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Speedy Trial Rights For Florida's Juveniles: A Survey of Recent Interpretations by Florida Courts

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Abstract

"Delay of justice is injustice." This maxim is embodied in the Bill of Rights and in Florida's Constitution: it is implemented by the federal government's Speedy Trial Act of 1974" and by Florida's Rules of Criminal and Juvenile Procedure.

KEYWORDS: juveniles, florida, trial

Speedy Trial Rights For Florida's Juveniles: A Survey of Recent Interpretations by Florida Courts

"Delay of justice is injustice."¹ This maxim is embodied in the Bill of Rights² and in Florida's Constitution:³ it is implemented by the federal government's Speedy Trial Act of 1974⁴ and by Florida's Rules of Criminal and Juvenile Procedure.⁵ The right to a speedy trial is incorporated into the statutory provisions or court rules of the fifty states and the District of Columbia.⁶

This note provides a practical interpretive guide to Florida's understanding of juvenile rights to a speedy determination when a juvenile is accused of a delinquent act.⁷ It compares and contrasts pertinent provisions of Florida's Juvenile Justice Act⁸ with state court rules to show 1) how the act's language has been interpreted; 2) the results reached through these interpretations; and 3) how differing fact patterns and rapidly changing law can produce ambiguous precedent.⁹ In order to facilitate understanding the importance of juvenile rights in the context of speedy resolution of pending charges, a brief background

1. Walter Savage Landor (1775-1864), an English poet, essayist and novelist.

2. U.S. CONST. amend. VI.

3. FLA. CONST. art. I, § 16.

4. 18 U.S.C. § 3161-74 (1976).

5. FLA. R. CRIM. P. 3.191 (1981) and FLA. R. JUV. P. 8.180 (1981).

6. See Poulos & Coleman, *Speedy Trial, Slow Implementation: The ABA Standard in Search of a Statehouse*, 28 HASTINGS L.J. 353, 376 n.53 (1976).

7. In 1950, the Florida Constitution was amended to define violations of law by children as "acts of delinquency" rather than as crimes. FLA. CONST. art. 1, § 15. The new constitution adopted in 1968 preserved this juvenile court concept and philosophy. *Id.*

8. The short title of chapter 39 of the Florida Statutes covering proceedings relating to juveniles, FLA. STAT. § 39.05, the speedy trial right, was amended in 1981. FLA. R. JUV. P. 8.180, as amended, became effective Jan. 1, 1981.

9. The diligent practitioner must be alert to the subtle and frequent changes in the language of the juvenile statutes and rules which could render relatively current decisions inapplicable because they were based on language in effect at the time of the offense.

of the historic speedy trial guarantee to all criminally accused will be given.¹⁰

The United States Supreme Court recognized the diverse functions served by speedy trials. Speedy trials are an important safeguard against oppressive pre-trial incarceration and an effective means for minimizing anxiety accompanying public accusation. Speedy trials limit impairment of an accused's defenses to the extent impairment results from lost witnesses or fading memories.¹¹ The Court has also stressed societal interests at stake in securing an accused's speedy trial; preventing overwhelming case backlogs which enable defendants to negotiate pleas to lesser offenses and curtailing the accused's opportunity to commit other crimes if free on bond while awaiting trial.¹²

The United States Supreme Court in its landmark decision *Barker v. Wingo*,¹³ established a framework for guidelines to assist courts in determining when trial delay violated a defendant's constitutional right to speedy trial.¹⁴ The Court declined to set precise limits, believing this function more appropriate for legislatures. In Florida, both the legislature and supreme court delineated these speedy trial limits for juveniles.¹⁵

The language of Florida's juvenile rules appears unambiguous. Uncertainty develops when the language of the rules and the language of their legislative counterpart conflict,¹⁶ or when situations not expressly resolved by the language of either arise. These circumstances necessitate consideration of persuasive authority, most often found in

10. Juveniles in Florida were not granted the speedy trial right until 1973 when chapter 39 was revised to reflect the procedural mandates of *In re Gault*, 387 U.S. 1 (1967). The creation of shorter time limits than due process required was based on the theory that the juvenile justice system should operate swiftly. See generally CONTINUING LEGAL EDUCATION COMMITTEE, THE FLA. BAR, FLA. JUV. L. & PRAC. (1979) for history and development of the juvenile system in Florida.

11. *United States v. Ewell*, 383 U.S. 116 (1966).

12. *Barker v. Wingo*, 407 U.S. 514 (1972).

13. *Id.*

14. Relevant factors include the length of delay, the reason for delay, assertion of defendant's right, and prejudice to the defendant. *Id.* at 530.

