Juvenile Law

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I. INTRODUCTION

For the second year running, the Florida Legislature has not made significant changes in its juvenile justice and child welfare systems and juvenile code, with limited exceptions highlighted in this article. However, the intermediate appellate courts have been very busy interpreting legislative changes made in the 1993 and 1994 sessions, as well as continuing a long standing practice of repeated corrections of simple, regular, and fundamental

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errors made by the trial courts. The intermediate appellate courts have been most active in the areas of delinquency dispositions and terminations of parental rights. The Supreme Court of Florida was also active this past year, albeit in interpreting statutory matters more than constitutional questions.

II. DELINQUENCY

A. Detention Issues

Florida's legislative approach to juvenile detention has varied dramatically over the past two decades. Earlier survey articles in this law review have discussed the state's fluctuating approach to this issue.\textsuperscript{1} Under Florida law, as it now stands, an intake counselor or case manager employed by the Department of Juvenile Justice\textsuperscript{2} ("DJJ") makes the decision whether or not to detain a child.\textsuperscript{3} The decision is based upon a risk assessment instrument ("RAI") which is a device developed by the DJJ.\textsuperscript{4} The RAI is developed from statutory detention guidelines which are based most significantly upon the charge against the juvenile.\textsuperscript{5} The court has discretion to detain a child in a placement more restrictive than indicated by the results of the risk assessment instrument, but the court must state, in writing, clear and convincing reasons for such placement.\textsuperscript{6}

The trial courts have had difficulty interpreting the detention requirements. For example, in \textit{S.W. v. Woolsey},\textsuperscript{7} the trial court securely detained a youngster after an adjudicatory hearing, despite the fact that the RAI reflected a score which would not allow for secure detention.\textsuperscript{8} The court based the post-adjudication secure detention upon the argument that the finding of adjudication was a change in circumstances and an aggravating factor which would allow the court to change the level of detention.\textsuperscript{9} First,
the appellate court held that the trial court failed to prepare a new RAI, rescored in compliance with the statute and prior case law.\textsuperscript{10} The trial court had added three points to the original RAI because at trial the child was found to have committed the charged delinquent act, which the trial court held was a change of circumstances and an aggravating factor. The appellate court noted, as a technical matter, that the trial court does not prepare the RAI, but rather the case manager, an employee of DJJ, does.\textsuperscript{11} However, more importantly, the fact that the child was found to have committed the delinquent act with which she was charged was not a changed circumstance as contemplated by the law.\textsuperscript{12} Changed circumstances, by definition, are circumstances not taken into account in the preparation of the original RAI.\textsuperscript{13} Obviously, the delinquent act with which the child was charged had been taken into account in the preparation of the original RAI.\textsuperscript{14} In fact, the appellate court explained that the RAI compilation presumes that the act charged was committed and the points are accordingly assigned.\textsuperscript{15} To allow additional points to be assigned for an act, after the finding had been made that the act was committed, would result in a double score for the same event. The court rejected this interpretation and reversed.\textsuperscript{16}

\textit{M.L.F. v. State}\textsuperscript{17} is an example of a case in which the trial court sought to use post-adjudication secure detention, although it lacked the authority to hold the child in secure detention, because neither the RAI nor any other statutory criteria supported the placement.\textsuperscript{18} When the child’s attorney objected to the secure detention, which was based upon an RAI score of only two points, resulting from several second degree misdemeanor adjudications, but had no other statutory basis, the trial court cavalierly commented as follows:

If a child is on release status and not detained pursuant to this section, the child may be placed into secure, nonsecure, or home detention care only pursuant to a court hearing in which the original risk assessment instrument, rescored based on newly discovered evidence or changed circumstances with the results recommending detention, is introduced into evidence.

\textbf{FLA. STAT. § 39.044(9).}

10. \textit{S.W.}, 673 So. 2d at 154–55 (citing C.M.T. v. Soud, 662 So. 2d 1382 (Fla. 1st Dist. Ct. App. 1995)); see also \textbf{FLA. STAT. § 39.044(9).}

11. \textit{S.W.}, 673 So. 2d at 155.

12. \textit{Id.}

13. \textit{Id.}

14. \textit{Id.}

15. \textit{Id.}

16. \textit{S.W.}, 673 So. 2d at 155.


18. \textit{Id.} at D1224.
Well, we're going to give the legislature something to think about and chew on and so forth, some of these edicts and so forth. They might just feel that's an inherent power of the court to do that and think it's wonderful legislation. I think what the state and [the Department of Juvenile Justice representative] said makes a lot of sense. I wish I could do it even longer. [Appellant], you will be in secure detention for fifteen working days and the Court will waive the RAI assessment that has been found to have some significance by some other courts and [you] will be in secure detention for fifteen working days for the reasons that were outlined by [the Department of Juvenile Justice representative], and then home detention with a monitor after the fifteen working days.19

The appellate court held that continued detention after adjudication is only premised upon a finding that it was initially permissible.20 The child's RAI did not support placement in secure detention, and none of the statutory requirements in the Florida Statutes which would permit a court to order placement more restrictive than that indicated by the RAI, existed.21 Finally, the court's statement, that the fact that the appellant child had no home to go to was grounds for detention, is explicitly prohibited by the Florida law.22

Because there are fewer detention facilities in Florida than there are judicial circuits, occasionally a youngster will be placed in a secure detention facility located in one judicial circuit, by a court sitting in another circuit. The issue that arose in T.O. v. Alachua Regional Juvenile Detention Center,23 was whether it was proper for the child to bring a writ of habeas corpus, challenging the legality of his pre-trial detention within the jurisdiction of the appellate court where he was held in a detention center but where the appellate court did not have jurisdiction over the trial court that ordered the detention.24 The appellate court held that the writ of habeas corpus was appropriate, given its purpose of determining the legality of the restraint under which the person is held.25 In such a proceeding, the person named respondent is the individual holding custody and the one in a position to physically produce the petitioner. The judge entering the detention order

19. Id. at D1224–25 (alteration in original).
20. Id. at D1225.
21. Id. See FLA. STAT. § 39.044(2)(a)–(f).
23. 668 So. 2d 243 (Fla. 1st Dist. Ct. App.), review granted, 676 So. 2d 412 (Fla. 1996).
24. Id. at 244.
25. Id. at 245.
was not a proper respondent. More significantly, a court only has authority to issue a writ of habeas corpus directed to a person within its judicial jurisdiction. The court therefore ruled that the Fifth District Court of Appeal did not have jurisdiction and found a violation of the detention statute by the trial court, entitling the juvenile to relief. The court recognized that the use of regional detention centers in Florida might result in the jurisdictional issue being presented again, and for that reason, the court certified the question to the Supreme Court of Florida.

In 1994, the legislature amended the juvenile code to allow for post-adjudication punishment using detention as an alternative. The statute provides a mandatory period of detention of five days in a secure detention facility as well as the performance of 100 hours of community service if there has been a finding of a commission of a first offense that involves the use or possession of a firearm. In T.A. v. Wimberly, the child filed a petition for writ of habeas corpus challenging the court's order detaining the child without awaiting the scheduling of a formal disposition hearing or the preparation of a pre-disposition report. While the statute itself does not provide explicit guidance, the appellate court nonetheless construed the law to provide that the imposition of the mandatory five day detention punishment must occur after a formal disposition hearing with a pre-disposition report. Significantly, the court also recognized that, given the time frame in which the punishment is served, this is the kind of case that is capable of repetition and likely to evade review. The result would be that if the court were to allow the full period of the penalty to be served before an appeal could be perfected, this would reasonably be seen as effectively eliminating the right of appellate review. The court, thus, decided the issue.
B. Trial Issues

Children, like adults, sometimes come before the juvenile court and a claim is made that they are incompetent to stand trial for the charge of juvenile delinquency. The question before the Fourth District Court of Appeal in *T.L. v. State*, the parties agreed that the child did not meet the criteria for involuntary hospitalization although the court also found that the child was not competent to proceed to trial. The trial court concluded that it lacked the authority to mandate either the DJJ or the Department of Health and Rehabilitative Services (“HRS”) to provide services to the child. First, the trial court held that the DJJ had no authority to provide the services because there was no statute or rule obligating the DJJ to look after a child until the youngster had been adjudicated delinquent. The trial court also declined to order HRS to provide the treatment because the Florida law governing involuntary commitment of defendants who are adjudicated incompetent to stand trial or incompetent for sentencing did not apply to juveniles as juvenile proceedings were governed solely by the *Florida Rules of Juvenile Procedure* and chapter 39. Therefore, the trial court ordered the two agencies to “work together,” whatever that might mean. Then, as reported by the appellate court, the DJJ made a referral to HRS, and it appeared that HRS would not provide the services recommended without a court order. The child appealed.

37. 670 So. 2d 172 (Fla. 4th Dist. Ct. App. 1996).
38. Id. at 172.
39. Id.
40. Id. at 173.
41. Id.
43. *T.L.*, 670 So. 2d at 173 (citing Department of Health and Rehabilitative Servs. v. A.E., 667 So. 2d 429 (Fla. 2d Dist. Ct. App. 1996)). The court in *A.E.* held that section 916 of the *Florida Statutes* is inapplicable to juvenile proceedings and the juvenile court cannot order an involuntary commitment of juveniles. *A.E.*, 667 So. 2d at 429. The *A.E.* court further held that proceedings should be commenced under sections 39.046, 394.467, and 393.11, and if the child does not meet the involuntary commitment standards, the appropriate relief should be ordered pursuant to Rule 8.095 of the *Florida Rules of Juvenile Procedure*. *Id.* at 429–30.
44. *T.L.*, 670 So. 2d at 173.
45. Id.
46. Id.
The appellate court did not do much to resolve the matter. It did find that the DJJ, by statute after 1994 was responsible for matters involving juvenile crime before, during, and after formal proceedings are initiated. It further found that the DJJ’s budget included costs for contracting with HRS to provide evaluations, therapy services, and other services for juveniles charged with felonies who are found to be mentally incompetent to proceed through the adjudicatory process. Furthermore, the court found that HRS is responsible for administering mental health provisions under chapter 394 of the Florida Statutes, and this includes children who have not yet been found delinquent. Indeed, the juvenile code does provide that if it is necessary to place a child in a residential facility for services the procedures and criteria established in chapter 394 are to be used. The appellate court found that the statutory scheme requires “interplay between the agencies.” The appellate court remanded the case back to the trial court because the trial court failed to comply with Rule 8.095 of the Florida Rules of Juvenile Procedure, which provides that if a child is incompetent to stand trial but does not meet the criteria for involuntary hospitalization, the trial court shall order the “appropriate nondelinquent treatment for the child in order to restore the child’s competence to proceed with an adjudicatory hearing.” Because HRS was not a party to the proceedings, the appellate court did not resolve the dispute between the two agencies as a matter of law. Rather, it ordered the trial court to bring both agencies before it for resolution. The opinion does nothing to clarify what should happen when both agencies are before the trial court.

