



# Juvenile Justice Center News

VOLUME 1, ISSUE 4

Juvenile Justice Center



## Florida Juvenile Case Law Update September 15th, 2008

### CONTEMPT OF COURT/DETENTION

[M.P. v State](#) 2008 WL 3978209, Fla App 5 Dist., August 29, 2008

The child violated several provisions of the same probation order and the judge ordered consecutive sentences. Reversed. This violates Section 985.037(2). Only one five day detention is allowed for one contempt sanction for any and all violations of a single court order. Strong dissent by Judge Sawaya.

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### HEARSAY

[N.S. v. State](#), 33 FLW D 1931, Fla App 3 Dist., August 6, 2008

The state did not lay a proper predicate for a record exception under the hearsay rule. The state is required to have testimony that the statement was generated by a person with knowledge, that the information contained in the statement was kept in the course of the bank's regular business activity and that it was the regular practice of the bank to prepare such statements. The error was harmless though in light of overwhelming evidence against the juvenile. Affirmed.

### ILLEGAL SEIZURE

[C.E.L. v. State](#) 2008 WL 4092820, Fla. App. 2 Dist, September 5, 2008 Child who lived in a "high crime area" ran when he saw police officers wearing vests with "sheriff" written on them. The officers ordered the child to stop but he kept running. They arrested him and he had an outstanding warrant. He was adjudicated guilty of obstructing a police officer without violence. The child appealed stating the motion for dismissal should have been granted because the state failed to prove the flight obstructed the officers in their legal duties and the flight can not be both the basis for detention and the obstruction itself. The fleeing was not a crime but the refusal to stop once an order to stop was made was a crime under 843.02. Strong concurring opinion by Judge Altenbernd who says this is a discriminatory decision that targets the poor and minorities who live in "high crime neighborhoods".

#### JUVENILE JUSTICE CENTER

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ORLANDO, FL 32826

321-235-8402

New Hope for Youth Advocacy

[C.H.C v. State](#), 33FLW D1907, Fla. App. 2 Dist., August 1, 2008

Conviction for resisting an officer without violence was overturned because there was no proof that the police officer was engaged in the lawful execution of a legal duty. The State had to prove that the deputy would have been justified in detaining the child based on a founded suspicion that the child was engaged in criminal activity. The child was standing around cursing and ran from the police officer. Reversed and remanded for judgment of dismissal.

[J.C. v. State](#), 33FLW D 1983, Fla. App. 3<sup>rd</sup>, August 13, 2008)

When a policeman in a public area observes two people are using the same restroom stall and not using it for its intended purpose, the police officer may take further reasonable steps to investigate. Affirmed.

## RECANTATION DEFENSE

[M.G. v. State](#) 2008 WL 3913970, Fla. App 1 Dist., August 27, 2008

Recanting of giving false name and information to police is a valid defense but once arrested, recantation is not a good defense. Also, police officer said he was 9 out of 10 percent sure that the juvenile in court was the same person he arrested. The identification in court was ok.

Affirmed conviction.

## SEX OFFENSES

[M.S. v. State](#) 33 FLW D 1879, Fla App 4 Dist. July 30,2008

The child was originally charged with making a false fire alarm and was placed on probation. The state filed a violation of probation based on a lewd and lascivious charge and a battery charge. DJJ filed a disposition report and recommended DNA testing and a residential environment for juvenile sex offenders. The trial court said it was departing from the guidelines and committed him to a high risk residential program and ordered a sex offender program and DNA testing. The court did not give an explanation as to why the commitment level recommended by DJJ was inadequate. Reversed the commitment to a high risk residential program. The trial court also erred in imposing a sex offender program since the underlying offense was not sexual. The DNA testing was also improper because he was adjudicated of the underlying charge of making a false fire alarm. Affirmed the revocation of probation but error in disposition order and reversed.

## TRIAL PROCEDURE (SANDWICH AT CLOSING)

[B.S. v. State](#) 33 FLW D 1800, Fla App 3Dist., July 16, 2008

Trial court failed to allow the juvenile opening and final arguments as required by Florida Rule of Juvenile Procedure 8.110(d). Remanded for further proceedings.

[J.C. v. State](#) 33FLW D 1983, Fla, App 3Dist., August 13, 2008

Trial court failed to allow the juvenile the opening and final arguments. The error is procedural rather than substantive if the original judge is available. Reversed and remanded.

*Recanting  
false name  
is a valid  
defense  
until  
arrested*

## AMENDED JUVENILE RULE OF PROCEDURE

### RULE 8.100. GENERAL PROVISIONS FOR HEARINGS

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

(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 provided only upon request of a party or a party's attorney or on a court order of the court.

### BAR TAKES STAND AGAINST PRESUMPTIVE SHACKLING

*"IT IS A SHOCKING SIGHT TO SEE 20 OR 30 CHILDREN SHACKLED"*

THE BAR BOARD OF GOVERNORS HAVE ENDORCED A PROCEDURAL RULE PROHIBITING THE PRESUMPTIVE SHACKLING OF CHILDREN IN DELINQUENCY APPEARANCES.

