



Juvenile Justice Center News

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Juvenile Justice Center

Florida Juvenile Case Law Update April 15, 2008



INSIDE THIS ISSUE

Detention [2](#)

Ineffective Assistance [2](#)

Motions to Suppress [3](#)

Substantive Issues [3](#)

Make an Impact [4](#)

Shackling [5](#)

Conduct Disorder [6](#)

JUVENILE JUSTICE CENTER

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BEHAVIOR ORDERS/PRE-TRIAL RELEASE ORDERS

[C.A.F. v. State](#), 2008 WL 611684 (5th DCA 2008): The Court stated that the trial court does not have statutory authority to impose a release order with pretrial conditions that the child must comply with while released.

[J.S. v. State](#), 2008 WL 611676 (5th DCA 2008): The Court upheld the issuance of the behavior order when the child scored secured detention and the trial court ordered a less restrictive placement by releasing the child from detention. The child is also entitled to credit for time served over a weekend.

[X.R. v. State](#), 2008 WL 611610 (5th DCA 2008): The Court upheld the finding of contempt because the child failed to appear for the order to show cause even though the show cause hearing was based on a violation of a behavior order.

CERTIFIED LEGAL INTERN

[C.B. v. State](#), 2008 WL 441636 (4th DCA 2008): The record must contain an executed written form by the child consenting to the representation by a certified legal intern.

CLOSING

[D.B. v. State](#), 2008 WL 942799 (3^d DCA 2008): The Court reversed because the child is entitled to the first and last closing when the child did not present any testimony on his behalf during the trial.

CONTEMPT

[K.Q.S. v. State](#), 2008 WL 244938 (1st DCA 2008): The Court affirmed the imposition of eighty days in secure detention stating that the trial court can stack detention for multiple instances of contempt. This holding is in contrast to [J.D. v. State](#), 954 So. 2d 93 (Fla. 5th 2007).

New Hope for Youth Advocacy

DETENTION

B.M. v. State, 2008 WL 724124 (1st DCA 2008): The Court granted the writ of habeas corpus because the child was illegally detained without a risk assessment instrument and the Court found the child to not be an absconder merely b/c she was away from home several days at a time. (This case is great for analysis on absconder status).

DISPOSITION

E.A.R. v. State, 2008 WL 583791 (4th DCA 2008): The Fourth District Court did not require the lower court to specifically identify “the characteristics of the restrictiveness level imposed vis-à-vis the needs of the juvenile” during disposition. The Court certified conflict with the Second District Court of Appeal in M.S. v. State, 927 So. 2d 1044 (2d DCA 2006).

DOUBLE JEOPARDY

L.O.J. v. State, 2008 WL 239059 (4th DCA Jan. 30th 2008): The adjudication was reversed with the disposition to be corrected because the Fourth District Court held that the child cannot be found delinquent of both the dealing in stolen property charge and the three counts of grand theft when the petition charges both of the crimes and they are related to “one scheme or course of conduct.”

“A juvenile...may not be placed into secure...detention due to a lack of more appropriate facilities.”

INCOMPETENCY TO STAND TRIAL

D.C.F. v B.N. and State, 2008 WL 942632, (4th DCA 2008): The Fourth granted the writ of certiorari and the writ of habeas releasing the child from the juvenile detention center. The trial court found the child incompetent and ordered the immediate placement of the child to Apalachicola Forest Youth Camp. As a result of no beds being available, the trial court ordered DCF to take immediate custody of the child. The court granted the habeas writ because the child cannot be detained for more than twenty one days for the offenses. The Fourth granted cert because the order of immediate placement constituted a violation of the separation of powers clause.

INEFFECTIVE ASSISTANCE OF COUNSEL

D.E.R. v. State, 2008 WL 199902 (2d DCA Jan. 2008): The Court held that the remedy to challenge the voluntariness of his plea is to file a motion to withdraw the plea and if that is not done the remedy is to file a petition for writ of habeas in the circuit court. The Court also stated the 3.850 motions are not applicable in juvenile cases.

MOTION TO SUPPRESS

[C.A. v. State](#), 2008 WL 583881 (3d DCA 2008): The Court held that it was error to deny the motion to suppress because the school did not have reasonable suspicion to search the student. The teacher did not smell the odor of marijuana around the child and she “simply associated” the child with the other student that possessed marijuana. The Court stated “suspicion by association or transference is not “reasonable suspicion.””

[R.B. v. State](#), 2008 WL 313699 (3d DCA 2008): The Court affirmed the denial of the motion to suppress stating that the officer did have reasonable suspicion to search the child based upon the fact the officer observed the child several weeks prior under the influence and on the day of the incident the child showed his cupped hand to another student and then withdrew it in a furtive manner.