It seems quite clear that the trial court has the power to order the agencies to resolve their administrative differences and work out an agreement to care for this category of children. Unfortunately, however, it is common in Florida that the state agencies are unable to administratively resolve their differences. As a result, the agencies appear before the trial court.

49. T.L., 670 So. 2d at 173.
50. Id. at 173-74.
51. Id. at 174 (citing Fla. Stat. § 39.046(2) (1995)). Section 39.046(2) provides that the “procedures and criteria established in chapter 393, chapter 394, or chapter 397, whichever is applicable, shall be used.” Fla. Stat. § 39.046(2).
52. T.L., 670 So. 2d at 174.
53. Id. (alteration in original) (quoting Fla. R. Juv. P. 8.095(a)(4)(A)).
54. Id.
55. Id.
courts, and ultimately the appellate courts, for failure to carry out statutory mandates based upon the agencies' belief that the statutory mandates do not apply to them. This is a long standing problem that has been before the appellate courts on a number of occasions.56

C. Adjudicatory Issues

The problem of violence in the schools has received substantial coverage in the media and academic circles.57 Students who commit violent acts are subject to school disciplinary action58 and charges of juvenile delinquency. In addition, fully independent of chapter 39 and its juvenile delinquency provisions, the State of Florida has enacted a statutory civil cause of action for a protective injunction in cases of repeat violence.59 Alleged victims of violence may obtain a protective injunction to stop further acts of violence if they prove the existence of two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which were directed toward the petitioner or the petitioner’s immediate family.60 In H.K. v. Vocelle,61 a fifteen-year-old high school student filed a petition for an injunction against repeated violence seeking protection from a seventeen-year-old classmate who had physically attacked her on school grounds.62 The trial court dismissed the petition on the grounds that chapter 39 of the Florida Statutes had preempted the repeat violence injunction statute.63 The appellate court concluded that the civil provisions of the injunction statute applied both to adult and juvenile respondents.64 The court found that the injunctive action

56. See Department of Health and Rehabilitative Servs. v. State, 655 So. 2d 227 (Fla. 5th Dist. Ct. App. 1995); Department of Health and Rehabilitative Servs. v. Kahn, 639 So. 2d 689 (Fla. 5th Dist. Ct. App. 1994). Sometimes the agency is correct that there is no authority to obligate them to act. See Department of Health and Rehabilitative Servs. v. Jones, 631 So. 2d 348 (Fla. 5th Dist. Ct. App. 1994); Department of Health and Rehabilitative Servs. v. Ortiz, 627 So. 2d 124 (Fla. 5th Dist. Ct. App. 1993).


58. See Michael J. Dale, Representing the Child Client 6-32 (1996).


60. Id.


62. Id. at 892.

63. Id.

64. Id.
was not penal in nature. Furthermore, the injunction statute was not limited to adults and was drafted with the recognition that such relief could be sought whether or not any other petition, complaint, or cause of action was currently available or pending between the parties. Finally, the appellate court concluded that even had the trial court been correct that such relief was only available in a delinquency proceeding in juvenile court, there was no lack of jurisdiction because the juvenile court was simply a different administrative division of the circuit court. The appellate court reversed on the merits, allowing the cause of action to proceed.

D. Dispositional Issues

Florida, like all other states, employs a two-part procedure in juvenile delinquency cases: the adjudicatory stage, discussed earlier, and the dispositional stage. Dispositional hearings are governed by section 39.052(4) of the Florida Statutes which, at first glance, does not appear to be a complicated law. Among the variety of dispositional alternatives provided in chapter 39 are restitution, community control, and commitment to various facilities which, in major part, are based upon increasing deprivation of liberty. However, the law has generated a plethora of reported opinions over the past decade. Among the issues regularly before the appellate courts, have been whether and if so, how much discretion the court has in making dispositional decisions, whether the court may change its dispositional decision, and how the adult court chooses to treat a child before that court for dispositional purposes.

As part of the juvenile delinquency dispositional process, Florida law requires the court to consider a pre-disposition report. The juvenile may

65. Id. at 893.
67. H.K., 667 So. 2d at 893.
68. Id.
72. Section 39.052(4)(a) of the Florida Statutes provides that the report:
waive the report requirement, but by supreme court decision, the trial court
must advise the child of his or her rights under the statute and confirm that
the juvenile understands the significance of the waiver of the right to the pre-
disposition report. 73 In Lunn v. State, 74 the Second District Court of Appeal
held that, while a child may execute a written waiver of the right to a pre-
disposition report, the trial court must question the child personally to
explain his or her rights under chapter 39. 75 Failure to do so is reversible
error. 76

Florida law also provides that the court shall provide the reasons for
adjudicating the child delinquent and committing him in writing. 77 The court
must also consider the Department’s placement and restrictiveness level
recommendation for the child which, if the court disregards it, the court shall
state its reasons on the record. 78 In J.E.W. v. State, 79 a child appealed an
adjudication of delinquency after pleading no contest to charges of petty and
grand theft. 80 The DJJ subsequently recommended that the disposition be
continued until the child underwent a psychiatric evaluation so that the
agency could complete a pre-disposition report which would contain place-
ment and other recommendations and a treatment plan. Despite the fact that
the DJJ advised the court that the psychiatric evaluation was pending, and
despite the further fact that the Department had not completed the pre-
disposition report, the trial court, incredibly, adjudicated the child delinquent
and then sentenced him to a moderate risk residential level placement
without reducing its order to writing. 81 The appellate court held that the
failure to comply with the statutory provisions was reversible error. 82 In so
doing, the court referred to a virtual litany of prior appellate court opinions

placement setting to meet the child’s needs with the minimum program security
that reasonably ensures public safety.

Id. § 39.052(4)(a).
73. See State v. Berry, 647 So. 2d 830, 832 (Fla. 1994).
74. 675 So. 2d 648 (Fla. 2d Dist. Ct. App. 1996).
75. Id. at 648.
76. Id.
77. FLA. STAT. § 39.052(4)(e)1; see also Lunn, 675 So. 2d at 648; Thomas v. State, 662
78. See FLA. STAT. § 39.052(4)(e)2–3.
80. Id. at 73.
81. Id.
82. Id. at 73–74.
and stated that strict statutory compliance in dispositional hearings is required under Florida law.\textsuperscript{83}

In \textit{Nation v. State},\textsuperscript{84} the First District Court of Appeal was also faced with the lack of entry of a written order.\textsuperscript{85} In that case, the court provided the trial court with guidance on how to solve the problem of a failure to make a written report, holding that a written \textit{nunc pro tunc} sentencing order would satisfy the statutory requirements.\textsuperscript{86} The court found that a new sentencing hearing was not required and that it was not necessary that the child be physically present in court for the ministerial act of entering a written order conforming to the oral pronouncement of the court.\textsuperscript{87}

A juvenile respondent’s right to maintain innocence, even at the dispositional stage of a juvenile delinquency case, was before the Third District Court of Appeal recently in \textit{A.S. v. State}.\textsuperscript{88} In \textit{A.S.}, the child was charged with the commission of an aggravated battery with a deadly weapon upon another juvenile.\textsuperscript{89} The respondent denied the charges and an adjudicatory hearing followed in which the child was ultimately adjudicated by the court to be delinquent as charged. At the dispositional hearing, HRS recommended that the child not be committed but that he receive a withholding of adjudication and be ordered to perform twenty hours of community service. The State objected, urging that the juvenile be adjudicated and committed to a level six facility. A level six facility is a moderate risk residential facility involving twenty-four hour awake supervision for youngsters who do not need placement in facilities which are physically secure.\textsuperscript{90} The trial court committed the child to a level four juvenile group treatment home to be followed by fifty hours of community service and reserved jurisdiction on the issue of restitution to the victim.\textsuperscript{91} The appellate court found that the trial court made it clear on the record that its disposition was significantly influenced by the child’s continued protestation of inno-

\begin{thebibliography}{99}
\bibitem{84} 668 So. 2d 284 (Fla. 1st Dist. Ct. App. 1996).
\bibitem{85} \textit{Id.} at 285.
\bibitem{86} \textit{Id.} at 286.
\bibitem{87} \textit{Id.; see also} Bridgewater \textit{v. State}, 21 Fla. L. Weekly D584 (1st Dist. Ct. App. March 5, 1996).
\bibitem{88} 667 So. 2d 994 (Fla. 3d Dist. Ct. App. 1996).
\bibitem{89} \textit{Id.} at 995.
\bibitem{90} \textit{See} FLA. \textit{STAT.} § 39.01(59)(c) (1995).
\bibitem{91} \textit{A.S.}, 667 So. 2d at 995.
\end{thebibliography}
cence to the charge. The appellate court reversed on the basis of the 1968 United States Supreme Court opinion in *United States v. Jackson*, which held that a judicially imposed penalty which needlessly discourages the articulation of one’s Fifth Amendment right not to plead guilty, and which deters exercise of the Sixth Amendment right to demand a jury trial, is patently unconstitutional. The court also relied upon *Holton v. State*, a Supreme Court of Florida case which held that a trial court violated a defendant’s due process rights by using the protestation of innocence against the defendant at the trial, as well as during the penalty phase of a criminal proceeding. The appellate court in A.S. reversed, finding that the choice of plea should never have been a factor in the dispositional decision.

