

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUVENILE PROCEDURE**

CASE NO:

**2007 FAST-TRACK REPORT OF THE
JUVENILE COURT RULES COMMITTEE**

Mary Katherine Wimsett, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this 2007 fast-track report under *Fla. R. Jud. Admin. 2.140(f)*, in response to the Court's requests of January 10, 2007 and May 11, 2007 (*see* Appendix G). The approved amendments are attached in both the full-page (*see* Appendix A) and two-column (*see* Appendix B) formats.

All proposed amendments have been approved by the Committee using its fast-track procedure. As required by *Fla. R. Jud. Admin. 2.140(f)*, the proposed amendments have been reviewed by the Executive Committee of the Board of Governors of The Florida Bar. The voting records of the Committee and Board of Governors are shown below. The proposals have not been published in *The Florida Bar News* or posted on The Florida Bar's website, but this will be done at the Court's direction.

Rule 8.165: Subdivision (a) of this rule has been amended to require that a child be given a meaningful opportunity to confer with an attorney before waiving counsel. This amendment was previously submitted to the Court as part of the Committee's 2004 cycle report. The original amendment also required the waiver of counsel to be written and added subdivision (b)(3), requiring that the written waiver 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. Subdivision (b)(3) also required verification from the specified adult that that

person discussed with the child the child's decision to waive counsel and that the waiver appeared to be knowing and voluntary.

The Juvenile Rules Committee originally voted 25-5-0 to support the amendment. A majority of the committee believed that the right to counsel was not fully understood by juveniles and that they should confer with an attorney before waiving counsel to be apprised of the importance of the right and the consequences of a waiver. The original proposal was unanimously recommended to the committee by The Florida Bar's Commission on the Legal Needs of Children and was unanimously approved on submission to the Board of Governors. Additionally, both the Steering Committee on Families and Children in the Court and the Florida Public Defender Association supported the amendment.

The Court adopted the amendment requiring a written waiver in subdivision (b)(3), but declined to adopt the portion of rule 8.165(a) regarding consultation with an attorney prior to a waiver. The Court stated:

We thus decline to adopt at this time the portion of rule 8.165(a) regarding consultation with an attorney prior to a waiver. We emphasize that we are not rejecting this proposed amendment to rule 8.165(a), but are merely deferring its consideration. We intend to readdress the adoption of the amendment to rule 8.165(a) at a future time following the conclusion of the legislative session. We further take this opportunity to reinforce that it is critical for the delinquency judges to ensure that any waiver of counsel by a child is knowingly and voluntarily given, especially prior to accepting a plea of guilty or nolo contendere.

Amendments to the Florida Rules of Juvenile Procedure, 894 So. 2d 875, 881 (Fla. 2005).

There have been three legislative sessions (2005, 2006, and 2007) since the

court issued this opinion in February 2005 and although legislation has been introduced, it has not passed. *See, e.g.*, SB 88, HB 7 (2007). On February 14, 2007, the Court requested the Committee to monitor this issue in the Legislature and advise the Court after the session ends. (*See* Appendix C.) The Court also directed the committee to seek input from the Florida Public Defender Association on any remaining issues concerning the fiscal impact. The Florida Public Defender Association continues to support the amendment and believes there is only minimal fiscal impact. (*See* Appendix D.) The Senate Staff Analysis to SB 88 (2007) also indicated minimal fiscal impact. (*See* Appendix E.) Per the Court's directive, the Committee believes that it is appropriate to resubmit this amendment to the court at this time. The amendment passed the Committee by a vote of 14-5, with a minority view that the amendment addresses a substantive right as opposed to a procedural right. It was approved by the Executive Committee of The Florida Bar Board of Governors by a vote of 10-0.

The majority of the Juvenile Court Rules Committee concluded that the appropriate procedure to protect a child's right to counsel is to require an opportunity for the child to confer with an attorney before the child's waiver of counsel. The right to counsel in delinquency proceedings was established by the United States Supreme Court in *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). The right to counsel becomes illusory if children waive their right to an attorney without a meaningful opportunity to confer with an attorney as to what rights they are actually giving up. Additionally, since the appellate courts have made it clear that it is difficult for a child to knowingly and intelligently waive the right to counsel, *see, e.g., State v. T.G.*, 800 So. 2d 204, 211 (Fla. 2001) (“[i]t is extremely doubtful that any child of limited experience can possibly comprehend the importance of counsel”), it is hoped that the procedures in this rule will reduce the need for appeals on this issue.

Form 8.978: Section 4 of CS for CS for SB 2114 (*see* Appendix F) creates section 743.044, Florida Statutes. The statute allows for the disabilities of nonage of a minor child who is 16 years of age or older, has been adjudicated dependent, is residing in an out-of-home placement, and has completed a financial literacy class to be removed so that the youth can obtain depository financial services, such as a checking or savings account. The statute requires entry of a court order. The committee is proposing an order to be used for this purpose. The proposed order tracks the language of the statute and is similar to *Fla. R. Juv. P. Form 8.977*, Order Authorizing Child to Enter into Residential Leasehold Before the Child's 18th Birthday, which was approved by the Court following the 2006 legislative session to implement section 743.045, Florida Statutes. See *In re: Amendments to the Florida Rules of Juvenile Procedure*, 951 So. 2d 804 (Fla. 2007). The committee vote on this new form was 19-0 and the Executive Committee of the Florida Bar Board of Governors vote was 10-0.

The Juvenile Court Rules Committee respectfully requests that the Court amend the Florida Rules of Juvenile Procedure as outlined in this report.

Respectfully submitted _____.

MARY KATHERINE WIMSETT
Chair
Juvenile Court Rules Committee
P. O. Box 358495
Gainesville, FL 32635
352/463-3135
FLORIDA BAR NO.: 118280

JOHN F. HARKNESS, JR.
Executive Director
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651 E. Jefferson St.
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FLORIDA BAR NO.: 123390

APPENDIX A

APPX- A-1

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.

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____(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.

**FORM 8.978. ORDER AUTHORIZING CHILD TO SECURE DEPOSITORY
FINANCIAL SERVICES BEFORE THE CHILD'S 18TH BIRTHDAY**

**ORDER AUTHORIZING CHILD TO SECURE DEPOSITORY FINANCIAL SERVICES
BEFORE THE CHILD'S 18TH BIRTHDAY**

THIS CAUSE came before the court to remove the disabilities of nonage of
.....(name)....., for the purpose of securing depository financial services and the court being fully
advised in the premises FINDS as follows:

.....(Name)..... is at least 16 years of age, meets the requirements of section 743.044,
Florida Statutes, and is entitled to the benefits of that statute.

THEREFORE, based on these findings of fact, it is ORDERED AND ADJUDGED that
the disabilities of nonage of(name)..... are hereby removed for the purpose of securing
depository financial services.(Name)..... is hereby authorized to make and execute contracts,
releases, and all other instruments necessary for the purpose of securing depository financial
services. The contracts or other instruments made by(name)..... for the purpose of securing
depository financial services have the same effect as though they were the obligations of a
person who is not a minor.

ORDERED at, Florida, on(date).....

Circuit Judge

Copies to:

APPENDIX B

APPX-B-1

Proposed rule

Reasons for change

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.** [No change]

The Committee is resubmitting this amendment, previously submitted in 2004, because the Legislature has failed to act to amend the statutes to confer this right. The Committee believes that children have a limited understanding of the right to counsel and that the right to confer with an attorney before a waiver of counsel is necessary to assure that any waiver of counsel is knowingly, intelligently, and voluntarily given.

