

Florida's
JUVENILE DELINQUENCY
BENCHBOOK
November 2016



Office of the State Courts Administrator

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INTRODUCTION

Education enhances the knowledge and skills of the judiciary and therefore contributes to the administration of justice. To further assist in the administration of justice, the Office of the State Courts Administrator, Office of Court Improvement, has developed this benchbook to address juvenile delinquency in Florida. The benchbook was developed to assist both new and experienced judges in Florida who are assigned to hear juvenile delinquency cases.

The benchbook is organized into a 'General Topics' section followed by chapters corresponding with the juvenile delinquency hearings provided for in Chapter 985. Each hearing chapter also has a corresponding hearing benchcard. The General Topics section introduces many important ancillary issues that will be encountered by the court. The citations in this benchbook have been abbreviated to improve text flow. For example, a citation to section 985.01, Florida Statutes, will appear as §985.01 and a citation to the Florida Rules of Juvenile Procedure 8.000 will appear as Rule 8.000.

Our office intends to update and supplement this book periodically. Accordingly, we invite suggestions regarding topics that need more detailed treatment and ways that this publication can be made more useful to judges hearing delinquency cases. Please provide comments and suggestions to Doris Laing in the Office of Court Improvement, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1900, laingd@flcourts.org, or 850.410.1889.

Upon request by a qualified individual with a disability, this document will be made available in alternate formats. To order this document in an alternate format, please contact the Office of Court Improvement, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1900. Phone: 850.414.1507.

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DELINQUENCY CASE FLOW CHART

A digital copy of the Delinquency Flow Chart is not available in this format, please view the [PDF version](#) of this document.

OVERVIEW OF THE FLORIDA JUVENILE DELINQUENCY PROCESS

The juvenile delinquency process in Florida is governed primarily by Chapter 985, Florida Statutes. The circuit courts have exclusive original jurisdiction over proceedings in which a child is alleged to have committed a delinquent act or violation of law. A child is defined as someone less than 18 years of age. The Florida Department of Juvenile Justice (DJJ) is the agency charged with administering the juvenile justice system in Florida. DJJ makes recommendations to the State Attorney, who then decides whether to proceed judicially or non-judicially. Generally, children that are charged by law enforcement with delinquent acts or violations of law are taken to a juvenile assessment center (JAC) for intake screening and to assess whether some type of detention is necessary. In counties that do not have an assessment center, the law enforcement officer calls a DJJ “on-call screener” to assess the juvenile’s risk and determine if detention is necessary. If detention is necessary, the child will be delivered to the nearest JAC or DJJ facility. With some minor offenses, law enforcement may release the child to a parent or guardian and forward the charges to the local clerk of court and DJJ Probation Office.

Intake and Referral

When a child is turned over to DJJ, or an on-call screener is contacted, a Juvenile Probation Officer (JPO) gathers information and reviews the case. As part of the intake process, the JPO completes a standardized Risk Assessment Instrument (RAI). DJJ makes the initial determination as to whether to release or detain the child based upon a risk assessment that includes the results of the RAI.

Detention Hearing

If DJJ decides to detain the child, §985.26 requires a detention hearing before the circuit court within 24 hours of being taken into custody. This hearing is analogous to the first appearance hearing in criminal law. The court must determine whether there is probable cause that the child committed a delinquent act or violation of law and whether further detention is necessary. A court cannot further detain a child unless the court finds the statutory criteria set forth in §985.255 are met. The child is then released or retained in detention pending further proceedings. A child cannot be detained in excess of 21 days without the commencement of an adjudicatory hearing unless an extension for good cause is shown. Some serious offenders can be held in secure detention for up to 30 days. §985.26(2).

Delinquency Petition

If the State Attorney decides to proceed judicially, a delinquency petition will be filed. If the State Attorney decides to proceed non-judicially, the child will be placed into a diversionary program agreed upon by all parties. If the child successfully completes the agreed upon program, the delinquency case is dismissed.

Arraignment Hearing

If a delinquency petition is filed, the next step is an arraignment hearing where the child enters a plea of not guilty, guilty, or nolo contendere. The case then proceeds to either an adjudicatory hearing if the plea was not guilty or a disposition hearing if the plea was either guilty or nolo contendere.

Adjudicatory Hearing

At an adjudicatory hearing, the court must decide whether the child committed a delinquent act or violation of law. The adjudicatory hearing is analogous to the trial in criminal law. If it is found that a delinquent act was committed, the court can withhold adjudication or adjudicate the child delinquent, whereby the case proceeds to disposition.

Disposition Hearing

The disposition hearing is analogous to sentencing. The disposition hearing can immediately follow the adjudication or can be scheduled for a later date depending on whether a predisposition report (PDR) was prepared by DJJ. DJJ submits a predisposition report that contains their recommendations as to how the case should be disposed. The court can deviate from DJJ's recommendations but must make the appropriate written findings in the disposition order. Following any commitment, offenders can be placed on post-commitment supervision such as probation and/or conditional release.

Common Acronyms

DJJ	Florida Department of Juvenile Justice
DCF	Florida Department of Children and Families
JPO	Juvenile Probation Officer
RAI	Risk Assessment Instrument
JAC	Juvenile Assessment Center
PDR	Predisposition Report
UFC	Unified Family Court

General Topics



General Topics

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Appeals

A. Generally

Sections 985.534-985.536 govern the procedure for delinquency appeals. There are two procedures that the trial court may oversee: motion for rehearing and motion for extraordinary relief. Rules 8.130 and 8.140. This section will discuss these two procedures, and provide an overview of the trial court's responsibilities when a party appeals to the appellate level.

B. Motion for Rehearing

After the court has entered a ruling on a pretrial motion, order of adjudication, or order withholding adjudication, any party may move for a rehearing. Rule 8.130(a). The grounds for such a motion include:

- That the trial court erred in the decision of any matter of law arising during the hearing.
- That a party did not receive a fair and impartial hearing.
- That any party required to be present at the hearing was not present.
- That there exists new and material evidence which, if introduced at the hearing, would probably have changed the court's decision and could not with reasonable diligence have been discovered before and produced at the hearing.
- That the court is without jurisdiction of the proceeding.
- That the judgment is contrary to the law and evidence. Rule 8.130(a)(1)-(6).

A motion for rehearing must be made within 10 days of the entry of the order being challenged, and can be made as soon as the court announces its judgment. Rule 8.130(b)(1). If the motion is in writing, it must be "served as provided in these rules for service of other pleadings." Rule 8.130(b)(2).

The court may rule upon the motion immediately. Rule 8.130(b)(1). If the court grants the motion, the court may modify or vacate the order in all or in part and allow additional proceedings as it deems just. Rule 8.130(c)(1). The court may enter a new judgment, and can keep the child in detention pending further proceedings. Rule 8.130(c)(1).

The court may on its own initiative vacate or modify any order, as long as it is done within 10 days of the entry of the order. Rule 8.130(c)(2).

The motion for rehearing will toll the time for the taking of an appeal. Rule 8.130(b)(3).

C. Motion for Extraordinary Relief

The court may, on motion and “upon such terms as are just,” provide a party or party’s legal representative extraordinary relief from an order, judgment, or proceeding. Rule 8.140(a). The court may base such relief on:

- Mistake, inadvertence, surprise, or excusable neglect.
- Newly discovered evidence which by due diligence could not have been discovered in time to move for rehearing.
- Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of any other party.
- That the order of judgment is void. Rule 8.140(a)(1)-(4).

The motion must be made within a reasonable time – for the first three bases, not more than one year after the judgment, order, or proceeding was taken. Rule 8.140(b).

D. Appeal to the Appellate Court

The child or his or her legal parent or guardian may file an appeal at any time between rendition of the final judgment and 30 days following rendition of a written order imposing sentence. Rule 9.140(b)(3). The child may appeal from a judgment based on a no contest plea if the child expressly reserved the right to appeal a dispositive order of the court, identifying with particularity the point of law being reserved. M.N. v. State, 16 So. 3d 280 (Fla. 2d DCA 2009). The failure to preserve an issue for review after the entry of a plea is not a jurisdictional bar but rather a limitation on the issues that can be addressed on appeal. Leonard v. State, So. 2d 114 (Fla. 2000). An issue is not properly preserved for appeal unless there is an express reservation of the right to appeal a particular point of law and the court determines that its prior order on that point was dispositive. T.A.R. v. State, 2 So. 3d 993 (Fla. 2d DCA 2008).

The state may file appeal on a limited number of grounds, Rule 9.145(c), within 15 days of the rendition of the order to be reviewed. Rule 9.140(c)(3).

The taking of an appeal does not operate as supersedeas unless pursuant to a court order. §985.534(3).

An appeal by the state on an order from a pre-adjudicatory hearing will stay the case until the appeal is determined. §985.535(2). If the appellate court determines that the subject matter of the order would materially assist the state in proving its case against another child (not the child in the current case), the appellate court can stay that child’s case until the current appeal is determined. §985.535(2).

While an appeal is pending, the trial court has discretion over whether to release the child or retain him or her in custody. §985.535(2).

When the state appeals from a ruling on a question of law adverse to the state, the appellate court must decide the question. §985.536(2).

Authority of Court over Parents

A. Generally

Parents/guardians are deemed responsible for providing for their children and deterring them from committing delinquent acts. §985.02(6). If the child does commit a delinquent act, the emotional, legal, and financial responsibilities of the parents or guardians with regard to the care, custody, and support of the child continue while he or she is under the care of DJJ. §985.02(6).

B. Nonattendance by a Parent or Guardian

The parents are required to attend hearings if they have been served, and face the possibility of contempt if they fail to obey the summons. §985.319(7). If a diligent search was made and the parents could not be located, an Affidavit of Diligent Search must be filed. Fla. R. Juv. Pro. Form 8.968. The form lists out several search methods that must be performed before filing, including attempting to:

- telephone the parents;
- search the telephone directory for information;
- send a certified letter to the last known address, return receipt requested;
- personally visit the last known address;
- inquire of all of the relatives any information about the parents' whereabouts or current addresses; and
- inquire of federal agencies, mental and physical health facilities, as to the possible location of the parents.

Only after these possibilities are exhausted may the form be filed with the court.

As long as diligent efforts were made to locate and serve the parents, their nonattendance does not bar a detention or arraignment hearing from taking place. Rules 8.010 and 8.015. Further, if the identity or location of the parents is unknown after the diligent search, the court must appoint a Guardian ad Litem for the child, if appropriate. §985.319(7).

The nonattendance by a parent or guardian may require the continuance of an adjudicatory, disposition, restitution, correction of orders, violation of probation, or contempt hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may

be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

C. Costs of Representation

Parents or guardians are responsible for paying costs associated with representation of the child. §985.511. If the child and the parents are indigent, the court shall appoint representation. §985.033(1). If the parents and child are not indigent but refuse to employ counsel, the court shall appoint counsel until counsel is provided. §985.033(3). Costs are imposed as provided by §§27.52 and 938.29.

D. Parenting Skills Course

The court may order the parent or legal guardian of a child adjudicated dependent, a child in need of services, or a child adjudicated delinquent to attend a parenting skills course, accept counseling, or receive other assistance from any other available agency. §985.512. The parents or guardians may also be ordered to participate in such counseling as deemed necessary for the rehabilitation of the child. §985.513(2).

E. Restitution or Community Service

The court, having jurisdiction over a child adjudicated delinquent, may (by an order stating the facts upon which a determination was made):

- Order the child's parent or guardian, along with the child, to render community service in a public service program or to participate in a community works project. The court may order the parents or guardians to perform community service if the court finds that they did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.
- Order the child's parent or guardian to pay restitution in money or in kind for any damage or loss caused by the child's offense. Furthermore, the parent may be responsible for any restitution ordered against the child. The court may retain jurisdiction over the child and parents until the restitution order is satisfied or the court orders otherwise. §985.513(1)(a)&(b).

F. Fees

When a child is placed into secure or nonsecure detention care pursuant to a court order following a detention hearing or adjudicatory hearing, regardless of adjudication, the parents must pay fees as provided in §985.039. §985.514(1)&(2). When the court orders any child to be prosecuted as an adult, the parents must pay fees as provided in §985.039 for the child's commitment to or supervision by the DJJ, §985.514(3), except where the fee is waived or reduced due to significant financial hardship or a finding that the parent was a victim of the child's unlawful behavior and is cooperating with the authorities. §985.039(3)&(4).

Child Adjudicated Not Guilty by Reason of Insanity

A. Advise the Court

If the child named in the petition intends to plead insanity as a defense, the child has to advise the court in writing not less than 10 days before the adjudicatory hearing and must provide the court with a statement of particulars showing as nearly as possible the nature of the insanity expected to be proved and the names and addresses of witnesses expected to prove it. Rule 8.095(b)(1). Once filed, the court may order the child to be examined in accordance with the procedures in Rule 8.095. Rule 8.095(b)(1).

The court, upon good cause showing and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purposes of an examination in accordance with Rule 8.095. Rule 8.095(b)(2). A continuance will toll speedy trial and the limitation on detention pending adjudication. Rule 8.095(b)(2).

B. Not Guilty by Reason of Insanity

If the child is found not guilty by reason of insanity, the court will enter such finding in its judgment. Rule 8.095(e)(1). After a ruling of not guilty by reason of insanity, the court will conduct a hearing to determine whether the child presently meets the statutory criteria for involuntary commitment to a residential psychiatric facility. Rule 8.095(e)(2). If the requirements are met, the court must commit the child to the Department of Children and Families for immediate placement in a residential psychiatric facility. Rule 8.095(e)(2)(A). If the requirements have not been established, the court will order the child to receive recommended and appropriate treatment at an outpatient facility. Rule 8.095(e)(2)(B). If the court determines that treatment is not needed, the court will discharge the child. Rule 8.095(e)(2)(C).

C. Treatment

Commitment to a residential psychiatric facility is governed by chapters 985 or 394, Florida Statutes, except that requests for discharge or continued involuntary commitment must be directed at the court that committed the child. Rule 8.095(e)(2)(D).

If a child is not committed to a residential psychiatric facility and has been ordered to receive treatment at an outpatient facility, and it appears during the course of the ordered treatment,

- that treatment is not being provided or that the child now meets the criteria for hospitalization, the court must conduct a hearing pursuant to subdivision (e)(2) of this rule; or

- that the child no longer requires treatment at an outpatient facility or service, the court must enter an order discharging the child. Rule 8.095(e)(2)(E)(i)-(ii).

D. Review

During the time the child is receiving treatment, either by hospitalization or through an outpatient facility, any party may request the court to conduct a hearing to determine the nature, quality, and need for continued treatment. The hearing must be conducted like the initial involuntary commitment hearing. Rule 8.095(e)(2)(F).

No later than 30 days before reaching age 19, a child still under supervision of the court under this rule must be afforded a hearing. At the hearing, a determination must be made as to whether the child needs continued hospitalization or treatment. If the court determines that continued care is appropriate, involuntary placement proceedings should be initiated under chapter 394, Florida Statutes. If the court determines further care is unnecessary, the child should be discharged. Rule 8.095(e)(2)(G).

Commitments to DJJ

A. Commitment Process

The commitment process begins when a child is brought for intake to the DJJ. §985.14(1). The child is assigned to a juvenile probation officer (JPO) who will assess the child's needs and risks, and determine the most appropriate treatment plan and setting according to the child's needs and risks. §985.14(1). The JPO will prepare a predisposition report, which is presented to the court at the detention hearing §985.14(3)(a).

The court uses the predisposition report, along with other materials and evidence, in the pre-sentencing hearings. If the child is adjudicated delinquent, the court will review DJJ's recommendations for commitment, and, by an order stating the facts upon which the determination was made, order the child into a specified commitment program or level of commitment. §985.441(1). DJJ has four restrictiveness levels depending on the program needs and required supervision of the child, as defined in §985.03(44)(a)-(d): (a) minimum-risk nonresidential, (b) nonsecure residential, (c) high-risk residential, and (d) maximum-risk residential.

A child on probation for a misdemeanor may not be committed to a restrictiveness level other than minimum-risk nonresidential for a misdemeanor offense or a technical probation violation. However, the child could be committed to a nonsecure residential placement if the child had previously been adjudicated or had adjudication withheld for a felony. The child may also be committed to a nonsecure residential placement if the child had previously been adjudicated or had adjudication withheld for three or more misdemeanors within the preceding 18 months. §985.441(2)(a),(b).

B. Restrictiveness Levels

- **Minimum-risk nonresidential.** Programs or program models work with the child who remains in the community and participates at least 5 days per week in a day treatment program. A child assessed and classified for a minimum-risk nonresidential program represents a minimum risk to himself/herself and to public safety, and does not require placement and services in residential settings. A child in this level has full access to, and resides in, the community. However, a child who was found to have committed delinquent acts that involved firearms, that were sexual offenses, or that would have been life felonies or first degree felonies if committed by an adult may not be committed to a program at this level.
- **Nonsecure residential.** Programs at this commitment level are residential but may allow the child to have unsupervised access to the community. Facilities are

either environmentally secure, staff secure, or hardware-secure with walls, fencing, or locking doors. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. A child assessed and classified for placement in programs at this commitment level represents a low or moderate risk to public safety and requires close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or others. Mechanical restraint may also be used when necessary.

- **High-risk residential.** At this commitment level, programs are residential and do not allow the child to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a court for a child who has made successful progress in his or her program in order for him or her to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a vocational program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors. Facilities provide 24-hour awake supervision, custody, care, and treatment of residents. A child assessed and classified for high-risk residential placement requires close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or to others. Mechanical restraint may also be used when necessary. The facility may provide for single cell occupancy.
- **Maximum-risk residential.** Programs at this commitment level include juvenile correctional facilities and juvenile prisons. The programs are long-term residential and do not allow the child to have access to the community. Facilities are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Facilities provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or to others. Mechanical restraint may also be used when necessary. The facility must provide for single cell occupancy, except that children may be housed together during prerelease transition. A child assessed and classified for this level of placement requires close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

Conditional Release and Post-Commitment Probation

A. Conditional Release

Conditional release is “the care, treatment, help, and supervision provided juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.” §985.46(1)(a).

Commitment programs should include rehabilitative efforts for preparing the child for a successful release into the community, §985.46(2)(a), with conditional release transition planning occurring as early in the commitment process as possible. §985.46(2)(b).

Conditional release services are provided by DJJ, and can include:

- Assessing a child placed into a residential commitment program to determine the need for conditional release services upon release from the program;
- Supervising the child when he or she is released into the community from a residential commitment facility;
- Providing counseling and other services as necessary for the child’s family; and
- Assisting the family in their preparations for the return of the child. §985.46(3).

Participation in the educational program by students of compulsory school attendance age is mandatory for a child on conditional release status. §985.46(5). A child of non-compulsory school attendance age who has not received his or her high school diploma or its equivalent must participate in the education program.

§985.46(5). A child who has received a high school diploma or its equivalent and is not employed must, while in the conditional release program, participate in:

- Workforce development or other career or technical education, or
- Attend community college or a university. §985.46(5).

B. Post-Commitment Probation

The court may order a child adjudicated delinquent to be placed into a post-commitment probation program. §985.435(1). The child must be placed into a program supervised by an authorized agent of DJJ or by any other agency or person specifically authorized and appointed by the court. §985.435(1). The program may be in the child’s home, the home of a relative, or another suitable place under the conditions specified by the court. §985.435(1).

The probation program must include a penalty component. §985.435(2). Common penalty components of probation programs include:

- Restitution in money or in kind;
- Community service;

- A curfew; or
- Revocation or suspension of the child's driver's license. §985.435(2)(a)-(d).

Other nonresidential punishments appropriate to the offense may be ordered by the court. §985.435(2)(e).

The probation program must also include a rehabilitation component. §985.435(3). Common rehabilitation components include participation in a school or similar educational program or participation in a substance abuse program. §985.435(3). Participation in the educational program by a child of compulsory school attendance age is mandatory for a child on post-commitment probation status. §985.46(5). The child's consent is not necessary for the court to order him or her to participate in the specified rehabilitation component. §985.435(3). The court may also order random testing for the purposes of detecting and monitoring the use of alcohol or controlled substance. §985.435(3).

A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order. §985.435(4).

If the court orders post-commitment probation, the period of probation must be consistent with any treatment or rehabilitation needs identified for the child. §985.435(5). If the court orders special conditions of probation, they must be pronounced orally at disposition or statutorily authorized. J.W.J. v. State, 994 So. 2d 1223 (Fla. 1st DCA 2008). Additionally, the probation period may not exceed the term for which sentence could be imposed if the child were committed for the offense. §985.435(5). However, there is an exception: if the offense is a misdemeanor of the second degree or equivalent to a second degree misdemeanor, the probation period may be for a period of no more than six months. §985.435(5). If the court orders post-commitment probation, specify in the order the length of the probation. S.T. v. State, 8 So. 3d 1153 (Fla. 1st DCA 2009).

The court may conduct judicial review hearings for a child placed on probation, to foster accountability and determine that the child is complying with the probation requirements. §985.435(6). The court may also allow for early termination of the probation for a child who has substantially complied with the terms of the probation. §985.435(6).

Confidentiality

A. Generally

With a few exceptions, all information obtained in a delinquency proceeding is confidential, so long as the information was obtained in the discharge of an official duty by any judge, employee of the court, authorized agent of DJJ, the Parole Commission, the Department of Corrections, the juvenile justice circuit boards, law enforcement officer, or licensed professional or licensed community agency representative who is participating in the assessment or treatment of a juvenile. §985.04(1). Any information so obtained may be disclosed only to the authorized personnel of the court, the DJJ and its designees, the Department of Corrections, the Parole Commission, law enforcement agents, school superintendents and their designees, licensed professionals or professional agency representatives participating in the assessment or treatment of the juvenile, or any other person entitled under this chapter to receive access to the information. §985.04(1). The court may also, by order, allow others not listed access to information. §985.04(1).

B. Exceptions

1. **The name, photograph, address and crime or arrest report** of a child is not considered confidential and exempt from §119.07(1) solely because of the child's age, if the child:
 - Has been taken into custody by a law enforcement officer for a violation of the law that, if committed by an adult, would be a felony;
 - Was found by the court to have committed three or more violations of the law that, if committed by an adult, would be misdemeanors;
 - Was transferred to the adult court system, indicted, or waived under the provision of chapter 985;
 - Was taken into custody by a law enforcement officer for a violation of the law under §986.557(2)(b) or (d); or
 - Was transferred to the adult court system but was sentenced to the juvenile justice system under §985.565. §985.04(2)(a)-(e).
2. **The victim of the offense may receive a copy of the juvenile offense report;** however, such information must not be revealed to any outside party, except as reasonably necessary to pursue legal remedies. §985.04(3).
3. **Records maintained by the court or DJJ** that pertain to a child adjudicated guilty of or with adjudication withheld for a delinquent act that, if committed by an adult, would be a crime under §§435.03 and 435.04, may be used only for meeting the screening requirements for personnel in §402.3055 or under departmental rule. §985.04(6)(a). The release of such information may only be

for the above purposes; the court has the power to punish by contempt of court anyone who releases or uses the information for any unauthorized purposes. §985.04(6)(a).

4. **Sexual offender and predator registration information** is a public record as provided by law. §985.04(6)(b).

5. **Records in the custody of DJJ regarding children** may be inspected only on the order of the Secretary of Juvenile Justice or his or her authorized agent, by people who have sufficient reason and on such conditions for their use and disposition as the Secretary or his or her authorized agent deems proper. §985.04(7)(a). The information may only be disclosed to other employees of the department who have a need for the information to perform their official duties, to other people as authorized by the department's rules, and on request to the Department of Corrections. §985.04(7)(a).

Cost of Court, Care, and Supervision

A. Generally

When any child is placed into nonsecure detention, probation, or other supervision status with DJJ, or is committed to the minimum-risk nonresidential restrictiveness level, the court must order the parent(s) or guardian(s) to pay to DJJ a fee of one dollar (\$1.00) per day for each day that the child is in such status for the cost of the supervision. §985.039(1)(a). When any child is placed into secure detention or placed on committed status and the temporary legal custody of such child is placed with DJJ, the court must order the parent(s) or guardian(s) to pay to DJJ a fee of five dollars (\$5.00) per day for the cost of the care for each day that the child is in the temporary legal custody of the DJJ. §985.039(1)(b). These fees may be reduced or waived only with a finding that the fees would create significant financial hardship or that the parent was a victim in the child's delinquent act and was cooperating with the investigation of the offense. §985.039(3)&(4).

B. Additional Fees

Additionally, when a child is adjudicated delinquent for, or pleads nolo contendere to, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law, the court must assess court costs. §775.083(2). The court cost is fifty dollars (\$50.00) for a felony and twenty dollars (\$20.00) for any other crime. The court can only assess these costs if there is an adjudication of delinquency; if adjudication is withheld, the cost cannot be imposed. R.A.V. v. State, 22 So. 3d 140 (Fla. 1st DCA 2009). The court must also assess an additional fifty dollar (\$50.00) fee on any child who is adjudicated delinquent for, pleads nolo contendere for, or has adjudication withheld for any felony, misdemeanor, delinquent act, or criminal traffic offense under the laws of this state or the violation of any municipal or county ordinance which adopts by reference any misdemeanor under state law. §938.03(1). This fee is in addition to the fee mandated in §775.083 and any costs assessed as per §985.039, and cannot be waived. §938.03(2).

C. Required Information

The parent of any child who has been placed under the supervision or care of DJJ must provide to DJJ his or her:

- name,
- address,
- social security number,
- date of birth,
- driver's license number or identification card number, and

- sufficient financial information to assist the court in determining the parent's ability to pay any fee associated with the cost of the child's supervision or care. §985.039(2).

If the parent refuses to provide DJJ with the required information, the court must order the parent to provide the required information. §985.039(2). The failure of the parent to comply with an order of the court to provide the required information constitutes contempt of court, and the court may punish the parent accordingly. §985.039(2).

D. Fee Determination

At a detention or disposition hearing, the court will receive the required information as well as any other verbal or written information offered by the parent of the child being placed in DJJ's care and supervision as to his or her ability to pay any fee imposed pursuant to this section and whether the payment of such fee will create a significant financial hardship. §985.039(3). The court may divide the obligation for the fee between each parent in a manner it deems appropriate; however, the total amount of the daily fee may not exceed the amounts specified in this section. §985.039(3). Any finding made by the court as to the ability of the parent to pay such fee, including any finding of indigency or significant financial hardship, must be in writing and contain a detailed description of the facts supporting such finding. §985.039(3). If the court makes a finding of indigency and significant financial hardship, the court must waive the fee or reduce it to an amount deemed appropriate. §985.039(3). Any order that fees are to be paid, fees are to be paid in a reduced amount, or fees are waived, must be included in the detention or disposition order. §985.039(5). A failure to include anything regarding costs in the order will mean that the parent is deemed to have to pay the full amount as specified by law. §985.039(5).

E. Fee Waiver

The court may reduce or waive the fee as to each parent if the court makes a finding on the record that the parent was the victim of the delinquent act or violation of law for which the child has been placed under the supervision or care of the department and that the parent is cooperating or has cooperated with the investigation of the offense. §985.039(4).

F. Child's Obligation upon Turning 18

For a child who reaches the age of 18 prior to the detention or disposition hearing, the court may direct an order regarding cost of care and fee assessments to the child, rather than to the child's parent. §985.039(6). If a child reaches 18 while under the supervision or care of the department, the court may, upon proper motion of any party, hold a hearing to determine whether any party should be

further obligated to pay any fee associated with cost of the supervision or care of the child. §985.039(6). If the court does not enter an order when the child reaches the age of 18 while under the supervision and care of DJJ, it is presumed that the parent must pay or continue to pay the fees specified in §985.039(6). Any order entered pursuant to §985.039(6) must include specific findings as to what fees are ordered, reduced, or waived as to the child.

G. Guardianship Issues

If any order entered pursuant to §985.039 affects the guardianship of an estate, a certified copy must be delivered to the judge that has jurisdiction over the guardianship of the estate. §985.039(8).

H. Parental Liability

No parent or child shall be liable for any fee provided in this section unless:

- the child is adjudicated delinquent, or has adjudication of delinquency withheld, for the offense that gave rise to the supervision or care; or
- the child is found to have violated an order of the court, including any order of supervision or care, and the costs are associated with the violation of such order. §985.039(12)(a)&(b).

I. Fee Reimbursement

If any funds are paid for the supervision or care of a child who is determined not to meet the criteria specified above, those funds must be refunded to the payor immediately. §985.039(12).

J. Extension of Care

Under no circumstances may the court or the department extend the child's length of stay in the department's supervision or care solely for the purpose of collecting the fees specified in this section. §985.039(11).

Delinquency/Dependency Crossover Cases

Crossover child: a child who is under the dual jurisdiction of the delinquency and dependency courts, though not necessarily under the care and supervision of either DJJ or DCF.

A. *Statistics*

Research has shown that victims of physical abuse/neglect are at an increased risk of becoming crossover children and engaging in delinquent acts.¹ In 1995, researchers found that between 9% and 29% of dependency children crossed over into delinquency court.² A more recent study found that the delinquency rate for children previously abused or neglected is 47% higher than for those with no such history.³ Crossover children typically cross into the delinquency court for the first time around 14 years of age, although delinquent or disruptive behavior can begin as early as 7 years of age.⁴

There are several factors that have been found to influence the chances a dependency-only child will become a crossover child. Each of the following factors, if present, has been found to increase the likelihood of crossing over.

Maltreatment

Studies have shown that the abuse/neglect which causes a child to fall under the dependency court's jurisdiction can also affect his or her likelihood of becoming a crossover child. Specifically, abuse or neglect limited to adolescence or continuous abuse or neglect throughout childhood can lead to a wide variety of negative outcomes, chief among them juvenile delinquency.⁵ Such abuse and/or neglect has been estimated to increase the risk of arrest as a juvenile by 55% and increase the

¹ Denise Herz & Joseph Ryan. *Building Multisystem Approaches in Child Welfare and Juvenile Justice*. National Association of Public Child Welfare Administrators (2008) at 34. The authors cite to 8 other research projects that support this proposition, including Kelly, B. T.; Thornberry, T.; & Smith, C. *In the wake of child maltreatment*. OJJDP Juvenile Justice Bulletin. Washington, D.C. (1997); Ryan, J. P. & Testa, M. K. *Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability*. 27 Children and Youth Services Review 227-249 (2005); and Wiig, J. K.; Widom, C. S.; & Tuell, J. A. *Understanding child maltreatment and juvenile delinquency: From research to effective program, practice, and systemic solutions*. Washington, DC: Child Welfare of America Press (2002).

² Shay Bilchik & Michael Nash. *Child Welfare and Juvenile Justice: Two Sides of the Same Coin*. Juvenile and Family Justice Today 16 (Fall 2008) at 17.

³ American Bar Association. *Policy and Report on Crossover and Dual Jurisdiction Youths* (February 2008).

⁴ Terence P. Thornberry, David Huizinga, & Rolf Loeber. *The Causes and Correlates Studies: Findings and Policy Implications*. 9(1) Juvenile Justice 3 (2004) at 14.

