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Notice to Parents of Criminal Minors

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than the prohibition of membership as a condition of employment has exceeded the authority granted to it under section 14 (b).

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NOTICE TO PARENTS OF CRIMINAL MINORS

During the past two years the Florida Supreme Court has been deluged with petitions for writs of habeas corpus based on section 932.38 of Florida Statutes 1959.[1] This statute, which was infrequently used in the past, requires that due notice of a criminal charge against an unmarried minor must be given to the parents or guardian before the trial; if those persons are unknown, notice must be given to any adult relative or friend designated by the minor. Service of notice may be accomplished as for a summons *ad respondendum* except that it can be made by registered mail or telegram if the parent or guardian is beyond the jurisdiction of the court.

The notice statute, drafted in non-specific language, does not provide a minimum standard by which the courts can be guided in applying the law. It was left to the judiciary to promulgate guideposts for attorneys, who must ascertain whether the notice requirement has been fulfilled.

RELATIONSHIP OF SECTION 932.38 TO THE JUVENILE COURT ACT

The notice compelled by section 932.38 is completely divorced from similar requirements imposed by the Juvenile Court Act,[2] which includes procedures for transferring a child under the age of seventeen years to a criminal court.[3] Upon the exercise of such removal the criminal laws, including the statute under consideration, become applicable. Minor offenders seventeen to twenty-one years of age are not subject to the Juvenile Court Act,[4] and immediately upon their detention for trial the notice requirement attaches. The decision in *Di Marco v. Cochran*[5] illustrates the importance of adequate notice when the minor is being transferred from juvenile

1. More cases have reached the Supreme Court since 1959 than in all previous years since the statute's enactment in 1911.

2. FLA. STAT. §39.11 (4) (1959).

3. Rules for transferral are set out in FLA. STAT. §39.02 (6) (1959).

4. The statutory terminology *minor* has been construed to mean males and females under the age of 21. Riley v. Holmes, 100 Fla. 938, 131 So. 330 (1930); Beekman v. Beekman, 53 Fla. 858, 43 So. 923 (1907).

5. 124 So. 2d 130 (Fla. 1960).

proceedings to a criminal court. The defendant's mother received notice of the pending disposition in the juvenile court and replied by telegram that she would be unable to attend. On the same day the case was transferred to the criminal court. The Supreme Court held that notice given as required by the Juvenile Court Act does not fulfill the notice requirement of section 932.38. The Court stated that notification of a pending juvenile court action might lead the parents to expect some disposition in the nature of parental custody, and that if they had known of the transfer to a criminal court they might have provided for legal counsel.

DUE NOTICE

In *Snell v. Mayo*[6] the petitioner argued vigorously that the statute explicitly requires notification by registered mail or telegram. Although the Florida Supreme Court stated that "due notice" is mandatory but that the specified method of giving notice is only directory, notice by registered mail seems to be more efficacious from an evidentiary viewpoint.

The state must notify the proper person, even though not requested to do so, unless this duty is frustrated by a minor who lies or withholds necessary information that cannot reasonably be ascertained elsewhere.[7] The state does have certain presumptions in its favor, however. If the transcript of the proceedings contains nothing to indicate that notice has been served, a presumption arises that the trial court has performed its duties in accordance with the laws of the state. If the petitioner fails to submit evidence of improper notice or lack of notice, the petition will be denied.[8] If a letter is correctly addressed, posted, and not returned, it is presumed that the parent or guardian received the letter in the due course of mail, and the notice requirement is satisfied even though nothing is ever heard from the addressee.[9]

Notice must be given prior to a trial, but it is not required before a hearing.[10] If the proceeding is merely a preliminary investigation that may result in a trial, no notice is anticipated by the statute; but if the circuit court judge decides to hold the minor for trial, the notice must be issued immediately.[11]

The purpose of the statute is to enable a parent or guardian to confer with the accused before the trial. The state need not seek

6. 84 So. 2d 581 (Fla. 1956).
7. State *ex rel.* Fox v. Cochran, 126 So. 2d 883 (Fla. 1961).
8. Blocker v. State, 90 Fla. 136, 105 So. 316 (1925).
9. Snell v. Mayo, 84 So. 2d 581 (Fla. 1956).
10. Shepard v. State, 96 Fla. 873, 119 So. 866 (1928).
11. OPS. ATT'Y GEN. FLA. 603 (1948).

out or bring in the parent, and the parent is not required to attend or participate in the trial.[12] In *Johnson v. Cochran*,[13] notice was received ten days before the trial by a grandmother residing in Virginia. The Court held that the requirement of due notice was fulfilled in this case, and stated that a reasonable description of the offense charged is sufficient.[14] On the other hand, notification received a few hours,[15] one day,[16] or two days[17] before trial has been held to be clearly insufficient.

