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2014 Survey Of Juvenile Law

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Abstract

The Florida Legislature enacted a statute providing counsel to children in certain categories in dependency cases, and also passed a statute removing the nexus requirement to prove grounds for termination of parental rights

KEYWORDS: law, juvenile, children

2014 SURVEY OF JUVENILE LAW

BY MICHAEL J. DALE*

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I. INTRODUCTION

The Florida Legislature enacted a statute providing counsel to children in certain categories in dependency cases, and also passed a statute removing the nexus requirement to prove grounds for termination of parental rights.[1] Both laws are a substantial departure from prior practice and contain serious flaws, which are discussed in this survey.[2] The Supreme Court of Florida ruled on one case during the past year, interpreting Florida's speedy trial rule in juvenile delinquency cases.[3] Intermediate appellate courts remained active both in the delinquency area and in the dependency field.[4] This survey reviews and analyzes the new laws and the significant reported opinions in these areas.[5]

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* Professor of Law, Nova Southeastern University Shepard Broad Law Center. This survey covers cases decided during the period from July 1, 2013 through June 30, 2014. The author thanks Law Review Subscriptions Editor, Richard Nelson, for his help in the preparation of this survey.

1. FLA. STAT. §§ 39.01305, .806(1)(f), (h) (2014); FLA. STAT. § 39.806(1)(f), (h) (2013).
2. *See* FLA. STAT. §§ 39.01305, .806(1)(f), (h) (2014); FLA. STAT. § 39.806 (2013); *infra* Part VII.
3. State v. S.A., 133 So. 3d 506, 507 (Fla. 2014) (per curiam).
4. *E.g.*, Weiand v. State, 129 So. 3d 434, 434 (Fla. 5th Dist. Ct. App. 2013).
5. *See infra* Parts I–V.

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II. DEPENDENCY

Chapter 39 of the Florida Statutes and the Florida Juvenile Rules of Civil Procedure provide for notice and an opportunity to be heard at multiple points in the dependency proceeding, including sections of chapter 39 that provide that, unless parental rights have been terminated, parents must be notified of all proceedings and hearings involving the child.[6] Despite the clear language of chapter 39 and the Rules of Juvenile Procedure, the Second District Court of Appeal was obligated to reverse in *In re J.B. v. Department of Children & Family Services*[7] because the trial court failed to give the parents adequate notice and an opportunity to prepare for a permanency hearing.[8] The appeal involved a dependency proceeding in which the parents did not comply with the case plan, and a scheduled judicial review was set.[9] Before the hearing, the Department, according to the appellate court, "apparently abandoned the goal of reunification and decided to seek a permanent guardianship."[10] Because the hearing was noticed as a judicial review and not a permanency hearing, the parents knew nothing about the change in plans.[11] In fact, "[f]orty-three pages into the transcript—[according to the appellate court]—the Department first explained that it actually wanted an order at the conclusion of [the] hearing establishing a permanent guardianship and a termination of supervision."[12] Over the objections of the child's father's attorney, the trial court proceeded with the matter, apparently not seeming to understand the impact of its ruling.[13] The appellate court reversed.[14]

In dependency proceedings in Florida, by statute, the parties are: The parents, the Department of Children and Families, the Guardian Ad Litem ("GAL") Program or a representative of the GAL Program if appointed, the child, and the petitioner, whether the Department or someone else.[15] Chapter 39

6. FLA. STAT. § 39.502(1) (2014); FLA. R. JUV. P. 8.045(h); FLA. R. JUV. P. 8.225(f)(1) (providing notice). When these rules do not require specific notice, all parties will be given reasonable notice of any hearings. FLA. STAT. § 39.502(1).

7. 130 So. 3d 753 (Fla. 2d Dist. Ct. App. 2014).

8. *In re J.B.*, 130 So. 3d at 754, 757; *see also* FLA. STAT. § 39.502(1); FLA. R. JUV. P. 8.225(f)(1).

9. *In re J.B.*, 130 So. 3d at 754.

10. *Id.*

11. *Id.* at 754–55.

12. *Id.* at 755.

13. *Id.* at 755–56.

14. *In re J.B.*, 130 So. 3d at 757.

15. FLA. STAT. § 39.01(51) (2014). For a discussion of the roles of the parties in Florida see Michael J. Dale & Louis M. Reidenberg, *Providing Attorneys for Children in Dependency and Termination of Parental Rights Proceedings in Florida: The Issue Updated*, 35 NOVA L. REV. 305, 323–32 (2011).

also recognizes that in child welfare proceedings in Florida, a *participant* may also be involved in the case.[16] A participant is defined as a non-party who receives notice of hearing and "includ[es] the actual custodian of the child, the foster parents, . . . the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child."[17] A mother of five children in *D.C. v. J.M.*[18] filed a writ of certiorari in the appellate court to quash a pre-trial order on the foster parent's motion to intervene.[19] The trial court's order provided that, in addition to the other parties, the foster parent's attorney would have the right to unfettered review of all court files in the case.[20] The mother, the GAL Program, and the attorney ad litem for one of the half siblings all objected and joined in the writ.[21] They claimed an invasion of privacy rights by the third party foster parent.[22] Recognizing that chapter 39 does not allow foster parents to receive every record in a confidential dependency case and that the order departed from an essential constitutional requirement, the appellate court granted the writ and quashed the trial court order.[23]

In any dependency proceeding, of course, the petitioner must prove the allegations contained in the petition by a preponderance of the evidence.[24] In *H.C. v. Department of Children & Family Services*,[25] a father appealed from an order adjudicating the children dependent based upon a finding of abuse, in that there were bruises on one of his children's left side as well as a purple loop mark.[26] The case arose when the children's mother, who was separated from the father, noticed the mark after the children returned from the father's care.[27] "The [court's] expert, . . . a nurse practitioner with the University of Miami's Child Protection [Unit],[28] testified that," in her opinion, the "injury 'represent[ed] child physical abuse.'"[29] The problem was that there was no

16. FLA. STAT. § 39.01(50).
17. *Id.*
18. 133 So. 3d 1080 (Fla. 3d Dist. Ct. App. 2014).
19. *Id.* at 1081.
20. *Id.*
21. *Id.*
22. *Id.*
23. FLA. STAT. § 39.0132(3) (2014); *D.C.*, 133 So. 3d at 1081–82.
24. FLA. STAT. § 39.507(1)(b).
25. 141 So. 3d 243 (Fla. 3d Dist. Ct. App. 2014).
26. *Id.* at 243.
27. *Id.* at 244.
28. *Id.*; *see also* FLA. STAT. § 39.303(1)(e). The Child Protection Units are operated by the State's Health Department to medically evaluate possible child abuse and neglect. *See* FLA. STAT. § 39.303(1).
29. *H.C.*, 141 So. 3d at 244.

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evidence of who did it.[30] As the appellate court explained, "the record is completely devoid of any evidence that the [f]ather caused [the child's] injuries."[31] Thus, the court of appeals found that the petitioner, "the Department, failed to establish by a preponderance of the evidence that the [f]ather" probably was the person who inflicted the injuries, and, on that basis, it reversed.[32]

An issue which regularly arises in the dependency context in Florida is whether the neglect or abuse of one child is sufficient, in and of itself, to prove that a parent's other children are also dependent.[33] The case law, going back twenty years, requires that there must be a *nexus* between the injuries to one child, or other neglect of that child, and proof that the other children are dependent.[34] This was the issue in *W.R. v. Department of Children & Families*,[35] a case in which "[a] father appeal[ed] [from] an order [declaring] his . . . children dependent."[36] The appellate court affirmed as to one child, but reversed as to the other.[37] The finding by the trial court as to the second child was based upon "one incident where the father struck the child," but there was no evidence of harm.[38] There was not even a bruise.[39] Relying on the body of prior case law, the appellate court explained that, "[t]he trial court failed to make any finding [with] regard[] to the risk of imminent abuse," and failed to show there was "a nexus between the parent's abuse of the one child and the risk of abuse of [the other] child."[40] Significantly, the Florida Legislature statutorily removed the nexus requirement during the 2014 Legislative Session.[41] Whether the removal is constitutional is described in Part VII, Legislative Changes.[42]

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30. *Id.* at 245.
31. *Id.*
32. *Id.*
33. *E.g.*, R.F. v. Fla. Dep't of Children & Families (*In re* M.F.), 770 So. 2d 1189, 1193 (Fla. 2000) (per curiam).
34. Padgett v. Dep't of Health & Rehabilitative Servs., 577 So. 2d 565, 571 (Fla. 1991); W.R. v. Dep't of Children & Families, 137 So. 3d 1078, 1079 (Fla. 4th Dist. Ct. App. 2014); C.M. v. Dep't of Children & Family Servs. (*In re* S.M.), 997 So. 2d 513, 515 (Fla. 2d Dist. Ct. App. 2008).
35. 137 So. 3d 1078 (Fla. 4th Dist. Ct. App. 2014).
36. *Id.* at 1079.
37. *Id.*
38. *Id.*
39. *Id.*
40. *W.R.*, 137 So. 3d at 1079–80.
41. *Compare* FLA. STAT. § 39.806(1)(f) (2014), *with* FLA. STAT. § 39.806(1)(f) (2013).
42. *See infra* Part VII.