⁵ *Supra* note 1 at 38-39.

risk of a violent crime arrest as a juvenile by 96%.⁶ However, if the maltreatment is limited to early childhood, and ends before adolescence, the child may not be impacted significantly enough for juvenile delinquency to be a common outcome.⁷

Childhood abuse in general increases the odds of future delinquency by 29%, although the likelihood of being arrested as a child increases by 59%.⁸ In one study, researchers found that maltreated youths were 4.8 times more likely to be arrested as children and 11 times more likely to be arrested for a violent crime than matched control children who had not been maltreated.⁹ Further, maltreated children were younger at the time of their arrest and committed nearly twice as many offenses.¹⁰

The implication that children who are abused and/or neglected tend to engage in delinquent acts at an early age is noteworthy. As one study noted, young offenders are 3 times more likely to become serious violent offenders.¹¹ Thus, there is a real need to understand the relationship between child maltreatment and juvenile delinquency.

Number of Placements

A factor that has been closely tied to delinquency is the number of out-of-home placements a child has experienced. Even one foster care placement significantly raises the likelihood that a child will come under delinquency court jurisdiction.¹² National data from 2008 indicated that children in dependency systems across the country had an average of 3.2 out-of-home placements per child, with an average time in care per placement of 15.3 months.¹³ Researchers from a study in California reported similar results. Ninety-eight percent of all crossover children had at least one out-of-home placement.¹⁴ Sixty-three percent had been placed with a relative at some time, and 62% had been placed in a group home. Data from Florida between October of 2007 and September of 2008 indicates that there is a direct correlation between increased placements and the length of time the child remains

⁶ *Id* at 34.

⁷ *Id* at 38-39.

⁸ Janet K. Wiig, with John A. Tuell. *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration: A Framework for Improved Outcomes*. Child Welfare League of America (2008) at xiii-xiv.

⁹ Bernardine H. Watson. *Multi-Problem Youth: A Growing Concern*. Stoneleigh Center (2008) at 4.

¹⁰ *Supra* note 9 at xiii-xiv.

¹¹ Joseph P. Ryan, Denise Herz, Pedro M. Hernandez, Jane Marie Marshall. *Maltreatment and Delinquency: Investigating Child Welfare Bias in Juvenile Justice Processing*. 29 Children and Youth Services Review 1035 (2007) at 1045.

¹² *Supra* note 4.

¹³ Peter J. Pecora. *Why Should Child Welfare Focus on Promoting Placement Stability?* CW360: Promoting Placement Stability (Spring 2010) at 4.

¹⁴ *Supra* note 1 at 50.

in DCF's care.¹⁵ For children in care for less than twelve months, approximately 83% had two or fewer placement settings.¹⁶ However, for children in care between 12 and 24 months, 61% had two or fewer placement settings.¹⁷ Finally, for children in care for longer than 24 months, only 33% had two or fewer placement settings.¹⁸

Further, placement disruption has been linked to attachment disorders and other behavioral and emotional problems in children.¹⁹ In particular, attachment disorders such as Reactive Attachment Disorder may frequently result from an increased number of placements, as the frequency of changes in placements and impermanence of care inhibit a child from developing healthy, secure attachments with a caregiver.²⁰ The more changes in caregiver a child experiences, the more likely the child is to develop an attachment disorder or behavioral problem.²¹

Instability in the dependency system, which results in a higher number of placements, has also been linked to rates of delinquency. Children with multiple placements are more likely to enter the delinquency system.²² In one study, males with 3 placements were 1.5 times more likely to become delinquent, and males with 4 or more placements were 2.1 times more likely to become delinquent as compared to males with only one placement.²³

Placement Setting

Studies have shown that children in substitute care settings are approximately two times more likely to engage in delinquency as compared to those receiving in-home care.²⁴ Specifically, group home settings appear to be the most worrisome; in a Los Angeles study, children with at least one group home placement had 2.5 times greater risk of delinquency as compared to similar children in other foster care

¹⁵ Fostering Court Improvement. *Children and Family Services Review Measures During October 2007 through September 2008*. Available online at

http://fosteringcourtimprovement.org/fl/DCFDistrict/cfsr2_summary.html.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Dana K. Smith, Elizabeth Stormshak, Patricia Chamberlain, and Rachel Bridges Whaley. *Placement Disruption in Treatment Foster Care*. 9(3) *Journal of Emotional and Behavioral Disorders* 200 (Fall 2001) at 200.

²⁰ Beth Troutman, Susan Ryan, and Michelle Cardi. *The Effects of Foster Care Placement on Young Children's Mental Health*. 16(1) *Protecting Children* (2000) at 30.

²¹ *Id.*

²² *Supra* note 20 at 36.

²³ *Id.*

²⁴ *Id.* at 35.

settings.²⁵ In that study, 2106 children were found to be associated with at least one arrest.²⁶ Of that number, 1671 (79%) experienced their first arrest while in substitute care settings.²⁷ And of that number, 675 (40%) of the arrests occurred while the adolescent was in a group home placement.²⁸ This statistic becomes more concerning when the nature of the arrest is considered. At least one-third (31%) of all arrests were related to placement, and two-thirds (66%) of all placement-related offenses occurred at a group home.²⁹

Children in group homes were found to be half as likely to be arrested for a weapons-related offense as those not in group homes.³⁰ However, group home children are three times as likely to be arrested for a threat-related offense, and twice as likely to be arrested for a violent offense.³¹

Peer Contagion

An additional factor that may affect adolescents is peer contagion – types of negative exposure and socialization processes that are likely to shape negative behaviors and attitudes.³² Peer contagion can increase problem behaviors and negative life outcomes throughout adolescence.³³ Prolonged exposure to high-risk peers has an unintended effect of heightening deviant behavior via social relationships.³⁴ In the dependency system, delinquency can emerge as a child experiences increased placement instability. The bonds the child forms may be stronger with other delinquent children, due to the unstable environment, and will result in the intake and internalization of delinquent beliefs.³⁵ Once these delinquent patterns form, they have a “feedback effect, further compromising one’s bond with conventional societal norms.”³⁶ The concept of deviant patterns includes smoking, alcohol problems, aggression, and delinquency, among others.³⁷

Gang Membership

²⁵ Joseph P. Ryan, Jane Marie Marshall, Denise Herz, Pedro M. Hernandez. *Juvenile Delinquency in Child Welfare: Investigating Group Home Effects*. 30(9) Children and Youth Services Review 1088 (2008).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Supra* note 1 at 36-37.

³⁰ *Supra* note 25.

³¹ *Id.*

³² *Supra* note 1 at 36.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 42.

³⁶ *Id.*

³⁷ *Supra* note 25.

Peer contagion is an issue, especially in the child welfare setting and group home placement in particular, but another aspect of peer contagion can be seen in gang membership. In a study done in New York, approximately 30% of the children studied joined a gang at some point between the ages of 14 and 18.³⁸ Gang members accounted for the majority of all delinquency in the study, with gang members involved in 63% of all delinquent acts, 82% of serious delinquencies, 70% of drug sales, and 54% of all arrests.³⁹ Further, the researchers found that gang members had a higher rate of delinquency during the period of gang membership, but not before or after that period.⁴⁰ A study in Denver confirmed the New York findings. In the Denver study, gang members accounted for approximately 80% of all serious and violent crime (excluding gang fights).⁴¹ These findings suggest that gang membership facilitates delinquent processes and patterns, making delinquency a much more likely outcome.

Depth of Involvement

Research suggests that “as penetration of the system deepened,” crossover children represent larger portions of delinquency cases.⁴² In an Arizona study, only 1% of informal diversion delinquency cases were crossover, compared to 7% of probation supervision cases and 42% of probation placement cases.⁴³ One study indicated that judicial decisions resulting in detention are strongly associated with a child being in out-of-home placement at the time of the offense, previous crossover referrals, a history of running away, and substance abuse problems.⁴⁴

Recidivism

Crossover children have been found to be as much as twice as likely to recidivate as compared to delinquency-only children.⁴⁵ Older children are significantly more likely to recidivate, and children exhibiting truancy patterns are more than twice as likely to recidivate.⁴⁶ Further, the trend to recidivate typically continues into adulthood. One study found that, by the age of 28, 89% of boys and 81% of girls in the study were rearrested, and 85% of the boys and 63% of the girls were convicted.⁴⁷ In

³⁸ *Supra* note 5 at 9.

³⁹ *Id.*

⁴⁰ *Id.* at 10.

⁴¹ *Id.*

⁴² *Supra* note 1 at 43.

⁴³ *Id.*

⁴⁴ *Supra* note 3 at 19.

⁴⁵ *Supra* note 1 at 53.

⁴⁶ Denise C. Herz, Joseph P. Ryan, and Shay Bilchik. *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*. 48(2) Family Court Review 305 (2010) at 315.

⁴⁷ Rebecca Colman, Do Han Kim, Susan Mitchell-Herzfeld, Therese A. Shady. *Long-Term Consequences of Delinquency: Child Maltreatment and Crime in Early Adulthood*. (2008) at executive summary 7.

terms of cross-system involvement, 89% of delinquent boys and 87% of delinquent girls were arrested or identified as conformed perpetrators of abuse or neglect before age 28.⁴⁸

B. Effective Practices in Crossover Cases

Court communication

The court should ask at every hearing whether the parties involved in the delinquency proceeding are involved in any related dependency cases.⁴⁹ If other related cases are identified, the court should communicate with the judge or judges that are hearing the other cases involving the crossover child. The ability to identify a crossover child can prevent a variety of problems, including duplication of efforts, miscommunication, and extended detention,⁵⁰ by increasing coordination between courts hearing cases involving the crossover child.

Inter-agency collaboration

Studies have shown that where coordination is lacking, child functioning and wellbeing is negatively impacted.⁵¹ One of the most effective practices the court can engage in is ensuring that the child gets the help and resources he or she needs from both the dependency and delinquency agencies.⁵² The court may inquire, where appropriate, of the agency representatives as to the state of the provision of services to the child by both agencies.

Dispositional considerations

Traditional delinquency practices can fail to adequately address common consequences of trauma, and may re-traumatize a vulnerable child.⁵³ Thus, when the court reviews possible dispositional outcomes for a crossover child, the court should consider not just the crossover child's actions but also his living situation.⁵⁴ Such a comprehensive examination of the family's needs and strengths, combined with an assessment by DJJ or DCF to determine whether the child is at risk of abuse

⁴⁸ *Id* at executive summary 9.

⁴⁹ *Supra* note 3 at 19.

⁵⁰ Gene Siegel, and Rachael Lord. *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*. 56 *Juvenile and Family Court Journal* 39 (2005) at 40.

⁵¹ Sara Munson, & Madelyn Freundlich. *Double Jeopardy: Youth in Foster Care Who Commit Delinquent Acts*. 25 *Children's Legal Rights Journal* 9 (2005) at 9.

⁵² See for examples: Gene Siegel, and Rachael Lord. *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*. 56 *Juvenile and Family Court Journal* 39 (2005); and Michael Nash, Shay Bilchik. *Child Welfare and Juvenile Justice – Two Sides of the Same Coin, Part II*. *Juvenile and Family Justice Today* 22 (Winter 2009).

⁵³ *Supra* note 47 at executive summary 12.

⁵⁴ *Supra* note 3 at 19.

or neglect, can ensure that the court has the necessary knowledge to appropriately determine the crossover child's outcome.⁵⁵

Possible dispositional outcomes that the court may consider in crossover cases, in addition to traditional dispositional options, include ordering the parent or legal guardian of a crossover child adjudicated delinquent to attend a course of instruction in parenting skills, and ordering the child and/or parent or guardian to accept counseling or to receive other assistance from any agency in the community.⁵⁶ These approaches result in reduced recidivism, fewer institutional commitments, less criminality among parents and older children, improved educational status, and improved family functioning, among other positive results.⁵⁷

Confidentiality of Information

The court should make certain that any information gathered from a crossover child as part of a diagnostic evaluation is not later used against the child as evidence in court to support a finding of guilt or to enhance punishment.⁵⁸ Any such use would "compromise the therapeutic process intended to help troubled foster youth by using it as an opportunity for their self-incrimination rather than as a means to promote the process of rehabilitation and recovery from their victimization."⁵⁹

Alternative court models

If the court uses an alternative court model, such as the Unified Family Court model, the court may hear all cases involving the crossover child and his or her family, as unified family courts operate on the "one family, one judge" principle. For more information about crossover children in unified family courts, see General Topics.

The Breakthrough Series Collaborative Team Model

Also known as the "Georgetown Model," the Breakthrough Series Collaborative Team Model is intended to provide a collaborative framework for courts dealing with crossover children. The model guides courts and agencies to work together and share information and duties. The model encourages family participation and emphasizes that crossover children and their families have strengths which, if used properly, would create improved services for the children.⁶⁰ This model is currently being used in 11th circuit, with expansions to the 13th and 17th circuits planned.

⁵⁵ *Id.*

⁵⁶ F.S.A. §985.512.

⁵⁷ *Supra* note 50 at 51.

⁵⁸ *Supra* note 4.

⁵⁹ *Id.*

⁶⁰ Lorrie Lutz, Macon Stewart, with contributions from Lyman Legters. *Crossover Youth Practice Model*. Center for Juvenile Justice Reform (2008) at 17. For more information on this model, please see the

Time management

The court may consider reserving a block of time on the court's calendar specifically for crossover case hearings.⁶¹ Coordinating the schedules of the parties involved could be streamlined by a reserved period of time⁶², as opposed to an unmanaged set of crossover cases interspersed throughout the non-crossover cases.

Additionally, scheduling for time-certain hearings can improve the predictability of court events and enhance the credibility and public perception of the court.⁶³

Courtroom practices

Crossover children often come under the jurisdiction of the dependency court as a result of abuse in the home. The court in a delinquency proceeding should be aware of the dynamics of family domestic abuse and how they may affect the child or the child's parents or guardians. For information on courtroom practices where domestic violence is present, *see* General Topics.

center for Juvenile Justice Reform website, available online at <http://cjr.georgetown.edu/pm/practicemodel.html>.

⁶¹ *Supra* note 50 at 45.

⁶² *Id.*

⁶³ *Id* at 46.

Departing from DJJ Guidelines

A. Generally

Section 985.433(7) details the role of DJJ in the disposition of a child adjudicated delinquent. DJJ prepares a recommendation for the court, indicating the most appropriate place and treatment plan, specifically identifying the level of restrictiveness appropriate for the child. §985.433(7)(a). The court is required to consider that recommendation when determining disposition of the child. §985.433(7)(a). However, the court is not obligated to follow DJJ's recommendation. According to §985.433(7)(b), the court can follow DJJ's recommendation or may order the child into a different placement level. Any deviation must be supported by reasons recorded by the court and supported by a preponderance of the evidence. §985.433(7)(b).

B. E.A.R. v. State

In January of 2009, The Florida Supreme Court released an opinion on a case, E.A.R. v. State, 4 So.3d 614 (Fla. 2009). In that case, the court examined what standard satisfied the requirements set forth in §985.433(7)(b) ("state for the record the reasons that establish by a preponderance of the evidence why the court is disregarding the assessment of the child and the restrictiveness level recommended by the department."), as the District Courts of Appeal were split on that issue. The First, Second, and Fifth District Courts of Appeal required the judge to specifically identify the characteristics of the restrictiveness level imposed with regard to the needs of the juvenile. The Fourth District held that such a requirement did not apply.¹

The Florida Supreme Court held that the Florida Statutes not only require that the court state its reasons for departing from DJJ's guidelines "on the record" and that the reasons be supported by a preponderance of the evidence, but also that the reasons supplied by the court explain, support, and justify why one restrictiveness level is more appropriate than another. A court must:

- (1) Articulate an understanding of the respective characteristics of the opposing restrictiveness levels including (but not limited to) the type of child that each restrictiveness level is designed to serve, the potential "lengths of stay" associated with each level, and the

¹ This summary taken from the Office of Court Improvement's Case Law Update, February 2009, available online at http://flcourts.org/gen_public/family/bin/OSCA-OCI-Case-Law-Update-February.pdf.

divergent treatment programs and services available to the juvenile at these levels; and

(2) Then logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving both the rehabilitative needs of the juvenile — in the least restrictive setting — and maintaining the ability of the State to protect the public from further acts of delinquency.²

Appellate courts have subsequently analyzed how juvenile courts are affected by this opinion. For example, the Fifth DCA, in B.C. v. State, 29 So.3d 386 (Fla. 5th DCA 2010), held that a court may sentence a child to consecutive rather than concurrent sentences, as recommended by DJJ, as long as the level the child is sentenced to is that recommended by DJJ. The Fifth DCA reasoned that such a determination is within the court's traditional discretion and not prohibited by E.A.R. v. State.

Further, the First DCA, in J.B.S. v. State, 90 So.3d 961 (Fla. 1st DCA 2012), held that a court may deviate from a probation recommendation and follow a subsequent restrictiveness recommendation. Likewise, the First DCA reasoned that such a determination is within the court's traditional discretion and not prohibited by E.A.R. v. State. However, a probation recommendation, without any alternative analysis or restrictiveness recommendation, is insufficient to allow the court to proceed with a final commitment disposition order. The First DCA reasoned that such a determination is prohibited by E.A.R. v. State. B.K.A. v. State, 122 So.3d 928 (2013).

In both J.B.S. v. State and B.K.A. v. State, the First District made it clear that the decision to commit or not to commit is that of the court and not a recommendation of DJJ. Accordingly, an E.A.R. analysis does not apply to initial determinations of commitment. See §985.433.

² E.A.R. v. State, 4 So. 3d 614 (Fla. 2009) at 638.

Detention Criteria

A. Pre-Commitment Detention

Section 985.255 details the criteria courts will use when determining whether a child may be placed into pre-commitment detention. A court cannot detain a child if the criteria are not met.

If a child has been taken into custody and placed into detention care prior to a detention hearing, the court may continue to detain the child if the child meets any of the following, from §985.255(1)(a)-(j):

- The child is alleged to be an escapee from a residential commitment program; an absconder from a nonresidential commitment program, probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.
- The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.
- The child is charged with committing an offense of domestic violence and is detained as provided below.
- The child is charged with possession or discharging a firearm on school property in violation of §790.115.
- The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.
- The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:
 - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 - Has a record of law violations prior to court hearings;
 - Has already been detained or has been released and is awaiting final disposition of the case;
 - Has a record of violent conduct resulting in physical injury to others; or
 - Is found to have been in possession of a firearm.
- The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in §985.439. If a consequence unit is not available, the child shall be placed in nonsecure detention with electronic monitoring.

- The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, for an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.
- The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

If the child has been charged with committing a domestic violence offense, and the child does not meet any of the other detention criteria above, the court may order the child to be held in secure detention if the court makes specific written findings that respite care is not available for the child, and/or that it is necessary to securely detain the child to protect the victim from injury. §985.255(2). If the child is detained by such written findings, the court must hold a hearing 48 hours later to determine whether the child should continue to be detained. §985.255(2). The child may continue to be detained only if the court makes specific written findings that continued detention is necessary to protect the victim from injury. §985.255(2). Any child held thusly may not be detained for longer than the time limits set forth in §985.26.

Any child who is detained under §985.255 must be given a detention hearing within 24 hours after being taken into custody, to determine the existence of probable cause that the child committed a delinquent act or violation of the law that he or she is charged with and the need for continued detention. §985.255(3)(a).

If the court orders a placement more restrictive than indicated by the results of the RAI, the court must state, in writing, clear and convincing reasons for such placement. §985.255(3)(b).

If the court orders detention but does not include a release date in the order, DJJ must request the court set one on the same date the child is placed into detention care. If subsequent hearings are needed for safety planning, the initial order shall

reflect that the next review hearing shall be held within three days after the initial detention placement. §985.255(3)(c).

A child may not remain in detention under a special detention order for more than 21 days, unless an adjudicatory hearing for the case has commenced in good faith. §985.26(2). However, if the offense would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against an individual, the court may, upon a good cause showing that the prosecution or defense needs more time to prepare due to the nature of the charge, extend the length of detention for an additional 9 days. §985.26(2). The time limits above do not include time extensions due to court-granted continuances. §985.26(4). Should a time limit be tolled due to a continuance, the court must review the continuance with a hearing every 72 hours, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention and further continuance of the proceedings. §985.26(4).

Except as provided above, a child may not be held in secure or nonsecure detention care for more than 15 days following the entry of an order of adjudication. §985.26(3). The time limit above does not include time extensions due to court-granted continuances. §985.26(4). Should the time limit be tolled due to a continuance, the court must review the continuance with a hearing every 72 hours, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention and further continuance of the proceedings. §985.26(4).

B. Post-Commitment Detention

All children who are adjudicated delinquent and are awaiting placement must be committed, but the post-commitment detention criteria vary, depending on the nature of the adjudication and commitment level ordered. §985.27(1).

- A child who is in nonsecure detention may be placed on electronic monitoring. §985.27(1).
- A child who is awaiting placement in a low-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. §985.27(1)(a). Any child being held in secure detention for the 5 days must meet the detention criteria in §985.255.
- A child who is awaiting placement in a moderate-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. §985.27(1)(b). Any child being held in secure detention for the 5 days must meet the detention criteria in §985.255. DJJ may ask for continued detention in secure detention facilities, if such is necessary to secure appropriate residential placement for the child. §985.27(1)(b). The court may grant such an extension not exceeding 15 days after the entry of an adjudication order, excluding Saturdays, Sundays, and legal holidays, and except as provided in §985.27.

- A child who is awaiting placement in a high-risk residential program must be held in detention care until placement or commitment is accomplished. §985.27(1)(c).
- A child who is awaiting placement in a maximum-risk residential program must be held in secure detention care until placement or commitment is accomplished. §985.27(1)(d).

Discovery

Discovery is not a mandatory part of the delinquency process. To engage in discovery, a child can elect to participate, filing with the court and serving on DJJ a “notice of discovery” which serves to inform all involved of the child’s desire to engage in discovery; this election also serves to bind all parties to the rules of discovery as contained in the Rules of Juvenile Procedure. Rule 8.060(a)(1). The court may, on good cause shown, alter the times for compliance with any discovery. Rule 8.060(g).

Except as otherwise provided, no party shall advise a person who has relevant material or information, except the child, to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant material, and no party may impede opposing counsel’s investigation of the case. Rule 8.060(i).

A. Required Disclosure to the Child

If a child has elected to participate and filed a “notice of discovery,” DJJ has 5 days to serve a written discovery exhibit on the child. The written discovery exhibit informs the child of the following, and allows him or her to inspect, copy, test, and photograph any of the following information or material in DJJ’s possession or control:

- Names and addresses of everyone known to DJJ to have information that might be relevant to the crime alleged, to any defense, or to any similar fact evidence that may be presented at the adjudication hearing. The names and addresses must be categorized as follows:
 - Category A: witnesses such as eye witnesses; alibi witnesses and witnesses rebuttal alibi; witnesses present during recorded or unrecorded statements by the child; investigating officers; witnesses known by DJJ to have information that tends to negate the guilt of the child as to the allegations; child hearsay witnesses; and expert witnesses who have not provided a written report and curriculum vitae or will testify to test results or give opinions that will meet the Daubert test (Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993); see also Fed. R. Evid. 702).
 - Category B: witnesses not listed in Category A or Category C.
 - Category C: witnesses who perform only ministerial functions or whom DJJ does not intend to call at the hearing and whose involvement and knowledge is set forth in a statement furnished to the child.
- Any statement by a person whose name is supplied above. A statement in this case is “a written statement made by said person and signed or otherwise adopted by him or her and also includes any statement of any kind or manner made by such person and written or recorded or summarized in any writing or recording,” and is intended to include all police and investigative reports of any

kind prepared in connection with the case, but not notes from which the reports are created.

- Any written or recorded statements and the substance of any oral statements made by the child, including a copy of any statements contained in police reports or summaries, along with the name and address of each witness to the statements.
- If there is a codefendant and the hearing is to be a joint hearing, any written or recorded statements and the substance of any oral statements made by the codefendant.
- If the child's case was the subject of a grand jury, any portions of the recorded grand jury minutes that contain testimony from the child.
- Any tangible papers or objects obtained from or belonging to the child.
- Whether DJJ received any materials or information from a confidential informant.
- If there has been electronic surveillance, including wiretapping, the DJJ must inform the child that it was used and of any conversations to which the child was a party; DJJ must also include in this any documents relating to the wireless surveillance.
- DJJ must inform the child whether there was any search or seizure and any documents relating to such.
- Reports or statements of experts made in connection with the child's case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.
- Any other tangible papers or objects DJJ intends to use in the hearing that were not obtained from or belonged to the child. Rule 8.060(a)(2)(A)-(K).

As soon as practicable after the delinquency petition is filed, DJJ must disclose to the child any information in the State's possession or control that tends to negate the guilt of the child as to the crime alleged. Rule 8.060(a)(3).

The court may order other discovery as justice may require. Rule 8.060(a)(5).

B. Required Disclosure to DJJ

If a child has elected to participate and filed a "notice of discovery," the child has 5 days to make the following disclosures:

- A written list of all of the people the child expects to call as witnesses at the hearing.
- The child must serve a written discovery exhibit, which informs DJJ of the following, and allows DJJ to inspect, copy, test, and photograph any of the following information or material in the child's possession or control:
 - Statements from anyone the child expects to call as a trial witness (other than himself);

- Reports or statements of experts made in connection with the child’s case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons; and
- Any tangible papers or objects which the child intends to use in the hearing. Rule 8.060(b)(1)(A)-(B).

If DJJ files a protective order, the time provided above is automatically stayed. Rule 8.060(b)(3). If the order is granted, the child may, within 2 days of such, or before DJJ provides the information or material that is the subject of the protective order, withdraw the demand and not be required to furnish reciprocal discovery. Rule 8.060(b)(3).

C. Limitations

Upon application by a party, the court may deny or limit disclosure if the court finds a substantial risk to anyone of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, which outweighs any usefulness of disclosure to the party attempting to disclose. Rule 8.060(c)(1). Anyone can move for an order denying or regulating disclosure of material; the court may consider the motion in camera. Rule 8.060(l)(1). However, certain information is not subject to disclosure, including:

- legal research or of records, correspondence, or memoranda, to the extent that they contain the opinion, theories, or conclusions of the prosecuting or defense attorney or members of their legal staff.
- Disclosure of a confidential informant is not required unless the informant will be produced at a hearing, or failure to disclose the informant’s identity will infringe on the child’s constitutional rights. Rule 8.060(c)(2)(A)-(B).

On a showing of good cause, the court may order at any time that certain disclosures be restricted, deferred, or exempt from discovery; that certain matters are not to be examined; that the scope of a deposition is to be limited to certain things; or that a deposition is to be sealed and able to be opened only by court order. The court may also make any other appropriate order to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy, including prohibiting the taking of a deposition. Rule 8.060(j). However, all material that a party is entitled to must be disclosed with sufficient time to permit the party to make beneficial use of the information. Rule 8.060(j).

D. Depositions

No depositions are allowed in cases where the delinquency petition alleges only a misdemeanor or criminal traffic court violation when all other discovery provided by Rule 8.060 has been complied with, except where good cause can be shown to the trial court. Rule 8.060(d)(2)(l). In its determination of whether to allow depositions,

the court should consider the consequences to the child, the complexity of the issues, the complexity of the testimony sought, and the other opportunities available to the child to disclose the information sought by deposition. Rule 8.060(d)(2)(I). The prohibition against taking depositions is not applicable if, following the furnishing of discovery by the child, DJJ takes the statement of a listed defense witness pursuant to the State Attorney's power and authority to summon witnesses. Rule 8.060(d)(2)(I).

When permitted, depositions can be taken at any time after the filing of the delinquency petition, and any party may take a deposition of any person authorized by this rule. Rule 8.060(d)(1)(A). The court may, after notice to the parties, issue subpoenas for parties to be deposed. Rule 8.060(d)(2)(B). Depositions of witnesses residing in the county where the adjudicatory hearing will take place must be taken in the building where the hearing is to take place, another location agreed to by the parties, or another location specified by the court. Rule 8.060(d)(1)(B). If the witness resides outside the county where the adjudicatory hearing will take place, the deposition must take place in a court reporter's office in the county where the witness resides, another location agreed to by the parties, or another location specified by the court. Rule 8.060(d)(1)(B). Any witness who refuses to obey a duly served subpoena may be adjudicated in contempt by the issuing court for such refusal. Rule 8.060(d)(5). Generally, witnesses can only be deposed once, with two exceptions: if the parties consent to multiple depositions, or if the court orders a subsequent deposition, on good cause shown. Rule 8.060(d)(2)(D).

The party taking the deposition should provide reasonable written notice to every other party, and make a good faith effort to coordinate with the other parties and the witness to be deposed. The notice must state the time and location of the deposition, the name of each person being deposed, and a certificate of counsel that a good faith effort was made to coordinate the deposition schedule. Rule 8.060(d)(2)(A). After notice to the parties, the court may, after a showing of good cause, change the time or location of the deposition. Rule 8.060(d)(2)(C). The procedure for taking a deposition, including the scope of the deposition and use of a subpoena (other than a subpoena duces tecum), is analogous to the procedure described in the Florida Rules of Civil Procedure. Rule 8.060(d)(2)(E). Depositions of children under 16 years of age shall be videotaped on demand from a party unless otherwise ordered by the court. Rule 8.060(d)(9). The court may order the videotaping of a deposition of a witness of fragile emotional health. The court may also order the deposition of the fragile witness to be taken in the presence of a special magistrate or the trial judge. Rule 8.060(d)(9).

Bad Faith Depositions

At any time during the taking of a deposition, on a motion by a party or by the person deposed, and on a showing that the deposition is being conducted in bad

faith or in a manner designed to annoy, embarrass, or oppress the witness or a party, the court may:

- Terminate the deposition;
- Limit the scope and manner of the taking of the deposition;
- Limit the time of the deposition;
- Continue the deposition to a later date and time;
- Order the deposition to be taken in open court; and
- May impose any sanction authorized by Rule 8.060. Rule 8.060(k).

If the court order terminates the deposition, it can only be resumed by an order of the court. Rule 8.060(k). Upon the request of a party or witness, the deposition may be suspended for the time necessary to make a motion for an order. Rule 8.060(k).

Child's Presence at Deposition

A child may not be present at a deposition except on stipulation of the parties or by an order of the court on a showing of good cause. Rule 8.060(d)(6). In making such an order, the court may consider the need for the physical presence of the child; the intimidating effect the child's presence may have on the witness; any cost or inconvenience that may result; and any alternative electronic means available to protect the child's ability to participate in discovery without being physically present. Rule 8.060(d)(6).

Witness' Presence at Deposition

The ability to depose a witness depends on the *type of witness*.

- DJJ can, without leave of the court, take the deposition of any witness listed by the child.
- The child, without leave of the court, can take the deposition of any witness listed by DJJ as a "Category A" witness.
- The child can, without leave of the court, take the deposition of any unlisted witness who may have information relevant to the delinquency petition's allegations.
- No party can depose a witness listed by DJJ as a "Category B" witness, except by leave of the court.
- A "Category C" witness cannot be deposed by any party unless the court determines the witness should be listed in another category. Rule 8.060(d)(2)(F)-(H).
- Upon stipulation of the parties and consent of the witness, the statement of a law enforcement officer can be taken telephonically in lieu of a deposition. The statement must be recorded and can be used for impeachment purposes at trial. Rule 8.060(d)(7). Law enforcement officers shall be deposed without subpoena, upon written notice of the deposition to the address designated by the law enforcement agency or, if no address is designated, to the address of the law

enforcement agency 5 days before the date of the deposition. A law enforcement officer who fails to appear after such notice is subject to contempt proceedings. Rule 8.060(d)(8).

