

FLORIDA RULES OF JUVENILE PROCEDURE

2008 Edition

All changes through May 1, 2008 are reflected in these rules. Effective July 1, 2008, Rule 8.165(a) is amended to provide that waiver of counsel can only occur 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. The change has been underlined in the text. Subsequent amendments, if any, can be found at www.floridasupremecourt.org/decisions/rules.shtml.

TABLE OF CONTENTS

RULE 8.000. SCOPE AND PURPOSE	5
PART I. DELINQUENCY PROCEEDINGS.....	6
A. Preliminary Proceedings (8.005 – 8.015)	
RULE 8.005. ORDERING CHILDREN INTO CUSTODY.....	6
RULE 8.010. DETENTION HEARING	6
RULE 8.013. DETENTION PETITION AND ORDER	7
RULE 8.015. ARRAIGNMENT OF DETAINED CHILD.....	8
B. Pleadings, Process, and orders (8.025 – 8.055)	
RULE 8.025. STYLE OF PLEADINGS AND ORDERS.....	9
RULE 8.030. COMMENCEMENT OF FORMAL PROCEEDINGS	9
RULE 8.031. PETITION FOR PARENTAL SANCTIONS.....	9
RULE 8.035. PETITIONS FOR DELINQUENCY	10
RULE 8.041. WITNESS ATTENDANCE AND SUBPOENAS.....	11
RULE 8.045. NOTICE TO APPEAR.....	12
RULE 8.055. ORDERS	14
C. Discovery (8.060 – 8.065)	
RULE 8.060. DISCOVERY	14
RULE 8.065. NOTICE OF DEFENSE OF ALIBI.....	21
D. Arraignments and Pleas (8.070 – 8.080)	
RULE 8.070. ARRAIGNMENTS	22
RULE 8.075. PLEAS.....	22
RULE 8.080. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA.....	23

E. Motions and Service of Pleadings (8.085 – 8.095)

RULE 8.085. PREHEARING MOTIONS AND SERVICE 24
RULE 8.090. SPEEDY TRIAL 27
RULE 8.095. PROCEDURE WHEN CHILD BELIEVED TO BE INCOMPETENT OR
INSANE..... 31

F. Hearings (8.100 – 8.120)

RULE 8.100. GENERAL PROVISIONS FOR HEARINGS 37
RULE 8.104. TESTIMONY BY CLOSED-CIRCUIT TELEVISION 37
RULE 8.105. WAIVER OF JURISDICTION 38
RULE 8.110. ADJUDICATORY HEARINGS 39
RULE 8.115. DISPOSITION HEARING 40
RULE 8.120. POST-DISPOSITION HEARING 41

G. Relief from Orders and Judgments (8.130 – 8.145)

RULE 8.130. MOTION FOR REHEARING 42
RULE 8.135. CORRECTION OF DISPOSITION OR COMMITMENT ORDERS..... 43
RULE 8.140. EXTRAORDINARY RELIEF 44
RULE 8.145. SUPERSEDEAS ON APPEAL..... 44

H. Contempt (8.150)

RULE 8.150. CONTEMPT..... 44

I. General Provisions (8.160 – 8.185)

RULE 8.160. TRANSFER OF CASES 46
RULE 8.165. PROVIDING COUNSEL TO PARTIES 47
RULE 8.170. GUARDIAN AD LITEM..... 47
RULE 8.180. COMPUTATION AND ENLARGEMENT OF TIME 47
RULE 8.185. COMMUNITY ARBITRATION..... 48

FLORIDA RULES OF JUVENILE PROCEDURE

RULE 8.000. SCOPE AND PURPOSE

These rules shall govern the procedures in the juvenile division of the circuit court in the exercise of its jurisdiction under Florida law.

Part I of these rules governs the procedures for delinquency cases in the juvenile court. Part III governs the procedures for families and children in need of services cases in the juvenile court. The Department of Juvenile Justice shall be referred to as the “department” in these parts.

Part II of these rules governs the procedures for dependency cases in the juvenile court. The Department of Children and Family Services shall be referred to as the “department” in that part.

These rules are intended to provide a just, speedy, and efficient determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.

They shall be known as the Florida Rules of Juvenile Procedure and may be cited as Fla. R. Juv. P.

When appropriate the use of singular nouns and pronouns shall be construed to include the plural and the use of plural nouns and pronouns shall be construed to include the singular.

Committee Notes

1991 Amendment. All rules have been edited for style and to remove gender bias. The rules have been reorganized and renumbered to correspond to the types and stages of juvenile proceedings. Cross-references have been changed accordingly.

1992 Amendment. Scope and Purpose, previously found in rules 8.000, 8.200, 8.600, and 8.700, has been consolidated into one rule. Designations of subparts within the delinquency part of the rules have been changed accordingly. Reference to the civil rules, previously found in rule 8.200, has been removed because the rules governing dependency and termination of parental rights proceedings are self-contained and no longer need to reference the Florida Rules of Civil Procedure.

PART I. DELINQUENCY PROCEEDINGS

A. PRELIMINARY PROCEEDINGS

RULE 8.005. ORDERING CHILDREN INTO CUSTODY

If a verified petition has been filed, or if, prior to the filing of a petition, an affidavit or sworn testimony is presented to the court, either of which alleges facts which under existing law are sufficient to authorize that a child be taken into custody, the court may issue an order to a person, authorized to do so, directing that the child be taken into custody. The order shall:

- (a) be in writing;
- (b) specify the name and address of the child or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (c) specify the age and sex of the child or, if the child's age is unknown, that he or she is believed to be of an age subject to the jurisdiction of the circuit court as a juvenile case;
- (d) state the reasons why the child is being taken into custody;
- (e) order that the child be brought immediately before the court or be taken to a place of detention designated by the court to be detained pending a detention hearing;
- (f) state the date when issued and the county and court where issued; and
- (g) be signed by the court with the title of office.

RULE 8.010. DETENTION HEARING

(a) When Required. No detention order provided for in rule 8.013 shall be entered without a hearing at which all parties shall have an opportunity to be heard on the necessity for the child's being held in detention, unless the court finds that the parent or custodian cannot be located or that the child's mental or physical condition is such that a court appearance is not in the child's best interest.

(b) Time. The detention hearing shall be held within the time limits as provided by law.

(c) Place. The detention hearing may be held in the county where the incident occurred, where the child is taken into custody, or where the child is detained.

(d) Notice. The intake officer shall make a diligent effort to notify the parent or custodian of the child of the time and place of the hearing. The notice may be by the most expeditious method available. Failure of notice to parents or custodians or their nonattendance at the hearing shall not invalidate the proceeding or the order of detention.

(e) Advice of Rights. At the detention hearing the persons present shall be advised of the purpose of the hearing and the child shall be advised of:

- (1) the nature of the charge for which he or she was taken into custody;
- (2) the right to be represented by counsel and if insolvent the right to appointed counsel;
- (3) that the child is not required to say anything and that anything said may be used against him or her;

- (4) if the child's parent, custodian, or counsel is not present, that he or she has a right to communicate with them and that, if necessary, reasonable means will be provided to do so; and
- (5) the reason continued detention is requested.

(f) Issues. At this hearing the court shall determine the following:

- (1) The existence of probable cause to believe the child has committed a delinquent act. This issue shall be determined in a nonadversary proceeding. The court shall apply the standard of proof necessary for an arrest warrant and its finding may be based upon a sworn complaint, affidavit, deposition under oath, or, if necessary, upon testimony under oath properly recorded.
- (2) The need for detention according to the criteria provided by law. In making this determination in addition to the sworn testimony of available witnesses all relevant and material evidence helpful in determining the specific issue, including oral and written reports, may be relied on to the extent of its probative value, even though it would not be competent at an adjudicatory hearing.
- (3) The need to release the juvenile from detention and return the child to the child's nonresidential commitment program.

(g) Probable Cause. If the court finds that such probable cause exists, it shall enter an order making such a finding and may, if other statutory needs of detention exist, retain the child in detention. If the court finds that such probable cause does not exist, it shall forthwith release the child from detention. If the court finds that one or more of the statutory needs of detention exists, but is unable to make a finding on the existence of probable cause, it may retain the child in detention and continue the hearing for the purpose of determining the existence of probable cause to a time within 72 hours of the time the child was taken into custody. The court may, on a showing of good cause, continue the hearing a second time for not more than 24 hours beyond the 72-hour period. Release of the child based on no probable cause existing shall not prohibit the filing of a petition and further proceedings thereunder, but shall prohibit holding the child in detention prior to an adjudicatory hearing.

RULE 8.013. DETENTION PETITION AND ORDER

(a) Time Limitation. No child taken into custody shall be detained, as a result of the incident for which taken into custody, longer than as provided by law unless a detention order so directing is made by the court following a detention hearing.

(b) Petition. The detention petition shall:

- (1) be in writing and be filed with the court;
- (2) state the name and address of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;

- (3) state the age and sex of the child or, if the age is unknown, that the child is believed to be of an age which will make him or her subject to the procedures covered by these rules;
- (4) state the reasons why the child is in custody and needs to be detained;
- (5) recommend the place where the child is to be detained or the agency to be responsible for the detention; and
- (6) be signed by an authorized agent of the Department of Juvenile Justice or by the state attorney or assistant state attorney.

(c) Order. The detention order shall:

- (1) be in writing;
- (2) state the name and address of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) state the age and sex of the child or, if the age is unknown, that the child is believed to be of an age which will make him or her subject to the procedures covered by these rules;
- (4) order that the child shall be held in detention and state the reasons therefor, or, if appropriate, order that the child be released from detention and returned to his or her nonresidential commitment program;
- (5) make a finding that probable cause exists that the child is delinquent or that such a finding cannot be made at this time and that the case is continued for such a determination to a time certain within 72 hours from the time the child is taken into custody unless this time is extended by the court for good cause shown for not longer than an additional 24 hours;
- (6) designate the place where the child is to be detained or the person or agency that will be responsible for the detention and state any special conditions found to be necessary;
- (7) state the date and time when issued and the county and court where issued, together with the date and time the child was taken into custody;
- (8) direct that the child 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 to the state or the child for cause; and
- (9) be signed by the court with the title of office.

RULE 8.015. ARRAIGNMENT OF DETAINED CHILD

(a) When Required. If a petition for delinquency is filed and the child is being detained, whether in secure, nonsecure, or home detention, the child shall be given a copy of the petition and shall be arraigned within 48 hours of the filing of the petition, excluding Saturdays, Sundays, or legal holidays.

(b) Notice.

- (1) Personal appearance of any person in a hearing before the court shall obviate the necessity of serving process on that person.
- (2) The clerk of the court shall give notice of the time and place of the arraignment to the parent or guardian of the child and the superintendent of the detention center by:

- (A) summons;
- (B) written notice; or
- (C) telephone notice.

