

IN THE SUPREME COURT OF FLORIDA

**IN RE: REPORT OF THE
TASK FORCE ON
TREATMENT-BASED
DRUG COURTS**

CASE NO: SC06-434

**AMENDED PETITION OF THE TASK FORCE ON
TREATMENT-BASED DRUG COURTS
TO ADOPT RECOMMENDATIONS**

The Task Force on Treatment-Based Drug Courts (“Task Force”), by and through its chair, Circuit Judge Terry D. Terrell, submits this Amended Petition in Response to the letter dated June 5, 2006 from Honorable Clerk of the Supreme Court. The initial Petition was filed pursuant to Administrative Order AOSC04-27 (hereinafter “Administrative Order”). The Task Force on Treatment-Based Drug Courts respectfully requests that this Court adopt the amendments to the Florida Rules of Court contained herein as well as recognize the importance and effectiveness of drug court by adopting the recommendations of the Task Force’s 2004 Report on Florida’s Drug Courts (hereinafter Task Force Report or Appendix A), the critical performance indicators and data elements¹ and Ten Key Components of drug court, the guidelines for juvenile delinquency and dependency drug

¹ The Task Force Report contains appendices entitled “Critical Performance Measures and Data Elements.” However, these phrases are terms of art with special meanings and are used in other, non-drug court, contexts. To avoid confusion of terms and meanings, they are referred to herein as critical performance indicators and data elements.

court, and provide a plan for the institutionalization of drug court in Florida's judicial system.

This Court has jurisdiction under Florida Rule of Judicial Administration 2.130(b). See also Art. V, § 2(a), Fla. Const. The voting record of the Task Force and the text of the proposed amendments in two-column and full-page formats is attached to this petition. The proposed amendments are:

Rule of Criminal Procedure 3.131, Pretrial Release: Subdivision (b)(3) enumerates factors that may be considered by the court in determining whether to release a defendant. The amendment adds the “need for substance abuse evaluation and/or treatment” to the criteria.

Rule of Criminal Procedure 3.170, Pleas: Subdivision (l) states that only the grounds set forth in Appellate Rule 9.140(b)(2)(A)(ii)(a)-(e) permit the filing of a motion to withdraw a plea set forth in the rule. The proposed amendment adds the phrase “except as provided by law”; thus incorporating the legislative changes discussed in the next paragraph. Additionally, by adding the phrase, the rule will correlate with the catchall provision “as otherwise provided by law” currently in Rule 9.140(b)(2)(A)(ii)(e).

Rule of Criminal Procedure 3.170, Pleas: New subdivision (m) is proposed which allows a defendant who pleads guilty or nolo contendere to a charge for the purpose of transferring the case to file a motion to withdraw the plea upon successful completion of the drug court treatment program. This rule implements legislative changes made by the Robert J. Koch Drug Court Intervention Act. See Ch. 2006-97, Laws of Fla. That law amended § 910.035(5)(e), Florida Statutes such that upon successful completion of the drug court program, the jurisdiction to which the case had been transferred shall dispose of the case under § 948.08(6), Florida Statutes. Id. Section 948.08, Florida Statutes (2005) provides, *inter alia*, that the court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program. Thus, by allowing a defendant who pleads guilty or nolo contendere to a charge for the purpose of transferring a case to file a motion to withdraw the plea upon successfully completing the treatment program, the proposed amendment conforms the Rule 3.170 to the legislative change. Moreover, the Robert J. Koch Drug Court Intervention Act took effect upon becoming law on June 7, 2006, so the amendment is necessary to keep the rule consistent with the statute.

Rule of Juvenile Procedure 8.010, Detention Hearing: Current subdivision (f)(3) is renumbered to (f)(4) by the proposed amendment which

contains a new subdivision (f)(3) requiring the court to consider the nature and circumstances of the offense charged, the child's need for substance abuse evaluation and/or treatment, and the child's mental condition. This change will require the court to consider factors crucial to the child's well-being but not currently set forth in the rule.

