

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.:

**FAST-TRACK AMENDMENT REGARDING
APPEARANCE OF COUNSEL AT DETENTION HEARINGS**

Ronald S. Frankel, Vice-chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle report under *Fla. R. Jud. Admin.* 2.140(e). The proposed amendment was approved by the Juvenile Court Rules Committee on first reading by a vote of 28-1-0 and on second reading by a vote of 22-2-8. The Committee voted to submit the proposal as an out-of-cycle report by a vote of 18-8-5. The proposal was approved by the Executive Committee of The Florida Bar Board of Governors by a vote of 10-0. Because of the request received from the Florida Council of Juvenile and Family Court Judges (FCJFCJ) (see Appendix E) and the need to conform the rule to *Fla. R. Crim. P.* 3.130 as amended by the Court in *In re: Amendments to Florida Rule of Criminal Procedure 3.130*, 11 So. 3d 341 (Fla. 2009), the Committee is submitting the request to the Court on an out-of-cycle basis.

The proposed amendment was published for comment in the October 15, 2009, Florida Bar *News* (see Appendix C) and posted on the Bar's website (see Appendix D). No comments were received.

The proposed amendment is attached in both full-page (see Appendix A) and two-column (see Appendix B) formats.

In May 2009, the Court approved an amendment to *Fla. R. Crim. P.* 3.130(a), requiring that the state attorney or an assistant state attorney and the public defender or an assistant public defender attend the first appearance proceeding. See *In re Amendments to Florida Rule of Criminal Procedure 3.130*. Subsequent to this opinion, David Silverstein, then-Chair of the Juvenile Court Rules Committee, received a letter from the Hon. James H. Seals, Chair, FCJFCJ (see Appendix E). Judge Seals reported that since the Court's opinion was issued, state attorneys and public defenders throughout the state had been declining to attend detention hearings in juvenile delinquency cases, arguing that *Fla. R. Crim. P.* 3.130(a) did not apply to juvenile proceedings and "given staffing reductions resulting from budget cuts, they will not attend any hearings which are not legally mandated." The FCJFCJ believed that juvenile detention hearings are at least as critical as adult first appearances and asked the Juvenile Court Rules Committee to address this matter promptly.

The Committee has approved creation of a new subdivision (i) to *Rule* 8.010, which requires the presence of the state attorney or an assistant state attorney and the public defender or an assistant public defender at juvenile

detention hearings. The language largely tracks what was approved by the Court in the amendment to *Rule 3.130(a)*. However, the provision in the adult rule regarding appearance by “other electronic means” has been deleted from the juvenile rule. See *Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 796 So. 2d 470 (Fla. 2001) (declining to make permanent temporary amendment to *Rule 8.100* permitting video detention hearings).

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

Respectfully submitted _____.

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APPENDIX A

RULE 8.010. DETENTION HEARING

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

(b) Time. The detention hearing shall be held within the time limits as provided by law. A child who is detained shall be given a hearing within 24 hours after being taken into custody.

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

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

(e) Appointment of Counsel. At the detention hearing, the child shall be advised of the right to be represented by counsel. Counsel shall be appointed if the child qualifies, unless the child waives counsel in writing subject to the requirements of rule 8.165.

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

(1) the nature of the charge for which he or she was taken into custody;

(2) that the child is not required to say anything and that anything said may be used against him or her;

(3) if the child's parent, custodian, or counsel is not present, that he or she has a right to communicate with them and that, if necessary, reasonable means will be provided to do so; and

(4) the reason continued detention is requested.

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

(1) The existence of probable cause to believe the child has committed a delinquent act. This issue shall be determined in a nonadversary proceeding. The court shall apply the standard of proof necessary for an arrest warrant and its finding may be based upon a sworn complaint, affidavit, deposition under oath, or, if necessary, upon testimony under oath properly recorded.

(2) The need for detention according to the criteria provided by law. In making this determination in addition to the sworn testimony of available witnesses all relevant and material evidence helpful in determining the specific issue, including oral and written reports, may be relied upon to the extent of its probative value, even though it would not be competent at an adjudicatory hearing.

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

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

(i) Presence of Counsel. The state attorney or assistant state attorney and public defender or assistant public defender shall attend the detention hearing. Detention hearings shall be held with adequate notice to the public defender and state attorney. An official record of the proceedings shall be maintained. If the child has retained counsel or expresses a desire to retain counsel and is financially able, the attendance of the public defender or assistant public defender is not required at the detention hearing.