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As noted earlier, foster parents can be participants in dependency proceedings.[43] As the recipients of children who are in the state-operated foster care system, foster parents are required to comply with licensing regulations.[44] In *Sanders v. Department of Children & Families*,[45] foster parents appealed from a decision of the Department of Children and Families revoking their foster care license on the basis of a hearing officer's recommendation.[46] The case arose from the foster parents' employment of corporal punishment on a foster child in their house.[47] Admitting that they struck the child, causing a bruise visible several days later, the foster parents on appeal claimed that the action of the Department interfered with their religious curriculum or teachings in violation of Florida law.[48] The appellate court affirmed the decision of the Department.[49] It held that Florida law does not deprive "the Department of the authority to prohibit corporal punishment," and that appellants' claim of invasion of their religious rights must fail because they should not have entered into the contract if they believed that the contract violated their constitutional rights.[50]

During the course of a dependency proceeding, often after adjudication and the disposition, a parent may make a motion for reunification.[51] When the parent does so, the court shall hold a hearing in which the "parent [is obligated to] demonstrate that the safety, [welfare], and physical, mental, and emotional health of the [parent's] child" will not suffer from endangerment by the change.[52] In a rather simple case on appeal, *A.M. v. Department of Children & Families*,[53] a mother appealed from a trial court's denial of a motion for reunification.[54] Apparently, there was no evidence in the record that the mother, through counsel, actually moved for reunification.[55] Nor was there an order

43. FLA. STAT. § 39.01(50) (2014); *see also supra* notes 15–17 and accompanying text.
44. Sanders v. Dep't Children & Families, 118 So. 3d 899, 901 (Fla. 1st Dist. Ct. App. 2013); *see also* FLA. STAT. § 409.175(1)(b).
45. 118 So. 3d 899 (Fla. 1st Dist. Ct. App. 2013).
46. *Id.* at 900.
47. *Id.*
48. *Id.*; *see also* FLA. STAT. § 409.175(1)(b).
49. *Sanders*, 118 So. 3d at 901; *see also* FLA. STAT. § 409.175(1)(b).
50. *Sanders*, 118 So. 3d at 901; *see also* FLA. STAT. § 409.175(1)(b).
51. FLA. STAT. § 39.621(9).
52. *Id.*
53. 118 So. 3d 998 (Fla. 1st Dist. Ct. App. 2013) (per curiam).
54. *Id.* at 998.
55. *Id.*

deciding the motion for reunification in the record.[56] For these simple reasons, the appellate court upheld the decision below.[57]

III. TERMINATION OF PARENTAL RIGHTS

The issue of the failure of parents to appear at termination of parental rights proceedings has come up in appellate court on numerous occasions in Florida.[58] Under Florida law, it is possible for a court to enter a consent to the termination of parental rights.[59] However, while the Florida statute governing the failure to appear may be grounds for termination of parental rights,[60] the question remains as to the circumstances underlying the failure to appear, including the possibility that the parent appeared on one of several days in the proceeding.[61] In *C.S. v. Department of Children & Families*,[62] the mother and father appealed from a judgment terminating their parental rights on the basis of the entry of a consent when they failed to appear.[63] The appellate court affirmed, finding that the court did not rule solely on the basis of the failure to appear, but also on the facts of the case.[64] The appellate court also noted that "[t]he trial court found the mother's excuse for [not appearing] not to be credible."[65] However, there was a very strong dissent by Judge Warner.[66] Apparently, "the parents appeared on the first two days of the adjudicatory hearing and failed to appear on the third day, [which was] scheduled three months later."[67] Relying on case law holding that a consent should not be entered where a parent does not appear at part of the hearing, Judge Warner would have granted the appeal on that ground.[68]

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56. *Id.*
57. *Id.* at 998–99.
58. *See* J.M. v. Dep't of Children & Families, 9 So. 3d 34, 35 (Fla. 4th Dist. Ct. App. 2009); Michael J. Dale, *2013 Survey of Juvenile Law*, 38 NOVA L. REV. 81, 86–87 (2013) [hereinafter Dale, *2013 Survey of Juvenile Law*]; Michael J. Dale, *2012 Survey of Juvenile Law*, 37 NOVA L. REV. 333, 342–46 (2013) [hereinafter Dale, *2012 Survey of Juvenile Law*].
59. FLA. STAT. § 39.801(3)(d) (2014); *see also J.M.*, 9 So. 3d at 36.
60. FLA. STAT. § 39.801(3)(d).
61. *See* Nickerson v. Dep't of Children & Families, 718 So. 2d 373, 373–74 (Fla. 3d Dist. Ct. App. 1998).
62. 124 So. 3d 978 (Fla. 4th Dist. Ct. App. 2013) (per curiam), *review denied*, 135 So. 3d 286 (Fla. 2014).
63. *Id.* at 979.
64. *Id.*
65. *Id.* at 980.
66. *Id.* (Warner, J., dissenting).
67. *C.S.*, 124 So. 3d at 980 (Warner, J., dissenting).
68. *Id.*

Florida provides for termination of parental rights on numerous grounds—abuse, neglect, and abandonment.[69] Abandonment, as defined in the Florida Statutes, is a situation where the parent "has made no significant contribution to the child's care and maintenance."[70] It includes a lack of frequent contact with the child where marginal efforts or token visits are not enough.[71] In *S.L. v. Department of Children and Families*,[72] a mother appealed from an adjudication terminating her parental rights on grounds of continuing abuse, neglect, or abandonment.[73] The appellate court affirmed in part and reversed in part, finding that the trial court erred in basing the termination on abandonment.[74] Looking at the facts, the appellate court held that the mother had at least twenty-six visits over a one-year period with her children, and that record contained "testimony indicat[ing] there may have been other visits . . . not memorialized in . . . Department records."[75] There was also evidence of telephone communications and provision of clothing, shoes, snacks, food, and other gifts.[76] In a second case, *J.E. v. Department of Children and Families*,[77] the appellate court affirmed a finding of abandonment by the father by clear and convincing evidence.[78] The court found that he failed to demonstrate financial ability to support the children or the capacity to do so, having last paid support three months prior to the trial.[79] In addition, his visitation was infrequent and irregular, causing the child not to see her father as a parent.[80] Finally, the court affirmed because the parent failed to substantially comply with the case plan, a separate ground for termination of parental rights.[81] The problem with the Florida Statute, as evidenced by the two cases described above, is that the language in the law is imprecise, containing no timeframes or other specific elements in the test of abandonment.[82]

Termination of parental rights in Florida, as in other jurisdictions, requires first, a finding by clear and convincing evidence that the grounds for

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69. FLA. STAT. § 39.806(1)(e)(1) (2014).
70. *Id.* § 39.01(1).
71. *Id.*
72. 120 So. 3d 75 (Fla. 4th Dist. Ct. App. 2013) (per curiam).
73. *Id.* at 76.
74. *Id.* at 77.
75. *Id.*
76. *Id.*
77. 126 So. 3d 424 (Fla. 4th Dist. Ct. App. 2013).
78. *Id.* at 428.
79. *Id.*
80. *Id.*
81. *Id.* at 430; *see also* FLA. STAT. § 39.806(1)(e)(1) (2014).
82. *See* FLA. STAT. § 39.806(1)(e); S.L. v. Dep't of Children & Families, 120 So. 3d 75, 77 (Fla. 4th Dist. Ct. App. 2013) (per curiam); *J.E.*, 126 So. 3d at 428.

termination exist[83] and second, that termination is in the manifest best interests of the child.[84] Third, in Florida, termination must be the least restrictive alternative.[85] In the case *K.D. v. Department of Children & Family Services (In re Z.C. II)*,[86] parents appealed a final judgment terminating parental rights to twin sons.[87] The case had previously been on appeal.[88] In the first decision, the appellate court held that since the trial court elected not to terminate parental rights, it could not immediately place the children in a permanent guardianship.[89] Thus, the case went back to the trial court on questions of the least alternative means and manifest best interest.[90] What brought the case back to the appellate court was the question of whether the trial court was obligated to consider new circumstances in determining whether termination was in the best interest of the children.[91] Reviewing the facts of the case, the appellate court reversed and remanded again, finding that it could not say for certain that the trial court would not have decided that the circumstances warranted an adjudication of dependency instead of termination of parental rights as a matter of best interests of the child.[92]