Rule of Juvenile Procedure 8.115, Disposition Hearing: Subdivision (a) currently mandates that at the disposition hearing, the court consider the psychiatric or psychological evaluations of the child that are relevant and material. The amendment would require the court also to consider the child's need for substance abuse evaluation and/or treatment. This change is consistent with the recommendation to amend Rule 8.010 above and is designed to ensure that a child's substance abuse needs are considered when the court holds the disposition hearing.

Rule of Juvenile Procedure 8.160, Transfer of Cases: The rule sets forth the procedure to be use in the transfer of cases. The proposal allows a child who pleads guilty or nolo contendere to a charge for the purpose of transferring a case to file a motion to withdraw the plea upon successful completion of the juvenile drug court treatment program. Similar to the aforementioned change to Rule 3.170, this proposal conforms the rule to the recent legislative alterations made by the Robert J. Koch Drug Court

Intervention Act. See Ch. 2006-97, Laws of Fla. By allowing a child who pleads guilty or nolo contendere to a charge for the purpose of transferring a case to file a motion to withdraw the plea upon successfully completing the treatment program, the amendment brings Rule 8.160 into line with the new law. Id.

Rule of Juvenile Procedure 8.250, Examinations, Evaluations, and Treatment: Subdivision (b) provides for physical or mental examinations of parents, legal custodians, or others requesting custody of a child. The amendment to this Rule provides for substance abuse evaluations or assessments to be performed. The amendment also allows the evaluation or assessment to occur after an adjudication of dependency or a finding of dependency when adjudication is withheld. As with the amendments to Rules 3.170 and 8.160, the amendment enacts the Robert J. Koch Drug Court Intervention Act. See Ch. 2006-97, § 3, Laws of Fla. The law amends § 39.407, Florida Statutes to permit substance abuse evaluations. Id. In addition, the law amends § 39.407(15), Florida Statutes to apply to a person who has custody of a child. Id. The law adds new § 39.407(16), Florida Statutes which provides that any time after the filing of a shelter petition or petition for dependency, the court may order the evaluation or assessment upon good cause shown. Id. Finally, the law adds new § 39.507(9), Florida

Statutes and amends current § 39.521(1)(b)1, Florida Statutes with similar provisions regarding adjudication and disposition stages. See Ch. 2006-97, §§ 4-5, Laws of Fla. This proposal therefore implements recent legislative changes to Chapter 39. This Court should be aware that this amendment is the product of and is currently under consideration before the Juvenile Rules Committee. Although the Task Force did not originate the proposal, it supports it as an important change to the rules.

Family Law Rule 12.010, Scope, Purpose, and Title: Subdivision (b) of this rule states the purpose of the rule. The proposed amendment strikes “speedy” and inserts “coordinated, comprehensive, timely, thorough” in its place. In addition, the final phrase is stricken and replaced with “resolution of the family’s disputes.” See In re: Report of the Family Court Steering Committee, 794 So. 2d 518, 519-520 (Fla. 2001)(“Family Courts IV”)(“In so doing, our goal continues to be the creation of a ‘fully integrated, comprehensive approach to handling all cases involving children and families,’ Family Courts II, 633 So. 2d at 17, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.”).

The term “drug court” may be misunderstood by some. The Florida Constitution prescribes the only permissible courts in Florida. “The judicial

power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other may be established by the state, any political subdivision or any municipality.” Art. V, § 1, Fla. Const. “Drug court is a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals; it employs effective drug-testing and graduated sanctions and incentives.” Task Force Report 1. The phrase drug court therefore refers not to a type of court or to a specialty court, but rather is a shorthand term used to describe the team approach to manage cases involving substance abuse more effectively by providing substance abuse treatment services coupled with court supervision. Drug court assists substance-addicted individuals with obtaining appropriate treatment services which ultimately result in their rejoining society as productive members, which in turn results in fewer repeat offenders. Adult defendants enter felony or misdemeanor drug court whereas juveniles in proceedings under Chapter 985 enter juvenile drug court, sometimes known as delinquency drug court. Cases involving child abuse, neglect, and abandonment under Chapter 39 encompass dependency drug court, also known as family dependency drug court.

