

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO.:**

**2011 LEGISLATIVE AMENDMENTS**

Joel M. Silvershein, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar file this out-of-cycle report of the Juvenile Court Rules Committee under *Fla. R. Jud. Admin.* 2.140(e) and in conformance with the Court’s direction to the rules committees to submit rules amended in response to legislative amendments on an annual basis as necessary. The proposed amendments have been approved by the Committee and reviewed and approved by the Executive Committee of The Florida Bar Board of Governors. The voting records of the Committee and Executive Committee are shown on the attached Table of Contents (*see* Appendix A). The proposed amendments have not been published for comment in *The Florida Bar News* or published on The Florida Bar’s website. The proposed amendments are attached in the full-page (*see* Appendix B) and two-column (*see* Appendix C) formats. Pertinent legislation is attached as Appendix D.

**Rule 8.820.** Subdivision (c)(2) of the rule has been amended to conform to section 390.01114(4)(d), Florida Statutes, as amended by section 1 of Chapter 2011-227, Laws of Florida (*see* Appendix D), which requires a finding by a preponderance of the evidence that child abuse or sexual abuse was “inflicted” on the petitioner by one or both of the petitioner’s parents or guardian.

In subdivision (c)(3) of the rule, the standard of proof has been amended from a preponderance of the evidence to clear and convincing evidence. This conforms the rule to amendment of section 390.01114(4)(d), Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida (*see* Appendix D).

Subdivisions (d)(1) and (d)(2) of the rule has been amended to change the time requirement for the court to issue a ruling on the petition from 48 hours to 3 business days. This conforms the rule to amendment of section 390.01114(4)(b)1, Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida (*see* Appendix D).

Subdivision (d)(3) of the rule has also been amended to change the procedure to be followed if the court fails to act. Section 1 of Chapter 2011-227, Laws of Florida

(*see* Appendix D), amended section 390.01114(4)(b)1, Florida Statutes, to provide that if the court does not act within the required time period, the minor may petition for a hearing to the chief judge of the circuit. The automatic granting of the petition on failure of the court to act was deleted.

**Rule 8.825.** The rule has been amended to require inclusion of findings of fact and conclusions of law on the maturity of the minor in the court's order. This amendment conforms the rule to amendment of section 390.01114(4)(e)2, Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida (*see* Appendix D).

**Rule 8.840.** This new rule incorporates the requirements of section 390.01114(4)(b)2, Florida Statutes, as created by section 1 of Chapter 2011-227, Laws of Florida. The amendment requires that the trial court enter an order within 3 business days of remand from the appellate court.

**Form 8.947.** The Delinquency Disposition Order has been amended to conform to two legislative enactments. First, references to the serious or habitual juvenile offender program have been deleted because section 985.47, Florida Statutes, has been repealed by section 4 of Chapter 2011-70, Laws of Florida (*see* Appendix D).

The form has also been amended to conform to amendments to section 985.441, Florida Statutes, by section 1 of Chapter 2011-54, Laws of Florida (*see* Appendix D), regarding commitment of a child whose underlying offense is a misdemeanor. Stylistic changes have also been made to improve the clarity of the form.

**Form 8.987.** This form has been amended in item (4)(b) to conform to amendment of section 390.01114(4)(d), Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida (*see* Appendix D). The amendment requires a finding that child abuse or sexual abuse was "inflicted" by a parent or guardian. A grammatical correction has also been made.

**Form 8.990.** This form has been amended to change the burden of proof from a preponderance of the evidence to clear and convincing evidence, as required by section 390.01114(4)(c), Florida Statutes. A list of the factors the court is required to consider has also been added to the form. This conforms to amendment of section 390.01114(4)(c), Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida (*see* Appendix D).

**Form 8.992.** The existing form has been deleted and a new form for a Minor's Petition to the Chief Judge to Require a Hearing on Her Petition for Judicial

Waiver has been created. This conforms to amendments to section 390.01114(4)(b)1, by section 1 of Chapter 2011-227, Laws of Florida, which deletes the previous provisions for issuance of a clerk's certificate and substitutes a provision for the minor to petition the chief judge for a hearing on her petition.

Chapters 2011-54 and 2011-70, Laws of Florida, became effective July 1, 2011. Section 3 of Chapter 2011-227, Laws of Florida, states: "This act shall take effect October 1, 2011, or upon the adoption of rules and forms pursuant to 390.01114(5), Florida Statutes, by the Supreme Court for purposes of the amendment of s. 390.01114, Florida Statutes, by this act, whichever occurs earlier."

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

Respectfully submitted \_\_\_\_\_.

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JOEL M. SILVERSHEIN  
Chair  
Juvenile Court Rules Committee  
201 S.E. 6th St., Ste. 660  
Fort Lauderdale, FL 33301-3334  
954/831-7913  
FLORIDA BAR NO.: 608092

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JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
850/561-5600  
FLORIDA BAR NO.: 123390

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	<u>Board of Governors Executive Committee vote:</u> 11-0	
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Board of Governors Executive Committee vote: 11-0
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Committee vote: 9-0-0  
Board of Governors Executive Committee vote: 11-0

## **APPENDIX B**

## **RULE 8.820. HEARING**

(a) **Hearing by Judge.** A judge shall conduct an informal hearing on the petition within the time limits provided by law and these rules. General magistrates and special magistrates shall not hear a petition for a judicial waiver of parental notice of termination of pregnancy.

(b) **Evidence.** The judge shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, and all other relevant evidence.

(c) **Burdens of Proof.**

(1) A finding that the minor is sufficiently mature to decide whether to terminate her pregnancy requires proof by clear and convincing evidence.

(2) A finding that the minor is a victim of child abuse or sexual abuse inflicted by one or both of her parents or a guardian requires proof by a preponderance of the evidence.

(3) A finding that notification of a parent or guardian is not in the best interest of the minor requires proof by ~~a preponderance of the~~ clear and convincing evidence.

(d) **Time Limits.** As provided by section 390.01114(4)(b), Florida Statutes:

(1) Cases commenced under this rule take precedence over other pending matters as necessary to ensure that the court can make its ruling and issue written findings of fact and conclusions of law within ~~48 hours~~ 3 business days of the filing of the petition. ~~The term "48 hours" as used in this section means exactly 48 hours from the filing of the petition and specifically includes weekends, holidays and times after regular business hours of the court.~~

(2) The ~~48-hour~~ 3-business-day time limit may be extended at the request of the minor; however, the court remains under an obligation to rule on the petition as soon as practically possible.



