

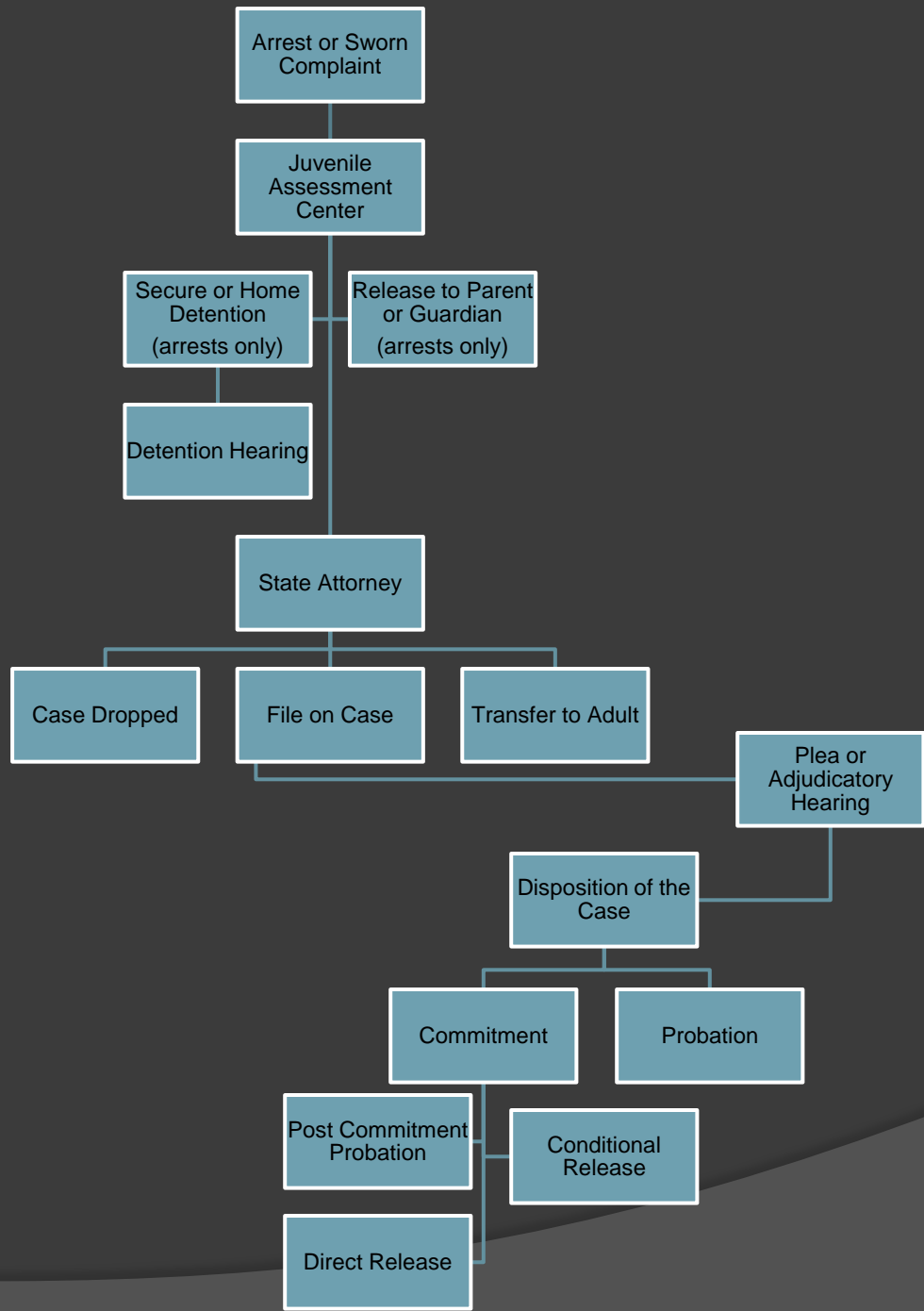
JUVENILE DELINQUENCY

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DETAINING JUVENILES

When can a juvenile be taken into custody?

Florida Statute §985.101

A child may be taken into custody under the following circumstances:

- (a) Pursuant to an order of the circuit court
- (b) For a delinquent act or violation of law, pursuant to Florida law pertaining to a lawful arrest.
- (c) For failing to appear at a court hearing after being properly noticed.
- (d) By a law enforcement officer who has probable cause to believe that the child is in violation of the conditions of the child's probation, nonsecure detention, post-commitment probation, or conditional release supervision or has escaped from commitment.
- (e) Purpose of utilizing (d) is to get the child in front of the judge for immediate consequences or sanctions flowing from his or her violation of supervision.

