

Delinquency Law Updates for Crossroads AALs

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Introduction to Delinquency Law

Chapter 985

- **Purpose of Juvenile Justice**

- **Rehabilitation**

- Balance need for rehabilitation with need for public safety
 - Prevent/Reduce delinquent acts while helping children, their families, and the community

- Many **collateral consequences** for Delinquency Arrest or Adjudication

- Adjudication of Delinquency is not a criminal conviction but is often treated like one. Fla. Stat. 985.35(6) and will be included on a future adult scoresheet.
 - School suspension, placed in alternative school
 - Impact on ability for future employment or law enforcement/military service
 - Many other potential consequences

Juvenile Divisions

Admin Order S-2023-024

- **There are 2 Delinquency Divisions and 1 Specialized Division:** Juvenile Mental Health Court (Div. B)
- **Division A**
 - Last name beginning with: A, B, C, D, E, P, Q, R, S, T, U, V, W, X, Y, Z
 - All sex-related offenses
- **Division F**
 - Last name beginning with: F, G, H, I, J, K, L, M, N, O
 - Crossover cases (children with both open dependency and non-sex related delinquency cases)
- **Division B**
 - Incompetent to Proceed Cases
 - Mental Health cases sent by agreement of PD and SAO for resolution with a case resolution contract (CRC)

Representing a Juvenile in Delinquency as an Attorney ad Litem

- **Rules of Professional Conduct**
 - Communication (FRPC 4.1-4)
 - Confidentiality
 - Loyalty (FRPC 4-1.2)
- **Deference to Assistant Public Defender**
- **You are an advocate for your client!!**

Communication

Rules of Professional Conduct 4-1.4

****Reasonable communication between the lawyer and the client is necessary for the client to effectively participate in the representation****

(a) Informing Client of Status of Representation. A Lawyer Shall:

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

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

Confidentiality

- Only communications between you, the attorney, and the client are protected by **Attorney-Client Privilege**.
- There is no Parent-Child Privilege.
- **Privileged information should not be discussed in front of a third party**, including the Child's parent/guardian or else the Attorney-Client Privilege is waived.
- When conducting interviews, ask the parent/guardian to step out of the room when speaking with the child about substantive issues in the case.
- **Do not give out information about your child or their case** other than public record information.
- It can be helpful to **explain to parents that you are protecting privilege** because you would never want them to have to be a witness against their child.

Loyalty

Rules of Professional Conduct 4-1.2

Objectives and Scope of Representation

(a) Lawyer to abide by Client's decisions: a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by 4-1.4, shall reasonably consult with the client as to the means by which the are to be pursued.

Your loyalty is to the child. It is not to the child's parents, guardians, DJJ, Court, Judge, JPO, or because it is convenient.

- Other parties are governed by the best interest of the child, that is not our role.

Attorney Obligations as Attorney ad Litem

- Protect attorney-client privilege to **develop a trusting relationship** with your client.
- **Review client's court, school and medical records**
 - Mitigation
 - Identify barriers to client's success
- **Be your client's biggest advocate!!**
- Provide encouragement and guidance.
- Help clients **complete court-sanctioned obligations.**

Deference to the Public Defender

The last sentence in #4 in Crossroads Delinquency Orders of Appointment:

“Additionally, [Attorney Name 1] and [Attorney Name 2] shall defer to the Public Defender's Office in the representation of the Child.”

What do we mean by deference?

- The PD is the attorney of record on the delinquency case(s).
- Stay in contact with the PD after you've met with your client or learned new information.
- Ask PD if anything is needed on the case when planning to visit client.
- Let the PD know what you'd like to share with the court beforehand.
 - **We are client's advocate:** Always try to find something positive to say.

Sequency of Delinquency Cases & Purposes of Hearings

- **Detention**
- **Arraignment**
- **Adjudicatory Hearing (Trial)**
- **Disposition Hearing (Sentencing)**
 - Walker Plan, CRC, Probation, Commitment, Judicial Warning

Detention Hearings

Florida Statutes: 985.24; 985.25; 985.255; 985.26 and Fla.R.Juv.P. 8.010

- Division A and F cover detention hearings on a rotating, weekly basis.
 - Duty Judge on weekends and holidays
- Children who are arrested must be brought before the Court within 24 hours of their arrest for a detention hearing.
 - Fla.R.Juv.P. 8.010
- **Purpose of a Detention Hearing**
 - Notice of the charge(s)
 - Appoint Public Defender (if no private attorney)
 - Determination of Probable Cause
 - Detention Status determined
 - Schedule Arraignment

Detention Status Determination

- **DRAI – Detention Risk Assessment Instrument**
 - **Risk screening process** for the Department of Juvenile Justice is prepared at the Juvenile Assessment Center at the time of the child's arrest.
 - **Standardized tool** for determining the level of detention.
 - **Points** are given for nature of the charge, prior history, whether child is on probation or committed, prior absconds, age, prolific juvenile offender, etc.