(3) The superintendent of the detention center, or designee, also shall verify that a diligent effort has been made to notify the parent or guardian of the child of the time and place of the arraignment.

(4) Failure of notice to the parent or guardian, or nonattendance of the parent or guardian at the hearing, shall not invalidate the proceeding.

Committee Notes

This rule corresponds to section 985.215(7), Florida Statutes, which requires detained children to be arraigned within 48 hours of the filing of the delinquency petition. This statutory requirement does not allow the normal summons process to take place. The rule, therefore, creates an option for the clerk of the court to notice the parent by phone or in writing.

B. PLEADINGS, PROCESS, AND ORDERS

RULE 8.025. STYLE OF PLEADINGS AND ORDERS

All pleadings and orders shall be styled: "In the interest of, a child," or: "In the interest of, children."

RULE 8.030. COMMENCEMENT OF FORMAL PROCEEDINGS

(a) Allegations as to Child. All proceedings shall be initiated by the filing of a petition by a person authorized by law to do so. A uniform traffic complaint may be considered a petition, but shall not be subject to the requirements of rule 8.035.

(b) Allegations as to Parents or Legal Guardians. In any delinquency proceeding in which the state is seeking payment of restitution or the performance of community service work by the child's parents or legal guardians, a separate petition alleging the parents' or legal guardians' responsibility shall be filed and served on the parents or legal guardians of the child.

RULE 8.031. PETITION FOR PARENTAL SANCTIONS

(a) Contents. Each petition directed to the child's parents or legal guardians shall be entitled a petition for parental sanctions and shall allege all facts showing the appropriateness of the requested sanction against the child's parents or legal guardians.

(b) Verification. The petition shall be signed by the state attorney or assistant state attorney, stating under oath the petitioner's good faith in filing the petition.

(c) Amendments. At any time before the hearing, an amended petition for parental sanctions may be filed or the petition may be amended on motion. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted on motion and a showing that the amendment prejudices or materially affects any party.

RULE 8.035. PETITIONS FOR DELINQUENCY

(a) Contents of Petition.

(1) Each petition shall be entitled a petition for delinquency and shall allege facts showing the child to have committed a delinquent act.

(2) The petition shall contain allegations as to the identity and residence of the parents or custodians, if known.

(3) In petitions alleging delinquency, each count shall recite the official or customary citations of the statute, ordinance, rule, regulation, or other provision of the law which the child is alleged to have violated, including the degree of each offense.

(4) Two or more allegations of the commission of delinquent acts may appear in the same petition, in separate counts.

(5) Two or more children may be the subject of the same petition if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. The children may be named in 1 or more counts together or separately and all of them need not be named in each count.

(b) Verification. The petition shall be signed by the state attorney or assistant state attorney, stating under oath the petitioner's good faith in filing the petition. No objection to a petition on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits.

(c) Amendments. At any time prior to the adjudicatory hearing an amended petition may be filed or the petition may be amended on motion. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted upon motion and a showing that the amendment prejudices or materially affects any party.

(d) Defects and Variances. No petition or any count thereof shall be dismissed, or any judgment vacated, on account of any defect in the form of the petition or of misjoinder of offenses or for any cause whatsoever. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the child and prejudice the child in the preparation of a defense, the petitioner may be required to furnish a statement of particulars.

RULE 8.040. PROCESS

(a) Summons.

(1) Upon the filing of a petition upon a child who is not detained by order of the court, the clerk shall issue a summons. The summons shall require the person on whom it is served to appear for a hearing at a time and place specified. The time of the hearing shall not be less than 24 hours after service of the summons. The summons shall require the custodian to produce the child at the said time and place. A copy of the delinquency petition shall be attached to the summons.

(2) If the child is being detained by order of the court, process shall be in accordance with the rule pertaining to the arraignment of a detained child.

(b) Service.

(1) Generally. The summons and other process shall be served upon such persons and in such manner as required by law. If the parents or custodian are out of the state and their address is known the clerk shall give them notice of the proceedings by mail. Service of process may be waived.

(2) Petition for Parental Sanctions. A petition for parental sanctions may be served on the child's parents or legal guardians in open court at any hearing concerning the child, but must be served at least 72 hours before the hearing at which parental sanctions are being sought. The petition for parental sanctions also may be served in accordance with chapter 48, Florida Statutes.

Committee Notes

1991 Amendment. This rule clearly defines the difference in procedures for summons for detained and nondetained children.

2000 Amendment. Subsection (b)(2) was added to provide requisite notice to the parents or legal guardians of a child when the state is seeking restitution or wishes to impose other sanctions against the parent or legal guardian. See S.B.L., Natural Mother of J.J. v. State, 737 So.2d 1131 (Fla. 1st DCA 1999); A.G., Natural Mother of S.B. v. State, 736 So.2d 151 (Fla. 1st DCA 1999).

RULE 8.041. WITNESS ATTENDANCE AND SUBPOENAS

(a) Attendance. A witness summoned by a subpoena in an adjudicatory hearing shall remain in attendance at the adjudicatory hearing until excused by the court or by both parties. A witness who departs without being excused properly may be held in criminal contempt of court.

(b) Subpoenas Generally.

(1) Subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court, by any attorney of record in an action, or by the court on its own motion.

(2) Except as otherwise required by this rule, the procedure for issuance of a subpoena (except for a subpoena duces tecum) by an attorney of record in a proceeding shall be as provided in the Florida Rules of Civil Procedure.

(c) Subpoenas for Testimony or Production of Tangible Evidence.

(1) Every subpoena for testimony or production of tangible evidence before the court shall be issued by an attorney of record in an action or by the clerk under the seal of the court. The subpoena shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony or produce evidence at a time and place specified.

(2) On oral request of an attorney of record, and without a witness praecipe, the clerk shall issue a subpoena for testimony before the court or a subpoena for tangible evidence before the court. The subpoena shall be signed and sealed but otherwise blank, both as to the title of the action and the name of the person to whom it is directed. The subpoena shall be filled in before service by the attorney.

(d) Subpoenas for Production of Tangible Evidence. If a subpoena commands the person to whom it is directed to produce the books, papers, documents, or tangible things designated in it, the court, on motion made promptly and in any event at or before the time specified in the subpoena for compliance with it, may

(1) quash or modify the subpoena if it is unreasonable and oppressive, or

(2) condition denial of the motion on the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

RULE 8.045. NOTICE TO APPEAR

(a) Definition. A notice to appear, unless indicated otherwise, means a written order issued by a law enforcement officer or authorized agent of the department, in lieu of taking a child into custody or detaining a child, which requires a child accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) By Arresting Officer. If a child is taken into custody for a violation of law and the officer elects to release the child as provided by law to a parent, responsible adult relative, or legal guardian, a notice to appear may be issued to the child by the officer unless:

(1) the child fails or refuses to sufficiently identify himself or herself or supply the required information;

- (2) the child refuses to sign the notice to appear;
- (3) the officer has reason to believe that the continued liberty of the child constitutes an unreasonable risk of bodily injury to the child or others;
- (4) the child has no ties with the jurisdiction reasonably sufficient to ensure an appearance or there is substantial risk that the child will refuse to respond to the notice;
- (5) the officer has any suspicion that the child may be wanted in any jurisdiction; or
- (6) it appears that the child has previously failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

(c) By Departmental Agent. If a child is taken into custody by an authorized agent of the department as provided by law, or if an authorized agent of the department takes custody of a child from a law enforcement officer and the child is not detained, the agent shall issue a notice to appear to the child upon the child's release to a parent, responsible adult relative, or legal guardian.

(d) How and When Served. If a notice to appear is issued, 6 copies shall be prepared. One copy of the notice shall be delivered to the child and 1 copy shall be delivered to the person to whom the child is released. In order to secure the child's release, the child and the person to whom the child is released shall give their written promise that the child will appear as directed in the notice by signing the remaining copies. One copy is to be retained by the issuer and 3 copies are to be filed with the clerk of the court.

(e) Distribution of Copies. The clerk shall deliver 1 copy of the notice to appear to the state attorney and 1 copy to the department and shall retain 1 copy in the court's file.

(f) Contents. A notice to appear shall contain the following information:

- (1) The name and address of the child and the person to whom the child was released.
- (2) The date of the offense(s).
- (3) The offense(s) charged by statute and municipal ordinance, if applicable.
- (4) The counts of each offense.
- (5) The time and place where the child is to appear.
- (6) The name and address of the trial court having jurisdiction to try the offense(s) charged.
- (7) The name of the arresting officer or authorized agent of the department.
- (8) The signatures of the child and the person to whom the child was released.

(g) Failure to Appear. When a child signs a written notice to appear and fails to respond to the notice, an order to take into custody shall be issued.

(h) Form of Notice. The notice to appear shall be substantially as found in form 8.930.

Committee Notes

1991 Adoption. This rule allows juveniles to be released with definite notice as to when they must return to court. This should help decrease the number of juveniles held in detention centers awaiting a court date. It also should provide a mechanism to divert juveniles to programs more efficiently. The change also should decrease the number of summons issued by the clerk.

1992 Amendment. A summons is not sworn but the arrest affidavit that is filed with the notice to appear is sworn. The notice to appear, which is more like a summons, does not need to be sworn.

RULE 8.055. ORDERS

All orders of the court shall be reduced to writing as soon after they are entered as is consistent with orderly procedure and shall contain findings of fact as required by law.

C. DISCOVERY

RULE 8.060. DISCOVERY

(a) Notice of Discovery.

(1) After the filing of the petition, a child may elect to utilize the discovery process provided by these rules, including the taking of discovery depositions, by filing with the court and serving upon the petitioner a “notice of discovery” which shall bind both the petitioner and the child to all discovery procedures contained in these rules.

Participation by a child in the discovery process, including the taking of any deposition by a child, shall be an election to participate in discovery. If any child knowingly or purposely shares in discovery obtained by a codefendant, the child shall be deemed to have elected to participate in discovery.

(2) Within 5 days of service of the child’s notice of discovery, the petitioner shall serve a written discovery exhibit which shall disclose to the child or the child’s counsel and permit the child or the child’s counsel to inspect, copy, test, and photograph the following information and material within the petitioner’s possession or control:

(A) A list of the names and addresses of all persons known to the petitioner to have information which may be relevant to the allegations, to any defense with respect thereto, or to any similar fact evidence to be presented at trial under section 90.402(2), Florida Statutes. The names and addresses of persons listed shall be clearly designated in the following categories:

(i) Category A. These witnesses shall include

- (a) eye witnesses;
- (b) alibi witnesses and rebuttal to alibi witnesses;
- (c) witnesses who were present when a recorded or unrecorded statement was taken from or made by the child or codefendant, which shall be separately identified within this category;
- (d) investigating officers;

(e) witnesses known by the petitioner to have any material information that tends to negate the guilt of the child as to the petition's allegations;

(f) child hearsay witnesses; and

(g) expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify to test results or give opinions that will have to meet the test set forth in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

(ii) Category B. All witnesses not listed in either Category A or Category C.