(3) If the court fails to rule within the ~~48-hour~~3-business-day period and an extension has not been requested by the minor, ~~the petition shall be deemed granted and the clerk shall issue the minor a certificate indicating the notice requirement is waived pursuant to [section] 390.01114(4)(b), Florida Statutes~~ the minor may immediately thereafter petition the chief judge of the circuit for a hearing. The chief judge must ensure that a hearing is held within 48 hours after receipt of the minor's petition, and an order is entered within 24 hours after the hearing.

(e) **Confidentiality of Hearings.** Hearings under this part shall be closed to the public and all records thereof shall remain confidential as provided by sections 390.01114(4)(e) and 390.01116, Florida Statutes. Persons other than the petitioner may be permitted to attend the hearing at the request of the petitioner. The court shall advise all persons in attendance that the hearing is confidential.

**RULE 8.825. ORDER AND JUDGMENT**

At the conclusion of the hearing, the court shall issue written and specific findings of fact and conclusions of law in support of its decision, including findings of fact and conclusions of law relating to the maturity of the minor, and order that a confidential record be maintained.

**RULE 8.840. REMAND OF PROCEEDINGS**

In the event the minor appeals a determination by the circuit court under these rules and the appellate court remands the matter to the trial court, the trial court must enter its ruling within 3 business days after the remand.

DISPOSITION ORDER

A petition was filed on .....(date)....., alleging .....(name)....., ..... age, to be a delinquent child. The court finds that it has jurisdiction of the proceedings.

Present before the court were:

- ..... the child;
- ..... .....(name)....., Assistant State Attorney;
- ..... .....(name)....., Assistant Public Defender/defense attorney;
- ..... .....(name)....., guardian;
- ..... .....(name)....., DJJ juvenile probation officer.

At the hearing on .....(date)....., after .....entry of a plea/an adjudicatory hearing....., the child was found to have committed the delinquent acts listed below:

	Count	Count	Count	Count
Charge	.....	.....	.....	.....
Lesser	.....	.....	.....	.....
Maximum	.....	.....	.....	.....
Degree	.....	.....	.....	.....
Guilty	.....	.....	.....	.....
Nolo contendere	.....	.....	.....	.....
Nolle prosee	.....	.....	.....	.....
Adjudicated	.....	.....	.....	.....
Adj. withheld	.....	.....	.....	.....

The predisposition report was .....received and considered/waived by the child.....

The court, having considered the evidence and comments offered by those present, having inquired, and being otherwise fully advised in the premises ORDERS THAT:

..... Adjudication of delinquency is withheld.

..... The child is adjudicated delinquent, ~~and:~~

..... The child is committed to ..... a licensed child caring agency ..... the Department of Juvenile Justice for placement in:

~~..... committed to .....a licensed child caring agency/the Department of Juvenile Justice..... for placement in ..... risk commitment program, for an indeterminate period, but no longer than the child's .....19th/21st..... birthday or the maximum term of imprisonment an adult may serve for each count listed above, except that a juvenile will not serve longer than six months in a nonresidential commitment program for a second degree misdemeanor, whichever comes first. The child is allowed ..... days credit for time spent in secure detention or incarceration before this date. The child shall be placed in .....home detention care .....with/without..... electronic monitoring/secure detention..... until placement.~~

~~.....placed in the serious or habitual juvenile offender program because the child meets the criteria in section 985.31, Florida Statutes. The placement shall be for an indeterminate period but no longer than the maximum sentence allowed by law or the child's 21st birthday, whichever comes first. The child is allowed ..... days credit for time spent in secure detention or incarceration before this date. The child shall be placed on .....home detention .....with/without..... electronic monitoring/secure detention..... until placement.~~

~~.....placed in a maximum risk program because the child meets the criteria in section 985.465, Florida Statutes. The placement is for an indeterminate period of time but no longer than the maximum sentence allowed by law or the child's 21st birthday, whichever comes first. The child is allowed ..... days credit for time spent in secure detention or incarceration before this date. The child shall be placed on .....home detention .....with/without..... electronic monitoring/secure detention..... until placement.~~

..... a minimum-risk nonresidential commitment program, for an indeterminate period, but no longer than the child's 21st birthday or the maximum term of imprisonment an adult may serve for each count listed above, whichever comes first.

..... a ..... low- or ..... moderate-risk commitment program, for an indeterminate period, but no longer than the child's 21st birthday or the maximum term of imprisonment an adult may serve for each count listed above, whichever comes first, because:

..... the child is before the court for the disposition of a felony;

..... the child has previously been adjudicated for a felony offense;

..... the child previously has been adjudicated or had adjudication withheld for three or more misdemeanor offenses;

..... the child is before the court for disposition for a violation of sections 800.03, 806.031, or 828.12, Florida Statutes; or

..... the court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. The facts supporting this finding are:

.....

..... a high-risk commitment program, for an indeterminate period, but no longer than the child's 21st birthday or the maximum term of imprisonment an adult may serve for each count listed above, whichever comes first, because the child is before the court for the disposition of a felony.

..... a maximum-risk commitment program, for an indeterminate period, but no longer than the child's 21st birthday or the maximum term of imprisonment an adult may serve for each count listed above, whichever comes first, because the child meets the criteria in section 985.465 or 985.494, Florida Statutes.

..... The child is allowed ..... days credit for time spent in secure detention or incarceration before this date.

The child shall be placed on

.....home detention .....with/without..... electronic monitoring until placement.

.... secure detention until placement.

..... The court has orally pronounced its reasons for adjudicating and committing this child.

..... The court retains jurisdiction to accept or reject the discharge of this child from commitment, as provided by law.

..... The child is placed on post-commitment juvenile probation for an indefinite period not to exceed the child's 19th birthday or the maximum term of imprisonment an adult could receive for each count listed above, whichever comes first.

..... JUVENILE PROBATION: The child is .....placed on/continued in..... juvenile probation under supervision of .....the Department of Juvenile Justice/.....(name)..... and

..... the court having withheld adjudication of delinquency, for an indefinite period not to exceed the child's 19th birthday.

..... the court having adjudicated the child delinquent, for an indefinite period not to exceed the child's 19th birthday or the maximum term of imprisonment an adult could

receive for each count listed above, except for a second degree misdemeanor, six months, whichever comes first.

.....DISMISS: The case is dismissed.

.....Disposition on each count is .....concurrent/consecutive.....

..... This case disposition is .....concurrent/consecutive.... with case number .....

GENERAL CONDITIONS OF JUVENILE PROBATION. The child shall abide by all of the following conditions:

1. The child shall obey all laws.
2. The child shall be employed full-time or attend school with no unexcused absences, suspensions, or disciplinary referrals.
3. The child shall not change or leave .....his/her.... residence, school, or place of employment without the consent of .....his/her..... parents and juvenile probation officer.
4. The child shall answer truthfully all questions of .....his/her..... juvenile probation officer and carry out all instructions of the court and juvenile probation officer.
5. The child shall keep in contact with the juvenile probation officer in the manner prescribed by the juvenile probation officer.
6. The child shall not use or possess alcoholic beverages or controlled substances.