In determining whether a party may depose a “Category B” witness, the court should consider the consequences to the child, the complexity of the issues, the complexity of the testimony sought, and the other opportunities available to the child to disclose the information sought by deposition. Rule 8.060(d)(2)(G). Upon request, the court must allow the child to make an ex parte showing of good cause for the taking of a deposition of a “Category B” witness. Rule 8.060(l)(2).

After the filing of a petition, upon application and subject to constitutional limitations, the court may, by directions as to time, place, and method, and on conditions that are just, require the child in all proceedings to:

- Appear in a lineup;
- Speak for identification by a witness to the offense;
- Pose for photographs not involving a reenactment of the offense;
- Try on articles of clothes;
- Permit the taking of material under the fingernails;
- Permit the taking of materials of the body, which involve no unreasonable intrusion, including blood and hair;
- Provide a handwriting sample; and
- Submit to a reasonable physical or medical inspection. Rule 8.060(f)(1).

The court may also order additional discovery as justice may require, on a showing that such discovery would be relevant or material. Rule 8.060(f)(2).

Order to Perpetuate Testimony

After the filing of a petition, and on reasonable notice, a party may apply for an order to perpetuate testimony. The application must be supported or verified by affidavits of credible people, and must state that the witness lives beyond the court’s jurisdiction or may be unable to attend court proceedings, or that there are grounds to believe that the witness will absent him- or herself from the court’s jurisdiction; that the testimony is material; and that it is necessary to take the deposition to prevent a failure of justice. Rule 8.060(e)(1). If the application is done in a timely manner and is well-founded, the court must order a commission to be issued to take the deposition of the witness to be used in subsequent court proceedings. Rule 8.060(e)(2). The commission must state the time and place of the deposition and must be served on all parties. Rule 8.060(e)(2). The court must also order any designated books, documents, or tangible objects not privileged be produced at the time of the deposition. Rule 8.060(e)(2). The commission may be issued to any court reporter, to transcribe the deposition and file it with the court. Rule 8.060(e)(2).

Subsequent Duty to Disclose

If, subsequent to compliance with the rules of discovery, a party discovers a witness, evidence, or material that the party would have been under a duty to disclose or produce previously, the party must promptly disclose or produce such in the same manner as required by the rules for initial discovery. Rule 8.060(h).

Uses of Depositions

Any deposition taken may be used at any hearing by any party for the purpose of impeaching the deponent. Rule 8.060(d)(3). If only part of the deposition is submitted into evidence by a party, an adverse party may include any other part of the deposition that in fairness ought to be considered with the part submitted, and any party can offer any part of the deposition into evidence. Rule 8.060(d)(4). However, no deposition may be read into evidence if the witness can attend the hearing. Rule 8.060(e)(3). Further, if it appears a deposed witness has absented him- or herself as a result of procurement, threats, or inducements by or on behalf of a party, the deposition may not be read into evidence on behalf of that party. Rule 8.060(e)(3).

E. Sanctions

If at any time it is brought to the attention of the court that a party has failed to comply with the rules of discovery or an order issued pursuant to a rule of discovery, the court may:

- Order the party to comply with discovery request;
- Grant a continuance;
- Grant a mistrial;
- Prohibit a party from calling a witness not disclosed, or introducing material not disclosed; or
- Enter an order the court deems just under the circumstances. Rule 8.060(m)(1)(A)-(E).

If counsel or a party not represented by counsel willfully violates the rules of discovery or an order based on an applicable rule, that counsel or party not represented may be subject to appropriate sanctions by the court. Rule 8.060(m)(2). The sanctions may include, but are not limited to, contempt proceedings against the attorney or party not represented and an assessment of costs incurred by the opposing party when appropriate. Rule 8.060(m)(2).

F. Record

A record shall be made of discovery proceedings. If the court enters an order granting relief after an in camera inspection or after an ex parte showing, the

complete record must be sealed and included in the records of the court, and must be made available to the appellate court should there be an appeal. Rule 8.060(l)(3).

Diversiónary Programs

A. *Generally*

Section 985.125 establishes that law enforcement agencies or school districts may establish pre- or post-arrest diversion programs, with the cooperation of the state attorney. As a part of any diversion program, a child alleged to be delinquent may have to surrender his or her driver's license, or, if the child does not currently have a driver's license, refrain from applying for a driver's license for a period not exceeding 90 days. §985.125(2). If the child fails to comply with the requirements of the diversion program, the state attorney may notify the Department of Motor Vehicles in writing and request the department suspend the child's driver's license for a period not exceeding 90 days. §985.125(2).

The process for entrance into a diversion program begins at intake. The Juvenile Probation Officer (JPO) serves as the primary case manager for the child. §985.145(1). The JPO reviews any documents submitted as to probable cause and screens the child. §985.145(1)(a)-(c). During screening, the JPO will determine whether the child is eligible for a diversion program, and if so, which program. §985.145(1)(c). If the JPO determines that the child is eligible for a diversion program, and that the program would be appropriate for the child, the JPO will refer the child to the selected program. §985.145(1)(h). The results of the screening, along with the JPOs recommendations, are submitted to DJJ, who can petition a state attorney to review the recommendation within 10 days of the state attorney's receipt of the petition. §985.145(1)(i).

B. *Teen Court*

The Teen Court concept was initially developed in 1967, when the President's Commission on Law Enforcement and Administration of Justice recommended reducing the role juvenile court took in handling juvenile offenders.¹ The originators of the teen court model reasoned that a system allowing teens to confront youthful delinquents about their behavior could have a powerful rehabilitative effect.² As of 2005, there were 1035 Teen Courts operating nationwide.³ It is estimated that,

¹ Seyfrit, C. L., Reichel, P. L., & Stutts, B. L. *Peer Juries as a Juvenile Justice Diversion Technique*. 18(3) *Youth and Society* 302 (1987).

² Weisz, V., Lott, R. C., & Thai, N. D. *A Teen Court Evaluation with a Therapeutic Jurisprudence Perspective*. 20 *Behavioral Sciences and the Law* 381 (2002).

³ Pearson, S.S. & Jurich, S. *Youth Court: A Community Solution for Embracing At-Risk Youth*. A National Update. Washington, D.C.: American Youth Policy Forum (2005).

nationwide, between 110,000 and 125,000 teen offenders are involved in Teen Court every year.⁴

There are 4 common Teen Court models. The Adult Judge Model allows teens to act in every role (prosecutor, defense, bailiff, clerk, and jury) with an adult presiding over the hearing.⁵ The adult's role is minimal. The Peer Jury Model does not involve attorneys, but instead, the jury questions the offender directly, under the supervision of an adult judge; the jury is responsible for providing sanctions.⁶ A third model is the Youth Judge Model, which resembles the Adult Judge model, except that a teen serves as the judge as opposed to an adult.⁷ The fourth model is called the Youth Tribunal Model, wherein 3 or 4 teen judges question the offender and provide sanctions.⁸ In this model, no jury or attorneys are present, although an adult is in the room to supervise the proceedings.⁹ According to the Florida Association of Teen Courts, the 75 Florida teen courts all adhere to the Adult Judge Model.¹⁰

Teen Courts allow first time offenders an opportunity to have their case heard by a jury of their peers. The jury evaluates the offense committed, and provides appropriate sanctions.¹¹ According to a 1998 survey, the most commonly handled offenses are theft, minor assault, disorderly conduct, alcohol possession, vandalism, and marijuana.¹² In terms of sanctions provided, juries include elements of community service, apology, written essays, teen court jury duty, and substance abuse classes.¹³

Teen court has become a widely used diversion program because it encourages procedural justice. In multiple studies, the participants have demonstrated a greater understanding of the legal process, increased belief in the fairness of the teen court system, and increased belief in the trustworthiness of authority.¹⁴ Additionally, use of a teen court diversion program can reduce "secondary deviance" by reducing

⁴ *Id.*

⁵ Godwin, T.M. *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs*. Washington, DC: American Probation and Parole Association (1998).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See <http://www.flteencourt.net/> for more information.

¹¹ *Supra* note 3.

¹² Butts, J.A., & Buck, J. *Teen Courts: A focus on research*. Juvenile Justice Bulletin (2000).

¹³ *Id.*

¹⁴ Logalbo, A.P. and Callahan, C.M. *An Evaluation of Teen Courts as a Juvenile Crime Diversion Program*. Juvenile and Family Court Journal (Spring 2001); Wells, J. B., & Minor, K. I. *An Evaluation of Kentucky's Teen Court Programs*. 1995 (Unpublished manuscript, on file at Eastern Kentucky University).

offenders' exposure to formal labeling by DJJ.¹⁵ Qualified children are diverted to teen court and are not considered "delinquent," and thus have a decreased tendency to define themselves as "delinquent" and engage in further delinquent acts.¹⁶ Additionally, teen court is primarily aimed at providing rehabilitative sanctions and diverting offenders away from the juvenile justice system and toward something more conventional.¹⁷ Procedural justice, label avoidance, and rehabilitative sanctions have been shown to decrease the likelihood of recidivism.¹⁸

Teen Courts are authorized under §938.19, and may be administered by a nonprofit organization, a law enforcement agency, the court administrator, the clerk of the court, or another similar agency authorized by the board of county commissioners. §938.19(6).

C. Civil Citation

The civil citation process is "an efficient and innovative alternative to custody by the Department of Juvenile Justice..." §985.12(1). Civil Citations are designed to be used for children who commit non-serious delinquent acts and to ensure swift and appropriate consequences. §985.12(1).

Any law enforcement officer, upon making contact with a child who has admitted to committing a non-serious delinquent act, may issue a civil citation. §985.12(1). A copy of the citation issued must be sent to DJJ, the county sheriff, the state attorney, appropriate intake office of DJJ, designated community service monitor, the parent or guardian of the offender, and the victim. §985.12(1)&(3). The officer may assess not more than 50 community service hours to the child, and require participation in intervention programs appropriate to the child, including family counseling, urinalysis monitoring, and substance abuse or mental health treatment. §985.12(1).

Once issued a citation, the child must report to the designated community service monitor within 7 business days of the date on the citation. §985.12(4). The community service must be completed at a rate of no less than 5 hours per week. §985.12(4). The monitor will advise the intake office once the child has completed the community service requirement. §985.12(4). If the child fails to comply with the terms of the civil citation, or if the child commits a subsequent misdemeanor, the

¹⁵ Dugas, D.M. *Is the Effectiveness of Teen Court Dependent on Gender?* 2006 (unpublished manuscript, on file at University of Maryland).

¹⁶ Matsueda, R.L. (1992). *Reflected Appraisals, Parental Labeling, and Delinquency: Specifying a Symbolic Interactionist Theory*. 6 *American Journal of Sociology* 1577 (1992).

¹⁷ Povitsky, W. *Teen Court: Does it Reduce Recidivism?* 2005 (unpublished manuscript, on file at University of Maryland).

¹⁸ *Supra* notes 14 and 17.

law enforcement officer must issue a report alleging that the child committed a delinquent act, which will cause the juvenile probation officer to process the original delinquent act as a referral to the DJJ and refer the report to the state attorney for review. §985.12(6).

The child may choose to refuse a civil citation – if he or she does refuse, the law enforcement officer will refer the offender to the intake office of DJJ. §985.12(5). This option is available to the child at any time prior to the completion of the assigned community service. §985.12(5).

D. Juvenile Substance Intervention Program

A child who is charged with a felony of the second or third degree for the purchase of possession of a controlled substance (per chapter 893, Florida Statutes), tampering with evidence, solicitation for purchase of a controlled substance, or fraudulently obtaining a prescription, is eligible for voluntary admission into a juvenile pretrial substance abuse intervention program, including a drug treatment court program. §985.345(1). The length of time of the program depends on the program requirements and the treatment services suitable to the child. §985.345(1).

Admission into a program can be requested at the motion of either party, or by the court. §985.345(1). However, if the child allegedly committed a violation of the law and was involved in dealing and/or selling drugs or other controlled substances, the court must hold a preadmission hearing. §985.345(1). If at that hearing the state attorney shows (by a preponderance of the evidence) that the child was involved in the dealing or selling of controlled substances, the court must deny admission to a pretrial intervention program. §985.345(1).

While enrolled in a treatment program, the child is subject to a coordinated strategy developed by a drug court team. §985.345(2). The strategy may include, among other things, a means of sanctioning a noncompliant child. The sanctions may include placement in a substance abuse treatment center, or time in secure detention. §985.345(2). Any strategy must be provided to the child in writing before he or she agrees to any pretrial intervention program. §985.345(2).

At the end of the intervention period, the court must consider the recommendations of the state attorney and pretrial diversion program coordinator as to the disposition of the youth. §985.345(3). The court must find, in writing, that either the child has successfully completed the pretrial intervention program or the child has not. §985.345(3). If the court finds that the child has not completed the pretrial program, the court may order the child to continue to attend an intervention program (if resources are available) or may order that the charges revert back to normal delinquency procedures. §985.345(3). The court may dismiss the charges

only if the court finds that the child has successfully completed the pretrial intervention program. §985.345(3).

E. Expunction

A pre- or post-arrest diversion program may provide for the expunction of the non-judicial arrest record if the child successfully completes the program. §985.125(3). If the child's records are expunged, they may still be available to criminal justice agencies for determinations of eligibility in pre- or post-arrest diversion programs; they may also be available if the record is sought as part of a criminal investigation or when the child is a candidate for employment with a criminal justice agency. §943.0582(2)(a)(1). However, for any other purpose, the child may legally deny or fail to acknowledge the arrest and charge of the expunged record.

§943.0582(2)(a)(1). To expunge a record, the child must:

- Successfully complete a pre- or post-arrest diversion program that expressly permits expunction to occur, and that is based on nonviolent misdemeanors that do not qualify as acts of domestic violence;
 - Submit an application for expunction, no later than 6 months after completion of the program;
 - Submit an official written statement from the state attorney certifying the completion of the program, and that the program was limited to minors arrested for nonviolent misdemeanors who have not been otherwise charged with or found to have committed any criminal offenses or comparable ordinance violations; and
 - Have never, prior to applying for expunction, been charged with or found to have committed any criminal offenses or comparable ordinance violations.
- §943.0582(3)(a)-(f).

Expunction of a charge does not prevent the child from petitioning for the expunction of a later criminal record, if the child is otherwise eligible. §943.0582(6).

The department is allowed to charge a seventy-five dollar (\$75) processing fee for each request for expunction unless the fee is waived by the executive director. §943.0582(4).

Domestic Violence Issues

A. Statistics

Many of the statistics in this section are presented as a range, as many researchers in this field calculate their data based off of national surveys and censuses.¹

Each year it is estimated that between 7 million and 14 million children² are exposed to violence against their mothers or female caretakers by other family members. Children in homes where domestic violence occurs are physically abused or neglected between 9 and 15 times higher than the national average.³ In one study, more than 60 percent of the children surveyed were exposed to violence within the past year, either directly or indirectly and nearly one-half of the children and adolescents surveyed (46.3 percent) were assaulted at least once in the past year.⁴

Research suggests that being battered is the most common factor among mothers of abused children. It has been estimated that 30 – 60% of children whose mothers are battered are themselves victims of abuse. Children living with an abused mother have been found to be 12 to 14 times more likely to be sexually abused than children whose mothers were not abused.⁵

One recent study found that, in the United States, stepfathers abuse children under 5 years old to death at a rate of 55.9 deaths per million at risk children per year, compared to 5.6 deaths per million at risk children per year by biological fathers.⁶ The authors of the study noted that if they had expanded the definition of “stepfather” to include live-in boyfriends and other similarly situated relationship roles and included all types of abuse related deaths (not just battering deaths), at

¹ Jeffrey L. Edleson, Amanda L. Ellerton, Ellen A. Seagren, Staci L. Kirchberg, Sarah O. Schmidt, Amirithi T. Ambrose. *Assessing Child Exposure to Adult Domestic Violence*. Children and Youth Services Review 2 (2007).

² *Id* at 2-3, citing B.E. Carlson. *Children exposed to intimate partner violence: Research findings and implications for intervention*. 1 Trauma, Violence, and Abuse 4, (2000).

³ Todd Herrenkohl, Cynthia Sousa, Emiko A. Tajima, Roy C. Herrenkohl, Carrie A. Moylan. *Intersection Between Child Abuse and Children’s Exposure to Domestic Violence*. Trauma, Violence and Abuse 84 (2008) at 87.

⁴ David Finkelhor, Heather Turner, Richard Ormrod, Sherry Hamby, Kristen Kracke. *Children’s Exposure To Violence: A Comprehensive National Survey*. Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin (October 2009) at 1.

⁵ Suzanne C. Swan, Laura J. Gambone, Jennifer E. Caldwell, Tami P. Sullivan, David L. Snow. *A Review of Research on Women’s Use of Violence With Male Intimate Partners*. 23 Victims and Violence 301 (2008) at 308.

⁶ Martin Daly, & Margo Wilson. *The “Cinderella Effect”: Elevated Mistreatment of Stepchildren in Comparison to Those Living with Genetic Parents*. (2008) at 2-3.

risk children living with a “stepfather” would be 100 times more likely to be killed than children living with biological parents.⁷ However, abused mothers in domestic violence situations are also more likely to abuse their children – 8 times more likely than non-abused mothers.⁸

Finally, as many as 87% of children in homes where there is domestic violence between parents witness it.⁹

B. The effects of Domestic Violence on children

Family violence is more traumatic for most children than street violence. The victims and perpetrators are most often people the child knows intimately and depends on for love and protection.¹⁰ However, domestic violence can affect each child differently. One study coined the term “adversity package” to describe the factors that can accumulate in a child’s life;¹¹ these factors include child abuse, parental substance abuse, mental health difficulties (in the parents or in the child), social isolation, unemployment, homelessness, and involvement in crime.¹² The presence or absence of multiple factors can alter the child’s reaction to domestic violence, both in the short term and in the long term.¹³

A multitude of studies have demonstrated that children exposed to domestic violence tend to have worse problems than those not exposed.¹⁴ And children exposed to domestic violence experience problems equally as bad as children physically abused or physically abused *and* exposed to domestic violence.¹⁵

Examples of how children can be **physically harmed** by domestic violence include:

- Children can themselves be physically abused;
- Children often try to intervene to protect the adult victim, which puts them in danger from the abuser;

⁷ *Id* at 3.

⁸ Leigh Goodmark. *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*. 102 W. Va. L. Rev. 237 (1999) at 241.

⁹ *Id* at 243.

¹⁰ *How Does Exposure to Violence Affect Very Young Children?* The Harvard Mental Health Letter, vol. 11, No. 7, January, 1995.

¹¹ Stephanie Holt, Helen Buckley, & Sadhbh Whelana. *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature*. 32 Child Abuse and Neglect 797 (2008) at 803.

¹² *Id*.

¹³ *Id*.

¹⁴ *Supra* note 1 at 3. There is some controversy as to how significant the variance in problems between affected children versus unaffected children actually is, but studies all agree there is a variation.

¹⁵ *Id* at 4.

- Domestic abusers may use children to control the adult victim by violence or threats of violence against the children.

Studies most often use the Child Behavior Checklist to assess the effect of domestic violence.¹⁶ Exposed children generally exhibit more aggressive behavior, antisocial behavior, internalized behavior, lower social competence and poorer academic performance than those not exposed.¹⁷

Adult domestic violence can have other devastating **consequences** for children in addition to bodily injury.

- Domestic violence can deprive children of housing, schooling, or medical care.
- Flight from domestic violence often leads to homelessness among victims and children, and is a primary reason why adolescents run away from home.¹⁸
- Children exposed to domestic violence often have higher rates of cognitive, psychological and emotional impairments than those not exposed.¹⁹

A number of **long term effects** on children exposed to domestic violence have also been documented, as follows:

- **Psychological problems**, such as withdrawal, hypervigilance, nightmares, anxiety, depression, low self-esteem, and shame.²⁰
- **Physical symptoms**, often identified as reactions to stress, include sleep disorders, headaches, diarrhea, ulcers, asthma, and depression.
- **Academic problems** such as poor school performance, truancy, absenteeism, difficulty concentrating, and school failure.²¹
- **Social and behavioral problems**, such as inability to form trusting relationships, aggressive or violent behavior, and substance abuse. An exposed child is more likely to be physically aggressive toward others in the community,²² and is eighteen times more likely to be physically aggressive toward his or her parents.²³

There are also effects on children exposed to violence that can last an **entire lifetime**, including:

¹⁶ Jeffrey L. Edleson, in consultation with Barbara Nissley. *Emerging Responses to Children Exposed to Domestic Violence*. National Online Resource Center on Violence Against Women (October 2006) at 2.

¹⁷ *Id.*

¹⁸ W. Richie. *The Impact of Domestic Violence on the Children of Battered Women*. Children's Aid Society Newsletter (Spring, 1992) at 3.

¹⁹ *Supra* note 2 at 89.

²⁰ *Id.*

²¹ *Id.*

²² *Supra* note 16 at 2.

²³ *Supra* note 11 at 801.

- Depression;
- Eating disorders and other health problems;
- Drug use and alcoholism; and
- Criminality.²⁴

Finally, one study found that there is “an intergenerational transmission rate of 30% which can manifest itself in many ways.”²⁵ A twelve-year study found that children exposed to violence were almost twice as likely to experience violence in their own adult relationships.²⁶

It should be noted that current research is somewhat conflicting regarding the effects of abuse on children. While several studies support the information provided above, two studies found that many children suffer no greater problems than children not exposed to domestic violence.²⁷ Further, one article suggested that the variance found in papers is a result of vague definitions or retrospective accounts.²⁸ For example, researchers differ on how to define terms such as “exposure to domestic violence” and what acts constitute adult domestic violence.²⁹

C. How to Ascertain whether Domestic Violence may be Present

Domestic violence can be very difficult to detect. Often children and parents or guardians will not disclose incidents of domestic violence because of the pervasive fear that disclosure will result in the child being removed from the home.

If DJJ and/or DCF has not notified the court that domestic violence is present, it is very likely because they have not encountered any evidence of abuse during their investigation. However, as domestic violence can be concealed from case workers, investigators, and other professionals trained to look for it, the following are signs of domestic violence in children and adults. The presence or absence of such signs does not necessarily correlate to the presence or absence of domestic violence. However, they are signs that there **might** be domestic violence, thus providing the court an opportunity to examine more closely for domestic violence.³⁰

²⁴ *Supra* note 3 at 89.

²⁵ *Supra* note 11 at 805.

²⁶ *Id.*

²⁷ *Supra* note 1 at 4.

²⁸ *Id.* at 3.

²⁹ *Id.*

³⁰ Where the articles hereunder discuss the signs of abuse as signals for parents, these signs may be present in abusive and abused juveniles also.

Children have several cues that they may be living with some form of violence.

These cues include:

- Physical violence towards animals or people;
- Aggressive behavior;
- Substance or alcohol abuse;
- Difficulty paying attention; or
- Withdrawn or absence of emotions;
- Anxiety or hyper-vigilance;
- Risk-taking behaviors
- Problems in school;
- Difficulty with peer relationships.³¹

There are many possible signs of an **abusive party**. The signs that suggest possible domestic violence are those that indicate disrespect toward one party.³² They can be broken into two sections, general signs and behavior in court.

General signs of abusive parties may include:

- Authoritarian demeanor or parenting style;
- Under-involved in family members' lives;
- Considering themselves superior in all aspects of family life;
- Placing little to no value on abused party's abilities; or
- Continuous criticism of abused party.³³

Behavioral signals in court of abusive parties may include:

- Claiming the other party is stupid or inflexible;
- Angering easily;
- Attempting to portray him/herself as the true victim;
- Attempting to engender sympathy with the court;
- An unwillingness to understand another's perspective;
- Advocating or adhering to strict gender roles;
- Patronizing the other party, counsel, or the court;
- Attempting to create an alliance with the court;
- Minimizing, denying, blaming the other party for, or excusing inappropriate behavior;³⁴ or

³¹ National Council of Juvenile and Family Court Judges, *A Judicial Checklist for Children and Youth Exposed to Violence*. (2006) at 2.

³² *Id* at 8.

³³ Jonathon W. Gould, David A. Martindale, Melisse H. Eidman. *Assessing Allegations of Domestic Violence*. 4 *Journal of Child Custody* 1(2007) at 30.

³⁴ *Supra* note 31 at 9.

- Speaking more than seventy-five percent (75%) of the time.³⁵

There are signs to look for in the **abused party** also. These signs include:

- Difficulty presenting evidence (perhaps from fear, abuse, or the belief that she will not be believed);
- Inappropriate response resulting from fear, depression, stress or other abuse;
- Anxious or unfocused in the presence of the abusive party;
- Aggressive or angry when testifying;
- Stress or duress when other party is testifying; or
- Appear numb, disinterested, or unaffected.³⁶

There are other signs that abuse may be present. These signs may be displayed by either party, and may mean different things, depending on whether they are displayed by the abuser or the abused. These signs include:

- One party always waits for the other to speak first. This could be an indicator of **control** if done by the abuser or **fear** if done by the abused.
- One party glances at the other each time he or she speaks to check for the other's reaction. This could be an indicator of **intimidation** if done by the abuser or **fear of later retribution** if done by the abused.
- One party excuses every conflict discussed. This could be a sign that either party is attempting to **minimize** the abuse.
- One party sends the other facial cues. This could be a sign of a number of issues. If done by the abuser, it could be a sign of **control** or **intimidation**. If done by the abused, it could be a sign of **fear** or **apology**.³⁷

D. Best practices in delinquency cases involving domestic violence

This best practices model is intended to serve as suggested guidelines for how domestic violence should be safely handled in delinquency cases. Its purpose is to provide guidance on issues related to domestic violence in delinquency cases.

Flexibility of Response

Throughout the delinquency process, whenever domestic violence is present, try to remain flexible in responding to the problem. Ensure abused parties have access to support resources so they may develop plans to reduce or eliminate the dangers of

³⁵ Alexandria Zylstra. *Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators*. 2001 J. Disp. Resol. 253 (2001) at 275.

³⁶ *Supra* note 31 at 10.

³⁷ *Supra* note 35 at 256-257.

domestic violence.³⁸ Consider each child's situation in context and in light of what is helpful and safe for individual family members.³⁹ Avoid automatically referring a juvenile to a standard set of processes and services;⁴⁰ instead, try to determine which interventions⁴¹ are appropriate for each youth based on the specific characteristics or patterns of violence.⁴²

Need for Confidentiality

The delinquency court is responsible for a large volume of information, often sensitive or confidential. This responsibility is heightened when there is domestic violence present. When making decisions and policies about information disclosure, balance:

- the need for information required to prove the occurrence of child maltreatment and to keep children safe, with
- the need of battered parties to keep information confidential in order to maintain and plan effectively for their safety.⁴³

Information that should be very carefully protected includes the victim's **safety plan** and **current address**.⁴⁴ Form 12.980(h), which is used in the domestic violence injunction process, is the mechanism for a petitioner to request his or her address be kept confidential. Finally, in the event that victims are asked to waive their

³⁸ Susan Schechter, with Jeffrey Edleson, with major contributions by Leonard Edwards, Linda Spears, Ann Rosewater, Elizabeth Stoeffel. *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*. National Council of Juvenile and Family Court Judges (1999) at 22.

³⁹ Nancy Ver Steegh, & Clare Dalton. *Report from the Wingspread Conference on Domestic Violence and Family Courts*. (2007) at 17.

⁴⁰ *Id* at 16.

⁴¹ One article included a list of resources, including: lethality assessment; batterers' treatment and anger management programs; alcohol and drug treatment; dual-diagnosis consultants and treatment; victim support and treatment; post-traumatic stress groups; therapy; mediation; supervised access and exchange facilities; reunification therapists; parenting coordination; assistance in implementing court-ordered parenting plans; treatment for traumatized children; parenting without violence classes; parenting education, skills training, and coaching; custody evaluation; child protection services; protective orders; removal of weapons; criminal penalties; court orders with triggers; suspended or supervised visitation; case management; interpreter services; housing and employment supervised access and exchange facilities; reunification therapists; parenting coordination; assistance in implementing court-ordered parenting plans; treatment for traumatized children; parenting without violence classes; parenting education, skills training, and coaching; custody evaluation; child protection services; protective orders; removal of weapons; criminal penalties; court orders with triggers; suspended or supervised visitation; case management; interpreter services; housing and employment assistance; immigration services; establishing child support and paternity; child care; and advocacy. Wingspread, *id* at 17-18.

⁴² *Id* at 17.

⁴³ *Supra* note 38 at 42.

⁴⁴ *Id* at 43.

privilege regarding confidential information, verify that the victim understands the implications of such a waiver.⁴⁵

Initial Hearings

Many battered parties are afraid to admit that they are victims of abuse. Thus, the absence of allegations of abuse does not mean domestic violence is not present. Recognize that abuse victims may attempt to hide the problem for reasons which include fear, shame, or embarrassment.⁴⁶ In every case, try to spot the signs of abuse as early as possible. The earlier in a case signs of abuse and coercive or controlling behaviors can be recognized, the faster the response to create a safe environment for the child and/or victim.⁴⁷

If the **child is the abuser** and domestic violence is alleged, and the child does not meet the detention criteria, the child may be placed in secure detention if the court makes specific findings that:

- Respite care for the child is not available.
- It is necessary to place the child in secure detention in order to protect the victim from injury. §985.255(2)(a)&(b).

Aside from this provision, the child shall be processed in the same manner as any other child alleged delinquent.

Duty to Report

If the child is or may be a victim of domestic violence, the court must report any knowledge or suspicion of abuse to the Department of Children and Families. §39.201(1)(a). A judge making a report must include his or her name; this information is confidential and exempt except as provided in §39.202. §39.201(1)(b).

Courtroom Practices

The following is a list of best practices for delinquency hearings where domestic violence is present.

Judges should **promote a culture of patience and courtesy** throughout the court system so that everyone is treated with dignity and respect.⁴⁸

⁴⁵ *Id* at 44.

⁴⁶ Jerry J. Bowles, Kaye K. Christian, Margaret B. Drew, Katheryn L. Yetter. *A Judicial Guide to Child Safety in Custody Cases*. National Council of Juvenile and Family Court Judges (2008) at 20.

⁴⁷ *Id* at 19.

⁴⁸ *Supra* note 38 at 101.