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APPENDIX C

APPX-C-1



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

R. FRED LEWIS
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
BARBARA J. PARIENTE
PEGGY A. QUINCE
RAOUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

February 14, 2007

THOMAS D. HALL
CLERK OF COURT

Ms. Mary Katherine Wimsett
Chair, Juvenile Court Rules Committee
Guardian Ad Litem Program
1132 N.W. 58th Terrace
Gainesville, Florida 32605-4477

Re: National Juvenile Defender Center's Assessment of Access to
Counsel & Quality of Representation in Delinquency Proceedings

Dear Ms. Wimsett:

I write to you in your capacity as chair of the Juvenile Court Rules Committee concerning the National Juvenile Defender Center's recent Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings. We ask that your committee advise the Court on several of the recommendations contained in the National Center's report, which can be found on the Center's website at www.njdc.info/florida.php.

We welcome the committee's input on all aspects of the report and specifically seek the committee's advice as to whether rule amendments are warranted in response to recommendations 4 (adequacy of judicial colloquies), 10 (acceptance of pleas at arraignment), and 7 (need for early appointment of counsel/quality of representation). Recommendation 4 provides:

Ms. Mary Katherine Wimsett
February 14, 2007
Page: 2

Judicial colloquies and admonitions administered to youth must be thorough, comprehensive and easily understood. Judges should take the time to fully test a youth's understanding.

Executive Summary at 5; Report at 66. Recommendation 10, which is related to concerns raised in the report about adequacy of plea colloquies, provides that:

Plea agreements should never be taken at arraignment in juvenile court. Defense counsel must have a meaningful opportunity to consult with the youth, explain potential short- and long-term consequences of a conviction, and review the sufficiency of the case prior to the court accepting a plea agreement.

Executive Summary at 5; Report at 67. The implementation strategy for this recommendation is to “[d]ecline to accept any guilty or nolo contendere pleas until each youth has had the meaningful opportunity to consult with defense counsel.” Report at 70.

Recommendation 7 provides that the “quality of representation in juvenile court should be improved through early appointment of counsel . . .” Executive Summary at 5; Report at 66. The implementation strategy for this recommendation urges the judiciary to “[e]nsure that counsel is appointed early, prior to initial or detention hearings, and that such counsel has a meaningful opportunity to meet with the client and prepare for the detention hearing.” Report at 69.

In connection with the above recommendations, the committee should specifically address whether rules 8.010(e), Advice of Rights, 8.080, Acceptance of Guilty or Nolo Contendere Plea, or 8.165, Providing Counsel to Parties, should be amended.

Recommendation 7 also urges that “quality of representation in juvenile court should be improved through . . . reduced defender caseload, additional lawyer training . . . and monitoring of cases in juvenile court. . . .” Executive Summary at 5; Report at 66. See also Report at 50-54 (discussing need for adequate training of juvenile defenders and quality of representation). Although no implementing strategy is suggested for the judiciary, the Court would like your committee to consider whether minimum standards for juvenile defenders are

warranted to address the concerns raised in the report. Cf. Fla. R. Crim. P. 3.112, Minimum Standards for Attorneys in Capital Cases.

The Court also seeks advice on recommendation 3 which provides:

Further restrictions on waiver of counsel must be established consistent with national standards. Youth should not be permitted to waive counsel without prior consultation with such counsel. Counsel should assist the client in making an informed, knowing and voluntary choice and stand-by counsel should be available in the event of waiver. It is imperative that youth understand the long-term consequences of a juvenile adjudication.

Executive Summary at 4; Report at 66. You will recall that, in Amendments to the Fla. Rules of Juv. P., 894 So. 2d 875, 877-881 (Fla. 2005), the Court previously considered a rule amendment that would have required a child to be given an opportunity to consult with counsel prior to waiving counsel. However, the Court deferred consideration of the proposal until the Legislature could address the issue. The Court explained:

[T]he Florida Public Defender Association (FPDA) has also endorsed the amendments to rule 8.165. At oral argument, Ward Metzger, speaking on behalf of the FPDA, stated that the public defenders have agreed to consult with juveniles prior to any waiver of counsel. After oral argument, in a motion to provide additional information and comments, Metzger further stated that the public defenders do not construe the proposed amendment to rule 8.165(a) to require appointment within the meaning of chapter 27, Florida Statutes (2004). Although the public defenders stated that they do not anticipate a direct fiscal impact because in many circuits these procedures are already being followed, supplemental comments filed by the FPDA indicate that at least two circuits, the Sixth and the Twelfth, may experience a significant fiscal impact, including the need for additional employees, should rule 8.165 be amended as proposed. . . .

Although we believe that consultation with an attorney prior to waiving counsel is an important additional safeguard designed to protect a juvenile's constitutional right to counsel, we are also mindful

of the potential financial impact of this requirement. We note that one of the recommendations of the representation subcommittee that was adopted by the full Commission on the Legal Needs of Children was to encourage efforts seeking legislative changes that would "create" a right to a prewaiver consultation and authorize the public defender to provide the required consultation. In fact, in its June 2002 Final Report, the Commission specifically recommended:

"5. Florida law should specifically create a right for children to consult counsel, short of outright appointment for the duration of the case, in the following instances:

a. Regarding waiver of counsel or other right or legal interest in a delinquency proceeding, prior to the appointment of the Public Defender by a judge, or at any time thereafter where waiver is sought;

....

6. Florida law should specifically authorize the Public Defender to provide the consultation services outlined in # 5 above. This recommendation would necessitate the legislature appropriating additional funds for the Public Defender to adequately provide consultation services."

These two recommended changes in the law could be made by amending sections 985.203(1) and 27.51, Florida Statutes (2004).

Because of the potential financial impact of the amendment to rule 8.165(a) regarding consultation with attorneys and our desire to work cooperatively with the Legislature, we urge the Legislature to consider the Commission's recommendations. We also strongly urge that the voluntary practice that exists in many jurisdictions in which consultation with an attorney takes place be continued and, where possible, expanded in the interim.

We thus decline to adopt at this time the portion of rule 8.165(a) regarding consultation with an attorney prior to a waiver. We emphasize that we are not rejecting this proposed amendment to rule 8.165(a), but are merely deferring its consideration. We intend to readdress the adoption of the amendment to rule 8.165(a) at a future time following the conclusion of the legislative session. We further take this opportunity to reinforce that it is critical for delinquency judges to ensure that any waiver of counsel by a child is knowingly and voluntarily given, especially prior to accepting a plea of guilty or nolo contendere.

Ms. Mary Katherine Wimsett
February 14, 2007
Page: 5

... We ... hope that the Legislature will consider our request on the issue of consultation with an attorney before waiver in juvenile delinquency proceedings.

Id. (footnotes omitted).

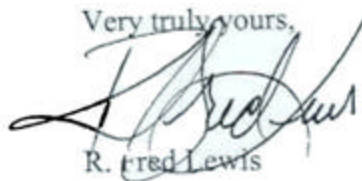
The suggested legislation has not yet been enacted. See SB 526 (2006) (amending § 985.203, Fla. Stat. to require that juvenile be provided with opportunity to confer with counsel prior to waiver passed by Senate but died in House Judiciary Committee); CS/SB 1218 (2005) (amending § 985.203, Fla. Stat. to require that juvenile be provided with opportunity to confer with counsel prior to waiver died in Senate Judiciary Committee). However, I understand there are bills currently pending on the subject. See, e.g. HB 7 & HB 53 (both amending § 985.033 to require that juvenile be represented by counsel at all stages of court proceedings unless the right to counsel is waived after consultation with counsel).