APPENDIX B

Proposed rule

Reasons for change

RULE 8.010. DETENTION HEARING

- (a) **When Required.** [No change]
- (b) **Time.** [No change]
- (c) **Place.** [No change]
- (d) **Notice.** [No change]
- (e) **Appointment of Counsel.** [No change]
- (f) **Advice of Rights.** [No change]
- (g) **Issues.** [No change]
- (h) **Probable Cause.** [No change]

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New subdivision created to conform to *Fla. R. Crim. P.* 3.130(a) as amended in *In re: Amendments to Florida Rule of Criminal Procedure 3.130*, 11 So. 3d 341 (Fla. 2009) and because of concerns raised by juvenile court judges over need to have state attorney or assistant state attorney and public defender or assistant public defender present at juvenile detention hearings.

APPENDIX C

Published in October 15, 2009, Florida Bar *News*, at page11.

**JUVENILE COURT RULES COMMITTEE
OUT-OF-CYCLE AMENDMENT**

The Juvenile Court Rules Committee invites comment on a proposed out-of-cycle amendment to the Florida Rules of Juvenile Procedure shown below. The full text of the proposal can be found on The Florida Bar's website at www.FloridaBar.org. Interested persons have until November 15, 2009, to submit comments **electronically** to Charles H. Davis, Chair, Juvenile Court Rules Committee, at charlesd@coj.net, with a copy to the committee's staff liaison at esloyer@flabar.org.

RULE/FORM	VOTE	EXPLANATION
8.010	28-1-0	Creates a new subdivision (i) requiring that the state attorney or assistant state attorney and public defender or assistant public defender attend the detention hearing. Conforms to amendment to <i>Fla.R.Crim.P.</i> 3.130 in May 2009.

APPENDIX D

NOTE: Rule was published for comment before 2009 amendment.

<http://www.floridabar.org/tfb/TFBLawReg.nsf/9dad7bbda218afe885257002004833c5/553479821107635985257000005f292e!OpenDocument#Proposed%20Court%20Rule%20Amendments>

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~~(2) the right to be represented by counsel and if insolvent the right to appointed counsel;~~

(32) that the child is not required to say anything and that anything said may be used against him or her;

(43) if the child's parent, custodian, or counsel is not present, that he or she has a right to communicate with them and that, if necessary, reasonable means will be provided to do so; and

(54) the reason continued detention is requested.

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NOTE: Highlighted portion is new proposal. Other underlined provisions are pending with Supreme Court as part of Juvenile Court Rules Committee's three-year cycle.

APPENDIX E

FCJFCJ

Florida Council of Juvenile and Family Court Judges

June 23, 2009

David Neal Silverstein, Esq.
Chair, Florida Juvenile Court Rules Committee
501 E. Kennedy Boulevard Ste. 1100
Tampa, Florida 33602-5242

Dear Chairman Silverstein:

I write on behalf of the Florida Council of Juvenile and Family Court Judges to propose an amendment to the Rules of Juvenile Procedure. On May 28, 2009, after more than a year of study and discussion by the Criminal Rules Committee, the Florida Supreme Court modified the Rules of Criminal Procedure to require attendance of lawyers from the State Attorney and Public Defender at weekend and holiday first appearance hearings. (See Supreme Court Opinion 08-1934) Since the promulgation of that rule, in some parts of the state the State Attorney and, more often, the Public Defender have declined to attend detention hearings in juvenile delinquency cases. Their justification for doing so is that the Rules of Criminal Procedure do not apply to delinquency cases; therefore they are not *required* to attend and, given staffing reductions resulting from budget cuts, they will not attend any hearings which are not legally mandated. Legal precedent supports that technical position. See *V.K.E. v. State*, 934 So.2d 1276 (Fla. 2006).

The Supreme Court opinion cited above acknowledged that the new rule would create practical hardships for the State Attorneys and Public Defenders, but found that first appearances are so critical that the added burden was justified because first appearances are so "critical" to the administration of justice in criminal cases.

If first appearances are critical to the rights of an adult criminal defendant, detention hearings are at least as critical to juvenile defendants. A child who is detained is deprived of every bit as much liberty as an adult defendant, and is probably less well equipped to speak for him- or herself than an adult. Juveniles are not even permitted to post bond, but are subject to an all-or-nothing decision by the judge. The principles governing juvenile detention are at least as complicated as the considerations for adult bond. However, because fewer judges are assigned to handle delinquency cases than are assigned to adult criminal cases, in almost every part of the state a juvenile defendant

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whose detention hearing occurs on a weekend or holiday is more likely to come before a judge who does not routinely address detention issues. In sum, there may be better reasons to provide juvenile defendants with professional assistance on weekends and holidays than the reasons the Supreme Court found to be "critical" for adults.

The FCJFCJ believes this matter should be addressed promptly. We would be pleased to provide advice or testimony if needed.

Very truly yours,


James H. Seals, Chair

JHS:bw

I certify that this rule was read against *In re: Amendments to the Florida Rules of Juvenile Procedure* (SC09-141 Dec. 17 2009) and *West's Rules of Court* (2009).

Ellen H. Sloyer, Associate Editor
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The Florida Bar