Juvenile Law in Florida in 1998

Michael J. Dale*
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I. INTRODUCTION

The Florida Legislature withdrew from extensive restructuring of the statutes governing juvenile delinquency during the 1998 session, making only modest changes to the new chapter, chapter 985, which it introduced in 1997. In the child welfare area, however, the legislature did make more substantial changes, at least in part, in response to the passage of new federal legislation governing abuse and neglect matters.

In the appellate courts, there was substantial activity, albeit generally technical in nature. There were, however, several significant opinions by the

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Supreme Court of Florida, although they too were of a technical nature. The appellate courts continue their periodic commentary expressing concern with the failure of the trial courts to comply with rudimentary statutory obligations.

II. DEPENDENCY

A. Adjudicatory Issues

Admission of out of court statements by child victims in dependency proceedings is an important probative part of such cases. There is a growing body of statutory and case law, nationwide, which deals specifically with out of court statements by youngsters and the development of special hearsay exceptions. In Florida, section 90.803(23) of the Florida Statutes governs hearsay exceptions for the statement of the child/victim. In Department of Health & Rehabilitative Services v. M.B., the Supreme Court of Florida had before it an appeal raising the question of whether a child/victim’s prior unsworn statement, which was inconsistent with the child’s in court testimony, was admissible where the testimony supported a determination that the earlier unsworn statement met sufficient safeguards of reliability. The statute in question provides that the court must find that there are sufficient safeguards of reliability in the child’s statement and shall take into account the child’s mental and physical age and maturity, nature and duration of the abuse or offense, the relationship of the child to the offender, reliability of the assertion, reliability of the child/victim, and any other factors deemed appropriate. The court found that section 90.803(23) of the Florida Statutes permits a child/victim’s prior inconsistent statements to be admitted as substantive evidence if found to be trustworthy. The court held that the child’s out of court statements could be admitted into evidence, without the necessity that they be consistent with the child’s trial testimony, so long as strict standards of reliability are applied before admitting the statements. In addition, the court held that the applicable evidentiary standard in such a case is a preponderance of the evidence, or greater weight

1. See generally Michael J. Dale et al., Representing the Child Client, ¶ 7.06 (Matthew Bender 1998).
3. 701 So. 2d 1155 (Fla. 1997).
4. Id. at 1156.
6. M.B., 701 So. 2d at 1162.
7. Id.
of the evidence, since the proceeding is that of a civil dependency matter nature.\footnote{Id. at 1163.}

Under Florida law, a parent who voluntarily executes a written surrender of the child, and consents to the entry of order giving custody of the child to the state or an agency, for purposes of adoption, may only withdraw the consent, after acceptance of the child by the Department or licensed child care agency, upon a finding that the surrender and consent were obtained by fraud or duress.\footnote{FLA. STAT. § 39.806(1)(d)2 (Supp. 1998).} In Bailey \emph{v. Department of Health \& Rehabilitative Services},\footnote{703 So. 2d 1224 (Fla. 5th Dist. Ct. App. 1998).} the issue raised was whether a parent could withdraw consent to a dependency petition.\footnote{Id. at 1225.} In a split opinion, the appeals court held that absent a showing of fraud or duress, the consent could not be withdrawn in a dependency proceeding.\footnote{Id.} In dissent, Judge Sharp argued first that the lower court order contained none of the findings as to the voluntariness and full understanding of the consent required in a termination case.\footnote{Id. (Sharp, J., dissenting).} Second, he argued that \emph{Interest of I.B.J.},\footnote{497 So. 2d 1265 (Fla. 5th Dist. Ct. App. 1986).} which held that it was not necessary to show fraud or duress in order to withdraw valid consent in a dependency proceeding, was still valid.\footnote{Bailey, 703 So. 2d at 1226 (Sharp, J., dissenting).} Instead, he relied upon Rule 8.315(b) of the \emph{Florida Rules of Juvenile Procedure}, which provides that at any time prior to the beginning of a disposition hearing the court may permit an admission of the allegations of the petition to be withdrawn and, if an adjudication has been entered, it may be set aside.\footnote{Id.} Thus, in Judge Sharp's view, the court had discretion to set aside the consent.\footnote{Id.}

In 1991, in Padget \emph{v. Department of Health \& Rehabilitative Services},\footnote{577 So. 2d 565 (Fla. 1991).} the Supreme Court of Florida held that parental rights may be terminated if the court finds that the child is at substantial risk of imminent abuse or neglect by the parent, and this finding is based on proof of neglect or abuse of other children if the evidence shows a substantial risk that the child will suffer similar abuse.\footnote{Id. at 566. \textit{See also}, Michael J. Dale, \emph{Juvenile Law: 1991 Survey of Florida Juvenile Law}, 16 \textit{NOVA L. REV.} 333, 368–373 (1991) [hereinafter 1991 Survey]; Michael J. Dale, \emph{Juvenile Law: 1996 Survey of Florida Law}, 21 \textit{NOVA L. REV.} 189, 216–17 (1996) [hereinafter 1996 Survey].} In 1998, in Eddy \emph{v. Department of Children \& Family Services},\footnote{Id. at 1163.} the issue raised was whether a parent could withdraw consent to a dependency petition.
Services, an unmarried father was charged with dependency on the basis of a ten year old criminal adjudication for sexual abuse of nephews when he was between thirteen and sixteen years of age. The Fifth District Court of Appeal held that prior sexual abuse of other children is insufficient alone to establish a substantial risk of imminent abuse; there must be independent evidence showing that sexual abuse is likely to recur. For example, independent evidence in the form of “testimony from a mental health specialist that the parent or custodian suffers from an untreatable problem would provide the nexus between the prior abuse and the allegation of prospective abuse.” Here, there was no nexus, and the court reversed the adjudication of dependency.

In S.J. v. Department of Health & Rehabilitative Services, a mother petitioned for certiorari review of two post-dependency decisions challenging, inter alia, an amended order in which the court applied a best interests of the child standard in the determination to remove a child previously adjudicated dependent from the mother’s home and to place the child with an adult relative. The appellate court reversed, finding that the circuit court had applied an erroneous standard in removing the child from the mother’s care and custody and placing the child in long term relative placement, without adherence to the statutory requirements. The statutory authorization for post-disposition placement is found in section 39.508(9)(a)8.b. of the Florida Statutes. The appellate court held that there is no authority to deviate from the statutory requirement, which states that the test is endangerment of the safety and well being of the child. There is no statutory provision for independent judicial consideration of the best interests of the child. The Department had the burden to show that the

20. 704 So. 2d 734 (Fla. 5th Dist. Ct. App. 1998).
21. Id. at 735.
22. Id. at 736.
23. Id.
24. Id.
26. Id. at 72.
27. Id. at 73.
28. FLA. STAT. § 39.508(9)(a)8.b. (Supp. 1998). The relevant section states:
   In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.
   Id.
29. S.J., 700 So. 2d at 75.
30. Id.
child's safety was endangered by remaining in her mother's home.\textsuperscript{31} The court concluded that while the best interests of the child is an overriding concern in all chapter 39 proceedings, there is no legislative authorization for using a best interests of the child legal standard to determine a change in placement of a dependent child.\textsuperscript{32}