Procedure for Detaining a Delinquent Child Florida Statute §985.101

- Law Enforcement must make every effort to notify parent, guardian, or legal custodian. § 985.101(3), F.S.
- The child must be delivered without unreasonable delay to an intake counselor pursuant to § 985.101(3), F.S. If child is delivered to intake counselor prior to parent notification, the intake counselor shall continue to attempt to contact parent or guardian until successful.
- Child may be delivered to the booking area of a jail for temporary custody not to exceed six (6) hours, for the purpose of having fingerprints or photographs taken and must be kept separate from adult inmates and trustees.

Detention Issues

A juvenile is not automatically detained overnight and brought before the Court after being taken into custody. Whether a juvenile can be held is determined by the Risk Assessment Instrument. If the juvenile is held then the juvenile is brought before the Court for a detention hearing.

Risk Assessment Instrument (RAI)

- The Department of Juvenile Justice intake screener shall base the detention decision on the RAI.
- All DJJ determinations and **court orders** must comply with the requirements and criteria listed on the RAI.
- Courts must consider and comply with the RAI, but are not bound by it. **The Courts must have clear and convincing reasons to deviate from the RAI (in a more restrictive manner). Those reasons must be in writing on the detention order.**

The Score

0-6: Release without any conditions (**exception if the detainment is for a violation of probation)

7-11: Nonsecure Detention – previously called home detention. The Court may consider exceptions for activities such as sports, church, counseling or medical appointments. The Court can impose conditions such as no contact with the victim, attend specific counseling, do not possess or consume drugs or alcohol, etc. (These conditions are only in place during the 21 days that the child is on nonsecure detention. Discussion of 21 day maximum to follow)

12 and up: Secure Detention

** If the juvenile is detained for a violation of probation the juvenile will be held in secure detention until the detention hearing. Even if the juvenile scores 0 points the Court may place the juvenile on nonsecure detention due to the violation of probation.

Statute Addition: F.S. 985.25(1)(b): “A child who has been taken into custody on three or more separate occasions within a 60-day period shall be placed in secure detention care until the child’s detention hearing.” This statute addition does not add any additional points to the RAI; it only requires that the juvenile be held overnight and brought before the Judge.

Domestic Violence

- A child charged with a domestic violence offense that otherwise does not meet detention criteria, may be held in secure detention provided the court makes specific written findings that:
 - respite care is not available; and
 - it is necessary to place the child in secure detention to prevent further injury to the victim.

The child may not be held in secure detention longer than 48 hours without a court order. After 48 hours, the court may hold a hearing if the state attorney or victim requests that secure detention be continued. Secure detention may not be imposed longer than the time limits attendant to standard detention (21 days). F.S. 985.255(2).

Firearms

- Detention for firearm offenses is authorized by both F.S. 985.255(1)(e) and F.S. 790.22(8).
- Standard detention criteria do not apply when a child is charged with an offense involving the use or possession of a firearm. F.S. 790.22(8)
- The child must initially be detained in secure detention unless the state attorney authorizes release.
- At the child's 24-hour detention hearing, the court may order the continued secure detention of the child, if the child meets detention criteria, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or the community. F.S. 790.22(8)
- Carrying a concealed firearm in a park frequented by children or at a bus stop while in route to school has been found to be clear and convincing reasons to order continued secure detention under F.S. 790.22(8) and F.S. 985.255. T.L.W. v. Soud, 645 So. 2d 1101 at 1105 (Fla 1st DCA 1994)

21 Day Rule

- The maximum secure or nonsecure time a juvenile can be held is 21 days pending an adjudicatory hearing.
- The only exception is a possible 9 day extension for charges that are at least violent second degree felonies and the purpose for the extension is in good faith for prosecution.
- 21 day periods **may not be stacked**. R.B. was released on home detention for a charge of Battery on School Board Employee. While on home detention, R.B. was arrested for an Armed Robbery. At the detention hearing on the robbery, the judge ordered R.B. to finish out the 21 days of the battery on school board employee charge before beginning the 21 day period on the robbery charge. The 2d District Court of Appeal granted the child's writ for *habeas corpus* ruling that stacking 21 day periods is impermissible. R.B. v. Miles, 871 So.2d 949 (Fla. 2d DCA 2004).
- However, if a defendant is arrested on separate charges during one 21 day period and this results in a longer period than 21 days, there is no violation of the 21 day rule. C.S. v. Jacoby, 893 So.2d 591 (Fla. 4th DCA 2004).

21 Day Rule

Any special conditions imposed as a condition of nonsecure detention or secure detention ie: no contact with the victim, no contact with co-defendants, do not possess any weapons are only in place for the 21 days that the juvenile is in secure detention or non-secure detention. **After the 21 days the court does not have jurisdiction to impose any pretrial conditions.**

CONFESSIONS

Confessions

- Before *Miranda* warnings are necessary, there must (as with adults) be a custodial interrogation. Assuming you have a custodial interrogation, then...
- Custody Determination: A recent Supreme Court case, **J.D.B. v. North Carolina, 131 S.Ct. 2394 (U.S.)**, holds that a child's age is an appropriate consideration in the custody analysis. The Court stated that a "child's age would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave." Id. at 2403. In this case a 13-year-old, seventh grade student was taken from his classroom by a uniformed officer to a closed door conference room where law enforcement and school administrators questioned him. The questioning lasted for at least 30 minutes. Prior to questioning him, Miranda warnings were not given, he was not given an opportunity to call his guardian, and he was not told he was free to leave. The case was reversed and remanded to address "whether J.D.B. was in custody when he was interrogated, taking account of all of the relevant circumstances of the interrogation, including J.D.B.'s age at the time." Id. at 2408.