SPECIAL CONDITIONS OF JUVENILE PROBATION. The child shall abide by all of the conditions marked below:

.....Restitution is ordered. Parent and child are responsible, ..... jointly and severally.

..... Amount is reserved.

..... \$..... to be paid to .....(name)..... Payments shall begin .....(date)..... and continue at the rate of \$..... each month.

..... The court retains jurisdiction under Chapter 985, Florida Statutes, to enforce its restitution order, regardless of the age of the child.

..... Community Service. .... hours are to be performed by the child at the rate of .... hours per month. Written proof is to be provided to the juvenile probation officer.

..... A letter of apology to be written by the child to .....(name)..... within .... days. The letter must be a minimum of .... words.

..... A .... word essay to be written by the child on .....(subject).... and provided to the juvenile probation officer within 30 days.

..... The child may have no ..... contact with victim(s), .....(name(s)).....

..... A ....mental health/substance abuse.... evaluation to be completed by the child within .... days. The child will attend and participate in every scheduled appointment and successfully attend and complete any and all recommended evaluations and treatment.

..... The parent(s) .....is/are..... to complete counseling in .....

..... A curfew is set for the child at ..... p.m. Sunday through Thursday and ..... p.m. Friday and Saturday.

..... The child's driver's license is .....suspended/ revoked/withheld..... for .....(time period).....

..... The child is to complete a .....detention/jail/ prison.... tour within ..... days.

..... The child will be subject to random urinalysis.

..... The child will be electronically monitored.

..... The child will successfully complete all sanctions of the original juvenile probation order.

..... Other: .....



.... The child must pay court costs of \$.....

## GUN CHARGES

.... The court finds that one of the above charges involves the use or possession of a firearm and further ORDERS the following:

.... The child's driver's license is .....suspended/ revoked..... for .....1/2..... years.

.... The child is to serve .....5/10.... days in the Juvenile Detention Center.

## THE COURT FURTHER FINDS AND ORDERS:

.... The child has violated Chapter 794, Florida Statutes (sexual battery) and is ordered to make restitution to the Crimes Compensation Trust Fund under section 960.28(5), Florida Statutes, for the cost of the forensic physical examination.

.... The child ....has been adjudicated delinquent/has entered a plea of no contest/has entered a plea of guilty..... to an offense under Chapter 794 or 800, sections 782.04, 784.045, 810.02, 812.133, 812.135, Florida Statutes, or any other offense specified in section 943.325, Florida Statutes, and the child is required to submit blood specimens under section 943.325, Florida Statutes.

.... Under section 985.039, Florida Statutes:

.... the parent/legal guardian, ....(name)....., shall pay to the Department of Juvenile Justice, 2737 Centerview Drive, Tallahassee, FL 32399-3100, \$5 per day for each day the child is in residential commitment.

.... the parent/legal guardian, ....(name)....., shall pay to the Department of Juvenile Justice, 2737 Centerview Drive, Tallahassee, FL 32399-3100, \$1 per day for each day the child is on probation, nonresidential commitment, or conditional release.

.... the parent/legal guardian, ....(name)....., shall pay to the Department of Juvenile Justice, 2737 Centerview Drive, Tallahassee, FL 32399-3100, a REDUCED fee of \$..... per day for each day the child is in the custody of or supervised by the department. This reduced fee is based on the court's finding:

..... that the parent/legal guardian was the victim of the delinquent act or violation of law for which the child is currently before the court and is cooperating in the investigation of the offense.

..... of indigency or significant financial hardship. The facts supporting this finding are:  
.....

..... The cost of care/supervision fee is WAIVED based on the court's finding:

..... that the parent/legal guardian was the victim of the delinquent act or violation of law for which the child is currently before the court and is cooperating in the investigation of the offense.

..... of indigency or significant financial hardship. The facts supporting this finding are:  
.....

..... The parent/guardian, .....(name)....., .....(address)....., shall be liable for .....% of the payment. The parent/guardian, .....(name)....., .....(address)....., shall be liable for .....% of the payment.

The child is placed on notice that the court may modify the conditions of .....his/her.... juvenile probation at any time and may revoke the juvenile probation if there is a violation of the conditions imposed.

The parties are advised that an appeal is allowed within 30 days of the date of this order.

DONE AND ORDERED in .....(city)....., ..... County, Florida on .....(date)....., at ..... a.m./p.m.

\_\_\_\_\_  
Circuit Judge

Copies to:

**FORM 8.987. PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTIFICATION OF TERMINATION OF PREGNANCY**

IN THE CIRCUIT COURT OF THE ..... JUDICIAL CIRCUIT  
IN AND FOR ..... COUNTY, FLORIDA

In the Interest of ..... (pseudonym or initials of minor)

Case No.: .....

Division: .....

**PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY**

I certify that the following information is true and correct:

(1) The pseudonym or initials of the minor (is/are) ....., and the minor has filed a Sworn Statement of True Name and Pseudonym with the clerk.

(2) The minor is ..... years old.

(3) The minor is pregnant and notice has not been waived.

(4) The minor desires to terminate her pregnancy without notice to a parent or legal guardian for one or more of the following reasons:  
[check all that apply]

..... a. The minor is sufficiently mature to decide whether to terminate her pregnancy, for the following reason(s): .....

..... b. The minor is a victim of child abuse or sexual abuse inflicted by one or both of her parents or a guardian.

..... c. Notification of a parent or guardian is not in the best interest of the minor, for the following reason(s): .....

(5) The minor requests that the court enter an order authorizing her to consent to the performance or inducement of a termination of pregnancy without notification of a parent or guardian.

(6) The minor requests the appointment of an attorney to represent her in this matter: [check one]  
..... yes  
..... no

(7) The minor elects the following method or methods for receiving notices of hearings or other court actions in this case:

..... Through a third party whose name is ..... and whose address and phone number for purposes of notice ~~is~~are ....., .....

..... The minor will contact the office of the clerk of court at the following phone number .....

I understand that by signing this form I am swearing to or affirming the truthfulness of the claims made in this petition and that the punishment for knowingly making a false statement includes fines, imprisonment, or both.

Signature: \_\_\_\_\_

Date: .....

(You may sign a name other than your true name, such as Jane Doe or other pseudonym under which your petition is being filed.)