As prior survey articles in this law review have discussed, the appellate courts have regularly admonished the trial courts in both dependency and delinquency cases for repeated failures to comply clear mandatory statutes.\textsuperscript{33} A particularly egregious example of the appellate courts' reluctant but clear exposition of concern is \textit{Ritter v. Department of Children & Family Services}.\textsuperscript{34} \textit{Ritter} involved a writ of mandamus to compel the trial court to issue a ruling in a case in which it had delayed almost twenty-seven months between the day of the dependency hearing, and the rendering of the order declaring the children dependent.\textsuperscript{35} The appellate court advanced that the reason for the delay was not explained in the record.\textsuperscript{36} The court then stated, "[w]e find this case falls within that class of cases in which trial courts have been sternly admonished for unnecessarily impeding the prompt administration of justice, especially in matters involving child custody."\textsuperscript{37} The court added, that it found that the delay of nearly twenty-seven months in the case, coupled with the proceeding for mandamus brought by one of the parties, "casts sufficient doubt upon the wisdom and fairness of the decisions rendered by the trial judge to require that all of the orders in this matter be vacated and that a new evidentiary hearing be conducted forthwith."\textsuperscript{38} The court then suggested that the case be assigned to another judge.\textsuperscript{39} Judge Harris concurred, adding that there should be a bright line standard beyond which a delayed judgment simply would not be recognized.\textsuperscript{40}

An important issue in the area of dependency is what happens to children who have been adjudicated dependent and placed into state care when they reach the age of eighteen. This issue was raised in \textit{L.Y. v. Department of Health & Rehabilitative Services}.\textsuperscript{41} Specifically, the issue in \textit{L.Y.} was whether the court could dismiss a dependency case and terminate

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\textsuperscript{31} Id.
\textsuperscript{32} Id. at 74.
\textsuperscript{34} 700 So. 2d 804, 805 (Fla. 5th Dist. Ct. App. 1997).
\textsuperscript{35} Id. at 804–05.
\textsuperscript{36} Id. at 805.
\textsuperscript{37} Id. (citations omitted).
\textsuperscript{38} Id.
\textsuperscript{39} \textit{Ritter}, 700 So. 2d at 805.
\textsuperscript{40} Id. at 806 (Harris J., concurring).
\textsuperscript{41} 696 So. 2d 430 (Fla. 4th Dist. Ct. App. 1997).
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juvenile court jurisdiction over a child when she reached eighteen, although she continued to receive services from the Department. The appellate court affirmed, without prejudice to the appellant’s right to seek appointment of a guardian pursuant to chapter 744 of the Florida Statutes if there was a showing of incapacity. The court explained that the issue was a legislative one and not a judicial one. As the court put it:

Unfortunately for L.Y., the fight is in the wrong arena as the legislature has not provided for judicial review of these services still being rendered to a now 18 year old, previously determined to be dependent, when that individual may not be incapacitated. The conscientious, concerned trial court properly held that the laws of Florida currently do not permit retention of continuing juvenile jurisdiction and review until the individual is 21.

B. Guardian Ad Litem Issues

Because Florida is a participant in the Federal Child Abuse Prevention and Treatment Act of 1974 ("CAPTA"), the state is obligated to provide a guardian ad litem for a child in dependency proceedings. The operation of this program is governed by statutes, court rules, unpublished supreme court orders, and case law. In cursory opinions devoid of statutory analysis, the Florida courts have rejected claims that the failure to have a guardian ad litem in place in the proceeding has been a fundamental error, on a number of occasions over the past few years. In W.R. v. Department of Children & Family Services, the Fourth District Court of Appeals continued this trend, and reaffirmed the proposition that the absence of an active guardian ad litem does not preclude a trial court from adjudicating children dependent.

42. Id. at 431.
43. Id.
44. Id.
45. Id. (commenting that the California Legislature has authorized such jurisdictions under the California Welfare and Institution Code, § 303. CAL. WELFARE & INST. § 303 (1998)).
47. See generally 1996 Survey, supra, note 19, at 222.
48. Id.
49. 701 So. 2d 651 (Fla. 4th Dist. Ct. App. 1997).
50. Id. at 652. Ironically, the trial court held that it could not conclude that the grounds for the termination of parental rights were established by clear and convincing evidence because the absence of an active guardian was fundamental and an impairment of the ability to make the finding. Id.
This line of cases is particularly disturbing because a child has no right to counsel in a dependency proceeding in Florida.\textsuperscript{51}

### III. TERMINATION OF PARENTAL RIGHTS

#### A. Adjudicatory Issues

The Florida courts have regularly analyzed the test for termination of parental rights, the grounds for which are articulated in section 39.464 of the \textit{Florida Statutes}.\textsuperscript{52} This statute also provides that in a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child.\textsuperscript{53} In \textit{Department of Children & Family Services v. J.A.},\textsuperscript{54} a case of apparent first impression, the Department appealed on the ground that the court failed to make a best interest finding, even after the state failed to prove grounds to terminate under section 39.464 of the \textit{Florida Statutes}.\textsuperscript{55} The appellate court recognized that terminations must be based upon both provisions.\textsuperscript{56} However, it concluded that even if the statute required a best interest finding in every case, including those where termination was rejected, the court's failure to do so would be harmless error and would not affect the ultimate denial of the petition.\textsuperscript{57}

Application of the Padgett \textit{v. Department of Health & Rehabilitative Services}\textsuperscript{58} standard also came up recently in a termination of parental rights case, \textit{Gaines v. Department of Children & Families}.\textsuperscript{59} The issue was one of "prospective" abuse or neglect. The court held that there must be a showing in the record that the behavior of the parent was beyond the parent's control, likely to continue, and placed the child, who was the subject of the proceeding, at risk.\textsuperscript{60} In the case at bar, there was no showing between the prior abuse of siblings, and the allegation of prospective abuse against the child who was the subject of the proceeding.\textsuperscript{61}

Confidentiality is a significant issue in both dependency and termination of parental rights cases in Florida. Section 39.471 of the \textit{Florida Statutes}.
Statutes governs confidentiality in termination cases and provides that all information obtained by judges, employees of the court, authorized agents of the Department of Children and Family Services ("DCFS"), and law enforcement agents shall be kept confidential unless authorized by the court. Stanfield v. Department of Children & Families, involved an appeal by the adult half-sister of the children before the court in a termination case. She challenged an injunctive order enjoining her from disclosing information about the case to the media or other persons. The appeals court held that the statutory authority to limit persons from discussing or talking about what they learned from sources other than court documents does not allow for an injunction. "The court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have gained independent of court documents even though the information may mirror the information contained in court documents." The court also indicated that it could enjoin lawyers from discussing the proceedings.