(iii) Category C. All witnesses who performed only ministerial functions or whom the petitioner does not intend to call at the hearing and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense.

(B) The statement of any person whose name is furnished in compliance with the preceding paragraph. The term "statement" as used herein means 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. The term "statement" is specifically intended to include all police and investigative reports of any kind prepared for or in connection with the case, but shall not include the notes from which such reports are compiled.

(C) Any written or recorded statements and the substance of any oral statements made by the child and known to the petitioner, including a copy of any statements contained in police reports or summaries, together with the name and address of each witness to the statements.

(D) Any written or recorded statements, and the substance of any oral statements, made by a codefendant if the hearing is to be a joint one.

(E) Those portions of recorded grand jury minutes that contain testimony of the child.

(F) Any tangible papers or objects which were obtained from or belonged to the child.

(G) Whether the petitioner has any material or information which has been provided by a confidential informant.

(H) Whether there has been any electronic surveillance, including wiretapping, of the premises of the child, or of conversations to which the child was a party, and any documents relating thereto.

(I) Whether there has been any search or seizure and any document relating thereto.

(J) Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(K) Any tangible papers or objects which the petitioner intends to use in the hearing and which were not obtained from or belonged to the child.

(3) As soon as practicable after the filing of the petition, the petitioner shall disclose to the child any material information within the state's possession or control which tends to negate the guilt of the child as to the petition's allegations.

(4) The petitioner shall perform the foregoing obligations in any manner mutually agreeable to the petitioner and the child or as ordered by the court.

(5) Upon a showing of materiality to the preparation of the defense, the court may require such other discovery to the child as justice may require.

(b) Required Disclosure to Petitioner.

(1) If a child elects to participate in discovery, within 5 days after receipt by the child of the discovery exhibit furnished by the petitioner under this rule, the following disclosures shall be made:

(A) The child shall furnish to the petitioner a written list of all persons whom the child expects to call as witnesses at the hearing. When the petitioner subpoenas a witness whose name has been furnished by the child, except for hearing subpoenas, reasonable notice shall be given to the child as to the time and location of examination pursuant to the subpoena. At such examination, the child through counsel shall have the right to be present and to examine the witness. The physical presence of the child shall be governed by rule 8.060(d)(6).

(B) The child shall serve a written discovery exhibit which shall disclose to the petitioner and permit the petitioner to inspect, copy, test, and photograph the following information and material which is in the child's possession or control:

(i) The statement of any person whom the child expects to call as a trial witness other than that of the child.

(ii) Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(iii) Any tangible papers or objects which the child intends to use in the hearing.

(2) The child shall perform the foregoing obligations in any manner mutually agreeable to the child and the petitioner or as ordered by the court.

(3) The filing of a motion for protective order by the petitioner will automatically stay the times provided for in this subdivision. If a protective order is granted, the child may, within 2 days thereafter, or at any time before the petitioner furnishes the information or material which is the subject of the motion for protective order, withdraw the demand and not be required to furnish reciprocal discovery.

(c) Limitations on Disclosure.

(1) Upon application, the court may deny or partially restrict disclosure authorized by this rule 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.

(2) The following matters shall not be subject to disclosure:

(A) Disclosure shall not be required of 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.

(B) Disclosure of a confidential informant shall not be required unless the confidential informant is to be produced at a hearing or a failure to disclose the informant's identity will infringe upon the constitutional rights of the child.

(d) Depositions.

(1) Time and Location.

(A) At any time after the filing of the petition alleging a child to be delinquent, any party may take the deposition upon oral examination of any person authorized by this rule.

(B) Depositions of witnesses residing in the county in which the adjudicatory hearing is to take place shall be taken in the building in which the adjudicatory hearing is to be held, another location agreed on by the parties, or a location designated by the court. Depositions of witnesses residing outside the county in which the adjudicatory hearing is to take place shall take place in a court reporter's office in the county and state in which the witness resides, another location agreed to by the parties, or a location designated by the court.

(2) Procedure.

(A) The party taking the deposition shall give reasonable written notice to each other party and shall make a good faith effort to coordinate the date, time, and location of the deposition to accommodate the schedules of other parties and the witness to be deposed. The notice shall state the time and the location of the deposition and the name of each person to be examined, and include a certificate of counsel that a good faith effort was made to coordinate the deposition schedule.

(B) Upon application, the court or the clerk of the court may issue subpoenas for the persons whose depositions are to be taken.

(C) After notice to the parties the court, for good cause shown, may change the time or location of the deposition.

(D) In any case, no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown.

(E) Except as otherwise provided by this rule, the procedure for taking the deposition, including the scope of the examination and the issuance of a subpoena (except for a subpoena duces tecum) for deposition by an attorney of record in the action shall be the same as that provided in the Florida Rules of Civil Procedure.

(F) The child, without leave of court, may take the deposition of any witness listed by the petitioner as a Category A witness or listed by a codefendant as a witness to be called at a joint hearing. After receipt by the child of the discovery exhibit, the child, without leave of court, may take the deposition of any unlisted witness who may have information relevant to the petition's allegations. The petitioner, without leave of court, may take the deposition of any witness listed by the child to be called at a hearing.

(G) No party may take the deposition of a witness listed by the petitioner as a Category B witness except upon leave of court with good cause shown. In determining whether to allow a deposition, the court should consider the consequences to the child, the complexities of the

issues involved, the complexity of the testimony of the witness (e.g., experts), and the other opportunities available to the child to discover the information sought by deposition.

(H) A witness listed by the petitioner as a Category C witness shall not be subject to deposition unless the court determines that the witness should be listed in another category.

(I) No deposition shall be taken in a case in which a petition has been filed alleging that the child committed only a misdemeanor or a criminal traffic offense when all other discovery provided by this rule has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the child, the complexity of the issues involved, the complexity of the witness's testimony (e.g., experts), and the other opportunities available to the child to discover the information sought by deposition. However, this prohibition against the taking of depositions shall not be applicable if following the furnishing of discovery by the child the petitioner then takes the statement of a listed defense witness pursuant to section 27.04, Florida Statutes.

(3) Use of Deposition. Any deposition taken pursuant to this rule may be used at any hearing covered by these rules by any party for the purpose of impeaching the testimony of the deponent as a witness.

(4) Introduction of Part of Deposition. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

(5) Sanctions. A witness who refuses to obey a duly served subpoena for the taking of a deposition may be adjudged in contempt of the court from which the subpoena issued.

(6) Physical Presence of Child. The child shall not be physically present at a deposition except upon stipulation of the parties or as provided by this rule. The court may order the physical presence of the child upon a showing of good cause. In ruling, the court may consider

(A) the need for the physical presence of the child to obtain effective discovery;

(B) the intimidating effect of the child's presence on the witness, if any;

(C) any cost or inconvenience which may result; and

(D) any alternative electronic or audio-visual means available to protect the child's ability to participate in discovery without the child's physical presence.

(7) Statements of Law Enforcement Officers. Upon stipulation of the parties and the consent of the witness, the statement of a law enforcement officer may be taken by telephone in lieu of deposition of the officer. In such case, the officer need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code.

(8) Depositions of Law Enforcement Officers. Subject to the general provisions of this rule, law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address designated by the law enforcement agency or department or, if no address has been designated, to the address of the law enforcement agency or department, 5 days prior to the date of the deposition. Law enforcement officers

who fail to appear for deposition after being served notice are subject to contempt proceedings.

(9) Videotaped Depositions. Depositions of children under the age of 16 shall be videotaped upon demand of any party unless otherwise ordered by the court. The court may order videotaping of a deposition or taking of a deposition of a witness with fragile emotional strength to be in the presence of the trial judge or a special magistrate.

(e) Perpetuating Testimony.

(1) After the filing of the petition and upon reasonable notice, any party may apply for an order to perpetuate testimony of a witness. The application shall be verified or supported by the affidavits of credible persons, and shall state that the prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending the subsequent court proceedings, or that grounds exist to believe that the witness will absent himself or herself from the jurisdiction of the court, that the testimony is material, and that it is necessary to take the deposition to prevent a failure of justice.

(2) If the application is well founded and timely made, the court shall order a commission to be issued to take the deposition of the witness to be used in subsequent court proceedings and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place. The commission may be issued to any official court reporter, whether the witness be within or without the state, transcribed by the reporter, and filed in the court. The commission shall state the time and place of the deposition and be served on all parties.

(3) No deposition shall be used or read in evidence when the attendance of the witness can be procured. If it shall appear to the court that any person whose deposition has been taken has absented himself or herself by procurement, inducements, or threats by or on behalf of any party, the deposition shall not be read in evidence on behalf of that party.

(f) Nontestimonial Discovery. After the filing of the petition, upon application, and subject to constitutional limitations, the court may with directions as to time, place, and method, and upon conditions which are just, require:

(1) the child in all proceedings to:

- (A) appear in a lineup;
- (B) speak for identification by a witness to an offense;
- (C) be fingerprinted;
- (D) pose for photographs not involving reenactment of a scene;
- (E) try on articles of clothing;
- (F) permit the taking of specimens of material under the fingernails;
- (G) permit the taking of samples of blood, hair, and other materials of the body which involve no unreasonable intrusion thereof;
- (H) provide specimens of handwriting; or
- (I) submit to a reasonable physical or medical inspection of his or her body; and

(2) such other discovery as justice may require upon a showing that such would be relevant or material.

(g) Court May Alter Times. The court may alter the times for compliance with any discovery under these rules on good cause shown.

(h) Supplemental Discovery. If, subsequent to compliance with these rules, a party discovers additional witnesses, evidence, or material which the party would have been under a duty to disclose or produce at the time of such previous compliance, the party shall promptly disclose or produce such witnesses, evidence, or material in the same manner as required under these rules for initial discovery.

(i) Investigations Not to Be Impeded. Except as otherwise provided for matters not subject to disclosure or restricted by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information, except for the child, to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(j) Protective Orders. Upon a showing of good cause, the court shall at any time order that specified disclosures be restricted, deferred, or exempted from discovery, that certain matters are not to be inquired into or that the scope of the deposition be limited to certain matters, that a deposition be sealed and after being sealed be opened only by order of the court, or make such other order as is appropriate to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy, including prohibiting the taking of a deposition. All material and information to which a party is entitled, however, must be disclosed in time to permit such party to make beneficial use of it.

(k) Motion to Terminate or Limit Examination. At any time during the taking of a deposition, on motion of a party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the circuit court where the deposition is being taken may (1) terminate the deposition, (2) limit the scope and manner of the taking of the deposition, (3) limit the time of the deposition, (4) continue the deposition to a later time, (5) order the deposition to be taken in open court and, in addition, (6) may impose any sanction authorized by this rule. If the order terminates the deposition, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of any party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(l) In Camera and Ex Parte Proceedings.

