AMENDMENT TO FLORIDA RULE OF JUVENILE PROCEDURE 8.100(a) AND PETITION REQUESTING APPROVAL TO IMPLEMENT A PILOT PROJECT UTILIZING ELECTRONIC AUDIOVISUAL DEVICES IN JUVENILE DETENTION HEARINGS.

No. 84,021

[January 25, 1996]

PER CURIAM.

Trial judges in several circuits have petitioned this Court to amend Florida Rules of Court to permit juveniles to attend detention hearings via audiovideo device. We have jurisdiction. Art. V, § 2(a), Fla. Const.

Florida Rule of Juvenile Procedure 8.010 provides that no child may be placed in detention without a hearing where probable cause and the need for detention are determined:

RULE 8.010 DETENTION HEARING

(a) When Required. No detention order provided for in rule 8.013 shall be entered without a hearing at which all parties shall have an opportunity to be heard on the necessity for the child's being held in detention . . . .

. . . .

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

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

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

"[C]riteria provided by law" in subsection (2) include those requirements set out in section 39.042, Florida Statutes (1995).[(1)]

39.042 Use of detention.--

(1) All determinations and court orders regarding the use of secure, nonsecure, or home detention shall be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;

(c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2)(a) All determinations and court orders regarding placement of a child into detention care shall comply with all requirements and criteria provided in this part and shall be based on a risk assessment of the child . . . .

(b)1. . . . The risk assessment instrument shall take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful

possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and community control status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances . . . . The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect.

Judges in the fifth,[(2)] ninth, thirteenth, seventeenth, and nineteenth circuits have petitioned this Court to amend Florida Rule of Juvenile Procedure 8.100(a) to allow juveniles to attend detention hearings via audiovideo device:

RULE 8.100 GENERAL PROVISIONS FOR HEARINGS

Unless otherwise provided, the following provisions apply to all hearings:

(a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests, except that the child's presence may be either in person or by electronic audiovisual device in the discretion of the Court for detention hearings.

The judges make the following points: Similar procedures are used for adults at first appearance and arraignment; this practice will eliminate the need for transporting juveniles from the detention center to the courthouse, which will end fights during transport and give juveniles more time to attend classes and counseling sessions at the center; this practice will eliminate the parading of juveniles through the courthouse in handcuffed groups and will do away with outbursts and fights in the courtroom.

Opponents of the amendment include individual public defenders, the Juvenile Court Rules Committee of the Florida Bar, and the Juvenile Justice Committee of the Florida Public Defenders Association, who make the following points:

Unlike first appearances, detention hearings are evidentiary and adversarial in nature, often requiring witness confrontation, challenging of evidence, and review of records and documents; the practice will put the public defender and state attorney on unequal footing by giving the state attorney the advantage of his or her physical presence in the courtroom with the judge while placing the public defender far away at the detention center with the juvenile; and this practice will deprive juveniles of the opportunity to have meaningful contact with parents, guardians, and counsellors.

The proposed amendment has been unanimously endorsed by the Juvenile Section of the Florida Conference of Circuit Judges and approved by the public defender of the thirteenth judicial circuit. Further, the Board of Governors of The Florida Bar has voted to disagree with the Juvenile Court Rules Committee's opposition to the amendment.

While every Florida citizen is entitled to due process of law in any legal proceeding where his or her personal freedom is directly in issue, this right is not vitiated by technological changes in court procedure. Attendance of adults via audiovisual device at first appearance and arraignment "has [proven] successful . . . [and] has met with the substantial approval of the arrested persons concerned." Florida Bar re Amendment to Rules--Criminal Procedure, 462 So. 2d 386, 386 (Fla. 1984). See generally Fla. R. Crim. P. 3.130, 3.160.

While detention hearings differ from adult proceedings in several respects, we note that it is the juvenile judges themselves who have initiated the present proposal. These judges are intimately familiar with the way detention hearings function and have no vested interest in the proposal, except to make the juvenile justice system work more effectively.

Based on the foregoing, we decline at this time to adopt the proposed rule change but authorize the chief judge in each of the above circuits to institute a one-year pilot program that will allow juveniles to attend detention hearings via audiovideo device. At the conclusion of one year, the chief judge in each of the above circuits that chooses to implement such a pilot program will submit to this Court a report evaluating the program.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, HARDING and WELLS, JJ., concur.