Of course, the trial court has the power to enter a dispositional order which is at odds with the predisposition report prepared by DJJ. The issue before the Third District Court of Appeal in *J.M. v. State*, was first, whether a child had a right to appeal from a disposition committing him to the DJJ’s custody and second, what is the standard of review of a court’s departure from an agency recommendation. On the first question, despite a long dissent by Judge Cope, the majority held that both on the basis of statutory construction and constitutional interpretation, the child had a right of appeal. The problem which gave rise to the dissent was language in the dispositional statute which stated that it was the intent of the legislature that the criteria set forth in the general guideline section are to be followed at the discretion of the court and are not mandatory procedural requirements in a dispositional hearing. The majority read the section narrowly to the effect that the legislature had not intended to create an appealable issue out of the fact that the trial court considered only certain criteria and not others in the list of the factors to be used to determine suitability or non-suitability for

92. *Id.*
94. *Id.* at 581.
96. *Id.* at 292.
97. A.S., 667 So. 2d at 996.
98. *See* FLA. STAT. § 39.052(4)(e)3.
100. *Id.* at 891–92.
101. *Id.* at 893–903 (Cope, J., dissenting).
102. *Id.* at 892.
103. *Id.* at 891 (citing FLA. STAT. § 39.052(3)(k) (1993)). This subsection was later renumbered as (4)(k). *See* FLA. STAT. § 39.052(4)(k).
adjudication and commitment of the child to the DJJ. 104 More significantly, the court held that if the child did not have a right to appeal the disposition, serious state and federal constitutional rights would be implicated. 105 The court quite properly noted that "[t]he commitment of a child to HRS is a deprivation of liberty which triggers significant due process protection under both the federal and Florida constitutions." 106 The court concluded that if juveniles had no right to appeal dispositions then the child in this case would have been forced to serve an increased sentence as a result of the exercise of a fundamental constitutional right. 107 The court concluded this was "unfathomable." 108

Another dispositional area that has given the trial courts a great deal of trouble has been the procedure by which the criminal court decides whether to treat a juvenile convicted as an adult, a juvenile, or a youthful offender for purposes of imposition of sanctions. 109 Prior survey articles have discussed the case law in this area in depth. 110

In Ritchie v. State, 111 the Supreme Court of Florida was asked to decide the following certified question:

WHETHER A CHILD, CHARGED WITH AN OFFENSE PUNISHABLE BY DEATH OR LIFE IMPRISONMENT, BUT FOUND GUILTY OF A LESSER INCLUDED OFFENSE, PUNISHABLE BY A TERM OF YEARS NOT EXCEEDING LIFE, MUST BE SENTENCED AS AN ADULT WITHOUT THE PROCEDURAL SAFEGUARDS AFFORDED BY SECTION 39.059(7)(c), FLORIDA STATUTES? 112

The court held that under the facts of the case the child was indicted for one offense but convicted of a lesser included offense, which was also punish-
able by death or life imprisonment, and therefore, the child was properly sentenced as an adult without the procedures afforded in chapter 39.\textsuperscript{113}

Justice Anstead dissented as a matter of statutory construction.\textsuperscript{114} The controversy concerned the interpretation of the then existing section 39.022(5)(c)\textsuperscript{3} of the Florida Statutes.\textsuperscript{115} This statute provides that:

If the child is found to have committed the offense punishable by death or life imprisonment, the child shall be sentenced as an adult. If the child is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he was indicated as a part of the criminal episode, the court may sentence [the child as a juvenile.]}\textsuperscript{116}

Justice Anstead argued that the statute must be read as written and that the word "the" in the statute does not mean "an."\textsuperscript{117} Thus, "[t]he statute clearly states that a child is not to be automatically sentenced as an adult when the child is not found to have committed the indictable offense," according to Justice Anstead.\textsuperscript{118} He concluded that, while there is a disparity in treatment possible by providing greater procedural protections to a person indicted for a more severe offense and convicted of a lesser charge than a person indicted and convicted of a less severe offense, the court is not in a position to rewrite the statute "as the majority has done here."\textsuperscript{119}

By statute, effective October 1, 1994, the Florida Legislature relieved the trial courts of the burden of making specific written findings for the imposition of an adult sentence as opposed to a juvenile sentence when the juvenile is tried as an adult.\textsuperscript{120} Prior to that date, the courts were required to make detailed specific written findings justifying the imposition of the adult sentence.\textsuperscript{121} Under the new law, the court does not need to articulate specific findings or enumerate criteria.\textsuperscript{122} In two recent cases, the Florida appellate

\begin{itemize}
    \item \textsuperscript{113} Id. at 928; see also Fla. Stat. § 39.059(7).
    \item \textsuperscript{114} Ritchie, 670 So. 2d at 928–29 (Anstead, J., dissenting).
    \item \textsuperscript{115} Fla. Stat. § 39.022(5)(c)\textsuperscript{3} (1993).
    \item \textsuperscript{116} Id.
    \item \textsuperscript{117} Ritchie, 670 So. 2d at 928 (Anstead, J., dissenting).
    \item \textsuperscript{118} Id.
    \item \textsuperscript{119} Id.
    \item \textsuperscript{120} See Fla. Stat. § 39.059(7)(d).
    \item \textsuperscript{121} See Dale, supra note 1, at 201–02 (discussing the changes in the law).
    \item \textsuperscript{122} See id. at 202 (criticizing this change).
\end{itemize}
courts were asked to decide whether post-October 1994 orders complied with the new statute.\textsuperscript{123}

In \textit{Grayson v. State},\textsuperscript{124} the Fourth District Court of Appeal reversed a juvenile’s sentence as an adult because the trial court did not comply with the recently amended section 39.059(7)(d).\textsuperscript{125} In that case, a sixteen-year-old at the time of the crime, was tried as an adult and found guilty of manslaughter with a firearm and sentenced as an adult to twenty years of incarceration.\textsuperscript{126} Before the sentence, the amendment to section 39.059(7) went into effect. Based upon decisions in \textit{Lutz v. State}\textsuperscript{127} and \textit{Thomas v. State},\textsuperscript{128} the trial court was correct to retroactively apply the amended statute. However, the State conceded that the trial court did not sentence the youngster in accordance with the amended statute. The amended statute retains most of the provisions of earlier law including the receipt and consideration of a pre-sentence investigation report from the DJJ which evaluates the suitability of the youngster for disposition as an adult, a juvenile, or a youthful offender,\textsuperscript{129} and a written order.\textsuperscript{130} The appellate court held that, while the current statute does not require the trial court to make specific findings in writing, the trial court must nonetheless consider the statutory criteria to determine what kind of sanctions should be imposed.\textsuperscript{131} While the statute contains a presumption that the court’s decision to sentence a juvenile as an adult is appropriate,\textsuperscript{132} there must be a writing imposing the adult sanctions. Here there was none. The court reversed.\textsuperscript{133}

In \textit{Roberts v. State},\textsuperscript{134} the appellate court reversed the lower court’s decision on the grounds that no order of any kind was prepared or filed under the new statute.\textsuperscript{135} Judge Sharp concurred, agreeing that the absence of any written order imposing adult sanctions required reversal and re-

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{123} Roberts v. State, 677 So. 2d 1 (Fla. 5th Dist. Ct. App. 1996); Grayson v. State, 671 So. 2d 855 (Fla. 4th Dist. Ct. App. 1996).
\item \textsuperscript{124} 671 So. 2d 855 (Fla. 4th Dist. Ct. App. 1996).
\item \textsuperscript{125} \textit{Id.} at 856.
\item \textsuperscript{126} \textit{Id.} at 855.
\item \textsuperscript{127} 664 So. 2d 1060, 1061 (Fla. 4th Dist. Ct. App. 1995).
\item \textsuperscript{128} 662 So. 2d 1334, 1336 (Fla. 1st Dist. Ct. App. 1995).
\item \textsuperscript{129} \textit{FLA. STAT.} § 39.059(7)(a).
\item \textsuperscript{131} \textit{Grayson}, 671 So. 2d at 856.
\item \textsuperscript{132} \textit{FLA. STAT.} § 39.059(7)(d).
\item \textsuperscript{133} \textit{Grayson}, 671 So. 2d at 856.
\item \textsuperscript{134} 677 So. 2d 1 (Fla. 5th Dist. Ct. App. 1996).
\item \textsuperscript{135} \textit{Id.} at 2.
\end{enumerate}
\end{footnotesize}
mand. He also raised the important issue of whether the court was obligated to consider a pre-sentence report. Agreeing with the court in Grayson, he would have found that the imposition of adult sanctions nonetheless obligates the trial court to consider the relevant statutory criteria even if it is not written into the order. Further, in Sharp's view, an order incorporating at least some of the considerations under the statute and the recommendations is reviewable by the appellate court. Finally, Judge Sharp addressed the trial court's primary complaint which dealt with the "inefficacy" of the juvenile justice system, wherein the trial court apparently decided on adult sanctions because of its view that the juvenile system was bankrupt. Judge Sharp responded by stating:

Query whether the inadequacy of the juvenile justice system is an appropriate reason to impose adult sanctions on a fourteen-year-old, and query whether society will be made safer by having Roberts locked up in an adult prison, only to be released, untreated and uncounseled, but older and wiser, in less than (probably) four years. It is a scary thought.