Finally, in *A.J. v. Department of Children & Families*,[93] the appellate court reversed as to the failure of the trial court to make proper findings as to the grounds for termination of parental rights.[94] Specifically, the appellate court found that there was no substantial evidence of significant harm to the sons, and was further "troubled by the court's finding[] that the parents could not provide the children with necessities, [as] [t]here was no testimony establishing the parents' financial situation and . . . no evidence that [they] could not . . . provide for their children."[95] In fact, the trial court denied the mother's attorney the right to shed light on another issue—the children's referral to therapy by their mother—on grounds that the question was irrelevant.[96] The trial court further

83. FLA. STAT. § 39.809(1); *see, e.g.*, 750 ILL. COMP. STAT. 50/1(1)(D)(f) (2014).

84. FLA. STAT. § 39.810; *see, e.g.*, 750 ILL. COMP. STAT. 50/1(1)(D)(m-1).

85. Padgett v. Dep't of Health & Rehabilitative Servs., 577 So. 2d 565, 571 (Fla. 1991); K.D. v. Dep't of Children & Family Servs. (*In re* Z.C. II), 132 So. 3d 877, 879 (Fla. 2d Dist. Ct. App. 2014); *see also* FLA. STAT. § 39.6012(3)(d).

86. 132 So. 3d 877 (Fla. 2d Dist. Ct. App. 2014).

87. *Id.* at 878.

88. Dep't of Children & Family Servs. v. K.D. (*In re* Z.C. I), 88 So. 3d 977, 979 (Fla. 2d Dist. Ct. App. 2012) (en banc).

89. *Id.* at 988–89.

90. *Id.* at 989.

91. *In re Z.C. II*, 132 So. 3d at 879.

92. *Id.* at 879–80.

93. 126 So. 3d 1212 (Fla. 4th Dist. Ct. App. 2012) (per curiam). This was a 2012 case that was reported in 2013.

94. *Id.* at 1215.

95. *Id.*

96. *Id.* at 1214.

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compounded its errors by relying on "hearsay accounts regarding one of the young[] boys and one of the father's daughters acting out sexually."[97]

IV. STATUS OFFENSES—CHILDREN IN NEED OF SERVICES

Chapter 984, entitled "Children and Families in Need of Services," deals with status offenders.[98] A "child in need of services" concerns children who have committed an act, which if committed by an adult would not be a crime.[99] Under Florida law, this includes children who persistently run away, are "habitually truant from school," and who "persistently disobey[] the reasonable and lawful demands of [their] parents."[100] This statute begins with the following statement of purpose:

> To provide judicial and other procedures to assure due process through which children and other interested parties are assured fair hearings by a respectful and respected court or other tribunal[s] and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.[101]

It appears clear from the Second District Court of Appeal ruling in *Moyers v. State*[102] that the trial court failed to comply with the enabling language of the statute.[103] In that case, a father "appeal[ed] two orders finding him in indirect criminal contempt for failing to comply with truancy orders" that obligated him to ensure that his daughter attended school.[104] According to the appellate court, there was no evidence presented at the first of two hearings regarding an order to show cause, and that the evidence presented at the second hearing showed only that the father's daughter had been absent or departed from school on several days.[105] In fact, according to the appellate court, what the evidence did show was that the child's medical condition caused her not to attend school for several days.[106] There was no evidence of the father's willful

97. *Id.*
98. *See* FLA. STAT. § 984.01 (2014).
99. *See id.* § 984.03(9).
100. *Id.* § 984.03(9)(a)–(c).
101. *Id.* § 984.01(1)(a).
102. 127 So. 3d 827 (Fla. 2d Dist. Ct. App. 2013).
103. *Id.* at 828; *see also* FLA. STAT. § 984.01(1)(a).
104. *Moyers*, 127 So. 3d at 827–28.
105. *Id.* at 828.
106. *Id.*

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failure to assure the child's attendance.[107] Rather, according to the appellate court, "[t]he truancy . . . judge improperly acted as the judge and the prosecutor, and the evidence was insufficient to establish Mr. Moyers' willful noncompliance with the truancy court's order[]."[108] Seeing "the truancy judge's improper role in the proceedings as prosecut[or], and because" there was no evidence to support the finding, the appellate court reversed.[109] In so doing, it recognized that it had previously ruled in exactly the same fashion in a prior case involving the same trial judge.[110]

An important question of the proximity of the status offense to a delinquency offense arose recently in *M.J. v. State*.[111] In that case, a juvenile appealed from an adjudication of delinquency.[112] The claim was that the trial court had denied the juvenile's "motion to suppress his confession . . . from what [was] claim[ed] [to be] an illegal detention for loitering and prowling."[113] Under the facts of the case, the court determined that the motion should have been suppressed because the reasonable stop of the juvenile by the police was for truancy, and thus, there was no "probable cause to arrest the juvenile for loitering and prowling."[114] According to the appellate court, during mid-day hours, a deputy sheriff noticed a juvenile "in front of a house in a high crime area."[115] The officer knew from prior dealings that the juvenile should have been in school.[116] When the officer made a U-turn in his vehicle, the juvenile ran away, and the officer subsequently found the juvenile "lying along the concrete wall inside the porch" of the house.[117] The officer then read the juvenile his *Miranda* rights and subsequently the juvenile confessed to a burglary.[118] The appeals court found that the police officer saw the juvenile and "suspected him of being a truant, not . . . committing a crime."[119] Thus, there was no probable cause for the arrest for loitering and prowling.[120]

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107. *Id.*
108. *Id.*
109. *Moyers*, 127 So. 3d at 828.
110. *Id.* (referencing Sockwell v. State, 123 So. 3d 585, 592 (Fla. 2d Dist. Ct. App. 2012)).
111. 121 So. 3d 1151, 1153 (Fla. 4th Dist. Ct. App. 2013), *review denied*, 133 So. 3d 528 (Fla. 2014).
112. *Id.* at 1153.
113. *Id.*
114. *Id.*
115. *Id.*
116. *M.J.*, 121 So. 3d at 1153.
117. *Id.*
118. *Id.*
119. *Id.* at 1155.
120. *Id.*

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V. JUVENILE DELINQUENCY

The issue before the Supreme Court of Florida during this survey year was the question of proper interpretation of the speedy trial rule in delinquency cases.[121] The specific issue in *State v. S.A.*[122] was how to compute what is referred to as the speedy trial rule's *recapture window*.[123] The issue arose from a conflict in two of the district courts of appeal.[124] In *S.A.*, the appellate issue arose when the juvenile "filed a notice of expiration of speedy trial and a motion seeking discharge under the speedy trial rule."[125] The motion required application of the trial rule's *recapture window* found in the Florida Rules of Juvenile Procedure.[126] The recapture rule says that "[n]o later than [five] days from the date of the filing of [the] motion for discharge, the court [is obligated to] hold a hearing on the motion."[127] Then, "unless the court finds that one of the reasons set forth in subdivision (d) [of the rule] exists . . . the respondent [must] be brought to trial within [ten] days" and if not, and "through no fault of the respondent, the respondent [is] . . . discharged."[128] The specific technical question was whether the rule provides for one fifteen-day time period based upon the five- and ten-day provisions, or whether the calculation of the recapture window is based upon two separate, but interrelated time periods of five and ten days.[129] Analyzing the legislative history—and over a dissent and two concurrences—the plurality ruling was "that the recapture window is comprised of two separate time periods."[130]

The Supreme Court of the United States' rulings in *Miller v. Alabama*[131] and *Graham v. Florida*[132] have generated a growing body of interpretive case law in Florida and in other jurisdictions.[133] In *Mason v. State*,[134] the specific question the appellate court dealt with was if the application of *Miller*, which

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121. *See* State v. S.A., 133 So. 3d 506, 507 (Fla. 2014) (per curiam).
122. 133 So. 3d 506 (Fla. 2014) (per curiam).
123. *Id.* at 507.
124. *Id.*; *see also* State v. S.A., 96 So. 3d 1133, 1135 (Fla. 4th Dist. Ct. App. 2012), *reh'g granted*, 2013 Fla. Lexis 881 (Fla. 2013), *quashed*, 133 So. 3d 506 (Fla. 2014); State v. McFarland, 747 So. 2d 481, 483 (Fla. 5th Dist. Ct. App. 2000).
125. *S.A.*, 133 So. 3d at 507.
126. FLA. R. JUV. P. 8.090(m)(3); *S.A.*, 133 So. 3d at 507–08.
127. FLA. R. JUV. P. 8.090(m)(3); *S.A.*, 133 So. 3d at 508.
128. FLA. R. JUV. P. 8.090(m)(3).
129. *S.A.*, 133 So. 3d at 509.
130. *Id.*
131. No. 10-9646, slip op. (U.S. June 25, 2012).
132. 560 U.S. 48 (2010).
133. *See Miller*, No. 10-9646, slip op. at 2; *Graham*, 560 U.S. at 82; 1 MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT ¶ 5.03(13)(e)(iii) (2014).
134. 134 So. 3d 499 (Fla. 4th Dist. Ct. App. 2014) (per curiam).