**FORM 8.990. FINAL ORDER GRANTING PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY**

**FINAL ORDER GRANTING PETITION FOR JUDICIAL WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY**

THIS CAUSE having come before the court on a petition for judicial waiver of parental notice of termination of pregnancy and the court being otherwise advised in the premises, finds the following:

.....The minor has proven by clear and convincing evidence that she is sufficiently mature to decide whether to terminate her pregnancy, for the following reason(s): .....

.....The minor has proven by a preponderance of the evidence that she is a victim of child abuse or sexual abuse inflicted by one or both of her parents or a guardian, for the following reason(s): .....

The court, having made a finding under this section, will report the abuse as is required by section 39.201, Florida Statutes.

.....The minor has proven by a ~~preponderance of the~~ clear and convincing evidence that notification of a parent or guardian is not in the best interest of the minor, for the following reason(s): .....

The court has considered the following factors in reaching this decision that notification of a parent or guardian is not in the best interest of the minor and makes the following findings:

- The minor's age is .....
- The minor's overall intelligence indicates .....
- The minor's emotional development and stability indicates .....
- The minor's credibility and demeanor as a witness indicates .....
- The minor's ability to accept responsibility is demonstrated by .....
- The minor's ability to assess both the immediate and long-range consequences of the minor's choices is demonstrated by .....
- The minor's ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision is indicated by .....

.....  
Whether there may be any undue influence by another on the minor's decision to have an abortion. ....

THEREFORE, it is ORDERED AND ADJUDGED that:

1. The petition for judicial waiver of parental notice of termination of pregnancy is GRANTED.
2. The minor may consent to the performance or inducement of a termination of pregnancy without notice to a parent or guardian.
3. The clerk shall keep and maintain a confidential record of these proceedings as provided by section 390.01116, Florida Statutes, and shall seal the record.

DONE AND ORDERED in the ..... court in and for ..... County, Florida, on .....(date).....

\_\_\_\_\_  
..... Judge

**FORM 8.992. ~~CLERK'S CERTIFICATE PURSUANT TO SECTION 390.01114(4)(B),~~  
~~FLORIDA STATUTES~~ MINOR'S PETITION TO CHIEF JUDGE TO  
REQUIRE A HEARING ON HER PETITION FOR JUDICIAL WAIVER  
OF NOTICE**

~~IN THE CIRCUIT COURT OF THE ..... JUDICIAL CIRCUIT~~  
~~IN AND FOR ..... COUNTY, FLORIDA~~

In the Interest of .....  
(pseudonym or initials of minor)

Case No.: .....  
Division: .....

**CLERK'S CERTIFICATE PURSUANT TO  
SECTION 390.01114(4)(b), FLORIDA STATUTES**

~~The Petitioner in this cause filed a Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy on (month/day/year) at (time). Petitioner has not requested an extension of time. As of (month/day/year) at (time), 48 hours have passed since the filing of the petition, and the Court has not entered a final order. Accordingly, the petition is granted, and the notice requirement is waived pursuant to section 390.01114(4)(b), Florida Statutes.~~

Clerk of the Circuit Court

By: \_\_\_\_\_  
\_\_\_\_\_(Deputy Clerk)

**MINOR'S PETITION TO CHIEF JUDGE TO REQUIRE A HEARING ON HER PETITION**  
**FOR JUDICIAL WAIVER OF NOTICE**

I, .....(name)....., hereby petition the chief judge of this judicial circuit for an order directing the judge to whom this case is assigned to hold a hearing within 48 hours after receipt of this petition by the chief judge, and requiring the court to enter an order on my petition for judicial waiver of notice within 24 hours after the hearing.

In support of this petition, I say:

My petition for judicial waiver of notice was filed with the Clerk on .....(date).....

The third business day from the date of filing my petition was .....(date).....

I have not requested an extension of time for the hearing required to be conducted.

No hearing has been conducted by the court within the time required by statute.

WHEREFORE, I ask the chief judge to enter an order requiring the hearing on the petition for judicial waiver to be conducted within the next 48 hours, and requiring the court to enter its order within 24 hours after that hearing.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

[to be stamped by Clerk]



## **APPENDIX C**

**Proposed rule**

**Reasons for change**

**RULE 8.820. HEARING**

(a) [No change]

(b) [No change]

(c) **Burdens of Proof.**

(1) A finding that the minor is sufficiently mature to decide whether to terminate her pregnancy requires proof by clear and convincing evidence.

(2) A finding that the minor is a victim of child abuse or sexual abuse inflicted by one or both of her parents or a guardian requires proof by a preponderance of the evidence.

(3) A finding that notification of a parent or guardian is not in the best interest of the minor requires proof by ~~a preponderance of the~~ clear and convincing evidence.

(d) **Time Limits.** As provided by section 390.01114(4)(b), Florida Statutes:

(1) Cases commenced under this rule take precedence over other pending matters as necessary to ensure that the court can make its ruling and issue written findings of fact and conclusions of law within ~~48 hours~~ 3 business days of the filing of the petition. ~~The term “48 hours” as used in this section means exactly 48 hours from the filing of the petition~~

Amended to conform to amendment of section 390.01114(4)(d), Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida.

Amended to conform to section 390.01114(4)(d), Florida Statutes.

Amended to conform to amendment of section 390.01114(4)(b)1, Florida Statutes, as amended by section 1 of Chapter 2011-227, Laws of Florida.

~~and specifically includes weekends, holidays and times after regular business hours of the court.~~

(2) The ~~48-hour~~3-business-day time limit may be extended at the request of the minor; however, the court remains under an obligation to rule on the petition as soon as practically possible.

(3) If the court fails to rule within the ~~48-hour~~3-business-day period and an extension has not been requested by the minor, ~~the petition shall be deemed granted and the clerk shall issue the minor a certificate indicating the notice requirement is waived pursuant to [section] 390.01114(4)(b), Florida Statutes~~ the minor may immediately thereafter petition the chief judge of the circuit for a hearing. The chief judge must ensure that a hearing is held within 48 hours after receipt of the minor's petition, and an order is entered within 24 hours after the hearing.

(e) [No change]

Amended to conform to amendment of section 390.01114(4)(b)1, Florida Statutes, as amended by section 1 of Chapter 2011-227, Laws of Florida.

Amended to conform to amendment of section 390.01114(4)(b)1, Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida.

**Proposed rule**

**Reasons for change**

**RULE 8.825. ORDER AND JUDGMENT**

At the conclusion of the hearing, the court shall issue written and specific findings of fact and conclusions of law in support of its decision, including findings of fact and conclusions of law relating to the maturity of the minor, and order that a confidential record be maintained.

Amended to conform to amendment of section 390.01114(4)(e)2, Florida Statutes, by section 1 of Chapter 2011-227, Laws of Florida.