- Insist that any attorneys present treat all parties with respect. If the abusive party's attorney is allowed to be disrespectful toward the opposing party, or any witnesses, that behavior serves to empower the abusive party and can thereby increase the safety threat to the at-risk party.
- Because the at-risk party may need additional time to answer questions, insist that each party is given **adequate time to respond**.
- Insist that counsel **maintain a respectful distance** from the witness.
- Warn the parties and counsel against the use of sarcastic or other disrespectful remarks or tone.
- **Consider imposing sanctions** for the continued use of disrespectful tone, remarks, or tactics.
- Watch out for and **intervene to stop any controlling non-verbal behavior** by one party toward the other.⁴⁹

To ensure **safety during the course of the hearings** when there is suspicion that one party has been controlled by the other party:

- **Inform security** that the suspected abusive party must be kept a safe distance from the at-risk party. This may include escorting the at-risk party into and out of the court house.⁵⁰
 - **Physically separate** the parties in the waiting area and in the courtroom to ensure that there is no communication between them.⁵¹
- Consider using the services of a victim advocate in the courtroom.⁵²

In addition to these practices, encourage the same caseworker and attorney for the children and parties to appear at all hearings on the case.⁵³

Finally, remember that the at-risk party may be re-traumatized by the presence of the abusive party, which may affect his or her testimony and whether or not it will be presented.⁵⁴

Drafting Orders

As a general guide, orders should be drafted with the following goals in mind:

- keeping the victim safe;

⁴⁹ Thomas D. Lyon, Mindy B. Mechanic. *Domestic Violence and Child Protection: Confronting the Dilemmas in Moving From Family Court to Dependency Court*. HANDBOOK ON CHILDREN, CULTURE, AND VIOLENCE (N. Dowd, D. Singer, & R.F. Wilson 2005) at 13.

⁵⁰ *Id.*

⁵¹ Office of the State Courts Administrator, *Florida's Domestic Violence Benchbook* (2008) at 8.

⁵² *Id.*

⁵³ *Supra* note 38 at 101.

⁵⁴ *Supra* note 49 at card 4.

- identifying the service needs of the child, including all forms of assistance and help; and
- rehabilitation and accountability for the perpetrator.⁵⁵

The court should **take sufficient time** to examine each case carefully and then regularly review each case to ensure that court orders are carried out by DJJ, DCF, or other service providers.⁵⁶ Set a date in a few months to review compliance and any difficulties that the child might be experiencing.⁵⁷ In this fashion the orders can be tailored to each specific case and monitored for effectiveness.

If the youth is the abuser, consider ordering him or her to a certified Batterer's Intervention Program. If the youth is not the abuser, but has been abused or has witnessed abuse, consider ordering the youth to counseling for domestic violence-related mental health issues.

Avoid drafting orders that mandate a large portion of time in which the abused party and abusive party are in contact. Promoting parent-child contact where parties are prone to become physically violent may create opportunities for renewed domestic violence.⁵⁸

⁵⁵ *Supra* note 38 at 107.

⁵⁶ *Supra* note 38 at 101.

⁵⁷ *Supra* note 49 at 34.

⁵⁸ Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, Nicholas Bala. *Custody Disputes Involving Allegations of Child Abuse: Toward a Differentiated Approach to Parenting Plans*. 46 Family Court Review 500 (2008) at 502.

Common Evidence Issues

A. *Investigatory Stops versus Consensual Encounters*

There is a marked difference between consensual encounters and investigatory stops. A consensual encounter is one in which the citizen is under no obligation to comply with the officer's requests, and may freely ignore the requests and leave at any time.¹ As such, no constitutional safeguards are invoked.² An investigatory stop, on the other hand, is made based on well-founded, articulable suspicion.³ At this level, the police officer can reasonably detain the citizen temporarily to ascertain whether any violations of law have or are about to occur.⁴ Constitutional protections such as the 4th amendment are involved in investigatory stops.⁵

A determination as to whether a stop was consensual or investigatory revolves around the question of whether a child would reasonably feel free to disregard the police and leave.⁶ Such a determination could depend on factors surrounding the stop such as the "threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."⁷ Where a police officer does not ask whether a child minds talking to him or her and answering questions, but instead uses words of compulsion to order a child to engage with the police officer, the encounter is not consensual, but is instead investigatory.⁸

In determining whether a stop was consensual or investigatory, examine whether, under a totality of the circumstances, a reasonable person would have felt at liberty to ignore the police presence and go on with his or her business.⁹ Where evidence was seized under a stop determined to be investigatory rather than consensual, verify that the police officer had the appropriate reasonable suspicion to perform the stop.

¹ Popple v. State, 626 So. 2d 185 (Fla. 1993).

² *Id.* at 186.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ P.W. v. State, 965 So. 2d 1197 (Fla. 4th DCA 2007) at 1199.

⁷ United States v. Mendenhall, 446 U.S. 544 (1980) at 554.

⁸ D.G. v. State, 714 So. 2d 644 (Fla. 4th DCA 1998) at 646.

⁹ Caldwell v. State, 985 So. 2d 602 (Fla. 2d DCA 2008) at 606.

B. Body Searches

It has been well-established that a lawfully arrested person can be searched without the need for a search warrant.¹⁰ However, where a person has not been lawfully arrested but is instead only detained by the police in an investigatory stop, the ability to search the detained person is severely limited. Under Florida's Stop and Frisk Law, §901.151, a law enforcement officer may perform a very limited search of the person only when the officer has probable cause to believe that the person is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person. The limited search may not initially go beyond a "pat down."¹¹ Only if the officer feels an object he or she reasonably believes to be a weapon may the officer seize the object.¹² Courts have held it to be unreasonable for a police officer, with no basis for suspecting the youth had a weapon, to perform a weapons search when the officer has not performed a pat down first.¹³ Even when a child puts a hand in a pocket in non-compliance with an order to show both hands, the Stop and Frisk Law only permits a pat down search, after which a weapon, if found, may be seized.¹⁴

C. Vehicle Searches

Where a person voluntarily consents to a search of his or her vehicle, the search must be done within the constraints of that consent.¹⁵ The measure of the consent – and what precisely it contains – can be determined by a test of objective reasonableness: what an ordinary reasonable person would have understood to be the scope of consent by the exchange between the officer and the consenting person.¹⁶ Where consent is given, but limited due to a locked container, and after a request by the police for the container to be open was denied, the consent is effectively limited, by denial, to exclude the locked container.¹⁷

When a person has been arrested, a vehicle can be searched as a contemporaneous incident to the arrest.¹⁸ However, this ability is not unlimited. While the arrested person does not need to be in the vehicle at the time of arrest and search, he or she

¹⁰ United States v. Robinson, 414 U.S. 218 (1973).

¹¹ D.B.A. v. State, 962 So. 2d 406 (Fla. 2d DCA 2007) at 407.

¹² *Id.*

¹³ L.C. v. State, 2009 WL 3763278 (Fla. 3d DCA 2009).

¹⁴ *Supra* note 11.

¹⁵ Davis v. State, 594 So. 2d 264 (Fla. 1992) at 266 (quoting United States v. Blake, 888 F. 2d 795 (11th Cir. 1989) at 800).

¹⁶ J.J.V. v. State, 17 So. 3d 881 (Fla. 4th DCA 2009) at 884 (quoting Florida v. Jimeno, 500 U.S. 248, (1991) at 251).

¹⁷ *Id.* at 885-886.

¹⁸ Thornton v. United States, 541 U.S. 615 (2004) at 617.

does need to be in "close proximity, both temporally and spatially" to the vehicle.¹⁹ The rationale for a search when the arrested person is in close proximity to the vehicle is that the arrested person is still able to destroy evidence in the vehicle and/or lunge for a weapon²⁰, making a search of the vehicle a safety precaution as well as an evidence preservation method. However, the ability to search the vehicle hinges on the proximal time and distance the vehicle is from the suspect. Where an arrestee is 30-60 feet from the vehicle, after a 35 minute lapse from the time the arrestee exited the vehicle, and the arrestee no longer has keys to the vehicle, the arrestee is no longer in close proximity, neither spatially nor temporally, to the vehicle.²¹ As such, search of the vehicle incident to the arrest would render any evidence found as inadmissible under that theory.

D. Standards in a School Setting

In particular, standards for searches in a school setting are unique to delinquency courts. In a school setting, the standard for conducting a warrantless search is different than the standard needed outside of school. Outside of school, the standard is probable cause; inside the school, the law enforcement officer needs only to have reasonable or founded suspicion.²² Further, this reasonable suspicion is considered from the viewpoint of a reasonable officer with the actual officer's training and experience.²³ The reasonable suspicion must be based on "specific and articulable facts that, when taken together with the rational inferences from those facts, reasonably warrant the intrusion."²⁴ A "hunch" or "intuition" alone is an insufficient basis for a "reasonable suspicion," upon which a warrantless search relies.²⁵ If an officer is justified in ordering a juvenile to empty his or her pockets, such an order is equivalent, for 4th amendment purposes, to the officer searching the juvenile by reaching inside the juvenile's pockets.²⁶

E. Weapons Issues

Section 790.001(13) defines a weapon as any "dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife." Common pocket knives are described in case law as a knife with a blade that can be folded into the handle that is carried in the closed position and that has no

¹⁹ *Id* at 619.

²⁰ *Id* at 621.

²¹ *A.T.P. v. State*, 973 So. 2d 650 (Fla. 2d DCA 2008) at 653.

²² *R.B. v. State*, 975 So. 2d 546 (Fla. 3d DCA 2008) at 547.

²³ *Id* at 548.

²⁴ *C.G. v. State*, 941 So. 2d 503 (Fla. 3d DCA 2006) at 504.

²⁵ *C.A. v. State*, 977 So. 2d 684 (Fla. 3d DCA 2008) at 686.

²⁶ *Supra* note 22 at 548.

weapon-like characteristics (hilt guard or notched grip, for example).²⁷ Additionally, if the pocket knife's blade is four inches or less, the knife is considered a common pocket knife.²⁸

A deadly weapon is defined as an item which, if used in the ordinary manner contemplated by its design, is likely to cause serious bodily harm or death.²⁹ Whether the item is a deadly weapon is a factual question determined by considering size, material, and manner in which it was used or could be used.³⁰ Several example cases have demonstrated the analysis the courts engage in when determining whether an object is a "deadly weapon."³¹

As discussed above, when a law enforcement officer has probable cause to believe a child may be carrying a dangerous weapon, that officer may engage in a limited search called a "pat down" to determine if the child is in fact carrying a dangerous weapon.³² Only if the officer feels an object that he or she reasonably believes to be a dangerous weapon may he or she seize the weapon.³³

²⁷ See J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008) for an example.

²⁸ L.B. v. State, 700 So. 2d 370 (Fla. 1997) at 372.

²⁹ J.W. v. State, 807 So. 2d 148 (Fla. 2d DCA 2002) at 149.

³⁰ Simmons v. State, 780 So. 2d 263 (Fla. 4th DCA 2001) at 265.

³¹ See D.B.B. v. State, 997 So. 2d 484 (Fla. 2d DCA 2008) (a bicycle thrown 10 feet from the intended victim that only traveled 5 feet was not a deadly weapon); E.J. v. State, 554 So. 2d 578 (Fla. 3d DCA 1989) at 579 (determining that a skateboard thrown at a vehicle was not a deadly weapon); Forchion v. State, 214 So. 2d 751 (Fla. 3d DCA 1968) at 752 (finding that a two foot long part of a broom handle thrown from twelve to fifteen feet away was not a deadly weapon); Rogan v. State, 203 So. 2d 24 (Fla. 3d DCA 1967) at 25 (concluding that a one-foot diameter flower pot filled with dirt, which was thrown through the window of a residence, did not qualify as a deadly weapon where the victim was seated five feet from the window).

³² *Supra* note 11.

³³ *Id.*

Immigration Issues

Juvenile adjudications of delinquency are not, for the purposes of the Immigration and Naturalization Act (INA), considered “convictions.”¹ As most of the provisions in the INA’s Deportable Alien section (8 CFR 1227) are triggered only where there is a conviction, adjudications of delinquency do not often result in contact with Immigration and Naturalization Service (INS).

However, there are certain offenses in §1227 that do not require a conviction to render a noncitizen juvenile deportable. These offenses include:

- Any alien who is, or at any time after admission has been, a drug abuser or addict, 8 CFR 1227(a)(2)(B)(ii);
- Any alien who, at any time after admission, is enjoined under a valid protection order and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, 8 CFR 1227(a)(2)(E)(ii);
- Any alien who engages in or attempts to engage in human trafficking, or who has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, 8 CFR 1227(a)(2)(F);
- Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter or any Federal or State law, 8 CFR 1227(a)(3)(D); and
- Any alien who has engaged, is engaged, or at any time after admission engages in espionage, sabotage, or any other crime that endangers public safety or national security. 8 CFR 1227(a)(4)(A).

Furthermore, an adjudication of guilt may result in deportation even if it did not stem from one of the above offenses. If the disposition ordered for the child includes a substantial period of time in the custody of DJJ, a noncitizen juvenile may be deportable. Additionally, if a noncitizen juvenile is determined to be incompetent and is ordered into DCF’s custody for a substantial period of time, the juvenile may be deportable. Section 1227(a)(5) says, “any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry...” Public charge has been defined as becoming primarily dependent on the government for subsistence, as demonstrated by receipt of public assistance, or institutionalization for long-term care at government expense.² (emphasis added)

¹ *In re Devison*, 22 I&N Dec. 1362 (BIA 2000).

² U.S. Citizenship and Immigration Services. *Questions and Answers: Public Charge*. US Department of Homeland Security (May, 1999), available at http://www.uscis.gov/files/article/public_cqa.pdf.

As a result, there are circumstances where a noncitizen juvenile may not be fully aware of the consequences of a possible nolo contendere or guilty plea. Thus, the court may include in its colloquy that is provided prior to determining the voluntariness of a nolo contendere or guilty plea a short statement about the possibility of deportation for certain acts or consequences, as indicated in the Arraignment Hearing Section on page 125-126.

Interpreters for Foreign Languages

The court will often be presented with individuals who cannot communicate properly in English. It may be that the individual does not speak English at all or speaks limited English insufficient for court communications. In situations such as these, the court must be able to identify the communication barriers, determine the best method for surmounting the obstacle, and provide an individual or service capable of resolving the problem.¹

A. Identify Need for Interpreting Services

The first thing the court must do is identify that a communication problem exists. It may be the case that the person in need of services requests interpreter services, or a non-court personnel initially determines that an interpreter is needed and communicates such to the court.² However, the court may not have any indication that interpreter services are required until the person in need of services is in the courtroom during a hearing. In whatever manner the court learns of the need for services, once the need is identified, the court must determine whether and what type of interpreter service is required.

The Rules of Judicial Administration specify in which circumstances an interpreter is required, and when the court may find that the services are not required.³ Where the proceeding is a criminal or juvenile delinquency proceeding, and the person in need of services is the accused, the court must appoint an interpreter for that person.⁴ Further, if the proceeding is a dependency, delinquency, or Child or Family in Need of Services case, court interpreting services are required for every person who is a party to the case (including parents or guardians).⁵ If the victim is the person in need of services, the court must appoint an interpreter unless it finds that the victim does not require those services.⁶ In all other proceedings, an interpreter for a litigant in need of interpretive services must be appointed if the court determines “that the inability to understand English deprives the litigant of an understanding of the court proceedings, that a fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency

¹ Commission on Trial Court Performance and Accountability, *Recommendations for the Provision of Court Interpreting Services in Florida’s Trial Courts*. DRAFT (2010) at 10.

² *Id.* at 11.

³ Fla. R. of Jud. Admin. 2.560 (2009), hereinafter referred to as “Rule 2.560.”

⁴ Rule 2.560(a).

⁵ Committee on Trial Court Performance and Accountability. *Court Interpreters: Report and Recommendations*. (January 2002) at 13, available online at http://www.flcourts.org/gen_public/pubs/bin/CourtInterpretersFinalReport.pdf.

⁶ *Id.*

proceeding), and that no alternative to the appointment of an interpreter exists.”⁷ Finally, in any proceeding where a witness is the person in need of services the appointment of an interpreter is governed by the applicable provisions of the Florida Evidence Code.⁸

If the child is non-English-speaking or limited-English-proficient, appoint an interpreter. If the victim is non-English-speaking or limited-English-proficient, appoint an interpreter unless the court finds that the victim does not require such services. Rule 2.560(a). If the witness is non-English-speaking or limited-English-proficient, appointment of an interpreter is governed by the Florida Evidence Code. Rule 2.560(c). In making determinations regarding the appointment of an interpreter, ensure compliance with the requirements of Title VI of the Civil Rights Act of 1964. Rule 2.560(d). Whenever possible, a certified or other duly qualified interpreter, as defined in the Rules for Certification and Regulation of Spoken Language Court Interpreters, must be appointed. Rule 2.560(e)(1). Preference is given to appointment of certified and language skilled interpreters, then to persons holding a provisionally approved designation. Rule 2.560(e)(1) and Rule 14.100(a)-(e). If, after diligent search, a certified or other duly qualified interpreter is not available, the court may appoint an interpreter who is registered with the Office of State Courts Administrator. The court must make a determination, on the record, that the proposed interpreter is competent. Rule 2.560(e)(2). If no certified or other duly qualified interpreter is available, the court may appoint an interpreter not certified or qualified if the court finds that good cause exists, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(3). Such an appointment is limited to a specific proceeding and cannot be extended to subsequent proceedings without additional findings of good cause and the requirements set forth in Rules 2.560(e)(3) and (4). Rule 2.560(e)(5). If the interpreter is not appointed under Rule 2.560(e)(1), the court must so advise the child, on the record, and the child may object or waive the appointment. Rule 2.560(e)(4).

B. Perform Assessment to Determine Needs

When the court has determined that there is a need for interpretive services, the next step is to determine which interpretive service is most appropriate by performing an assessment of the person’s needs. If the need for services has been identified in advance of the proceeding, the court can use the information submitted to perform the assessment.⁹ If the person’s needs are not identified until the person is in court, the court should conduct a brief questionnaire, asking questions that

⁷ Rule 2.560(b).

⁸ Rule 2.560(c).

⁹ *Supra* note 1 at 11.

involve descriptions or narrations to determine the extent of the communication barrier and the services required.¹⁰

When the court determines that a party or witness cannot understand the English language, or cannot express him- or herself in English sufficiently to be understood, the court must bring in a qualified interpreter. §90.606(1)(a). This is not limited to individuals who speak a language other than English, but includes any person who cannot be reasonably understood, or cannot reasonably understand questioning without the aid of an interpreter. §90.606(1)(b).

C. Selection of Interpreter

Once the court has determined that a need for interpretive services exists, and has assessed the extent of the communication barrier, the court must select an interpreter for the proceeding.¹¹ Typically, the court administration will have contacts with appropriate interpreters, and can assign an interpreter based on several factors, such as: the language needed, type of case, complexity of proceedings, qualifications of interpreter, location, and availability of remote interpreting technology.¹² Whenever possible, a certified or duly qualified interpreter must be appointed.¹³

For non-English interpreters, certified has been defined as, “an interpreter who has completed the mandatory requirements as defined by these rules and holds a valid certificate as a certified court interpreter issued by the Office of the State Courts Administrator and is named in the registry of certified court interpreters maintained by the Office of the State Courts Administrator.”¹⁴ Duly qualified has been defined as, “an interpreter who has obtained a passing grade on a written examination, who has attended a two-day orientation program offered by the Office of the State Courts Administrator, who is familiar with Part III of these rules, and who has an understanding of basic legal terminology in both languages.”¹⁵

There may be situations where a certified or duly qualified interpreter cannot always be readily appointed; an interpreter who is neither duly qualified nor certified may be appointed during a proceeding, if the court finds that good cause exists for said appointment, such as burdensome delay or other unusual circumstance, and the

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Rule 2.560(e)(1) and Fla. Stat. 90.6063(2).

¹⁴ Rules for Certification and Regulation of Court Interpreters (hereinafter “Rule”), Rule 14.100(a) (2009).

¹⁵ Rule 14.100(b).

proposed interpreter is competent to interpret.¹⁶ In criminal and juvenile delinquency proceedings, a defendant is allowed to object to the proposed appointment of an interpreter who is neither duly qualified nor certified.¹⁷

D. Provision of Services

Before providing any interpretive services, the interpreter must take an oath that he or she will make a “true interpretation” of the questions asked and the answers given, and that the interpreter will make a “true translation” into English any writing that he or she is required to translate.¹⁸ An interpreter for a deaf or hard-of-hearing person must demonstrate that he or she is able to communicate readily with the person in need of services and can repeat and translate communication easily.¹⁹ Interpreters are expected to render complete and accurate interpretation without altering, omitting, explaining, or adding anything to what the person in need of services communicates.²⁰ Further, interpreters are expected to be impartial and unbiased. If there is any real or perceived conflict of interest, the interpreter must disclose such to the court.²¹

Interpreters are subject to the same provisions as witnesses,²² and must protect the confidentiality of all privileged and confidential information.²³

E. Modes of Interpreting and Service Delivery Methods

There are several modes of interpreting that may be available to the court. The first is **consecutive interpretation**, in which the interpreter renders statements from or to the person in need of services to or by the court intermittently, after a pause between statements by the speaker.²⁴ Consecutive interpreting may require communications between parties to be broken by the interpreter into small utterances that the interpreter is capable of remembering for interpretation.

Alternatively, the interpreter may engage in **simultaneous interpretation**, rendering an interpretation continuously to the person in need of services at the same time that the speaker is communicating.²⁵ Simultaneous interpretation is intended to be

¹⁶ Rule 2.560(e)(2).

¹⁷ *Supra* note 1 at 12.

¹⁸ Fla. Stat. 90.606(3) and Fla. Stat. 90.6063(7).

¹⁹ Fla. Stat. 90.6063(6).

²⁰ Rule 14.310.

²¹ *Id.*

²² Fla. Stat. 90.606(2).

²³ Rule 14.340 and Fla. Stat. 90.6063(7).

²⁴ *Supra* note 1 at 12.

²⁵ *Id.*

received by the person being addressed by the person in need of services; as such, the interpreter may use equipment to ensure the information is received properly without disruptions to the proceeding.²⁶

Another mode of interpreting is **sight translation**, wherein the interpreter provides an oral rendition of a source text from one language to another.²⁷

Finally, the interpreter can engage in **translation services**, wherein he or she creates a written document in the target language that accurately reproduces the equivalent of the written source language document.²⁸

The above services can be delivered in a variety of ways. Commonly, the interpreter is physically present at the proceeding. This may be desirable where the hearing will be lengthy or complex, or where technical issues or limitations may exist.²⁹ An alternative to this is remote telephone interpretation, where the interpreter uses a standard telephone line and a speaker phone to consecutively or simultaneously interpret the communications to or from the person in need of services and the court.³⁰ This may be used when an interpreter is unable to be present for the hearing due to distance or other factors but is still available to interpret.

A second alternative is remote audio/video interpretation, where interpreters use integrated audio-visual or internet-based systems to facilitate communication.³¹ The advantages of this system are even greater than those with telephonic interpretation, as the video comment allows an interpreter to actually view the activities in the courtroom as they are providing the interpreting service, and audio mixers allow for speaker isolation.

²⁶ *Id.*

²⁷ National Association of Judiciary Interpreters and Translators. *Terms of the Profession*. (n.d.) available online at <http://www.najit.org/Publications/Terms%20of%20the%20Profession.pdf>.

²⁸ *Supra* note 1 at 13.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Interstate Compact

A. Generally

The Interstate Compact is an agreement among and between the states to cooperate with each other in returning children to states when their return is sought, and in accepting the return of children whenever a child residing in a state is found or apprehended in another state. §985.801(2). The Compact can be found at §985.802.

B. Runaways and Escapees – Procedure

Article IV of the Compact discusses the return of runaways, while Article V discusses the return of escapees. Both Articles operate in a functionally similar manner. A person or agency that has legal custody of a child who has not been adjudicated delinquent but has run away without consent, or a child adjudicated delinquent who has escaped custody, may petition the appropriate court in the demanding court for an issuance of a “Requisition for the Juvenile’s Return.” The petition must either state such facts as tend to show that the unemancipated child who has run away is endangering his or her own welfare or the welfare of others, or (if the child has been found delinquent) state the particulars of the child’s adjudication of delinquency and the circumstances of the breach. The petition must be verified by affidavit, and be accompanied by certified copies of documents on which the petitioner’s entitlement of the child’s custody is based.

The court to which the petitioner applies may hold a hearing to determine custody and emancipation status as well as whether it is in the child’s best interests to be returned to the state. If the court determines, with or without a hearing, that the child should be returned, the court shall present to the appropriate jurisdiction where the child is alleged to be a written Requisition for the Juvenile’s Return. The court will then issue an order for any law enforcement officer to take the child into custody. Once the child is taken into custody, the court may appoint him or her a Guardian ad Litem or counsel. If the requisition is in order, the court must deliver the child to an officer of the court demanding the child. If there is no Requisition outstanding, but the court has reasonable information that the child has run away from or escaped from another state, the court can take the child into custody to determine whether probable cause exists to hold the child. The court may appoint the child counsel or Guardian ad Litem. The court may hold the child for up to 90 days to enable the child to return to another state wherein an agency or party has legal custody over the child. If the child has committed a delinquent act in the state he or she has run away to or escaped to, the child may not be returned to his or her home state without the consent of the court without first discharging any obligations arising from the commission of the delinquent act.

C. Voluntary Return Procedure

Article VI details how a child may voluntarily return to a state he or she ran away or escaped from. When a runaway or escapee child is taken into custody, he or she can consent to be returned to his or her home state, with or without a Requisition of Return filed. The court must inform the child of his or her rights under the Compact before allowing the child to return to the home state.

D. Probationers and Parolees

Article VII indicates that when probationers or parolees move from one state to another, the receiving state may, after an examination of the facts surrounding the child's case, accept supervision of the parolee or probationer.

E. Supplementary Agreements

The Interstate Compact does not bar states from entering into supplementary agreements with other states.

Jurisdiction in Delinquency Proceedings

A. Generally

The circuit courts are granted original jurisdiction over juvenile delinquency proceedings. §985.0301(1). Jurisdiction attaches to a case and the subject child in either of two situations. When the child has been taken into custody with or without service of summons and before or after filing of a delinquency petition, personal jurisdiction attaches to the child. §985.0301(2)&(4)(b). Or, when the child and his or her parent or guardian has been served summons, subject matter jurisdiction attaches. §985.0301(2)&(4)(b). Petitions alleging delinquency must be filed in the circuit where the alleged violation occurred, but may be transferred to the circuit in which the child lives. §985.0301(4)(a).

B. Retention of Jurisdiction

Once jurisdiction attaches, the circuit court will in most cases retain jurisdiction over a child adjudicated delinquent until the child turns 19 years old, unless the court relinquishes jurisdiction sooner, §985.0301(5)(a), though the terms of commitment may run until the child turns 21 years old. §985.0301(5)(c). Exceptions to (5)(a) include children in high or maximum risk facilities and sexual offenders, over whom the court may retain jurisdiction until the child turns 21 years of age, §985.0301(5)(d)-(g), though the terms of commitment under juvenile court remain limited to the child's turning 21 years of age. §985.0301(5)(f).

Once jurisdiction has attached, the court retains jurisdiction over any restitution order until the order is satisfied. §985.0301(5)(h). The restitution order is separate from the disposition order or order of commitment.

Juvenile Assessment Center

Juvenile Assessment Centers (JAC) are community operated facilities that provide collocated central intake and screening services, as well as a broad array of youth-related services. §985.135(1)&(2). The centers are managed and governed by the participating agencies through interagency agreements and an advisory committee that guides the center's operation. §985.135(3). The participating agencies have operational oversight on only those individual service components for which the agency has statutory authority and responsibility. §985.135(3).

Each JAC provides a central intake and screening services for children referred to DJJ. The center must provide sufficient services to facilitate initial screening and case processing, including delinquency intake, identification of the child, a needs assessment and substance abuse, mental, and physical screenings, and diagnostic testing where appropriate. §985.135(4). The centers can also be used to conduct predispositions and assessments of children in detention centers. §985.135(7).

The JACs are also encouraged to provide a truancy program that would provide central intake and screening of truant children within a specific area. §985.135(5).

Juvenile Sex Offenders and The Adam Walsh Act

A. *Generally*

In 2006 the Adam Walsh Child Protection and Safety Act (42 USC 16901) was enacted in an effort to assist law enforcement in tracking sexual offenders. To conform with the new federal law, §943.0435 was amended to require certain juvenile sex offenders to register with the Florida Department of Law Enforcement (FDLE) and their identity be posted on the FDLE public website. The “Adam Walsh Act” requires the inclusion of children 14 years or older at the time the crime was committed if the crime was comparable or more severe than aggravated child abuse as described in 18 USC 2241. As a result, §943.0435(1)(a)(1)(d) provides that juvenile sex offenders are required to register if they were 14 years or older at the time the crime was committed and the crime was:

- Sexual Battery §794.011 excluding §794.011(10);
- Lewd and Lascivious Battery §800.04(4)(b) where the victim is under 12 years of age or the court finds sexual activity by the use of force or coercion;
- Lewd and Lascivious Molestation §800.04(5)(c)(1) where the court finds molestation of a victim under 12 years of age by an offender under 18 years of age, and the molestation involved unclothed genitals; or
- Lewd and Lascivious Molestation §800.04(5)(d) where the court finds molestation of a victim ages 12-16 by an offender under 18 years of age, where present were the use of force or coercion and unclothed genital.

B. *Written Findings Required*

For all qualifying offenses, the court must make a written finding of the age of the offender and the age of the victim at the time of the offense. Making this finding in all cases involving a sexual offense is a **best practice** for handling this requirement. §943.0435(1)(a)(2).

For a violation of §800.04(4), the court must make an additional written finding indicating that the offense did or did not involve sexual activity and indicating that the offense did or did not involve force or coercion. §943.0435(1)(a)(2). For a violation of §800.04(5), the court must make an additional written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion. §943.0435(1)(a)(2).

C. *Registration*

The qualifying juvenile sex offender may motion the court to remove the registration requirements if the child is not more than 4 years older than the victim who was 14

years of age or older but not more than 17 years of age at the time of the offense. §943.04354(1)(c).

For those who must register as a sexual offender, they are required to present information to the Sheriff's office in the county where they reside, and provide the authorities with information regarding their abode, identifying characteristics, methods of communication (e.g. telephone number, email address, instant message name), and must be photographed and fingerprinted. §943.0435(2). This information is entered into a national database and may be public. Juvenile sexual offenders must re-register on a quarterly basis. §943.0435(14)(b).

D. Removal from the Registry

An offender will stay on the registry for the duration of his or her life, unless that offender has received a full pardon or has had a conviction set aside in a post-conviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. §943.0435(11). However, select offenders may be able to have their names removed from the registry and may have the registration requirement removed if they have been lawfully released from confinement or supervision for 25 years, have not committed any misdemeanor or felony offense in that time, and were not guilty of certain offenses committed as adults. §943.0435(11)(a).

Juvenile Sex Offender Programs

A. Generally

Juvenile sexual offender behavior ranges from noncontact sexual behavior (e.g. obscene phone calls, exhibitionism, and voyeurism) to varying degrees of sexual contact (e.g. frottage, fondling, rape, and other sexually aggressive acts). §985.475(1)(b).