had held that a sentencing law "requir[ing] a mandatory sentence of life in prison without . . . parole for a juvenile, [was violative of] the Eighth Amendment prohibition against cruel and unusual punishment."[135] In the *Mason* case, the juvenile "negotiated [a] plea to second-degree murder . . . and received life in prison with a fifteen-year mandatory minimum as a [violent habitual] felony offender."[136] Because the statute under which the juvenile was punished did not contain a requirement of mandatory life in prison without parole, *Miller* did not apply, according to the appellate court.[137] Although the court employed discretion at the trial level to impose a higher sentence than it could have, nothing indicated that the court did not take Mason's youth into account when determining the sentence.[138] The appellate court thus affirmed.[139]

In *Weiand v. State*,[140] the juvenile appealed an order denying his motion for post-conviction relief.[141] Based upon the defendant's pro se appeal, the intermediate appellate court held that the sentence of life in prison without parole on kidnapping and robbery convictions was illegal under *Graham v. State*.[142] Applying *Graham*, the appellate court held that "the Supreme Court [of the United States] created a *bright-line rule* . . . that a defendant . . . under eighteen, when" he or she commits a "non-homicide offense [could not] be sentenced to life without parole."[143]

Lack of probable cause for an arrest of a juvenile for loitering, described in the *M.J.* case above, has arisen on several occasions in the appellate courts.[144] Thus, in *C.C. v. State*,[145] a juvenile "was adjudicated delinquent on charge[s] of loitering and prowling," appealed the adjudication, and the appellate court reversed, finding there was a failure to establish a completed offense of loitering and prowling.[146] The case arose when police officers in the City of Hollywood at about ten o'clock in the morning noticed a

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135. *Id.* at 500; *see also Miller*, No. 10-9646, slip op. at 2; DALE ET AL., *supra* note 133, at ¶ 5.03(13)(e)(iii).

136. *See Mason*, 134 So. 3d at 500.

137. *Id.*; *see also Miller*, No. 10-9646, slip op. at 2.

138. *See Mason*, 134 So. 3d at 501.

139. *Id.*

140. 129 So. 3d 434 (Fla. 5th Dist. Ct. App. 2013).

141. *Id.* at 434.

142. *Id.* at 435; *see also* Graham v. Florida, 560 U.S. 48, 82 (2010).

143. *Weiand*, 129 So. 3d at 435 (emphasis added); *see also Graham*, 560 U.S. at 82.

144. *See* C.C. v. State, 137 So. 3d 466, 467 (Fla. 4th Dist. Ct. App.), *review denied*, No. SC14-960, 2014 WL 4291798 (Fla. Aug. 29, 2014); M.J. v. State, 121 So. 3d 1151, 1153 (Fla. 4th Dist. Ct. App. 2013), *review denied*, 133 So. 3d 528 (Fla. 2014); *supra* text accompanying notes 111–20.

145. 137 So. 3d 466 (Fla. 4th Dist. Ct. App.), *review denied*, No. SC14-960, 2014 WL 4291798 (Fla. Aug. 29, 2014).

146. *Id.* at 467.

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juvenile who the officers believed should have been in school.[147] "When the officers stopped their patrol car [the respondent] and two other[s] . . . dropped their backpacks in a bush and [tried to hide] behind a truck."[148] The officers arrested the respondent, searched his backpack, and found a four-way lug wrench and other tools.[149] At trial, respondent moved to dismiss, which was denied, and the defense then rested.[150] The appellate court held "that the items found . . . after [the] arrest should not have been admitted [as evidence] or considered by the trial court because the offense of loitering and prowling [was not] completed."[151] In fact, the appellate court held that, under the law, it must be found that the respondent was loitering and prowling at a place and in a manner not usual for law-abiding citizens, that loitering was under circumstances that warranted alarm or concern for the safety of others, and that these elements were completed prior to the arrest.[152] Significantly, the appellate court held that it was unable to distinguish the *C.C.* case from *M.J.*[153] Recognizing the nearly identical facts, the court held that the State had failed to prove that the elements of the offense occurred in the officers' presence.[154] It thus reversed.[155]

In a third similar case, *G.T. v. State*,[156] the juvenile appealed from a conviction "for resisting an officer without violence when she refused to [provide] the arresting officer [with] her name and personal information after [she was] detained [on] suspicion of underage drinking and disorderly intoxication."[157] In order to detain someone, the "officer must have reasonable suspicion of criminal activity by" that individual.[158] In this case, the State was unable to demonstrate the facts that connected the child to an empty liquor bottle or to show that the police officer "had more than an inchoate hunch that this group of juveniles was the one [that] he had been dispatched to investigate."[159] The only information that the officer had was that the juveniles appeared to have "red [and] glossy eyes and slurred speech, [suggesting] to the

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147. *Id.*
148. *Id.*
149. *Id.*
150. *C.C.*, 137 So. 3d at 467.
151. *Id.*
152. *Id.* at 468–69 (quoting E.F. v. State, 110 So. 3d 101, 104 (Fla. 4th Dist. Ct. App.), *review denied*, 121 So. 3d 1038 (Fla. 2013)).
153. *Id.* at 468; *see also* M.J. v. State, 121 So. 3d 1151, 1153 (Fla. 4th Dist. Ct. App. 2013), *review denied*, 133 So. 3d 528 (Fla. 2014).
154. *C.C.*, 137 So. 3d at 469.
155. *Id.* at 469–70.
156. 120 So. 3d 141 (Fla. 4th Dist. Ct. App. 2013) (per curiam).
157. *Id.* at 142.
158. *Id.* at 143.
159. *Id.*

officer that they were intoxicated."[160] However, the officer observed this after he detained the juvenile.[161] The court thus reversed.[162]

The fourth lack of reasonable suspicion case is *A.R. v. State*.[163] In this case, the act of delinquency alleged was resisting an officer without violence.[164] "Boynton Beach police were 'investigating a . . . crime that [may have] taken place' in a public park."[165] When officers arrived, the appellant turned away and started to run.[166] The officer yelled at the individual to stop a number of times, and the youth ultimately gave up and surrendered.[167] The juvenile's argument on appeal was that the police investigation of the crime could not be the basis to legally detain a person where there was no reasonable suspicion of probable cause as to that individual.[168] Running away—the court held based on prior case law—"is not sufficient to establish [a] reasonable suspicion where there is no evidence to demonstrate that the flight took place in a high crime area."[169] Further, there was no showing that the flight obstructed the officers in the lawful execution of their duties.[170] The court thus reversed.[171]

Issues of detention, ranging from home detention through secure detention, appear regularly in the appellate case law.[172] The issue in *H.D. v. Shore*[173] was whether a child could be held in secure detention based upon a prior arrest for burglary of a dwelling and grand theft offenses, which by themselves did not score sufficiently on Florida's Risk Assessment Instrument ("RAI") for secure detention, but when the juvenile failed to go to school, the father reported the violation and the court then ordered secure detention.[174] The appellate court ruled that Florida's juvenile detention statute does not provide a court with the authority to order secure detention solely on the basis of a violation of a pre-adjudication home detention.[175] The appellate court then explained that the remedy for such a violation was indirect contempt.[176]

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160. *Id.*
161. *G.T.*, 120 So. 3d at 143.
162. *Id.* at 143–44.
163. 127 So. 3d 650, 652 (Fla. 4th Dist. Ct. App. 2013).
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.* at 652–53.
168. *A.R.*, 127 So. 3d at 653.
169. *Id.* at 654.
170. *Id.*
171. *Id.* at 655.
172. Dale, *2013 Survey of Juvenile Law*, *supra* note 58, at 93; *see, e.g.*, H.D. v. Shore, 134 So. 3d 1062, 1062 (Fla. 4th Dist. Ct. App. 2013) (per curiam).
173. 134 So. 3d 1062 (Fla. 4th Dist. Ct. App. 2013) (per curiam).
174. *Id.* at 1062–63.
175. *Id.* at 1063; *see also* FLA. STAT. § 985.255 (2014).
176. *H.D.*, 134 So. 3d at 1063.