Under Florida law, once a juvenile has been transferred for adult prosecution by means of voluntary waiver, involuntary waiver, or criminal information in the adult court and after the child has been found to have committed the adult offense, the child is to be treated as an adult for any subsequent offenses. In T.L.P. v. State, the appellate court ruled that a juvenile, who had committed the acts upon which the juvenile charges were based before she was found to have committed unrelated offenses for which she was tried as an adult, could not be sentenced under the adult sentencing statute, and therefore, the court reversed. The juvenile offenses were not subsequent violations for the purposes of the statute.

Another requirement of section 39.059 governing juveniles who are before adult court is the provision that juveniles must be notified that they...
have the right to a trial court determination of the suitability of imposing adult sanctions by considering the criteria enumerated in this section. In *Figueroa v. State*, a child appealed his conviction after the trial court accepted his plea without informing him of his rights under section 39.059(7). By failing to advise the child of the rights that were waived by the plea, the youngster did not have a full understanding of the plea, and the waiver of the rights was not knowing, voluntary, or intelligent. The appellate court therefore reversed, granting the child’s subsequent motions to withdraw his pleas.

Interpreting the rules by which the courts may change dispositional orders in delinquency cases has also proved difficult for the courts. An opinion by the Supreme Court of Florida has recently clarified matters. The issue in *State v. M.C.*, was whether Rule 3.800(b)(2) of the Florida Rules of Criminal Procedure which provides the trial court with authority to modify a sentence within sixty days of its imposition applies in juvenile delinquency cases. The supreme court held that it did not. The court found that the purpose of the juvenile and adult rules were different. However, the court held that although a juvenile in Florida is not considered a criminal defendant, and thus, the Rules of Criminal Procedure do not apply to juveniles, juveniles ought to be accorded the same basic rights to finality and certainty in sentencing as adults. Therefore, the court upheld the proposition that a modification to a sentence, including the imposition of restitution, should occur within sixty days of sentencing as provided by the Rules of Criminal Procedure.

More recently in *T.R. v. State*, the supreme court was presented with a similar question of the authority to modify juvenile sentences. In *T.R.*, the trial court committed the juvenile to HRS’ low risk residential program. The State subsequently moved to modify the commitment, stating that the

147. 657 So. 2d 1225 (Fla. 2d Dist. Ct. App. 1995).
148. *Id.* at 1226.
149. *Id.*
150. *Id.*
151. 666 So. 2d 877 (Fla. 1995).
152. *Id.* at 878; *see also* FLA. R. CRIM. P. 3.800(b).
153. *M.C.*, 666 So. 2d at 878.
154. *Id.*
155. *Id.*
156. *Id.* *See also* L.N.H. v. State, 670 So. 2d 1013 (Fla. 2d Dist. Ct. App. 1996).
157. 677 So. 2d 270 (Fla. 1996).
158. *Id.* at 270–71.
low risk level was not available for juveniles convicted of aggravated battery. The juvenile claimed on appeal that the court was without jurisdiction to modify the order, relying on a 1981 case, *D.W.J. v. State*.

The supreme court held that the statutory provision at issue allowed trial courts to modify or set aside orders without reference to any time limit. The juvenile claimed that a separate section of the *Florida Statutes* set a sixty-day window after an order was entered within which to suspend a commitment order and place a child on probation or in community control and that the applicable section of the *Florida Statutes* should apply to this case.

The court distinguished *M.C.*, holding that in *M.C.*, the issue was whether a trial court could enter an order more than sixty days after the sentence was imposed which, for the first time would require the juvenile to pay restitution.

In *T.R.*, the supreme court recognized that the trial court was not imposing a sentence for the first time, but was modifying a sentence already imposed. Therefore, the court disapproved the holding in *D.W.J.* and upheld the modification of the commitment order.

In *W.E. v. State*, a child challenged a trial court amendment of an original sentence to include community control in the form of restitution. Initially, the trial court withheld adjudication and ordered counseling, enrollment in a particular school program, all costs, and a public defender lien. There was no order regarding restitution. Twenty days later a hearing was held on the State's motion to amend the sentence. The trial court granted the motion amending the sentence to include community control so that the victim's seventy-five dollars unreimbursed medical bill could be ordered as part of community control. The appellate court ruled explicitly that the trial court had no authority to amend the sentence to include additional sanctions when the original sentence was a legal one.
C.M. v. State\textsuperscript{171} is a similar case. Here, a trial court ordered an increase in the original sentence from a juvenile service program to community control.\textsuperscript{172} The appellate court held that the trial court could not increase an otherwise legal sentence.\textsuperscript{173} In C.M., the court withheld adjudication and ordered the child to enter and successfully complete the Juvenile Alternative Services Program ("JASP") and to pay reasonable restitution.\textsuperscript{174} Several days later the State filed a motion for re-determination of sentence arguing that the sentence was illegal because restitution could only be ordered when the child was committed to HRS or placed on community control. The trial court agreed, increasing the sentence and the child appealed.\textsuperscript{175} The appellate court held that under Florida law the trial court has the authority to impose restitution as a part of a community based sanction when adjudication has been withheld.\textsuperscript{176} Thus, the original disposition made by the court ordering completion of community-based JASP and restitution was proper.\textsuperscript{177} Because the original sentence was legal, the court did not have authority to increase that legal sentence.\textsuperscript{178}

Another possible condition of community control is the imposition of a curfew. In A.B.C. v. State,\textsuperscript{179} a juvenile appealed from an order imposing a 7:00 p.m. curfew on the technical grounds that the curfew was contained in the written order but was not orally pronounced at the adjudicatory hearing.\textsuperscript{180} There is a conflict in the case law between the A.B.C. decision and the decision in S.W. v. State.\textsuperscript{181} In the latter case, the appellate court struck down the condition of a juvenile's community control which required sixty hours of community service because that general condition was not orally pronounced although the community service is an allowable condition by statute.\textsuperscript{182}

Many municipalities around the country have recently enacted juvenile curfew ordinances in an effort to control juvenile behavior and reduce

\textsuperscript{171} 658 So. 2d 1178 (Fla. 2d Dist. Ct. App. 1995).
\textsuperscript{172} Id. at 1179.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
\textsuperscript{175} Id.
\textsuperscript{176} C.M., 658 So. 2d at 1179.
\textsuperscript{177} Id. (citing FLA. STAT. § 39.052(3) (1993)).
\textsuperscript{178} Id.
\textsuperscript{179} 673 So. 2d 966 (Fla. 1st Dist. Ct. App. 1996).
\textsuperscript{180} Id. at 966.
\textsuperscript{181} 666 So. 2d 600 (Fla. 4th Dist. Ct. App. 1996).
\textsuperscript{182} Id. at 600.
crime. In January 1994, the Dade County Commission enacted a juvenile curfew ordinance. In Metropolitan Dade County v. Pred, the appellate court heard an appeal from a circuit court decision which found the ordinance unconstitutional in violation of the Florida Constitution. The appellate court reversed, finding none of the challenges to the ordinance meritorious. The court found that juveniles are always subject to some form of custody and the state has the constitutional power to regulate matters for the well being of children. The appellate court, without any detailed discussion, concluded that because children due to their special nature and vulnerabilities “do not enjoy the same quantum or quality of rights as adults,” the ordinance did not violate any of their rights under the Florida Constitution.

A child and his parent have the right to speak at a dispositional hearing. In A.P. v. State, the Second District Court of Appeal analyzed the trial court’s refusal to allow the child or his mother to address the court and the lower court’s placement of the youngster on community control. The appellate court recognized that given the serious nature of the charges, nothing either the parent or the child would have said would have affected the disposition. However, the Florida Statutes provide that prior to determining and announcing the disposition the trial court shall give the parties an opportunity to comment on the issue of disposition and rehabilitation. The court further recognized that the proceeding may be one which will “create a lasting impression of fair and impartial justice” and that this may be best effectuated by allowing the parties to be heard.

183. See SOLER ET AL., supra note 69, at 3-41.
184. Metropolitan Dade County, Fla., Ordinance 94-1 (Jan. 18, 1994).
185. 665 So. 2d 252 (Fla. 3d Dist. Ct. App. 1995).
186. Id. at 253.
187. Id.
190. 666 So. 2d 211 (Fla. 2d Dist. Ct. App. 1995).
191. Id. at 211.
192. Id.
194. A.P., 666 So. 2d at 211.
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E. Appellate Issues

The Florida Juvenile Code allows the trial courts to use contempt as a means of enforcing disposition orders. In A.L.B. v. State, a child appealed from a contempt finding which was based upon the trial court’s issuance of an order to show cause, sua sponte, as to why the child should not be held in contempt for failure to abide by a court order placing him on community control. Among the issues raised on appeal was whether the court had authority to enter the order to show cause, sua sponte, under the facts of the case. Rule 8.150(b)(1) of the Florida Rules of Juvenile Procedure provides that the court on its own motion or upon affidavit of any person having knowledge of the facts may issue and sign an order to show cause in a contempt proceeding. Without any analysis, the court simply concluded that the record in the case reflected the statement of the trial judge that the basis of the order to show cause was upon his own motion and the sworn petition alleging violation of community control. Judge Webster dissented. He concluded that the record showed that the order to show cause was issued at the request of the child’s community control counselor. Judge Webster could find nothing in the Florida Rules of Juvenile Procedure to explain what it meant for a judge on his or her own motion to issue the order to show cause. Therefore, Judge Webster looked to the analogous rules of criminal procedure and case law and concluded that the order to show cause was based upon statements by a person who was not under oath who lacked personal knowledge of the matters about which he was commenting, and thus, were hearsay statements. In Judge Webster’s view, the Florida Rules of Juvenile Procedure require an affidavit from a person having knowledge of the facts, and here there was none. Nor did he see how the order to show cause could have been issued on the court’s own motion. Although research disclosed no case on point, research on the language of the analogous criminal procedure rule disclosed that a judge

196. Id. at 669.
197. Id.
198. FLA. R. JUV. P. 8.150(b)(1).
199. A.L.B., 675 So. 2d at 670.
200. Id. (Webster, J., dissenting).
201. Id.
202. Id. at 671.
203. Id.
204. A.L.B., 675 So. 2d at 671.
205. Id. at 672.
may issue an order to show cause on the judge’s own motion provided that he or she has heard sworn testimony which, if true, would support an adjudication of indirect criminal contempt. Here the alleged contempt occurred outside the presence of the judge, and the judge had no independent knowledge regarding the facts. Finally, to allow the court on its own motion to issue an order to show cause for a criminal contempt without supporting evidence under oath would "permit the courts to engage in star chamber proceedings, in complete disregard of the due process requirements implicated by such serious charges."