B. Right to Counsel Issues

In J.B. v. Department of Children & Family Services, a father appealed from a court order denying him counsel in a termination of parental rights proceeding on the ground that he had not previously appeared and was therefore deemed to have consented to termination of his parental rights. The appellate court reversed, finding that the failure to advise the father of his right to counsel at the adjudicatory hearing, coupled with the failure to continue the adjudicatory hearing for the purposes of allowing the father an opportunity to obtain counsel, warranted reversal under the then applicable provisions of chapter 39 of the Florida Statutes for appointment of counsel in termination cases. The failure to advise occurred after the advisory hearing, at which the father did not appear. The court recognized that the case should be remanded, to allow the parent an opportunity to appear with

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63. 698 So. 2d 321 (Fla. 3d Dist. Ct. App. 1997).
64. Id. at 321.
65. Id.
66. Id. at 323.
67. Id.
68. Stanfield, 698 So. 2d at 323.
69. 703 So. 2d 1208 (Fla. 1st Dist. Ct. App. 1997).
70. Id. at 1209.
71. Id. at 1210; FLA. STAT. §§ 39.465(1)(a), 1(b)(3) (1997) and FLA. STAT. § 39.467(2) (1997).
72. J.B., 703 So. 2d at 1210.
the assistance of counsel to challenge the consent to termination of parental rights by default, and to present evidence at the adjudicatory hearing. Chapter 39 was amended during the last legislative session to require appointment of counsel to all parents in dependency cases.

A minor mother appealed from an order terminating her parental rights on the ground that without counsel she signed a surrender and consent, giving the child to the Department of Health and Rehabilitative Services for subsequent adoption. In *J.E.F.L. v. Department of Health & Rehabilitative Services*, the mother who, after executing a voluntary surrender, was appointed counsel, sought a continuance of the final adjudicatory hearing so that she could attend the hearing and contest termination. However, she was unable to do so because she could not find transportation. The trial court denied the motion and the appeal ensued. The appellate court found that this was the only opportunity to challenge the conditions under which the minor mother executed the voluntary surrender, the grounds for which would be fraud or duress. In addition, the court held that the validity of the waiver of counsel in order to sign the voluntary termination would also be at issue before the court. The court reversed and remanded so that, with appointed counsel the minor could show fraud or duress in the execution of the surrender.

C. Appellate Issues

In *G.L.S. v. Department of Children & Families*, the Supreme Court of Florida resolved the conflict between the districts on the question of whether, in a child dependency proceeding, an adjudication order which terminates parental rights is immediately appealable as a final order or reviewable only upon appeal from the disposition order. The first district, in *G.L.S.*, held that it was, whereas the Fifth District Court of Appeal in

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73. *Id.*
74. *See infra* Part IV.
76. *Id.* at 3.
77. *Id.* at 4.
78. *Id.*
79. *Id.*
81. *Id.*
82. *Id.* at 4–5.
83. 724 So. 2d 1181 (Fla. 1998).
84. *Id.* at 1182.
85. 700 So. 2d 96 (Fla. 1st Dist. Ct. App. 1997).
Moore v. Department of Health & Rehabilitative Services\(^{87}\) and Lewis v. Department of Health & Rehabilitative Services\(^{88}\) held "that it is the second or dispositional order which is the final order for purposes of appeal."\(^{89}\) The Supreme Court of Florida held "that the First District erred in holding that an adjudication order which initially terminates parental rights in a child dependency case may not be challenged upon appeal from a subsequent disposition order."\(^{90}\)

IV. STATUTORY CHANGES INVOLVING DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS

The Florida Legislature made a number of changes in 1997 that effect dependency and termination of parental rights proceedings. Perhaps in an effort to integrate child abuse and neglect legislation with chapter 39, the legislature inserted many child protection provisions from chapter 415 into chapter 39.\(^{91}\)

The legislature made a dramatic change in the dependency field by amending section 39.013 of the Florida Statutes, to provide that indigent parents must be appointed counsel at the dependency stage of the proceedings.\(^{92}\) The change is significant in a number of respects. As a constitutional matter, the case goes beyond the holding of the United States Supreme Court in Lassiter v. Department of Social Services,\(^{93}\) in which the high court said that there was no absolute right to counsel under the Due Process Clause of the Fourteenth Amendment in termination of parental rights cases.\(^{94}\) As a practical matter, the Florida Legislature now provides parents with a protection that should ease the appellate docket, which in past years contained many appeals from termination of parental rights because, under the old law, the lack of counsel at the dependency stage rendered the

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86. Id. at 99.
87. 664 So. 2d 1137 (Fla. 5th Dist. Ct. App. 1995).
88. 670 So. 2d 1191 (Fla. 5th Dist. Ct. App. 1996).
89. Moore, 664 So. 2d at 1139.
90. G.L.S., 724 So. 2d at 1182.
93. 452 U.S. 18 (1981). See also DALE, ET AL., supra note 1 at ¶ 7 (discussing Lassiter).
finding of termination of parental rights invalid. The failure to provide free
counsel to indigent parents in dependency cases under the old law was the
subject of discussion in this survey on numerous occasions. Under the new
statute, the compensation scheme of attorneys representing indigent parents
in dependency proceedings shall be established by each county. The
compensation scheme in termination of parent rights cases is a maximum of
$1,000 at the trial level and $2,500 at the appellate level.

As a matter of case review, and in compliance with the changes in the
CAPTA, section 39.710 of the Florida Statutes was amended to provide that
when the court extends any case plan beyond twelve months, rather than
eighteen months under the prior law, judicial reviews must be held at least
every six months. In the area of termination of parental rights, the
legislature also amended chapter 39 of the Florida Statutes to contain a
much more detailed procedure for the identification and location of unknown
parents after the filing of a termination of parental rights petition. The
diligent search requirement should help in situations where a parent
subsequently comes forward to challenge the termination of parental
rights.

The legislature also changed the provisions governing injunctions
pending disposition of a petition in a dependency proceeding, to effectively
provide for ex parte injunctions where the child is reported to be in
imminent danger. Under such circumstances, notice to the parties as
provided by Rule 8.305 of the Florida Rules of Juvenile Procedure may be
waived. However, when an immediate injunction is issued, the court shall
hold a hearing on the next day of judicial business either to dissolve the
injunction, or to continue or modify it.

