JUVENILE DELINQUENCY

Group 4

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**II. Juvenile Arrests/Taking a Juvenile Into Custody**

**A. 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.

1. 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.
2. 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.
3. **Procedure for Detaining a Delinquent Child. §985.101**

1. Law Enforcement must make every effort to notify parent, guardian, or legal custodian. § 985.101(3), F.S.

2. 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.

3. 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.

**D. Detention Issues**

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

1. **0-6** Release without any conditions (\*\*exception if the arrest is for a violation of probation)

ii. **7-11** Nonsecure Detention – previously called home detention. The juvenile must remain at home and only leave the home for school. The Court may consider exceptions for sports, church, counseling or medical appointments. The Court can impose conditions such as no contact with the victim or attend specific counseling or school, but these conditions are only in place during the 21 days that the child is on nonsecure detention.

iii. **12-** Secure Detention

* 1. Domestic Violence.

a. 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:

1. respite care is not available; and
2. it is necessary to place the child in secure detention to prevent further injury to the victim.

b. 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 that the time limits attendant to standard detention (21 days). F.S. 985.255(2)

* 1. Firearms.
     1. Detention for firearm offenses is authorized by both F.S. 985.255(1)(e) and F.S. 790.22(8).
     2. 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)
     3. The child must initially be detained in secure detention unless the state attorney authorizes release.
     4. 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)
     5. 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)
  2. 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.”
  3. 21 Day Rule.
     1. The maximum secure or home detention time a juvenile can be held is 21 days pending an adjudicatory hearing.
     2. 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.
     3. 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).
     4. However, if a defendant is arrested on separate charges during on 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).
     5. Any special conditions imposed as a condition of non-secure 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.

**III.** **Confessions/Interrogations**

* Rules are, generally, no different than those dealing with adults.
* 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. Note that 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.
* 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.
* **Ramirez v. State**, 739 So.2d 568 (1999). Controlling case on Miranda, specifically juveniles.
  + 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:
      * Fla. Stat. 985.101. LEO 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.
    - Written Waiver at the Outset

**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)

**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)

**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.

**IV. Disposition Hearings (Juvenile Sentencing)**

1. Hearing held before Juvenile Judge to determine sentence.
2. Prior to Sentencing DJJ completes a pre-disposition report (PDR) with a recommendation to the Court. The PDR includes information about the crime, living conditions of the juvenile, past history, medical issues, mental health issues, victim’s input, schooling, etc.
3. Court may either give:
   * 1. Judicial Warning
     2. Probation under Parent or Responsible Adult
     3. Probation under DJJ
     4. Commitment

a. Nonsecure Residential

b. Secure Residential

c. High Risk

d. Maximum Risk

5. Along with probation or commitment, Court generally orders community

service, apology letters, no contact orders, curfew, counseling.

**V. Cases Transferred to Adult Court for Prosecution**

**A.** When *can* this be done*?* The State Attorneys of Florida have very broad discretion to prosecute juveniles as adults. Each office must have a policy on file with the Governor’s Office that lays out the criteria and standards that the office will follow when using this power. Cases are sent up to the felony division. If the felony attorney determines not to file on a case it either is dismissed or transferred back to the juvenile division; cases will not be sent to the adult misdemeanor court.

1. For a 14 or 15 year old the following crimes **may** be prosecuted as an adult, even if it is the first offense:

a.. Arson

b. Sexual Battery

c. Robbery

d. Kidnapping

e. Aggravated Child Abuse

f. Aggravated Assault

g. Aggravated Stalking

h. Murder or Manslaughter

i. Throwing, Placing or Discharging a Destructive Device

j. Most Burglaries

k. Aggravated Battery

l. Lewd and Lascivious Charges

m. Felonies in which a firearm is possessed or used

n. Grand Theft Auto (with a prior Grand Theft Auto)

o. Possession of a weapon on school grounds

p. Home Invasion Robbery

q. Carjacking (Fla. Stat. 985.557(1)(a)).