KOGAN, J., dissents with an opinion, in which ANSTEAD, J., concurs.

ANSTEAD, J., dissents with an opinion, in which KOGAN, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

KOGAN, J., dissenting.

I respectfully dissent as I agree with the position of the Juvenile Court Rules Committee of the Florida Bar, the several public defenders, and the Juvenile Justice Committee of the Florida Public Defenders Association.

ANSTEAD, J., concurs.

ANSTEAD, J., dissenting.

I respectfully dissent, as I agree with those, including the Florida Bar's Juvenile Court Rules Committee, who oppose the substitution of audiovisual monitors for personal appearances by children charged in juvenile court.[(3)]

COMMENTS AND RECOMMENDATIONS OF THE FLORIDA BAR JUVENILE COURT RULES COMMITTEE

COME NOW JOHN F. HARKNESS, Executive Director of the Florida Bar, and ELIZABETH L. HAPNER, Chair, Florida Bar Juvenile Court Rules Committee, having been granted leave to file comments and recommendations of the Florida Bar Juvenile Court Rules Committee in the captioned cause, by order dated September 12, 1994, and file this response in opposition to the proposed amendment:

Although a copy of the proposed emergency amendment was not provided to the Florida Bar Juvenile Court Rules Committee for consideration before comments were filed, the committee considered the proposed amendment at its September 8, 1994 meeting. The committee strongly opposes this requested procedural change. Due to the decision in R.R. v. Portesy, 629 So. 2d 1050 (Fla. 1st DCA 1994), a similar rule relating to the same concept was considered, and rejected, by the delinquency subcommittee on June 23, 1994. Because of the lack of support within the subcommittee, that proposal was not considered by the committee as a whole.

The Florida Rules of Criminal Procedure permit the use of audiovisual devices for first appearances [Rule 3.130(a)] and arraignment [Rule 3.160(a)]. The proposed emergency amendment would expand this use to juvenile detention hearings. The existence of probable cause is but one of the matters to be determined at a juvenile detention hearing. The court must further determine the need for detention according to the criteria provided by law. Florida Rule of Juvenile Procedure 8.010(f)(2) provides:

In making this determination in addition to the sworn testimony of available witnesses all relevant and material evidence helpful in determining the specific issue, including oral and written reports, may be relied on to the extent of its probative value, even though it would not be competent at an adjudicatory hearing.

Additionally, Chapter 39 of the Florida Statutes

requires that the court make a finding that the statutory detention criteria has been met. F.S. 39.042, 39.043 and 39.044 (1993). An assessment of the risk must be done in order to determine the appropriateness of any form of detention. R.W. v. Soud, [639 So. 2d 25, Fla. 1994]. The right to participate in the proceedings and the ability to challenge evidence presented with respect to the detention criteria were cited by the First District in its holding that detention hearings conducted by way of a video-telephone were illegal. The actual physical presence of the child and his parents or other responsible adults in the courtroom is necessary for the discussion and review of records entailed in consideration of the detention criteria. No meaningful give and take can transpire when the child and his counsel are present only by means of a video screen.

Because detention hearings are evidentiary in nature, they are akin to the pretrial detention and bond hearings in the adult systems. Florida Rules of Criminal Procedure 3.131 and 3.132 govern those hearings. Neither makes provision for appearance by audio-visual equipment. Presumably, this is due to

the right to confront the witnesses.

It is the considered opinion of the juvenile court rules committee that the use of video technology would dehumanize the process. The child and parents or responsible adult need to be physically present before the trial court. First offenders, or those who have never previously been subjected to detention proceedings, should be physically present to strengthen the impact of the hearing on the child. While we cannot sit by idly and ignore the advances in technology that aid in the judicial process, we must bear in mind that the funding and physical plant differs from county to county. Multiple county circuits have different courthouses yet only one regional detention center. This means that an assistant public defender may have to travel great distances to be present at the detention hearings, further straining their limited resources. The technology available differs substantially from one facility to the next based on the resources available in that area. For example, the screen size may not be adequate in some jurisdictions. There are no specific parameters set forth in the proposed rules concerning the type of equipment to be employed. Generally, if not always, the parents or other responsible adults who appear cannot be seen by the judge on the screen because the split screens do not make provision for such persons. In the future, the technology may further advance and improve at which time the committee will give the matter further consideration.