With ninety-four (94) drug courts in operation and another twelve (12) planned, Florida continues to embrace drug court in the adult criminal, juvenile, and family dependency divisions in response to the overwhelming substance abuse problems that affect many of the individuals entering the court system. The importance of institutionalizing drug court within every judicial circuit and county throughout the state can not be overstated due to the effectiveness of drug court in reducing substance abuse, its concomitant criminal and delinquent behavior, and family dysfunction.

Since the inception of drug courts in 1989, Florida has been at the forefront. Indeed, drug court originated with Circuit Judge Herbert Klein in Miami who sought a better approach to drug cases than had traditionally been employed. *Id.* at 3. There are now drug courts in every one of Florida's judicial circuits as well as in every state in the nation. Drug court has received praise from all branches of government for its successes and has often been referred to as the "crown jewel" of Florida's Drug Control Strategy. *Id.* at 16. Reducing recidivism is an essential goal of criminal statutes. Drug courts are more adept at lowering recidivism for substance abusing offenders than traditional methods.

A recent national recidivism study on drug courts, conducted by the National Institute of Justice, revealed a 16.4% recidivism rate for graduates after one year compared to 43.5% of similar cases handled in a traditional method. The recidivism rate

increased to 27.5% after two years compared to 58.6% for offenders handled traditionally.

Id. at 10 (footnotes omitted). The Task Force extensively considered varying definitions of recidivism and retention to ensure reliable and uniform data reporting statewide and has adopted critical performance indicators and data elements for adult criminal, juvenile, and dependency drug courts in Florida. Thus, the Task Force recommends that all drug courts use these identified elements and indicators as currently defined and when modified as needed. (See Appendix B).

The Task Force on Treatment-Based Drug Courts was reconstituted by Administrative Order AOSC 04-27 on July 26, 2004. Since then, the Task Force has worked diligently on a number of issues regarding drug court, including refinement of the process, the development of minimum standards for juvenile and dependency drug courts, and best practices for adult and juvenile drug courts. The Task Force has been working for several years to enhance and institutionalize drug court through passage of legislation.

In 2001, the Legislature codified the Ten Key Components, expanded eligibility, mandated a drug court in each judicial circuit, provided a mechanism for transferring cases throughout the state, and established delinquency and misdemeanor diversion programs. Since that time, the

Task Force has recommended expansion of the pre-trial intervention drug court eligibility to non-violent third degree felonies. The Robert J. Koch Drug Court Intervention Act infuses drug court into Chapter 39, enhances the transfer statute, provides for a coordinator in each judicial circuit, authorizes the imposition of sanctions, and aligns the delinquency statute with the felony pre-trial statute. Ch. 2006-97, Laws of Fla.; *See also* S.B. 114, S.B. 444, 2006 Leg., Reg. Sess. (Fla. 2005); H.B. 177, 2005 Leg., Reg. Sess. (Fla. 2005); S.B. 184, 2005 Leg., Reg. Sess. (Fla. 2004); H.B. 281, S.B. 316, 2004 Leg., Reg. Sess. (Fla. 2003); H.B. 669, S.B. 2210, 2003 Leg., Reg. Sess. (Fla. 2003); H.B. 1403, S.B. 1662, 2002 Leg., Reg. Sess. (Fla. 2002). This year, the Legislature also considered, but did not pass, legislation to provide drug court funding through a county-option assessment to impose court costs on criminal dispositions. *See* H.B. 709, 2006 Leg., Reg. Sess. (Fla. 2006); S.B. 940, 2006 Leg., Reg. Sess. (Fla. 2005); H.B. 441, S.B. 1578, 2005 Leg., Reg. Sess. (Fla. 2005); H.B. 133, S.B. 140, 2004 Leg., Reg. Sess. (Fla. 2003); H.B. 1137, S.B. 1186 2003 Leg., Reg. Sess. (Fla. 2003). The Task Force remains committed to these and other unenacted reforms that not only further the cause of drug court but also improve Florida's judicial system.