(1) Any person may move for an order denying or regulating disclosure of sensitive matters. The court may consider the matters contained in the motion in camera.

(2) Upon request, the court shall allow the child to make an ex parte showing of good cause for taking the deposition of a Category B witness.

(3) A record shall be made of proceedings authorized under this subdivision. If the court enters an order granting relief after an in camera inspection or ex parte showing, the entire

record of the proceeding shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(m) Sanctions.

(1) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or with an order issued pursuant to an applicable discovery rule, the court may:

- (A) order such party to comply with the discovery or inspection of materials not previously disclosed or produced;
- (B) grant a continuance;
- (C) grant a mistrial;
- (D) prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or
- (E) enter such order as it deems just under the circumstances.

(2) Willful violation by counsel or a party not represented by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel or a party not represented by counsel to appropriate sanction by the court. The sanctions may include, but are not limited to, contempt proceedings against the attorney or party not represented by counsel, as well as the assessment of costs incurred by the opposing party, when appropriate.

Court Commentary

1996 Amendment. This amendment generally conforms the rule to the 1996 amendment to Florida Rule of Criminal Procedure 3.220.

RULE 8.065. NOTICE OF DEFENSE OF ALIBI

- (a) Notice to State Attorney. After a petition has been served the state attorney may demand in writing that the child, who intends to offer an alibi defense, shall provide the state attorney with the details of the alibi as to the time and place where the child claims to have been at the time of the alleged offense and the names and addresses of such witnesses as may appear to testify thereon. The child shall comply as above not less than 10 days before the trial date.
- (b) Rebuttal Witness List. The state attorney shall, within 5 days of the receipt thereof, provide the child with a list of such witnesses to be called to rebut the alibi testimony.
- (c) Sanctions. Should the child fail or refuse to comply with the provisions hereof, the court may in its discretion exclude testimony of alibi witnesses other than that of the child or, should the state attorney fail to comply herewith, the court may in its discretion exclude rebuttal testimony offered by the state.
- (d) Waiver of Rule. For good cause shown, the court may waive the requirements of this rule.

D. ARRAIGNMENTS AND PLEAS

RULE 8.070. ARRAIGNMENTS

Prior to the adjudicatory hearing, the court may conduct a hearing to determine whether a guilty, nolo contendere, or not guilty plea to the petition shall be entered and whether the child is represented by counsel or entitled to appointed counsel as provided by law. If a plea of guilty or nolo contendere is entered, the court shall proceed as set forth under rule 8.115, disposition hearings. If a plea of not guilty is entered, the court shall set an adjudicatory hearing within the period of time provided by law and appoint counsel when required. If the child is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and thereupon arraignment shall be deemed waived.

Committee Notes

This rule creates an arraignment proceeding that is referred to in section 985.215(7), Florida Statutes.

RULE 8.075. PLEAS

No written answer to the petition nor any other pleading need be filed.

(a) Acceptance of Plea. In delinquency cases the child may plead guilty, nolo contendere, or not guilty. The court may refuse to accept a plea of guilty or nolo contendere, and shall not accept either plea without first determining that the plea is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of such plea and that there is a factual basis for such plea.

(b) Plan of Proposed Treatment, Training, or Conduct. After the filing of a petition and prior to the adjudicatory hearing, a plan of proposed treatment, training, or conduct may be submitted on behalf of the child in lieu of a plea. The appropriate agencies of the Department of Juvenile Justice or other agency as designated by the court shall be the supervising agencies for said plan and the terms and conditions of all such plans shall be formulated in conjunction with the supervising agency involved. The submission of a plan is not an admission of the allegations of the petition of delinquency. If such a plan is submitted the procedure shall be as follows:

- (1) The plan must be in writing, agreed to and signed in all cases by the state attorney, the child, and, when represented, by the child's counsel, and, unless excused by the court, by the parents or custodian. An authorized agent of the supervising agency involved shall indicate whether the agency recommends the acceptance of the plan.
- (2) The plan shall contain a stipulation that the speedy trial rule is waived and shall include the state attorney's consent to defer the prosecution of the petition.

(3) After hearing, which may be waived by stipulation of the parties and the supervising agency, the court may accept the plan and order compliance therewith, or may reject it. If the plan is rejected by the court, the court shall state on the record the reasons for rejection.

(4) Violations of the conditions of the plan shall be presented to the court by motion by the supervising agency or by any party. If the court, after hearing, finds a violation has occurred, it may take such action as is appropriate to enforce the plan, modify the plan by supplemental agreement, or set the case for hearing on the original petition.

(5) The plan shall be effective for an indeterminate period, for such period as is stated therein, or until the petition is dismissed.

(6) Unless otherwise dismissed, the petition may be dismissed on the motion of the person submitting the plan or the supervising agency, after notice of hearing and a finding of substantial compliance with the provisions and intent of the plan.

(c) Written Answer. A written answer admitting or denying the allegations of the petition may be filed by the child joined by a parent, custodian, or the child's counsel. If the answer admits the allegations of the petition it must acknowledge that the child has been advised of the right to counsel, the right to remain silent, and the possible dispositions available to the court and shall include a consent to a predispositional study. Upon the filing of such an answer a hearing for adjudication or adjudication and disposition shall be set at the earliest practicable time.

(d) Entry of Plea by Court. If a child stands mute or pleads evasively, a plea of not guilty shall be entered by the court.

(e) Withdrawal of Plea. The court may for good cause shown at any time prior to the beginning of a disposition hearing permit a plea of guilty to be withdrawn, and if a finding that the child committed a delinquent act has been entered thereon, set aside such finding and allow another plea to be substituted for the plea of guilty. In the subsequent adjudicatory hearing the court shall not consider the plea which was withdrawn as an admission.

(f) Withdrawal of Plea After Drug Court Transfer. A child who pleads guilty or nolo contendere to a charge for the purpose of transferring the case, under section 910.035, Florida Statutes, may file a motion to withdraw the plea upon successful completion of the juvenile drug court treatment program.

RULE 8.080. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA

(a) Voluntariness. Before accepting a plea of guilty or nolo contendere, the court shall determine that the plea is knowingly and voluntarily entered and that there is a factual basis for it. Counsel for the prosecution and the defense shall assist the court in this determination.

(b) Determination by Court. The court, when making this determination, should place the child under oath and shall address the child personally. The court shall determine that the child understands the following:

(1) The nature of the charge to which the plea is offered and the possible dispositions available to the court.

(2) If the child is not represented by an attorney, that the child has the right to be represented by an attorney at every stage of the proceedings and, if necessary, one will be appointed.

(3) That the child has the right to plead not guilty, or to persist in that plea if it had already been made, and that the child has the right to an adjudicatory hearing and at that hearing has the right to the assistance of counsel, the right to compel the attendance of witnesses on his or her behalf, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

(4) That, if the child pleads guilty or nolo contendere, without express reservation of the right to appeal, the right to appeal all matters relating to the judgment, including the issue of guilt or innocence, is relinquished, but the right to review by appropriate collateral attack is not impaired.

(5) That, if the child pleads guilty or nolo contendere, there will not be a further adjudicatory hearing of any kind, so that by pleading so the right to an adjudicatory hearing is waived.

(6) That, if the child pleads guilty or nolo contendere, the court may ask the child questions about the offense to which the child has pleaded, and, if those questions are answered under oath, on the record, the answers may later be used against the child in a prosecution for perjury.

(7) The complete terms of any plea agreement including specifically all obligations the child will incur as a result.

(c) Acknowledgment by Child. Before the court accepts a guilty or nolo contendere plea, the court must determine that the child either:

(1) acknowledges guilt; or

(2) acknowledges that the plea is in the child's best interest, while maintaining innocence.

(d) Of Record. These proceedings shall be of record.

(e) When Binding. No plea offer or negotiation is binding until it is accepted by the court after making all the inquiries, advisements, and determinations required by this rule. Until that time, it may be withdrawn by either party without any necessary justification.

(f) Failure to Follow Procedures. Failure to follow any of the procedures in this rule shall not render a plea void, absent a showing of prejudice.

E. MOTIONS AND SERVICE OF PLEADINGS

RULE 8.085. PREHEARING MOTIONS AND SERVICE

(a) Prehearing Motions.

(1) **Motions in General.** Every motion made before a hearing and any pleading in response to the motion shall be in writing and shall be signed by the party making the motion and the party's attorney. This requirement may be waived by the court for good cause shown.

(2) Motion to Dismiss. All defenses not raised by a plea of not guilty or denial of the allegations of the petition shall be made by a motion to dismiss the petition. If a motion to dismiss is granted, the child who is detained under an order entered under rule 8.013 may be continued in detention under the said order upon the representation that a new or amended petition will be filed.

(3) Motion to Suppress. Any confession or admission obtained illegally or any evidence obtained by an unlawful search and seizure may be suppressed on motion by the child.

(A) Every motion to suppress shall clearly state the particular evidence sought to be suppressed, the reason for the suppression, and a general statement of the facts on which the motion is based.

(B) Before hearing evidence, the court shall determine if the motion is legally sufficient. If it is not, the motion shall be denied. If the court hears the motion on its merits, the moving party shall present evidence in support thereof and the state may offer rebuttal evidence.

(4) Motion to Sever. A motion may be made for the severance of 2 or more counts in a multi-count petition, or for the severance of the cases of 2 or more children to be adjudicated in the same hearing. The court may grant motions for severance of counts and severance of jointly brought cases for good cause shown.

(5) Time for Filing. Any motion to suppress, sever, or dismiss shall be made prior to the date of the adjudicatory hearing unless an opportunity to make such motion previously did not exist or the party making the motion was not aware of the grounds for the motion.

(6) Sworn Motions to Dismiss. Before the adjudicatory hearing the court may entertain a motion to dismiss on the ground that there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the child. The facts on which such motion is based shall be specifically alleged and the motion sworn to by the child. The motion shall be filed a reasonable time before the date of the adjudicatory hearing. The state may traverse or demur to this motion. Factual matters alleged in it shall be deemed admitted unless specifically denied by the state in a traverse. The court, in its discretion, may receive evidence on any issue of fact necessary to decide the motion. The motion shall be dismissed if the state files a written traverse that with specificity denies under oath the material fact or facts alleged in the motion to dismiss. Any demurrer or traverse shall be filed a reasonable time before the hearing on the motion to dismiss.

(b) Service of Pleadings and Papers.

(1) When Required. Unless the court orders otherwise, every pleading subsequent to the initial petition, every order, every written motion, unless it is one as to which hearing ex parte is authorized, and every written notice filed in the case shall be served on each party; however, nothing herein shall be construed to require that a plea be in writing or that an application for witness subpoena be served.