Section 39.501 of the Florida Statutes was amended to include a new
sub-part four which now provides that with regard to the petition for
dependency, the child's parent, guardian, or custodian must be served with a

96. Id. at 209; 1996 Survey, supra note 19, at 218; 1994 Survey, supra note 33, at 146.
98. See id. § 39.0134(2).
99. See also id. § 39.703(2).
100. Ch. 98-403, § 85, 1998 Fla. Laws 3081, 3201 (codified at FLA. STAT. § 39.803 (Supp. 1998)).
103. FLA. R. JUV. P. 8.305.
104. FLA. STAT. § 39.504(2) (Supp. 1998).
copy of the petition at least seventy-two hours before the arraignment hearing.\textsuperscript{105}

The Florida Legislature made a specific and provocative change in the provisions of chapter 39, governing the activities of the guardian ad litem, at section 39.807 of the \textit{Florida Statutes}.\textsuperscript{106} It removed a section of that law which previously provided that the court order a guardian ad litem to perform other duties and undertake other responsibilities such as the court may direct.\textsuperscript{107}

The legislature amended the section of the dependency statute governing abandonment based upon imprisonment\textsuperscript{108} to provide that a parent who is incarcerated in a state or federal correctional institution may be found to have abandoned a child when "[t]he period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years."\textsuperscript{109}

The legislature passed a new section of chapter 39 of the \textit{Florida Statutes} dealing with protective investigations of institutional child abuse, abandonment, or neglect.\textsuperscript{110} Section 39.302 of the \textit{Florida Statutes} is a very important addition to the statutory scheme, containing a rather detailed investigation procedure including a notification system to the state attorney for criminal investigation.\textsuperscript{111} The law provides for restricted access of individuals to the child if there is threatened harm to the youngster.\textsuperscript{112}

The legislature also made amendments at various places in chapter 39, to include abandonment together with abuse and neglect as dependency grounds.\textsuperscript{113} Oddly, at diverse places in the statute the terms abuse and neglect are found, but abandonment is not when the reference is to the forms of dependency. The legislature also focused on the specific setting of the placement of a child in an independent living arrangement when the youngster is sixteen years of age or older.\textsuperscript{114} The legislature mandated continuing court review.\textsuperscript{115}

\textsuperscript{105} FLA. STAT. § 39.501(4) (Supp. 1998).
\textsuperscript{106} FLA. STAT. § 39.807 (Supp. 1998).
\textsuperscript{107} See FLA. STAT. § 39.465(b)4. (1997) (recodified at § 39.807(b) (Supp. 1998)).
\textsuperscript{108} Ch. 98-417, § 2, 1998 Fla. Laws 3332, 3336-7 (codified at FLA. STAT. § 39.302 (Supp. 1998)).
\textsuperscript{109} FLA. STAT. § 39.806(I)(d)1 (Supp. 1998).
\textsuperscript{110} FLA. STAT. § 39.302 (Supp. 1998).
\textsuperscript{111} Id.
\textsuperscript{112} Id. at (2)(a).
\textsuperscript{113} See generally FLA. STAT. § 39.01 (Supp. 1998).
\textsuperscript{114} FLA. STAT. § 39.508(9)(a)6.e. (Supp. 1998).
\textsuperscript{115} Id.
V. CHILDREN IN NEED OF SERVICES/FAMILIES IN NEED OF SERVICES

The Florida courts have rarely rendered opinions interpreting the Children in Need of Services/Families in Need of Services ("CINS/FINS") statute, which has been in place for ten years. The statute provides for services to children and families focused on counseling and medical, psychiatric and psychological services. In *Department of Juvenile Justice v. C.M.*, the question before the court was whether the trial court could order payment by the Department of Juvenile Justice ("DJJ") to a hospital to which the child was placed for assessment purposes. The court held that it could find no case on point authorizing the court to order payment of expenses in CINS/FINS proceedings. It held that DJJ showed at the trial level that "it had no appropriated funds to pay for [the] expense[s]." The court concluded that the order interfered with both legislative discretion in determining what funds are required of an agency and executive discretion in spending the appropriated funds under the doctrine of separation of powers.

VI. DELINQUENCY

A. Detention Issues

Florida's detention statute provides for both secure and nonsecure detention and for both pre- and post-adjudication and disposition detention. All determinations and court orders concerning placement into detention are based upon a risk assessment instrument ("RAI") developed by DJJ. Application of the instrument has generated a substantial amount of appellate law.

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117. See *1995 Survey supra* note 109, at 219, 221.
119. 704 So. 2d 1123 (Fla. 4th Dist. Ct. App. 1998).
120. *Id.* at 1125.
121. *Id.*
122. *Id.*
123. *Id.*
125. *Id.* at (2)(a), (b).
N.E.W. v. Portesey,127 is a detention case evidencing the appellate courts' ongoing need to clarify the detention law for the trial courts. In N.E.W., the appellate court, on a motion for rehearing, affirmed its opinion granting petitions for writs of habeas corpus for two children who were detained as the result of a policy adopted by DJJ.128 During the term of community control, the children were charged with new misdemeanor level offenses that did not involve domestic violence and which otherwise would not allow for secure detention.129 The court rejected the policy adopted by DJJ and endorsed by the juvenile judges presiding over the detention hearings in Hillsborough County finding no statutory foundation for the approach.130 DJJ had scored earlier third degree felony offenses on its risk assessment instrument, which would have fulfilled the obligations of the state statute had they been new offenses.131 But, the new offenses were only misdemeanors.132 Thus, the court concluded that "there [was] no statutory authority to score a delinquent offense that has already been the subject of an adjudicatory hearing when a juvenile is picked up for a new offense."133

A child may only be placed in detention after an adjudicatory hearing when newly discovered evidence or changed circumstances are reflected on the amended risk assessment instrument which mandates confinement.134 In K.K. v. Taylor,135 a child brought a writ of habeas corpus challenging her post-adjudication secure detention.136 The court held that, "the state elevates the provision of the form to suspend the access of our citizenry to the writ of habeas corpus, a daring proposition born more from reflexive advocacy than reasoned legal thinking."137 The Court then added that, "[e]ven more alarming than the state's reliance on a sentence from a form to legitimate confinement clearly proscribed by statute is the fact that in the case at bar the language 'must be detained' had not even been checked during the initial preparation of the [risk assessment] form."138

The Florida detention statute now provides that when a child is committed to DJJ and awaiting a dispositional placement the child must be

127. 712 So. 2d 1158 (Fla. 2d Dist. Ct. App. 1998).
128. Id. at 1159.
129. Id.
130. Id.
131. Id.
132. N.E.W., 712 So. 2d at 1159.
133. Id.
135. 703 So. 2d 1064 (Fla. 2d Dist. Ct. App. 1997).
136. Id.
137. Id. at 1065.
138. Id. The court granted the writ because the statute forbid detention of the child. Id.
removed from the detention center within five days of the commitment. However, where a child is committed to a lower moderate risk residential program, DJJ may apply for an order from the court for continued detention for a maximum of fifteen days excluding weekends and legal holidays for the purpose of finding an appropriate facility. In *A.W. v. State,* and *J.M. v. State,* the child sought a writ of habeas corpus on the ground that the court on its own motion had ordered the child to remain in secure detention for ten and fifteen days respectively, while awaiting placement. The appeals courts held that the trial court could only extend the detention beyond the five days pending placement in a moderate risk facility if the Department applied to the court and demonstrated that it was necessary for placement purposes. The extensions were not for purposes of maximizing punishment.