The Task Force Report recommended formal recognition by the Court of the following points about drug court: 1) the importance of drug court in effective judicial processing of cases involving substance abusers, and identifying drug court as a core structure of justice system processing; 2) the need for continued education and training for drug court team members (judges, prosecutors, public defenders, law enforcement officers, treatment professionals, and corrections officers) and other justice system personnel about substance abuse, mental health, and the process known as drug court; 3) the importance of a statewide evaluation to capture data on recidivism, retention, and cost effectiveness of drug court; 4) the need to create a stable revenue stream for drug court case management; 5) a review process by appropriate rules committees to address issues arising from drug court and its transition into mainstream judicial processing; 6) the importance of local drug court advisory committees, drug court coordinators, and local administrative orders within each circuit to promote the sustainability, growth, and institutionalization of drug court; and 7) the need to insure staff support in a centralized location for the development of education and training, data collection, and coordination of services for the statewide drug court system. Task Force Report 19.

Although it is tempting simply to label any system involving the courts and substance abuse as a drug court, true drug courts adhere to the Ten Key Components. Also known as Florida's Drug Court Standards, they have been adopted from the United States Department of Justice and have been codified in statute by the Legislature as follows:

- (a) Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
- (b) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- (c) Eligible participants are identified early and promptly placed in the drug court program.
- (d) Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- (e) Abstinence is monitored by frequent testing for alcohol and other drugs.
- (f) A coordinated strategy governs drug court program responses to participants' compliance.
- (g) Ongoing judicial interaction with each drug court program participant is essential.
- (h) Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
- (i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.

(j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

§ 397.334(2)(a)-(j), Fla. Stat. (2004); *See* Task Force Report 8-9; *Cf.* Mullin v. Jenne, 890 So. 2d 543, 545 (Fla. 4th DCA 2005)(noting, *inter alia*, legislative enactment of Ten Key Components). The Ten Key Components are the *sine qua non* of any drug court program.

Many other programs named “drug courts” have sprung up across the country in the past several years in response to expanding court dockets, clogged with drug-related offenses. They may look similar, but they may not provide the orientation toward treatment and judicial supervision described in this document. Some programs focus on expediting case processing. Others try to intervene before trial but do not use judicial oversight, immediate treatment intervention, or alcohol and drug testing. Adherence to the key components and benchmarks detailed here distinguish treatment-based, multidiscipline, full-range drug courts from other programs.

Office of Drug Programs, U.S. Department of Justice, *Defining Drug Courts: The Key Components* iii-iv (1997).

The role of judicial oversight in drug court cases cannot be overstated. Without the ability of the court to sanction defendants who violate the terms of the drug court program on a timely basis and simultaneously reward compliance, the whole drug court program would be feckless and ineffective.

The coercive power of the court insures attendance at treatment and compliance with program requirements. The court’s

ultimate and inherent authority to incarcerate is normally used as a last resort when other sanctions fail. It is nevertheless an integral component necessary to the success of drug courts and their participants.

Mullin at 547. Other attempts at curbing substance abuse and related criminal behavior, such as mandatory treatment without sanctions and judicial oversight, or mandatory incarceration with no treatment, are misguided and ultimately unsuccessful.

After conscientiously considering and weighing existing standards developed at the national level, the Task Force finalized the enclosed guidelines for juvenile drug courts. The juvenile drug court guidelines have enhanced and elaborated upon the Ten Key Components. Modified from Office of Justice Programs, Bureau of Justice Assistance, Juvenile Drug Courts: Strategies in Practice (2003), they are as follows:

1. Collaborative Planning-Engage all stakeholders in creating an interdisciplinary, coordinated, comprehensive, and systemic approach to working with youth and their families.
2. Teamwork-Develop and maintain an interdisciplinary team focused on a unified approach to problem-solving.
3. Clearly Defined Target Population and Eligibility Criteria-Define the target population and eligibility criteria that are aligned with program goals and objectives.