FLORIDA BAR NEWS 8-15-08

Review

online

"Inside the

Teenage

Brain" with

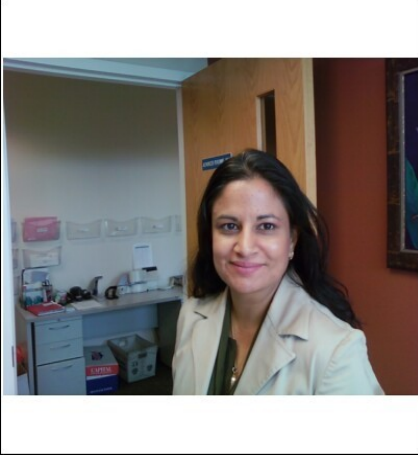
PBS

### DOCUMENTARIES

"Inside the Teenage Brain"; PBS: This is a 60 minute documentary that you can listen to online or buy. Scientists give new explanations for why adolescents behave the way they do. It can help teachers, judges and lawyers as well as parents understand teenagers better.

**"Interviewing the Child Client: Approaches and Techniques for a Successful Interview"**; American Bar Association  
This is a 38 minute DVD that gives practical advice and demonstrates techniques that can help lawyers represent their child clients. Email: [sporche@mail.barry.edu](mailto:sporche@mail.barry.edu) for a copy.

## Success Story!!



**“She never  
tested  
positive  
again”**

This is a drug court case where the client was unsuccessful, and got sentenced to probation. While on probation, she failed to attend any substance abuse counseling and tested positive for cannabis. She was sentenced on a VOP to a moderate risk program. The client was very frustrated at sentencing, starting throwing a tantrum like a two year old as she was being sentenced and as she walked out of court. The bailiff had to go after her as she was pounding on the walls as she was leaving the courtroom.

I called the child a week later and talked to her. I guided her through what she needed to do, what she should have done while she was on probation, and ended up talking to her about taking responsibility for her actions. Every week we communicated. She signed up for family counseling and substance abuse treatment. I was able to set the case for weekly reviews with the judge. Right before the first judicial review, her bed became available. The judge told her that he didn't think she could follow through after failing so many times before. He asked for the bed to be held for two weeks for the child to stay clean.

She never tested positive again. The commitment was suspended and he kept her on probation with weekly reviews. She eventually completed all her counseling, got a job, obtained her high school diploma, and started taking college classes. Eventually, after a few months, her probation was terminated. She is still doing well. Sometimes the role of a juvenile public defender extends beyond legal defense, but providing guidance and support for the client.

Submitted by:

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19th Circuit Assistant Public Defender

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# Great Job Miami-Dade Public Defender Office!

In a huge victory with national implications for public defender offices, Circuit Judge Stanford Blake ruled that the Miami-Dade Public Defender's Office, based on evidence he considered in a two-day proceeding at which the court took testimony from, *inter alia*, both the outgoing and incoming Public Defenders, the evidence shows 1) that the number of active cases is so high that the assistant public defenders are, at best, providing minimally competent representation to the accused and 2) that the office is in need of relief sufficient to ensure that the assistant public defenders are able to comply with the Florida Rules of Professional Conduct and carry out their constitutional duties. Accordingly, the court ruled that the Office can decline to accept appointments to third-degree felony cases – numbering between 1,000 and 1,500 cases a month -- until the court determines that the Office is able to resume its constitutional duties with respect to all its cases.

**Here is an article about how these types of lawsuits are being filed all over the country:**

## **Facing Budget 'Crisis,' Public Defenders May Refuse Cases**

Constitutional Dilemma: 'Severe' Budget Cuts Could Force Public Defenders to Turn Away Thousands of Poor Defendants

<http://abcnews.go.com/TheLaw/Story?id=5049461&page=1>

**Here is a link to the Miami-Dade PD's excessive workload litigation:**

[http://www.pdmiami.com/ExcessiveWorkload/Excessive\\_Workload\\_Pleadings.htm](http://www.pdmiami.com/ExcessiveWorkload/Excessive_Workload_Pleadings.htm)



**Public  
Defenders  
Deserve a  
Reasonable  
Caseloads!!**



# TEN CORE PRINCIPALS OF JUVENILE DEFENSE

## NATIONAL JUVENILE DEFENDER CENTER

**1. The Public Defense Delivery System Upholds Juveniles’ Constitutional Rights Throughout the Delinquency Process and Recognizes The Need For Competent and Diligent Representation.**

**2. The Public Defense Delivery System Recognizes that Legal Representation of Children is a Specialized Area of the Law**

**3. The Public Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and Resource Parity.**

**4. The Public Defense Delivery System Uses Expert and Ancillary Services to Provide Quality Juvenile Defense Services.**