Therefore, the appellate court held that as the child did not score enough points under Florida's RAI for secure detention, and there were no findings to depart from the RAI, secure detention was improper.[177] The court thus granted the writ of habeas corpus.[178] It should be noted that the court in *H.D.* disagreed with the court in *K.T.E. v. Lofthiem*,[179] that section 985.265(1) of the Florida Statutes "provides an independent basis for ordering secure detention" under the facts in the *H.D.* case.[180]

Evidentiary issues are not usually part of this juvenile survey as they are generic to any variety of litigation settings.[181] However, a recent Fourth District Court of Appeal case, *T.D.W. v. State*[182] is worthy of discussion as it deals with best evidence.[183] The issue before the court was "whether [the] appellant was [properly] identified as one of the three boys who burgl[arized] a home."[184] His "identification was based in part on the [detective's] testimony."[185] The detective testified that "she saw [the appellant] on a surveillance videotape [that] she [had] viewed outside the courtroom."[186] However, the "identification did not appear on the copy of the surveillance video offered into evidence at trial."[187] Florida Rule of Evidence 90.952 provides in relevant part that "[e]xcept as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph."[188] Known as the Best Evidence Rule, unless an exception may be shown, "'the testimony of [the] witness . . . [regarding] the contents of the original is inadmissible.'"[189] Finding that the error was not harmless, citing similar case law, the appellate court reversed.[190]

The issue of whether Second Amendment constitutional rights apply to juveniles was before the Fourth District Court of Appeal in *L.S. v. State*.[191] A

177. *Id.* at 1064.
178. *Id.* at 1062, 1064.
179. 915 So. 2d 767 (Fla. 2d Dist. Ct. App. 2005).
180. *H.D.*, 134 So. 3d. at 1063–64; *see also* FLA. STAT. § 985.265(1); *K.T.E.*, 915 So. 2d at 769–70.
181. *See* Dale, *2013 Survey of Juvenile Law*, *supra* note 58, at 84.
182. 137 So. 3d 574 (Fla. 4th Dist. Ct. App. 2014).
183. *Id.* at 575.
184. *Id.*
185. *Id.*
186. *Id.*
187. *T.D.W.*, 137 So. 3d at 575.
188. FLA. STAT. § 90.952 (2014).
189. *T.D.W.*, 137 So. 3d at 576; *see also* FLA. STAT. § 90.952.
190. *T.D.W.*, 137 So. 3d at 577–78; *see also* McKeehan v. State, 838 So. 2d 1257, 1261 (Fla. 5th Dist. Ct. App. 2003).
191. 120 So. 3d 55, 58 (Fla. 4th Dist. Ct. App. 2013).

juvenile was adjudicated delinquent based upon "carrying a concealed firearm, grand theft of a firearm, improper exhibition of a firearm, [and] resisting arrest without violence [as well as] possession of a firearm by a minor."[192] The appellate court reversed as to all adjudications with the exception of carrying a concealed firearm.[193] As to that adjudication, the minor argued that he had a right under the Second Amendment to the United States Constitution to carry the firearm as there is no juvenile exception in the Amendment.[194] The appellate court held that the constitutional rights of children are not equated with those of adults on the basis of the juvenile's "inability to make decisions in an informed and mature manner."[195] Citing basic United States Constitutional law, the court held that while the Second Amendment does not mention juveniles, the Supreme Court of the United States has recognized limitations on the right to bear arms.[196] The court also commented that the constitutional rights of children under the Florida Constitution are not the same as adults, as well as under the laws of other states.[197] The court therefore affirmed the adjudication of possession of firearms by a minor.[198]

Florida provides that incompetency may be grounds under which a proceeding to determine delinquency may not proceed and that ultimately the charges under certain circumstances may be dismissed.[199] The basis for incompetence may be age, immaturity, a mental illness, intellectual disability, or autism.[200] The question before the Fourth District Court of Appeal in *D.B. v. State*,[201] was whether dismissal of a delinquency petition was mandated as the juvenile had been declared incompetent more than three years earlier and remained incompetent.[202] Under the Florida Statutes, and pursuant to due process principles, a juvenile may not be tried while incompetent.[203] The statutes also provide a jurisdictional limit on how long the court may retain jurisdiction.[204] Here, under the statute and as conceded by the State, dismissal was warranted.[205]

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192. *Id.* at 56.
193. *Id.* at 59.
194. *Id.* at 58; *see also* U.S. CONST. amend. II.
195. *L.S.*, 120 So. 3d at 58.
196. U.S. CONST. amend. II.; *but see In re* T.W., 551 So. 2d 1186, 1193 (Fla.), *withdrawn*, 1989 Lexis 1226 (Fla. 1989).
197. *L.S.*, 120 So. 3d at 59.
198. *Id.*
199. FLA. STAT. § 985.19(1), (5)(c) (2014).
200. *See id.* § 985.19(2), (3)(a).
201. 120 So. 3d 71 (Fla. 4th Dist. Ct. App. 2013).
202. *Id.* at 72.
203. *Id.* at 73; *see also* FLA. STAT. § 985.19(1).
204. FLA. STAT. § 985.19(5)(c).
205. *D.B.*, 120 So. 3d at 72.

The issue of waiver of *Miranda* rights by juveniles is a very common issue that arises in the appellate courts all over the country.[206] That issue was before the appellate court in *J.X. v. State*.[207] In that case, a juvenile appealed the denial of his motion to suppress statements he provided to the police after being given his *Miranda* warnings, which he then waived.[208] The juvenile was seventeen and was summoned to the police station with his mother.[209] There was a suspicion that he had been involved in burglaries.[210] As soon as he was advised that he had been asked to come to the police station because of the two residential burglaries, he unequivocally invoked his right to counsel.[211] The police officer "closed his case file and terminated the interview."[212] However, after the detective said he was going to speak to the juvenile's brother, the mother encouraged the appellant to cooperate.[213] After the juvenile reinitiated contact with the officer, the officer advised the juvenile again of his *Miranda* rights, giving him the form containing the full recitation and orally advising him.[214] The juvenile then confessed.[215] The appellate court held that when the juvenile reinstituted contact with the police—where there was no threat of coercion and where the juvenile did not ask for a lawyer—the waiver was free, voluntary, and knowing.[216] It then affirmed the denial of the motion to suppress.[217]

Florida's delinquency statute provides a number of dispositional alternatives including probation, restitution, community service, revocation of driver's licenses, and attendance at school.[218] Restitution issues often come up before the appellate courts on proper application of the Florida Statute.[219] In *T.J.J. v. State*,[220] a juvenile appealed an order of disposition—including restitution—after he admitted to a burglary of a dwelling.[221] The issue was that the restitution order included a payment for "items not listed in the original

206. *E.g.*, J.X. v. State, 125 So. 3d 364, 365 (Fla. 3d Dist. Ct. App. 2013); *see also* DALE ET AL., *supra* note 133, at ¶ 5.03(7).
207. 125 So. 3d 364, 365 (Fla. 3d Dist. Ct. App. 2013).
208. *Id.* at 365.
209. *Id.*
210. *Id.*
211. *Id.*
212. *J.X.*, 125 So. 3d at 365.
213. *Id.*
214. *Id.*
215. *Id.*
216. *Id.* at 367.
217. *J.X.*, 125 So. 3d at 367.
218. FLA. STAT. § 985.455(1)–(2) (2014).
219. Dale, *2013 Survey of Juvenile Law*, *supra* note 58, at 94.
220. 121 So. 3d 635 (Fla. 4th Dist. Ct. App. 2013).
221. *Id.* at 637.

charging document."[222] The amount of restitution was "$2718, or more than twice what the charging document," set forth.[223] The appeals court reversed for failure to comply with the statute, which provides that restitution is based upon the charging document.[224]

In *V.A.C. v. State*,[225] the issue involving an order of restitution dealt with a jurisdictional problem.[226] In that case, the juvenile turned nineteen, and a notice of hearing to establish restitution was filed after the juvenile's nineteenth birthday.[227] As a result, the juvenile court lacked jurisdiction.[228] Having reserved jurisdiction on the issue of restitution prior to the juvenile's nineteenth birthday, the trial court could have dealt with the matter.[229] However, the "court erred in ordering restitution after it lost jurisdiction."[230]

If there is an allegation that a juvenile has violated probation, under Florida law, the state may file a petition for violation of probation.[231] In *S.M. v. State*,[232] the juvenile appealed the dispositional order which found her guilty of violation of probation on the grounds that the juvenile had been ordered to leave the courtroom to privately speak to her grandmother, and because the State presented only hearsay evidence by the juvenile's probation officer to support the allegation.[233] The appellate court held that "[w]hile '[h]earsay is admissible in a revocation hearing,'" it cannot be the sole basis for the finding; in the case at bar that was all the evidence.[234] Thus, "there was insufficient evidence to revoke the . . . probation on the two allegations contained [in] the petition."[235] Furthermore, "juveniles have a constitutional right to be present at all critical stages of the proceeding[]," unless waived by the child himself or herself.[236] Because "the juvenile did not personally waive her right to be present" and because events took place while the juvenile was out of the courtroom—only to be back to hear the disposition—the court also reversed.[237]

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222. *Id.*
223. *Id.*
224. *Id.*
225. 136 So. 3d 612 (Fla. 2d Dist. Ct. App. 2013).
226. *Id.* at 613.
227. *Id.*
228. *Id.*
229. *Id.*
230. *V.A.C.*, 136 So. 3d at 614.
231. FLA. STAT. § 985.439(1)(b) (2014).
232. 138 So. 3d 1156 (Fla. 4th Dist. Ct. App. 2014).
233. *Id.* at 1157, 1159.
234. *Id.* at 1159 (quoting McNealy v. State, 479 So. 2d 138, 139 (Fla. 2d Dist. Ct. App. 1985)).
235. *Id.*
236. *Id.* at 1159–60 (quoting J.R. v. State, 953 So. 2d 690, 691 (Fla. 1st Dist. Ct. App. 2007) (per curiam)).
237. *S.M.*, 138 So. 3d at 1160.