**Proposed rule**

**Reasons for change**

**RULE 8.840. REMAND OF PROCEEDINGS**

In the event the minor appeals a determination by the circuit court under these rules and the appellate court remands the matter to the trial court, the trial court must enter its ruling within 3 business days after the remand.

New rule created to incorporate the requirements of section 390.01114(4)(b)2, Florida Statutes, as created by section 1 of Chapter 2011-227, Laws of Florida.

## **APPENDIX D**

## CHAPTER 2011-54 Senate Bill No. 2114

An act relating to juvenile justice; amending s. 985.441, F.S.; revising provisions concerning active control over a child committed to the Department of Juvenile Justice; prohibiting a court from committing certain youth at a restrictiveness level other than minimum-risk nonresidential; authorizing a court to commit certain youth to a low-risk or moderate-risk residential placement; limiting transfers of certain youth; amending ss. 985.0301, 985.033, and 985.46, F.S.; conforming cross-references; providing an effective date.

WHEREAS, 94 percent of Florida youth grow up to be productive citizens, but the 6 percent of Florida youth who become delinquent cost the state of Florida an average of \$5,200 per child annually according to 2008 statistics, and

WHEREAS, according to national studies, 27 percent of abused or neglected children become delinquent, and

WHEREAS, one of the most effective ways to reduce delinquency is to prevent child abuse, abandonment, and neglect, and

WHEREAS, Florida's juvenile commitment programs have a 39 percent recidivism rate within 1 year, and

WHEREAS, the Department of Juvenile Justice shows that 59 percent of the juveniles being rearrested offend within 120 days after being released, revealing a critical transition period currently not being addressed, and

WHEREAS, the State of Washington undertook a study that demonstrated that a significant level of future prison construction can be avoided, taxpayer dollars can be saved, and crime rates can be reduced by a portfolio of evidence-based youth service options, and

WHEREAS, it has been proven that at-risk youth benefit from a comprehensive approach through coordination of intensive prevention, diversion, and family services, and

WHEREAS, local management fosters all these approaches, ensures stronger relationships between providers and the family, and allows providers to assist in strengthening relationships between the child and the family, and

WHEREAS, instead of competing for funding, prevention, diversion, and juvenile justice services should cooperate with the goal of keeping youth out of juvenile detention, NOW, THEREFORE,

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

Section 1. Section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(1) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(a) Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

(b) Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, ~~and~~ monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program. If the child is not successful in the conditional release program, the department may use the transfer procedure under subsection (4) ~~(3)~~.

(c) Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.47.

1. Following a delinquency adjudicatory hearing under s. 985.35 and a delinquency disposition hearing under s. 985.433 that results in a commitment determination, the court shall, on its own or upon request by the state or the department, determine whether the protection of the public requires that the child be placed in a program for serious or habitual juvenile offenders and whether the particular needs of the child would be best served by a program for serious or habitual juvenile offenders as provided in s. 985.47. The determination shall be made under ss. 985.47(1) and 985.433(7).

2. Any commitment of a child to a program or facility for serious or habitual juvenile offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(d) Commit the child to the department for placement in a program or facility for juvenile sexual offenders in accordance with s. 985.48, subject to specific appropriation for such a program or facility.

1. The child may only be committed for such placement pursuant to determination that the child is a juvenile sexual offender under the criteria specified in s. 985.475.

2. Any commitment of a juvenile sexual offender to a program or facility for juvenile sexual offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense.

(2) Notwithstanding subsection (1), the court having jurisdiction over an adjudicated delinquent child whose underlying offense was a misdemeanor may not commit the child for any misdemeanor offense or any probation violation at a restrictiveness level other than minimum-risk nonresidential unless the probation violation is a new violation of law constituting a felony. However, the court may commit such child to a low-risk or moderate-risk residential placement if:

1. The child has previously been adjudicated for a felony offense;
2. The child has been adjudicated or had adjudication withheld for three or more misdemeanor offenses;
3. The child is before the court for disposition for a violation of s. 800.03, s. 806.031, or s. 828.12; or
4. The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

~~(3)(2)~~ The nonconsent of the child to commitment or treatment in a substance abuse treatment program in no way precludes the court from ordering such commitment or treatment.

~~(4)(3)~~ The department may transfer a child, when necessary to appropriately administer the child's commitment, from one facility or program to another facility or program operated, contracted, subcontracted, or designated by the department, including a postcommitment nonresidential conditional release program, except that the department may not transfer any child adjudicated solely for a misdemeanor to a residential program except as provided in subsection (2). The department shall notify the court that committed the child to the department and any attorney of record for the child, in writing, of its intent to transfer the child from a commitment facility or program to another facility or program of a higher or lower restrictiveness level. The court that committed the child may agree to the transfer or may set a hearing to review the transfer. If the court does not respond within 10 days after receipt of the notice, the transfer of the child shall be deemed granted.

Section 2. Paragraph (d) of subsection (5) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(5)

(d) The court may retain jurisdiction over a child committed to the department for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program pursuant to s. 985.46. ~~In no case shall~~ The jurisdiction of the court may not be retained



after beyond the child's 22nd birthday. However, if the child is not successful in the conditional release program, the department may use the transfer procedure under s. 985.441(4) ~~s. 985.441(3)~~.

Section 3. Subsection (2) of section 985.033, Florida Statutes, is amended to read:

985.033 Right to counsel.—

(2) This section does not apply to transfer proceedings under s. 985.441(4) ~~s. 985.441(3)~~, unless the court sets a hearing to review the transfer.

Section 4. Subsection (4) of section 985.46, Florida Statutes, is amended to read:

985.46 Conditional release.—

(4) A juvenile under nonresidential commitment placement continues ~~will continue to be~~ on commitment status and is ~~the~~ subject to ~~the transfer provision~~ under s. 985.441(4) ~~s. 985.441(3)~~.

Section 5. This act shall take effect July 1, 2011. Approved by the Governor May 26, 2011. Filed in Office

Secretary of State May 26, 2011.

CHAPTER 2011-70

Committee Substitute for Senate Bill No. 618

An act relating to juvenile justice; repealing ss. 985.02(5), 985.03(48), 985.03(56), 985.47, 985.483, 985.486, and 985.636, F.S., relating to, respectively, legislative intent for serious or habitual juvenile offenders in the juvenile justice system, definitions of terms for a training school and the serious or habitual juvenile offender program, the serious or habitual juvenile offender program in the juvenile justice system, the intensive residential treatment program for offenders less than 13 years of age, and the designation of persons holding law enforcement certification within the Office of the Inspector General to act as law enforcement officers; amending s. 985.494, F.S.; requiring a child who is adjudicated delinquent, or for whom adjudication is withheld, to be committed to a maximum-risk residential program for an act that would be a felony if committed by an adult if the child has completed two different high-risk residential commitment programs; repealing s. 985.445, F.S., relating to cases involving grand theft of a motor vehicle committed by a child; amending ss. 985.0301, 985.47, and 985.565, F.S.; conforming references to changes made by the act; amending s. 985.66, F.S.; removing all references to the Juvenile Justice Standards and Training Commission; requiring the Department of Juvenile Justice to be responsible for staff development and training; specifying the duties and responsibilities of the department for staff development and training; removing obsolete provisions to conform to changes made by the act; repealing s. 985.48(8), F.S., relating to activities of the Juvenile Justice Standards and Training Commission with respect to training and treatment services for juvenile sexual offenders; providing an effective date.

