

Supreme Court of Florida

No. SC11-1567

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

[October 20, 2011]

PER CURIAM.

The Florida Bar's Juvenile Court Rules Committee (Committee) has filed an out-of-cycle, fast-track report of proposed amendments to the Florida Rules of Juvenile Procedure that conform the rules and forms to recent legislation. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e).

The Committee proposes amendments to rules 8.820 (Hearing), and 8.825 (Order and Judgment), and forms 8.947 (Disposition Order — Delinquency), 8.987 (Petition for Judicial Waiver of Parental Notification of Termination of Pregnancy), and 8.990 (Final Order Granting Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy). The Committee also proposes new rule 8.840 (Remand of Proceedings), and replacing existing form 8.992 (Clerk's Certificate Pursuant to Section 390.01114(4)(b), Florida Statutes) with new form

8.992 (Minor's Petition to Chief Judge to Require a Hearing on Her Petition for Judicial Waiver of Notice). The proposals are in response to recent amendments to sections 39.01114(4), 985.47, and 985.441, Florida Statutes (2010). See ch. 2011-54, §1, Laws of Fla. (amending § 985.441, Fla. Stat.); ch. 2011-70, § 4, Laws of Fla. (amending § 985.47, Fla. Stat.); ch. 2011-227, § 1, Laws of Fla. (amending § 39.01114(4), Fla. Stat.). The amendments to sections 985.47 and 985.441 became effective July 1, 2011. See ch. 2011-54, § 5, Laws of Fla.; ch. 2011-70, §15, Laws of Fla. The amendments to section 39.01114(4) became effective October 1, 2011. See ch. 2011-227, § 3, Laws of Fla. The Executive Committee of the Florida Bar Board of Governors approved the proposals by a vote of 11-0.

After considering the Committee's proposals and reviewing the relevant legislation, we adopt the proposed amendments, with a modification to the amendments to form 8.990 (Final Order Granting Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy). The amendments to form 8.990 implement amendments to section 39.01114(4), Florida Statutes, made by chapter 2011-227, section 1, Laws of Florida. The Committee proposes that the lead-in paragraph in the form for the list of factors the court must consider, under amended section 39.01114(4)(c), in determining whether a minor is sufficiently mature to decide whether to terminate her pregnancy provide:

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 indicate.....
- 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.....

(Emphasis added.) Because the factors being added to the form must be considered in connection with a maturity finding, under section 390.01114(4)(c), rather than a best interests finding, under section 390.01114(4)(d), we modify the new paragraph to read:

The court has considered the following factors in reaching this decision that the minor is sufficiently mature to decide whether to terminate her pregnancy and makes the following findings:

Accordingly, we amend the Florida Rules of Juvenile Procedure as reflected in the appendix to this opinion. New language is underscored, and deleted language is struck through. These amendments shall become effective immediately upon the release of this opinion. Because the amendments were not

published for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments with the Court.¹

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Juvenile Procedure Committee

Joel M. Silvershein, Chair, Juvenile Court Rules Committee, Fort Lauderdale, Florida; John F. Harkness, Jr., Executive Director, and Ellen H. Sloyer, Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

1. An original and nine paper copies of all comments must be filed with the Court on or before December 19, 2011, with a certificate of service verifying that a copy has been served on the committee chair, Joel Michael Silvershein, 201 SE 6th Street Suite 660, Fort Lauderdale, Florida 33301-3334, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The committee chair has until January 9, 2012, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

APPENDIX

RULE 8.820. HEARING

(a) – (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 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]

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.

FORM 8.947. DISPOSITION ORDER — DELINQUENCY

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)....., afterentry 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 prosequere
Adjudicated
Adj. withheld

The predisposition report wasreceived 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 toa 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's19th/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 inhome detention carewith/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 onhome detentionwith/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 onhome detentionwith/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 detentionwith/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 isplaced on/continued in..... juvenile probation under supervision ofthe 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 isconcurrent/consecutive.....

..... This case disposition isconcurrent/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 leavehis/her.... residence, school, or place of employment without the consent ofhis/her..... parents and juvenile probation officer.
4. The child shall answer truthfully all questions ofhis/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)).....

..... Amental 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 issuspended/ revoked/withheld..... for(time period).....

..... The child is to complete adetention/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 issuspended/ revoked..... for1/2..... years.

..... The child is to serve5/10.... 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 childhas 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 ofhis/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 court has considered the following factors in reaching this decision that the minor is sufficiently mature to decide whether to terminate her pregnancy 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.

.....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):

.....
.....
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]