Another dispositional issue that comes up on occasion is the question of the specifics of special conditions of juvenile probation.[238] In *T.J.J.*, in addition to ordering "restitution for items not [contained] in the . . . charging document, [t]he [trial] court also imposed [as] a special condition of . . . probation that the [respondent] not associate with persons under supervision, members of gangs, or whose contact [was] prohibited by the juvenile's probation officer, parent or guardian."[239] The appellate court reversed as to this condition of probation finding that nothing in the Florida Statutes or the Rules of Juvenile Procedure contained a "blanket prohibition of willful contact" with certain individuals.[240] The rules' "special condition [dealt with] prohibiting contact with the victim[s]."[241] Furthermore, the appellate court held that "the condition must be related to the crime committed."[242] Finally, the appellate court held that "the condition [was] invalid for vagueness and overbreadth."[243]

Another example of police interaction with a juvenile during school hours and their handling of them is *R.A.S. v. State*.[244] In that case, a juvenile appealed from a delinquency adjudication for "possession of marijuana and drug paraphernalia" having unsuccessfully sought to suppress the evidence.[245] A police officer was driving through the respondent's neighborhood trying to find him because the youngster had been reported absent from school.[246] When "[t]he deputy located [the student] and asked him to come over to talk to him," the student said he was on his way to school.[247] The deputy offered to give the student a ride to school, which the student accepted.[248] The deputy then told the youngster to empty his pockets, indicating that he was doing a weapons pat-down.[249] In so doing, the officer—realizing the student failed to entirely empty his pockets—felt an item, which turned out to be a plastic bag of marijuana.[250] The appellate court held that ordering someone to empty his pockets under these circumstances was an unauthorized full search.[251] "The deputy did not have . . .

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238. T.J.J. v. State, 121 So. 3d 635, 637 (Fla. 4th Dist. Ct. App. 2013); *see also* FLA. STAT. § 985.435 (2014).
239. *T.J.J.*, 121 So. 3d at 637.
240. *Id.* at 638–39; *see also* FLA. STAT. § 985.435; FLA. R. JUV. P. Form 8.947.
241. *T.J.J.*, 121 So. 3d at 638; *see also* FLA. R. JUV. P. Form 8.947.
242. *T.J.J.*, 121 So. 3d at 638 (citing Biller v. State, 618 So. 2d 734, 734–35 (Fla. 1993)).
243. *Id.*
244. 141 So. 3d 687, 689 (Fla. 2d Dist. Ct. App. 2014).
245. *Id.*
246. *Id.*
247. *Id.*
248. *Id.*
249. *R.A.S.*, 141 So. 3d at 689.
250. *Id.*
251. *Id.*

reason to [believe] that [the youngster] was carrying a weapon or contraband. Thus, the initial search had no legal basis."[252] The court recognized that the police officer did have the right to conduct the pat-down for weapons.[253] But when an officer takes a truant into custody, as here, "the only concern is for officer safety," which means the concern is about a weapon.[254] Thus, the appellate court reversed.[255]

Florida law provides a form of amnesty or immunity for school students who divulge information related to the supplying of controlled substances if the events giving rise to the incident "occurred on property other than public school property."[256] In *State v. E.M.*,[257] the State appealed the trial court's granting of the respondent juvenile's motion in limine to preclude statements to school officials.[258] The case arose out of an internal suspension resulting from a violation of the school dress code.[259] The student told the school security officials that he was out of dress code because "his uniform shirt was 'messed up.'"[260] When the security officer asked the youngster to show the officer the shirt and when the juvenile "opened his backpack to take out [his] shirt, [the] [s]ecurity [officials] smelled the odor of marijuana."[261] As a result, the juvenile admitted that he had the marijuana, which the security officer found in the backpack.[262] The State alleged two counts—possession of marijuana with intent to deliver at the nearest school and marijuana subsequently found in the juvenile's home.[263] As a matter of statutory interpretation, the appellate court held that the immunity statute did not apply because the student did not fall within the category of one who "divulges information leading to the arrest and conviction of the person who supplied the controlled substance to him."[264] Rather, the student fell into the second category which did not receive the same protection—which is to say inadmissibly of incriminating statements—as in the first category.[265] The appellate court therefore reversed.[266]

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252. *Id.*
253. *Id.* at 690.
254. *R.A.S.*, 141 So. 3d at 690.
255. *Id.*
256. FLA. STAT. § 1006.09(2)(a) (2014).
257. 141 So. 3d 682 (Fla. 4th Dist. Ct. App. 2014).
258. *Id.* at 683.
259. *Id.*
260. *Id.*
261. *Id.*
262. *E.M.*, 141 So. 3d at 683.
263. *Id.*
264. *Id.* at 685 (citing FLA. STAT. § 1006.09(2)(a)(2014)).
265. *Id.*
266. *Id.* at 686.

VI. OTHER MATTERS

The role of Florida's well-funded GAL Program has been discussed in this law review on several occasions.[267] In *Turnier v. Stockman*,[268] the issue of whether a guardian ad litem could be appointed arose in the context of a chapter 61 custody matter commenced as a paternity proceeding.[269] The case transferred from St. Johns County to Miami-Dade County, involved with whom a deaf minor child should live, where both of the parents were deaf.[270] The trial court considered appointing a GAL, but ultimately did not.[271] The mother appealed, arguing that it was reversible error for the trial court to fail to appoint a GAL for the child.[272] The appellate court held that there was no requirement to appoint a guardian in the proceeding below because the Florida Legislature in, chapter 61, did not make the appointment mandatory, but rather discretionary.[273]

The question of liability of what are known in Florida as the lead agencies—the organizations to which the Department of Children and Families outsource the provision of foster care and related services—was before the First District Court of Appeal.[274] The case—a wrongful death action arising out of the death of a child in foster care—was brought against Partnership for Strong Families, the community-based provider in several counties in the state.[275] The appellate court affirmed summary judgment for the provider, finding it owed no duty to the child because the trial court had terminated *protective supervision*, and thus the "negligence could not be the proximate cause of" the child's death.[276] The death had occurred as a result of the action of the child's father to whom the child had been returned.[277] Finding that the alleged negligence was also unforeseeable, the appellate court affirmed the grant of the motion for summary judgment.[278] Thus, *Castello v. Partnership for Strong Families,*

267. *See, e.g.*, Dale & Reidenberg, *supra* note 15, at 323–32.
268. 139 So. 3d 397 (Fla. 3d Dist. Ct. App. 2014),.
269. *Id.* at 398–400; *see also* FLA. STAT. § 61.401 (2014).
270. *Turnier*, 139 So. 3d at 398.
271. *Id.* at 399.
272. *Id.* at 400.
273. *Id.*; *see also* FLA. STAT. § 61.401.
274. Castello v. P'ship for Strong Families, Inc., 117 So. 3d 62, 63–64 (Fla. 1st Dist. Ct. App. 2013) (per curiam), *review denied*, 139 So. 3d 884 (Fla. 2014); *see also* FLA. STAT. § 39.0016(1)(b).
275. *Castello*, 117 So. 3d at 63.
276. *Id.* at 63–64.
277. *Id.* at 63.
278. *Id.* at 63–64.