B. Community Based Treatment Services

Following a delinquency adjudicatory hearing, the court may, on its own or on request by DJJ or the state (subject to specific appropriation), make determinations as to the best placement of the child and may order a comprehensive assessment that focuses specifically on sexually deviant behavior. §985.475(2). Any report so ordered must contain, at a minimum:

- an account by the offender of the incident;
- the official history of the case;
- the juvenile's offense history;
- an assessment of the offender's sexually deviant behaviors, including an assessment by a certified mental health professional; and
- an assessment of the offender's family, social, educational, and employment situation. §985.475(2)(a).

The report must also contain an assessment of the child's amenability to community-based treatment and any threat or risk to the victim or community, §985.475(2)(b), as well as a proposed treatment plan that details therapy interactions and duration. §985.475(c).

If after receiving the report, the court determines that the community treatment is appropriate, the court may place the child in treatment for up to 3 years. §985.475(e). The court may require the child to comply with various conditions of community treatment, including treatment plan compliance and physical geographic boundaries. §985.475(e)(1)&(2).

The treatment provider must submit quarterly reports to the court and to the parties to the proceedings, detailing the child's progress in treatment. §985.475(2)(f). The report must reference the treatment plan and must include at a minimum:

- dates of the child's attendance;
- the child's compliance with the required treatment;
- a description of the treatment activities;
- the child's relative progress;

- the child’s family support of the treatment; and
- any other material specified by the court at disposition. §985.475(f)(1)-(6).

If the child fails to comply with the community treatment services, the court may revoke the treatment and order the child to be committed to DJJ. §985.475(h).

C. Juvenile Sexual Offender Commitment Programs

DJJ is authorized to implement and operate programs that provide “intensive educational and psychological services and other treatments for juvenile sexual offenders,” §985.48(2), and may contract with private organizations for the operation of such programs. §985.475(7). A juvenile sexual offender program must include educational components, life management training, substance abuse treatment, and intensive psychological treatment provided by appropriate mental health professionals. §985.475(4). DJJ may include an intensive conditional release component that would assist in a child’s transition into the community. §985.475(5). Such a component may include terms and conditions such as electronic monitoring of the child. §985.475(5). When a child is returned to the community, DJJ must inform the schools, law enforcement agencies, and the court. §985.475(6).

DJJ must conduct inspections of the juvenile sexual offender programs to verify quality assurance and to determine that each program complies with DJJ rules for continued operation, §985.475(9), and must keep records necessary to evaluate the effectiveness of such programs. §985.475(10).

Medicaid/Medicare Eligibility for Services upon Release¹

Delinquent children put in DJJ custody are eligible for Medicaid services only if they are placed in Low or Moderate Risk NON-state operated residential programs. Any other form of residential care will cause the child to be ineligible for Medicaid.

Requirements for applying or reapplying for Medicaid following a child's release from DJJ care depend on whether the child has family that were receiving Medicaid benefits at the time he or she was placed into DJJ's custody.

If the child was receiving Medicaid benefits at the time he or she was detained, and if he or she has other family members receiving benefits, the child can regain his or her benefits if, upon release from DJJ care, a family member informs and requests DCF for re-instatement of the child's benefits.

If the child was receiving Medicaid benefits at the time of detention, but no other family members were receiving benefits, the child can regain his or her benefits if, upon release from DJJ care, a family member completes an application for Medicaid benefits and submits it to the local DCF service center.

The DCF Medicaid approval process can take up to 45 days. Once a child is approved for Medicaid benefits, a form letter will be sent to the parent or custodian.

¹ Information in this section from Department of Juvenile Justice, available online at <http://www.djj.state.fl.us/AboutDJJ/faq.html#HealthP3>.

Restitution

The court that has jurisdiction over a child adjudicated delinquent may, by an order stating the facts upon which a determination of restitution was made, order the child to make restitution. §985.437(1). A child has a constitutional right to be present at a restitution hearing, unless he or she has knowingly and voluntarily waived that right. J.C. v. State, 1 So. 3d 1196 (Fla. 5th DCA 2008).

Such restitution would be part of the probation program or, for a committed child, part of the community-based sanctions ordered by the court. §985.437(1). The restitution ordered may be monetary or may be restitution in kind, and would be through a promissory note cosigned by the child's parents or guardians. §985.437(2).

Whenever restitution is ordered, the amount may not exceed an amount the child and parent or guardian could reasonably be expected to pay, §985.437(2), and must be based on a determination of the child's expected earnings upon finding suitable employment. K.T.M. v. State, 969 So. 2d 542(Fla. 2d DCA 2007).

The court may rely on direct testimony of fair market value to determine the amount of restitution. If direct evidence of fair market value is not available, the court can rely on the following to ascertain fair market value:

- original market cost;
- manner in which the item was used;
- general condition and quality of the item; and
- the percentage of depreciation. K.W. v. State, 983 So. 2d 713 (Fla. 2d DCA 2008)

The court may also base the amount of restitution on replacement costs, as an alternative to fair market value. 983 So. 2d at 715. Another alternative available to the court is out-of-pocket valuation; if this is used, the amount of restitution should be offset by the salvage value of any property returned. C.M.S. v. State, 997 So. 2d 520 (Fla. 2d DCA 2008).

A finding that the parent or guardian made a good faith effort to prevent the child from committing the juvenile act(s) may absolve the parent or guardian from liability for restitution. §985.437(4).

Finally, the court may retain jurisdiction over the child and the child's parent or guardian whom the court has ordered to pay restitution until the restitution is paid in full or the court orders otherwise. §985.437(5).

Risk Assessment Instrument (RAI)

The court's determinations and orders regarding placement of a child into detention care must be based on a risk assessment of the child, unless he or she is placed into detention care as a result of a domestic violence offense. §985.245(1). The Risk Assessment Instrument (RAI) takes in to consideration a variety of factors, including but not limited to:

- history of failure to appear;
- prior offenses;
- offenses committed pending adjudication;
- unlawful possession of a firearm;
- theft of a motor vehicle or possession of a stolen motor vehicle; and
- probation status at time taken into custody. §985.245(2)(b).

The RAI may also take into consideration any mitigating or aggravating factors, and must include any information concerning a history of abuse or neglect. §985.245(2)(b). The RAI will also examine the delinquent act the child is alleged to have committed, and assign point values to current and previous offenses, as well as history, legal status, and other factors. If possession or use of the firearm is part of the inchoate offense (i.e. aggravated assault with a firearm) then firearm assessment points should not be included, and is an impermissible double scoring. M.W. v. Department of Juvenile Justice, 15 So. 3d 782 (Fla. 1st DCA 2009).

The total number of points will determine the child's recommended detention. If the child scores more than 12 points, he or she will be recommended for secure detention. If the child scores between 7 and 11 points, the recommendation will be for non-secure detention. Finally, if the child scores 6 points or less, he or she will be recommended for release. A sample RAI is included in the Appendices.

Service of Process

Upon the filing of a petition alleging that the child committed a delinquent act or violation of the law, the clerk or deputy clerk will issue a summons. §985.319(2). The summons must have a copy of the petition attached and must order the person served to appear for a hearing before the court on a specified time and place, no less than 24 hours after service, except in the case of a medical emergency. §985.319(3). If the child has not been detained, he or she must appear at the hearing. §985.319(3).

Law enforcement must serve process within 7 days after an arraignment or as soon as possible after, except that no service is done on Sundays. §985.319(4). The summons must be directed to and served upon, the child, the parents of the child, and any legal or actual guardians or custodians, and the child's Guardian ad Litem. §985.319(5). If the court deems it advisable under the listed detention criteria, the child may be taken into custody when served. §985.319(6). If the identity of the parents, custodians, or guardians are unknown after a diligent search, or if they live outside of the state, or if they evade service, the person tasked to serve them must file a certificate of those facts; if this occurs, the court must appoint a Guardian ad Litem to the child if appropriate. §985.319(7). If any of the parties refuses to comply with service, the court may order them taken into custody for a hearing to show cause why the noncompliant party or parties should not be held in contempt of court. §985.319(7).

Upon application by the child or the state attorney, the clerk shall issue, or the court may issue, subpoenas for witnesses and/or records or other tangible documents at a hearing. §985.319(8). Process and orders issued by the court are served and executed as any other process or order from the circuit court. §985.319(9).

Speedy Trial

A. Generally

All children have a right to be brought to an adjudicatory hearing within 90 days of the earlier of either the date the child was taken into custody or the date of service of summons issued when the delinquency petition was filed. Rule 8.090(a). If the child's case is not heard within the 90 day limit, and there are no circumstances that interrupt the running of the time period, the child is entitled to appropriate relief. Rule 8.090(b).

B. Demand for Speedy Trial

However, a child may, by petition, demand a speedy trial. Rule 8.090(g). The child will have the right to an adjudicatory hearing within 60 days by filing a petition entitled "Demand for Speedy Trial" with the court and serving it on the prosecuting attorney. Rule 8.090(g). After filing such a petition, the court has 5 days to hold a hearing for report and announced receipt of the demand. 8.090(g)(1). At the report, the court will set the adjudicatory hearing no less than 5 days and no more than 45 days from the date of the report. Rule 8.090(g)(2). If the child is not brought to an adjudicatory hearing within 50 days from the date of filing the demand, the child will have the right to appropriate relief. Rule 8.090(g)(4).

A Demand for Speedy Trial is deemed a pleading that the child is available for the adjudicatory hearing, has diligently investigated the case, and is prepared or will be prepared for the adjudicatory hearing within 5 days. Rule 8.090(h). Such a demand may only be withdrawn by good cause shown, consent by the prosecuting attorney, or by order of the court. Rule 8.090(h).

C. Motion for Discharge

After the above time limits have been exceeded without an adjudicatory hearing, the child may file a motion to discharge. Rule 8.090(m)(2). No later than 5 days after the filing of the motion, the court will hold a hearing on the matter and order the child to be brought to trial within 10 days, unless:

- The child has voluntarily waived the right to a speedy trial.
- An extension of time has been ordered. An extension can result from any of the following:
 - Stipulation, announced to the court and signed by the child or the child's attorney;
 - Written or recorded order by the court citing the reasons and exceptional circumstances for the extension. Exceptional circumstances include:
 - Unexpected illness or incapacity or unforeseeable and unavoidable absence of a necessary person;

- A showing by the state that the unusual and complex nature of the case requires additional time;
- A showing by the state that specific evidence or testimony is presently unavailable despite efforts to secure it, but will become available at a later time;
- A showing by the child or state that delay is necessary based on developments that could not have been foreseen and which will materially affect the case;
- A showing that delay is necessary to accommodate a co-respondent, where there is a reason not to sever the case; or
- A showing by the state that the child has caused major delay or disruption of preparation or proceeding.
- Written or recorded order of the court for a period of reasonable and necessary delay that results from proceedings including but not limited to hearing as to mental competence or physical ability to stand trial, appeals by the state, or adjudicatory hearings on other pending charges against the child. Rule 8.090(f)
- The failure to hold an adjudicatory hearing is attributable to the child, co-respondent in the same adjudicatory hearing, or their counsel.
- The child is unavailable for the adjudicatory hearing, where unavailable means:
 - The child or the child’s counsel fails to attend a proceeding where their presence is required; or
 - The child or child’s counsel is not prepared for the adjudicatory hearing on the date it is scheduled. No presumption of nonavailability attaches unless the prosecuting attorney objects to the dismissal and presents evidence of nonavailability; the child must then establish availability by competent evidence.
- The Demand for Speedy Trial is invalid.
- If the court finds dismissal is not appropriate, the pending motion to dismiss must be denied, and an adjudicatory hearing must commence within 90 days of a written or recorded order of denial. Rule 8.090(d)(1)-(6).

Note:

If none of the above applies and 10 days pass without the child being brought to an adjudicatory hearing, through no fault of the child’s, the child will be forever discharged of the crime. Rule 8.090(m)(4).

Transfer to Adult Court

A. Waiver

A **Voluntary Waiver** takes place when a child, alleged to have committed a violation of the law and prior to the start of an adjudicatory hearing, petitions the court with the parent or guardian's consent to be tried as an adult. §985.556(1). The court must then hold a voluntary waiver hearing. §985.556(1). After the hearing, the child is transferred to adult court jurisdiction and must be handled thereafter in every respect as an adult for that and every subsequent violation of the law, unless the adult court imposes juvenile sanctions. §985.556(1).

An **Involuntary Discretionary Waiver** takes place when, except as provided by involuntary mandatory waivers, the state attorney chooses to file a motion requesting that the court transfer to adult court if the child was 14 years old or older at the time the alleged delinquent act of violation of law occurred. §985.556(2).

An **Involuntary Mandatory Waiver** can occur in two ways.

- If the child was 14 years of age or older and has been previously adjudicated delinquent for an act classified as a felony, where he or she was adjudicated for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and if the child is currently alleged to have committed a violent crime against a person; or
- If the child was 14 years old or older at the time of the commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed or attempted or conspired to commit three offenses that are felony offenses involving the use or possession of a firearm or violence against a person;

The state attorney must request that the court transfer the child to adult court or provide reasons to the court for failing to make such a request, or direct file. §985.556(3).

The **Effect of a Waiver** is that the court must hold a waiver of jurisdiction hearing to determine whether jurisdiction can be waived for the child.

B. Direct Filing

Discretionary Direct File occurs if, with respect to a child that is 14 or 15 years old at the time of the commission of the alleged offense, the state attorney may file an information with the adult court. §985.557(1)(a). In the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated assault;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary or specified burglary of a dwelling or structure, or burglary with an assault or battery;
- Aggravated battery;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft;
- Possessing or discharging any weapon or firearm on school property;
- Home invasion robbery;
- Carjacking; or
- Grand theft of a motor vehicle or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.

Discretionary Direct File also occurs if, with respect to a child who was 16 or 17 at the time of the offense, the state attorney may file an information when, in his or her judgment and discretion, the public interest requires that adult sanctions be considered. §985.557(1)(b). However, the state attorney may not file if the child was charged with a misdemeanor, unless he or she had at least two previous adjudications or adjudications withheld, at least one of which was classified as a felony. §985.557(1)(b).

Mandatory Direct File can occur in different ways.

- Where the child was 16 or 17 at the time of the offense, and the child has been previously adjudicated delinquent for a felony where adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault and the child is currently charged with a second or subsequent violent crime against a person, the state attorney must file an information. §985.557(2)(a).
- Where the child was 16 or 17 at the time of an offense classified as a forcible felony, if the child was previously adjudicated delinquent or had adjudication withheld for three previous felony acts each which occurred at least 45 days apart, the state attorney must file an information, UNLESS he or she has good cause to believe exceptional circumstances exist that preclude the just prosecution of the child in adult court. §985.557(2)(b).
- Where, regardless of the child's age at the time of the offense, if the child is alleged to have committed an act that would be a violation of the law if the child were an adult and involves stealing a motor vehicle, including but not limited to carjacking, grand theft of a motor vehicle, and where the child, while in possession of the vehicle, caused serious bodily injury or death of a person who was not involved in the underlying offense, the state attorney must file an information. This applies to the driver of the vehicle and all willing passengers at the time of such serious injury or death. §985.557(2)(c).
- Where the child was 16 or 17 years old at the time of the offense, if the child was charged with committing or attempting to commit an offense listed in §775.087(2)(a)(1)(a)-(q), and during the commission or attempted commission, the child:
 - Actually possessed a firearm or destructive device.
 - Discharged a firearm or destructive device.
 - Discharged a firearm or destructive device, and, as a result of the discharge, death or great bodily harm was inflicted upon any person.

The state attorney must file an information, unless the state attorney has good cause to believe exceptional circumstances exist that preclude the just prosecution of the child in adult court. §985.557(2)(d)(1)&(4).

Once a child has been transferred pursuant to an information, and has been found to have committed the offense charged or a lesser included offense, the child will be treated in every respect as an adult, for that and any subsequent offenses, unless the adult court elects to impose juvenile sanctions. §985.557(3)(a). Thus, the court must immediately transfer and certify all felony cases pertaining to the child which have not yet resulted in a guilty plea or plea of nolo contendere, or in which a finding of guilt has not been made. §985.557(3)(b).

C. Indictments

A child of any age that is charged with a violation of the law punishable by death or life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by a grand jury. §985.56(1). When such an indictment is returned, the delinquency petition must be dismissed and the child must be handled in every respect as an adult, on the offense punishable by death or life imprisonment, and on all other felonies or misdemeanors charged in the indictment and based on the same transaction as the offense punishable by death or life imprisonment or on one or more acts or transactions based on the offense punishable by death or life imprisonment. §985.56(1). In addition, the court must immediately transfer and certify all felony cases pertaining to the child which have not yet resulted in a guilty plea or plea of nolo contendere, or in which a finding of guilt has not been made. §985.56(4)(b).

The grand jury has 21 days to act and return an indictment. The juvenile court may not hold an adjudicatory hearing for those 21 days unless the state attorney notifies the court that he or she does not intend to present the case to the grand jury, or has presented it to the grand jury and the grand jury has not returned an indictment, in which case the court may hold an adjudicatory hearing sooner than 21 days. §985.56(2). If the grand jury fails to act within the 21 day period, the court may hold an adjudicatory hearing after that period. §985.56(2).

If the juvenile court holds an adjudicatory hearing and the child is found to have committed the alleged offense punishable by death or life imprisonment, the court must sentence the child as an adult. §985.56(3). If the court find that the child did not commit the indictable offense but committed a lesser included offense or any other offense he or she was or could have been indicted for as a part of the criminal episode, the court may impose alternative juvenile sanctions under §985.565.

Unified Family Court – Model Family Court

If the judicial system encourages alternatives to the adversarial process, empowers litigants to reach their own solutions, and assists in crafting solutions that promote long-term stability in matters involving children and families, the likelihood of future court intervention in the family should be decreased – whether this be through minimizing post-judgment litigation or preventing the dependent child of today from becoming the delinquent child of tomorrow. Our ultimate goal remains to facilitate the resolution of disputes involving children and families in a fair, timely, effective and cost-efficient manner.¹

In traditional circuits, families come into contact with a variety of courts for a variety of reasons: divorce, domestic violence, abandonment or mistreatment of children, or misbehavior of children. These families may “spin from courtroom to courtroom caught in a process that depletes time, money, and energy, and yet never really addresses the core of the problem. Ironically, children, the intended beneficiaries of our family courts, suffer most as a result.”²

Unified Family Courts (UFCs) serve to coordinate judicial efforts in cases involving the same family, regardless of the manner in which dockets for different types of cases are structured and managed,³ and provide one court that will hear the variety of cases facing a family in a consolidated, coordinated fashion. The Florida Supreme Court enumerated the guiding principles of a UFC, saying, “The legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.”⁴

The guiding principles are all aimed at increasing stability within the family, increasing court functionality and coordination, and conserving resources, both judicial and familial.

A UFC may hear cases involving divorce or dissolution of marriage, child support issues, civil domestic violence injunctions, juvenile dependency, juvenile

¹ *In re Report of Family Court Steering Committee*, 794 So. 2d 518 (Fla. 2001) 535-536.

² Wright, C. *Representation of Children in a Unified Family Court System in Florida*, 14 U. Fla. J.L. & Pub. Pol’y 179 (2002-2003) at 180.

³ *In re Report of the Commission on Family Courts*, 633 So. 2d 14 (Fla. 1994) at 17.

⁴ *Supra* note 1 at 524 (quoting the Committee’s commentary).

delinquency, and truancy issues⁵, and the court must be highly coordinated, responsive to the needs of the families and children, and flexible in its responses.

Coordination of cases within the UFC requires the court to identify all cases involving the family.⁶ The court should inquire at each hearing or conference whether there are any cases pending that involve the family.

Responsiveness to the family requires “continued attention to the needs of the children and family as the case moves through the judicial system so that the appropriate court resources are made available and linkages to appropriate community resources are facilitated.”⁷ The court should be aware of the family’s situation and determine which court actions and resources will best benefit the family.

The court should also be aware of any steps taken by the child to engage with the independent living programs offered by Department of Children and Families. Independent living courts are designed to educate children in the care of the Department of Children and Families as to their rights, and to teach them educational and life skills to be able to “make it on their own.”⁸ These independent living courts bring together representatives from a variety of agencies, including but not limited to Guardian ad Litem, community based care caseworkers, and DJJ staff, to ensure the child has an independent living case plan and sufficient resources to support the child as he or she ages out of the care of a state agency and transitions into independent adulthood.

A UFC may face agency coordination issues similar to those issues present in traditional circuits that handle crossover cases. A UFC should engage in the same practices discussed in the Crossover Cases general topic.

Additionally, as a UFC may hear cases that involve aspects of domestic violence, a UFC should conform the courtroom practices to those discussed in the Domestic Violence and Delinquency general topic.

⁵ *Id* at 525.

⁶ *Id* at 529.

⁷ *Id*.

⁸ Pudlow, J. *Independent Living Docket: Helping Foster Kids Transition into Adulthood*. (December 1, 2008).

Walker Plan Approval by Judge

After a delinquency petition is filed but prior to an adjudicatory hearing, a plan of proposed treatment or conduct may be submitted for the child in lieu of a plea. Rule 8.075(b). The terms and conditions of the plan must be worked out with the assistance of DJJ and other supervising agencies. Rule 8.075(b). The plan may be for an indeterminate period of time, or for a specified period, or until the petition is dismissed. Rule 8.075(b)(5). The court has no obligation to accept any plan offered. If the court rejects the proposed plan, the court must state on record the reasons for rejecting the proposal. Rule 8.075(b)(3). However, if a plan is accepted, the plan must be in writing, agreed to and signed by the state attorney, the child, the child's counsel (if the child has one) and the child's parents or guardians unless excused by the court. Rule 8.075(b)(1). Additionally, an agent from DJJ or other supervising agency must sign to indicate consent. Rule 8.075(b)(1).

If the child violates the plan, the violation or violations must be presented to the court by motion of the supervising agency or any other party. Rule 8.075(b)(4). If the court finds that a violation has occurred, the court may act to enforce the plan, modify the plan by supplemental agreements, or set the case for a hearing on the original petition. Rule 8.075(b)(4).



Delinquency Hearings

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DETENTION HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§ 27.52; 90.6063; 741.28; 790.22; 901.02; 985.02; 985.033; 985.035; 985.039; 985.16; 985.24; 985.245; 985.25; 985.255; 985.26; 985.27; 985.275; 985.335</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.013; 8.015; 8.100; 8.110; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	<p>The purpose of the detention hearing is to determine whether probable cause exists that the child committed a delinquent act or violation of law and, if so, whether continued detention is necessary. §985.255(3)(a); Rule 8.010(g).</p>
TIME FRAME	<p>The detention hearing must be held within 24 hours of the child being taken into custody. §§985.255(3)(a); 985.26(1).</p> <p>Under certain circumstances the detention hearing may be continued for up to 72 hours if a statutory need for detention is met and the court is unable to make a probable cause determination. Rule 8.010(h).</p> <p>Detention cannot exceed 21 days without the commencement of an adjudicatory hearing. §985.26(2).</p>
BURDEN OF PROOF	<p>Standard of proof for probable cause is that which is necessary for an arrest warrant. Rule 8.010(g)(1).</p>
RULES OF EVIDENCE	<p>The court may hear all relevant material evidence. Rule 8.010(g)(1)&(2). All parties present have the right to be heard regarding the issue of detention if the court finds probable cause. Rule 8.010(a).</p>
RIGHT TO COUNSEL	<p>The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.</p>
NEXT HEARING	<p>An arraignment hearing must be held within 48 hours after the filing of a delinquency petition (excluding Saturdays, Sundays or legal holidays). Rule 8.015(a).</p>

DETENTION HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- The purpose of the detention hearing is to determine whether there is probable cause that the child committed a delinquent act or violation of law.
- If testimony will be offered, place all witnesses under oath.
- Have all the parties identify themselves for the record with full name and current address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Advise the child of his or her right to counsel and determine whether the right is understood.
- Determine whether the child is represented by counsel.
- If the child and his or her parents are insolvent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine that the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says may be used against him or her.
- If the child's parent, custodian or counsel is not present, advise the child of his or her right to communicate with them, and if necessary, that reasonable means will be provided to do so.
- Advise the child of the nature of the charges.
- Advise the child of the reasons continued detention is requested.

C. Probable Cause Determination

- Explain to the child that the standard of proof is whether the court, based on the information before it, “reasonably believes that the person complained against has committed an offense” within the court’s jurisdiction.
- If the court finds no probable cause, the child must be released from detention.
- If probable cause cannot be determined, but a statutory need for detention exists, the court may continue the detention hearing for up to 72 hours, on a showing of good cause.
- If there is probable cause, determine whether continued detention is necessary. Review documents such as the RAI, DJJ’s detention recommendations, and the detention petition.
- If there is probable cause and if detention is warranted, explain to the child what level of detention he or she will be under and the reasons for the detention determination.
- If there is probable cause and if the child is under nonsecure detention, explain what that means and what is expected of the child.

D. Set an arraignment hearing

- The hearing must be within 48 hours of the filing of a delinquency petition, excluding Saturdays, Sundays, or legal holidays.

E. Requirements for written order of detention

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify him or her with reasonable certainty.
- State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him or her subject to the juvenile proceedings.
- Direct the detention of the child and state the reasons or, if appropriate, order the release of the child and return to his or her nonresidential commitment program.
- Make a finding of probable cause or that such a finding cannot be made at this time and that the case is continued for such a determination within 72 hours of the child being taken into custody.
- Designate the place of detention or person or agency responsible for supervision, and any special conditions.
- State the date and time the order was issued, the county and court from where it was issued and the date and time the child was taken into custody.
- Make a finding regarding cost or supervision and care.
- Order that child to be released no later than 5:00 p.m. on the last day of the specified statutory detention period unless a continuance has been granted for good cause.
- Set the next detention hearing date if an extension granted.
- Set date for arraignment hearing.

DETENTION HEARING OUTLINE

A. Generally

1. Interpreter Determination

If the child is deaf, the court must determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a qualified interpreter. §90.6063(3)(b). If no qualified interpreter is available, the court may appoint a non-qualified interpreter upon a finding of good cause, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(3). Verify that the child knows that he or she is allowed to object to the proposed appointment of a non-qualified interpreter. See General Topics for more information on interpreters.

2. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. Purpose

Explain the purpose of the detention hearing. The purpose of the detention hearing is to determine whether there is probable cause that the child committed a delinquent act or violation of law. Rule 8.010(g)(1). If the court finds probable cause, then the court must determine what, if any, detention is necessary. §985.255(3)(a); Rule 8.010(h). When law enforcement turns a child over to DJJ, they make the initial determination of whether to detain the child based on its review of all available information and the Risk Assessment Instrument (RAI). §985.245.

4. Hearing Timeframe; Standard of Proof

Any child being detained must have a detention hearing within 24 hours of being taken into custody, and no child can be detained longer than 24 hours unless the circuit court holds a detention hearing and either enters a detention order or continues, on a showing of good cause, the hearing for up to 72 hours. §985.26; Rule 8.013(a). No detention order can be entered without a hearing at which all parties will have an opportunity to be heard on the necessity for the child to be held in detention unless the court finds that the parent or custodian cannot be located or the child's mental health or physical condition is such that a court appearance is not in the child's best interest. Rule 8.010(a). The court generally

decides whether there is probable cause based upon sworn statements or testimony presented by the State. The standard of proof is the same as for an arrest warrant. Rule 8.010(g)(1).

5. Detention Issues

The court cannot order detention unless the statutory criteria of §§985.24 and 985.255 are met. There are two types of detention: secure and non-secure, §985.25. The court can order a placement more restrictive than indicated by the RAI score, but the court must state, in writing, clear and convincing reasons for such placement. §985.255(3)(b). Detention cannot exceed 21 days without the commencement of an adjudicatory hearing unless an extension of time for good cause is shown. However, some serious offenders can be held in secure detention for up to 30 days if the offense is one that would be, if committed by an adult, a capital felony, life felony, felony of the first degree, or felony of the second degree that involves violence against an individual. §985.26(2). Under no circumstances may a child alleged to be **dependent under chapter 39** be placed into or held in secure detention. §985.24(3).

6. Identify Those Present

Identify those present and their relationship to the case. The parties should identify themselves for the court and the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

7. Notice Assessment

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Rule 8.010(d) requires that the DJJ intake officer must make a diligent effort to notify the parent or custodian of the time and place of the detention hearing. Notice may be by the most expeditious method available. The child has a right to speak with any absent parent or guardian and, if necessary, reasonable means should be provided to do so. Rule 8.010(f)(3). However, the failure to notice or the nonattendance of the parent or guardian does not invalidate the hearing or the detention order. Rule 8.010(d). A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search, following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

8. Place Any Witnesses Under Oath

The court should place any witnesses under oath. 8.010(g)(2). Prior to the examination of any witnesses, any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule

8.100(c).

9. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

A child in delinquency proceedings is generally afforded the same Constitutional rights as adults in criminal proceedings. The one notable exception is that the child is not entitled to a jury trial. Rule 8.010(f)(1)-(4) specifically provides what right the child must be advised of at the detention hearing.

1. Right to Review Packet; Right to Know Charges

Advise the child of the charges. Rule 8.010(f)(1). The child has the right to review the detention packet submitted to the court and be apprised of the charges.

2. Right to Counsel

Advise the child of the right to counsel. Rule 8.010(e). The child must be advised of the right to counsel at the detention hearing.

The Court must determine whether the right to counsel is understood. The court must make a specific inquiry to determine whether the child understands this right. Rule 8.165(b). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If insolvent, advise of the right to have counsel appointed. The child must be advised that if he or she is insolvent, the child has the right to have counsel appointed by the court in accordance with §27.52.

If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal

counsel at all stages of all juvenile court proceedings unless the court determines that the right is knowingly, freely, and intelligently waived by the child. Further, waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding any factors that would assist the child in making the decision to waive counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1). The court must inquire whether the child understands this right.

3. Right to Remain Silent

Advise the child of the right to remain silent. Rule 8.010(f)(2). The child must be advised that he or she has the right to remain silent and that anything that the child says can be used against him or her.

4. Right to Communicate

If the child's parent, custodian, or counsel is not present, advise the child of his or her right to communicate with them, and if necessary, that reasonable means will be provided to do so. Rule 8.010(f)(3).

5. Right to Know why Continued Detention is Requested

Advise the child of the reasons continued detention is requested. Rule 8.010(f)(4).

C. Probable Cause Determination

The court may base its probable cause determination on a sworn complaint, affidavit, deposition, or testimony under oath. Rule 8.010(g).

1. Standard of Proof

The standard of proof necessary for determining probable cause is the same standard used for an arrest warrant. Rule 8.010(g)(1). The standard of proof for an arrest warrant is whether the judge, based on the information before him, "reasonably believes that the person complained against has committed an offense" within the court's jurisdiction. §901.02(1).

2. Probable Cause Determination

If no probable cause, the child must be released from detention. Rule 8.010(h).

The release of the child based upon a finding that no probable cause exists does not prohibit the filing of a delinquency petition or further delinquency proceedings. Rule 8.010(h).

If probable cause cannot be determined, but a statutory need for detention exists, the court may continue the detention hearing for up to 72 hours. Rule 8.010(h). The court on a showing of good cause may continue the hearing a second time for a period not more than 24 hours beyond the 72 hour period. Rule 8.010(h).