Another use of detention in Florida is for the placement of juveniles who are held in direct or indirect contempt. Section 985.216(2)(a) of the Florida Statutes provides that a juvenile may be held in a secure detention facility for five days for a first offense or for fifteen days for a second or subsequent offense. In *G.S. v. State,* juveniles in four consolidated cases appealed from their placement in secure detention pursuant to contempt findings arguing that the community control statute states that violations of community control require placement in a "consequence unit." The consequence unit is a term introduced in the 1997 amendments to the Florida Juvenile Code, but without definition. According to the appeals court in *G.S.,* DJJ has not implemented the amendment. Nor, according to the court, did it appear that the statute mandated the creation of such units, and it further concluded that no funds were appropriated for the construction of such units. The court therefore held that under those circumstances it was hesitant to say that the juvenile detention center cannot

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140. Id.
141. 711 So. 2d 598 (Fla. 5th Dist. Ct. App. 1998).
142. 705 So. 2d 98 (Fla. 5th Dist. Ct. App. 1998).
143. A.W., 711 So. 2d at 599.
144. J.M., 705 So. 2d at 99.
145. Id.; A.W., 711 So. 2d at 599.
146. Id.
147. Id.
149. 709 So. 2d 122 (Fla. 5th Dist. Ct. App. 1998).
150. See FLA. STAT. § 985.231(1)(a)1.c.(I) (Supp. 1998).
151. Id.
152. G.S., 709 So. 2d at 123.
153. Id.
serve as a consequence unit for juveniles who violate community control or aftercare. The court concluded that "[c]ontempt appears to be an alternative permissible procedure to address juvenile violators of community control," It noted that the legislature had passed section 985.216(1) of the Florida Statutes to obviate the Supreme Court of Florida's ruling in A.A. v. Rolle, which had held that the court could not use secure detention to punish juveniles for contempt of court. The court concluded in G.S. that the contempt procedure is a free standing separate provision of the law, distinct from the violation procedures and remedies under community control. Thus, while the juveniles in the case at bar had not been charged with violating community control, they were held to have been in contempt of court. The appeals court thus affirmed the placement in secure detention.

B. Adjudicatory Issues

Florida's speedy trial rule in juvenile cases provides that the case must be brought to trial within ninety days. The Third District Court of Appeal recently held so in State v. Meza, a case in which the trial court discharged a juvenile when the information was filed on the ninetieth day because, in its view, ninety days means ninety days. Relying on an earlier Supreme Court of Florida opinion in P.S. v. State, the court held that the state may not file or re-file charges after the ninetieth day of the juvenile speedy trial period but may file on the ninetieth day.

A second case dealing with the speedy trial rule is P.G. v. State. After the expiration of the ninety day speedy trial period the state nolle prossed a charge of battery against a juvenile. Subsequently, the state filed a new petition charging the child with resisting an officer without violence. The
defense attorney filed a motion for discharge under the speedy trial rule which was denied and the child pleaded with the reservation of a right to appeal. 169 Under Rule 8.090 of the Florida Rules of Juvenile Procedure, every child charged with a delinquent act shall be brought to an adjudicatory hearing without demand within ninety days of the earlier of the date the child was taken into custody or the date the petition was filed. 170 The district court of appeals held that the time limitations contained in the rule cannot be avoided by the filing of a **nolle prosequi** by the prosecutor. 171 In the case at bar, the state entered the **nolle prosequi** after the ninety day period had run and there being no requirement that the failure to request a discharge by the child after the initial ninety days had run constitutes a waiver, the government could not reinstitute delinquency proceedings. 172

Florida has an expansive statute dealing with the transfer of juveniles to adult court which provides for both direct filing and transfer from the juvenile court. 173 In *State v. Davis*, 174 over the state’s objections, the trial court in the juvenile division conducted a bond hearing for a custody release after the state had advised the court that the matter was set for arraignment before a judge in the adult felony division. 175 The appeals court held that the lower court departed from its statutory obligation to immediately order that the juvenile be transported to the adult county jail upon the state’s announcement that the charges had been direct filed in the adult division where the child would subsequently be booked, processed, and released in the normal course as an adult. 176

In an important decision, the Supreme Court of Florida recently upheld as constitutional the Florida statutory rape statute 177 as it applied to two fifteen-year-old boys who engaged in consensual sex with two twelve-year-old girls in *J.A.S. v. State*. 178 The court had previously dealt with the question in the context of adults charged with consensual sexual intercourse with persons under the age of sixteen in *B.B. v. State* 179 and *Jones v. State*. 180 In *J.A.S.*, the court upheld the constitutionality of the statute in a consensual

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169. *Id.*
170. *Id.*
171. *P.G.*, 711 So. 2d at 189 (citing *State v. T.W.*, 679 So. 2d 69 (Fla. 4th Dist. Ct. App. 1996)).
172. *Id.* at 189–90.
173. See generally *FLA. STAT.* § 985 (1997).
175. *Id.* at 848.
176. *Id.* See *FLA. STAT.* § 985.215(4)(a) (Supp. 1998).
177. *FLA. STAT.* § 800.04 (1997).
178. 705 So. 2d 1381 (Fla. 1998).
179. 659 So. 2d 256 (Fla. 1995).
180. 640 So. 2d 1084 (Fla. 1994).
setting finding that the state had a compelling interest in intervening to stop sexual misconduct even when consensual. 181 The court also refused to extend the minor’s privacy rights which had been established in the abortion context in In re T.W. 182 In B.B., the court had found section 794.05 of the Florida Statutes unconstitutional as applied to the facts of that case, specifically as both the charged defendant and the alleged consenting victim were age sixteen. 183 The question there was whether the statute which applied to two juveniles in the context of claims of juvenile delinquency involved intimate acts which fell within the zone of privacy recognized by both the United States Constitution and the Florida Constitution under the T.W. holding. 184 The court held that it did, specifically distinguishing the adult/minor situation from the minor/minor situation. 185 However, in J.A.S., the court recognized what it viewed as the fundamental distinction that the defendants were two fifteen-year-old boys and the two victims were two twelve-year-old girls, as opposed to all of the youngsters being sixteen-year-olds as in B.B. 186 The court concluded in J.A.S. that on a balancing of interests, the state’s compelling interest in protecting children from harmful sexual conduct outweighed the right of privacy of the defendants. 187 The state had a compelling interest in protecting twelve-year-olds from older teenagers and from their own immaturity in engaging in harmful conduct. 188

The appellate courts have been faced on a number of occasions with appeals from adjudications of delinquency for disorderly conduct based upon findings that the child used loud, obscene, and/or verbal protests. In K.S. v. State, 189 a juvenile appealed from an adjudication based upon a finding that the child cursed at a police officer for what he felt was an unjustified accusation. 190 Relying on a long line of cases, the court reversed, holding that the child’s words did not inflict injury or constitute intent to incite an immediate breach of the peace. 191 On the other hand, in K.A.C. v. State, 192 the court upheld the adjudication for resisting an officer without

181. J.A.S., 705 So. 2d at 1383.
182. Id.; 551 So. 2d 1186 (Fla. 1989).
183. B.B., 659 So. 2d at 260. See also 1995 Survey supra note 109, at 197–98.
184. Id. at 258.
185. Id. at 259.
186. J.A.S., 705 So. 2d at 1383–85.
187. Id. at 1386.
188. Id.
189. 697 So. 2d 1275 (Fla. 3d Dist. Ct. App. 1997).
190. Id. at 1276.
192. 707 So. 2d 1175 (Fla. 3d Dist. Ct. App. 1998).
violence because the essence of the offense was the refusal to respond to questions that officers had a right to ask as opposed to, as in prior cases, a charge based upon what the youth said in the form of loud profanity directed at the police.\footnote{193}