RESTITUTION

[L.S. v. State](#), 2008 WL 313719 (4th DCA 2008): The Court reversed to the trial court because the trial court imposed a restitution amount without giving the child an opportunity to have a formal hearing.

SUBSTANTIVE CASE LAW

Possession of Alcohol by a Minor

[P.N. v. State](#), 2008 WL 50895 (3d DCA 2008): The Court reversed the adjudication because no evidence existed that the child admitted to the bottle containing alcohol nor did the officer testify that the contents had alcohol in the bottle.

Robbery

[N.H.M. v. State](#), 2008 WL 199899 (2d DCA January 2008): The Court reversed because the charge of battery is not necessarily a lesser of the charge of robbery and the petition must specifically allege the elements of battery or it is a denial of due process. The Court further stated that the use of force does not include an intentional touch or the infliction of bodily harm without consent.

“[S]uspicion by association or transference is not “reasonable suspicion.””

MAKE AN IMPACT

BY CARRIE LEE, J.D.



I met him in the detention center. Sixteen years old, tall, lanky and shy. He needed help and had no one. He lived with his 18 year old sister because both of his parents had thrown him out. No longer able to stay with her because the management of the apartment complex she lived in had trespassed him from the property.

He burglarized and stole to get money for his drug habit. He just needed someone to care for him and someone to listen to him. Everyday I saw kids that just needed to be treated with love and respect. Some would come to court and I would never see them again. Some were my regulars that I would try to help with all that I could but they could never see their way out.

Kyle* became one of my regulars. He just kept breaking into people's homes. I was able to get a lot of the charges or cases dropped but there would always be just one that he would have to plea to and get probation with counseling, etc. Finally the system could not take it anymore and Kyle was committed to a moderate risk program with a focus on drug treatment and vocational training. I hated myself for letting his cases get to that place allowing for commitment. He needed to be in foster care but he refused to allow me to make that call. Kyle wanted to go to the program. He wanted help.

I followed his progress while he was in the commitment program to make sure everything went smoothly for him. Then Kyle* was released and I lost track of him. I knew he was on post commitment probation but I just did not have the time to monitor his case.

Then one day unexpectedly, he hunted me down in the courthouse. Kyle* gave me a copy of his diploma. He said he had graduated and was living a crime free clean life. He had moved back in with his father and was at last happy.

The life of a juvenile defender can be depressing. You have no jury trials. Even before you begin, you are fighting a losing battle. But every now and then, you have a client that makes the job worthwhile.

A copy of his diploma still hangs in my office.

*The child was given this name to protect his anonymity.

Committee takes up the shackling of children in court

By Jan Pudlow

Senior Editor

Unchain the children.

Keep the shackles on kids charged with crimes to maintain order in the court.

Those clashing positions were hotly debated when the Juvenile Court Rules Committee met January 17 at The Florida Bar Midyear Meeting in Miami.

The vote was 12-11 (with one abstention) to approve the proposed Rule 8.100 General Provisions for Hearings that says “instruments of restraint, such as handcuffs, chains, irons, or straitjackets, may not be used on a child during a court proceeding and must be removed prior to the child’s appearance before the court.”

Shackling would be allowed only if the judge finds it is necessary to prevent physical harm to the child or others; the child has a history of disruptive courtroom behavior; there is “founded belief” the child is a flight risk; and there are no less restrictive alternatives, such as the presence of law enforcement officers. “It was a difficult and contentious issue,” said Chair Rob Mason, an assistant public defender in the Fourth Judicial Circuit. “It’s an emotional issue, and most members of the committee have very strong views.”

It’s an issue close to the heart of Carlos Martinez, chief assistant public defender of Miami-Dade’s 11th Circuit, who said shackling first shocked his conscience when he was visiting a Tallahassee courtroom and watched an 11-year-old girl, only 3-foot-7-inches tall, led to juvenile court wearing a belly chain connected to both handcuffs and leg irons — usually reserved for adults who are flight risks or charged with first-degree murder. He later learned it is a statewide practice in Florida to shackle children detained by the Department of Juvenile Justice when they are transported to court, and the chains often remain as they stand before judges across the state, regardless of the child’s age, height, weight, gender, offense, risk of flight, or threat to public safety. Since then, on a case-by-case basis, Martinez’ office challenged the use of indiscriminate shackling of juveniles in the 11th Circuit. In September 2006, he brought the issue to the Bar’s Legal Needs of Children Committee, saying, “These children are presumed innocent, yet the message we are sending is they are dangerous animals, herded in chains.”

Read the rest of the article: [Florida Bar News 3-1-08](#).



LITTLE SOCIOPATH OR ADOLESCENT CONDUCT DISORDER?