If probable cause is found, the court must then determine whether continued detention is necessary and what detention should be imposed. Rule 8.010(h). Evidence for such a determination may be considered to the extent of its probative value even though it would not be competent at an adjudicatory hearing. Rule 8.010(g)(2). The court may continue or modify the current detention placement. DJJ will make recommendations to the court regarding the level of detention and placement. The court's decisions will be based on the results of the Risk Assessment Instrument (RAI) performed by the juvenile probation officer and the statutory detention criteria. §985.245. The court should review the RAI and correct any mistakes made in calculating the RAI score. §985.245(3). See General Topics for more information on Risk Assessment Instruments.

3. Additional Acts while under Supervision

If the child is charged with additional acts while under supervision, the RAI should be updated to reflect the additional charges. §985.245(2)(b). The court should review all relevant evidence to determine whether detention is still necessary and whether the recommended level is commensurate. Section 985.255(3)(b) requires that if the court orders a placement more restrictive than indicated by the RAI, the court must state in writing the clear and convincing reasons for such placement. The court is not authorized to impose a form of detention more restrictive than the statutory maximum. See General Topics for more information on more restrictive placements. Rule 8.110(a) provides that all parties at the detention hearing must be given the opportunity to be heard on whether continued detention is necessary unless the parents cannot be located or the child's physical or mental condition precludes appearing for the hearing. Section 985.02(4)(a) requires that the least restrictive means that meet the needs of the child and of public safety should always be utilized.

4. Continued Detention Regardless of RAI Score

Section 985.255 sets forth the statutory criteria necessary to continue a child in detention. See General Topics for more detailed information on detention criteria. All determinations and court orders placing a child in detention must also be based upon the RAI, unless the child is placed into detention care for domestic violence as defined in §741.28. In such a case, the child who does not meet detention criteria may be held in secure detention if the court makes specific written findings that:

- Respite care for the child is not available; or
- It is necessary to place the child in secure detention in order to protect the victim from injury. §985.255(2).

A child may not be held in detention under 985.255(2) for more than 48 hours without court order. §985.255(2). Additionally, after 48 hours, the court must hold a hearing if the state attorney or the child requests that detention be continued. §985.255(2). Detention may be continued if the court makes specific written findings that continued detention is necessary to protect the victim from further harm, and detention cannot continue past the time limits established in Florida statute. §985.255(2).

Further, a child may be held in detention regardless of the RAI if the child had previously failed to appear for an adjudicatory hearing on the same case, or two or more hearings of any nature in the same case. §985.255(1)(i)&(j).

5. If an Answer is Filed

If the child files an answer to the petition that admits to the allegations of the petition, the court should verify that the answer acknowledges that the child was advised of his or her rights, and of the possible dispositions available to the court. §985.335. The answer must also provide a waiver for the adjudicatory hearing, a statement of consent to an order of adjudication, and an authorization for the court to proceed with a disposition hearing. §985.335. The court should file an order of adjudication and set the disposition hearing at the earliest practicable time that allows for the completion of the predisposition report and resulting classification. §985.335.

D. Set arraignment hearing

The hearing shall be within 48 hours of the filing of a delinquency petition, excluding Saturdays, Sundays, or legal holidays. Rule 8.015(a). The child must be given notice of the arraignment; however, personal appearance by the child before the court shall remove the necessity of serving process on him or her. Rule 8.015(b)(1).

E. Requirements for written order of detention

1. The court may be presented with a detention order prepared by the State Attorney, or may draft the order in court. Any detention order must be authorized by the criteria set forth in §§985.24 and 985.255.

- **Name and address.** State the name and address of the child or if unknown, designate the child by a name or description that can identify the child with reasonable certainty. Rule 8.013(c)(2).
- **Age and gender.** State the age and sex of the child. If the age is unknown,

state that the child is believed to be of an age that makes him subject to the juvenile proceedings. Rule 8.013(c)(3).

- **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- **Detention directions.** Direct the detention of the child and state the reasons therefor or, if appropriate, order the release of the child and the return to his or her nonresidential commitment program. Rule 8.013(c)(4).
- **Probable cause finding.** Make a finding of probable cause or that such a finding cannot be made at this time and that the case is continued for such a determination within 72 hours of the child being taken into custody unless this time is extended by the court for good cause shown for not longer than an additional 24 hours. Rule 8.013(c)(5).
- **Detention location designation.** Designate the place of detention, or person or agency responsible for supervision, and any special conditions. Rule 8.013(c)(6).
- **Date and time.** State the date and time the order is issued, the county and court from where issued, and the date and time the child was taken into custody. Rule 8.013(c)(7).
- **Release instructions.** Order a specific release time, or that the child is to be released no later than 5:00 p.m. on the last day of the specified statutory detention period unless a continuance has been granted for good cause. Rule 8.013(c)(8); §985.255(3)(c). Except as provided in §§790.22(8) or 985.27, when a child is placed into secure or non-secure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5:00 p.m. on the last day of the detention period specified in §§985.26 or 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under §985.26(4).
- **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. §985.039. When a child is placed into nonsecure detention, probation, or other supervised status with the DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to the DJJ for each day the child is in that status. §985.039(1)(a).
If a child is placed in secure detention or placed on committed status and the DJJ acquires temporary legal custody of said child, order the parent or guardian to pay five dollars (\$5.00) per day to the DJJ for each day the child is in that status. §985.039(1)(b).
If the court fails to include in the Detention Order information regarding cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision

of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. §985.039(5). *See* General Topics for more information on costs.

- **Set next hearing.** Set the next hearing date if an extension is granted. Rule 8.010(h). If no extension is granted, set the date for the arraignment hearing. Rule 8.015(a).

ARRAIGNMENT HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§ 27.52; 90.6063; 741.28; 985.033; 985.035; 985.039; 985.0435; 985.185; 985.24; 985.25; 985.255; 985.26; 985.318; 985.335</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.035; 8.070; 8.075; 8.080; 8.090; 8.100; 8.110; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	<p>The purpose of the arraignment hearing is for the child to enter a plea of not guilty, guilty or nolo contendere in response to the delinquency petition. Rule 8.070.</p> <p>This hearing is similar to arraignment in criminal court.</p>
TIME FRAME	<p>If child is detained, the arraignment hearing must be held within 48 hours of the filing of the delinquency petition excluding Saturdays, Sundays, and legal holidays. §985.26(6); Rule 8.015(a).</p>
BURDEN OF PROOF	<p>The delinquency petition must be reviewed to determine whether it states a <i>prima facie</i> case for delinquency if there has been no detention hearing. §985.13.</p> <p>There is no burden of proof at an arraignment hearing.</p>
RULES OF EVIDENCE	<p>No evidence is submitted at an arraignment hearing.</p>
RIGHT TO COUNSEL	<p>The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child’s parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.</p>
NEXT HEARING	<p>If child pleads not guilty - Adjudicatory hearing must commence as soon as practicable (§985.35) within 21 days of the child being taken into custody. §985.26(2); Rule 8.070.</p> <p>If child pleads guilty or nolo contendere – Disposition may immediately follow arraignment if predisposition report is available (Rule 8.115(b)) or the disposition hearing may be scheduled for a future date. Rule 8.070.</p>

ARRAIGNMENT HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Inform the child that the purpose of the arraignment hearing is for the child to enter a plea of not guilty, guilty or nolo contendere to the delinquency petition filed by the State Attorney.
- Place the child under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If child appears without counsel, advise the child of right to counsel, and determine whether the right is understood.
- If the child and child's parents or guardians are insolvent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived in writing by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If counsel is waived, determine if waiver is knowing, intelligent, and voluntary.
- Advise the child of the right to remain silent, and that anything the child says may be used against him or her.

C. Review delinquency petition

- Review the delinquency petition to determine whether the petition states a prima facie case of delinquency.

D. Entrance of a plea

- Explain to the child that a plea is an answer to the complaint brought against him or her. Verify that the child understands that he or she may plead not guilty, guilty, nolo contendere, or may remain silent and refrain from making a plea.
- Before accepting a plea of guilty or nolo contendere, the court must determine whether the plea is knowing, intelligent, and voluntary. Additionally, the court must determine that there is a factual basis for accepting the plea.
- If the plea is accepted by the court, the case proceeds to disposition hearing. Explain to the child what will happen next, and what is expected of the child.
- If plea is not guilty, the case proceeds to an adjudicatory hearing. Explain to the child what will happen next, and what is expected of the child.
- If the child is mute or pleads evasively, enter a plea of not guilty.

E. Set next hearing

- If plea was not guilty, set the adjudicatory hearing for as soon as practicable and within 21 days from the date the child was placed into detention care. If the child was not placed into detention care, the next hearing must be within 90 days of the earlier of either the filing of the petition or the taking of the child into custody.
- If plea was nolo contendere or guilty, the disposition hearing may take place immediately or may be scheduled for the earliest practicable time that will allow for the completion of the assessment process resulting from the predisposition report.

F. Determine custody pending disposition

- If the child was held in detention prior to the arraignment hearing, the court will have to determine whether continued detention is necessary pending disposition.
- If the child has committed a domestic violence offense (as defined in §741.28) and he or she does not meet detention criteria, the court can order the child to be held in secure detention, with appropriate findings.

ARRAIGNMENT HEARING OUTLINE

A. Generally

1. Interpreter Determination

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

2. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. Purpose

Explain to the child that the purpose of the arraignment hearing is to provide an opportunity for the child to enter a plea of not guilty, guilty or nolo contendere to the delinquency petition filed by the State Attorney. If the child is detained, the arraignment hearing must take place within 48 hours of the filing of the delinquency petition excluding Saturdays, Sundays and legal holidays. §985.26(6); Rule 8.015(a).

4. Identify Those Present

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. Notice Assessment

Determine steps taken to locate and notice any identified and absent parents or guardians of the arraignment hearing. Parents or guardians should be notified of the arraignment hearing. Diligent efforts must be made to notify the parents or guardian of the child of the arraignment hearing. Rule 8.015(b)(3). However,

failure of notice or nonattendance does not invalidate the hearing. Rule 8.015(b)(4). A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search, following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

6. Place the child under oath

7. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

1. Right to Counsel

Determine whether child is represented by counsel. If child appears without counsel, advise the child of the right to counsel. §985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that if indigent, he or she has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowingly, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine

whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record and in writing. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the child appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Review delinquency petition

1. Review for Prima Facie Case of Delinquency

Review the delinquency petition to determine whether the petition states a prima facie case of delinquency. The requirements for the delinquency petition are set forth in Rule 8.035. The child does not need to file an answer to the petition. Any matters that could be in an answer may be pleaded orally before the judge. §985.335.

2. Answer Filed

If the child files an answer to the petition that admits to the allegations of the petition, verify that the answer acknowledges that the child was advised of his or her rights, and of the possible dispositions available to the court. §985.335. The answer must also provide a waiver for the adjudicatory hearing, a statement of consent to an order of adjudication, and an authorization for the court to proceed with a disposition hearing. §985.335. File an order of adjudication and set the disposition hearing at the earliest practicable time that allows for the completion of the predisposition report and resulting classification. §985.335.

D. Entrance of a plea

1. Generally

The child must enter a plea of **guilty, not guilty, or nolo contendere** to the charges in the delinquency petition. If a child stands mute or answers evasively, a plea of not guilty shall be entered by the court. Rule 8.075(d). The child shall be permitted to withdraw a guilty plea at any time prior to the beginning of the disposition hearing with a showing of good cause, and the withdrawn plea is not considered an admission. Rule 8.075(e). Plea proceedings shall be of record. Rule 8.080(d). Until accepted by the court, the plea offer or negotiation may be withdrawn by either party. Rule 8.080(e). Failure to follow the rule shall not render the plea void absent a showing of prejudice. Rule 8.080(g).

2. Plea of Not Guilty

If the child enters a plea of not guilty, determine whether the adjudicatory hearing may take place immediately or if it must be set for a future date, no later than 21 days after the child was taken into custody.

3. Plea of Guilty or Nolo Contendere

If the child enters a plea of guilty or nolo contendere, determine whether plea is knowing, intelligent, and voluntary. Rule 8.075(a). The court may refuse to accept a plea of guilty or nolo contendere and must not accept either plea without first determining that the plea is voluntary, and with the full understanding of the nature of the allegations and the possible consequences of the plea and that there is a factual basis for such plea. Rule 8.075(a). If it is anticipated that a guilty or nolo contendere plea is going to be entered, defense counsel can request a predisposition report be prepared prior to the arraignment hearing.

4. Determine Voluntariness of Guilty or Nolo Contendere Plea

Before accepting a plea of guilty or nolo contendere, the court must determine that the plea is knowingly, intelligently, and voluntarily entered and that there is a factual basis for it. Rule 8.080(a). When making this determination, the court must address the child personally. Rule 8.080(b). Determine that the child understands:

- the nature of the charges to which the plea is offered and the possible dispositions available to the court, Rule 8.080(b)(1);
- that, if not represented by counsel, the right to counsel and the right to have counsel if indigent, Rule 8.080(b)(2);
- the right to plead not guilty, the right to an adjudicatory hearing where the child has the right to counsel, the right to compel the attendance of witnesses on his or her behalf, the right to cross examine adverse witnesses, the right to testify, and the right not to testify, Rule 8.080(b)(3);
- that, if the child pleads guilty or no contest without express reservation of right to appeal, the right to appeal all matters related to the judgment are waived. Review by collateral attack is not impaired, Rule 8.080(b)(4);
- that a plea of guilty or no contest waives the right to an adjudicatory hearing, Rule 8.080(b)(5);
- that, if the child pleads no contest or guilty, the court can ask the child questions under oath and the answers can be used for a subsequent perjury prosecution, Rule 8.080(b)(6);
- the complete terms of the plea agreement including all obligations the child will incur as a result, Rule 8.080(b)(7); and
- that if the child pleads guilty or nolo contendere to a sexually violent or sexually motivated offense, or if the child has been previously adjudicated for such an offense, the plea may result in the child being placed in civil commitment as a sexually violent predator upon the completion of his/her sentence. Rule 8.080(b)(8).

5. Determination of Voluntariness and Non-Citizen Juveniles

Although there is no equivalent delinquency rule, the Florida Rule of Criminal Procedure 3.172(c)(8) makes mandatory that the adult criminal court include in a determination of the voluntariness of a plea the following:

- If the defendant pleads guilty or nolo contendere, if he or she is not a United States citizen, the plea may subject him or her to deportation pursuant to the laws and regulations governing the United States Immigration and Naturalization Service. It shall not be necessary for the trial judge to inquire as to whether the defendant is a United States citizen, as this admonition shall be given to all defendants in all cases.

Furthermore, the court in In re Amendments to the Florida Rules of Criminal Procedure, 536 So. 2d 992 (Fla. 1988), indicated that the adult rule is mandatory, without inquiring as to the defendant's citizenship, "to protect the defendant's due process rights."

Thus, prior to the child entering a plea, the juvenile court may also advise the child that, if he or she is not a United States citizen, a plea of guilty or nolo contendere may subject him or her to deportation pursuant to the laws and

regulations governing the United States Immigration and Naturalization Service. If such a statement is included in a voluntariness determination, similar to the adult criminal rule, it should be given to all juveniles in all juvenile delinquency cases; the court is not required to inquire as to whether the juvenile is a United States citizen before providing such a statement. See General Topics for more information.

6. Acknowledgement by the Child

Before the court accepts a guilty or no contest plea, the court must determine that the child either:

- acknowledges guilt, Rule 8.080(c)(1); or
- acknowledges that the plea is in the child's best interest, while maintaining innocence. Rule 8.080(c)(2).

Important note for certain juvenile sex offenders. Effective July 1, 2007, §943.0435, was amended to require certain juvenile sex offenders to register with the Florida Department of Law Enforcement (FDLE) and their identity be posted on the FDLE website. For offenses occurring on or after July 1, 2007, a juvenile who was 14 years of age or older at the time of the offense and is adjudicated delinquent of a qualifying offense must register as a sexual offender. To help ensure that pleas are knowingly made, any plea colloquy for a qualified offense should include information about the sex offender registration requirements. See General Topics for more information on juvenile sexual offenders.

E. Set next hearing

1. If a Plea of Guilty or Nolo Contendere

If the child pleads guilty or nolo contendere, a disposition hearing can occur immediately after the plea is taken if a predisposition report has been prepared. Rule 8.070(b). The case can also be set for a disposition hearing for a later date. §985.335. Prior to disposition, if the child is in detention, the need for continued detention must also be reviewed. §985.26. A comprehensive evaluation for disposition is required if residential commitment is anticipated or recommended, §985.185(1), including a predisposition report. §985.43(1)(a).

2. If a Plea of Not Guilty

If the child pleads not guilty, the case proceeds to an adjudicatory hearing and/or mediation. The adjudicatory hearing can commence immediately or the court may set a future time for the adjudicatory hearing. Rule 8.110(b). If the child is represented by counsel, the child may file a written plea of not guilty at or before the arraignment hearing and the arraignment proceeding will be deemed waived. Rule 8.070(b). The child does not need to be present at the arraignment if a written plea of not guilty has been entered.

3. Time Limits

If there is to be an adjudicatory hearing, and the child is not held in detention, it must occur within 90 days of the earlier of:

- the date the child was taken into custody; or
- the date the child was served with the summons that was issued when the petition was filed. Rule 8.090(a).

However, the child can file a “Demand for Speedy Trial” and have the right to the adjudicatory hearing within 50 days of the filing of the demand. Rule 8.090(g)(4). See General Topics for more information on speedy trials.

If the child is held in detention, the adjudicatory hearing must be commenced within 21 days of the child being placed into detention care, §985.26, unless the child has waived the time periods by requesting continuances.

F. Determine custody pending disposition

1. Review RAI

If the child was held in detention prior to the arraignment hearing, the court will have to determine whether continued detention is necessary pending disposition. §§985.24(1); 985.255(2). The court may review the RAI score for assistance in determining custody, and will need to make findings that the child:

- Presents a risk of not appearing at the next hearing;
- Presents a risk of bodily harm to others as evidenced by recent behavior;
- Presents a history of committing property offenses prior to adjudication, disposition, or placement; or
- Requests protection from imminent bodily harm. §985.24(1)(a)-(c),(e).

2. If a Domestic Violence Offense is Alleged

If the child is alleged to have committed a domestic violence offense (as defined in §741.28) and he or she does not meet detention criteria, the court can order the child to be held in secure detention if the court makes written findings that:

- Respite care for the child is not available.
- It is necessary to place the child in secure detention to protect the victim from injury. §985.255(2)(a)-(b).

A child may not be held in detention under 985.255(2) for more than 48 hours without court order. §985.255(2). Additionally, after 48 hours, the court must hold a hearing if the state attorney or the child requests that detention be continued. §985.255(2). Detention may be continued if the court makes specific written findings that continued detention is necessary to protect the victim from further harm, and detention cannot continue past the time limits established in Florida statute. §985.255(2).

3. Reasons not to Place the Child

However, a child may not be placed into detention care for any of the following reasons:

- to allow a parent or guardian to avoid his or her legal responsibility;
- to permit more convenient administrative access to the child;
- to facilitate further interrogation or investigation; or
- due to a lack of more appropriate facilities. §985.24(2)(a)-(d).

Also, a child may not, under any circumstances, be placed into secure detention if the child is alleged to be dependent under Chapter 39. §985.24(3).

ADJUDICATORY HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§985.033-985.039; 985.185; 985.26; 985.35; 985.43; 985.445; 985.534; 985.35</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.055; 8.060; 8.065; 8.090; 8.100; 8.110; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	The purpose of the adjudicatory hearing is to determine whether the child committed a delinquent act or violation of law.
TIME FRAME	For a child held in detention, the adjudicatory hearing must be commenced within 21 days of the child being taken into custody. The court may extend the length of detention an additional 9 days for certain offenses. §985.26(2) For a child not held in detention, the adjudicatory hearing must be held within 90 days of the filing of the delinquency petition, or within 50 days of the filing by the child of a Demand for Speedy Trial. Rule 8.090(g)(4).
BURDEN OF PROOF	The petitioner must prove the allegations in the delinquency petition that the child committed a delinquent act or violation of law beyond a reasonable doubt. §985.35(2)(a).
RULES OF EVIDENCE	Rules of evidence used in criminal cases. §985.35(2).
RIGHT TO COUNSEL	The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.
NEXT HEARING	A disposition hearing must occur as soon as possible after the adjudicatory hearing. Child cannot remain in detention for longer than 15 days following entry of an order of adjudication. §985.26(3).

ADJUDICATORY HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the adjudicatory hearing is to allow the petitioner an opportunity to prove the allegations in the delinquency petition beyond a reasonable doubt.
- Place the child and all witnesses, including the parents, under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says can be used against him or her.

C. Adjudicatory hearing process

- The child may testify on his or her own behalf and introduce evidence. Verify that the child understands what this means.
- The rules of evidence and procedures applied in criminal cases are applied in delinquency cases. Explain to the child that the petitioner must prove the charge of delinquency beyond a reasonable doubt - that the charge must be proven to the extent that there is no "reasonable doubt" in the mind of a reasonable person that the child is guilty.

D. Delinquency determination

- If delinquency is not proven, dismiss the case and discharge the child.
- If delinquency is proven, the case proceeds to disposition. Explain what will happen next and what is expected of the child.
- If delinquency is proven, determine whether to withhold adjudication or adjudicate the child delinquent.
- State the factual basis for the determination. Tell the child the reasons for the determination in clear, simple terms.

E. Custody pending disposition

- Explain to the child any custody decisions made and the reasons for them.

F. Advise of right to appeal

- Verify that the child understand this right.

G. Set disposition hearing

- If a predisposition report has not been done, order it to be done and set the disposition for a date after the report has been completed.
- If a predisposition report has been completed and DJJ has issued its recommendation, the court may hold the disposition hearing immediately, or may set it for a future date.
- A disposition hearing must occur as soon as possible after the adjudicatory hearing. If the child is in detention care, the disposition hearing must be held no later than 15 days following entry of an order of adjudication.

H. Requirements for written order of adjudication

- It must state the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- If counsel is waived, make finding that waiver was knowing, voluntary, and intelligent.
- Written order must state findings and factual basis for delinquency decision.
- If child is found not to have committed delinquent act, make finding and order the release of the child. Include reasons for such a finding.
- If child is found to have committed a delinquent act, make finding and order an adjudication of delinquency or withholding of adjudication. Include reasons for such.
- Direct the detention of the child and state the reasons or, if appropriate, order the release of the child and return to his or her nonresidential commitment program, or release the child pending disposition.
- Make a finding regarding cost or supervision and care.
- Set the next hearing date.

ADJUDICATORY HEARING OUTLINE

A. *Generally*

1. **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. *See General Topics* for more information on interpreters.

2. **Recording**

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. **Purpose**

Explain that the purpose of the adjudicatory hearing is to provide the petitioner an opportunity to prove the allegations of the delinquency petition beyond a reasonable doubt. §985.35(2)(a). Delinquency adjudicatory hearings are conducted by the court without a jury. Rule 8.110(c). The rules of evidence used in criminal cases apply to adjudicatory hearings. §985.35(2). The child has the right to present evidence and to cross-examine witnesses. §985.35(2)(b). The adjudicatory hearing must be held as soon as practicable after the petition for dependency is filed, but not more than 21 days after child is placed in detention care. §985.26(2). For a child not held in detention, the adjudicatory hearing must be held within 90 days of the filing of the delinquency petition, or within 50 days of the filing of a demand for a speedy trial. Rule 8.090(g)(4). *See General Topics* for more information on speedy trials.

4. **Identify Those Present**

Identify those present and their relationship to the case. Those present should identify themselves for the court and the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. Notice Assessment

If there are any identified parents or guardians who are absent from the proceeding, determine steps taken to locate and serve notice of the adjudicatory hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search, following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of an adjudicatory hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

6. Place the child and any witnesses, including the parents, under oath

If the child is presenting testimony on his/her own behalf, the court should place the child under oath. Rule 8.110(d). The court should also place any witnesses who will present testimony under oath. Prior to the examination of any witnesses, any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

7. Joint Trials

Where 2 or more children are alleged to have jointly committed a delinquent act or violation of the law, they shall be tried jointly unless the court in its discretion orders separate trials. Rule 8.110(e).

8. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

A child in delinquency proceedings is generally afforded the same Constitutional rights as adults in criminal proceeding. Children are entitled to due process, right to counsel, and right against self-incrimination and illegal search and seizure. §985.35(2). The one notable exception is the right to a jury – a child in a delinquency proceeding does not have the right to a trial by jury.

1. Right to Counsel

Determine whether the child is represented by counsel. If the child appears without counsel, advise him or her of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that if indigent, he or she has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowingly, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record and in writing. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence

of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

3. Right to Remain Silent

Advise the child of his or her right to remain silent. The child must be apprised that he or she has the right against self-incrimination. The court must advise the child that he or she has the right to remain silent and that anything the child says can be used against him or her as an admission. §985.35(2).

C. Adjudicatory hearing process

Conduct the hearing, to the fullest extent practicable, in language understandable to the child before the court. §985.35(2).

1. Defense of Alibi

If a child wants to present an alibi as a defense, the state attorney may demand in writing that the child provide the state attorney with the details of the alibi defense; the child must comply not less than 10 days before the trial date. Rule 8.065(a). The state attorney may then prepare a list of rebuttal witnesses within 5 days of receipt of the information, and must present that list to the child. Rule 8.065(b). **Should the child fail to or refuse to comply** with Rule 8.065, the court may, in its discretion, exclude testimony of alibi witnesses other than that of the child. Rule 8.065(c). **Should the state attorney fail to comply** with the Rule 8.065, the court may, in its discretion, exclude rebuttal testimony offered by the state. Rule 8.065(c). As per Rule 8.065(d), for good cause shown, the court may waive the requirements of Rule 8.065.

2. Participation in the Discovery Process

Participation by the child in the discovery process shall be an election to participate in discovery. Rule 8.060(a)(1). If there is a showing of materiality to the preparation of the defense, the court can order discovery other than in the written discovery exhibit. Rule 8.060(a)(5). Upon application, the court may deny

or partially restrict disclosure authorized by Rule 8.060 if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure, which outweighs any usefulness of the disclosure to the party requesting it. Rule 8.060(c)(1). *See* General Topics for more information on the discovery process.

3. Rules of Evidence

The rules of evidence applied in criminal cases are applied in delinquency cases. §985.35(2). A child charged with a delinquent act or violation of the law is afforded all rights against self-incrimination. §985.35(2)(c). Evidence illegally seized or obtained shall not be admitted into evidence to establish the allegations against the child. §985.35(2)(c). *See* General Topics for more information on common evidence issues.

4. Child Allowed to Testify and Introduce Evidence

The child may testify on his or her own behalf and introduce evidence. §985.35(2)(b). The child may be cross-examined like other witnesses, Rule 8.110(d), and may cross-examine witnesses. §985.35(2)(b). No child can be compelled to give testimony against him- or herself, and no prosecuting attorney can comment on any such failure to testify. Rule 8.110(d).

5. Right to a Closing Argument

All children have the right to a closing argument. However, the order in which the child and the state present their closing arguments may vary, depending on whether the child has presented any evidence or offered any testimony other than his or her own. If the child has presented evidence or testimony other than his or her own, the state presents the first closing argument (and the rebuttal closing argument) and the child presents the second closing argument.

If, however, the child has presented no testimony or evidence other than his or her own, the child is entitled to present the initial closing argument and a rebuttal argument. Rule 8.110(d). The state is allowed to present the second closing argument.

In *D.B. v. State*, 979 So. 2d 1119 (Fla. 3d DCA 2008), the court held that D.B., who presented no evidence nor offered any testimony other than his own, was entitled to present the first and final closing arguments; this is held to be different than adult criminal prosecutions, where the State is entitled to give the first and reply closing arguments, per Fla. R. Crim. P. 3.381. The court further held that this right is a vested procedural right.

D. Delinquency determination

1. If Delinquency is not Proven

If delinquency has not been proven, dismiss the case and discharge the child. §985.35(3); Rule 8.110(f).

2. If Delinquency is Proven

If delinquency has been proven, determine whether to withhold adjudication or adjudicate child delinquent. §985.35(4). The court can impose an array of conditions, including but not limited to restitution, community service, or curfew. §985.35(4)(a). If the child fails to comply, the court may after a hearing on noncompliance enter an adjudication of delinquency. §985.35(4)(c). If the child is adjudicated delinquent, the court must then decide disposition. If the pre-disposition report is available, the court may immediately proceed to disposition, or continue the case to a disposition hearing. Rule 8.110(g). If a predisposition report is not ready, the court will continue the case and refer the child to the appropriate agency. Rule 8.110(g). An adjudication of delinquency **shall not** be deemed to be a conviction, nor will the child be deemed to be a criminal by reason of that adjudication. §985.35(6).

3. Withholding Adjudication

The court may, in its discretion, enter an order stating the facts upon which its finding is based but withhold adjudication. §985.35(4). Upon withholding adjudication, the court may place the child in a probation program under the supervision of DJJ. §985.35(4)(a). One recent article suggested that withholding adjudication may be beneficial to the court because a withholding will increase judicial efficiency, and may allow the court an opportunity to demonstrate leniency for uncharacteristic behavior. (*see* Tragos, G. and Sartes, P. *Withhold of Adjudication: What Everyone Needs to Know*. Florida Bar Journal (Feb. 1, 2008).)

Withholding adjudication may be beneficial to the child as well. A withholding of adjudication could preclude the child from collateral consequences to an adjudication of delinquency (*see* Tragos and Sartes, *supra*) and keep the child's legal record clear of delinquent adjudications.

4. Written Finding if Child is in a Public School

Regardless of whether adjudication is withheld, if the child is attending public school and the victim or sibling also attends that school, the court must make a written finding under §985.455(2). The court must determine whether a no contact order in favor of the victim or victim's sibling is appropriate. If the court finds that it is appropriate, and if the victim or victim's representative finds it appropriate, the court may reflect such determinations in writing or in open court, and include a statement that the victim or victim's representative did not object to the offender child attending the same school or riding the same bus as

the victim or victim's siblings. §985.455(2).

5. Order of Adjudication

If the court finds the child has committed a delinquent act or violation of the law, the court shall incorporate that finding into an order of adjudication of delinquency, stating the facts upon which the finding is made. §985.35(5).

6. Degrees of Offenses Included

If the petition alleges an offense or offenses that are divided into degrees, the court may find that the child committed an offense of the degree alleged or to a lesser degree. Rule 8.110(h). On a petition for any offense, the court may find that the child committed an attempt to commit the offense or any necessarily included or lesser included offense of the offense charged in the petition. Rule 8.110(j).

7. Motion for Judgment of Dismissal. Rule 8.110(k).

At the close of petitioner's evidence, the court may dismiss the petition on its own, or on motion by the state attorney or the child, if the court finds the evidence insufficient to establish a prima facie case of delinquency. When making such a determination, the court must view the evidence in the light most favorable to the State.

E. Custody pending disposition

If the case is continued pending a disposition hearing, the court may order the child detained. Rule 8.110(g). However, the court **must** place in detention care all children who are adjudicated delinquent and awaiting placement in a commitment program. §985.27.