The appeals courts have made clear that when multiple offenses constitute the basis for a delinquency adjudication, separate disposition orders for each offense must be used. Nonetheless, the trial courts continually fail to comply with this provision. For example, in \textit{D.A.D. v. State},\footnote{194} the state filed three separate petitions for delinquency against the child.\footnote{195} The court used a single commitment order for all three offenses in clear violation of prior case law.\footnote{196}

Section 874.03(3) of the \textit{Florida Statutes} provides that in a course of the commission or solicitation of two or more felonies or violent misdemeanors on separate occasions within a three-year period an individual can be declared a member of a criminal street gang.\footnote{197} In \textit{S.L. v. State},\footnote{198} a juvenile appealed from the declaration that he was a member of criminal street gang.\footnote{199} The appeals court reversed finding that there was no demonstration of a pattern of criminal street gang activity necessary to make the law applicable.\footnote{200} The court held that gang membership alone is insufficient to declare a person a member of a criminal street gang.\footnote{201} Here, only the gang membership was proven. The officers testified that the juvenile admitted to being a member of the “Latin Lords” and when he was arrested had “Latin Lords” graffiti in his book bag.\footnote{202} But there was no showing that the Latin Lords committed, or attempted to commit two or more felonies or violent misdemeanors.\footnote{203}

The issue of proper application of \textit{Miranda} warnings in the context of juveniles comes up regularly in Florida appellate case law. This year was no different. In \textit{State v. R.M.},\footnote{204} the state appealed from an order suppressing

\begin{footnotes}
\item[194] 697 So. 2d 234 (Fla. 5th Dist. Ct. App. 1997).
\item[195] \textit{Id.}
\item[197] \textit{Fla. Stat.} § 874.03(3) (Supp. 1998).
\item[198] 708 So. 2d 1006 (Fla. 2d Dist. Ct. App. 1998).
\item[199] \textit{Id.} at 1007.
\item[200] \textit{Id.}
\item[201] \textit{Id.} at 1008.
\item[202] \textit{Id.} at 1007.
\item[203] \textit{S.L.}, 708 So. 2d at 1008.
\item[204] 696 So. 2d 449 (Fla. 4th Dist. Ct. App. 1997).
\end{footnotes}
evidence and the appeals court affirmed, applying the Florida rules that the confession must be shown to be voluntary, and the burden is on the state to establish voluntariness by a preponderance of the evidence based upon the totality of the circumstances. In the R.M. case, the court upheld the suppression in light of the facts of the case which were described as a fourteen-year-old who had been in a home with a younger sister when the detective arrested her for strong arm robbery. The child was handcuffed, placed in a squad car, and taken to the police station to a brightly lit interrogation room where the detective said it would be in the child’s best interests to give a statement because he would go to court and tell the judge that she had been cooperative. The child’s mother was not called and the detective did not tell the child that she could have her mother present. The youngster said she talked to the officer because her mother had told her in the past that it was proper to cooperate with people and to be polite to adults.

In juvenile delinquency proceedings certain discovery is permitted under the Florida Rules of Juvenile Procedure. The issue before the Third District Court of Appeal in State v. D.R. was whether the respondent child, through counsel, could issue a subpoena duces tecum. The State filed a motion for a protective order to quash on the ground that subpoenas duces tecum are not permitted without leave of the court. The appeals court held that the Florida Rules of Criminal Procedure governing discovery depositions in criminal matters do not allow such subpoenas without permission of the court and that the Florida Rules of Juvenile Procedure governing depositions are identical to the criminal rule. Because the Supreme Court of Florida approved the construction of the criminal rule, the same construction should apply in juvenile court.

A recent enactment dealing with youth crime was the passage in 1994 by Dade County of a Comprehensive Anti-Graffiti Ordinance which made it illegal to sell spray paint cans and broad tipped markers to minors. A

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205. Id. at 451; see Coffee v. State, 6 So. 493, 496 (1889).
207. See Frazier v. State, 107 So. 2d 16 (Fla. 1958).
208. R.M., 696 So. 2d at 451.
209. Id.
211. 701 So. 2d 120 (Fla. 3d Dist. Ct. App. 1997).
212. Id. at 121.
213. Id.
214. Id.
216. DADE COUNTY CODE § 21-30.01 (1994).
minor challenged the constitutionality of the ordinance, which makes it a misdemeanor to have broad-tipped markers or spray paint with the intent to draw graffiti, in D.P. v. State. The Third District Court of Appeals upheld the constitutionality of the anti-graffiti ordinance because it did not place an outright ban on the possession of spray paint or jumbo markers by minors and thus, did not violate the juvenile's due process or equal protection rights. Judge Green dissented, finding the ordinance facially unconstitutional as violative of the due process clauses of both the state and federal Constitution.

C. Dispositional Issues

An important form of disposition in Florida delinquency cases is restitution. Trial courts have had difficulty applying the principles of restitution in such cases. In D.J.R. v. State, a juvenile was charged with attempted burglary and pleaded to the lesser crime of petit theft. Specifically, he pleaded to cutting an alarm wire at a commercial business. The wire was subsequently repaired and yet six hours later an unrelated burglary and theft occurred at the same business. At that time, the alarm was functioning properly and was triggered. Incredibly, the trial court imposed restitution for items stolen in the burglary the following morning at the same location. The appellate court held that the state may not require the child to pay restitution for damages that were not caused by or related to the child’s criminal episode and were not included in the child’s plea.

The Florida statutory provisions concerning restitution provide that the amount of restitution may not exceed an amount the child and the parent or guardian may reasonably pay. However, the court has flexibility in fashioning the restitution requirements. In M.H. v. State, the court entered

217. 705 So. 2d 593 (Fla. 3d Dist. Ct. App. 1997).
218. Id. at 596–97.
219. Id. at 598 (Green, J., dissenting).
221. 701 So. 2d 383 (Fla. 1st Dist. Ct. App. 1997).
222. Id.
223. Id.
224. Id.
225. Id.
226. D.J.R., 701 So. 2d at 383.
227. Id. at 384 (citing FLA. STAT. § 775.089(1)(b)2 (1995)).
228. FLA. STAT. § 985.231(1)(a)1.d.f. (Supp. 1998).
229. 698 So. 2d 395 (Fla. 4th Dist. Ct. App. 1997).
a restitution order liquidating the restitution. As to actual payment, the court held that the child would begin to pay no later than thirty days following either her sixteenth birthday or gaining employment, whichever came first. The court of appeals approved this determination finding that a flexible statutory scheme encourages restitution both to compensate victims and to serve the rehabilitative and deterrent rules of the juvenile justice system. The court added that a reasonable reading of the statute allows the court to revisit the payment schedule issue as the child ages and life skills and earning capacity crystallize.