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

Section 1. Subsection (5) of section 985.02, Florida Statutes, is repealed.

Section 2. Subsection (48) of section 985.03, Florida Statutes, is repealed.

Section 3. Subsection (56) of section 985.03, Florida Statutes, is repealed.

Section 4. Section 985.47, Florida Statutes, is repealed.

Section 5. Section 985.483, Florida Statutes, is repealed.

Section 6. Section 985.486, Florida Statutes, is repealed.

Section 7. Section 985.636, Florida Statutes, is repealed.

Section 8. Section 985.494, Florida Statutes, is amended to read:

985.494 Commitment programs for juvenile felony offenders.—

(1) Notwithstanding any other law and regardless of the child's age, a child who is adjudicated delinquent, or for whom adjudication is withheld, for an act that would be a felony if committed by an adult, shall be committed to:

~~(a) A program for serious or habitual juvenile offenders under s. 985.47 or an intensive residential treatment program for offenders less than 13 years of age under s. 985.483, if the child has participated in an early delinquency intervention program and has completed a sheriff's training and respect program.~~

~~(b) a maximum-risk residential program, if the child has completed two different high-risk residential commitment programs participated in an early delinquency intervention program, has completed a sheriff's training and respect program, and has completed a program for serious or habitual juvenile offenders or an intensive residential treatment program for offenders less than 13 years of age. The commitment of a child to a maximum-risk residential program must be for an indeterminate period, but may not exceed the maximum term of imprisonment that an adult may serve for the same offense.~~

(2) In committing a child to the appropriate program, the court may consider an equivalent program of similar intensity as being comparable to a program required under subsection (1).

Section 9. Section 985.445, Florida Statutes, is repealed.

Section 10. Paragraph (c) of subsection (5) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(5)

(c) Notwithstanding ss. 743.07 and 985.455(3), and except as provided in s. 985.47, the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, ~~985.445~~, 985.455, and 985.513, and except as provided in this section and s. 985.47, a child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), ~~s. 985.445~~, or s. 985.455 after becoming 21 years of age.

Section 11. Subsection (2) of section 985.47, Florida Statutes, is amended to read:

985.47 Serious or habitual juvenile offender.—

(2) DETERMINATION.—After a child has been adjudicated delinquent under s. 985.35, the court shall determine whether the child meets the criteria for a serious or habitual juvenile offender under subsection (1). If the court determines that the child does not meet such criteria, ss. 985.435, 985.437, 985.439, 985.441, ~~985.445~~, 985.45, and 985.455 shall apply.

Section 12. Paragraph (b) of subsection (4) of section 985.565, Florida Statutes, is amended to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(b) *Juvenile sanctions*.—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, ~~985.445~~, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 13. Section 985.66, Florida Statutes, is amended to read:

985.66 Juvenile justice training academies; ~~staff development and training; Juvenile Justice Standards and Training Commission;~~ Juvenile Justice Training Trust Fund.—

(1) LEGISLATIVE PURPOSE.—In order to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff that will meet the needs of such persons in their discharge of duties while at the same time meeting the requirements for the American Correction Association accreditation by the Commission on Accreditation for Corrections, it is the purpose of the Legislature to require the department to establish, maintain, and oversee the operation of juvenile justice training academies in the state. The purpose of the Legislature in establishing staff development and training programs is to foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs; to positively impact the recidivism of children in the juvenile justice system; and to afford greater protection of the public through an improved level of services delivered by a professionally trained juvenile justice program staff to children who are alleged to be or who have been found to be delinquent.

(2) ~~STAFF DEVELOPMENT JUVENILE JUSTICE STANDARDS AND TRAINING COMMISSION.~~—

(a) ~~There is created under the Department of Juvenile Justice the Juvenile Justice Standards and Training Commission, hereinafter referred to as the commission. The 17-member commission shall consist of the Attorney General or designee, the Commissioner of Education or designee, a member of the juvenile court judiciary to be appointed by the Chief Justice of the Supreme Court, and 14 members to be appointed by the Secretary of Juvenile Justice as follows:~~

~~1. Seven members shall be juvenile justice professionals: a superintendent or a direct care staff member from an institution; a director from a contracted community based program; a superintendent and a direct care staff member from a regional detention center or facility; a juvenile probation officer supervisor and a juvenile probation officer; and a director of a day treatment or conditional release program. No fewer than three of these members shall be contract providers.~~

~~—2. Two members shall be representatives of local law enforcement agencies.~~

~~3. One member shall be an educator from the state's university and community college program of criminology, criminal justice administration, social work, psychology, sociology, or other field of study pertinent to the training of juvenile justice program staff.~~

~~4. One member shall be a member of the public.~~

~~5. One member shall be a state attorney, or assistant state attorney, who has juvenile court experience.~~

~~6. One member shall be a public defender, or assistant public defender, who has juvenile court experience.~~

~~7. One member shall be a representative of the business community.~~

~~All appointed members shall be appointed to serve terms of 2 years.~~

(b) ~~The composition of the commission shall be broadly reflective of the public and shall include minorities and women. The term "minorities" as used in this paragraph means a member of a socially or economically disadvantaged group that includes blacks, Hispanics, and American Indians.~~

(c) ~~The Department of Juvenile Justice shall provide the commission with staff necessary to assist the commission in the performance of its duties.~~

(d) ~~The commission shall annually elect its chairperson and other officers. The commission shall hold at least four regular meetings each year at the call of the chairperson or upon the written request of three members of the commission. A majority of the members of the commission constitutes a quorum. Members of the commission shall serve without compensation but are entitled to be reimbursed for per diem and travel expenses as provided by s.~~

~~112.061 and these expenses shall be paid from the Juvenile Justice Training Trust Fund.~~

~~(e) The department powers, duties, and functions of the commission shall be to:~~

~~(a) 1--Designate the location of the training academies; develop, implement, maintain, and update the curriculum to be used in the training of juvenile justice program staff; establish timeframes for participation in and completion of training by juvenile justice program staff; develop, implement, maintain, and update job-related examinations; develop, implement, and update the types and frequencies of evaluations of the training academies; approve, modify, or disapprove the budget for the training academies, and the contractor to be selected to organize and operate the training academies and to provide the training curriculum.~~