(2) How Made. When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or party shall be made by delivering a copy or by mailing it to the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing.

Delivery of a copy within this rule shall mean:

- (A) handing it to the attorney or the party;
- (B) leaving it at the attorney's office, with the person in charge thereof;
- (C) if there is no one in charge of the office, leaving it in a conspicuous place therein;
- (D) if the office is closed or the person to serve has no office, leaving it at his or her usual place of abode with some person of the family above 15 years of age and informing such person of the contents thereof; or
- (E) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, the number of pages transmitted, and the recipient's facsimile number. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when the transmission is complete.

(3) Filing. All original papers, copies of which are required to be served upon parties, must be filed with the court either before service or immediately thereafter.

(4) Filing with Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court except that the court may permit the papers to be filed with the court in which event the filing date shall be noted thereon and the papers shall be transmitted to the office of the clerk.

(5) Certificate of Service. When any authorized person shall in substance certify:

"I certify that a copy/copies has/have been furnished to (insert name or names) by (delivery) (mail) (fax) on (date).

_____ Title"

the certificate shall be taken as prima facie proof of such service in compliance with all rules of court and law.

(6) People Who May Certify Service. Service of pleadings and orders required to be served as provided by subdivision (2) may be certified by an attorney of record, clerk or deputy clerk, court, or authorized agent of the Department of Juvenile Justice in the form provided in subdivision (5).

(c) Time for Service of Motions and Notice of Hearing. A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof shall be served a reasonable time before the time specified for the hearing.

(d) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of notice or other paper and the notice or paper is served by mail, 5 days shall be added to the prescribed period.

(e) Pleading to Be Signed by Attorney. Every written paper or pleading of a party represented by an attorney shall be signed in the attorney's individual name by such attorney, whose address and telephone number, including area code, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida. The attorney may be required by an order of court to vouch for the authority to represent such party and to give the address of such party. Except when otherwise specifically provided by these rules or applicable statute, pleadings as such need not be verified or accompanied by affidavit.

(f) Pleading to Be Signed by Unrepresented Party. A party who has no attorney but represents himself or herself shall sign the written pleading or other paper to be filed and state his or her address and telephone number, including area code.

(g) Effect of Signing Pleading. The signature of a person shall constitute a certificate that the paper or pleading has been read; that to the best of the person's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or paper is not signed, or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or paper had not been served.

Committee Notes

1991 Amendment. (a)(6) This creates a procedure for dismissal similar to Florida Rule of Criminal Procedure 3.190(c)(4).

1992 Amendments. (d) Rules 8.240(c)(2) and 8.630(c)(2) allow 5 days for service by mail. This change conforms this rule.

(f) The current rule implies that a written pleading must be filed. No written pleadings are required.

(e) and (g) The language from (e) was moved to create this new subdivision. The current rule applies only to attorneys. These requirements also should apply to nonattorneys who sign and file papers. This rule conforms with proposed revisions to rules 8.230 and 8.640.

RULE 8.090. SPEEDY TRIAL

(a) Time. If a petition has been filed alleging a child to have committed a delinquent act, the child shall be brought to an adjudicatory hearing without demand within 90 days of the earlier of the following:

- (1) The date the child was taken into custody.
- (2) The date of service of the summons that is issued when the petition is filed.

(b) Dismissal. If an adjudicatory hearing has not commenced within 90 days, upon motion timely filed with the court and served upon the prosecuting attorney, the respondent shall be entitled to the appropriate remedy as set forth in subdivision (m). The court before granting such motion shall make the required inquiry under subdivision (d).

(c) Commencement. A child shall be deemed to have been brought to trial if the adjudicatory hearing begins before the court within the time provided.

(d) Motion to Dismiss. If the adjudicatory hearing is not commenced within the periods of time established, the respondent shall be entitled to the appropriate remedy as set forth in subdivision (m) unless any of the following situations exist:

- (1) The child has voluntarily waived the right to speedy trial.
- (2) An extension of time has been ordered under subdivision (f).
- (3) The failure to hold an adjudicatory hearing is attributable to the child, a co-respondent in the same adjudicatory hearing, or their counsel.
- (4) The child was unavailable for the adjudicatory hearing. A child is unavailable if:

(A) the child or the child's counsel fails to attend a proceeding when their presence is required; or

(B) the child or the child's counsel is not ready for the adjudicatory hearing on the date it is scheduled. No presumption of nonavailability attaches, but if the state objects to dismissal and presents any evidence tending to show nonavailability, the child must, by competent proof, establish availability during the term.

(5) The demand referred to in subdivision (g) is invalid.

(6) If the court finds dismissal is not appropriate, the pending motion to dismiss shall be denied, and an adjudicatory hearing shall commence within 90 days of a written or recorded order of denial.

(e) Incompetency of Child. Upon the filing of a motion to declare the child incompetent, the speedy trial period shall be tolled until a subsequent finding of the court that the child is competent to proceed.

(f) Extension of Time. The period of time established by subdivision (a) may be extended as follows:

- (1) Upon stipulation, announced to the court or signed by the child or the child's counsel and the state.
- (2) By written or recorded order of the court on the court's own motion or motion by either party in exceptional circumstances. The order extending the period shall recite the reasons for the extension and the length of the extension. Exceptional circumstances are those which require an extension as a matter of substantial justice to the child or the state or both. Such circumstances include:

(A) unexpected illness or unexpected incapacity or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;
(B) a showing by the state that the case is so unusual and so complex, due to the number of respondents or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;
(C) a showing by the state that specific evidence or testimony is not available, despite diligent efforts to secure it, but will become available at a later time;
(D) a showing by the child or the state of necessity for delay grounded on developments which could not have been anticipated and which will materially affect the trial;
(E) a showing that a delay is necessary to accommodate a co-respondent, where there is a reason not to sever the cases in order to proceed promptly with trial of the respondent; or
(F) a showing by the state that the child has caused major delay or disruption of preparation or proceedings, such as by preventing the attendance of witnesses or otherwise.
Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation or failure to obtain available witnesses, or other avoidable or foreseeable delays.

(3) By written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including, but not limited to, an examination and hearing to determine the mental competency or physical ability of the respondent to stand trial for hearings or pretrial motions, for appeals by the state, and for adjudicatory hearings of other pending charges against the child.

(g) Speedy Trial Upon Demand. Except as otherwise provided by this rule and subject to the limitations imposed by subdivision (h), the child shall have the right to demand a trial within 60 days, by filing a written pleading entitled "Demand for Speedy Trial" with the court and serving it upon the prosecuting attorney.

(1) No later than 5 days from the filing of a demand for speedy trial, the court shall set the matter for report, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the report the court shall set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the report.

(3) The failure of the court to hold such a report date on a demand which has been properly filed shall not interrupt the running of any time periods under this subdivision (g).

(4) In the event that the child shall not have been brought to trial within 50 days of the filing of the demand, the child shall have the right to the appropriate remedy as set forth in subdivision (m).

(h) Demand for Speedy Trial; Effect. A demand for speedy trial shall be deemed a pleading by the respondent that he or she 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. A demand may not be withdrawn by the child except on order of the court, with consent of the state, or on good cause shown. Good cause for continuance or delay on behalf of the

accused shall not thereafter include nonreadiness for the adjudicatory hearing, except as to matters which may arise after the demand for the adjudicatory hearing is filed and which could not reasonably have been anticipated by the accused or defense counsel.

(i) Dismissal After Demand. If an adjudicatory hearing has not commenced within 50 days after a demand for speedy trial, upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney, the child shall have the right to the appropriate remedy as set forth in subdivision (m), provided the court has made the required inquiry under subdivision (d).

(j) Effect of Mistrial, Appeal, or Order of New Trial. A child who is to be tried again or whose adjudicatory hearing has been delayed by an appeal by the state or the respondent shall be brought to trial within 90 days from the date of declaration of a mistrial by the trial court, the date of an order by the trial court granting a new trial, or the date of receipt by the trial court of a mandate, order, or notice of whatever form from an appellate or other reviewing court which makes possible a new trial for the respondent, whichever is last. If the child is not brought to trial within the prescribed time periods, the child shall be entitled to the appropriate remedy as set forth in subdivision (m).

(k) Discharge From Delinquent Act or Violation of Law; Effect. Discharge from a delinquent act or violation of law under this rule shall operate to bar prosecution of the delinquent act or violation of law charged and all other offenses on which an adjudicatory hearing has not begun or adjudication obtained or withheld and that were, or might have been, charged as a lesser degree or lesser included offense.

(l) Nolle Prosequi; Effect. The intent and effect of this rule shall not be avoided by the state entering a nolle prosequi to a delinquent act or violation of law charged and by prosecuting a new delinquent act or violation of law grounded on the same conduct or episode or otherwise by prosecuting new and different charges based on the same delinquent conduct or episode, whether or not the pending charge is suspended, continued, or the subject of the entry of a nolle prosequi.

(m) Remedy for Failure to Try Respondent Within the Specified Time.

(1) No remedy shall be granted to any respondent under this rule until the court shall have made the required inquiry under subdivision (d).

(2) The respondent may, at any time after the expiration of the prescribed time period, file a motion for discharge. Upon filing the motion the respondent shall simultaneously file a notice of hearing. The motion for discharge and its notice of hearing shall be served upon the prosecuting attorney.

(3) No later than 5 days from the date of the filing of a motion for discharge, the court shall hold a hearing on the motion and, unless the court finds that one of the reasons set forth in subdivision (d) exists, shall order that the respondent be brought to trial within 10 days. If the respondent is not brought to trial within the 10-day period through no fault of the respondent, the respondent shall be forever discharged from the crime.

Committee Notes

1991 Amendment. (m)(2) This rule requires a notice of hearing at the time of filing the motion for discharge to ensure that the child's motion is heard in a timely manner. A dissenting opinion in the committee was that this change does not protect the child's rights but merely ensures that the case is not dismissed because of clerical error.

RULE 8.095. PROCEDURE WHEN CHILD BELIEVED TO BE INCOMPETENT OR INSANE

(a) Incompetency At Time of Adjudicatory Hearing or Hearing on Petition Alleging Violation of Juvenile Probation in Delinquency Cases.

(1) Motion.

(A) A written motion for examination of the child made by counsel for the child shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the child that have formed the basis for the motion.

(B) A written motion for examination of the child made by counsel for the state shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the child is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the child that have caused the state to file the motion.

(2) Setting Hearing. If at any time prior to or during the adjudicatory hearing or hearing on a violation of juvenile probation the court has reasonable grounds to believe the child named in the petition may be incompetent to proceed with an adjudicatory hearing, the court on its own motion or motion of counsel for the child or the state shall immediately stay the proceedings and fix a time for a hearing for the determination of the child's mental condition.