Inc.[279] mirrors the Supreme Court of the United States ruling in *DeShaney v. Winnebago County Department of Social Services*.[280]

Domestic violence matters unrelated to dependency proceedings can also involve juveniles.[281] *Cannon v. Thomas*[282] is such a case.[283] A student appealed from a trial court order "granting a permanent injunction for protection against repeat violence" arising out of the appellant child's attack upon the appellee child.[284] The injunction was granted based upon a factual determination that the appellant "brutally battered [a]ppellee's daughter, slamming her head against a concrete wall" near a convenience store.[285] The problem, according to the appellate court, is that the Florida statute requires two incidents of violence in order to protect the minor child.[286] Thus, while recognizing the severity of the attack, as a matter of statutory construction, the appellate court was obligated to vacate the injunction for protection against the violence.[287]

VII. LEGISLATIVE CHANGES

This year's legislative changes in juvenile law demonstrate a new emphasis on prevention and intervention,[288] a commitment to utilizing trauma informed care,[289] and revised standards for detention centers.[290] The Legislature also increased protections for juvenile offenders by adding criminal penalties for willful neglect on the part of Department of Juvenile Justice ("DJJ") employees.[291] In dependency, the Legislature addressed a longstanding issue relating to termination of parental rights for prospective child abuse, reversing twenty years of case law that required a nexus between prior abuse and current risk.[292] The Legislature has also created a right to counsel for special needs children in dependency actions.[293] Other changes include new provisions for

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279. 117 So. 3d 62 (Fla. 1st Dist. Ct. App. 2013) (per curiam), *review denied*, 139 So. 3d 884 (Fla. 2014).
280. 489 U.S. 189, 203 (1989); *Castello*, 117 So. 3d at 64.
281. *See* FLA. STAT. § 784.046(2)(a) (2014).
282. 133 So. 3d 634 (Fla. 1st Dist. Ct. App. 2014).
283. *Id.* at 635.
284. *Id.*
285. *Id.*
286. FLA. STAT. § 784.046(1)(b); *Cannon*, 133 So. 3d at 635, 640.
287. *Cannon*, 133 So. 3d at 635, 640.
288. FLA. STAT. § 985.01(1)(a).
289. *Id.* §§ 985.02(8), .03(52).
290. *Id.* §§ 985.02(5), .03(44).
291. *Id.* § 985.702(2)(a).
292. *See id*. § 39.806(1)(f); Padgett v. Dep't of Health & Rehabilitative Servs., 577 So. 2d 565, 571 (Fla. 1991).
293. FLA. STAT. § 39.01305(3).

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addressing cases of medical neglect,[294] and new provisions for reporting and addressing deaths of children in department care.[295] The Legislature also extended the scope of the relative caregiver program to include non-relative caregivers.[296] On a lighter note, the Legislature has mandated a program to help children in department care obtain their driver's licenses.[297]

A. *Juvenile Delinquency Statutory Changes*

This year, the Legislature has introduced a shift in the declared purpose of the juvenile justice system by emphasizing the role of prevention, intervention, treatment, and the importance of children's families and community support systems.[298] To this end, the Legislature added section 985.17 of the Florida Statutes, describing the need for prevention services to "decrease recidivism by addressing the needs of at-risk youth and their families."[299] The new statute directs the DJJ to "develop the capacity for local communities to serve their youth [through] engag[ing] faith and community based organizations to provide" various volunteer services such as "chaplaincy services, crisis intervention counseling, mentoring, and tutoring."[300] The statute directs the DJJ to provide services such as literacy and recreation programs targeted specifically at certain at-risk youth.[301]

The Legislature has also added an emphasis on *trauma informed care* recognizing the role that trauma, such as "violence, physical or sexual abuse, neglect, [and] medical difficulties," plays in the child's life.[302] The DJJ is directed to provide services to "be more supportive and avoid retraumatization, [through] trauma-specific interventions that are designed . . . to facilitate healing."[303]

The shift toward prevention through family and community involvement is also apparent in new guidelines for detention facilities.[304] Facilities are to be placed close to the home communities of children they serve to encourage family involvement.[305] Further evidencing the transition to more

294. *Id.* § 39.3068.
295. *Id.* § 39.201(3).
296. *Id.* § 39.5085(1)(a), (2)(a)(3).
297. *Id.* § 409.1454(1)–(2).
298. *See* FLA. STAT. § 985.01(1)(a), (e).
299. *Id.* § 985.17(1).
300. *Id.* § 985.17(2)–(2)(a).
301. *Id.* § 985.17(3)(a).
302. *Id.* § 985.03(52); *see also* FLA. STAT. §§ 985.02(8), .601(3)(a).
303. FLA. STAT. § 985.02(8).
304. *Id.* § 985.02(5).
305. *Id.* § 985.02(5)(c).

individualized services is the reduction of the maximum number of beds allowed in facilities from 165 to 90.[306]

Lastly, the Legislature has filled a significant gap in protection of juvenile offenders from harm at the hands of DJJ employees, volunteers, and interns.[307] Although the Florida Statutes provided criminal penalties for sexual abuse of children within the juvenile justice system, there was no such provision for employees alleged to have neglected a youth in the department's custody.[308] Although such incidences are uncommon, one recent highly publicized event illustrated the need for legislative change.[309] In 2011, an eighteen-year-old in the department's custody died of a brain hemorrhage after "guards refused to call 911 for more than six hours" because they thought the young person was faking.[310] Unfortunately, the guards could not be charged with child neglect because the person was eighteen and no longer legally a child.[311] To address instances such as this, the Legislature amended section 985.701 of the Florida Statutes to define '"[j]uvenile offender' [as a] person of any age . . . detained . . . or committed to the custody of the department," and created section 985.702 which makes "[w]illful and malicious neglect of a juvenile offender" a felony offense.[312] In addition, violation of these provisions is grounds for dismissal and permanent disqualification from employment in the juvenile justice system.[313] Section 985.702 also imposes a duty on DJJ employees to report instances of neglect and makes failure to do so a first-degree misdemeanor.[314]

B. *Dependency Statutory Changes*

Perhaps the most significant practical change in substantive dependency law was the legislative abrogation of the nexus test established by the Supreme Court of Florida in *Padgett v. Department of Health & Rehabilitative Services*[315] in 1991.[316] The *Padgett* nexus test—which has been applied for over

306. FLA. H.R., FINAL BILL ANALYSIS, CS/HB 7055, Reg. Leg. Sess., at 3 (Fla. 2014); *see also* FLA. STAT. § 985.02(5)(c).

307. FINAL BILL ANALYSIS, CS/HB 7055, at 17–18, *see also* FLA. STAT. § 985.702.

308. FINAL BILL ANALYSIS, CS/HB 7055, at 17.

309. *Id.*; Ana M. Valdes, *Parents of Teen Who Died in Detention to Sue State*, PALM BEACH POST, Mar. 14, 2012, at B1.

310. Lisa Rab, *DJJ Supervisor Thought Eric Perez Was "Faking" As He Died in Juvie Lockup, Officer Testifies*, THE PULP (Mar. 9, 2012, 12:42 PM), http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php; *see also* Valdes, *supra* note 309.

311. Rab, *supra* note 310; *see also* FINAL BILL ANALYSIS, CS/HB 7055, at 17.

312. FLA. STAT. §§ 985.701(1)(a)(1)(c), .702(2)(a)–(b).

313. *Id.* § 985.702(2)(c).

314. *Id.* § 985.702(3), (4)(a)–(b).

315. 577 So. 2d 565 (Fla. 1991).

two decades[317]— mandated that termination of parental rights ("TPR") based upon the abuse of sibling or another child in the family must be predicated upon a showing of a nexus between the harm to the other child, and imminent risk of harm to the current child.[318] The Legislature has eliminated this nexus requirement in part, amending section 39.806 of the Florida Statutes to specify that no proof of a nexus between prior conduct and potential harm to a sibling is required in cases of prior egregious conduct, or those related to homicide of a child or the other parent.[319] Similarly, conviction of crime "that requires [a] parent to register as a sexual predator" has been added as a grounds for TPR.[320]

Although several organizations provide attorney representation to dependent children in some parts of the state on a limited basis, the Legislature has recognized that children with special needs have a particular need for legal representation.[321] For this reason, the Legislature has extended a right to legal representation for dependent children with certain special needs.[322] Specifically, an attorney shall be provided for a child who is subject to any proceeding under chapter 39 who resides or is being considered for placement in a skilled nursing home or residential treatment center, is prescribed but declines assent to psychotropic medication, has a developmental disability, or is a victim of human trafficking.[323]

There is a series of serious infirmities in the new statute.[324] First, it leaves unrepresented many children with equally serious needs, as well as the vast majority of the over twenty-eight thousand children who are before the dependency court.[325] There are several constitutional reasons why all these other children are entitled to counsel.[326] The fact that they are treated

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316. *Id.* at 57; *see also* FLA. STAT. § 39.806(1)(f); Fla. Prof'l Staff of the Comm. On Appropriations, Bill Analysis and Fiscal Impact Statement, S. 1666, Reg. Sess., at 19 (2014).