~~(b) 2--Establish uniform minimum job-related training courses and examinations for juvenile justice program staff.~~

~~(c) 3--Consult and cooperate with the state or any political subdivision; any private entity or contractor; and with private and public universities, colleges, community colleges, and other educational institutions concerning the development of juvenile justice training and programs or courses of instruction, including, but not limited to, education and training in the areas of juvenile justice.~~

~~(d) 4--Enter into With the approval of the department, make and enter into such contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the commission determines are necessary in the execution of the its powers of the department or the performance of its duties.~~

~~5. Make recommendations to the Department of Juvenile Justice concerning any matter within the purview of this section.~~

(3) JUVENILE JUSTICE TRAINING PROGRAM.—The ~~department commission~~ shall establish a certifiable program for juvenile justice training pursuant to this section, and all department program staff and providers who deliver direct care services pursuant to contract with the department shall be required to participate in and successfully complete the ~~department-approved commission-approved~~ program of training pertinent to their areas of responsibility. Judges, state attorneys, and public defenders, law enforcement officers, and school district personnel may participate in such training program. For the juvenile justice program staff, the ~~department commission~~ shall, based on a job-task analysis:

(a) Design, implement, maintain, evaluate, and revise a basic training program, including a competency-based examination, for the purpose of providing minimum employment training qualifications for all juvenile justice personnel. All program staff of the department and providers who deliver direct-care services who are hired after October 1, 1999, must meet the following minimum requirements:

1. Be at least 19 years of age.

2. Be a high school graduate or its equivalent as determined by the ~~department commission~~.

3. Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after September 30, 1999, pleads guilty or nolo contendere to or is found guilty of any felony or a misdemeanor involving perjury or false statement is not eligible for employment, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subparagraph, any person who pled nolo contendere to a misdemeanor involving a false statement before October 1, 1999, and who has had such record of that plea sealed or expunged is not ineligible for employment for that reason.

4. Abide by all the provisions of s. 985.644(1) regarding fingerprinting and background investigations and other screening requirements for personnel.

5. Execute and submit to the department an affidavit-of-application form, adopted by the department, attesting to his or her compliance with subparagraphs 1.-4. The affidavit must be executed under oath and constitutes an official statement under s. 837.06. The affidavit must include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The employing agency shall retain the affidavit.

(b) Design, implement, maintain, evaluate, and revise an advanced training program, including a competency-based examination for each training course, which is intended to enhance knowledge, skills, and abilities related to job performance.

(c) Design, implement, maintain, evaluate, and revise a career development training program, including a competency-based examination for each training course. Career development courses are intended to prepare personnel for promotion.

(d) The ~~department commission~~ is encouraged to design, implement, maintain, evaluate, and revise juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

(4) JUVENILE JUSTICE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Juvenile Justice Training Trust Fund to be used by the department of ~~Juvenile Justice~~ for the purpose of funding the development and updating of a job-task analysis of juvenile justice personnel; the development, implementation, and updating of job-related training courses and examinations; and the cost of ~~commission-approved~~ juvenile justice training courses; ~~and reimbursement for expenses as provided in s. 112.061 for members of the commission and staff.~~

(b) One dollar from every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b) and 318.18 shall be deposited into the Juvenile Justice Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget cycle or through a supplemental budget approved by the department shall revert to the trust fund.

(5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—The number, location, and establishment of juvenile justice training academies shall be determined by the ~~department commission~~.

(6) SCHOLARSHIPS AND STIPENDS.—

(a) By rule, the ~~department commission~~ shall establish criteria to award scholarships or stipends to qualified juvenile justice personnel who are residents of the state who want to pursue a bachelor's or associate in arts degree in juvenile justice or a related field. The department shall handle the administration of the scholarship or stipend. The Department of Education shall handle the notes issued for the payment of the scholarships or stipends. All scholarship and stipend awards shall be paid from the Juvenile Justice Training Trust Fund upon vouchers approved by the Department of Education and properly certified by the Chief Financial Officer. Prior to the award of a scholarship or stipend, the juvenile justice employee must agree in writing to practice her or his profession in juvenile justice or a related field for 1 month for each month of grant or to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period not to exceed 10 years. Repayment shall be made payable to the state for deposit into the Juvenile Justice Training Trust Fund.

(b) The ~~department commission~~ may establish the scholarship program by rule ~~and implement the program on or after July 1, 1996.~~

(7) ADOPTION OF RULES.—The ~~department commission~~ shall adopt rules as necessary to carry out the provisions of this section.

(8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services is authorized to insure a private agency, individual, or corporation operating a state-owned training school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized herein shall be

under the same general terms and conditions as the department is insured for its responsibilities under chapter 284.

~~(9) The Juvenile Justice Standards and Training Commission is terminated on June 30, 2001, and such termination shall be reviewed by the Legislature prior to that date.~~

Section 14. Subsection (8) of section 985.48, Florida Statutes, is repealed.

Section 15. This act shall take effect July 1, 2011.

Approved by the Governor May 31, 2011.

Filed in Office Secretary of State May 31, 2011.

## CHAPTER 2011-227

### House Bill No. 1247

An act relating to parental notice of abortion; amending s. 390.01114, F.S.; revising the definition of the term “constructive notice”; revising notice requirements relating to the termination of a pregnancy of a minor; providing exceptions to the notice requirements; revising procedure for judicial waiver of notice; providing for the minor to petition for a hearing within a specified time; providing that in a hearing relating to waiving the requirement for parental notice, the court consider certain additional factors, including whether the minor’s decision to terminate her pregnancy was due to undue influence; providing a procedure for appeal if judicial waiver of notice is not granted; requiring that the court order contain factual findings and legal conclusions; requiring Supreme Court reports to the Governor and Legislature to include additional information; providing for severability; providing an effective date.

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

Section 1. Section 390.01114, Florida Statutes, is amended to read:

390.01114 Parental Notice of Abortion Act.—

(1) SHORT TITLE.—This section may be cited as the “Parental Notice of Abortion Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Actual notice” means notice that is given directly, in person or by telephone, to a parent or legal guardian of a minor, by a physician, at least 48 hours before the inducement or performance of a termination of pregnancy, and documented in the minor’s files.

(b) “Child abuse” has the same meaning as s. 39.0015(3).

(c) “Constructive notice” means notice that is given in writing, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After the 72 hours have passed, delivery is deemed to have occurred.

(d) “Medical emergency” means a condition that, on the basis of a physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

(e) “Sexual abuse” has the meaning ascribed in s. 39.01.