Because juvenile defendants are children, they are less mature and their ability to understand what takes place in the legal system is more limited than an adult's. If the defendant is physically present in the courtroom, the judge is more likely to conduct a more thorough hearing. Similarly, the judge will be better able to determine whether the child defendant understands the proceedings. The court's perception is necessarily going to be more limited when viewing the child on a quarter of a television screen. The child's perception and understanding is going to be far more limited. There is no guarantee under the proposed amendment that the child would even be able to see all the players on screen at one time.

The stated purpose of the proposed amendment is to eliminate the occasional disruption of proceedings by physical altercations or emotional outbursts and to streamline the proceedings by omitting the transport of the juvenile offenders to and from the detention center. In R.R. v. Portesy, supra, the First District

observed

Indeed, if avoidance of the transfer of the

accused juvenile to the hearing was the underlying reason for using this procedure, there was no showing that the detention hearing could not just as well have

been held at the juvenile detention center.

The reasons cited in support of the proposed

amendment to the rule are the exception, not the norm, and do not seem sufficiently significant to warrant such a change. Rather the proposed change appears to be purely for convenience.

No clear need for this procedure having been demonstrated, the committee urges this Court to deny the request for amendment of the rule.

While the proposed change is obviously suggested in good faith and based on genuine concerns, it represents a step in the wrong direction.

While the courts appear to play a small role in the legislature's overall scheme for addressing children's problems in Florida, the juvenile court's role is critical because it sees our most troubled children. The juvenile court's role is also unique because all of its members--judges, prosecutors, defenders, and support staff--have been charged by the legislature to focus on helping the children.(4) This explicit obligation to help contrasts sharply with the adversary system's usual fixation on "winning." When one of our children loses, we all lose. We can only "win" if we help.

Unfortunately, although not without notable exceptions in some circuits, the juvenile division is usually at the bottom of the pecking order in the allocation of judicial resources.

Hopefully, this current debate will stir the circuits, and especially the chief judges thereof, to reexamine their priorities so as to be certain we are in step with the rest of society in recognizing that our troubled children should stand first in line. More attention and resources, not institutional convenience and super efficiency, should be our response to those children who so desperately need our help.

KOGAN, J., concurs.

Original Proceeding - Florida Rules of Juvenile Procedure

Honorable Robert O. Collins, Administrative Judge, Juvenile Division and Melanie G. May, Circuit Court Judge, Seventeenth Judicial Circuit, Fort Lauderdale, Florida; and Honorable F. Dennis Alvarez, Chief Judge, Thirteenth Judicial Circuit, Tampa, Florida; Honorable William T. Swigert, Chief Judge and David M. Trammell, Deputy Court Administrator for the Fifth Circuit, Ocala, Florida,

for Petitioners

Louis O. Frost, Jr., Public Defender and Ward L. Metzger, Assistant Public Defender, Fourth Judicial Circuit, Jacksonville, Florida, on behalf of the Juvenile Justice Committee of the Florida Public Defender Association, The Honorable Joseph W. Durocher, Committee Chair; Nancy A. Daniels, Public Defender and Glenna Joyce Reeves, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida; John A. DeVault, President, Jacksonville, Florida; John W. Frost, II, President-elect, Bartow, Florida, John F. Harkness, Jr., Executive Director, Tallahassee, Florida and Elizabeth L. Hapner, Chair, Tampa, Florida, on behalf of Florida Bar Juvenile Court Rules Committee; Honorable R. James Stroker, Chief Judge and Honorable Thomas S. Kirk, Circuit Judge, Ninth Judicial Circuit, Orlando, Florida; and Honorable L.B. Vocelle, Chief Judge and Honorable Charles E. Smith, Circuit Judge, Nineteenth Judicial Circuit, Vero Beach, Florida,

Responding to Petition

FOOTNOTES:

1. [0] Section 39.042 provides in part:

2. [0] The chief judge of the fifth judicial circuit has petitioned this Court to permit juveniles to attend domestic violence detention hearings via audiovideo device. See § 39.042, Fla. Stat. (Supp. 1994).

3. [0]The Rules Committee is, of course, a nonpartisan committee made up of judges, prosecutors, defense lawyers, and law teachers upon whom we have traditionally relied to assess important issues like the one before us today. That committee's report speaks for itself:

4. [0]Of course, public safety is an ever present concern in juvenile delinquency proceedings. That concern, however, in no way lessens our obligation to help the children. That obligation is the major reason for having separate judicial proceedings for children.