Restitution orders must also be made in timely fashion. The Supreme Court of Florida has said that restitution may be ordered within sixty days of sentencing although the determination and amount to be paid may be made beyond the sixty day period. In *L.O. v. State*, the court ordered a child to pay $1,060 in restitution for injuries resulting when the respondent hit a fellow student breaking the student’s tooth. While the trial court did not enter a written order of restitution at the time of sentencing or within sixty days thereafter, the appeals court concluded that the trial court put the child and counsel on notice that the juvenile would be responsible for restitution as the trial court made a timely reservation of jurisdiction to award restitution in its oral pronouncement and then some months later set the exact amount to be paid. The court rejected several First District Court of Appeal cases which held that an oral reservation of jurisdiction would be insufficient to satisfy the requirements of the Supreme Court of Florida case law.

An important dispositional issue recently came before the Supreme Court of Florida in *P.W.G. v. State*. The issue was whether the trial court in a delinquency case can order placement in a particular facility based upon criminal conduct for which the child had not been charged. The child claimed that such a basis for disposition violated his right to substantive due

230. *Id.* at 396.
231. *Id.*
232. *Id.*
233. *Id.* at 397.
235. 697 So. 2d 1273 (Fla. 3d Dist. Ct. App. 1997).
236. *Id.*
237. *Id.* at 1275.
239. 702 So. 2d 488 (Fla. 1997).
240. *Id.* at 490.
process of law under both the state and federal constitutions.\textsuperscript{241} There had been substantial evidence in the predisposition report of the child's unproven prior sexual abuse and sexual battery of relatives.\textsuperscript{242} The pre-disposition report concluded, in light of the child's history, that he could benefit from a treatment program focused upon sexual offenders.\textsuperscript{243} But, because such treatment is only available in programs classified as high risk restrictiveness level, the recommendation was that he be committed to the Department at such a level.\textsuperscript{244} In light of the distinction between the goal of the juvenile delinquency system and the adult criminal justice system—rehabilitation in the case of the former toward the end of preventing delinquent children from becoming adult offenders—it was constitutionally permissible for the trial court to impose whatever treatment plan it concluded was most likely to be effective for the particular child.\textsuperscript{245} This comported with the court's \textit{parens patriae} approach.\textsuperscript{246}

Under Florida law, when an alleged juvenile delinquent has been determined to be incompetent, the trial court may order commitment of the child accused of delinquent acts to DCF, but only where the alleged act constitutes a felony.\textsuperscript{247} Significantly, as the court held in \textit{Department of Children & Family Services v. A.A.S.T.M.},\textsuperscript{248} the DCF may not receive a child determined to be incompetent where the charge is merely a misdemeanor.\textsuperscript{249} The court said nothing about what happens to a child under these circumstances.

The Florida disposition statute in delinquency cases provides for a variety of legislatively authorized dispositional alternatives.\textsuperscript{250} In \textit{C.M. v. State},\textsuperscript{251} a child entered a plea of guilty to the charge of aggravated fleeing or attempting to elude a law enforcement officer but objected to a condition of community control requiring him to write a letter of apology to the driver of the car he was following and to have no contact with his or her property.\textsuperscript{252} The appeals court held that, under the facts of the case, the disposition met the appropriate standard of being reasonably related to the offense, to

\begin{itemize}
\item \textsuperscript{241} \textit{Id.}
\item \textsuperscript{242} \textit{Id.}
\item \textsuperscript{243} \textit{Id.}
\item \textsuperscript{244} \textit{P.W.G., 702 So. 2d at 490.}
\item \textsuperscript{245} \textit{Id. at 491.}
\item \textsuperscript{246} \textit{Id.}
\item \textsuperscript{247} \textit{Fla. Stat., § 985.223 (Supp. 1998).}
\item \textsuperscript{248} \textit{706 So. 2d 367 (Fla. 5th Dist. Ct. App. 1998).}
\item \textsuperscript{249} \textit{Id. at 367.}
\item \textsuperscript{250} \textit{Fla. Stat., § 985.231 (1997).}
\item \textsuperscript{251} \textit{696 So. 2d 1350 (Fla. 4th Dist. Ct. App. 1997).}
\item \textsuperscript{252} \textit{Id. at 1350.}
\end{itemize}
rehabilitation of the child, or protection of the public, and was therefore, a valid condition of probation or community control.\textsuperscript{253}

Under Florida law it has been held that conduct which is offensive to the court and which shows a lack of contrition or remorse is not sufficient to overcome the burden placed upon a trial court when it disregards placement recommendations by DJJ.\textsuperscript{254} In \textit{R.D.S. v. State},\textsuperscript{255} the court elected to disregard the minimum risk placement recommendation of DJJ.\textsuperscript{256} The court found the child's body language disrespectful and contemptuous.\textsuperscript{257} The appeals court held that in order to disregard such a recommendation the court's reasons must be supported by a preponderance of the evidence; therefore, it reversed.\textsuperscript{258}

As a general proposition, in Florida, the disposition in a juvenile court proceeding can be no longer than the sentence of an adult convicted of a crime.\textsuperscript{259} In \textit{M.G. v. State},\textsuperscript{260} the court adjudicated a child to have committed the offense of battery and ordered her to serve an unspecified period of community control as a sanction.\textsuperscript{261} The appeals court held that because the trial court adjudicated her delinquent, an independent period of community control was improper.\textsuperscript{262} The disposition imposed must be limited to the amount of time for which an adult could be sentenced for the same crime.\textsuperscript{263} It is only when a juvenile has had the adjudication withheld that an indeterminate period of community control is a proper disposition.\textsuperscript{264}

The Florida statute contains five restrictiveness levels of placement as to which the DJJ makes recommendations.\textsuperscript{265} The First and Second District Courts of Appeal differ as to whether the court must seek an additional recommendation from DJJ after rejecting a recommendation of a particular restrictiveness level. The First District takes the position that a recommendation of community control is not a "restrictiveness level" so that the court's decision not to follow a recommendation requires a re-

\textsuperscript{253.} \textit{Id.} at 1351.
\textsuperscript{255.} 696 So. 2d 1188 (Fla. 1st Dist. Ct. App. 1997).
\textsuperscript{256.} \textit{Id.} at 1189.
\textsuperscript{257.} \textit{Id.}
\textsuperscript{258.} \textit{Id.}
\textsuperscript{260.} 696 So. 2d 1340 (Fla. 2d Dist. Ct. App. 1997).
\textsuperscript{261.} \textit{Id.} at 1341.
\textsuperscript{262.} \textit{Id.}
\textsuperscript{263.} \textit{Id.}
\textsuperscript{264.} \textit{Id.}
\textsuperscript{265.} \textit{FLA. STAT.} § 985.03(46) (Supp. 1998).
submission to the Department for a recommended restrictiveness level. The Second District takes the view that a recommendation of community control is a restriction and thus, no further submission to the Department is required when the trial court decides to depart from the recommended sanction. In H.H. v. State, the Fifth District Court of Appeal referenced the opinions from the two other districts but found, under the facts of the case, that the Department had recommended a particular restrictiveness level, and the court departed from the prior holdings of the first and second districts. Thus, where community control played no part in the trial court opinion, the departure was appropriate. Finally, in L.R.J. v. State, the First District Court of Appeal certified the question of whether alternative recommendations are necessary as follows:

DOES THE TRIAL JUDGE, ACTING AFTER A DISPOSITION HEARING AND BASED ON SPECIFIC REASONS, HAVE AUTHORITY TO REJECT THE DEPARTMENT'S COMMUNITY CONTROL RECOMMENDATION WITHOUT REMANDING THE CASE TO THE DEPARTMENT FOR AN ALTERNATIVE RECOMMENDATION?