An interesting question of how much restitution may be ordered in light of the order of adjudication was before the First District Court of Appeal in J.O.S. v. State. In that case, a child was ordered to pay restitution of $1,092 after an adjudication that he committed what would have been an offense of second degree misdemeanor criminal mischief for which as an adult the maximum amount of restitution was $200. The State had filed a petition alleging a first degree misdemeanor where the damage of the property was greater than $200 but less than $1,000. At the adjudicatory hearing, the State offered no evidence regarding the dollar value of the damage and as a result the court made a finding of criminal mischief, a second degree misdemeanor. At the restitution hearing, the court heard testimony and issued an order in the amount of $1,092 from which the child appealed. The appellate court held that the purpose of the restitution hearing is to restore to the victims of crime the value of what they lost rather than to punish the wrongdoer. The evidentiary standard is the greater weight of the evidence rather than the exclusion of all reasonable doubt. There is no requirement that the amount of the loss first be proven in the criminal case at the misdemeanor level. Furthermore, the Supreme Court of Florida held in Hebert v. State, that when an individual entered into a plea agreement which left the trial court discretion as to the amount of restitution the defendant waived any objection to the amount of the restitution absent

206. Id.
207. Id.
208. 668 So. 2d 1082 (Fla. 1st Dist. Ct. App.), review granted, 677 So. 2d 840 (Fla. 1996).
209. Id. at 1083.
210. Id.
211. Id. at 1085.
212. Id.
213. 614 So. 2d 493 (Fla. 1993).
abuse of discretion. The court in J.O.S. recognized that the issue before the court was unanswered in Hebert, and therefore, it certified the question to the Supreme Court of Florida.

The technical question of whether an order of adjudication is a final order in a juvenile delinquency case and thus appealable was recently before the Third District Court of Appeal in A.N. v. State. In that case, the child sought to appeal from an adjudication of delinquency in the circuit court in Dade County when the case was transferred for disposition to Broward County. The third district held that the adjudication order was a non-appealable, non-final order, and that there was no appealable final order in a delinquency case until a disposition order was entered. The appellate court recognized that the right of the child to appeal a final order in a delinquency case was created by statute but that the statute did not itself define a final order. The court in A.N. relied upon an earlier appellate opinion of T.L.W. v. Soud, which held that judicial "labor" ends upon entry of an order of disposition in a delinquency case and that this point in time establishes the test of finality for purposes of determining an appealable final order. The appeal in A.N. was thus dismissed.

The Fourth District Court of Appeal has ruled in a very brief opinion on the limit of the ability of the State to appeal from a dispositional order. In State v. C.W., the court held that the State may not appeal from a juvenile court order denying restitution. Under the Florida Juvenile Code, there is no provision comparable to that existing in the adult criminal code, which allows the State to appeal. Thus, the failure to order restitution is not on a list of orders from which the State may appeal in a juvenile proceeding, and the failure to order restitution does not constitute an illegal sentence.

214. Id. at 494.
215. J.O.S., 668 So. 2d at 1085.
216. 666 So. 2d 928 (Fla. 3d Dist. Ct. App. 1995).
217. Id. at 929.
218. Id. at 930.
219. Id.
220. 645 So. 2d 1101 (Fla. 1st Dist. Ct. App. 1994).
221. Id. at 1104–05.
222. A.N., 666 So. 2d at 930.
223. 662 So. 2d 768 (Fla. 4th Dist. Ct. App. 1995).
224. Id. at 769.
226. C.W., 662 So. 2d at 769 (citing State v. Maclead, 600 So. 2d 1096, 1098 (Fla. 1992)).
Therefore, the appellate court had no jurisdiction to consider the appeal by the State. 227

F. Legislation and Rule Changes

The Florida Legislature did not make many changes in the juvenile code this year relating to juvenile justice. However, one important change is in the area of the transfer of a child for prosecution as an adult at section 39.052. 228 A new subsection (f) requires the State Attorney to file an information if a child, regardless of age at the time of the alleged offense, is alleged to have committed a theft of a motor vehicle which, while the child is in possession of the stolen vehicle, causes serious bodily injury or death to a person who is not involved in the underlying offense. 229 In other words, the legislature has decided that a child of any age shall be treated as an adult for criminal trial purposes whenever there is a vehicular theft resulting in serious bodily injury or death. This continues the clear trend in the Florida Legislature to deal with juveniles as adults rejecting either the medical model or the restorative justice model of the juvenile court. The statute became law without the Governor's approval on May 25, 1996, to become effective on October 1, 1996. 230

A second change in the criminal law makes it unlawful for any student under eighteen in any school to smoke tobacco in, on, or within 1000 feet of school property between 6:00 a.m. and midnight. 231 The maximum penalty is twenty-five dollars or fifty hours of community service or completion of an anti-tobacco program. 232

In Amendment to Florida Rule of Juvenile Procedure 8.100(a), 233 the Supreme Court of Florida recently ruled on a proposed amendment to the Florida Rules of Juvenile Procedure. 234 The amendment was to allow a pilot project, which would utilize electronic audio-visual devices during juvenile detention hearings, as is done in adult criminal cases. 235 Over the dissents of

227. Id.
228. Ch. 96-234, § 1, 1996 Fla. Laws 627, 627 (amending FLA. STAT. § 39.052(3)).
229. Id. § 1, 1996 Fla. Laws at 629 (creating FLA. STAT. § 39.052(3)(a)(f).
230. Id. §§ 1, 2, 1996 Fla. Laws at 630.
231. Ch. 96-217, § 1, 1996 Fla. Laws 588, 588 (to be codified at FLA. STAT. § 386.212(1)).
232. Id. § 1, 1996 Fla. Laws at 588 (to be codified at FLA. STAT. § 386.212(3)).
233. 667 So. 2d 195 (Fla. 1996).
234. Id. at 197.
235. Id. at 196.
Justices Anstead and Kogan,236 the court approved a one year pilot program to allow juveniles to attend detention hearings via audio-video devices authorized by the chief judge in each of the petitioning circuits.237 Justice Anstead objected, explaining that the juvenile court’s role is unique in that the focus is on helping children and not on the adversarial system’s usual fixation on winning.238 Justice Anstead also cited to the comments and recommendations of the Florida Bar Juvenile Court Rules Committee which opposed the change in the rule on grounds of due process and evidentiary entitlements.239 In sum, Justice Anstead argued in favor of in-person hearings contending that both good public policy and constitutional and statutory protections mitigated against audio-visual detention hearings.240

III. DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS

A. Criminal Child Abuse and Neglect

In 1993, the Florida Legislature introduced section 827.05 which created a misdemeanor criminal offense proscribing negligent treatment of children.241 In State v. Mincey,242 the Supreme Court of Florida held that the statute was unconstitutional.243 The court relied upon its 1977 decision in State v. Winters,244 in which it had ruled that a similar negligent treatment of children statute was unconstitutionally vague, indefinite, and overbroad.245 The Mincey court found that the new statute made several changes by adding some language to the old law but that it did not clarify the kind of conduct to be prohibited.246 As a result, the changes did not correct the vagueness problem recognized in the Winters decision which was the failure to give parents and others susceptible to child abuse charges fair notice of the type of behavior which would subject them to criminal sanctions.247

236. Id. at 197–98 (Anstead & Kogan, JJ., dissenting).
237. Id. at 197.
238. Amendment, 667 So. 2d at 198 (Anstead, J., dissenting).
239. Id. at 197 n.3.
240. Id. at 197–98 nn. 3–4.
241. FLA. STAT. § 827.05 (1993).
242. 672 So. 2d 524 (Fla. 1996).
243. Id. at 526.
244. 346 So. 2d 991 (Fla. 1977).
245. Id. at 994.
246. Mincey, 672 So. 2d at 526.
247. Id.
B. Dependency Issues

The Florida courts have held that a finding of dependency can be made against one parent and not the other. The question before the appellate court in *Department of Health and Rehabilitative Services v. P.H.*, 248 was whether a finding of dependency can be predicated upon proof of neglect by only one parent. 249 The court of appeal held that it could 250 although the opinion is unclear in several respects. The trial court had found that a prima facie case of present neglect had been proved as to the mother but not as to the father. 251 The trial court then decided that an adjudication of dependency required proof of current or prospective abuse, neglect, or abandonment, as to both parents. 252 Thus, the court dismissed the petition for dependency. 253 The appellate court quite properly said that this was error. 254 The *Florida Statutes* can be read to allow a finding of dependency by one parent. For example, the juvenile code provides six different grounds for a finding of dependency including: 1) abandonment, abuse, or neglect; 2) surrender for adoption; 3) voluntary placement and failure to comply with a case plan; 4) voluntary placement for the purpose of subsequent adoption; 5) lack of a parent, legal custodian, or responsible adult relative to provide supervision and care; and 6) a substantial risk of imminent abuse or neglect by the parent, parents, or custodian. 255 The statute speaks in the singular and plural. At several points in the section of the law defining dependent children, reference is made to parents in the plural. Furthermore, at another section of chapter 39 regarding the filing of petitions for dependency, the statute currently provides that the petition need not contain allegations of acts or omissions by both parents. 256 However, what seems to have happened in the *P.H.* case is that the non-custodial father failed to accept responsibility for the protection, maintenance, and care of his children and failed to request custody of the children despite being apprised of the mother’s neglect. Thus, the appellate court concluded that HRS presented a prima facie case with

249. *Id.* at 1377.
250. *Id.* at 1379.
251. *Id.* at 1377.
252. *Id.*
253. *P.H.*, 659 So. 2d at 1377.
254. *Id.* at 1379.
255. See *FLA. STAT.* § 39.01(14).
respect to the father's neglect and prospective neglect of the children.\textsuperscript{257} Thus, there appears to have been neglect by both parents in the opinion of the appellate court.\textsuperscript{258} Then and it is unclear why, the court concluded that a finding of dependency as to a second parent can be predicated upon proof of neglect by one parent.\textsuperscript{259} If all the appellate court meant by this statement is that there can be a finding of dependency as to one parent and there need not be a finding of dependency as to both parents, then the opinion makes sense. The prior case law cited in the \textit{P.H.} opinion supports the proposition that a finding of neglect can be made against one parent but not the other.\textsuperscript{260} But what if the court is saying that a finding of dependency as to one parent can be transferred to a second parent without an independent basis of dependency being found as to the second parent. Then, clearly, such a holding constitutes a denial of due process. Here the dependency petition alleged that the father was unable to protect the children, and neither parent provided emotionally or financially for the children. This would give adequate notice to the father and could allow the trial court, as well as the appellate court, to conclude that there was a prima facie case with respect to the father's neglect and prospective neglect of the children.

