knowledgeable about the services offered by the different programs and consult with the child to determine what services he/she wants if committed as well.

The court is required to consider the DJJ recommendation. If DJJ recommends commitment, the court also is required to follow the commitment level recommendation during disposition and if the court is not inclined to do so, then the judge must preserve in writing and on the record the reasons for the departure of the recommendation.¹⁰³

⁹⁷ FLA. STAT. § 985.43 (2012).

⁹⁸ FLA. STAT. § 985.43(3) (2012).

⁹⁹ FLA. STAT. § 985.441(1) (2012).

¹⁰⁰ Fla. R. Juv. P. 8.115(a).

¹⁰¹ *Id.*

¹⁰² FLA. STAT. § 985.441 (2012).

¹⁰³ *E.A.R. v. State*, 4 So. 3d 614 (2009).

¹⁰⁴ FLA. STAT. § 985.03(46)(a) (2012).

¹⁰⁵ FLA. STAT. § 985.03(46)(b) (2012).

¹⁰⁶ FLA. STAT. § 985.03(46)(c) (2012).

¹⁰⁷ FLA. STAT. § 985.03(46)(d) (2012).

¹⁰⁸ FLA. STAT. § 985.03(46)(e) (2012).

¹⁰⁹ FLA. STAT. § 985.46 (2012).

¹¹⁰ FLA. STAT. § 985.46 (2012).

¹¹¹ *Id.*

¹¹² FLA. STAT. § 985.435 (2012).

¹¹³ *Id.*

Commitment Level	Description	Usual Time of Commitment
		(time is based on the performance of the child)
Minimum-Risk Nonresidential¹⁰⁴	<p>Child remains at home and participates in a day treatment program at least 5 days a week</p> <p>Not available if the charge involved firearms, was a sexual offense, life felony or first degree felony</p>	
Low-Risk Residential¹⁰⁵	<p>Residential, but child may have unsupervised access to the community</p> <p>Not available if the charge involved firearms, was a sexual offense, life felony or first degree felony</p>	30 days to 4 months
Moderate-Risk Residential¹⁰⁶	<p>Residential, but child may have supervised access to the community</p> <p>Environmental secure, staff secure, or hardware secure (e.g. fences, locking doors)</p> <p>Provides 24 hour awake supervision</p>	6 to 9 months
High-Risk Residential¹⁰⁷	<p>Residential, no access to community except for the possibility for 72 hour release for family emergency or, during the final 60 days at the program, to visit home, enroll in school, attend a job interview, or participate in community service project</p> <p>Hardware secure with perimeter fencing and locking doors</p> <p>24 hour awake supervision</p>	9 to 18 months
Maximum-Risk Residential¹⁰⁸	<p>Residential, no access to community</p> <p>Includes juvenile correctional facilities and juvenile prisons</p> <p>Hardware secure with perimeter security fencing and locking doors</p> <p>24 hour awake supervision</p>	18 to 36 months

If sentenced to a commitment program, the conditions after release from the commitment program will also be set.¹⁰⁹ If it is straight release, then the child is simply released with no further obligations upon completion of the program. If it is a conditional release, then certain requirements must be met after being released, such as counseling.¹¹⁰ The conditional release supervision and services may be delivered in the form of post commitment probation.¹¹¹

If the child is adjudicated delinquent, the probation program must include both penalty and rehabilitative components. The duration of the probation cannot exceed the maximum amount the child could have been sentenced to for the crime as an adult, nor can it last past their 19th birthday.¹¹² If adjudication is withheld then the probation may, but need not, include both penalty and rehabilitative components and the child may remain on probation until their 19th birthday.¹¹³

Level of Offense (if committed by an adult)	Maximum Amount of Time on Probation (if adjudicated delinquent)
Second Degree Misdemeanor	6 months ¹¹⁴
First Degree Misdemeanor	1 year ¹¹⁵
Third Degree Felony	5 Years ¹¹⁶
Second Degree Felony	15 Years (but note the expiration on 19 th birthday requirement) ¹¹⁷
First Degree Felony	30 Years (but note the expiration on 19 th birthday requirement) ¹¹⁸
Capital/Life Felony	Life (but note the expiration on 19 th birthday requirement)