(3) Child Found Competent to Proceed. If at the hearing provided for in subdivision (a)(2) the child is found to be competent to proceed with an adjudicatory hearing, the court shall enter an order so finding and proceed accordingly.

(4) Child Found Incompetent to Proceed. If at the hearing provided for in subdivision (a)(2) the child is found to be incompetent to proceed, the child must be adjudicated incompetent to proceed and may be involuntarily committed as provided by law to the Department of Children and Family Services for treatment upon a finding of clear and convincing evidence that:

(A) The child is mentally ill or mentally retarded and because of the mental illness or retardation of the child:

(i) the child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment the child is likely to either suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

(ii) there is a substantial likelihood that in the near future the child will inflict serious bodily harm on himself or herself or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(B) All available less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient settings which would offer an opportunity for improvement of the child's condition are inappropriate.

(5) Hearing on Competency. Not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, or at any time the service provider determines the child has attained competency or no longer meets the criteria for commitment, the service provider must file a report with the court and all parties. Upon receipt of this report, the court shall set a hearing to determine the child's competency.

(A) If the court determines that the child continues to remain incompetent, the court shall order appropriate nondelinquent hospitalization or treatment in conformity with this rule and the applicable provisions of chapter 985, Florida Statutes.

(B) If the court determines the child to be competent, it shall enter an order so finding and proceed accordingly.

(6) Commitment. Each child who has been adjudicated incompetent to proceed and who meets the criteria for commitment in subdivision (a)(4) must be committed to the Department of Children and Family Services. The department must train or treat the child in the least restrictive alternative consistent with public safety. Any commitment of a child to a secure residential program must be to a program separate from adult forensic programs. If the child attains competency, case management and supervision of the child will be transferred to the Department of Juvenile Justice to continue delinquency proceedings. The court retains authority, however, to order the Department of Children and Family Services to provide continued treatment to maintain competency.

(A) A child adjudicated incompetent because of mental retardation may be ordered into a program designated by the Department of Children and Family Services for retarded children.

(B) A child adjudicated incompetent because of mental illness may be ordered into a program designated by the Department of Children and Family Services for mentally ill children.

(7) Continuing Jurisdiction and Dismissal of Jurisdiction.

(A) If a child is determined to be incompetent to proceed, the court shall retain jurisdiction of the child for up to 2 years after the date of the order of incompetency, with reviews at least

every 6 months to determine competency. If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency petition or petition alleging violation of juvenile probation.

(B) If, at the end of the 2-year period following the date of the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year, the court must dismiss the delinquency petition.

(C) If necessary, the court may order that proceedings under chapter 393 or 394, Florida Statutes, be instituted. Such proceedings must be instituted no less than 60 days before the dismissal of the delinquency petition. The juvenile court may conduct all proceedings and make all determinations under chapter 393 or 394, Florida Statutes.

(8) Treatment Alternatives to Commitment. If a child who is found to be incompetent does not meet the commitment criteria of subdivision (a)(4), the court shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. All court-ordered treatment must be in the least restrictive setting consistent with public safety. Any residential program must be separate from an adult forensic program. If a child is ordered to receive such services, the services shall be provided by the Department of Children and Family Services. The competency determination must be reviewed at least every 6 months, or at the end of any extended period of treatment or training, and any time the child appears to have attained competency or will never attain competency, by the service provider. A copy of a written report evaluating the child's competency must be filed by the provider with the court, the Department of Children and Family Services, the Department of Juvenile Justice, the state, and counsel for the child.

(9) Speedy Trial Tolerated. Upon the filing of a motion by the child's counsel alleging the child to be incompetent to proceed or upon an order of the court finding a child incompetent to proceed, speedy trial shall be tolled until a subsequent finding of the court that the child is competent to proceed. Proceedings under this subdivision initiated by the court on its own motion or the state's motion may toll the speedy trial period pursuant to rule 8.090(e).

(b) Insanity at Time of Delinquent Act or Violation of Juvenile Probation.

(1) If the child named in the petition intends to plead insanity as a defense, the child shall advise the court in writing not less than 10 days before the adjudicatory hearing and shall 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. Upon the filing of this statement, on motion of the state, or on its own motion, the court may cause the child to be examined in accordance with the procedures in this rule.

(2) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule. A continuance granted for this purpose will toll the speedy trial rule and the limitation on detention pending adjudication.

(c) Appointment of Expert Witnesses; Detention of Child for Examination.

(1) When a question has been raised concerning the sanity or competency of the child named in the petition and the court has set the matter for an adjudicatory hearing, hearing on violation of juvenile probation, or a hearing to determine the mental condition of the child, the court may on its own motion, and shall on motion of the state or the child, appoint no more than 3, nor fewer than 2, disinterested qualified experts to examine the child as to competency or sanity of the child at the time of the commission of the alleged delinquent act or violation of juvenile probation. Attorneys for the state and the child may be present at the examination. An examination regarding sanity should take place at the same time as the examination into the competence of the child to proceed, if the issue of competency has been raised. Other competent evidence may be introduced at the hearing. The appointment of experts by the court shall not preclude the state or the child from calling other expert witnesses to testify at the adjudicatory hearing, hearing on violation of juvenile probation, or at the hearing to determine the mental condition of the child.

(2) The court only as provided by general law may order the child held in detention pending examination. This rule shall in no way be construed to add any detention powers not provided by statute or case law.

(3) When counsel for a child adjudged to be indigent or partially indigent, whether public defender or court appointed, shall have reason to believe that the child may be incompetent to proceed or may have been insane at the time of the alleged delinquent act or juvenile probation violation, counsel may so inform the court. The court shall appoint 1 expert to examine the child to assist in the preparation of the defense. The expert shall report only to counsel for the child, and all matters related to the expert shall be deemed to fall under the lawyer-client privilege.

(4) For competency evaluations related to mental retardation, the court shall order the Developmental Services Program Office of the Department of Children and Family Services to examine the child to determine if the child meets the definition of retardation in section 393.063, Florida Statutes, and, if so, whether the child is competent to proceed or amenable to treatment through the Department of Children and Family Services retardation services or programs.

(d) Competence to Proceed; Scope of Examination and Report.

(1) Examination by Experts. On appointment by the court, the experts shall examine the child with respect to the issue of competence to proceed as specified by the court in its order appointing the experts.

(A) The experts first shall consider factors related to whether the child meets the criteria for competence to proceed; that is, 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.

(B) In considering the competence of the child to proceed, the examining experts shall consider and include in their reports the child's capacity to:

- (i) appreciate the charges or allegations against the child;
- (ii) appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable;
- (iii) understand the adversary nature of the legal process;
- (iv) disclose to counsel facts pertinent to the proceedings at issue;
- (v) display appropriate courtroom behavior; and
- (vi) testify relevantly. The experts also may consider any other factors they deem to be relevant.

(C) Any report concluding that a child is not competent must include the basis for the competency determination.

(2) Treatment Recommendations. If the experts find that the child is incompetent to proceed, they shall report on any recommended treatment for the child to attain competence to proceed. A recommendation as to whether residential or nonresidential treatment or training is required must be included. In considering issues related to treatment, the experts shall report on the following:

- (A) The mental illness, mental retardation, or mental age causing incompetence.
- (B) 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.
- (C) The availability of acceptable treatment or education. If treatment or education is available in the community, the experts shall so state in the report.
- (D) 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.
- (E) Whether the child meets the criteria for involuntary hospitalization or involuntary admissions to residential services under chapter 985, Florida Statutes.

(3) Insanity. If a notice of intent to rely on an insanity defense has been filed before an adjudicatory hearing or a hearing on an alleged violation of juvenile probation, when ordered by the court the experts shall report on the issue of the child's sanity at the time of the delinquent act or violation of juvenile probation.

(4) Written Findings of Experts. Any written report submitted by the experts shall:

- (A) identify the specific matters referred for evaluation;
- (B) describe the procedures, techniques, and tests used in the examination and the purposes of each;
- (C) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the court and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(D) identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(5) Limited Use of Competency Evidence.

(A) The information contained in any motion by the child for determination of competency to proceed or in any report filed under this rule as it relates solely to the issues of competency to proceed and commitment, and any information elicited during a hearing on competency to proceed or commitment held under this rule, shall be used only in determining the mental competency to proceed, the commitment of the child, or other treatment of the child.

(B) The child waives this provision by using the report, or any parts of it, in any proceeding for any other purpose. If so waived, the disclosure or use of the report, or any portion of it, shall be governed by the applicable rules of evidence and juvenile procedure. If a part of a report is used by the child, the state may request the production of any other portion that, in fairness, ought to be considered.

(e) Procedures After Judgment of Not Guilty by Reason of Insanity.

(1) When the child is found not guilty of the delinquent act or violation of juvenile probation because of insanity, the court shall enter such a finding and judgment.

(2) After finding the child not guilty by reason of insanity, the court shall conduct a hearing to determine if the child presently meets the statutory criteria for involuntary commitment to a residential psychiatric facility.

(A) If the court determines that the required criteria have been met, the child shall be committed by the juvenile court to the Department of Children and Family Services for immediate placement in a residential psychiatric facility.

(B) If the court determines that such commitment criteria have not been established, the court, after hearing, shall order that the child receive recommended and appropriate treatment at an outpatient facility or service.

(C) If the court determines that treatment is not needed, it shall discharge the child.

(D) Commitment to a residential psychiatric facility of a child adjudged not guilty by reason of insanity shall be governed by the provisions of chapters 985 or 394, Florida Statutes, except that requests for discharge or continued involuntary hospitalization of the child shall be directed to the court that committed the child.

(E) If a child is not committed to a residential psychiatric facility and has been ordered to receive appropriate treatment at an outpatient facility or service and it appears during the course of the ordered treatment

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

(ii) that the child no longer requires treatment at an outpatient facility or service, the court shall enter an order discharging the child.

(F) During the time the child is receiving treatment, either by hospitalization or through an outpatient facility or service, any party may request the court to conduct a hearing to determine the nature, quality, and need for continued treatment. The hearing shall be conducted in conformity with subdivision (e)(2) of this rule.

(G) No later than 30 days before reaching age 19, a child still under supervision of the court under this rule shall be afforded a hearing. At the hearing, a determination shall be made as to the need for continued hospitalization or treatment. If the court determines that continued care is appropriate, proceedings shall be initiated under chapter 394, Florida Statutes. If the court determines further care to be unnecessary, the court shall discharge the child.

F. HEARINGS

RULE 8.100. GENERAL PROVISIONS FOR HEARINGS

Unless otherwise provided, the following provisions apply to all hearings:

(a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests.

(b) Absence of the Child. If the child is present at the beginning of a hearing and during the progress of the hearing voluntarily absents himself or herself from the presence of the court without leave of the court, or is removed from the presence of the court because of disruptive conduct during the hearing, the hearing shall not be postponed or delayed, but shall proceed in all respects as if the child were present in court at all times.