We ask that your committee monitor this issue in the Legislature and advise the Court on the issue after the session ends. In making its recommendations on this issue, the committee should seek input from the Florida Public Defender Association on any remaining issues concerning the fiscal impact of such a requirement. If the pending legislation is passed, please submit your report on this subject, along with the necessary proposed rule amendments, to the Clerk's Office as soon as possible after the session ends, with copies to the liaison justice to your committee and the director of central staff.

If the committee determines that rule amendments are warranted in connection with the other issues referred, those issues can be addressed in the committee's next regular-cycle rules submission, unless the committee determines that the amendments should be addressed out of cycle. If the committee determines that no amendments are required to address these issues, your report should be filed with the Clerk's Office by October 1, 2007, with copies to the liaison justice and central staff director. If you need additional time to address these issues, please file a request for an extension with the Clerk's Office.

Ms. Mary Katherine Wimsett
February 14, 2007
Page: 6

Thank you in advance for your attention to this matter. Should you have any questions, please do not hesitate to contact Tom Hall or me.

Very truly yours,

R. Fred Lewis

RFL/dm/nm/mb

cc: Justice Peggy A. Quince, Liaison to Rules Committee
Thomas D. Hall, Clerk of Court
Lisa Goodner, State Courts Administrator
Ellen Sloyer, Bar Staff Liaison to Rules Committee
Deborah J. Meyer, Director of Central Staff

APPENDIX D

APPX-D-1



BILL WHITE
PUBLIC DEFENDER

Law Offices Of The
Public Defender

Fourth Judicial Circuit of Florida
For Duval, Clay & Nassau Counties

*By defending the poor, we uphold the law.
By upholding the law, we defend the public.*

Main Office – Duval County
25 North Market Street
Jacksonville, Florida 32202

Telephone (904) 630-1440
FAX (904) 630-1592

June 18, 2007

To Whom it May Concern

From: Bill White *BW*

Re: Juvenile Waiver of Counsel – Florida Legislature – Efforts of the Florida Public Defender's Association

The Florida Public Defender Association (FPDA) supported the recommendation of the Florida Supreme Court with respect to seeking legislation to require children charged with delinquency to be provided an opportunity to speak to a public defender prior to waiving the right to counsel.

It was originally the position of the FPDA, argued before the Florida Supreme Court, that a rule was necessary to address this issue. When the Court suggested that legislation should be sought before any final consideration of a rule, the FPDA obtained the support of Senator Steve Wise for the purpose of filing a bill. Senator Wise filed his bill in the 2006 legislative session, and he obtained a sponsor in the House. That first year, the bill failed to move and died without moving out of committee.

Senator Wise filed the bill again in the 2007 legislative session and assisted the FPDA in obtaining a sponsor in the House. The bill moved through the Senate without a problem. In the House, one member refused to move the bill out of his committee. Numerous meetings with this House member proved unsuccessful in moving the bill. It is the opinion of all of the representatives of the FPDA who worked on this bill during the 2007 session that the bill died because of the intransigence of this one member.

Although Senator Wise has indicated that he would sponsor the legislation again should he be asked to do so, the same House member will be in a position to block it's passage during the 2008 session.

It is the recommendation of the FPDA that the Florida Supreme Court take the initiative and promulgate a rule that will require each child charged as a delinquent to meet with counsel prior to a decision to waive the right to counsel.

The position of the FPDA has not changed with respect to the anticipated fiscal impact of such a rule on the courts, the State Attorneys or the Public Defenders in Florida.

APPX-D-2

APPENDIX E

APPX-E-1

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT
STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 88

INTRODUCER: Senators Wise and Lynn

SUBJECT: Indigent Juvenile Defendant Representation

DATE: March 7, 2007 REVISED:

ANALYST STAFF DIRECTOR REFERENCE ACTION

1 Dugger Cannon CJ **Favorable**
2 Luczynski Maclure JU **Favorable**
3 JA
4
5
6

I. Summary:

The bill would change the timing of when the public defender is required, under s. 27.51(1), F.S., to represent an indigent child from at the time when such child is “[a]lleged to be a delinquent child pursuant to a petition filed before a circuit court” to when such child is “taken into custody under s. 985.101 or s. 985.105.” According to the Florida Public Defenders Association, it is common practice in many circuits for public defenders to be appointed to represent indigent youth at detention hearings or other times prior to a petition being filed.

In addition, the bill clarifies the timing of when a child’s right to counsel attaches. The bill adds to the current waiver of counsel provision by providing that a child must be advised by counsel prior to waiving his or her right to counsel. As noted by the Florida Supreme Court, this is an important safeguard to protect a juvenile’s constitutional right to counsel, and it is consistent with the recommendations of the Florida Bar Commission on the Legal Needs of Children in its June 2002 Final Report.¹ Moreover, this is already occurring in some counties. “[P]ublic defenders in some counties [already have] adopt[ed] an informal agreement with trial courts in their jurisdictions by which the public defenders consult with juvenile defendants to ensure that each juvenile’s waiver is knowing and voluntary.”² The bill further clarifies that counsel shall be allowed to provide advice to the child anytime after he or she has been taken into custody under s. 985.101 or s. 985.105, F.S.

¹ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d 875, 880 (Fla. 2005).

² *Id.*

Finally, the bill requires the court to appoint counsel for an indigent child if the child's parent or legal guardian is also the alleged victim in the case. It provides that the parents or legal guardian are not liable for fees, charges, or costs if the court finds that a parent or the legal guardian is a victim of the offense.

This bill amends sections 27.51 and 985.033, Florida Statutes.

II. Present Situation:

Under s. 27.51(1)(c), F.S., the public defender is required to represent an indigent youth who is alleged to be a delinquent child pursuant to a petition filed before a circuit court. When the public defender is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding³ in any other court, the nonindigent parents or legal guardian are liable for fees and costs.

Section 985.033(1), F.S., provides that a youth shall be represented by legal counsel at all stages of any delinquency court proceedings under ch. 985, F.S., unless the right to counsel has been freely, knowingly, and intelligently waived by the child. Legal counsel representing a child who exercises the right to counsel must be allowed to provide advice and counsel to the child at any time after the child's arrest. If the child appears without counsel, the court must advise the child of his or her rights with respect to representation by court-appointed counsel.

Sections 985.101 and 985.105, F.S., delineate the circumstances when a child may be picked up and brought into custody by a law enforcement officer or a youth custody officer. These circumstances include the following: upon lawful arrest for a delinquent act or violation of law; upon a court order (based on sworn testimony) either before or after a petition for delinquency is filed; upon failure to appear in court after proper notice; and upon probable cause to believe there has been a violation of probation, home detention, or conditional release supervision, or there has been an escape from commitment. Section 985.105, F.S., limits when a youth custody officer is authorized to take a child into custody to circumstances involving a violation of probation, home detention, or conditional release supervision, or a failure to appear in court after proper notice.