BY: POLLY MCINTYRE, JD, MA

What are the symptoms? They bully, threaten and intimidate others and often initiate fights. They use weapons and are cruel to people and animals. They may force someone else into sexual activity. They may set fires and destroy other people's property. They may break into other people's houses, lie and steal trivial items. They may stay out at night, run away and skip school before the age of 13. At least three or more of these symptoms must be exhibited in the previous year. One of those symptoms must last six months for the behavior to qualify as a conduct disorder. Many children with conduct disorders will also have depression, post traumatic stress disorder, ADHD or oppositional defiant disorder. Seventy percent of them have a learning disability.

What are the causes? There are many hypothesized causes of conduct disorders such as: being male, poor parenting of the child, and having a family member with antisocial personality disorder. Factors such as low socioeconomic status, learning disabilities and low IQ all contribute. Pinpointing a cause for a conduct disorder is difficult. It usually takes a constellation of factors converging for the disorder to manifest itself.

How do we know who is more likely to develop an antisocial personality disorder or become a sociopath in adulthood? Typically, the younger the symptoms start, especially before the age of 10, the more likely it is going to be an adult antisocial personality disorder. Likewise, the lower the cognitive ability and the more aggressive the child at a young age the more likely it is a long term disorder. The more disconnection from the family and the greater impulsivity also suggest that it is not just an adolescent phase, but an early onset disorder with long standing consequences. On the other hand, boys in the adolescent phase of a conduct disorder and most girls are likely to have peer group pressure as a precipitating factor. Only one third of male children with a conduct disorder will grow up to have an antisocial personality disorder and engage in criminal activity. Only 1% of girls will. According to the DSMIV-TR, an antisocial personality label or "sociopath" can not be applied to a child under the age of 18.

How does that help us? The adolescent phase boys and girls are more likely to respond to interventions such as family therapy, assisting with learning disabilities and depression, substance abuse treatment, anger management classes or separation from antisocial peers. With the early onset conduct disorders, we need to intervene as early as possible. We need to ask for school psycho educational evaluations for every child in the delinquent system. If the family is abusive, we need to call in an abuse report (with the child's permission) and have the child placed in a better environment. If the child's parents are capable of parenting, we need to give them the tools with such programs as Family Functional Therapy of MDT therapy. We need to have psychiatrists evaluate these children for depression and ADHD and get the least harmful amount of medication for them. We need to spend the money on evidence based programs rather than warehousing children until they are 19. We need to provide hope.

Call us at 321-235-8409 to help you find an expert that understands developmental behavior of adolescents. Join our listserv to get opinions from over 100 lawyers in Florida.



- Most boys and almost all girls will grow out of a conduct disorder
- The sooner the treatment, the better the outcome
- Use evidence based treatment for the family such as Functional Family Therapy and MDT therapy.
- Get a psycho educational evaluation and assist with any underlying learning disorder.

**“New Hope
for Youth
Advocacy”**

Save the Date!
Friday, June 13, 2008 Inn at Cocoa Beach

**Adolescent Development
and Special Education Law**

Speakers:

Joseph B. Tulman, Esq.
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Call **(321) 799-3460** and state you are with **Barry University** for the \$125 rate per night. Scholarships pending. Free training.



Staff Attorney, Carrie Lee

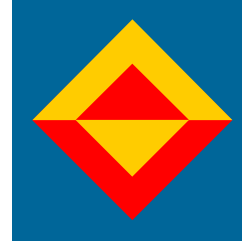
Call her at 321-235-8403.
Email: clee@mail.barry.edu

Carrie Lee

Our New Services

Our Website is almost finished and the link will be emailed to you.

Use our listserv by posting questions to over 100 lawyers in Florida.



We have a disposition manual with links to all types of services for children in Florida. Email for a copy.

Call us with questions about expert psychiatric and psychological witnesses and evaluators. We are developing a database for you.

Lunch-N-Learn: We will be offering one hour CLE classes at noon for FREE. If you are on our listserv, we will email you the conference call phone number and pin number. Mark your calendars for the upcoming dates!

FREE CLE
Classes by
conference
call and in
person!

Date	Title	
3/28/08	Case Law Update: The last year in review	Download
4/25/08	Detention Advocacy	
5/30/08	Writs	
6/27/08	Jimmy Ryce/Adam Walsh	
7/25/08	Psychological Evals: What to ask for & how to understand what you have	
8/29/08	School Discipline	
9/26/08	Disposition Advocacy	
10/31/08	Connecting With Your Client and Child Witnesses	
11/21/08	Representing Girls: The physical and emotional differences	
12/21/08	Education issues: IEPs and how they can help you	

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