COLLATERAL CONSEQUENCES

It is important when considering options and counseling your client to keep in mind the various collateral consequences that exist if the child is adjudicated delinquent. A collateral consequence is a consequence that occurs because of the adjudication, but is not directly tied to the sentence imposed. Even though juvenile delinquency proceedings are not criminal proceedings, being adjudicated delinquent is still stigmatizing and has long reaching effects. It can prevent juveniles from future employment due to both the failure of background checks and in the prevention of getting certain trade and business licenses. Arrest records may also sometimes appear on background checks, so even if a child is not adjudicated it may have a collateral effect. An adjudication of delinquency for a felony offense bars enrollment in the armed forces unless special approval from the Secretary of Defense is obtained and an adjudication of delinquency for a misdemeanor offense such as domestic violence battery may bar enrollment in the armed forces depending on the circumstances. A delinquency adjudication may affect eligibility for public benefits and housing. Court involvement may affect the child's ability to go to college or limit access to college financial aid. Under certain circumstances, a suspension of driving privileges, expulsion from school, and/or prevention from owning a firearm (or delayed eligibility to own one) may occur.

A juvenile charge may also be used as a sentence enhancer for later adult crimes, even if adjudication is withheld. If the juvenile disposition occurs five or less years prior to the commission of an adult crime, it will be counted as a prior record in Florida. If the juvenile disposition was for a sexual offense and if the offender failed to have a clean record, with no convictions for five consecutive years, the juvenile offense will be counted as a prior record, regardless of how recently the disposition occurred. A juvenile offense may also be used as a sentence enhancer for adult charges in federal criminal court under certain circumstances.

POSTDISPOSITION

If the child is committed, the child will be detained pending placement. This may include home detention and should be advocated for if appropriate. A child may not be held in secure detention unless the detention criteria under the RAI is satisfied (see the section on **Detention** on pages 11 & 12 for more information). If the child is committed to a high- or maximum-risk residential program, the child must be placed on some detention care status, i.e. secure or home detention, until they are placed.¹¹⁹ If they are awaiting placement in a moderate or low risk program they may be held in secure detention for five days; however, if it is a moderate risk program then DJJ may request an extension of time with no more

¹¹⁴ FLA. STAT. § 985.435(5) (2012).

¹¹⁵ FLA. STAT. § 775.082(4)(b) (2012).

¹¹⁶ FLA. STAT. § 775.082(3)(d) (2012).

¹¹⁷ FLA. STAT. § 775.082(3)(c) (2012).

¹¹⁸ FLA. STAT. § 775.082(3)(b) (2012).

than fifteen days after the commitment order is entered excluding Saturdays, Sundays and other legal holidays. If it does not appear that a bed in the appropriate commitment facility will be obtained in time, the attorney for the child may request a placement review hearing to ensure that the child is either placed in a commitment facility or released from the detention center while placement is found.¹²⁰

Throughout probation, the child will be supervised by DJJ with the use of juvenile probation officers to make sure the child is complying with the terms of his/her probation. An allegation of violation of probation may begin by the filing of an affidavit by anyone with actual knowledge of the facts of the violation. The state, DJJ or the court may then initiate proceedings based on the affidavit. Again, the RAI will determine if the child may be detained. A hearing on the probation violation will be held. If the child admits to the violation or if the court finds that the child has violated any of the terms of probation, the court must enter an order to continue the probation, modify the conditions, or revoke the probation.