In an analogous situation, a mother brought a writ of certiorari challenging a circuit court order approving a performance agreement which included tasks related to a child who had not been adjudicated dependent. The appellate court in \textit{J.V. v. Department of Health and Rehabilitative Services},\textsuperscript{261} held that it was error to include obligations related to a new baby who had not been the subject of the dependency proceeding in a performance agreement.\textsuperscript{262} The court noted that the \textit{Florida Statutes} require that the problems or conditions which are the basis for the adjudication of dependency are to be included in the performance agreement\textsuperscript{263} referred to as a plan under current law. The court further noted that the agreement must be designed to address the facts and circumstances upon which the court based

\begin{footnotes}
\footnote{257. \textit{P.H.}, 659 So. 2d at 1379.}
\footnote{258. \textit{Id.}}
\footnote{259. \textit{Id.}}
\footnote{260. \textit{See C.F. v. Department of Health and Rehabilitative Servs.}, 649 So. 2d 295, 296 (Fla. 1st Dist. Ct. App. 1995) (holding that dependency can be found as to independent acts by each parent); \textit{In re L.S.}, 592 So. 2d 802, 802 (Fla. 4th Dist. Ct. App. 1992) (recognizing that a dependency adjudication can be against one parent based upon the amendment to section 39.01(10) of the \textit{Florida Statutes} in 1990 to include the single parent).}
\footnote{261. 661 So. 2d 1263 (Fla. 1st Dist. Ct. App. 1995).}
\footnote{262. \textit{Id.} at 1265.}
\footnote{263. \textit{Id.} at 1264 (citing FLA. STAT. § 39.451(3)(d) (1993)).}
\end{footnotes}
the finding of dependency in involuntary placements. In J.V., the appellate court concluded that the problems which gave rise to the dependency were in no way related to the new baby. In addition, the court appears to have concluded that the new baby had not been declared dependent. Thus, Padgett v. Department of Health and Rehabilitative Services, the Supreme Court of Florida case which held that proof of abuse or neglect as to one child may form the basis for an adjudication as to the parents' rights to another child, was inapposite. In J.V., there had been no effort to declare the new baby dependent. Thus, for both reasons, the appellate court quashed the order approving the performance agreement in part to the extent that the tasks included those related solely to the unadjudicated child.

Since the Supreme Court of Florida opinion in Padgett, cases have regularly come to the appellate courts on the issue of the proper interpretation of the doctrine of "prospective neglect." The test for prospective neglect was recently employed by the appellate court in Denson v. Department of Health and Rehabilitative Services over a dissent demonstrating the factual difficulties inherent in the test. In Denson, the father had been adjudicated as having sexually abused a child. Based on that finding, a dependency adjudication was made as to three other stepchildren. The appellate court in Denson held that under Padgett there must be a two-part finding that first, there was proof of neglect or abuse of another child and second, the child who was the subject of the current proceeding is at "substantial risk" of suffering imminent abuse or neglect if left in the custody of the parent. The showing is based on proof that the parent suffers from a condition that makes the prospect of future abuse or neglect of the other child highly probable. The dissent simply stated that the respon-

264. Id. (citing Fla. Stat. § 39.451(6)(b)(5)).
265. Id. at 1265.
266. 577 So. 2d 565 (Fla. 1991).
267. J.V., 661 So. 2d at 1265 (explaining why Padgett does not apply).
268. Id.
270. 661 So. 2d 934 (Fla. 5th Dist. Ct. App. 1995).
271. Id. at 936 (Dauksch, J., dissenting).
272. Id. at 935.
273. Id. See also Richmond v. Department of Health and Rehabilitative Servs., 658 So. 2d 176 (Fla. 5th Dist. Ct. App. 1995); Palmer v. Department of Health and Rehabilitative Servs., 547 So. 2d 981 (Fla. 5th Dist. Ct. App.), cause dismissed, 553 So. 2d 1166 (Fla. 1989).
dent father was a proven molester and the evidence was sufficient to support
the determination of the trial court. 274

The Florida courts have held on a number of occasions that the trial
court's ability to order HRS to pay for various services in dependency
proceedings is quite limited. The issue came up again this year in Department of Health and Rehabilitative Services v. Platt. 275 In Platt, as part of a
dependency proceeding the court on its own motion ordered each of the
parents to submit to a psychological evaluation within thirty days but failed
to articulate who was to pay for such evaluations. 276 When the psycholo-
gist's bill remained unpaid the court ordered HRS to make payment.
Relying upon earlier case law which appeared to have been on point, 277 and
its further findings of an absence of specific statutory authority, and a
constitutional right on the part of the parent to such services, the court held
that the parent, and not HRS, is responsible for the payment of the serv-
ces. 278 The court did not answer the question of whether HRS is responsible
for the obligation if a parent is found to be indigent following a hearing on
that issue.

Another dependency related issue going to the limits of authority of the
court involves the question of whether the court may require a mother who
had given birth to three cocaine dependent children to undergo bi-monthly
pregnancy testing. In T.H. v. Department of Health and Rehabilitative
Services, 279 the appellate court held that, while it shared the concern of the
trial court about the impact of drug use during pregnancy, and that, while it
agreed that exposure to drugs is of great public and legal concern, the court
could find nothing in chapter 39 giving the court the authority to enter such
an order. 280

An interesting issue of the jurisdiction of the juvenile division of the
circuit court in dependency matters came up recently in Friedland v. De-

274. Denson, 661 So. 2d at 936 (Dauksch, J., dissenting). For a detailed analysis of the
doctrine of prospective neglect, as applied in Padgett, and the two-part test that has been
developed by the trial court subsequent thereto, see Smith v. Department of Health and Rehabilitative Servs., 665 So. 2d 1153 (Fla. 5th Dist. Ct. App. 1996) (Sharp, J., dissenting).
275. 675 So. 2d 141 (Fla. 5th Dist. Ct. App. 1996).
276. Id. at 141.
277. See Department of Health and Rehabilitative Servs. v. Ortiz, 627 So. 2d 124 (Fla.
5th Dist. Ct. App. 1993). See also In re J.W., 591 So. 2d 1048 (Fla. 1st Dist. Ct. App. 1991);
(1994) (discussing Ortiz).
278. Platt, 675 So. 2d at 142.
279. 661 So. 2d 403 (Fla. 1st Dist. Ct. App. 1995).
280. Id. at 404.
partment of Health and Rehabilitative Services. In that case, upon the dismissal of a dependency petition with prejudice, the trial court did not order the children to be returned home. One child traveled to Massachusetts to reside with his maternal aunt while the other returned home. The parents brought a habeas corpus petition seeking enforcement of the dismissal and the trial court concluded it had no jurisdiction. HRS argued that the court lacked jurisdiction to order return of the child because of the dismissal. The appellate court held that the trial court had inherent jurisdiction to impose its own orders, that the trial court failed to provide for terminating its jurisdiction in the order, and that the order could have no other purpose but to authorize return of the child to the parents. Accordingly, the appellate court reversed.

C. Right to Counsel Issues

In prior surveys, this author has urged that Florida’s statute limiting the right to counsel for parents in dependency proceedings be amended to provide free counsel to indigent parents in all dependency proceedings as is done in other states. The right to counsel section of the Florida Statutes provides that a poor parent is not entitled to a lawyer free of cost in a dependency case, although he or she must be notified of the right to counsel, and if termination is likely, a lawyer at no cost shall then be appointed. Florida does provide an absolute right to counsel, including counsel for an indigent parent in all termination of parental rights cases, by statute. This non-absolute right to counsel system in dependency proceedings was adopted by the Supreme Court of Florida in In re D.B. in 1980, when the court held that counsel shall be provided in a dependency case only “where permanent termination or child abuse charges might result.” For the past

281. 661 So. 2d 1286 (Fla. 4th Dist. Ct. App. 1995).
282. Id. at 1287.
283. Id.
284. Id.
285. See Dale, supra note 277, at 144.
288. 385 So. 2d 83 (Fla. 1980).
289. Id. at 91.
fifteen years, the trial courts have had ongoing and repeated problems complying with this imprecise test.\textsuperscript{290}