317. Dale, *2013 Survey of Juvenile Law*, *supra* note 58, at 85.

318. *Padgett*, 577 So. 2d at 571; Dale, *2013 Survey of Juvenile Law*, *supra* note 58, at 85.

319. FLA. STAT. § 39.806(1)(f), (h).

320. *Id.* § 39.806(1)(n). Research discloses no legislative history for these changes. FLA. STAT. § 39.806 (2013).

321. FLA. STAT. § 39.01305(1)(a)(2). The legislation is a response to a 2012 warning issued by the United States Department of Justice threatening a law suit against the State of Florida regarding Americans with Disabilities Act violations concerning severely disabled children housed in nursing homes throughout the state. FLA. H.R., FINAL BILL ANALYSIS, CS/HB 561, Reg. Leg. Sess., at 3 (2014).

322. FLA. STAT. § 39.01305(3).

323. *Id.*

324. *See id.* § 39.01305(1)–(9).

325. *See* Dale & Reidenberg, *supra* note 15, at 311, 353; *DCF Quick Facts*, FLA. DEP'T OF CHILDREN AND FAMILIES, http://www.dcfstate.fl.us/general-information/quick-facts/cw (last visited Nov. 9, 2014).

326. Dale & Reidenberg, *supra* note 15, at 350–53.

differently than those provided with lawyers raises a question of equal protection.[327] The failure to provide counsel at all to most children in Florida in these cases may also be a denial of procedural due process.[328]

Second, the new law appropriates five million dollars to pay for lawyers to represent the children.[329] However, it says that, first, efforts must be made to find volunteer lawyers.[330] This itself is a problem because volunteer lawyers have never been able to represent even a significant fraction of the children before the dependency court.[331] The decision to provide lawyers for children is first made by the attorneys for the Department of Children and Families.[332] The law thus creates an ethical issue for department lawyers.[333] Pursuant to the Florida Rules of Professional Responsibility, the decision of whether a party should be entitled to counsel is being made by a lawyer for another party.[334] Moreover, the system for locating and training lawyers to represent children is left to the GAL Program.[335] This creates a similar ethical problem.[336] Thus, one party is training and choosing those lawyers who will represent another party.[337]

Third, the legislature never explained why the excess of thirty million dollars that it has expended to fund the GAL Program every year is not adequate to represent these children.[338] Of course—as discussed in two articles by this author in the *Nova Law Review*[339]—the first part of the answer may be that the

327. *Id.*

328. *Id.* at 311, 353.

329. FLA. H.R., FINAL BILL ANALYSIS, CS/HB 561, Reg. Leg. Sess., at 4 (2014).

330. FLA. STAT. § 39.01305(4)(a) (2014).

331. *See* U. FLA. LEVIN COLL. LAW CTR. ON CHILDREN & FAMILIES & FLA'S CHILDREN FIRST, LEGAL REPRESENTATION OF DEPENDENT CHILDREN 6 (2012). The failure to fund volunteer lawyers to represent children is compounded by the influx of approximately 53,000 undocumented children into the United States and the efforts of bar associations to fund lawyers for them. Melvin Felix & Mike Clary, *Deutsch Vows to Fight for Undocumented Kids*, SUN SENTINEL (Dec. 18, 2014, 8:42 PM), http://www.sun-sentinel.com/news/politics/fl-undocumented-minors-folo-20141218-story.html; Mara Gay, *As Child Immigrants Await Fate, a Race for Counsel*, WALL ST. J., Oct. 1, 2014, at A19; Jan Pudlow, *Florida Lawyers Stand with Unaccompanied Minors*, FLA. B. NEWS, Oct. 1, 2014, at 1. Legal Aid Societies are overwhelmed by need for pro bono lawyers to meet need of unaccompanied immigrant children. Gay, *supra* note 331.

332. FLA. STAT. § 39.01305(6); Dale & Reidenberg, *supra* note 15, at 308 n.10.

333. Dale & Reidenberg, *supra* note 15, at 308 n.10, 352–53.

334. R. REGULATING FLA. BAR 4-1.14(b); *see also* Dale & Reidenberg, *supra* note 15, at 311, 353.

335. Dale & Reidenberg, *supra* note 15, at 323.

336. *See id.* at 308 n.10, 323.

337. *See id.*

338. *Id.* at 362. The complete budget from all sources is actually higher. *See* Michael Dale & Louis M. Reidenberg, *The Kids Aren't Alright: Every Child Should Have an Attorney in Child Welfare Proceedings in Florida*, 36 NOVA. L. REV. 345, 356, (2012).

339. *See* Dale, *2012 Survey of Juvenile Law*, *supra* note 58, at 338–39; Dale &

GAL Program in Florida does not represent the legal interests of children in dependency and termination of parental rights cases.[340] The GAL Program is not the child's lawyer.[341] Rather, the GAL Program, a party to dependency and TPR cases in Florida, only represents the child's best interests.[342] The child, of course, is a separate party in Florida.[343] So the GAL Program's lawyers cannot ethically represent another party—the child.[344] The second part of the answer may be that, while the GAL Program describes itself as *guardian angels*, it tries to be the child's friend, has 145 lawyers on staff, and actually only represents the best interests of half the children before the court; it is legally, ethically, and structurally incapable of solving the complex legal problems of the children before the dependency court.[345]

Until this year, chapter 39 did not contain any special provisions for dealing with cases of medical neglect or those involving children with complex medical needs.[346] Because of this, "parents [could] be found . . . neglectful or abusive [where the] observed problems [were] related to insufficient services or a natural change in medical conditions."[347] To correct these shortcomings and to ensure children are maintained in a minimally restrictive and nurturing environment, provisions were added to ensure that reports of medical neglect will be investigated by persons with specialized training,[348] and a child protective team investigating such a case must consult with a physician with experience treating children with the same condition.[349] The goal of these changes is to use a family-centered approach to allow children to remain at home where the parents are willing and able to meet the child's medical needs with services.[350]

Although this survey can only address a limited number of statutory changes, there are several additional provisions that require mention.[351] First, the legislature has created multiple procedures and protocols related to the

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Reidenberg, *supra* note 15, at 311.

340. Dale & Reidenberg, *supra* note 15, at 311; *see also* FLA. GUARDIAN AD LITEM PROGRAM, FLA. GUARDIAN AD LITEM 2009 ANNUAL REPORT 2, 5 (2009), *available at* http://www.guardianadlitem.org/documents/GAL-2009AnnualReport.pdf.

341. *See* Dale & Reidenberg, *supra* note 15, at 310–11, 327.

342. *Id.* at 311, 327.

343. *See id.* at 311.

344. R. REGULATING FLA. BAR 4-1.7(a)(2); *see also* FLA. STAT. § 39.01(51) (2014).

345. *See* Dale & Reidenberg, *supra* note 15, at 327, 330, 353.

346. FLA. STAT. § 39.01(41)–(43); Fla. Prof'l Staff of the Comm. on Appropriation, Bill Analysis and Fiscal Impact Statement, S. 1666, Reg. Sess., at 12 (2014).

347. Fla. Bill Analysis and Fiscal Impact Statement, S. 1666 at 12.

348. *See* FLA. STAT. § 39.3068(1).

349. *See id.* § 39.303(1).

350. *Id.* § 39.3068(2).

351. *See supra* Part V.

investigation and reporting of deaths and other incidents, involving children either in the care of, or who have been investigated by, the department.[352] The relative caregiver program—which provides financial assistance to family members willing to care for a dependent child—was extended to assist persons who are not related to the child by blood or marriage.[353] A three-year pilot program was established to pay for the costs associated with obtaining a driver's license—including insurance—for children in foster care.[354] Finally, multiple provisions were added to increase the overall competence of child welfare personnel, with an emphasis on increasing the number of employees with bachelor's and master's degrees in social work.[355]

VIII. CONCLUSION

The Legislature made substantial changes in the juvenile delinquency and child welfare law.[356] In the latter area, several of the changes contain major constitutional infirmities.[357] The Supreme Court of Florida heard only one juvenile law case involving a statutory analysis of the speedy trial rule.[358] And finally, the intermediate appellate courts contained their long-standing approach to significant oversight of trial court rulings in both delinquency and child welfare areas.[359]

352. *See, e.g.*, FLA. STAT. § 39.2015 (1).
353. *Id.* § 39.5085(2)(a)(3).
354. *Id.* § 409.1454(2).
355. *Id.* § 402.403(1)–(6).
356. *See supra* Part I.
357. *See supra* Part V.
358. State v. S.A., 133 So. 3d 506, 507 (Fla. 2014) (per curiam).
359. *See, e.g.*, S.L. v. Dep't of Children & Families, 120 So. 3d 75, 77 (Fla. 4th Dist. Ct. App. 2013) (per curiam).