(c) Invoking the Rule. Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing shall, exclude all other witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(d) Continuances. The court may grant a continuance before or during a hearing for good cause shown by any party.

(e) Record of Testimony. A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. The records shall be preserved for 5 years from the date of the hearing. Official records of testimony shall be transcribed only upon order of the court.

(f) Notice. When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

RULE 8.104. TESTIMONY BY CLOSED-CIRCUIT TELEVISION

(a) Requirements for Use. In any case the trial court may order the testimony of a victim or witness under the age of 16 to be taken outside the courtroom and shown by means of closed-circuit television if on motion and hearing in camera, the trial court determines that the

victim or witness would suffer at least moderate emotional or mental harm due to the presence of the defendant child if the witness is required to testify in open court.

(b) Persons Who May File Motion. The motion may be filed by:

- (1) the victim or witness or his or her attorney, parent, legal guardian, or guardian ad litem;
- (2) the trial judge on his or her own motion;
- (3) the prosecuting attorney; or
- (4) the defendant child or his or her counsel.

(c) Persons Who May Be Present During Testimony. Only the judge, prosecutor, witness or victim, attorney for the witness or victim, defendant child's attorney, operator of the equipment, an interpreter, and some other person who in the opinion of the court contributes to the well-being of the victim or witness and who will not be a witness in the case may be in the room during the recording of the testimony.

(d) Presence of Defendant Child. During the testimony of the victim or witness by closed-circuit television, the court may require the defendant child to view the testimony from the courtroom. In such case, the court shall permit the defendant child to observe and hear the testimony, but shall ensure that the victim or witness cannot hear or see the defendant child. The defendant child's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross examination, shall be protected and, on the defendant child's request, such communication shall be provided by any appropriate electronic method.

(e) Findings of Fact. The court shall make specific findings of fact on the record as to the basis for its ruling under this rule.

(f) Time for Motion. The motion referred to in subdivision (a) may be made at any time with reasonable notice to each party.

Committee Notes

1992 Adoption. Addition of this rule is mandated by section 92.55, Florida Statutes (1989).

RULE 8.105. WAIVER OF JURISDICTION

(a) On Demand. On demand for waiver of jurisdiction, the court shall enter a written order setting forth the demand, waiving jurisdiction, and certifying the case for trial as if the child were an adult. The demand shall be made in the form provided by law prior to the commencement of an adjudicatory hearing. A certified copy of the order shall be furnished to the clerk of the court having jurisdiction to try the child as an adult and to the prosecuting officer of the said child within 5 days of the demand being made. The court may order that the child be delivered to the sheriff of the county in which the court that is to try the child is located.

(b) Involuntary Waiver; Hearing.

(1) As provided by law, the state attorney may, or if required shall, file a motion requesting the court to waive its jurisdiction and certify the case to the appropriate court for trial as if the child were an adult.

(2) Following the filing of the motion of the state attorney, summons shall be issued and served in conformity with the provision of rule 8.040. A copy of the motion and a copy of the delinquency petition, if not already served, shall be attached to each summons.

(3) No plea to a petition shall be accepted by the court prior to the disposition of the motion to waive jurisdiction.

(4) After the filing of the report required by law, the court shall conduct a hearing on the motion to determine the existence of the criteria established by law for waiver of jurisdiction.

(5) After hearing as provided in this rule:

(A) The court may enter an order waiving jurisdiction and certifying the case for trial as if the child were an adult as provided by law. The order shall set forth the basis for waiver of jurisdiction and certification to the appropriate court, with copies provided to all parties and the department. A certified copy of the order shall be furnished to the clerk of the court having jurisdiction to try the child as an adult and to the prosecuting officer of the said court within 5 days of the date of the order. The child shall be delivered immediately to the sheriff of the county in which the court that is to try the child as an adult is located.

(B) The court may enter an order denying waiver of jurisdiction, and give reasons for this denial, as provided by law. If the waiver is denied, the same judge, with the consent of the child and the state, may proceed immediately with the adjudicatory hearing.

(c) Bail. If the child is delivered to the sheriff under subdivision (a) or (b) the court shall fix bail. A certified copy of the order shall be furnished to the sheriff.

RULE 8.110. ADJUDICATORY HEARINGS

(a) Appearances; Pleas. The child shall appear before the court at the times set and, unless a written plea has been filed, enter a plea of guilty, not guilty, or, with the consent of the court, nolo contendere.

(b) Preparation of Case. If the child pleads not guilty the court may proceed at once to an adjudicatory hearing, or may continue the case to allow sufficient time on the court calendar for a hearing or to give the state or the child a reasonable time for the preparation of the case.

(c) Trial by Court. The adjudicatory hearing shall be conducted by the court without a jury. At this hearing the court determines whether the allegations of the petition have been sustained.

(d) Testimony. The child may be sworn and testify in his or her own behalf. The child may be cross-examined as other witnesses. No child shall be compelled to give testimony against himself or herself, nor shall any prosecuting attorney be permitted to comment on the failure of the child to testify in his or her own behalf. A child offering no testimony in his or her own behalf except his or her own shall be entitled to the concluding argument.

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

(f) Dismissal. If the court finds that the allegations in the petition have not been sustained, it shall enter an order so finding and dismissing the case.

(g) Dispositional Alternatives. If the court finds that the evidence supports the allegations of the petition, it may enter an order of adjudication or withhold adjudication as provided by law. If the pre-disposition report required by law is available, the court may proceed immediately to disposition or continue the case for a disposition hearing. If the report is not available, the court will continue the case for a disposition hearing and refer it to the appropriate agency or agencies for a study and recommendation. If the case is continued the court may order the child detained.

(h) Degree of Offense. If in a petition there is alleged an offense which is divided into degrees, the court may find the child committed an offense of the degree alleged or of any lesser degree.

(i) Specifying Offense Committed. If in a petition more than one offense is alleged the court shall state in its order which offense or offenses it finds the child committed.

(j) Lesser Included Offenses. On a petition on which the child is to be tried for any offense, the court may find the child committed:

(1) an attempt to commit the offense, if the attempt is an offense and is supported by the evidence; or

(2) any offense that as a matter of law is a necessarily included offense or a lesser included offense of the offense charged in the petition and is supported by the evidence.

(k) Motion for Judgment of Dismissal. If at the close of the evidence for the petitioner, the court is of the opinion that the evidence is insufficient to establish a prima facie case of guilt against the child, it may, or on the motion of the state attorney or the child shall, enter an order dismissing the petition for insufficiency of the evidence.

RULE 8.115. DISPOSITION HEARING

(a) Information Available to Court. At the disposition hearing the court, after establishing compliance with the dispositional considerations, determinations, and discussions required by law, may receive any relevant and material evidence helpful in determining the proper disposition to be made. It shall include written reports required by law, and may include, but shall not be limited to, the child's need for substance abuse evaluation and/or treatment, and any psychiatric or psychological evaluations of the child that may be obtained and that are relevant and material. Such evidence may be received by the court and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing.

(b) Disclosure. The child, the child's attorney, the child's parent or custodian, and the state attorney shall be entitled to disclosure of all information in the predisposition report and all reports and evaluations used by the department in the preparation of the report.

(c) Disposition Order. The disposition order shall be prepared and distributed by the clerk of the court. Copies shall be provided to the child, defense attorney, state attorney, and department representative. Each case requires a separate disposition order. The order shall:

- (1) state the name and age of the child;
- (2) state the disposition of each count, specifying the charge title, degree of offense, and maximum penalty defined by statute;
- (3) state general and specific conditions or sanctions;
- (4) make all findings of fact required by law;
- (5) state the date and time when issued and the county and court where issued; and
- (6) be signed by the court with the title of office.

(d) Fingerprints. The child's fingerprints shall be affixed to the order of disposition.

Committee Notes

1991 Amendment. (c) Section 985.23(3)(e), Florida Statutes, requires the court to fingerprint any child who is adjudicated or has adjudication withheld for a felony. This rule extends this requirement to all dispositions. Sentencing guidelines include scorable points for misdemeanor offenses as well as for felonies. This procedure also should assist in identifying juveniles who use false names and birthdates, which can result in the arrest of an innocent child whose name was used by the offender.

RULE 8.120. POST-DISPOSITION HEARING

(a) Revocation of Juvenile Probation.

- (1) A child who has been placed on juvenile probation may be brought before the court upon allegations of violation(s).
- (2) Any proceeding alleging a violation shall be initiated by the filing of a sworn affidavit of the material facts supporting the allegation(s). The affidavit shall be executed by the child's juvenile probation officer or other person having actual knowledge of the facts. Copies of the affidavit shall be provided to the court, the state attorney, and the Department of Juvenile Justice.
- (3) When revocation proceedings are sought by the state attorney or the Department of Juvenile Justice, the proceedings shall be initiated by the filing of a petition alleging violation of juvenile probation. The petition shall incorporate and reference the affidavit described in subdivision (a)(2). All such petitions must be signed and filed by legal counsel.
- (4) The court may initiate revocation proceedings by the entry of an order initiating revocation proceedings. The order must incorporate and reference the affidavit described in subdivision (a)(2).
- (5) All interested persons, including the child, shall have an opportunity to be heard. After such hearing, the court shall enter an order revoking, modifying, terminating, or continuing

juvenile probation. Upon the revocation of juvenile probation, the court shall, when the child has been placed on juvenile probation and adjudication has been withheld, adjudicate the child delinquent. In all cases after a revocation of juvenile probation, the court shall enter a new disposition order.

(b) Retention of Authority over Discharge. When the court has retained authority over discharge of a delinquent child from placement or commitment as provided by law, prior to any discharge from placement or commitment, the Department of Juvenile Justice shall notify the court, the state attorney, the victim of the offense or offenses for which the child was placed under supervision of the department, and the child of its intention to discharge the child. Thereafter, any interested party may request a hearing, within the time prescribed by law, to address the discharge.

G. RELIEF FROM ORDERS AND JUDGMENTS

RULE 8.130. MOTION FOR REHEARING

(a) Basis. After the court has entered an order ruling on a pretrial motion, an order of adjudication, or an order withholding adjudication, any party may move for rehearing upon one or more of the following grounds:

- (1) That the court erred in the decision of any matter of law arising during the hearing.
- (2) That a party did not receive a fair and impartial hearing.
- (3) That any party required to be present at the hearing was not present.
- (4) 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.
- (5) That the court is without jurisdiction of the proceeding.
- (6) That the judgment is contrary to the law and evidence.

(b) Time and Method.

- (1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order being challenged.
- (2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.
- (3) A motion for rehearing shall not toll the time for the taking of an appeal.

(c) Court Action.