\textit{Wofford v. Eid}\textsuperscript{291} is a recent example of this problem. In that case, HRS filed a petition for adjudication of dependency and several hearings were held, culminating in a dispositional order adjudicating the child dependent. At all these hearings, the court advised the mother of the right to seek counsel. At a subsequent hearing approving a case plan, the court did not advise the mother of her right to counsel. Nor did it do so at several subsequent hearings. Ultimately, HRS filed a petition for termination of parental rights. At an initial hearing on termination, the trial court conducted the hearing without appointing counsel and without advising the mother of her right to counsel but thereafter did appoint counsel. The trial court subsequently became concerned that the mother had not received adequate notice of her right to counsel at prior hearings and entered an order dismissing HRS’ petition for termination of parental rights on the basis of lack of advice of her right to counsel.\textsuperscript{292} The appellate court affirmed the trial court’s ruling that the mother had not been afforded an appropriate level of due process protection regarding the right to counsel and on that basis affirmed the dismissal of the petition.\textsuperscript{293} However, to the extent that the termination of parental rights petition was premised upon grounds wholly independent of the constitutionally flawed dependency proceeding, in which there was no counsel, the appellate court reversed, thus allowing the proceeding to continue.\textsuperscript{294}

The appellate court’s discussion of the failure to appoint counsel in \textit{Wofford} is significant. The court held that whenever a dependency petition states a ground for a finding of dependency contained in section 39.464(1)(d) involving “egregious” conduct by the parent that endangers the life, health, or safety of the child or the child’s sibling, such an allegation generates potential for the ultimate termination of parental rights.\textsuperscript{295} Therefore, counsel must be appointed and the failure to do so is reversible error.\textsuperscript{296}

\begin{itemize}
\item \textsuperscript{290} See Dale, \textit{supra} note 277, at 144.
\item \textsuperscript{291} 671 So. 2d 859 (Fla. 4th Dist. Ct. App. 1996).
\item \textsuperscript{292} \textit{Id.} at 861.
\item \textsuperscript{293} \textit{Id.} at 863.
\item \textsuperscript{294} \textit{Id.}
\item \textsuperscript{295} \textit{Id.} at 862.
\item \textsuperscript{296} \textit{Wofford}, 671 So. 2d at 862.
\end{itemize}
terms within twelve months generates a termination proceeding, the consequences are the same as a dependency adjudication containing findings of egregious abuse. 297 Here, too, counsel must be appointed. Thus, the holding in Wofford conveys that pursuant to two of the chapter 39 grounds for termination of parental rights, counsel must be appointed at the dependency stage. 298 It remains to be seen whether other district courts of appeal or trial courts will follow this holding. As noted previously, another simpler and more expedient resolution of this entire matter is to have an absolute right to counsel established statutorily in Florida. Asking the appellate courts to parse the statute for entitlements and evaluate diverse cases on their facts at a later date is hardly an efficient way to protect the constitutional rights of parents.

Even when the court properly notifies the parent about the right to counsel in a dependency proceeding the parents' waiver of counsel must be made knowingly, intelligently, and voluntarily. 299 The issue of how to evaluate waiver of counsel came up recently in McKenzie v. Department of Health and Rehabilitative Services. 300 In that case, at arraignment, the mother initially consented to the petition. But when questioned by the court to determine if she understood that she was giving up the right to an attorney, she then requested an attorney. At the end of the arraignment, she requested that an attorney be appointed and one indeed was appointed to represent her at future hearings. The appellate court noted that the mother displayed hesitation and confusion when entering her plea of consent. 301 She requested counsel twice during the arraignment because she did not understand the nature of the dependency hearings, and specifically, she did not understand the right that she was relinquishing. The court concluded that once the mother stated that she did not understand the proceedings and that she was confused, the inquiry as to consent should have stopped and an attorney should have been appointed immediately to represent her. 302

An important question in termination cases is whether the parent ought to have the right to counsel on appeal. Termination cases are civil in nature, not criminal. Therefore, the right to counsel in a criminal appeal, as enunciated in...
ated by the United States Supreme Court in *Anders v. California*, would not appear to apply. In *Ostrum v. Department of Health and Rehabilitative Services*, the attorney for an appellant father whose parental rights had been terminated, filed a motion on appeal to withdraw accompanied by an *Anders* brief. The father had been convicted of two counts of capital sexual battery of his own minor children and sentenced to two life terms with minimum mandatory terms of twenty-five years on each count to run consecutively. Thus, he would not be released from prison until after his children reached the age of majority. HRS brought a termination proceeding and counsel was appointed for the father. The attorney presented no evidence, and the appellant father declined an opportunity to be present at the hearing. In ruling on the withdrawal motion, the appellate court held first that while parents are entitled to appointed counsel at the public’s expense in termination cases, the right is generated by the Due Process Clause of the Fourteenth Amendment and not the Sixth Amendment. Therefore, *Anders* does not apply because it only applies in criminal cases. The court held that on a practical level the *Anders* protection, which involved the filing of a brief by counsel, detailing the proceedings below with a discussion of where error might be suggested and why none actually appears, is unnecessary in light of the need for the children to have finality as soon as possible. Thus, the court held that all that will be necessary in a termination case is for appellant’s counsel to file a motion seeking leave to withdraw as counsel for the parent whose rights had been terminated. The appellant parent will then be given time in which to argue the case without an attorney. If the parent then fails to file a brief in a timely fashion, the court will conclude that the parent does not wish to prosecute the appeal and the court will dismiss for failure to prosecute. If a brief is filed, the court will review it and if it finds no preliminary basis for reversal, the court will summarily

303. 386 U.S. 738 (1967).
304. 663 So. 2d 1359 (Fla. 4th Dist. Ct. App. 1995).
305. *Id.* at 1361.
306. *Id.*
307. *Id.*
308. *Id.*
309. *Ostrum*, 663 So. 2d at 1361.
310. *Id.* The parent could obtain new counsel although the court does not mention this alternative.
311. *Id.*
affirm pursuant to rule 9.315. Otherwise, the case will proceed as any ordinary appeal.

D. Guardian Ad Litem Issues

Previous surveys have discussed the fact that a child does not have an absolute right to counsel in a dependency proceeding in Florida. However, because Florida participates in the Federal Child Abuse Prevention and Treatment Act of 1974 ("CAPTA"), the State must provide a guardian ad litem on behalf of children in dependency proceedings. The precise role of the guardian ad litem and the procedures under which one operates have been the subject of substantial appellate court analysis in recent years. The duties of the guardian ad litem are governed by an amalgam of statutes, court rules, unpublished supreme court orders, and case law.

In a significant and rather startling opinion, the Fifth District Court of Appeal in Fisher v. Department of Health and Rehabilitative Services, recently held that the trial court did not commit fundamental error when the guardian ad litem appointed for the child failed to serve the entirety of the case. The appellate court found that after the voluntary guardian resigned, the trial court had entered repeated orders attempting to have a guardian ad litem appointed by the Guardian Ad Litem Program; however, no guardian was ever appointed. Furthermore, the court noted that the former guardian

312. Id.
313. Id.
320. 674 So. 2d 207 (Fla. 5th Dist. Ct. App. 1996).
321. Id. at 208.
322. Id.
ad litem did testify at the termination hearing between six and seven months after resigning, and the court recommended that parental rights be terminated. The court found no fundamental error. The court reasoned that there was an absence of a showing that the child's rights were not adequately protected by the court, HRS, or the foster parents, and that the guardian ad litem had represented the interests of the child through a substantial portion of the case. The appellate court concluded that the continued service of the guardian would not have changed the outcome of the case.

The court in Fisher relied heavily on a 1994 opinion from the Second District Court of Appeal in In re E.F., in which the court held that a trial court does not commit fundamental error if it attempts but is unable to locate a volunteer guardian ad litem. In E.F., a mother appealed from an order terminating parental rights since the child never received the assistance of a guardian ad litem. The appellate court upheld the termination in the absence of a guardian ad litem because, as it explained:

Although both the legislature and the supreme court have mandated the use of guardians ad litem in parental termination proceedings, our state has never implemented a program to provide an adequate supply of guardians. The program is primarily staffed by volunteers. At a time when the supply of [guardians] is exceeded by the demands of children who would benefit from guardians, we cannot hold that a trial court commits fundamental error if it attempts, but is unable, to locate a volunteer guardian ad litem.

There are several problems with the holdings in Fisher and E.F. First, the federal statute under which Florida is obligated to provide a Guardian Ad Litem Program is not a discretionary statute. It requires appointment of guardians ad litems. Furthermore, while the Florida courts have not held that a child has a right to counsel in a dependency or termination proceeding,

323. Id.
324. Id.
325. Fisher, 674 So. 2d at 208.
326. Id.
327. 639 So. 2d 639 ( Fla. 2d Dist. Ct. App. 1994).
328. Id. at 640.
329. Id. at 642.
330. Id. at 640.
they have recognized the significance of advocacy on behalf of the child.\footnote{332. See In re D.B., 385 So. 2d 83 (Fla. 1980); Simms v. State, 641 So. 2d 957 (Fla. 3d Dist. Ct. App. 1994) (recognizing that the significance of the guardian ad litem’s position may differ from that of HRS).}

In addition, the Florida Statutes do not render the appointment and involvement of the guardian ad litem discretionary, but rather, they mandate appointment.\footnote{333. See FLA. STAT. § 39.465(2)(a).} The court’s rejection of federal and state mandatory statutory provisions is without explanation other than that no harm resulted. This rejection of the mandatory obligation does not square with other case law, where mandatory obligations have been enforced even though their enforcement would not affect the outcome of the case.\footnote{334. See discussion supra p. 208 (concerning A.P. v. State, 666 So. 2d 211 (Fla. 2d Dist. Ct. App. 1995)).}

In addition, the holding in Fisher is hard to apply in practice. The opinion suggests that if the trial court concludes that a guardian ad litem will not be of any benefit to the child and the result in all likelihood will be appropriate in any event, it need not worry about a guardian ad litem appointment. This is a very difficult test for the appellate court to evaluate, after the fact, on appeal. There is no standard of review. Furthermore, the absence of information in the record which the guardian ad litem would generate cannot be opined by the appellate court because there will rarely be anything in front of it in the record on appeal.