Types of Detention

- 2 Types of Detention in Florida
- **Secure Detention**
 - **> 13 points** on the Risk Assessment Instrument
 - Child is held at Hillsborough Juvenile Detention Center West
- **Home Detention/Supervised Release**
 - Scores between **7 and 12 points** on the Risk Assessment Instrument
 - Child is released to his home.
 - Child remains within the confines of his home unless he is at school or with his parents.
 - Taking out the trash, walking the dog, or going into the front yard can constitute a violation of Home Detention.
- **Release**
 - Scores **< 6 points** on the Risk Assessment Instrument
 - Child is released and not placed on any type of supervision

Supervised Release

Home Detention

- Youth are released to a parent, guardian, or responsible adult with supervision guidelines that include restrictions on the youth's whereabouts.
 - First 21 days: One face to face contact per week, including one weekend contact.
- **7-8 points** on DRAI

Reporting Center

- Highly structured programming at a community center which includes, but is not limited to, skill building exercises, homework assistance, vocational classes, tutoring, and family engagement programs
- **9-10 points** on DRAI
- Boys only, ages 11-17
- Services provided at **Kings Forest Park** from **3:00 PM to 7:30 PM, Monday through Thursday**

Supervised Release continued

Intensive Home Detention

- Youth are released to a parent, guardian, or responsible adult with supervision guidelines that include restrictions on the youth's whereabouts.
 - First 21 days: Minimum five face to face contact per week.
- 7-8 points on DRAI

Intensive Home Detention w/ Electronic Monitor

- Youth released to parent/guardian/responsible adult with supervision guidelines, restrictions on youth whereabouts, and use of electronic monitor tracking.
 - First 21 days: Three face to face contacts inc. two weekends + constant electronic tracking.
- 12 or more points on DRAI

Arraignment

- Occurs 2-3 weeks after detention hearing.
- If a Petition is filed and a child is being detained (secure, nonsecure, or home detention), the child shall be arraigned within **48 hours** of the filing of the Petition, **Rule 8.015**
- If petition is filed and no private counsel, the **Court appoints the public defender's office.**
- Child enters **formal plea** to the charge(s).
- **Adjudicatory hearing date set** within speedy trial.

Adjudicatory Hearings & Dispositions

- **Adjudicatory Hearing (Trial)**
 - Public Defender/AAL differing roles
- **Other Dispositions**
 - Walker Plan
 - Judicial Warning
 - Probation
 - Commitment

Mental Health Issues & Competency

- Fla. Stat. 985.19
- Fla.R.Juv.P. 8.095
- **Juvenile Mental Health Court (Division B)**
 - Incompetent to Proceed (ITP)
 - Case Resolution Contracts (CRC)

Mental Health and Competency

- Competency raised in delinquency division.
- **Three basis for raising competency** - mental illness, age and immaturity and intellectual disability/Autism.
- Competency can be **raised at any point in a case** and once it is raised, speedy trial is tolled.
- **Fla. Stat. 985.19(1)(b)**
 - Evaluation of a child's mental condition shall be made by **not less than two nor more than three experts** appointed by the Court.
 - The **basis** for incompetency **must be stated** in the evaluation.
 - Evaluation must include **recommendation** for **residential** or **nonresidential treatment**

Mental Health and Competency

- Intellectual disability is contingent on a **low IQ** or **AND** **low adaptive functioning**.
 - There should be **demonstrated evidence**; typically, in **school records**
- AAL can assist by obtaining school records and medical records to share with evaluators or treatment providers.
- AAL can help client **follow through with attending appointments** for competency training, treatment, etc. or ensuring the client is **completing conditions** on Case Resolution Contract.

Juvenile Mental Health Court (Division B)

- **Two separate dockets:**
 - Incompetent to Proceed (ITP)
 - Case Resolution Contract (CRC)
- **Bi-Weekly JMHC dockets** (ITP docket & CRC docket meet once a month)
 - Exception: ITP/CRC Add Ons if expedited need for case to be heard

Incompetent to Proceed (ITP)

JMHC Docket (Div. B)

- **Fla. Stat. 985.19**
- Once child found ITP, case(s) transferred to JMHC
 - Per Administrative Order
- Clients receive **competency training** and **treatment** until restored to competent.
- **If restored** to competency, **client returns to delinquency division** unless offered Case Resolution Contract (CRC)
- Most ITP clients are referred to **YES**
 - **YES** family navigator to identify family needs / link families to treatment and services
 - **YES** also provides counseling for clients.