III. Effect of Proposed Changes:

The bill would change the timing of when the public defender is required to represent an indigent child from at the time when the child is "[a]lleged to be a delinquent child pursuant to a petition filed before a circuit court" to when the child is "taken into custody under s. 985.101 or s. 985.105." This change would require the public defender to represent an indigent child at the time that he or she has been taken into custody. The bill would have the effect of requiring the public defender to represent a child at somewhat equivalent points in a delinquency context

³ Section 27.52(6), F.S.

as the public defender is required to represent any person in a criminal context under s. 27.51, F.S. Moreover, according to the Department of Juvenile Justice, this proposed change would make the statute consistent with what already realistically occurs.⁴

The bill would make the provision in s. 985.033(1), F.S., specifying the time that the right to counsel attaches in a delinquency proceeding consistent with the proposed modifications to s. 27.51(1), F.S., concerning the point in a delinquency proceeding when the public defender is required to represent an indigent child. The bill would also provide that a child may only waive the right to counsel after the child has been advised by counsel. This is consistent with the Supreme Court of Florida in *Amendments to the Florida Rule of Juvenile Procedure*, where it stated that “consultation with an attorney prior to waiving counsel is an important additional safeguard designed to protect a juvenile’s constitutional right to counsel.”⁵ The bill clarifies that counsel shall be allowed to provide advice to the child anytime after he or she has been taken into custody under s. 985.101 or s. 985.105, F.S.

The bill also requires the court to appoint counsel for an indigent child if the child’s parent or legal guardian is also the alleged victim in the case. It provides that if the court makes a finding that the parent or legal guardian is a victim of the offense, he or she will not be held liable for paying court fees and costs.

The bill provides that it takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁴ FLA. DEP’T OF JUVENILE JUSTICE, BILL ANALYSIS , HBs 7, 53, SB 88, 2007 Sess., at 2 (Fla. 2007)
⁵ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d at 880.

B. Private Sector Impact

None.

C. Government Sector Impact:

According to the Florida Public Defenders Association, the fiscal impact of the bill on the public defenders advising a child of his or her legal rights before being permitted to waive the right to counsel is minimal. However, the fiscal impact that cannot be determined by the association is if a public defender is appointed to represent a child in a case because the child chooses not to waive his or her right to counsel. Some circuits would be significantly affected and others would not. According to the association, in large circuits like the Fourth (Jacksonville), the Eleventh (Miami), the Thirteenth (Tampa), and the Seventeenth (Broward), there would be no impact because the common practice there is to appoint a public defender to almost all indigent children. Other circuits that do not do this as a matter of course could have a significant increase in caseloads. However, this potential fiscal impact should be balanced against the likelihood that reversals on appeal in which a child has not received legal counsel may decrease if the bill becomes law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In January 2005, the Supreme Court of Florida considered the biennial report of the Florida Bar's Juvenile Court Rules Committee (Rules Committee), and elected not to adopt a rule change at that time relating to a child's consultation with an attorney prior to his or her waiver of the right to counsel. The Court did, however, require that any waiver of counsel be in writing.⁶ Moreover, it required that a parent, legal custodian, or attorney verify that the child discussed the waiver and that the child appeared to knowingly and voluntarily make such waiver.⁷

The Court observed that there was a potential financial impact with regard to requiring that juveniles consult with a lawyer prior to waiving the right to counsel. Because of this observation, the Court suggested that the Legislature consider implementing statutory revisions regarding this waiver requirement, rather than the Court adopting the rule advocated by the Rules Committee. The Court clarified it was not rejecting the proposed rule change, but rather deferring its consideration until after the Legislature had an opportunity to act on it. The Court reinforced that judges on the delinquency bench must ensure that a waiver of counsel by a child is knowing and voluntary, especially before a guilty or nolo contendere plea is entered.⁸

⁶ FLA. R. JUV. P. 8.165(a).

⁷ FLA. R. JUV. P. 8.165(b)(3)

⁸ *Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d at 881.

Similarly, in the fall of 2006, the National Juvenile Defender Center conducted an assessment of access to counsel and the quality of representation in delinquency proceedings in Florida. One of its recommendations provided that children should not be allowed to waive the right to counsel without first consulting with an attorney.⁹

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁹ PATRICIA PURITZ & CATHRYN CRAWFORD, NAT'L JUVENILE DEFENDER CTR., FLORIDA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 66 (2006), *available at* <http://www.njdc.info/pdf/Florida%20Assessment.pdf>.

5-167-07

A bill to be entitled An act relating to juvenile defendants; amending s. 27.51, F.S.; requiring that the public defender represent an indigent child taken into custody under specified delinquency provisions; amending s. 985.033, F.S.; requiring that a child be represented at a specified point in delinquency court proceedings unless the right to counsel is waived after receiving advice of counsel; providing that counsel be permitted to advise a child after a specified point in delinquency court proceedings; requiring that the court appoint counsel for an indigent child if the child's parent or legal guardian is the alleged victim in the case; providing that the parent or legal guardian is not liable for fees, charges, or costs upon a finding by the court that a parent or legal guardian is a victim of the offense; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) of section 27.51, Florida Statutes, are amended to read:

27.51 Duties of public defender. --

(1) The public defender shall represent, without additional compensation, any person determined to be indigent under s. 27.52 and:

(a) Under arrest for, or charged with, a felony;

(b) Under arrest for, or charged with:

1. A misdemeanor authorized for prosecution by the state attorney;

2. A violation of chapter 316 punishable by imprisonment;

3. Criminal contempt; or

4. A violation of a special law or county or municipal ordinance ancillary to a state charge, or if not ancillary to a state charge, only if the public defender contracts with the county or municipality to provide representation pursuant to ss. 27.54 and 125.69.

The public defender ~~may shall~~ not provide representation ~~under pursuant to~~ this paragraph if the court, before ~~prior to~~ trial, files in the cause an order of no imprisonment as provided in s. 27.512;

(c) ~~Who is a child taken into custody under s. 985.101 or s. 985.105 Alleged to be a delinquent child pursuant to a petition filed before a circuit court;~~

(d) Sought by petition filed in such court to be involuntarily placed as a mentally ill person under part I of chapter 394, involuntarily committed as a sexually violent predator under part V of chapter 394, or involuntarily admitted to residential services as a person with developmental disabilities under chapter 393. A public defender ~~may shall~~ not represent any

plaintiff in a civil action brought under the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or the federal statutes, or represent a petitioner in a rule challenge under chapter 120, unless specifically authorized by statute;

(e) Convicted and sentenced to death, for purposes of handling an appeal to the Supreme Court; or

(f) Is appealing a matter in a case arising under paragraphs (a)-(d).

(2) Except as provided in s. 985.033, the court may not appoint the public defender to represent, even on a temporary basis, any person who is not indigent. The court, however, may appoint private counsel in capital cases as provided in ss. 27.40 and 27.5303.