2. For a 16 or 17 year old **any felony** may be charged as an adult. Fla. Stat. 985.557(1)(b)

**B**. When ***must*** a case be transferred for adult prosecution?

1. A 16 or 17 year old with a prior Murder, Sexual Battery, Robbery, Carjacking or Aggravated Battery or Assault who gets charged with another violent crime. Fla. Stat. 985.557(2)(b)

2. A 16 or 17 year old with one of the big felonies who has 3 prior felonies all committed at least 45 days apart. Fla. Stat. 985.557(2)(b)

1. Any aged child who has an offense that involves stealing a motor vehicle and the juvenile causes serious bodily injury or death of a person not involved in the offense. Fla. Stat. 985.557(2)(c)
2. A 16 or 17 year old with one of the big felonies and during the commission of the offense the juvenile possessed or discharged a firearm or destructive device. Fla. Stat. 985.557(2)(d)

**C**. Once someone is prosecuted as an adult, what does that mean?

1. When a child is transferred for criminal prosecution as an adult, the court shall immediately transfer and certify to the adult circuit court all felony cases pertaining to the child, for prosecution of the child as an adult, which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. Fla.Stat. 985.557(3)(b)

Once a child has been transferred for criminal prosecution pursuant to an information and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under [s. 985.233](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS985%2E233&FindType=L&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW5.02). Fla. Stat. 985.557(3)(a)

**VI. Confidentiality Issues. What can people know?**

**A. Statutes.**

1. The court may punish by contempt any person who releases or uses the records for any unauthorized purpose. Fla. Stat. 985.04

2. Except as provided in subsections (2), (3), (6), and (7), and [s. 943.053](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS943%2E053&FindType=L&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01), all information obtained under this part in the discharge of official duty by any judge, court employee, Department of Juvenile Justice employee, the Parole Commission, DJJ, JJ circuit boards, law enforcement, schools, or upon order of the court. Fla. Stat. 985.04

3. Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. Fla. Stat. 985.04(1)

4. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's classroom of a juvenile who has been placed in a probation or commitment program for a felony offense. Fla. Stat. 985.04(1)

5. The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, [s. 827.071](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS827%2E071&FindType=L&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01), or [s. 847.0133](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS847%2E0133&FindType=L&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01), regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in [s. 775.082](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS775%2E082&FindType=L&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01) or [s. 775.083](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS775%2E083&FindType=L&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01). Fla. Stat. 985.04(3)

6. Records in the custody of the Department of Juvenile Justice regarding children are not open to inspection by the public. Fla. Stat. 985.04(7)(a)

7. Notwithstanding any other provisions of this part, the name, photograph, address, and crime or arrest report of a child in the following situations shall not be considered confidential just because of age:

a. Arrested for a Felony

b. Found by Court to have committed three or more misdemeanors

c. Transferred to Adult Court

d. Taken into custody for law violations subject to 985.227(2)(b) or (d)

e. Transferred to Adult but sentenced as a Juvenile. F.S. 985.04(2)

8. This part does not prohibit the release of the juvenile offense report by a law enforcement agency to the victim of the offense. However, information gained by the victim pursuant to this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies. Fla. Stat. 985.04(3)

9. Notwithstanding any other provision of this section, when a child of any age is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act. Fla. Stat. 985.04(4)(a)

* + 1. Notwithstanding paragraph (a) or any other provision of this section, when a child of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney shall notify the superintendent of the child's school that the child has been charged with such felony or delinquent act. The information obtained by the superintendent of schools pursuant to this section must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the child. The principal must immediately notify the child's immediate classroom teachers. Upon notification, the principal is authorized to begin disciplinary actions pursuant to [s. 1006.09(1)-](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS1006%2E09&FindType=L&ReferencePositionType=T&ReferencePosition=SP%3Be554000034e67&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01)[(4)](http://web2.westlaw.com/find/default.wl?DB=1000006&DocName=FLSTS1006%2E09&FindType=L&ReferencePositionType=T&ReferencePosition=SP%3B0bd500007a412&AP=&mt=Florida&fn=_top&sv=Split&utid=%7bA2203CA8-8934-4553-9497-F655AC0DD503%7d&vr=2.0&rs=WLW6.01). Fla. Stat. 985.04(4)(b)