Confessions

The Court, like dealing with an adult confession, must look at the *totality of the circumstances* to determine if there was a knowing, intelligent, voluntary waiver of the Miranda rights.

Because a juvenile's circumstances are different than an adult's, there are additional factors: the age of the child, the sophistication of the child, and whether or not the parents were contacted.

Confessions

- Ramirez v. State, 739 So.2d 568 (1999). State bears a **heavy burden** to establish a knowing, intelligent, voluntary waiver.
 - Totality of the circumstances as they relate to:
 - (a) Voluntariness and (b) Full Awareness of Rights Waived and (c) Consequences of Decision to Waive Miranda Rights.
 - Manner in which Rights were Administered:
 - Cajoling? Trickery? Careful? Thorough? Telling defendant he is **not** under arrest when officer's have P.C. to arrest.
 - Suspect's age, experience, background and intelligence.

Contact with Parents

- Florida Statute 985.101
 - Law Enforcement is obligated to make a meaningful attempt to notify a parent upon taking a child into custody and to continue such attempt.
 - Failure to comply **does not** render the confession involuntary, but it is one more factor for the Court to consider.
 - Law Enforcement is not required to notify a parent before speaking with a juvenile if the juvenile is not being taken into custody or if the juvenile does not request to speak to or have their parent present; however, it is also a factor for the Court to consider.

INADMISSIBLE

Police continued to interrogate juvenile after mother requested to see him at the jail. Allen v. State, 636 So.2d 494 (1994).

Guardian grandmother was never contacted even though the child was “taken into custody.” The court looked closely at the requirements under 985.101. J.G. v. State, 883 So.2d 915 (Fla. 1st DCA 2004).

Court could not determine the sufficiency of the Miranda warnings; detective turned off the tape during Miranda. The child was 14, had no history and the only evidence as to understanding was from the detective. The child’s age, experience and background did not allow her to appreciate the situation. During the interview, detective suggested that the crime was a joke and that he understood her behavior. Parent was never contacted. B.M.B. v. State, 927 So.2d 219 (Fla. 2nd DCA 2006).

Court restated that a child has **no constitutional right to have the parent contacted**, but that if the child states that he does not want to speak until parent is present, that questioning should cease until parent contact is made. Child never asked for parent and Court said that the trial court’s reliance on that issue to suppress the statements “were flawed.” Statements were inadmissible anyway because child was not told he had a right to an attorney. State v. S.V., 958 So.2d 609 (Fla. 4th DCA 2007).

Once you have a Custodial Interrogation and Proper Miranda Warnings, the statements must still be freely and voluntarily made. J.G. v. State, 883 So.2d 915 (Fla. 1st DCA 2004)

- Defendant sat in the interview room for about 2 ½ hours before the questioning.
- Defendant was ESE and his second nine-week grading report showed 6 Fs out of 7 classes.
- Most importantly, during the interview, the defendant was asked whether or not he would admit to the crime if he knew there were tapes of him committing the crime.

ADMISSIBLE

Juvenile had an IQ of 66, was young and immature, but LEO used no **force, promises or coercion**, juvenile was **repeatedly reminded of his rights**, and **parents were present during his questioning**. Ross v. State, 386 So.2d 1191 (1980).

Juvenile was offered to have parents present, but juvenile stated he did not want his parents to be contacted. Bonifay v. State, 626 So.2d 1310 (1993).

Parent informed, juvenile had his GED, interrogation lasted less than 20 minutes and waiver form signed. Snipes v. State, 733 So.2d 1000 (1999).

Child asked whether or not his parents had been notified and LEO stated, “It has been taken care of.” Parents **had not been notified**. Totality of the Circumstances were that there had been a knowing, intelligent, voluntary waiver. Court found that defendant never asked for parents or for their presence. Brancaccio v. State, 773 So.2d 582 (Fla. 4 DCA 2000).

Parents called the police, parents present during the reading of Miranda, child never requested an attorney, child wrote the statement himself (although in the back of the patrol car), there was a written waiver at the outset, child had been in the system. J.P. v. State, 895 So.2d 1202 (Fla. 5th DCA 2005).

Outline available on the James C. Adkins Jr. American Inn of Court Website with the information contained in this presentation and the following additional topics:

- Disposition Hearings/Juvenile Sentencing
- Transferring Juvenile Cases to Adult Court for Prosecution
- Confidentiality in Juvenile Cases