Section 2. Subsections (1) and (3) of section 985.033, Florida Statutes, are amended to read:

985.033 Right to counsel.--

(1) A child shall be represented ~~is entitled to representation~~ by legal counsel at all stages of any delinquency court proceedings occurring after the child has been taken into custody under s. 985.101 or s. 985.105, unless the right to counsel is freely, knowingly, and intelligently waived by the child after he or she has been advised by counsel ~~under this chapter~~. If the child and the parents or other legal guardian are indigent and unable to employ counsel for the child, the court shall appoint counsel under s. 27.52. Determination of indigence and costs of representation shall be as provided by ss. 27.52 and 938.29. ~~Legal Counsel representing a child who exercises the right to counsel shall be allowed to provide advice and counsel to the child at any time after the child has been taken into custody under s. 985.101 or s. 985.105 subsequent to the child's arrest, including prior to a detention hearing while in secure detention care. A child shall be represented by legal counsel at all stages of all court proceedings unless the right to counsel is freely, knowingly, and intelligently waived by the child.~~ If the child appears without counsel, the court shall advise the child of his or her rights with respect to representation of court-appointed counsel.

(3) If the parents or legal guardian of an indigent child are not indigent but refuse to employ counsel, the court shall appoint counsel pursuant to s. 27.52 to represent the child at the detention hearing and until counsel is provided. Costs of representation ~~shall be~~ are hereby imposed as provided by ss. 27.52 and 938.29. Thereafter, the court ~~may shall~~ not appoint counsel for an indigent child ~~who has with~~ nonindigent parents or a nonindigent legal guardian but shall order the parents or legal guardian to obtain private counsel. A parent or legal guardian of an indigent child who has been ordered to obtain private counsel for the child and who willfully fails to follow the court order shall be punished by the court in civil contempt proceedings. If a parent or legal guardian is also an alleged victim in the case, the court may not order the parents or legal guardian to obtain private counsel but shall appoint counsel pursuant to s. 27.52 to represent the indigent child. At the disposition of the case and upon a finding by the court that a parent or legal guardian is a victim of the offense, the parents or legal guardian are not liable for fees, charges, or costs under s. 27.52, s. 938.29, or this chapter.

Section 3. This act shall take effect July 1, 2007.

SENATE SUMMARY

Requires that the public defender represent an indigent child taken into custody under specified

delinquency provisions. Requires that a child be represented at as specified point in delinquency court proceedings unless the right to counsel is waived after receiving advice of counsel. Provides that counsel be permitted to advise a child after a specified point in delinquency court proceedings. Requires that the court appoint counsel for an indigent child if the child's parent or legal guardian is the alleged victim in the case. Provides that the parent or legal guardian is not liable for fees, charges, or costs upon a finding by the court that a parent or legal guardian is a victim of the offense.

APPENDIX F

APPX-F-1

An act relating to independent living transition services; amending s. 322.09, F.S.; limiting liability of a caseworker who signs an application for a driver's license for a minor who is in foster care; requiring a caseworker to provide notice of intent to sign the application to specified persons; amending s. 409.1451, F.S.; revising eligibility criteria for independent living transition services; exempting foster parents and caregivers from responsibility for the actions of certain children engaged in activities specified in a written plan; requiring certain children eligible for subsidized independent living services to be formally evaluated under certain circumstances; revising eligibility criteria for the Road-to-Independence Program; amending s. 409.903, F.S.; increasing the age limit for eligibility for certain persons to qualify for medical assistance payments; creating s. 743.044, F.S.; providing for the removal of disabilities of certain minors for purposes of securing depository financial services; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor. —

(1)(a) The application of any person under the age of 18 years for a driver's license must be signed and verified before a person authorized to administer oaths by the father, mother, or guardian; by a secondary guardian if the primary guardian dies before the minor reaches 18 years of age; or, if there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor. This section does not apply to a person under the age of 18 years who is emancipated by marriage.

(b) There shall be submitted with each application a certified copy of a United States birth certificate, a valid United States passport, an alien registration receipt card (green card), an employment authorization card issued by the United States Department of Homeland Security, or proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original license.

(2) Any negligence or willful misconduct of a minor under the age of 18 years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct.

(3) The department may not issue a driver's license or learner's driver's license to any applicant under the age of 18 years who is not in compliance with the requirements of s. 322.091.

(4) Notwithstanding the provisions of subsections (1) and (2), if a foster parent of a minor who is under the age of 18 years and is in foster care as defined in s. 39.01, ~~or~~ an authorized representative of a residential group home at which such a minor resides, or the caseworker at the agency at which the state has placed the minor signs the minor's application for a learner's driver's license, that foster parent, ~~or~~ group home representative, or caseworker does

not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor; by reason of having signed the application. Prior to signing the application, the caseworker shall notify the foster parent or other responsible party of his or her intent to sign and verify the application.

(5) Notwithstanding the provisions of subsections (1) and (2), a caseworker at the agency at which the state has placed a minor in foster care may sign the minor's application for a driver's license pursuant to a court-approved transition plan. Before signing the application, the caseworker shall notify the foster parent or other responsible party of the intent to sign and verify the application. The caseworker does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application.

Section 2 Paragraph (b) of subsection (2), paragraph (a) of subsection (3), paragraph (c) of subsection (4), and subsection (5) of section 409.1451, Florida Statutes, are amended to read:

409.1451 Independent living transition services. —

(2) ELIGIBILITY. —

(b) The department shall serve young adults who have reached 18 years of age but are not yet 23 years of age and who were in foster care when they turned 18 years of age or, after reaching 16 years of age were adopted from foster care or placed with a court-approved dependency guardian and have spent a minimum of 6 months in foster care within the 12 months immediately preceding such placement or adoption, by providing services pursuant to subsection (5). Young adults to be served must meet the eligibility requirements set forth for specific services in this section.

(3) PREPARATION FOR INDEPENDENT LIVING. —

(a) It is the intent of the Legislature for the Department of Children and Family Services to assist older children in foster care and young adults who exit foster care at age 18 in making the transition to independent living and self-sufficiency as adults. The department shall provide such children and young adults with opportunities to participate in life skills activities in their foster families and communities which are reasonable and appropriate for their respective ages or for any special needs they may have and shall provide them with services to build life skills and increase their ability to live independently and become self-sufficient. To support the provision of opportunities for participation in age-appropriate life skills activities, the department shall:

1. Develop a list of age-appropriate activities and responsibilities to be offered to all children involved in independent living transition services and their foster parents.

2. Provide training for staff and foster parents to address the issues of older children in foster care in transitioning to adulthood, which shall include information on high school completion, grant applications, vocational school opportunities, supporting education and employment opportunities, and opportunities to participate in appropriate daily activities.

3. Develop procedures to maximize the authority of foster parents or caregivers to approve participation in age-appropriate activities of children in their care. The age-appropriate activities and the authority of the foster parent or caregiver shall be developed into a written plan that the foster parent or caregiver, the child, and the case manager all develop together, sign, and follow. This plan must include specific goals and objectives and be reviewed and updated no less than quarterly. Foster parents or caregivers who have developed a written plan as described in this subparagraph shall not be held responsible under administrative rules or laws pertaining to

state licensure or have their licensure status in any manner jeopardized as a result of the actions of a child engaged in the approved age-appropriate activities specified in the written plan.

4. Provide opportunities for older children in foster care to interact with mentors.
5. Develop and implement procedures for older children to directly access and manage the personal allowance they receive from the department in order to learn responsibility and participate in age-appropriate life skills activities to the extent feasible.

6. Make a good faith effort to fully explain, prior to execution of any signature, if required, any document, report, form, or other record, whether written or electronic, presented to a child or young adult pursuant to this chapter and allow for the recipient to ask any appropriate questions necessary to fully understand the document. It shall be the responsibility of the person presenting the document to the child or young adult to comply with this subparagraph.