F. Advise of right to appeal

An appeal from an adjudicatory order may be taken to the appropriate district court within the time and manner prescribed in §924.051 and Fla. Rules of Appellate Procedure by the child, parent or guardian, or the state. §985.534(1)(a)&(b).

In L.B. v. State, 10 So. 3d 1161 (Fla. 3d DCA 2009), the court held, "To preserve an issue for appeal, a litigant must make a **timely, contemporaneous objection, stating a legal ground for that objection.** The purpose for the rule is to 'place the trial judge on notice that error may have been committed, and provide him an opportunity to correct it at an early stage of the proceedings.' (citing Harrell v. State, 894 So. 2d 935 (Fla. 2005) at 340)." (Emphasis added.)

G. Set disposition hearing

1. Generally

A predisposition report must be ordered by the court for any child for whom a residential commitment disposition is anticipated or recommended by an officer of the court or DJJ. Evaluation shall be ordered for any child for whom residential commitment disposition is anticipated or recommended. §985.185(1). The court may order any additional reports. §985.185(2). A child who was not in secure detention at the time of the adjudicatory hearing, but for whom residential commitment is anticipated or recommended, may be placed under a special detention order under §985.26(5) for the purpose of conducting a comprehensive evaluation. §985.43(1).

2. If Report is Unavailable

If the predisposition report is unavailable at the time of the adjudicatory hearing, the court may continue the case until such a time as it is available, Rule 8.110(g), although not more than 15 days following the entry of an order of adjudication, if the child is in detention care. §985.26(3). The court should refer the child to the appropriate agency for a study and recommendation. Rule 8.110(g).

H. Requirements for written order of adjudication

1. The court order must be in writing and must set forth the facts upon which the finding that the child committed a delinquent act is based. Rule 8.055.

- **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Waiver of Counsel.** If counsel was waived, make finding that the waiver was knowing, voluntary, and intelligent.
- **Detention directions.** Direct the detention of the child pending disposition and state the reasons therefor or, if appropriate, order the release of the child and return to his or her nonresidential commitment program.
- **Finding of Adjudication.** If the child was found not to have committed delinquent act, make a finding, stating facts the finding is based on, and order the release of the child. If the child was found to have committed a delinquent act, make a finding and order the child adjudicated delinquent or withhold adjudication, and briefly state the facts upon which the finding is made. §985.35(5).
- **Specify offenses.** If the petition alleges more than one offense, or an offense divided into degrees, specify which offense or offenses the child was found to have committed. Rule 8.110(i).
- **Release instructions.** Except as provided in §§790.22(8) or 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the

court order must include specific instructions that direct the release of the child from such placement no later than 5:00 p.m. on the last day of the detention period specified in §§985.26 or 985.27, whichever is applicable, unless the requirements of the applicable provision have been met or an order of continuance has been granted under Fla. Stat. §985.26(4).

- **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. §985.039. When a child is placed into nonsecure detention, probation, or other supervised status with DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to DJJ for each day the child is in that status. §985.039(1)(a).

If a child is placed in secure detention or placed on committed status and DJJ acquires temporary legal custody of the child, order the parent or guardian to pay five dollars (\$5.00) per day to DJJ for each day the child is in that status. §985.039(1)(b).

If the court fails to include in the Detention Order information regarding cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. §985.039(5). *See* General Topics for more information on costs.

- **Set next hearing.**

DISPOSITION HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§27.52; 90.6063; 318.143; 790.22; 938.03; 985.0301; 955.033; 985.035; 985.039; 985.255; 985.26; 985.27; 985.35; 985.43; 985.433; 985.435; 985.437; 985.441; 985.455; 985.46; 985.601; 985.721</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.055; 8.100; 8.110; 8.115; 8.165; 8.929; 8.947</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	The purpose of the disposition hearing is for the court to consider reports, recommendations, and other evidence to determine the disposition of the case.
TIME FRAME	The disposition hearing should be held not more than 15 days following the entry of an order of adjudication, if the child is in detention care. §985.26(3).
RULES OF EVIDENCE	Court may receive any relevant and material evidence helpful in determining the proper disposition. The court may rely upon such evidence to the extent of its probative value, even if it is not competent in an adjudicatory hearing. Rule 8.115(a).
RIGHT TO COUNSEL	The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.

DISPOSITION HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the disposition hearing is for the court to consider reports, recommendations, and other relevant and material evidence to determine the disposition of the case.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says can be used against him or her.

C. Review predisposition report

- The court must consider the predisposition report if one was prepared.
- In addition to the predisposition report, the court must consider the underlying comprehensive assessment and records of earlier judicial proceedings.
- The court can withhold adjudication if the court finds that no action other than supervision in the child's home is required.
- The court may also withhold adjudication, place the child in a probation program and impose penalty components such as restitution, community service, or other

nonresidential punishment appropriate to the offense.

D. Commitment determination

- The first determination the court must make is a determination of suitability for adjudication and commitment of the child to the department.
- If the court adjudicates the child delinquent, the court must then decide whether commitment is appropriate based upon the detention criteria.
- DJJ will recommend to the court a placement level and individualized treatment plan for the child.
- The court must include a penalty component in a probation program for a child adjudicated delinquent.
- The court may order a child adjudicated delinquent to make restitution, or may order the parent or guardian to make restitution.
- The court may also order the child be placed on post-commitment probation at any time before release.
- The court may order conditional release services to promote rehabilitation.
- The court must order other penalties if the child is adjudicated for offenses involving firearms and offenses involving alcohol consumption.
- Verify that the child understands what is being ordered, how it will affect the child, and what will be expected of him or her. Explain the terms of disposition clearly and in language the child can understand.

E. Detention pending commitment

- Children committed to a residential program must be placed into some form of detention care pending placement into the residential program. Explain what that means, what is expected of the child, and what the consequences of failing to act as required are.

F. Requirements for written order of disposition

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the disposition of each count specifying the charge, the degree of offense, and the maximum penalty defined by statute.
- If counsel waived, make finding that the waiver was knowing, voluntary, and intelligent.
- State general and specific conditions or sanctions, including any restitution or probation provisions.
- Make findings as to the disposition of the child.
- State the date and time when issued and the country and court where issued.
- The child's fingerprints shall be affixed to the order of disposition.
- State the period of the disposition.
- State whether the court retains jurisdiction over discharge.

DISPOSITION HEARING OUTLINE

A. Generally

1. Interpreter Determination

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

2. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. Purpose

Explain to the child that the purpose of the disposition hearing is for the court to consider reports, recommendations, and other relevant and material evidence to determine the disposition of the case. All parties present have the right to be heard. For purposes of disposition, this includes parents, guardians, legal custodians, child's counsel, state attorney, DJJ representatives, the victim or victim's representative, representatives of the school system, and law enforcement officers involved in the case. I.H. v. State, 584 So. 2d 230 (Fla. 5th DCA 1991). The disposition hearing is akin to the sentencing hearing in criminal law, and follows either a court finding that the juvenile committed a delinquent act or a plea of guilty or nolo contendere was entered. The court has a wide range of disposition options ranging from a judicial warning, probation only, commitment to a licensed child caring agency, or commitment to DJJ.

4. Identify Those Present

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. Notice Assessment

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the disposition hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

6. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

1. Right to Counsel

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigency status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person

seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, he or she has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the child appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Review predisposition report

1. Consider Disposition Report

The court must consider the predisposition report. The predisposition is prepared by the juvenile probation officer and contains DJJ's recommendations for disposition, and, if prepared, must be submitted to the court no less than 48 hours prior to the disposition hearing. §985.43(3). A predisposition report is required when residential commitment is anticipated. §985.43(1)(a). The child, the child's attorney, the child's parent or custodian, and the state attorney are entitled to disclosure of all information contained in the predisposition report and all reports and evaluations used in the preparation. Rule 8.115(c). However, the predisposition report cannot be reviewed by the court without the consent of the child until the child has been found to have committed a delinquent act. §985.43(3). The predisposition report may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Rule 8.115(a).

2. Consider Other Records

In addition to the predisposition report, the court must consider the underlying comprehensive assessment and records of earlier judicial proceedings pursuant to §985.43(2). The court may also consider any relevant and material evidence that may be helpful to determining the proper disposition. Evidence may be relied upon to the extent of its probative value even if this evidence would not be competent at an adjudicatory hearing. Rule 8.115(a).

3. Before Determining Disposition

Before determining disposition, **the court must:**

- State clearly, using common terminology, the purposes of the hearing and the right of those present to comment at appropriate times;
- Discuss with the child his or her compliance with any plan imposed since the date of the offense;
- Discuss with the child his or her feelings about the offense committed, the harm done, and what penalty he or she should face for the offense; and
- Give all parties an opportunity to comment on the issue of disposition and any proposed rehabilitative actions. §985.433(4)(a)-(d).

4. Determine Disposition

Once the court has considered the predisposition report and all the evidence, determine disposition. §985.433(7). The court must determine what program best meets the needs of the child and the public safety. §985.433(9). The court has the option to adjudicate the child delinquent or to withhold adjudication.

The court can withhold adjudication if the court, in its discretion, enters an order withholding adjudication and states the facts upon which the finding is based. §985.35(4). Under §985.35(4), the court may withhold adjudication and place

the child in a probation program, and may impose other penalty components as a condition of the program.

The court **may not** commit a juvenile to a life sentence without parole if the offender did not commit homicide. Graham v. Florida, 2010 WL 1946731 (U.S. 2010).

D. Commitment determination

1. Suitability of Adjudication Determination

The first determination the court must make is a determination of suitability for adjudication. §985.433(6). The determination shall include a consideration of the information presented by all parties, including but not limited to the predisposition report, the nature and circumstances of the delinquent act, and the child's educational status.

2. Determine Commitment

If the court adjudicates the child delinquent, the court must then decide whether commitment is appropriate based upon the criteria in §985.433(6).

DJJ will recommend to the court a placement level and individualized treatment plan for the child, which the court must consider before deciding the commitment of the child. §985.433(6). The court may commit the child to the level recommended by DJJ or it can reject the recommendation. §985.433(7)(b). The court can deviate from the recommendation; if it does so, it must follow §985.433(7)(b) and the Florida Supreme Court's ruling in E.A.R. v. State, 4 So. 3d 614 (Fla. 2009). The court may not direct DJJ to place a child at a specific facility. Dept. of Juvenile Justice v. K.B., 784 So. 2d 556 (Fla. 1st DCA 2001). The court can only order the commitment level.

In *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009), the court held that, if lower courts wanted to diverge from the recommendations of DJJ, the juvenile court must:

“articulate an understanding of the respective characteristics of the opposing restrictiveness levels, including, but not limited to, the type of child that each restrictiveness level is designed to serve, the potential “lengths of stay” associated with each level, and the divergent treatment programs and services available to the juvenile at these levels; and

logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving both the rehabilitative needs of the juvenile, in the least restrictive setting, and maintaining the ability of the State to protect the public from further acts of delinquency.”

See General Topics for more information on more restrictive placements.

3. Period of Commitment

The period of commitment is indeterminate, but cannot exceed the maximum adult sentence for the same offense. §985.455(3). This allows DJJ to retain the child in an appropriate commitment placement until rehabilitation is achieved. However for some offenders such as sex offender or juvenile prison commitment, jurisdiction is until 21 years of age. §985.0301(5). Jurisdiction can be extended until 22 years of age for high-risk and maximum-risk offenders to allow the child to participate in a juvenile conditional release program. §985.0301(5)(d). DJJ commitments have varying levels of restrictiveness. Restrictiveness level means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children. Sections 985.601(10) and 985.721 apply to children placed in programs at any residential commitment level. See General Topics for more information on commitment to DJJ.

4. Probation

The court may include a probation program for a child adjudicated delinquent. §985.435. Juvenile probation is an individualized program that includes both a penalty and a rehabilitative component. §985.435(2)&(3). The probation must include treatment designed to achieve rehabilitation such as substance abuse treatment, required school attendance, educational or work programs, counseling, and community based programs for youths. §985.435(3). A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. §985.435(4). A mandatory \$50.00 victim’s crime compensation trust fund fee

must be imposed regardless of whether adjudication is withheld. §938.03(1). The court may impose any special condition of probation as long as it bears a relationship to the crime, relates to conduct which is in itself criminal, or requires or forbids conduct which is reasonably related to future criminality. Biller v. State, 618 So. 2d 734 (Fla. 1993). The court may impose electronic monitoring as a condition of juvenile probation. T.S. v. State, 682 So. 2d 1202 (Fla. 4th DCA 1996). An order of probation is indeterminate but cannot extend beyond the child's 19th birthday. §985.0301(5)(b). The duration cannot exceed the time that could be imposed for which an adult sentence could be imposed, except that for misdemeanors of the second degree, probation may be imposed for up to 6 months. §985.455(3).

The court may also order the child be placed on post-commitment probation at any time before release. §985.433(7)(c). The court may suspend imposition of the commitment and place the child on juvenile probation within 60 days from the date of disposition. §985.455(4).

5. Restitution

The court may order a child adjudicated delinquent (or where adjudication has been withheld) to make restitution or order the parent or guardian to make restitution. §985.437. The court may order the child to make restitution in money through a promissory note cosigned by the parents or in kind for damages or loss caused by the offense. §985.437(2). *See General Topics* for more information on restitution.

6. Conditional Release Services

The court may order conditional release services to promote rehabilitation. §985.46. These services can contribute to a successful transition of a delinquent child from commitment back into the child's community, and thus should be included in the continuum of care. §985.46(1). *See General Topics* for more information on conditional release.

7. Offenses Involving Firearms

If the child is adjudicated for an offense involving the use or possession of a firearm and is not committed to DJJ, the court must order, in addition to any other penalty, at least 15 days in secure detention, 100 hours community service, and placement on probation or in a nonresidential community program for a first offense. §790.22(9). The court must order at least 21 days secure detention and 100-200 hours of community service and placement in probation or in a nonresidential community program for a second or subsequent offense. §790.22(9). In addition, the child's driver's license must be revoked or withheld for up to one year for a first offense and up to 2 years for a second or subsequent offense. §790.22(10). The child does not get credit for time already

served in secure detention. §790.22(9).

8. Offenses Involving Alcohol

Children who violate the alcohol statute prohibiting persons less than 21 years of age from drinking alcohol are required to have their driver's license revoked or withheld until they turn 18 years of age for the first offense and until they turn 21 years of age for a second or subsequent offense. §318.143(4).

E. Detention pending commitment

Children committed to a residential program must be placed into some form of detention care pending placement into the residential program, §985.27(1), and must meet detention criteria outlined in §985.255. A child awaiting placement in a low to moderate risk residential program may be placed in secure detention for up to 5 days. §985.27(1)(a). If a moderate –risk residential program is being imposed, DJJ may request an extension of up to 15 working days for placement. §985.27(1)(b). A child awaiting placement in a low to moderate residential placement may be placed in nonsecure detention with electronic monitoring. §985.27(1). When a child is placed in detention care, the court must order the parents to pay \$5.00/day to offset the cost of the child's care, §985.039(1)(b), unless the court orders that a reduction in cost or waiver of cost is appropriate, supported by appropriate findings. See General Topics for more information.

F. Requirements for written order of disposition

- 1. The court order must be in writing and must set forth the facts upon which the finding that the child committed a delinquent act is based. Rule 8.055. The Florida Supreme Court has an approved form available for use, Form 8.947.**
 - **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty. Rule 8.115(d)(1).
 - **Date and time.** Specify the date and time when issued and the county and court where issued. Rule 8.115(d)(5).
 - **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
 - **Detention directions.** Direct the detention of the child and state the reasons supporting such or, if appropriate, order the release of the child and return to his or her nonresidential commitment program.
 - **Findings of fact.** Make all findings of fact required by law. Rule 8.115(d)(4).
 - **Specify offenses.** If the petition alleges more than one offense, or an offense divided into degrees, the court must specify of which offense or offenses the child has been adjudicated delinquent. Rule 8.110(i).

- **Disposition.** State the disposition of each count specifying the charge title, the degree of offense, and the maximum penalty defined by statute. Rule 8.115(d)(2)&(d)(3).
- **Special disposition.** Order probation, restitution, community service, curfew, and/or apologies as appropriate. Order no contact with victims, if appropriate. Rule 8.115(d)(3).
- **Determination of gang membership.** Include any determination that the child was a member of a street gang. §985.433(7). Such a determination must be given “great weight” in identifying the appropriate level of restrictiveness. §985.433(7)(a).
- **Release instructions.** Except as provided in §§790.22(8) or 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5:00 p.m. on the last day of the detention period specified in §§985.26 or 985.27, whichever is applicable, unless the requirements of the applicable provision have been met or an order of continuance has been granted under §985.26(4).
- **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. §985.039. When a child is placed into nonsecure detention, probation, or other supervised status with DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to DJJ for each day the child is in that status. §985.039(1)(a).
If a child is placed in secure detention or placed on committed status and DJJ acquires temporary legal custody of said child, order the parent or guardian to pay five dollars (\$5.00) per day to DJJ for each day the child is in that status. §985.039(1)(b).
If the court fails to include in the Detention Order information regarding cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. §985.039(5). See General Topics for more information on costs.

The child’s fingerprints must be affixed to the order of disposition. Rule 8.115(e).

Other Hearings

VIOLATION OF PROBATION HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§27.52; 90.6063; 790.22; 985.033; 985.035; 985.039; 985.245; 985.255; 985.26; 985.27; 985.433; 985.435; 985.439</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.110; 8.115; 8.120; 8.165; 8.929; 8.947</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	The purpose of the violation of probation hearing is to determine whether the child violated the terms and conditions of his or her probation or conditional release.
TIME FRAME	Probable cause hearing within 24 hours after the child is taken into custody. §985.439(2). Violation of Probation hearing must be within the time limits set out in §985.255.
BURDEN OF PROOF	The petitioner must prove the allegations of the violation of probation petition filed by the JPO. The burden of proof is by a preponderance of the evidence.
RULES OF EVIDENCE	The court is not required to follow the strict rules of evidence and may consider affidavits and other documents as are relevant, even though that evidence may not be admissible in a criminal trial.
RIGHT TO COUNSEL	The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.

VIOLATION OF PROBATION HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the violation of probation hearing is to determine whether the child has violated the terms and conditions of his or her probation or conditional release.
- Place the child and any witnesses under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says can be used against him or her.

C. Violation of probation determination

- The court must consider the predisposition report if one was prepared.
- In addition to the predisposition report, the court must consider the underlying comprehensive assessment and records of earlier judicial proceedings.
- The court can require additional assessments of the child.
- The court can withhold adjudication if the court finds that no action other than supervision in the child's home is required.

- If the court finds the child violated probation, the court shall enter an order revoking, modifying, or continuing probation or post-commitment probation. 985.439(4).

D. Disposition determination

- State the factual basis for the determination. Tell the child the reasons for the determination clearly using language the child can understand. Verify that the child understands what the determination means, what will be expected of him or her, and the consequences of failing to act as required.
- Children committed to a residential program must be placed into some form of detention care pending placement into the residential program.

E. Requirements for written order of disposition

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the disposition of each count specifying the charge, the degree of offense, and the maximum penalty defined by statute.
- If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- State general and specific conditions or sanctions.
- Make findings as to the disposition of the child. Include the facts underlying any finding.
- State the date and time when issued and the country and court where issued.
- Be signed by the court with the title of office.
- The child's fingerprints must be affixed to the order of disposition.
- State the period of the disposition.
- State whether the court retains jurisdiction over discharge.

VIOLETION OF PROBATION HEARING OUTLINE

A. Generally

1. Interpreter Determination

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

2. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. Purpose

A violation of probation hearing determines whether the child has violated the terms and conditions of his or her probation or conditional release. When a child is alleged to have violated probation, it is necessary to determine whether the child should be held in detention pending the violation hearing. Section 985.255(1)(h) authorizes detention if a child is alleged to have violated the conditions of probation. However, the form of detention that may be imposed is limited to a consequence unit – a secure facility designated by DJJ for the purposes of detaining children taken into custody for violating their probation. §985.439(2). If the child has not allegedly committed a new delinquent act as part of the violation of probation and if a consequence unit is not available, then the child must be detained in to home detention with electronic monitoring. In R.A.P. v. Charles Parkins, Superintendent of the Alachua Regional Juvenile Detention Center and the State of Florida, 994 So. 2d 414 (Fla. 1st DCA 2008), the First District Court of Appeal held that where neither a consequence unit nor electronic monitoring for home detention is available within the trial court's geographic jurisdiction, only a less restrictive form of detention, such as home detention, is permissible. If a new crime is alleged as the violation of probation, detention is governed by §985.245(4). An RAI that includes the underlying

offense and the new offense(s) is scored. Based upon the new RAI, the child may be subject to more restrictive detention.

4. Identify Those Present

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. Notice Assessment

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the violation of probation hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

6. Place the Child and Any Witnesses Under Oath

The court should place the child and any witnesses under oath. Rule 8.120(a)(5). Prior to the examination of any witnesses, the court may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

7. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of Rights

1. Right to Counsel

Determine whether child is represented by counsel. If child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that if indigent, the child has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowingly, intelligent and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely and intelligently waived by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Violation of probation determination

1. The court shall ask the child to enter a plea.

2. If the Child Admits

If the child admits to the violation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. §985.439(4).

3. If the Child Denies

If the child denies the alleged violation, the court shall, at the child's request, appoint counsel to represent the child. §985.439(3). The court shall subsequently hold a hearing to determine whether the child violated probation. The hearing may immediately follow the probable cause hearing or may be held at a future date. If the hearing is held at a future date and the child is in custody pending the hearing, the detention must comport with the criteria set out in §§985.255 and 985.26.

4. Rules of Evidence

At the violation of probation hearing, the court is not required to follow the strict rules of evidence and may consider such affidavits and other documents as are relevant, even though such evidence may not be admissible in a criminal trial. Wheeler v. State, 344 So. 2d 630 (Fla. 2d DCA 1977).

5. Burden of Proof

The prosecution must prove by a preponderance of the evidence that the child violated his or her probation. Van Wagner v. State, 677 So. 2d 314 (Fla. 1st DCA 1996).

6. Possible Court Actions

If the court finds the child violated probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions the court could have imposed at the original disposition hearing, the court may impose other sanctions as set out in §985.439(4).

D. Disposition determination

A juvenile is not entitled to credit on probation for time spent in detention. However, once a violation of probation is filed, the child is entitled to credit for time served before the filing of the petition. Davis v. State, 667 So. 2d 885 (Fla. 1st DCA 1996). Additionally, upon revocation of probation, the time a child has already served on probation for a given offense must be credited toward any new term of probation imposed for that offense, when necessary to ensure that the total term of probation does not exceed the statutory maximum for that offense. State v. Summers, 642 So. 2d 742 (Fla. 1994).

E. Requirements for written order

1. **If the court finds that the child has violated the conditions of probation or post-commitment probation, the court shall enter a new disposition order, and may impose further sanctions as noted above. The new disposition order can be found in the Supreme Court approved forms, Form 8.947.**
 - **Name and address.** State the name and address of the child or if unknown, designate the child by a name or description that can identify the child with reasonable certainty. Rule 8.115(d)(1).
 - **Age and gender.** State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him subject to the juvenile proceedings. Rule 8.115(d)(1).
 - **Date and time.** Specify the date and time when issued and the county and court where issued. Rule 8.115(d)(5).
 - **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, voluntary, and intelligent.
 - **Finding of fact.** Make all findings of fact required by law. Rule 8.115(d)(4).
 - **Detention directions.** Direct the detention of the child and state the reasons therefor or, if appropriate, order the release of the child and return to their nonresidential commitment program. Rule 8.115(d)(3).

- **Specify offenses.** If the petition alleges more than one offense, or an offense divided into degrees, the court shall specify which offense or offenses of which the child has been adjudicated delinquent. Rule 8.110(i).
- **Disposition.** State the disposition of each count specifying the charge title, the degree of offense, and the maximum penalty defined by statute. Rule 8.115(d)(2)&(d)(3).
- **Special disposition.** Order probation, restitution, community service, curfew, and/or apologies as appropriate. Order no contact with victims, if appropriate. Rule 8.115(d)(3).
- **Determination of gang membership.** Include any determination that the child was a member of a street gang. §985.433(7).
- **Release instructions.** Except as provided in §790.22(8) or 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in §§985.26 or 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under Fla. Stat. §985.26(4).
- **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. §985.039. When a child is placed into nonsecure detention, probation, or other supervised status with the DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to the DJJ for each day the child is in that status. §985.039(1)(a).
If a child is placed in secure detention or placed on committed status and the DJJ acquires temporary legal custody of said child, order the parent or guardian to pay five dollars (\$5.00) per day to the DJJ for each day the child is in that status. §985.039(1)(b).
If the court fails to include in the Detention Order information regarding cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. §985.039(5). See General Topics for more information on costs.

In addition to the above requirements, the court may:

- Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation and up to 15 days for a second or subsequent violation;
- Place the child on home detention with electronic monitoring. However, this sanction may be used only if a residential consequence unit is not available;
- Place the child in an alternative consequence program designed to provide

swift and appropriate consequences to any further violations of probation, if child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law;

- Modify or continue the child's probation program or postcommitment probation program; or
- Revoke probation or postcommitment probation and commit the child to the department. §985.439(4)(a)-(e).

The court may also order the child to submit to random testing for the purposes of detecting and monitoring the use of alcohol or controlled substances. §985.439(5).

The child's fingerprints shall be affixed to the order of disposition. Rule 8.115(e).

CONTEMPT OF COURT HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§ 27.52; 90.6063; 790.22; 985.033; 985.035; 985.037; 985.039; 985.26; 985.27</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.150; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	The purpose of the contempt of court hearing is to determine whether the child has violated the terms and conditions of a court order.
TIME FRAME	The contempt hearing must be held within 24 hours of the child being charged with indirect contempt.
BURDEN OF PROOF	Presumed innocent until proven guilty beyond a reasonable doubt.
RULES OF EVIDENCE	Rules of evidence used in criminal cases.
RIGHT TO COUNSEL	The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.

CONTEMPT OF COURT HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the indirect criminal contempt of court hearing is to determine whether the child has committed indirect criminal contempt of a valid court order.
- Place the child and any witnesses under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says can be used against him or her.
- Advise the child of his or her due process rights.

C. Indirect contempt hearing procedure

- Issue and sign an Order to Show Cause and specify the time and date of the contempt hearing.
- If the court has reason to believe that the child will not appear, the court can issue an order of arrest.
- Arraign the child. Ask him or her to enter a plea of guilty, not guilty or nolo

- contendere. Explain what each plea signifies, and inform the child he or she has the right to refrain from entering any plea, in which case the court will enter a plea of not guilty. Verify the child understands the implications of the pleas.
- Conduct the hearing, following the rules of evidence used in criminal cases.
 - Explain to the child that the petitioner must prove the charge of delinquency beyond a reasonable doubt - that the charge must be proven to the extent that there is no "reasonable doubt" in the mind of a reasonable person that the defendant is guilty.
 - At the conclusion of the case, sign and enter a judgment of guilty or not guilty.
 - Pronounce the sentence in open court. Explain to the child the reasons for the order in clear, simple language.

D. Sanctions

- Follow the sanction guide to determine which sanctions are appropriate.
- Explain to the child what the sanctions mean, what will be expected of him or her, and the consequences of failing to act as required in clear, simple language.

E. Requirements for written judgment of contempt

- State the name and address of the child or if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- Include a recital of the facts constituting the contempt of which the accused has been found guilty.
- State the sanctions applicable for the child.
- Make a finding regarding cost or supervision and care.
- State the date and time when issued and the country and court where issued.
- Include a signature by the court with the title of office.

CONTEMPT OF COURT HEARING OUTLINE

A. Generally

1. Interpreter Determination

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and 90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

2. Direct Contempt of Court

A contempt of court may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. Rule 8.150(a). If the court witnesses the contemptuous conduct, the court may issue a judgment of contempt, including a recital of the facts upon which the adjudication of guilt is based. Rule 8.150(a). Prior to adjudication, the court shall inform the child of the accusation and inquire as to whether the child can show cause as to why he or she should be not be adjudicated guilty, giving the child time to present evidence of excusing or mitigating circumstances. Rule 8.150(a).

3. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

4. Purpose

An indirect contempt of court hearing determines whether the child has breached or violated a valid court order.

5. Identify Those Present

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public

unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

6. Notice Assessment

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the contempt hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

7. Place the Child and Any Witnesses Under Oath

The court should place the child and any witnesses under oath. Rule 8.150(b)(4). Prior to the examination of any witnesses, any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

8. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of Rights

1. Right to Counsel

Determine whether child is represented by counsel. If child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be

accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, he or she has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowingly, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;

- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

3. Due Process Rights

Advise the child of his or her due process rights. The following due process rights must be provided to the child:

- The right to a copy of the order to show cause alleging facts supporting the contempt charge.
- The right to an explanation of the nature and the consequences of the proceedings.
- The right to legal counsel and the right to have legal counsel appointed by the court if the juvenile is indigent, under §985.033.
- The right to confront witnesses.
- The right to present witnesses.
- The right to have a transcript or record of the proceeding.
- The right to appeal to an appropriate court. §985.037(4)(b)(1)-(7).

The transcript or recording, if requested by a motion to the court, is paid for by the state.

C. Indirect contempt hearing procedure

1. Issue an Order to Show Cause

This may be done on the court's own motion or upon affidavit of any person having knowledge of the facts. Rule 8.150(b)(1). The order shall specify the time and place of the hearing, with reasonable time allowed for the preparation of a defense after service of the order on the accused, Rule 8.150(b)(1), but the hearing must take place within 24 hours of the child being charged.

§985.037(4)(b). The child may move to dismiss the order, move for a statement of particulars, or answer. Rule 8.150(b)(2). All motions and answers shall be in writing unless otherwise specified by the court. Rule 8.150(b)(2). Any failure to answer or respond shall not be deemed an admission of guilt. Rule 8.150(b)(2).

2. Issue Order of Arrest

If the court has reason to believe that the child will not appear, the court can issue an order of arrest. The child must be admitted to bail in the manner provided by law in criminal cases. Rule 8.150(b)(3).

3. Arraign the child

The child may be arraigned at the contempt hearing or prior to the hearing upon request. Rule 8.150(b)(4).

4. If the Child Pleads Guilty

If the child pleads guilty, the court must issue a judgment of guilty and sentence the child.

5. If the Child Pleads Not Guilty

If the child pleads not guilty, the court will conduct a hearing, following the rules of evidence used in criminal cases. The court may conduct the hearing without assistance of counsel, or may be assisted by state attorney or another attorney appointed for that purpose. Rule 8.150(b)(4). The child is entitled to:

- Representation by counsel;
- Compulsory process for the attendance of witnesses; and
- The option of testifying in his or her own defense. Rule 8.150(b)(4).

6. Burden of Proof

The burden of proof in indirect contempt hearings is the same as for criminal cases; the state must prove the child's guilt beyond a reasonable doubt. Forbes v. State, 933 So. 2d 706 (Fla. 4th DCA 2006).

7. Judgment and Pronouncement of Sentence

At the conclusion of the case, sign and enter a judgment of guilty or not guilty. Include in the judgment a recital of the facts constituting the contempt of which the accused has been found guilty. Rule 8.150(b)(6).