(1) If the motion for rehearing is granted the court may vacate or modify the order or any part thereof and allow additional proceedings as it deems just. It may enter a new judgment, and may order or continue the child in detention pending further proceedings.

(2) The court on its own initiative may vacate or modify any order within the time limitation provided in subdivision (b).

RULE 8.135. CORRECTION OF DISPOSITION OR COMMITMENT ORDERS

(a) Correction. A court at any time may correct an illegal disposition or commitment order imposed by it. However, a party may not file a motion to correct under this subdivision during the time allowed for the filing of a motion under subdivision (b)(1) or during the pendency of a direct appeal.

(b) Motion to Correct Disposition or Commitment Error. A motion to correct any disposition or commitment order error, including an illegal disposition or commitment, may be filed as allowed by this subdivision. The motion must identify the error with specificity and provide a proposed correction. A response to the motion may be filed within 15 days either admitting or contesting the alleged error. Motions may be filed by the state under this subdivision only if the correction of the error would benefit the child or to correct a scrivener's error.

(1) Motion Before Appeal. During the time allowed for the filing of a notice of appeal, a child, the state, or the department may file a motion to correct a disposition or commitment order error.

(A) This motion stays rendition under Florida Rule of Appellate Procedure 9.020(h).

(B) Unless the trial court determines that the motion can be resolved as a matter of law without a hearing, it shall hold an initial hearing no later than 10 days from the filing of the motion, with notice to all parties, for the express purpose of either ruling on the motion or determining the need for an evidentiary hearing. If an evidentiary hearing is needed, it shall be set no more than 10 days from the date of the initial hearing. Within 30 days from the filing of the motion, the trial court shall file an order ruling on the motion. If no order is filed within 30 days, the motion shall be deemed denied.

(2) Motion Pending Appeal. If an appeal is pending, a child or the state may file in the trial court a motion to correct a disposition or commitment order error. The motion may be filed by appellate counsel and must be served before the party's first brief is served. A notice of pending motion to correct disposition or commitment error shall be filed in the appellate court, which notice shall automatically extend the time for the filing of the brief, until 10 days after the clerk of the circuit court transmits the supplemental record under Florida Rule of Appellate Procedure 9.140(f)(6).

(A) The motion shall be served on the trial court and on all trial and appellate counsel of record. Unless the motion expressly states that appellate counsel will represent the movant in the trial court, trial counsel will represent the movant on the motion under Florida Rule of Appellate Procedure 9.140(d). If the state is the movant, trial counsel will represent the child unless appellate counsel for the child notifies trial counsel and the trial court that appellate counsel will represent the child on the state's motion.

(B) The trial court shall resolve this motion in accordance with subdivision (b)(1)(B) of this rule.

(C) Under Florida Rule of Appellate Procedure 9.140(f)(6), the clerk of the circuit court shall supplement the appellate record with the motion, the order, any amended disposition, and, if designated, a transcript of any additional portion of the proceedings.

RULE 8.140. EXTRAORDINARY RELIEF

(a) Basis. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from an order, judgment, or proceeding for the following reasons:

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

(b) Time. The motion shall be made within a reasonable time and, for reasons (1), (2), and (3), not more than 1 year after the judgment, order, or proceeding was taken.

RULE 8.145. SUPERSEDEAS ON APPEAL

(a) Granting of Supersedeas. The court in considering the welfare and best interest of the child and the interest of the public may grant a supersedeas in its discretion on such conditions as it may determine are appropriate.

(b) Preeminence of Rule. This rule shall be to the exclusion of any other court rule providing for supersedeas on appeal.

H. CONTEMPT

RULE 8.150. CONTEMPT

(a) Direct Contempt. A contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication of guilt is based. Prior to the adjudication of guilt the court shall inform the person accused of the accusation and inquire as to whether there is any cause to show why he

or she should not be adjudged guilty of contempt by the court and sentenced therefor. The accused shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the court and entered of record. Sentence shall be pronounced in open court.

(b) Indirect Contempt. An indirect contempt may be prosecuted in the following manner:

(1) Order to Show Cause. The court on its own motion or upon affidavit of any person having knowledge of the facts, may issue and sign an order directed to the one accused of contempt, stating the essential facts constituting the contempt charged and requiring the accused to appear before the court to show cause why he or she should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for the preparation of a defense after service of the order on the one accused. It shall be served in the same manner as a summons. Nothing herein shall be construed to prevent the one accused of contempt from waiving the service of process.

(2) Motions; Answer. The accused, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer such order by way of explanation or defense. All motions and the answers shall be in writing unless specified otherwise by the court. The accused's omission to file a motion or answer shall not be deemed an admission of guilt of the contempt charged.

(3) Order of Arrest; Bail. The court may issue an order of arrest of the one accused of contempt if the court has reason to believe the accused will not appear in response to the order to show cause. The accused shall be admitted to bail in the manner provided by law in criminal cases.

(4) Arraignment; Hearing. The accused may be arraigned at the hearing, or prior thereto upon request. A hearing to determine the guilt or innocence of the accused shall follow a plea of not guilty. The court may conduct a hearing without assistance of counsel or may be assisted by the state attorney or by an attorney appointed for that purpose. The accused is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his or her own defense. All issues of law and fact shall be determined by the court.

(5) Disqualification of the Judge. If the contempt charged involves disrespect to or criticism of a judge, the judge shall be disqualified by the chief judge of the circuit.

(6) Verdict; Judgment. At the conclusion of the hearing the court shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the accused has been found and adjudicated guilty.

(7) Sentence. Prior to the pronouncement of sentence the court shall inform the accused of the accusation and judgment against him or her and inquire as to whether there is any cause to show why sentence should not be pronounced. The accused shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the one found guilty of contempt.

I. GENERAL PROVISIONS

RULE 8.160. TRANSFER OF CASES

The court may transfer any case, after adjudication or when adjudication is withheld, to the circuit court for the county of the circuit in which is located the domicile or usual residence of the child or such other circuit court as the court may determine to be for the best interest of the child. No case shall be transferred to another county under this rule unless a plea of nolo contendere or guilty has been entered by the child on the charge being transferred, or until the transferring court has found the child committed the offense in question after an adjudicatory hearing in the county where the offense occurred. Any action challenging the entry of a plea or the adjudicatory hearing result must be brought in the transferring court's county. The transferring court shall enter an order transferring its jurisdiction and certifying the case to the proper court. The transferring court shall furnish the following to the state attorney, the public defender, if counsel was previously appointed, and the clerk of the receiving court within 5 days:

(a) A certified copy of the order of transfer, which shall include, but not be limited to:

- (1) specific offense that the child was found to have committed;
- (2) degree of the offense;
- (3) name of parent/custodian to be summoned;
- (4) address at which the child should be summoned for disposition;
- (5) name and address of victim;
- (6) whether the child was represented by counsel; and
- (7) findings of fact, after hearing or stipulation, regarding the amount of damages or loss caused directly or indirectly by the child's offense, for purposes of restitution.

(b) A certified copy of the delinquency petition.

(c) A copy of the juvenile referral or complaint.

(d) Any reports and all previous orders including orders appointing counsel entered by the court in the interest of that child.

Committee Notes

1991 Amendment. This rule requires the transferring court to provide sufficient information to the receiving court when transferring the case to another jurisdiction to comply with the requirements of chapter 39, Florida Statutes.

1992 Amendment. The purpose of this amendment is to require the court hearing the substantive charge to determine the value of the victim's damage or loss caused by the child's offense. The victim and witnesses necessary to testify as to damage and loss are more often residents of the transferring court's county, rather than the receiving court's.

RULE 8.165. PROVIDING COUNSEL TO PARTIES

(a) Duty of the Court. The court shall advise the child of the child's right to counsel. The court shall appoint counsel as provided by law unless waived by the child at each stage of the proceeding. 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.

(b) Waiver of Counsel.

(1) The failure of a child to request appointment of counsel at a particular stage in the proceedings or the child's announced intention to plead guilty shall not, in itself, constitute a waiver of counsel at any subsequent stage of the proceedings.

(2) A child shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the child's comprehension of that offer and the capacity to make that choice intelligently and understandingly has been made.

(3) If the child is entering a plea to or being tried on an allegation of committing a delinquent act, the written waiver shall also be submitted to the court in the presence of a parent, legal custodian, responsible adult relative, or attorney assigned by the court to assist the child, who shall verify on the written waiver that the child's decision to waive counsel has been discussed with the child and appears to be knowing and voluntary.

(4) No waiver shall be accepted if it appears that the party is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(5) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the party appears without counsel.

RULE 8.170. GUARDIAN AD LITEM

At any stage of the proceedings, the court may appoint a guardian ad litem for the child. A guardian ad litem shall not be required to post bond but shall file an acceptance of the office.

RULE 8.180. COMPUTATION AND ENLARGEMENT OF TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, except rules 8.013 and 8.010, by order of court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be counted, unless it is Saturday, Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a

Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) Enlargement of Time. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown may, at any time, in its discretion:

(1) with or without notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made and notice after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. But it may not, except as provided by law or elsewhere in these rules, extend the time for making a motion for a new trial, a motion for rehearing, judgment of acquittal, vacation of judgment, or for taking an appeal. This rule shall not be construed to apply to detention hearings.

RULE 8.185. COMMUNITY ARBITRATION

(a) Referral. A case may be referred to community arbitration as provided by law. The chief judge of each judicial circuit shall maintain a list of qualified persons who have agreed to serve as community arbitrators for the purpose of carrying out the provisions of chapter 985, Florida Statutes.

(b) Arbitrator Qualifications. Each community arbitrator or member of a community arbitration panel shall be selected pursuant to law and shall meet the following minimum qualification and training requirements:

(1) Be at least 18 years of age.

(2) Be a person of the temperament necessary to deal properly with cases involving children and with the family crises likely to be presented.

(3) Pass a law enforcement records check and a Department of Children and Family Services abuse registry background check, as determined by the written guidelines developed by the chief judge of the circuit, the senior circuit court judge assigned to juvenile cases in the circuit, and the state attorney.

(4) Observe a minimum of 3 community arbitration hearings conducted by an approved arbitrator in a juvenile case.

(5) Conduct at least 1 juvenile community arbitration hearing under the personal observation of an approved community arbitrator.

(6) Successfully complete a training program consisting of not less than 8 hours of instruction including, but not limited to, instruction in:

(A) conflict resolution;

(B) juvenile delinquency law;

(C) child psychology; and

(D) availability of community resources.

The chief judge of the circuit, the senior circuit judge assigned to juvenile cases in the circuit, and the state attorney shall develop specific written guidelines for the training program and may specify additional qualifications as necessary.

Committee Notes

1992 Adoption. This rule provides qualification and training requirements for arbitrators as required by section 985.304(3), Florida Statutes. It was the committee's intention to set minimal qualifications and to allow local programs to determine additional requirements.