The Supreme Court has accepted the state's contention that the requirement of due notice is met if the parent or guardian actually knows of the detention and pending trial even though he was not notified under the terms of the statute. If the parent receives a letter from the minor,[18] visits him in his cell,[19] or was present at the commission of the unlawful act[20] or when the child was transferred from a juvenile to a criminal court,[21] the parent has actual notice and the official statutory notifiication procedure is superfluous.

Effect of Lack of Due Notice

Until recently the Florida Supreme Court has been inclined to excuse technical variations from the notice procedure prescribed by the statute, holding on one occasion that mere error without resulting injury does not warrant reversal of a conviction.[22] This position was retained until 1959, when the Court stated in *Kinard v. Cochran*[23] that failure to comply with any of the alternatives of the statute is fatal and the petitioner must, of necessity, be discharged. It now appears that failure to serve proper notice will in itself be deemed a

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12. Pitts v. State, 88 Fla. 438, 102 So. 554 (1924).
13. 124 So. 2d 488 (Fla. 1960).
14. In McGuirk v. Cochran, 126 So. 2d 555 (Fla. 1961), the Court held that a letter written by the incarcerated minor to his mother, a resident of Michigan, stating that he was being held in jail and wanted cigarette money, was insufficient to show that the parent had notice that her son was being held answerable to the serious crime of burglary.
15. State *ex rel.* Hamilton v. Chapman, 125 Fla. 235, 169 So. 658 (1936).
16. Thompson v. Cochran, 126 So. 2d 564 (Fla. 1961).
17. Di Marco v. Cochran, 124 So. 2d 130 (Fla. 1960).
18. See McGuirk v. Cochran, 126 So. 2d 555 (Fla. 1961), in which the Court held a letter to be insufficient for purposes of actual notice.
19. Centanni v. Cochran, 126 So. 2d 146 (Fla. 1961); Bowen v. Cochran, 121 So. 2d 154 (Fla. 1960); Milligan v. State, 109 Fla. 219, 147 So. 260 (1933).
20. Pitts v. State, 88 Fla. 438, 102 So. 554 (1924).
21. Brockman v. Cochran, 127 So. 2d 443 (Fla. 1961).
22. Whitten v. State, 86 Fla. 111, 97 So. 496 (1923).
23. 113 So. 2d 843 (Fla. 1959).

miscarriage of justice sufficient for reversal. This view has been substantiated by a 1961 Supreme Court decision.[24]

When the court finds reversible error, the sentence is discharged but the minor is not relieved from further prosecution. The court can remand him to the custody of the Director of the Division of Corrections, give proper notice to parents or guardian, require another plea to the information, and proceed with a retrial.[25] Therefore the purpose of drawing the court's attention to the error is to gamble for an acquittal at a second trial or for a decision by the state that a second trial would be impractical.

UNMARRIED MINORS

The notice statute is applicable only to unmarried minors, but interpretation of the statutory language "not married" is left to the courts. In *Milligan v. State*[26] the petitioner argued that the conviction of a divorced minor was improper because his parents had not been notified before the trial. The Supreme Court sustained the conviction, stating that the "marital relation having been established, its dissolution by annulment or divorce does not revitalize the rights conferred by the statute."[27] Two recent Florida decisions are in accord with this position.[28] It is difficult to reconcile this viewpoint with the Court's statement in *State ex rel. Fox v. Cochran*[29] that "the statute . . . was enacted as a safeguard for minors . . . because of their youth and inexperience." If the Court was correct in its appraisal of the policy behind the notice requirement, it appears that the statute should be amended to conform with the Juvenile Court Act, which applies to all minors, whether single, married, or divorced.[30]

CONCLUSION

The current flood of litigation concerning parental notice is apparently the result of several recent successful writs of habeas corpus in cases involving inadequate notice. The fact that defense attorneys are now fully aware of this recourse emphasizes the need for strict adherence to clarified statutory procedures.

24. Raggen v. Cochran, 126 So. 2d 145 (Fla. 1961).

25. *E.g.*, Thompson v. Cochran, 126 So. 2d 564 (Fla. 1961); McGuirk v. Cochran, 126 So. 2d 555 (Fla. 1961); Di Marco v. Cochran, 124 So. 2d 130 (Fla. 1960); State *ex rel.* Hamilton v. Chapman, 125 Fla. 235, 169 So. 658 (1936).

26. 109 Fla. 219, 147 So. 261 (1933).

27. *Id.* at 224, 147 So. at 262.

28. Harris v. Cochran, 122 So. 2d 465 (Fla. 1960); Hewitt v. Cochran, 117 So. 2d 3 (Fla. 1960).

29. 126 So. 2d 883, 884 (Fla. 1961).

30. See FLA. STAT. §39.01 (6) (1959).