4. Judicial Involvement and Supervision-Schedule frequent judicial reviews and be sensitive to the effect that court proceedings can have on youth and their families.
5. Monitoring and Evaluation-Establish a system for program monitoring and evaluation to ensure quality of service, assess program impact, and contribute to knowledge in the field.
6. Community Partnership-Build partnerships with a variety of community resources to expand the range of opportunities available to youth and their families.
7. Comprehensive Treatment Planning-Individualize interventions to meet the complex and varied needs of youth and their families.
8. Developmentally Appropriate Services-Formulate and monitor an individualized treatment plan to address the evolving developmental needs of the adolescent.
9. Gender-Appropriate Services-Design treatment to address the unique needs of each gender.
10. Cultural Competence and Proficiency-Create and put into practice policies and procedures that are responsive to cultural differences and train personnel to be culturally competent and proficient.
11. Focus on Strengths-Maintain a focus on the strengths of youth and their families during program planning and in every interaction between the court and those it serves.
12. Family Engagement-Recognize and engage the family as a valued partner in all components of the program.
13. Educational Linkages-Coordinate with the school system to ensure that each participant complies with a developed educational or vocational program that is appropriate to his or her needs.

14. Drug Testing-Design drug testing to be frequent, random, and observed. Document testing policies and procedures in writing.
15. Goal-Oriented Incentives and Sanctions-Respond to compliance and noncompliance with incentives and sanctions that are designed to reinforce or modify the behavior of youth and their families.
16. Confidentiality-Establish a confidentiality policy and procedures that guard the privacy of the youth while allowing the drug court team to access key information.
17. Continuing Interdisciplinary Training and Education-Participate and attend continuing education seminars and workshops including cross-discipline training.

Drug courts also assist in the reunification of families. Just as the Task Force has developed analogous guidelines for juvenile drug courts, it likewise recommends adoption of the following guidelines for family dependency drug court:

1. Collaborative Planning-Engage all stakeholders in creating an interdisciplinary, coordinated, comprehensive, and sustainable system to provide appropriate, timely, and permanent placement of children in a safe, healthy environment.
2. Teamwork-Develop and maintain an interdisciplinary team focused on stopping the cycle of abuse, abandonment, and neglect in families.
3. Clearly Defined Target Population and Eligibility Criteria-Define the target population and eligibility criteria that are aligned with program goals and objectives.

4. Judicial Involvement and Supervision-Schedule frequent judicial reviews being sensitive to the effect that court proceedings can have on children, parents, and their families while providing opportunities for expedited permanency.
5. Monitoring and Evaluation-Establish a system for program monitoring and evaluation to insure quality of service, cost effectiveness, program outcomes, and contribute to knowledge in the field.
6. Community Partnership-Build partnerships with a variety of community resources to expand the range of affordable opportunities available to children, parents, and their families.
7. Comprehensive Treatment Planning-Formulate individualized case plans to meet the complex, financial, and varied needs of children, parents, and their families while assisting them in acquiring skills to maintain a safe and healthy environment.
8. Gender-Appropriate Services-Design treatment to address the unique needs of each gender.
9. Cultural Competence and Proficiency-Create and put into practice policies and procedures that are responsive to cultural difference and train personnel to be culturally competent and proficient.
10. Focus on Strengths-Maintain a focus on the strengths of children, parents, and their families during program planning and in every interaction between the court and those it serves.
11. Family Engagement-Recognize and engage the family as a valued partner in all components of the program.
12. Educational Opportunities and Stability-Coordinate educational opportunities for the parents and insure educational stability for the children.

13. Drug Testing-Design accessible drug testing to be frequent, random, and observed. Document testing policies and procedures in writing.
14. Goal-Oriented Graduated Incentives and Sanctions-Respond to compliance and noncompliance with graduated incentives and sanctions that are designed to reinforce or modify the behavior of the parents.
15. Legal Rights and Advocacy-Insure legal rights and advocacy for parents and children.
16. Confidentiality-Establish a confidentiality policy and procedures that guard the privacy of the children, parents, and families while allowing the drug court team to access key information.
17. Continuing Interdisciplinary Training and Education-Participate and attend continuing education seminars and workshops including cross-discipline training.

By adopting the juvenile drug court and family dependency drug court guidelines as well as by implementing the aforementioned definitions of critical performance indicators and data elements, the collection of statewide data will be more uniform and will demonstrate the effectiveness of drug court and participant success. Furthermore, drug court performance and accountability will be measured and maintained.

The Task Force's proposals will improve drug court and permit its further refinement. The Task Force remains very confident in the benefits of drug court and will continue to work to help ensure efficient justice for all Floridians.