(4) SERVICES FOR CHILDREN IN FOSTER CARE. --The department shall provide the following transition to independence services to children in foster care who meet prescribed conditions and are determined eligible by the department. The service categories available to children in foster care which facilitate successful transition into adulthood are:

(c) Subsidized independent living services. -

1. Subsidized independent living services are living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175.

2. A child who has reached 16 years of age but is not yet 18 years of age is eligible for such services and shall be formally evaluated for placement in a subsidized independent living arrangement, if he or she:

a. Is adjudicated dependent under chapter 39; has been placed in licensed out-of-home care for at least 6 months prior to entering subsidized independent living; and has a permanency goal of adoption, independent living, or long-term licensed care; and

b. Is able to demonstrate independent living skills, as determined by the department, using established procedures and assessments.

3. Independent living arrangements established for a child must be part of an overall plan leading to the total independence of the child from the department's supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and ability; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in the independent living program; documentation of proposed services to be provided by the department and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with the family, other adults, friends, and the community, as appropriate.

4. Subsidy payments in an amount established by the department may be made directly to a child under the direct supervision of a caseworker or other responsible adult approved by the department.

(5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER CARE. — Based on the availability of funds, the department shall provide or arrange for the following services to young adults formerly in foster care who meet the prescribed conditions and are determined eligible by the department. The department, or a community-based care lead agency

when the agency is under contract with the department to provide the services described under this subsection, shall develop a plan to implement those services. A plan shall be developed for each community-based care service area in the state. Each plan that is developed by a community-based care lead agency shall be submitted to the department. Each plan shall include the number of young adults to be served each month of the fiscal year and specify the number of young adults who will reach 18 years of age who will be eligible for the plan and the number of young adults who will reach 23 years of age and will be ineligible for the plan or who are otherwise ineligible during each month of the fiscal year; staffing requirements and all related costs to administer the services and program; expenditures to or on behalf of the eligible recipients; costs of services provided to young adults through an approved plan for housing, transportation, and employment; reconciliation of these expenses and any additional related costs with the funds allocated for these services; and an explanation of and a plan to resolve any shortages or surpluses in order to end the fiscal year with a balanced budget. The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(a) Aftercare support services. —

1. Aftercare support services are available to assist young adults who were formerly in foster care in their efforts to continue to develop the skills and abilities necessary for independent living. The aftercare support services available include, but are not limited to, the following:

- a. Mentoring and tutoring.
- b. Mental health services and substance abuse counseling.
- c. Life skills classes, including credit management and preventive health activities.
- d. Parenting classes.
- e. Job and career skills training.
- f. Counselor consultations.
- g. Temporary financial assistance.
- h. Financial literacy skills training.

The specific services to be provided under this subparagraph shall be determined by an aftercare services assessment and may be provided by the department or through referrals in the community.

2. Temporary assistance provided to prevent homelessness shall be provided as expeditiously as possible and within the limitations defined by the department.

3. A young adult who has reached 18 years of age but is not yet 23 years of age who leaves foster care at 18 years of age but who requests services prior to reaching 23 years of age is eligible for such services.

(b) Road-to-Independence Program. —

1. The Road-to-Independence Program is intended to help eligible students who are former foster children in this state to receive the educational and vocational training needed to achieve independence. The amount of the award shall be based on the living and educational needs of the young adult and may be up to, but may not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.

2. A young adult who has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, has earned a special diploma or special certificate of completion as described in s. 1003.438, or has reached 18 years of age but is not yet 21 years of age is eligible for the initial award, and a young adult under 23 years of age is eligible for

renewal awards, if he or she

a. Was a dependent child, under chapter 39, and was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday or is currently living in licensed foster care or subsidized independent living, or, after reaching the age of 16 was adopted from foster care or placed with a court-approved dependency guardian and has spent a minimum of 6 months in foster care immediately preceding such placement or adoption;

b. Spent at least 6 months living in foster care before reaching his or her 18th birthday;

c. Is a resident of this state as defined in s. 1009.40; and

d. Meets one of the following qualifications:

(I) Has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, or has earned a special diploma or special certificate of completion as described in s. 1003.438, and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in s. 1009.533;

(II) Is enrolled full time in an accredited high school; or

(III) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent.

3. A young adult applying for the Road-to-Independence Program must apply for any other grants and scholarships for which he or she may qualify. The department shall assist the young adult in the application process and may use the federal financial aid grant process to determine the funding needs of the young adult.

4. An award shall be available to a young adult who is considered a full-time student or its equivalent by the educational institution in which he or she is enrolled, unless that young adult has a recognized disability preventing full-time attendance. The amount of the award, whether it is being used by a young adult working toward completion of a high school diploma or its equivalent or working toward completion of a postsecondary education program, shall be determined based on an assessment of the funding needs of the young adult. This assessment must consider the young adult's living and educational costs and other grants, scholarships, waivers, earnings, and other income to be received by the young adult. An award shall be available only to the extent that other grants and scholarships are not sufficient to meet the living and educational needs of the young adult, but an award may not be less than \$25 in order to maintain Medicaid eligibility for the young adult as provided in s. 409.903.

5. The amount of the award may be disregarded for purposes of determining the eligibility for, or the amount of, any other federal or federally supported assistance.

6.a. The department must advertise the criteria, application procedures, and availability of the program to:

(I) Children and young adults in, leaving, or formerly in foster care.

(II) Case managers.

(III) Guidance and family services counselors.

(IV) Principals or other relevant school administrators.

(V) Guardians ad litem.

(VI) Foster parents.

b. The department shall issue awards from the program for each young adult who meets all the requirements of the program to the extent funding is available.

c. An award shall be issued at the time the eligible student reaches 18 years of age.

d. A young adult who is eligible for the Road-to-Independence Program, transitional

support services, or aftercare services and who so desires shall be allowed to reside with the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday or to reside in another licensed foster home or with a group care provider arranged by the department.

e. If the award recipient transfers from one eligible institution to another and continues to meet eligibility requirements, the award must be transferred with the recipient.

f. Funds awarded to any eligible young adult under this program are in addition to any other services or funds provided to the young adult by the department through transitional support services or aftercare services.

g. The department shall provide information concerning young adults receiving funding through the Road-to-Independence Program to the Department of Education for inclusion in the student financial assistance database, as provided in s. 1009.94.

h. Funds are intended to help eligible young adults who are former foster children in this state to receive the educational and vocational training needed to become independent and self-supporting. The funds shall be terminated when the young adult has attained one of four postsecondary goals under subsection (3) or reaches 23 years of age, whichever occurs earlier. In order to initiate postsecondary education, to allow for a change in career goal, or to obtain additional skills in the same educational or vocational area, a young adult may earn no more than two diplomas, certificates, or credentials. A young adult attaining an associate of arts or associate of science degree shall be permitted to work toward completion of a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree. Road-to-Independence Program funds may not be used for education or training after a young adult has attained a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree. i. The department shall evaluate and renew each award annually during the 90-day period before the young adult's birthday. In order to be eligible for a renewal award for the subsequent year, the young adult must:

(I) Complete the number of hours, or the equivalent considered full time by the educational institution, unless that young adult has a recognized disability preventing full-time attendance, in the last academic year in which the young adult earned an award, except for a young adult who meets the requirements of s. 1009.41.