APPEALS

If a child is adversely affected by an error, a timely appeal should be filed. The error should be properly preserved at the trial court level, although a fundamental error may be brought even if it is not preserved.¹²¹ A fundamental error is one that “goes to the foundation of the case...and is equivalent to a denial of due process.”¹²²

The juvenile defender must discuss the right to appeal with the child. This discussion should inform the child of the information that he/she may need to make a decision about appealing the case including the time frame of an appeal, the child’s obligations pending appeal, and the possibility of success at the appellate level. The defender must also ensure that an attorney is appointed for purposes of an appeal.

WRITS

If a child is held in secure detention unlawfully, an emergency petition for writ of habeas corpus may be filed, which if granted, will allow the child to be released. The writ should be filed as soon as an illegal detention is discovered to prevent the child from spending any more time in secure detention than necessary.

A writ of mandamus is used to direct a court to perform a nondiscretionary, ministerial act required by law which the court has failed or refused to do. A petition for one may be filed if necessary to compel the trial court to fulfill their lawful requirements. There is no time limit for filling one; however, courts may deny the writ if they find the petitioner unreasonably delayed in filing it.

Another type of writ that a juvenile defender may need to use is a writ of prohibition. A writ of prohibition allows an appellate court to prevent a lower court from further exercising jurisdiction in a matter. It is most often used to challenge the denial of a motion to disqualify the judge of the lower court. It must be filed prior to the action it wants to prevent taking place.

A writ of certiorari is used to review orders that cannot otherwise be directly appealed to a higher court. It is a “safety net” of sorts when referring to writs, since it can handle a variety of matters to remedy issues. It must be filed within 30 days of the action it is seeking to overturn.

¹¹⁹ FLA. STAT. § 985.27 (2012).

¹²⁰ *Id.*

¹²¹ FLA. STAT. § 985.534 (2012).

¹²² *Id.*

APPENDIX OF USEFUL REFERENCES

Florida Juvenile Law and Practice. The Florida Bar Continuing Legal Education, Florida Juvenile Law and Practice (11th ed. 2009).

- A book published by the Florida Bar providing an overview of the juvenile justice system.

Florida Rules of Juvenile Procedures, [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/E2AD7DEF01F6F90685256B29004BFA7E/\\$FILE/Juvenile.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/E2AD7DEF01F6F90685256B29004BFA7E/$FILE/Juvenile.pdf?OpenElement).

- Rules regulating delinquency and dependency proceedings in Florida.

Florida Statutes Chapter 985,

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0900-0999/0985/0985ContentsIndex.html&StatuteYear=2012&Title=-%3E2012-%3EChapter%20985.

- Chapter of Florida Statutes regarding delinquency.

Juvenile Defender Delinquency Notebook. Elizabeth Calvin et al, National Juvenile Defender Center, Juvenile Defender Delinquency Notebook (2d ed. 2006) *available at* http://www.njdc.info/pdf/delinquency_notebook.pdf.

- A national practice manual for juvenile defenders.

Juvenile Justice Center, <http://barry.edu/jjc/>.

- Provides various materials pertaining to representing juveniles including fact sheets, sample motions, and past CLEs.

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice,

http://www.adjj.org/content/page.php?cat_id=2.

- Research studies regarding adolescent development and its intersection with juvenile justice.

National Association of Criminal Defense Lawyers, <http://www.nacdl.org/>.

- CLEs, past training materials, and news on both juvenile justice and general criminal defense issues.

National Juvenile Defender Center, <http://www.njdc.info/publications.php>.

- Materials relating to a variety of juvenile justice issues on a national level.

Trial Manual for Defense Attorneys in Juvenile Delinquency Cases. Randy Hertz et al, National Juvenile Defender Center, Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (2012) *available at* http://camlaw.rutgers.edu/sites/camlaw/files/Trial_Manual_for_Defense_Attorneys_in_Juvenile_Court_Updated_2012.pdf.

- A national practice manual for juvenile defenders.

Youth Advocacy Division, Juvenile Defense Network, <http://www.youthadvocacydepartment.org/jdn/jdn-resources.html>.

- Various materials relating to juveniles including a Comprehensive Adolescent Brain Development Packet.





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