WHEREFORE, the Task Force on Treatment-Based Drug Courts respectfully requests that this Court enter an opinion adopting the rule amendments and recommendations contained herein.

Respectfully submitted,

Terry D. Terrell, Circuit Judge
M.C. Blanchard Judicial Bldg.
190 Governmental Center, 5th Floor
Pensacola, Florida 32502

CERTIFICATE

I hereby certify that a copy of the foregoing document was provided by mail to: William C. Vose, Chair of Criminal Procedures Rules Committee, 1104 Bahama Drive, Orlando, Florida 32806-1440; John Fraser Himes, Chair Family Law Rules Committee, Himes & Boire, P.A., 101 E. Kennedy Blvd, Suite 2430, Tampa, Florida 33602-5895; Mary K. Wimsett, Chair of Juvenile Rules Committee, 1132 NW 58th Terrace, Gainesville, Florida 32605; this ____ day of July, 2006.

Terry D. Terrell, Circuit Judge

CERTIFICATE

I hereby certify that the foregoing document utilizes computer-generated Times New Roman 14-point font, this ____ day of July, 2006.

Terry D. Terrell, Circuit Judge

Rule 3.131 Pretrial Release

(b)(3) Hearing at First Appearance Conditions of Release

In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

Task Force approved 17-0.

Rule 3.170 Pleas

(l) Motion to Withdraw the Plea after Sentencing

A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e) except as provided by law.

Task Force approved 17-0.

Rule 3.170 Pleas

(m) Motion to Withdraw the Plea after Drug Court Transfer

A defendant who pleads guilty or nolo contendere to a charge for the purpose of transferring the case, pursuant to section 910.035, Florida Statutes, may file a motion to withdraw the plea upon successful completion of the drug court treatment program.

Task Force approved 17-0.

Rule 8.010 Detention Hearing

(f) Issues

(3) The court shall consider the nature and circumstances of the offense charged, the child's need for substance abuse evaluation and/or treatment, and the child's mental condition.

~~(4)~~(3) The need to release the juvenile from detention and return the child to the child's residential commitment program.

Task Force approved 17-0.

Rule 8.115 Disposition Hearing

(a) Information Available to the 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, 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.

Task Force approved 17-0.

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. 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. 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:

Task Force approved 17-0.

Rule 8.250 Examinations, Evaluations, and Treatment

(b) Parent, Legal Custodian, or Other Person who has Custody or is Requesting Custody

At any time the filing of a shelter, dependency, or termination of parental rights petition, or after an adjudication of dependency or a finding of dependency where adjudication is withheld, when the mental or physical condition, including the blood group, of a parent, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, any party may request the court to order the person to submit to a physical or mental examination or a substance abuse evaluation or assessment by a qualified professional. The order may be made only on good cause shown and after notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The person whose examination is sought may, after receiving notice of the request for an examination, request a hearing seeking to quash the request. The court may, on its own motion, order a parent, legal custodian, or other person requesting custody to undergo such evaluation, treatment, or counseling activities as authorized by law.

Task Force approved 17-0.

Note: this amendment is the product of and is currently under the consideration before the Juvenile Rules Committee. Although the Task Force did not originate this proposal, it supports it as an important change.

Rule 12.010 Scope, Purpose, and Title

(b) Purpose. “These rules shall be construed to secure the just, ~~speedy,~~
coordinated, comprehensive, timely, thorough, and inexpensive resolution of
the family’s disputes ~~determination of the procedures covered by them and~~
~~shall be construed to secure simplicity in procedure and fairness in~~
administration.

Task Force approved 17-0.

Proposed rule

Reasons for change

RULE 3.131 PRETRIAL RELEASE

(a) [No change]

(b) [No change]

(1)-(2) [No change]

(3) Hearing at First

Appearance Conditions of

Release. In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

(4)-(5) [No change]

(c)-(l) [No change]

This change reflects the need for the court to consider the defendant's need for substance abuse evaluation and/or treatment.

Proposed rule

Reasons for change

RULE 3.170 PLEAS

(a)-(k) [No change]

(l) Motion to Withdraw the Plea after Sentencing. A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e) except as provided by law.

This change incorporates recent legislative changes and correlates with the catchall provision of Rule 9.140(b)(2)(A)(ii)(e).