(II) Maintain appropriate progress as required by the educational institution, except that, if the young adult's progress is insufficient to renew the award at any time during the eligibility period, the young adult may restore eligibility by improving his or her progress to the required level.

j. Funds may be terminated during the interim between an award and the evaluation for a renewal award if the department determines that the award recipient is no longer enrolled in an educational institution as defined in sub-subparagraph 2.d., or is no longer a state resident. The department shall notify a recipient who is terminated and inform the recipient of his or her right to appeal.

k. An award recipient who does not qualify for a renewal award or who chooses not to renew the award may subsequently apply for reinstatement. An application for reinstatement must be made before the young adult reaches 23 years of age, and a student may not apply for reinstatement more than once. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the program.

(c) Transitional support services. —

1. In addition to any services provided through aftercare support or the Road-to-

Independence Program, a young adult formerly in foster care may receive other appropriate short-term funding and services, which may include financial, housing, counseling, employment, education, mental health, disability, and other services, if the young adult demonstrates that the services are critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system. The department or community-based care provider shall work with the young adult in developing a joint transition plan that is consistent with a needs assessment identifying the specific need for transitional services to support the young adult's own efforts. The young adult must have specific tasks to complete or maintain included in the plan and be accountable for the completion of or making progress towards the completion of these tasks. If the young adult and the department or community-based care provider cannot come to agreement regarding any part of the plan, the young adult may access a grievance process to its full extent in an effort to resolve the disagreement.

2. A young adult formerly in foster care is eligible to apply for transitional support services if he or she has reached 18 years of age but is not yet 23 years of age, was a dependent child pursuant to chapter 39, was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday, and had spent at least 6 months living in foster care before that date.

3. If at any time the services are no longer critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system, they shall be terminated.

(d) Payment of aftercare, Road-to-Independence Program, or transitional support funds. —

1. Payment of aftercare, Road-to-Independence Program, or transitional support funds shall be made directly to the recipient unless the recipient requests in writing to the community-based care lead agency, or the department, that the payments or a portion of the payments be made directly on the recipient's behalf in order to secure services such as housing, counseling, education, or employment training as part of the young adult's own efforts to achieve self-sufficiency.

2. After the completion of aftercare support services that satisfy the requirements of sub-subparagraph (a)1.h., payment of awards under the Road-to-Independence Program shall be made by direct deposit to the recipient, unless the recipient requests in writing to the community-based care lead agency or the department that:

- a. The payments be made directly to the recipient by check or warrant;
- b. The payments or a portion of the payments be made directly on the recipient's behalf to institutions the recipient is attending to maintain eligibility under this section; or
- c. The payments be made on a two-party check to a business or landlord for a legitimate expense, whether reimbursed or not. A legitimate expense for the purposes of this sub-subparagraph shall include automobile repair or maintenance expenses; educational, job, or training expenses; and costs incurred, except legal costs, fines, or penalties, when applying for or executing a rental agreement for the purposes of securing a home or residence.

3. The community-based care lead agency may purchase housing, transportation, or employment services to ensure the availability and affordability of specific transitional services thereby allowing an eligible young adult to utilize these services in lieu of receiving a direct payment. Prior to purchasing such services, the community-based care lead agency must have a plan approved by the department describing the services to be purchased, the rationale for purchasing the services, and a specific range of expenses for each service that is less than the cost of purchasing the service by an individual young adult. The plan must include a description

of the transition of a young adult using these services into independence and a timeframe for achievement of independence. An eligible young adult who prefers a direct payment shall receive such payment. The plan must be reviewed annually and evaluated for cost-efficiency and for effectiveness in assisting young adults in achieving independence, preventing homelessness among young adults, and enabling young adults to earn a livable wage in a permanent employment situation.

4. The young adult who resides with a foster family may not be included as a child in calculating any licensing restriction on the number of children in the foster home.

(e) Appeals process. —

1. The Department of Children and Family Services shall adopt by rule a procedure by which a young adult may appeal an eligibility determination or the department's failure to provide aftercare, Road-to-Independence Program, or transitional support services, or the termination of such services, if such funds are available.

2. The procedure developed by the department must be readily available to young adults, must provide timely decisions, and must provide for an appeal to the Secretary of Children and Family Services. The decision of the secretary constitutes final agency action and is reviewable by the court as provided in s. 120.68.

Section 3. Subsection (4) of section 409.903, Florida Statutes, is amended to read:

409.903 Mandatory payments for eligible persons. — The agency shall make payments for medical assistance and related services on behalf of the following persons who the department, or the Social Security Administration by contract with the Department of Children and Family Services, determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(4) A child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. This category includes a young adult who is eligible to receive services under s. 409.1451(5), until the young adult reaches 21 ~~20~~ years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required. This category also includes a person who as a child was eligible under Title IV-E of the Social Security Act for foster care or the state-provided foster care and who is a participant in the Road-to-Independence Program.

Section 4. Section 743.044, Florida Statutes, is created to read:

743.044 Removal of disabilities of minors; executing agreements for depository financial services. — For the purpose of ensuring that a youth in foster care will be able to secure depository financial services, such as checking and savings accounts, the disability of nonage of minors shall be removed provided that the youth has reached 16 years of age, has been adjudicated dependent, is residing in an out-of-home placement as defined in s. 39.01, and has completed a financial literacy class. Upon issuance of an order by a court of competent jurisdiction, such a youth is authorized to make and execute all documents, contracts, or agreements necessary for obtaining the rights, privileges, and benefits of depository financial services as if the youth is otherwise competent to make and execute contracts. Execution of any such contract or agreement for depository financial services shall have the same effect as if it

were the act of a person who is not a minor. A youth seeking to enter into such contracts or agreements or execute other necessary instruments incidental to obtaining depository financial services must present an order from a court of competent jurisdiction removing the disabilities of nonage of the minor under this section.

Section 5. For the purpose of implementing this act during the 2007-2008 fiscal year:

(1) The sum of \$420,358 is appropriated from the General Revenue Fund to the Department of Children and Family Services.

(2) The sum of \$519,479 is appropriated from the General Revenue Fund and \$686,089 is appropriated from the Medical Care Trust Fund to the Agency for Health Care Administration.

Section 6. This act shall take effect July 1, 2007.

APPENDIX G

APPX-G-1



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

R. FRANK LEWIS
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
BARBARA J. PARIENTE
PEGGY A. QUINCE
KAJUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

January 10, 2007

THOMAS D. HALL
CLERK OF COURT

Mr. Henry M. Coxe, III
President, The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Mr. John F. Harkness
Executive Director, The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: Procedure for Rule Changes Required By New Legislation

Dear Mr. Coxe and Mr. Harkness:

This letter follows our meeting of July 13, 2006, and Tom Hall's February 11, 2004, letter explaining the procedure to be followed by Florida Bar rules committees concerning rule changes required by new legislation.

As you know, under the current procedure, topical experts and judicial consultants of the Office of the State Courts Administrator (OSCA) track pending legislation during the session and review newly-enacted laws for potential impact on the rules of court. At the end of each legislative session, OSCA prepares a report of new laws that may warrant rule changes, specifically identifying, if possible, the affected rules. Mr. Hall forwards the report to the President of The Florida Bar and appropriate rules committees, as soon as possible after the session

Mr. Henry M. Coxe, III
Mr. John F. Harkness
January 10, 2007
Page: 2

ends, for expedited review by each committee's fast-track legislative subcommittee.