Case Resolution Contracts

JMHC Docket (Div. B)

- **CRCs** are a diversion option available in competency cases where no formal finding of incompetence has been found or a child has been found incompetent, but no training has been ordered.
- **CRC is a negotiated diversion contract.**
 - Child enters agreement with State to complete sanctions such as community service, counseling, payment of restitution, and writing letters of apology.
- **AO2018-064** – Competent, but juvenile's behavioral/mental health issues may be more appropriately addressed in Juvenile Mental Health Court

Case Resolution Contracts

JMHC Docket (Div. B)

- The Child **does not have to enter a plea.**
- **Successful completion** will result in the **case(s) getting dismissed.**
- Competency only becomes an issue **if** it affects ability to fulfill contract requirements.
 - Competency may be raised to protect child's **due process rights.**
- Unless the State legally revokes the CRC, **a child may remain on a CRC even if found incompetent.**

Case Resolution Contracts

JMHC Docket (Div. B)

- Most CRC clients are referred to **YES** to receive family navigation and, when appropriate, counseling.
- CRC docket follows **Mental Health Court model** guided by best practices.
 - Manual being created to outline and define the policies and procedures of the court.

Recent Changes in Delinquency Law

- **Firearm Sanctions**
- **Detention Hearings**
- **Commitment Sentencing**

Firearm Sanctions

- **Old Law**

- Discretionary 3 days in secure detention for Minor in Possession

- **New Law**

- Mandatory period of up to 5 days in secure detention (with credit for time served)
- 2nd offense is a 3rd degree felony punishable by 21 days in secure detention (credit for time served)
- 3rd offense is mandatory commitment

Firearm Sanctions

- **Old Law**

- Mandatory 100 Community Service Hours

- **New Law**

- Can be substituted with paid work hours

Firearm Sanctions

- **Old Law**

- Felony Disposition
- Serve 21 days with no credit for time served

- **New Law**

- Felony Disposition
- Now must serve 30 days with credit from time served
- 1 year probation with electronic monitor

Firearm Sanctions

- **Old Law**

- Judge had discretion to determine adjudication or withhold

- **New Law**

- Child is not entitled to a 2nd withhold of adjudication if they have a prior Robbery w/ Firearm, Carjacking, Armed Burglary or Felony w/ a Firearm or Delinquent in Possession of Firearm
- Child must be committed if found delinquent of 2nd offense.

Detention Hearings

- **Old Law**

- Judges were more or less bound by the DRAI score
 - The Court “shall use the results of the risk assessment instrument.”

- **New Law**

- Judges are allowed to simply consider the DRAI and vary up or down as they see fit.
 - The Court “shall consider the results of the risk assessment instrument.”
- Court must make written findings to vary up or down from DRAI score.

Detention Hearings

- **Old Law**

- Children were held for 21 days after initial detention hearing unless the State sought extended detention.
 - Good cause is shown that the nature of the offense requires additional time, or the State can establish it's necessary to preserve public safety

- **New Law**

- The Court can hold a child in detention longer than 21 days when:
 - Good cause / Public Safety (stated above)
 - Crime alleged is a capital, life, first, or 2nd degree felony
 - Crime alleged is a 3rd degree felony involving violence
 - Crime alleged involves the use of a firearm

Detention Hearings

- **Old Law**

- No specific charges the Court must order secure detention.

- **New Law**

- Charges the Court **must** order secure detention at the detention hearing
 - Murder, Armed Robbery w/ Firearm, Armed Carjacking, Armed Burglary, and felony involving the use of a firearm
 - If Child alleged of above-listed charge and not held in secure detention, then the Court must state why in writing

Detention Hearings

- **Old Law**

- The Court would abide by DRAI score when assessing whether a Child accused of violating home detention would be held in secure detention.

- **New Law**

- A child accused of violating home detention **must** be held in secure for the remainder of their time.

Commitment Sentencing

- **Old Law**

- Court could order post-commitment probation or direct release.

- **New Law**

- Court cannot order post-commitment probation; statute now requires Conditional Release
- The Court can still order direct release.
- Decision to violate Conditional Release is made by Department of Juvenile Justice

Questions?