**5. The Public Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads.**

**6. The Public Defense Delivery System Supervises and Systematically Reviews Juvenile Staff According to National, State and/or Local Performance Guidelines or Standards.**

**7. The Public Defense Delivery System Provides and Requires Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children.**

**8. The Public Defense Delivery System Has an Obligation to Present Independent Treatment and Disposition Alternatives to the Court.**

**9. The Public Defense Delivery System Advocates for the Educational Needs of Clients.**

**10. The Public Defense Delivery System Promotes Fairness and Equity For Children.**



- The NJDC recommends a maximum of 250 cases a year for juvenile defenders
- Public Defenders have an obligation to advocate for educational needs of children



## 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*. The new rule is effective as of July 1, 2008.



### HOW TO IMPLEMENT FLORIDA RULE OF JUVENILE PROCEDURE 8.165(A)

Ask if the child wants an attorney to represent him or her.

- If so, have the parent fill out the affidavit of indigence.
- Send the child into the courtroom and have a partnering lawyer enter a not guilty plea, waive reading of the charges and request a pretrial date.

If not,

- Explain to parent that you need to speak with the child alone and the reasons why.... (including attorney-client, protecting them from being forced to testify against their own child).
- Sit down to talk to the child in a private area.
- Ask the child why an attorney is being declined.
- Answer their concerns.
- Ask if they want an attorney now.
- If so, send them into the courtroom.

If not,

- Explain your role, prosecutor role and judge's role.
- Explain attorney-client privilege.
- Read them the charging affidavit.
- Tell them what are the possible outcomes of the charge including maximum/ minimum penalties and collateral consequences.
- Explain the benefits of having a lawyer.
- Ask the child if he or she wants an attorney.
- If so, send the child into the courtroom.

If not,

- Talk to the child about why they do not want an attorney.
- Talk to the parent to see if there are mental health or educational problems.
- If the child still does not want a criminal defense attorney, see if an AAL or GAL can be appointed for the child.

**Give the child  
a collateral  
consequences  
list so they  
know all possi-  
ble future**

# What is New on JJC Website

## [Juvenile Defender Tools:](#)

### Adolescent Development:

- Handout from Marty Beyer, PhD
- What's Behind Behavior; Marty Beyer, PhD
- Meeting Girls Needs

## [Download and Listen to Seminars](#)

## **GOOD NEWS!!! MACARTHUR FOUNDATION GRANT**

We are pleased to announce that the Juvenile Justice Center in collaboration with the Miami-Dade Public Defender's Office were selected by the NJDC and the MacArthur Foundation to receive a grant of \$100,000. Florida has been selected as a new Model for Change state in conjunction with New Jersey, Massachusetts and California. We will be joining Illinois, Pennsylvania, Washington and Massachusetts to form an action network.

The Florida team for the Juvenile Indigent Defense Action Network is Carlos Martinez, Elected Public Defender of Miami-Dade, Honorable Irene Sullivan, Circuit Judge, Clearwater, Ted Tollett, The Justice Research Project, Tallahassee, Rob Mason, Assistant Public Defender, Jacksonville, Angela Vigil, Pro Bono Coordinator for Baker and McKenzie, Miami, Gerry Glynn, Associate Professor, Barry Law School, Maria Schneider, Assistant State Attorney, Broward County and Gordon Weekes, Assistant Public Defender, Broward County. They will be meeting on October 2<sup>nd</sup> and 3<sup>rd</sup> to collaborate with other national experts about improving the defense of juveniles nationwide.

**“Florida  
picked as a  
new Model  
for Change  
State by  
MacArthur  
Foundation”**

## Other Useful Websites:

[DEPARTMENT OF JUVENILE JUSTICE](#)

[FLORIDA SUPREME COURT](#)

[FLORIDA PUBLIC DEFENDER'S ASSOCIATION](#)

# Upcoming Lunch N Learns 12:30 p.m.

- 9/26/08      Disposition Advocacy  
Marie Osborne, Asst. Public Defender, Miami
- 10/31/08    Connecting with Your Client and Child Witnesses  
Angela Vigil, Esq.
- 11/18/08    Representing Girls: The Physical & Emotional Differences  
Marty Beyer, PhD

## Zealous Advocacy For Kids Seminar

- |                           |                        |
|---------------------------|------------------------|
| Search & Seizure          | Train the Trainers     |
| Motions to Suppress       | Best Practices         |
| How to Introduce Evidence | Constructive Cross     |
| Detention Advocacy        | Ethics                 |
| Collateral Consequences   | Laying the Record      |
| Stress Reduction          | Interviewing/ Deposing |
| Sex Offenses              | Children               |
| Disposition Advocacy      |                        |

Mark your calendar for Dec. 5th and Dec. 6th for Zealous Advocacy Seminar

**Embassy Suites Hotel , Altamonte Springs, Florida**  
**Friday all day 12/5/08; Until noon Saturday 12/6/08**

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