Finally, in Gordon v. Department of Health and Rehabilitative Services ("Gordon II"),\footnote{335. 674 So. 2d 840 (Fla. 3d Dist. Ct. App. 1996).} the appellate court approved the trial court’s entry of a "cost judgment"\footnote{336. FLA. STAT. § 57.031 (1995).} in favor of the guardian ad litem as prevailing party and against the parents in a dependency and termination of parental rights case.\footnote{337. Gordon, 674 So. 2d at 948 (Fla. 3d Dist. Ct. App. 1994).} The Third District Court of Appeal had previously held in the same case in an earlier reported decision, Gordon v. Department of Health and Rehabilitative Services ("Gordon I"),\footnote{338. 637 So. 2d 948 (Fla. 3d Dist. Ct. App. 1994).} that Florida law did not require the court to assess costs in such cases against HRS.\footnote{339. Id. at 948-49 (citing FLA. STAT. § 57.041 (1993)).} The court held in Gordon II that the trial court did have discretion to enter such an order against the parents on the basis of the prior ruling in Gordon I, and that it had the discretion to enter such an order against HRS.\footnote{340. Gordon, 674 So. 2d at 841 (citing Department of Health and Rehabilitative Servs. v. A.F., 528 So. 2d 87 (Fla. 5th Dist. Ct. App. 1988)).} The court noted that by
statute Florida provides that financially able parents shall pay the costs of guardian ad litem services.\footnote{341}

E. Termination of Parental Rights

The Fifth District Court of Appeal recently ruled that adjudicatory hearings, even in the context of termination of parental rights, must comply with the rules of evidence applicable in civil cases. In \textit{Lewis v. Department of Health and Rehabilitative Services},\footnote{342} the actions of the trial court were startling. At the end of an evidentiary hearing for termination of parental rights, the court, unbeknownst to the mother, ordered the guardian ad litem and HRS to make unannounced visits to the home where the mother had been staying.\footnote{343} The mother led a nomadic life style, and the court was concerned about her residence and employment. The guardian ad litem and HRS made the visit, took photographs, and filed supplemental reports which concluded that the home was not a good environment for the mother and child. The reports were not provided to the mother or her attorney until the day of the final adjudicatory hearing. Incredibly, the court did not allow the mother to offer testimony to refute the contents of the report or to cross examine the guardian ad litem or the HRS counselor because, as the appellate court described it, the trial court did not want to reopen the case.\footnote{344} The trial court then entered a detailed order terminating parental rights, relying upon the supplemental report.\footnote{345}

The mother appealed, arguing among other things that the adjudication and disposition should be reversed because the trial court took into consideration supplemental reports and photographs and did not allow her an opportunity to cross examine.\footnote{346} The appellate court reversed first on the basis of the statute which requires a written guardian ad litem report to be provided to all parties and the court at least forty-eight hours before the dispositional hearing.\footnote{347} The appellate court noted the obvious purpose is to allow the parents to contest the report.\footnote{348} Second, the use of hearsay evidence to terminate parental rights denied the mother due process.\footnote{349} Under

\footnote{341. \textit{Id.}; see \textit{FLA. STAT.} § 415.508(2) (1995).}
\footnote{342. 670 So. 2d 1191 (Fla. 5th Dist. Ct. App. 1996).}
\footnote{343. \textit{Id.} at 1193.}
\footnote{344. \textit{Id.}}
\footnote{345. \textit{Id.}}
\footnote{346. \textit{Id.}}
\footnote{347. \textit{Lewis}, 670 So. 2d at 1193; see \textit{FLA. STAT.} § 39.465(2)(b)(1).}
\footnote{348. \textit{Lewis}, 670 So. 2d at 1193.}
\footnote{349. \textit{Id.}}
Florida law during the adjudicatory hearing, a trial court is required to apply the "'rules of evidence used in civil cases.'" The evidence has to be admissible. This evidence was rank hearsay. Furthermore, it is a denial of due process to prohibit the right to cross examine. The mother's second argument on appeal, which the appellate court did not have to reach, was the denial of the right to counsel. It turns out that at the dispositional hearing the mother's lawyer telephoned the court to say she was unavoidably detained and asked that the hearing be continued until she could arrive. The trial court had conducted the hearing without the mother's attorney and entered an order of disposition. Enough said.

In a recent opinion from the Second District Court of Appeal, the question was whether the Florida Statutes allow for termination of parental rights of either parent where only one of the parents commits abuse. Conceptually, the issue is the same as that raised in Department of Health and Rehabilitative Services v. P.H. In In re A.C., a termination proceeding against two parents was based upon allegations that the mother had shaken the child and caused significant head injuries to the youngster. The trial court found that the father was at work at the time and thus, the termination petition as to him was denied. The trial court then held that it could not terminate parental rights when the severe and continuing abuse or neglect and/or egregious abuse or neglect was found to be committed by only one parent. The appellate court held that chapter 39 does not preclude institution of a termination proceeding against one parent where the other parent would be a satisfactory replacement. The language of the statute provides for termination where "[t]he parent or parents" have engaged in severe or continuing abuse or neglect or egregious abuse. The court therefore reversed.

351. Id.
352. Id.
353. Lewis, 670 So. 2d at 1194.
354. Id.
355. Id.
359. Id. at 331.
360. Id.
361. Id. at 332.
362. Id. at 331 (quoting Fla. Stat. § 39.464(3) (Supp. 1992)).
363. A.C., 660 So. 2d at 332.
The Florida termination of parental rights statute contains five items which must be established by clear and convincing evidence before there can be an adjudication that parental rights should be terminated. These items are: 1) the child was adjudicated dependent; 2) a dispositional order was entered; 3) the parent was informed of his right to counsel in the dependency proceeding; 4) the best interests of the child would be served by granting the petition; and 5) at least one of the grounds in section 39.464 of the Florida Statutes has been met.

The issue before the court in Department of Health and Rehabilitative Services v. N.T. was whether the failure to incorporate findings of fact in the dependency adjudication requires the court to dismiss the subsequent termination proceeding. The appellate court held that the technical insufficiency of a dependency order to set forth findings of fact is not reversible error in a termination case. The court held that the adjudication of dependency requirement is satisfied by the mere fact of adjudication. There is nothing in the statutory language that precludes termination of parental rights when the dependency order fails to set forth factual findings as to the basis for dependency.

F. Appellate Issues

The Florida courts have held that an adjudicatory order in a dependency proceeding is not appealable. It is premature, and an appeal in a dependency case must come from a dispositional order. In a recent decision from the Fifth District Court of Appeal in Moore v. Department of Health and Rehabilitative Services, the court held that because the statutory scheme for termination of parental rights contemplates entry of two orders, the second or dispositional order is the final order for purposes of appeal.

365. Id.
367. Id. at 1148.
368. Id.
369. Id.
370. Id.
371. See In re T.M., 622 So. 2d 589 (Fla. 1st Dist. Ct. App.), review granted, 630 So. 2d 1103 (Fla. 1993); see also In re T.M., 614 So. 2d 561 (Fla. 1st Dist. Ct. App. 1993).
372. 664 So. 2d 1137 (Fla. 5th Dist. Ct. App. 1995).
373. Id. at 1139.
G. Legislation and Rule Changes

The Supreme Court of Florida amended the *Florida Rules of Juvenile Procedure* in the fall of 1995 to make changes that comply with language in the statutes governing performance agreements in dependency cases. The statute, and now the court rules, provide for the development and implementation of "case plans" previously known as "performance agreements." The court also changed the procedure for initiating petitions for termination of parental rights so that they may be filed in time and that the guardian ad litem is listed among the entities and persons who may file a petition. The court rules also contain a new provision providing that in termination of parental rights cases, the parties may stipulate, or the court may order that parties or relatives of the parent whose rights have been terminated may maintain contact with the child.

IV. CONCLUSION

Extensive changes to the *Florida Juvenile Code* in both the juvenile delinquency and child dependency areas, which have been the norm in the Florida Legislature until last year, did not take place this year. Thus, the courts will have an opportunity to analyze statutes which have been on the books for two years without dramatic change. This should be helpful.

Unfortunately, the appellate courts have had to spend much of their time correcting simple, yet repeated errors by the trial courts. However, the appellate courts have also rendered valuable services interpreting sections of chapter 39 with specific emphasis on the dispositional stage of delinquency cases and termination of parental rights. A particularly difficult area, as yet not fully developed by the appellate courts, involves questions of the right to counsel for parents in dependency and termination proceedings and the role of the guardian ad litem in the same proceedings.

Finally, although the Florida Legislature was busy restructuring Part IV of chapter 39 dealing with families in need of services and children in need

374. See FLA. R. JUV. P. 8.400-.410.
375. Id. at 8.500(b)(1).
376. Id. at 8.530(d).
of services, there has been virtually no reported appellate case law in the field. Indeed, there was nothing to report this past year.

377. See 1996 Fla. Laws ch. 96-369 (amending Fla. Stat. § 39.426(2)); 1996 Fla. Laws ch. 96-398 (amending Fla. Stat. § 39.42(1), (5), (7)). The changes in chapter 96-369 of the Laws of Florida deals with subsection two of section 39.426 of the Florida Statutes entitled “Case staffing; services and treatment to a family in need of services.” The changes amended the composition of the case staffing committee and provided that the committee may include a supervisor of the Department’s contracted provider, a representative from the area of substance abuse, the alternative sanctions coordinator, and a representative from the child’s school. See ch. 96-369, § 4, 1996 Fla. Laws 2128, 2133.

Additionally, chapter 96-398 of the Laws of Florida restructured the children in need of services and families in need of services section of chapter 39 by identifying the roles of the DJJ and HRS (effective January 1997, the Department of Children and Family Services) as they apply to preserving the unity and integrity of the family and in serving this country’s youth population. See ch. 96-398, §§ 19–34, 1996 Fla. Laws 2505, 2539–53.