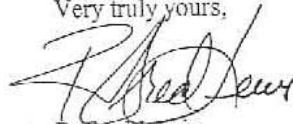
OSCA also works with the Legislature on pending legislation that could affect court rules and generally encourages the Legislature to make such legislation effective October 1 or later to give the rules committees and the Court adequate time to respond. However, in many cases, the new legislation still becomes effective July 1 or even upon being signed into law, thus requiring very swift action by the committees and the Court.

The "fast-track" procedure has been followed for the last three legislative sessions and the procedure generally has worked well. However, recently proposed amendments that were required by new legislation were submitted to the Court after the effective date of the legislation or after the Court deemed it necessary to adopt rule amendments on its own motion because the legislation that required the amendments had already gone into effect.

As we discussed, for the fast-track procedure to work effectively, it is imperative that the rules committees identify and submit to the Court rule amendments, the adoption of which must coincide with the effective date of the legislation, as soon as possible to allow the Court sufficient time to act on the proposals. Similarly, if a committee plans to submit proposed amendments after the effective date of the legislation or a committee believes no rule amendments are required, that decision and the basis for it should be reported promptly to the Clerk of Court as well.

I thank you, the Board of Governors, and the committee chairs, in advance, for assisting the Court to adequately respond to new legislation in a timely manner. If you have any questions, please do not hesitate to contact Tom Hall or me.

Very truly yours,



R. Fred Lewis

Mr. Henry M. Cox, III
Mr. John F. Harkness
January 10, 2007
Page: 3

RFL/dm/sb

cc: Edward Maurice Mullins, Chair, Appellate Court Rules Committee
Keith H. Park, Chair, Civil Pro. Rules Committee
Honorable Dedee S. Costello, Chair, Code & Rules of Evidence Committee
William C. Vose, Chair, Crim. Pro. Rules Committee
John Fraser Himes, Chair, Family Law Rules Committee
Mary Katherine Wimsatt, Chair, Juvenile Court Rules Committee
Peter Alan Sachs, Chair, Probate Rules Committee
Gary Devenow Fox, Chair, Rules of Jud. Admin. Committee
Honorable Pauline M. Drayton, Chair, Small Claims Rules Committee
Peter Anthony Sartes II, Chair, Traffic Court Rules Committee
Thomas, D. Hall, Clerk of Court
Lisa Goodner, State Courts Administrator
✓Gerry Rose, Fla. Bar Director of Legal Publications
Deborah J. Meyer, Director of Central Staff



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
DEBBIE CAUSSEBAUX
CHIEF DEPUTY CLERK
SEBASTIAN J. PHELPS
STAFF ATTORNEY

PHONE NUMBER: (850) 488-6125
www.floridasupremecourt.org

May 11, 2007

Mr. Henry M. Cox, III
President, The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

Mr. John F. Harkness
Executive Director, The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

Re: Rule Changes Required by New Legislation

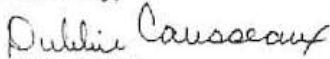
Dear Mr. Cox and Mr. Harkness:

Enclosed please find a chart listing court rule changes that may be required by legislation passed during the 2007 session. The chart identifies as specifically as possible the rules potentially impacted by legislation, and includes comments relating to the required changes. The chart also lists the effective date for each bill.

Mr. Henry M. Coxe, III
Mr. John F. Harkness
May 11, 2007
Page: 2

Please do not hesitate to call me if you have questions.

Most cordially,

by: 
Chief Deputy Clerk

Thomas D. Hall

TDH/LR/vbv

Enclosure

cc: Honorable R. Fred Lewis, Chief Justice
Edward Maurice Mullins, Chair, Appellate Court Rules Committee
Keith H. Park, Chair, Civil Procedure Rules Committee
Honorable Dedee S. Costello, Chair, Code & Rules of Evidence Committee
William C. Vose, Chair, Criminal Procedure Rules Committee
John Fraser Himes, Chair, Family Law Rules Committee
Mary Katherine Wimsett, Chair, Juvenile Court Rules Committee
Peter Alan Sachs, Chair, Probate Rules Committee
Gary Devenow Fox, Chair, Rules of Judicial Administration Committee
Honorable Pauline M. Drayton, Chair, Small Claims Rules Committee
Peter Anthony Sartes II, Chair, Traffic Court Rules Committee
Ricardo Morales, Chair, Workers' Compensation Rules Committee
Honorable Terry Terrell, Chair, Standard Jury Instructions – Criminal Cases
Scott D. Makar, Chair, Standard Jury Instructions – Civil Cases
Paul Hill, General Counsel, The Florida Bar
Lisa Goodner, State Courts Administrator
Brenda Johnson, Director of Community & Intergovernmental Relations
Laura Rush, General Counsel
Deborah J. Meyer, Director of Central Staff

FINAL REPORT
2007 ENROLLED BILLS IMPACTING COURT RULES

Civil House Bill	Short Title/Sponsor	Rule Impacted	Comments/ Effective Date
<u>HB311</u>	Relating to Probate By Hukill	Fla. Prob. R. 5.260(f), 5.340(f), 5.360	July 1, 2007
<u>HB1305</u>	Relating to Notary Public/Electronic Notarization of Documents By Thompson	Any rules requiring or permitting notarization or e-filing	Jan. 1, 2008
Civil Senate Bill	Short Title/Sponsor	Rule Impacted	Comments/ Effective Date
<u>SB252</u>	Relating to Business Filings By Aronberg	Evidence Code Sections 90.301 F.S. And 90.302 F.S.	Bill creates section 671.21 F.S., defining presumption, which may vary from definition in Evidence Code Jan. 1, 2008
<u>SB1030</u>	Relating to Court Costs By Argenziano	R.Crim.P. 3.692 (Form relating to affidavit, petition and order to expunge/seal records)	July 1, 2007
<u>SB2118</u>	Relating to Debts & Debtors By Joyner	R. Civ.P. 1.550, 1.560, 1.570, 1.580	July 1, 2007
Family House Bill	Short Title/Sponsor	Rule Impacted	Comments/ Effective Date
<u>HB1770</u>	Relating to Technology to Supplement Visitation By Lynn	Rule of Mandatory Disclosure in Family Law Cases	The Rules committee may want to add to Rule 12.285 Oct. 1, 2007
Family Senate Bill	Short Title/Sponsor	Rule Impacted	Comments/ Effective Date
<u>SB2870</u>	Relating to Child Support Enforcement By Healthcare Council		May require amendments to various law forms and rules regarding child

			support. Upon Becoming Law
SB122	Relating to Child Custody/Not Modifying Child Custody By Posey		May require changes to the Family Law forms or rules. July 1, 2007
Continual Senate Bill	Short Title/Sponsor	Rule Impacted	Comments/ Effective Date
SB2866	Relating to Sexually Violent Predators By Children, Families and Elder Affairs	Rule 3.986 Forms Related to Judgment and Sentence	The bill requires the adding of language to the judgment to identify any offense that involves sexual motivation. Upon becoming law.
Mediation Senate Bill	Short Title/Sponsor	Rule Impacted	Comments/ Effective Date
SB978	Relating to Court Ordered Nonbinding Arbitration By Aronberg		May require amendments to rules for court-appointed arbitrators. October 1, 2007

I hereby certify that these rules were read against *West's Florida Rules of Court – State* (2007).

Ellen H. Sloyer
Associate Editor
Legal Publications