The appellate courts continue to admonish the trial courts on appeals relating to the trial courts' commitments of delinquent children to restrictive levels greater than those recommended by the DJJ because the court believed the children had lied at trial. In D.A.J. v. State, the appellate court reversed, explaining once again that such action by the court would impermissibly chill the exercise of Fifth and Sixth Amendment rights of the child at trial.
The Florida statute governing juvenile proceedings contains an extensive provision governing contempt and contempt sanctions.\(^{275}\) In \textit{N.M.R. v. State},\(^{276}\) a juvenile appealed from a contempt citation for failure to complete court-ordered sanctions and community control that resulted in a sentence of ninety days in jail for indirect criminal contempt.\(^{277}\) The appellate court held that the contempt statute does not provide for jail as an alternative sanction.\(^{278}\) Because the appellant was under the jurisdiction of the juvenile court, the appellate court held that the trial court erred by sentencing her as an adult for violation of a court-imposed order while she was under the age of eighteen.\(^{279}\)

### D. Appellate Issues

The Supreme Court of Florida recently cleared up a question of appellate procedure that had been troubling the intermediate appellate courts.\(^{280}\) The question in \textit{State v. T.M.B.}\(^{281}\) was whether sections 924.051(3)–(4) of the \textit{Florida Statutes}, which describe the procedure for preserving appeals in criminal cases, applies to juvenile delinquency cases.\(^{282}\) The court held that the sections did not apply because the juvenile system is different from the adult system, focusing on rehabilitation rather than punishment.\(^{283}\) In addition, the terms and conditions of juvenile appeals are addressed exhaustively in chapter 39 of the \textit{Florida Statutes}, and the legislature intended chapter 39 to govern delinquency proceedings.\(^{284}\)

### E. Statutory Changes

The legislature made a number of modest changes relating to delinquency matters during the 1998 session. It amended section 985.231 of

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\(^{275}\) See Fla. Stat. § 985.216 (Supp. 1998); see also discussion supra at p. 14–15.

\(^{276}\) 711 So. 2d 145 (Fla. 5th Dist. Ct. App. 1998).

\(^{277}\) Id. at 145–46.

\(^{278}\) Id. at 148.

\(^{279}\) Id.


\(^{281}\) 716 So. 2d 269 (Fla. 1998).

\(^{282}\) Id. at 269.

\(^{283}\) Id. at 270–71.

\(^{284}\) Id. See also State v. A.L.W., 717 So. 2d 913 (Fla. 1998); State v. B.D.W., 717 So. 2d 460 (Fla. 1998). In 1997, the legislature moved the delinquency provisions from chapter 39 to chapter 985. See Dale, supra note 96, at 202–205.
the Florida Statutes to provide that the trial court may order a juvenile to undergo random substance abuse testing during the dispositional phase of a delinquency case upon recommendation of DJJ.\textsuperscript{285} Testing may also occur after the disposition in the case of a petition alleging a violation of community control or aftercare.\textsuperscript{286} The legislature also amended section 985.309 of the Florida Statutes to continue providing local funds to operate boot camps that are to be operated under the supervisory authority of sheriffs under contract with the DJJ.\textsuperscript{287} The continued funding is interesting in light of the fact that there is a growing body of national literature questioning the rehabilitative benefits of boot camps.\textsuperscript{288}

A separate change in dispositional alternatives is the provision for court jurisdiction to place a child who violates community control or aftercare into a residential consequence unit which is a secure location used for children violating community control or aftercare or for youth determined by the court to have violated conditions of community control or aftercare if there is a consequence unit available.\textsuperscript{289} The legislature changed the title of intake counselors and case managers to juvenile probation officers with the result that the terminology now matches that found throughout the country.\textsuperscript{290} The legislature also took a first step toward dealing with juvenile sexual offenders by establishing a task force to make recommendations for standards relating to licensed professionals who work with juvenile offenders and victims.\textsuperscript{291} The legislature further authorized a local child protection team or state attorney to establish a sexual abuse intervention network, in order to collaborate on programs for juvenile offenders and victims and to obtain funds from the Office of the Attorney General or other funding sources.\textsuperscript{292} The law now requires DCF and DJJ to disclose to school superintendents the presence of a juvenile with a known history of predatory sexual behavior who is an adjudicated juvenile sexual offender.\textsuperscript{293} Finally, the legislature passed a bill authorizing the Juvenile Justice Advisory Board

\begin{itemize}
\item \textsuperscript{285} Ch. 98-55, § 1, 1998 Fla. Laws 361, 362 (codified at FLA. STAT. § 985.231(1)(a)1 (Supp. 1998)).
\item \textsuperscript{286} FLA. STAT. § 985.231(1)(a)1 (Supp. 1998).
\item \textsuperscript{287} See generally Ch. 98-282, 1998 Fla. Laws 2495–99 (codified at FLA. STAT. § 985.309 (Supp. 1998)).
\item \textsuperscript{288} See generally Boot Camps for Juvenile Offenders, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION (U.S. Dep’t of Justice, Washington, D.C.) Sept. 1997, at 32–33.
\item \textsuperscript{289} FLA. STAT. § 985.231(1)(a)1c (Supp. 1998).
\item \textsuperscript{290} FLA. STAT. § 985.03(32) (Supp. 1998).
\item \textsuperscript{291} FLA. STAT. § 985.403 (Supp. 1998).
\item \textsuperscript{292} Id.
\item \textsuperscript{293} See FLA. STAT. § 39.411 (Supp. 1998); FLA. STAT. § 490.012 (Supp. 1998); FLA. STAT. § 490.0143 (Supp. 1998); FLA. STAT. § 985.308 (Supp. 1998); FLA. STAT. § 985.04 (Supp. 1998).
\end{itemize}
to conduct a study on a number of educational matters in the juvenile justice system.  

VII. CONCLUSION

The Florida appellate courts continue a long tradition of admonitions to the trial courts to comply with the statutory mandates of chapters 39 and 985. At the same time, the appellate courts continue the laudable process of statutory interpretation. The Supreme Court of Florida has handed down several important cases including its most recent interpretation of statutory rape.

Finally, the legislature, while not active in the delinquency field to the extent it has been in prior years, did make a number of significant changes to the dependency and termination of parental rights statute. The most significant was the expansion of the right to counsel for indigent parents in dependency proceedings, a long overdue change.