Proposed rule

Reasons for change

RULE 3.170 PLEAS

(a)-(l) [No change]

(m) Motion to Withdraw the Plea after Drug Court Transfer A defendant who pleads guilty or nolo contendere to a charge for the purpose of transferring the case, pursuant to section 910.035, Florida Statutes, may file a motion to withdraw the plea upon successful completion of the drug court treatment program.

This change implements legislative changes made by the Robert J. Koch Drug Court Intervention Act which took effect on June 7, 2006. That law amended § 910.035(5)(e), Florida Statutes such that upon successful completion of the drug court program, the jurisdiction to which the case had been transferred shall dispose of the case under § 948.08(6), Florida Statutes. Section 948.08, Florida Statutes (2005) provides that the court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program.

Proposed rule

Reasons for change

**RULE 8.010 DETENTION
HEARING**

(a)-(e) [No change]

(f) [No change]

a. [No change]

b. [No change]

c. The court shall consider the nature and circumstances of the offense charged, the child's need for substance abuse evaluation and/or treatment, and the child's mental condition.

~~(4)~~ (3) The need to release the juvenile from detention and return the child to the child's residential commitment program.

This change will require the court to consider factors crucial to the child's well-being but not currently set forth in the rule.

Proposed rule

Reasons for change

**RULE 8.115 DISPOSITION
HEARING**

(a) Information

Available to the 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, 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.

This change is consistent with the recommendation to amend Rule 8.010 above and is designed to ensure that the child's substance needs are considered when the court holds the disposition hearing.

Proposed rule

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. 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. 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)-(d) [No change]

Reasons for change

This change implements legislative changes made by the Robert J. Koch Drug Court Intervention Act which took effect on June 7, 2006. By allowing a child who pleads guilty or nolo contendere to a charge for the purpose of transferring a case to file a motion to withdraw the plea upon successfully completing the treatment program, the amendment brings Rule 8.160 into line with the new law.

Proposed rule

RULE 8.250 EXAMINATIONS, EVALUATIONS, AND TREATMENT

(a) [No Change]

(b) Parent, Legal Custodian, or Other Person who has Custody or is Requesting Custody.

At any time the filing of a shelter, dependency, or termination of parental rights petition, or after an adjudication of dependency or a finding of dependency where adjudication is withheld, when the mental or physical condition, including the blood group, of a parent, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, any party may request the court to order the person to submit to a physical or mental examination or a substance abuse evaluation or assessment by a qualified professional. The order may be made only on good cause shown and after notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The person whose examination is sought may, after receiving notice of the request for an examination, request a hearing seeking to quash the request. The court may, on its own motion, order a parent, legal custodian, or other person requesting custody to undergo such evaluation, treatment, or counseling activities as authorized by law.

Reasons for change

These changes implements legislative changes made by the Robert J. Koch Drug Court Intervention Act which took effect on June 7, 2006. That law amended §§ 39.407, 39.407(15), and 39.521(1)(b)1, Florida Statutes and created new §§ 39.407(16) & 39.507(9), Florida Statutes. The law permits substance abuse evaluations applies the statute on evaluations to persons who currently have custody of a child. The law also provides that any time after the filing of a shelter petition or the petition for dependency, the court may order the evaluation for good cause shown.

Note: this amendment is the product of and is currently under the consideration before the Juvenile Rules Committee. Although the Task Force did not originate this proposal, it supports it as an important change.

Proposed rule

Reasons for change

**RULE 12.010 SCOPE, PURPOSE,
AND TITLE**

(a)-(g) [No change]

(h) Purpose. These rules shall be construed to secure the just, ~~speedy,~~ coordinated, comprehensive, timely, thorough, and inexpensive resolution of the family's disputes ~~determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.~~

This change imparts drug court concepts to the Family Law Rules as well as Unified Family Court concepts. As this Court noted in its Family Courts IV opinion, “In so doing, our goal continues to be the creation of a ‘fully integrated, comprehensive approach to handling all cases involving children and families,’ Family Courts II, 633 So. 2d at 17, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.” Family Courts IV at 519-520 *quoting* Family Courts II.