(f) “Minor” means a person under the age of 18 years.

(3) NOTIFICATION REQUIRED.—

(a) Actual notice shall be provided by the physician performing or inducing the termination of pregnancy before the performance or inducement of the termination of the pregnancy of a minor. The notice may be given by a referring physician. The physician who performs or induces the termination of pregnancy must receive the written statement of the referring physician certifying that the referring physician has given notice. If actual notice is not possible after a reasonable effort has been made, the physician performing or inducing the termination of pregnancy or the referring physician must give constructive notice. Notice given under this subsection by the physician performing or inducing the termination of pregnancy must include the name and address of the facility providing the termination of pregnancy and the name of the physician providing notice. Notice given under this subsection by a referring physician must include the name and address of the facility where he or she is referring the minor and the name of the physician providing notice. If actual notice is provided by telephone, the physician must actually speak with the parent or guardian, and must record in the minor’s medical file the name of the parent or guardian provided notice,



the phone number dialed, and the date and time of the call. If constructive notice is given, the physician must document that notice by placing copies of any document related to the constructive notice, including, but not limited to, a copy of the letter and the return receipt, in the minor's medical file. Actual notice given by telephone shall be confirmed in writing, signed by the physician, and mailed to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

(b) Notice is not required if:

1. In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements. If a medical emergency exists, the physician shall make reasonable attempts, whenever possible, without endangering the minor, to contact the parent or legal guardian, and may proceed, but must document reasons for the medical necessity in the patient's medical records. The physician shall provide notice directly, in person or by telephone, to the parent or legal guardian, including details of the medical emergency and any additional risks to the minor. If the parent or legal guardian has not been notified within 24 hours after the termination of the pregnancy, the physician shall provide notice in writing, including details of the medical emergency and any additional risks to the minor, signed by the physician, to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian;

2. Notice is waived in writing by the person who is entitled to notice and such waiver is notarized, dated not more than 30 days before the termination of pregnancy, and contains a specific waiver of the right of the parent or legal guardian to notice of the minor's termination of pregnancy;

3. Notice is waived by the minor who is or has been married or has had the disability of nonage removed under s. 743.015 or a similar statute of another state;

4. Notice is waived by the patient because the patient has a minor child dependent on her; or

5. Notice is waived under subsection (4).

(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

(4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.—

(a) A minor may petition any circuit court ~~in a judicial circuit within the jurisdiction of the District Court of Appeal~~ in which the minor she resides for a waiver of the notice requirements of subsection (3) and may participate in proceedings on her own behalf. The petition may be filed under a pseudonym or through the use of initials, as provided by court rule. The petition must include a statement that the petitioner is pregnant and notice has not been waived. The court shall advise the minor that she has a right to court-appointed counsel and shall provide her with counsel upon her request at no cost to the minor.

~~(b)1.~~ Court proceedings under this subsection must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within 3 business days ~~48 hours~~ after the petition is filed, except that the 3-business-day ~~48-hour~~ limitation may be extended at the request of the minor. If the court fails to rule within the 3-business-day ~~48-hour~~ period and an extension has not been requested, the minor may immediately petition for a hearing upon the expiration of the 3-business-day period to the chief judge of the circuit, who must ensure a hearing is held within 48 hours after receipt of the minor's petition and an order is entered within 24 hours after the hearing ~~the petition is granted, and the notice requirement is waived.~~

2. If the circuit court does not grant judicial waiver of notice, the minor has the right to appeal. An appellate court must rule within 7 days after receipt of appeal, but a ruling may be remanded with further instruction for a ruling within 3 business days after the remand. The reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court since the proceeding is a nonadversarial proceeding.

(c) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy without the notification of a parent or guardian. If the court does not make the finding specified in this paragraph or paragraph (d), it must dismiss the petition. Factors the court shall consider include:

1. The minor's:

a. Age.

b. Overall intelligence.

c. Emotional development and stability.

d. Credibility and demeanor as a witness.

e. Ability to accept responsibility.

f. Ability to assess both the immediate and long-range consequences of the minor's choices.

g. Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.

2. Whether there may be any undue influence by another on the minor's decision to have an abortion.

(d) If the court finds, by a preponderance of the evidence, that the petitioner is the victim ~~there is evidence of~~ child abuse or sexual abuse ~~inflicted of the petitioner~~ by one or both of her parents or her guardian, or by clear and convincing evidence that the notification of a parent or guardian is not in the best interest of the petitioner, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy without the notification of a parent or guardian. The best-interest standard does not include financial best interest or financial considerations or the potential financial impact on the minor or the minor's family if the minor does not terminate the pregnancy. If the court finds evidence of child abuse or sexual abuse of the minor petitioner by any person, the court shall report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201. If the court does not make the finding specified in this paragraph or paragraph (c), it must dismiss the petition.

(e) A court that conducts proceedings under this section shall:

1. Provide for a written transcript of all testimony and proceedings; and

2. Issue a final written order containing and specific factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor as provided under paragraph (c); and shall

3. Order that a confidential record be maintained, as required under s. 390.01116. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, and all other relevant evidence.

(f) All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

(g)(f) An expedited appeal shall be made available, as the Supreme Court provides by rule, to any minor to whom the circuit court denies a waiver of notice. An order authorizing a termination of pregnancy without notice is not subject to appeal.

(h)(g) No Filing fees or court costs may not shall be required of any pregnant minor who petitions a court for a waiver of parental notification under this subsection at either the trial or the appellate level.

(i)(h) A No county is not shall be obligated to pay the salaries, costs, or expenses of any counsel appointed by the

court under this subsection.

(5) PROCEEDINGS.—The Supreme Court is requested to adopt rules and forms for petitions to ensure that proceedings under subsection (4) are handled expeditiously and in a manner consistent with this act. The Supreme Court is also requested to adopt rules to ensure that the hearings protect the minor’s confidentiality and the confidentiality of the proceedings.

(6) REPORT.—The Supreme Court, through the Office of the State Courts Administrator, shall report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed under subsection (4) for the preceding year, and the timing and manner of disposal of such petitions by each circuit court. For each petition resulting in a waiver of notice, the reason for the waiver shall be included in the report.

Section 2. If any provision of this act or its application to any individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 3. This act shall take effect October 1, 2011, or upon the adoption of rules and forms pursuant to s. 390.01114(5), Florida Statutes, by the Supreme Court for purposes of the amendment of s. 390.01114, Florida Statutes, by this act, whichever occurs earlier.

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.

I certify that these rules were read against *West's Rules of Court – State (2011)*. I also certify that this document was prepared in accordance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

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Ellen H. Sloyer  
Rules Committee Liaison  
The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399  
850/561-5709