Pronounce the sentence in open court, in the presence of the child. Rule 8.150(b)(7). Prior to the pronouncement, inform the child of the accusation and judgment against him or her and inquire as to whether there is any cause to show why the sentence should not be pronounced. Rule 8.150(b)(7). Allow the child an opportunity to present mitigating circumstances. Rule 8.150(b)(7).

D. Sanctions

1. Mandatory Sanctions

Upon determining a child has committed indirect contempt of court, the court must order the child to perform 50 hours of community-service manual labor or a similar alternative sanction, unless an alternative sanction is unavailable or inappropriate, or unless the child has failed to comply with a prior alternative sanction. §985.037(3). The court may request the alternative sanctions coordinator to recommend the most appropriate available alternative sanction. §985.037(3).

2. If no Alternative Sanctions

If alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction, the court may order the child to be placed in a secure facility for purposes of punishment for contempt of court. §985.037(2). The court is encouraged to order the child to perform community service where appropriate before ordering that the child be placed in a secure facility as punishment for contempt of court. §985.037(4)(c). A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility not to exceed:

- 5 days for a first offense; and
- 15 days for a second or subsequent offense. §985.037(2).

The court shall review the placement of the child only upon motion by the defense attorney or state attorney to determine whether it is appropriate for the child to remain in the facility. §985.037(4)(b).

3. Discretionary Sanction

In addition to any sanction imposed under this section, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend, a child's driver's license or driving privilege. §985.037(4)(d). The court may order the child's driver's license or driving privilege be withheld or suspended for up to:

- One year for a first offense; and
- 2 years for a second or subsequent offense. §985.037(4)(d).

If the child's driver's license or driving privilege is being withheld or suspended at the time the sanction for contempt is imposed, the period of suspension or revocation shall begin on the date on which the child is otherwise eligible to drive. §985.037(4)(d).

E. Requirements for a written judgment of contempt

1. At the conclusion of the hearing, the court shall enter and record a judgment of guilty or not guilty. Rule 8.150(b)(6). The judgment shall be in writing and include the following:

- **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Age and gender.** State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him or her subject to the juvenile proceedings.
- **Date and time.** State the date and time when issued and the country and court where issued.

- **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, voluntary, and intelligent.
- **Recitation of facts.** Include a recital of the facts constituting the contempt of which the accused has been found guilty.
- **Applicable sanctions.** State the sanctions applicable to the child.
- **Release instructions.** Except as provided in §§790.22(8) or 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5:00 p.m. on the last day of the detention period specified in §§985.26 or 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under §985.26(4).
- **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. §985.039. When a child is placed into nonsecure detention, probation, or other supervised status with DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to DJJ for each day the child is in that status. §985.039(1)(a).

If a child is placed in secure detention or placed on committed status and DJJ acquires temporary legal custody of said child, order the parent or guardian to pay five dollars (\$5.00) per day to DJJ for each day the child is in that status. §985.039(1)(b).

If the court fails to include in the Detention Order information regarding cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. §985.039(5). See General Topics for more information on costs.

WAIVER OF JURISDICTION HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§ 27.52; 90.6063; 985.033; 985.035; 985.319; 985.55; 985.556; 985.557; 985.57</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.105; 8.160; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court interpreters 14.100</p>
PURPOSE OF HEARING	The purpose of the waiver of jurisdiction hearing is to determine whether the child should remain under the juvenile court’s jurisdiction or be transferred to another court.
TIME FRAME	The hearing must be held within 7 days (excluding Saturdays, Sundays and legal holidays) after the date of the petition alleging that the child has committed a delinquent act or violation of the law has been filed, or later with approval from the court.
RULES OF EVIDENCE	Section 985.556 specifies what the court shall consider.
RIGHT TO COUNSEL	The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child’s parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.

WAIVER OF JURISDICTION HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the waiver of jurisdiction hearing is to determine whether the child should be transferred to the jurisdiction of another court.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says can be used against him or her.

C. Determine the type of waiver

D. Issue a summons

E. Consider evidence presented

- Prior to the hearing, an authorized agent of the department shall prepare a study and report relevant to the issue of jurisdiction.
- The child and the child's parents or guardians and counsel shall have the right to

examine these reports and question the parties responsible for them. Verify that the child understands how he or she can act on this right.

F. Jurisdiction determination

- Explain the determination to the child in clear, simple language. Verify that the child understands what will happen next and what will be expected of him or her and the consequences of failing to act as required.

G. Requirements for written order on waiver of jurisdiction

- State the name and address of the child or if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- Include specific findings of fact with respect to and in consideration of the criteria in §985.556(c).
- Include the reasons to impose adult sanctions.
- State the date and time when issued and the country and court where issued.
- Sign the order by the court with the title of office.

WAIVER OF JURISDICTION HEARING OUTLINE

A. Generally

1. Interpreter Determination

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

2. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. Purpose

A waiver of jurisdiction hearing determines whether the child should be transferred to the jurisdiction of another court. A child can be tried criminally as an adult if juvenile jurisdiction is waived by the circuit court; or the case is transferred to criminal court because of a direct filing or indictment. Rule 8.105; §§985.556 & 985.57.

4. Identify those present

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. Notice Assessment

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list

of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

6. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of Rights

1. Right to Counsel

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, the child has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowingly, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the

offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Determine the type of waiver

1. Voluntary Waiver

A waiver is voluntary if the child demands in writing to be tried as an adult. The circuit court must transfer and certify the child's case for trial as an adult. The demand must be made prior to the commencement of an adjudicatory hearing and must be joined by a parent or, in the absence of a parent, the guardian or guardian ad litem. §985.556(1).

2. Discretionary Involuntary Waiver

A waiver is involuntary and discretionary if the child was 14 years old at the time of the alleged act. The state attorney has the discretion to file a motion requesting the court to waive jurisdiction and transfer and certify a child's case for trial as an adult. §985.556(2).

3. Mandatory Involuntary Waiver

A waiver is involuntary and mandatory if the child was 14 years old at the time of the alleged act, and if:

- if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or
- If the child was 14 years of age or older at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for, or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person. §985.556(3).

The state attorney must request the court to transfer the child to an adult court or shall provide written reasons to the court for not making such a request, or proceed under §985.557(1).

D. Issue a Summons

The summons must be issued and served in conformity with §985.319. Verify that a copy of the motion and a copy of the delinquency petition, if not already served, are attached to each summons. §985.556(4)(b).

E. Consider the evidence presented

1. Study and Report by DJJ

Prior to the hearing, a study and report must be made by an authorized agent of the DJJ. §985.556(4)(d). This report and study will analyze factors that assist the court in making the determination, including:

- The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
- The probable cause as found in the report, affidavit, or complaint.
- The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
- The sophistication and maturity of the child.

- The record and previous history of the child, including:
 - Previous contacts with the department, the Department of Corrections, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, other law enforcement agencies, and courts;
 - Prior periods of probation;
 - Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and
 - Prior commitments to institutions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the court. §985.556(4)(c)(1)-(8).

2. Child’s Right to Examine

The child and the child's parents or legal guardians and counsel and the state attorney shall have the right to examine these reports and to question the parties responsible for them at the hearing. §985.556(4)(d).

3. Additional Materials Available

The court shall consider the study and report, as well as other evidence and testimony offered, when making its determination.

F. Jurisdiction determination

1. Order Waiving Jurisdiction

The court may enter an order waiving jurisdiction and certifying the case for trial as if the child were an adult. Rule 8.105(b)(5)(A). The order must set forth the basis for the decision. Rule 8.105(b)(5)(A). Provide copies to all the parties, and provide a certified copy to the clerk of the court having jurisdiction to try the child as an adult and to the prosecuting officer of said court within 5 days of the date of the order. Rule 8.105(b)(5)(A). The child is to be immediately delivered to the sheriff of the county in which the adult court is located. Rule 8.105(b)(5)(A).

2. Order Denying Waiver of Jurisdiction

The court may enter an order denying the waiver of jurisdiction, and give reasons for this denial. Rule 8.105(b)(5)(B). If the waiver is denied, the court, with the consent of the state and the child, may proceed immediately with the adjudicatory hearing. Rule 8.105(b)(5)(B).

G. Requirements for a written order on waiver of jurisdiction

- 1. Name and address.** State the name and address of the child or if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- 2. Age and gender.** State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him subject to the juvenile proceedings.
- 3. Date and time.** State the date and time the order is issued, the county and court from where issued and the date and time the child was taken into custody.
- 4. Waiver of counsel.** If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- 5. Recitation of facts.** Include specific findings of fact with respect to and in consideration of the criteria in §985.556(c).
- 6. Rationale.** Include the reasons to impose adult sanctions.

RESTITUTION HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§27.52; 775.089; 90.6063; 985.0301; 985.033; 985.035</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.165, 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	<p>The purpose of the restitution hearing is to set restitution amount if not determined at disposition, to determine whether the child or the child's parents or guardians are current with restitution payments, or to order the payments to begin if payor failed to make payments as ordered.</p>
BURDEN OF PROOF	<p>Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence.</p>
RULES OF EVIDENCE	<p>Rules of evidence used in civil cases.</p>
RIGHT TO COUNSEL	<p>The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.</p>

RESTITUTION HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the restitution hearing is to set restitution amount if not determined at disposition, to determine whether the child or the child's parents or guardians are current with restitution payments, or to order the payments to begin if payor failed to make payments as ordered.
- Place the child and any witnesses under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- The child has a right to be present at any restitution hearing.
- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If insolvent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine if the waiver is knowing, intelligent, and voluntary.

C. Hearing procedure

- If the child adjudicated delinquent and the state attorney could not agree to a restitution amount at disposition, the hearing will be to determine the amount of restitution due and payment process.
- If the restitution amount is set and the child adjudicated delinquent is challenging

the amount, the hearing will be to review the amount of restitution due and modify as necessary.

- If the restitution amount is set and the state attorney requested the hearing to review compliance, the hearing will be to verify compliance and enforce the order in the same manner as a judgment in a civil action.

D. Restitution determination

- Explain to the child what the determination means and how the court arrived at that determination in clear, simple language.
- On any finding that restitution is due, verify that the child knows what is required of him or her, and the consequences of failing to act as required.

E. Requirements for a written order of restitution

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the name and address of the parent or guardian or, if unknown, designate the parent or guardian by a name or description that can identify the parent or guardian with reasonable certainty.
- State the name and address of the payee.
- State the case number.
- State the date.
- State the amount paid.
- State the amount due.
- List any other fees due.

RESTITUTION HEARING OUTLINE

A. *Generally*

1. **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. *See General Topics* for more information on interpreters.

2. **Recording**

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. **Purpose**

The purpose of the restitution hearing is to set restitution amount if not determined at disposition, to determine whether the child or the child's parents or guardians are current with restitution payments, or to order the payments to begin if payor failed to make payments as ordered. It can be initiated at the request of the payor or the state attorney. *See General Topics* for more information on restitution.

4. **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or

guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the restitution hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

6. Place the Child and Any Witnesses Under Oath

The court should place the child and any witnesses under oath. Prior to the examination of any witnesses, any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(c).

7. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

1. Right to be Present

The child has a right to be present at any restitution hearing. T.L. v. State, 967 So. 2d 421 (Fla. 1st DCA 2007).

2. Right to Counsel

Determine whether child is represented by counsel. If child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, the child has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

3. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or

Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Hearing Procedure

The restitution review hearing can be requested by the state attorney or the child adjudicated delinquent.

1. Rules of Evidence

Any dispute as to the proper amount or type of restitution shall use the rules of evidence used in civil cases, and shall be resolved by the court by the preponderance of the evidence. §775.089(7).

2. When Restitution Amount is in Dispute

If the child adjudicated delinquent and the state attorney could not agree to a restitution amount at disposition, the hearing will be to determine the amount of restitution due and payment process. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. §775.089(7).

- **When setting the amount of restitution**, consider the fair market value of the items the victim asked restitution for, and offset any salvage value if the items are returned. G.M.H. v. State, 18 So. 3d 728 (Fla. 2d DCA 2009). Fair market value can be determined by looking at:
 - original market cost;
 - manner in which the item was used;
 - the general condition and quality of the item; and
 - the percentage of depreciation. K.W. v. State, 983 So. 2d 713 (Fla. 2d DCA 2008)
- However, that although fair market valuation is the common approach to determine restitution, it is not the only permissible approach. Court may base restitution awards on out-of-pocket costs, offsetting the award by the salvage value of any items returned. C.M.S. v. State, 997 So. 2d 520 (Fla. 2d DCA 2008).
- **Restitution may not be ordered** for items not referenced in the charging document. G.P. v. State, 996 So. 2d 920 (Fla. 4th DCA 2008).

3. Where Child is Challenging Restitution Amount

If the restitution amount is set and the child adjudicated delinquent is challenging the amount, the hearing will be to review the amount of restitution due and modify as necessary. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is again on the state attorney. §775.089(7). In calculating value of the items, the court may use the fair market valuation method above or another acceptable method at its discretion.

4. Where there is Noncompliance with a Valid Restitution Order

If the restitution amount is set and the state attorney requested the hearing to review compliance, the hearing will be to verify compliance and enforce the order in the same manner as a judgment in a civil action. The burden of demonstrating the present financial resources, the absence of potential future financial resources, and the financial needs of the payor is on the payor. §775.089(7). Remind the payor that the juvenile court may retain jurisdiction over the child or child's parent or guardian until the restitution order is satisfied. §985.0301(5)(i).

D. Restitution determination

Explain to the child what the determination means and how the court arrived at that determination in clear, simple language.

On any finding that restitution is due, verify that the child knows what is required of him or her, and the consequences of failing to act as required.

Where the court orders restitution, the court may be in installments or may be in lump sum immediately. §775.089(3)(a)&(c). Where the order is silent as to the manner of payment of restitution, restitution must be made immediately. §775.089(3)(d).

The court may order the clerk of the court to collect and dispense restitution payments. §775.089(11)(a).

E. Requirements for a written order of restitution

1. The contents of the restitution are limited by §985.0301(5)(i). The restitution order shall include:

- **Name and address of child.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Name and address of parents or guardians.** State the name and address of the parent or guardian or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Name and address of payee.** State the name and address of the payee.
- **Case number.** State the case number.
- **Date and amount.** State the date and amount of restitution ordered.
- **Amount paid.** State the amount, if any, of restitution paid to date.
- **Amount due.** State the amount of restitution due and owing.
- **Other fees due.** State that costs, interest, penalties, and attorney's fees may also be due and owing.

2. Terms Subject to §775.089(5)

Note that the terms of the restitution order are subject to §775.089(5), which discusses enforcement of a restitution order. Restitution orders can be enforced in the same manner as a judgment in a civil action. The outstanding restitution bears interest and, when properly recorded, becomes a lien on any real estate owned by the child or the child's parent or guardian. If civil enforcement is necessary, the child or child's parent or guardian is responsible for costs and attorney's fees incurred by the victim in enforcing the order.

CORRECTION OF ORDERS HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§ 27.52; 90.6063; 985.033; 985.035</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.135; 8.165; 8.929</p> <p>Rules of Appellate Procedure 9.110; 9.140; 9.145</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	<p>The purpose of the correction of orders hearing is to determine whether the court has made an error in the disposition or commitment order that must be corrected.</p>
RULES OF EVIDENCE	<p>The same rules of evidence used in evidentiary hearings.</p>
RIGHT TO COUNSEL	<p>The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.</p>

CORRECTION OF ORDERS HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain the purpose of the correction of orders hearing. Let the child know that the purpose of the hearing is to determine whether the court has made an error in the disposition or commitment order that must be corrected.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If insolvent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine if the waiver is knowing, intelligent, and voluntary.

C. Correction hearing procedure

- Once the court receives a motion for correction, the court must determine whether it can resolve the motion as a matter of law without a hearing.
- If a hearing is necessary, the court will have ten days from the filing to hold an initial hearing, with notice to all parties.
- The court is required to file an order ruling on the motion within 30 days of the date of the initial filing.

D. Correction determination

- The court should examine the records of the hearing that provide the basis for the order in question and determine whether there was an error in the order.
- Explain to the child what the determination means and how the court arrived at that determination in clear, simple language. Verify that the child knows what is required of him or her, and the consequences of failing to act as required.

E. Requirements for a corrected disposition order

- Clearly mark that the order is an amended order.
- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the disposition of each count specifying the charge, the degree of offense, and the maximum penalty defined by statute.
- If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- State general and specific conditions or sanctions.
- Make findings as to the disposition of the child.
- State the date and time when issued and the country and court where issued.
- The child's fingerprints must be affixed to the order of disposition.
- State the period of the disposition.
- State whether the court retains jurisdiction over discharge.

CORRECTION OF ORDERS HEARING OUTLINE

A. Generally

1. Interpreter Determination

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. *See General Topics* for more information on interpreters.

2. Recording

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. Purpose

The purpose of the correction hearing is to determine whether the court has made an error in the disposition or commitment order that must be corrected.

4. Identify Those Present

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. Notice Assessment

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. *See General Topics* for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the correction hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. §985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

6. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

1. Right to Counsel

Determine whether child is represented by counsel. If child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, he or she has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at

all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Correction hearing procedure

1. Motion before appeal

If the State, child, or DJJ files a motion to correct an order, the motion must be filed within the time frame specified in the Rules of Appellate Procedure. Rule 8.135(b)(1). The child must file within 30 days of rendition of the written disposition order or commitment order. Rule 9.140(b)(1)(B). The State must file within 15 days of rendition of the written order to be reviewed. Rule 9.140(c)(3). If the State is filing a motion to correct a pre-adjudication order, the notice of appeal must be filed within 15 days of the rendition of the order and must be before commencement of the adjudicatory hearing. Rule 9.145(c)(2).

2. Motion pending appeal

The State or child may file a motion to correct while an appeal is pending if it is done before the party's first brief is served. Rule 8.135(b)(2). Unless the motion explicitly states otherwise, trial counsel will represent the moving party. Rule 8.135(b)(2)(A). If the State is the moving party, the child will be represented by the trial counsel unless the court is otherwise notified. Rule 8.135(b)(2)(A).

The State may file only if the correction of the error would benefit the child or to correct a scrivener's error. Rule 8.135(b). In *J.D. v. State*, 849 So. 2d 458 (Fla. 4th DCA 2003), the court indicated that a scrivener's error referred to, "clerical or ministerial errors in a criminal case that occur in the written sentence, judgment, or order of probation or restitution."

3. Determine whether Hearing is Necessary; Hearing Timeframe

Once the court receives a motion for correction, the court must determine whether it can resolve the motion as a matter of law without a hearing. Rule 8.135(b)(1)(B). If a hearing is necessary, the court will have 10 days from the initial filing to hold an initial hearing, with notice to all parties. Rule 8.135(b)(1)(B).

The court is required to file an order ruling on the motion within 30 days from the date of the initial filing. Rule 8.135(b)(1)(B). The motion will be deemed denied if no order is filed within 30 days. Rule 8.135(b)(1)(B).

D. Correction determination

The court should examine the records of the hearing that provide the basis for the order in question. Compare the hearing records with the written order, take testimony as necessary, and determine whether there was any error.

Explain to the child what the determination means and how the court arrived at that determination in clear, simple language. Verify that the child knows what is required of him or her, and the consequences of failing to act as required.

E. Requirements for a corrected order

1. The court is required to file a written order ruling on the motion within 30 days from the date of the initial filing. Rule 8.135(b)(1)(B).

- Very clearly mark "**Amended**" at the top of the new order. In this manner, affected parties will know that the order is a corrected order.
- **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Date and time.** Specify the date and time when issued and the county and

court where issued.

- Finally, include those elements as required by the type of order being corrected.

COMPETENCY HEARING AT A GLANCE

RELEVANT STATUTES & RULES	<p>Florida Statutes §§27.52; 90.6063; 985.033; 985.035; 985.19; 985.29</p> <p>Rules of Judicial Administration 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.085; 8.090; 8.095; 8.100; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
PURPOSE OF HEARING	The purpose of the competency hearing is to determine whether the child alleged delinquent may be incompetent to proceed with the charges against him or her.
BURDEN OF PROOF	Clear and convincing evidence.
RULES OF EVIDENCE	Rules of evidence used in civil cases.
RIGHT TO COUNSEL	The court must advise the child of his or her right to counsel and determine whether the right is understood. §985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with §27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. §985.033; Rule 8.165.

COMPETENCY HEARING BENCHCARD

A. Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the competency hearing is to determine whether the child may be incompetent to proceed with the charges against him or her.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

- Determine whether child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel, and determine whether the right is understood.
- If insolvent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine if the waiver is knowing, intelligent, and voluntary.

C. Competency hearing procedure

- The court must, upon motion from the by the child or the state, or may upon the court's own motion, stay any and all proceedings and order an evaluation of the child's mental condition.
- The hearing shall be set for a time determined by the court. Verify that the child understands the purpose of the hearing in clear, simple language.

D. Competency determination

- All determinations of competency shall be based on the evaluation of the child's mental condition made by no less than two and no more than 3 experts appointed by the court, though other competent evidence may be introduced at the hearing. Explain to the child the purpose of the evaluations and how they are used in the proceeding.
- The evaluations by the court-appointed experts must include the basis for any determination, and a recommendation as to whether residential or nonresidential treatment or training is required.
- The court shall determine whether the child is incompetent to proceed. Verify that the child understands what the determination means and what is expected of him or her.

E. Confinement assessment

- If the child is determined to be competent, proceed accordingly.
- If the child is determined to be incompetent, determine whether he or she must be given into the custody of the Department of Children and Families for treatment, training, or education.
- If the child is deemed incompetent to proceed but is not put into the custody of the Department of Children and Families, determine whether any form of court-ordered treatment is necessary, and, if so, order it.
- If the child is determined to be incompetent, set the next hearing at most 6 months from the date of the order of incompetency.

F. Requirements for a written order of incompetency

- Name and address of child.
- Include written findings that serve as the basis for the order.
- Specify the treatment ordered.
- Date of next hearing.

COMPETENCY HEARING OUTLINE

A. *Generally*

1. **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. §90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)&(b), and §90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. *See General Topics* for more information on interpreters.

2. **Recording**

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

3. **Purpose**

The purpose of the competency hearing is to determine whether the child may be incompetent to proceed with the charges against him or her.

4. **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. §985.035.

5. **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. *See General Topics* for more information on the diligent search requirement.

6. Other Proceedings Determination

Determine whether the child is involved in other court proceedings. Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

B. Advise of rights

1. Right to Counsel

Determine whether child is represented by counsel. If child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. §27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. §27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, the child has the right to have counsel appointed by the court in accordance with §27.52. §985.033(4).

If counsel is waived, determine if waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client

relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. §985.033(1).

2. Right to Communicate

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

C. Competency hearing procedures

1. Stay any and all Proceedings

The court must, upon motion from the by the child or the state, or may upon the court's own motion, stay any and all proceedings and order an evaluation of the child's mental condition. §985.19(1). If the child's attorney submitted the motion, the motion must include a certificate that the motion was made in good faith and on reasonable grounds to believe that the child is incompetent to proceed. Rule 8.095(a)(1)(A). The motion must include a recital of observations and facts that, while not invading lawyer-client privilege, form the basis for the motion. Rule 8.095(a)(1)(A). If the state files the motion, the motion must include a certificate that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent, including a recital of observations and statements of the child that have formed the basis for the motion. Rule 8.095(a)(1)(B).

2. Service

Any motion questioning the competency of a child must be served on the child's attorney, the state attorney, the attorneys representing the Department of Children and Families, and the attorneys representing the DJJ. §985.19(1)(a).

3. Speedy Trial Time Tolls

Upon the filing of a motion by the child's counsel alleging incompetency to proceed, or on the court's order finding the child incompetent to proceed, speedy trial shall be tolled until a subsequent order that the child is competent to proceed. Motions by the state or by the court itself that the child is incompetent to proceed may toll speedy trial pursuant to Rule 8.090(e). Rule 8.095(a)(9). See General Topics for more information about speedy trials.

4. Set the Hearing

The hearing shall be set for a time determined by the court. Rule 8.095(a)(2). The hearing date must allow time for experts to examine and evaluate the child's mental condition.

5. Detention is Permissible

The court may order the child detained pending examination; this in no way adds any detention power not provided by statute or case law. Rule 8.095(c)(2).

D. Competency determination

1. Basis for a Determination

All determinations of competency shall be based on the evaluation of the child's mental condition made by no less than 2 and no more than 3 experts appointed by the court, §985.19(1)(b), though other competent evidence may be introduced at the hearing. Rule 8.095(c)(1). The appointment of experts by the court does not preclude the child or the state from calling other expert witnesses to testify. Rule 8.095(c)(1).

2. Evaluation by Experts

The evaluations by the court-appointed experts must include the basis for any determination, and a recommendation as to whether residential or nonresidential treatment or training is required. §985.19(1)(b). The evaluators must determine whether the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the child has a rational and factual understanding of the present proceedings. Rule 8.095(d)(1)(A). The evaluation must address the child's capacity to:

- Appreciate the charges or allegations against the child;
- Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings at issue;
- Display appropriate courtroom behavior; and
- Testify relevantly. §985.19(1)(f)(1)-(6).

3. Expert Report

If the experts recommend that the child is incompetent to proceed, they must include in their report any recommended treatment for the child to gain competence to proceed. Rule 8.095(d)(2). In considering issues related to treatment, the experts must report on the following:

- The mental illness, mental retardation, or mental age causing incompetence;
- The treatment or education appropriate for the mental illness or mental retardation of the child and an explanation of each of the possible treatment or education alternatives, in order of recommendation;
- The availability of acceptable treatment or education. If treatment or education is available in the community, the experts must state that in the report.
- The likelihood of the child attaining competence under the treatment or education recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the child will attain competence to proceed in the foreseeable future; and
- Whether the child meets the criteria for involuntary hospitalization or involuntary admissions to residential services under chapter 985, Florida Statutes. Rule 8.095(d)(2)(A)-(E).

4. “Mental Retardation” or “Autism”

If the motion alleges “mental retardation” or “autism,” the court shall order the Agency for Persons with Disabilities to examine the child to determine whether the child meets the definition of “mental retardation” or “autism,” and, if so, whether the child is competent to proceed with the delinquency proceedings. §985.19(1)(e).

5. If Found Competent

If the child is competent, enter an order so finding and proceed accordingly. Rule 8.095(a)(3).

6. If Found Incompetent

If the court finds the child incompetent to proceed, the child must be adjudicated incompetent to proceed. The court must then determine the appropriate treatment or training for the child. Rule 8.095(a)(4).

E. Confinement assessment

1. Commitment to DCF

A child who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of the law, either of which would be a felony if committed by an adult, must be committed to Department of Children and Families for treatment or training. §985.19(2).

2. When Commitment to DCF is Impermissible

A child who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of the law, either of which would be considered a misdemeanor if committed by an adult, may not be committed to the Department of Children and Families for restoration-of-competency treatment or training services. §985.19(2).

A child who is adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the Department of Children and Families for restoration-of-competency treatment or training services. §985.29(2).

3. Secure Placement Determination

If the child is adjudicated incompetent to proceed because of mental illness, retardation, or autism, the court must determine whether the child meets the criteria for secure placement. §985.19(3). The criteria for secure placement is a finding based on clear and convincing evidence that the child is mentally ill, mentally retarded or has autism, and because of that:

- the child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or
- there is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm;

and all available less restrictive alternatives, including treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate. §985.19(3).

4. Where Detention Criteria are Met

A child adjudicated incompetent to proceed because of mental illness, retardation, or autism, and who meets the detention criteria in §985.19(3) must be committed to the Department of Children and Families. Rule 8.095(a)(6). A child adjudicated incompetent because of mental retardation may be ordered into a program designated by Department of Children and Families for retarded children. Rule 8.095(a)(6)(A). A child adjudicated incompetent because of mental illness may be ordered into a program designated by the Department of Children and Families for mentally ill children. Rule 8.095(a)(6)(B).

5. Where Detention Criteria are not Met

A child adjudicated incompetent to proceed because of mental illness, retardation, or autism, and who does not meet the detention criteria shall be ordered into the Department of Children and Families care and provided appropriate treatment and training in the community. Rule 8.095(a)(8). All court-ordered treatment must be in the least restrictive setting consistent with public safety. Rule 8.095(a)(8).

6. Report by Service Provider

The service provider who is providing treatment or education to the child must file with the court a written report not later than 6 months after the date of commitment, or at the end of any period of extended training or education, and at any time the Department of Children and Families determines the child has attained competency, or sooner if so ordered by the court. §985.19(4)(e).

7. Retention of Jurisdiction

The court shall retain jurisdiction of a child adjudicated incompetent to proceed for up to 2 years after the date of the order of incompetency, with reviews at least every 6 months to determine competency. §985.19(5)(a). If the court determines that the child has not attained competency, the court shall order appropriate nondelinquent hospitalization or treatment in conformity with Rule 8.095 and the applicable sections of Chapter 985, Florida Statutes. Rule 8.095(a)(5)(A). If the court at any time determines that the child will never attain competency, the court may dismiss the delinquency petition or petition alleging violation of juvenile probation. Rule 8.095(a)(7)(A). If necessary, the court may order proceedings under Chapter 393, Florida Statutes (Developmental Disabilities) or Chapter 394, Florida Statutes (Florida Mental Health Act or The Baker Act) be instituted not less than 60 days before the dismissal of the delinquency petition. Rule 8.085(a)(7)(C).

8. Dismissal of Delinquency Petition

If, at the end of the two-year period, the child has not attained competency and there is no evidence that he or she will attain competency within one year, the court must dismiss the delinquency petition. Rule 8.095(a)(7)(B).

F. Requirements for a written order of incompetency

1. The order of incompetency must include:

- **Name and address of child.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Written findings.** Include specific written findings as to the nature of the incompetency and whether the child requires secure or nonsecure treatment or training environments. §985.19(1)(c).
- **Treatment ordered.** Include the treatment, training, or education ordered

for the child, and the findings such is based on.

- **Date of next hearing.** Include in the order the date of the follow up hearing to assess whether the child has attained competence.



Appendices

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Appendix 1: Detention Risk Assessment Instrument (RAI)

Appendix 2: Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency

Appendix 3: Helping Traumatized Children: Tips For Judges

Appendix 1: Detention Risk Assessment Instrument (RAI)

Appendix 1 is not available in electronic format, if you would like to request a hard copy of this document please contact our office at: OSCA, Office of Court Improvement, 500 South Duval Street, Tallahassee, Florida 32399. Telephone: 850/414.1507.

Appendix 2: Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency¹

Appendix 2 is available in electronic format at the following website:
http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf

¹ Kristine Buffington, Carly B. Dierkhising, & Shawn C. Marsh. *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*. Reno, NV: National Council of Juvenile and Family Court Judges (2010).

Appendix 3: Helping Traumatized Children: Tips For Judges¹

Appendix 3 is available in electronic format at the following website:
<http://www.nctsn.org/sites/default/files/assets/pdfs/JudgesFactSheet.pdf>

¹ National Child Traumatic Stress Network, Justice System Consortium. *Helping Traumatized Children: Tips for Judges*. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress (2009).

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