15. FLA. STAT. § 39.05(7)(a) (1981) and FLA. R. JUV. P. 8.180(a) (1981).

16. Compare FLA. R. JUV. P. 8.180(e) (1981) with FLA. STAT. § 39.05(6) (1981). For discussion of this conflict, see *infra* notes 51 and 52 and accompanying text.

the language and interpretation of analogous criminal procedure rules used in adult court.¹⁷ This need for logical persuasive case law is problematic since Florida courts traditionally adhere to the philosophy that "juveniles constitute a special and distinct class of citizens with particularized needs to be afforded unique treatment by the state."¹⁸ If juveniles are in fact deserving of "unique treatment" it is arguable that decisions and procedures adopted in adult criminal cases are inapplicable and inappropriate for juvenile delinquency cases despite factual similarities.¹⁹

During its 1981 session the legislature substantially revised Florida's Juvenile Justice Act.²⁰ These revisions, the most significant since the Act's major overhaul in 1978,²¹ call for harsher treatment of juvenile offenders. They are the legislature's response to public alarm over rise in juvenile crime. They may also pretend serious erosion of the enhanced procedural benefits currently afforded juveniles. The avowed purpose of the Act is to assure all children "the care, guidance, and control, preferably in each child's own home, which will best serve the moral, emotional, mental, and physical welfare of the child and the best interests of the state."²² The delicate balance between the interests of the state and the interests of the child is threatened now that one interest is gaining preeminence. Earlier provisions, now more severe, permit serious and repeat offenders to be removed from the juvenile system and treated as adults in all respects.²³ Florida courts must re-

17. FLA. R. CRIM. P. 3.191 (1981).

18. *A.D.T. v. State*, 318 So. 2d 478 (Fla. 1st Dist. Ct. App. 1975).

19. *See L.G. v. State*, 405 So. 2d 252, 253 n.3 (Fla. 3d Dist. Ct. App. 1981) (availability requirement of adult criminal rule not pertinent to juvenile rule); *In re D.B.*, 385 So. 2d 83, 90 (Fla. 1980) (delinquency proceedings exist to remove children from the adult criminal justice system and punish them in a manner suitable and appropriate for children); *G.A. v. State*, 391 So. 2d 720, 722 (Fla. 1st Dist. Ct. App. 1980) (expressed state policy of treating juvenile offenders differently from adult offenders).

20. *See Evans, Juvenile Justice: The Legislature Revisits Chapter 39*, 55 FLA. B.J. 697 (1981).

21. Ch. 78-414, 1978 Fla. Laws 1318-66.

22. FLA. STAT. § 39.001(2)(b) (1981).

23. *See* FLA. STAT. § 39.04(2)(c)(3) (1981) and FLA. R. JUV. P. 8.150(b) (1981) (providing for waiver to adult court of a child fourteen or older under certain circumstances); FLA. STAT. § 39.04(2)(e)(4) (1981) (granting authority and discretion

main alert to jealously safeguard the distinctive rights of those minors who remain within the juvenile system. Otherwise, the longstanding objectives of juvenile court—rehabilitation and restitution rather than punishment and retribution²⁴—could be sacrificed to appease public anger with the juvenile system.

Supporting the view that the unique aspects of juvenile courts should be preserved, the remainder of this note will examine the unsettled “speedy rights”²⁵ guaranteed juveniles and suggest possible avenues for resolving existing conflicts.

When the Speedy Right Attaches

Florida Rule of Juvenile Procedure 8.180(a)²⁶ Time. Every case in which a petition has been filed alleging a child to be delinquent or dependent shall be brought to an adjudicatory hearing without demand within ninety (90) days or the earlie(r) of the following dates:

- (1) The date the child was taken into custody.
- (2) The date the petition was filed.²⁷

to the prosecutor to file a charge directly in the adult criminal division if the child is sixteen or seventeen and public interest requires adult sanctions be considered); FLA. STAT. § 39.02(5)(c) (1981) (providing for grand jury indictment of a child, regardless of age, if the crime is punishable by death or life imprisonment).

24. *G.A.*, 391 So. 2d at 722 (citing *Kent v. United States*, 383 U.S. 541 (1966)) and FLA. STAT. § 39.001(2) (Supp. 1978).

25. The term “speedy rights” will hereinafter be used since a corresponding right to a timely-filed instrument of accusation, unique to juveniles, will also be discussed. Provisions of FLA. R. JUV. P. 8.180 (1981) not dealt with in this note are the effect of a mistrial or order of a new trial (8.180(e)) and the exemption from the rule for permanent commitments of children for adoption or placement in a licensed agency (8.180(f)). These subsections have remained unchanged and virtually unchallenged since they provide few grounds for controversy.

26. The corresponding FLA. STAT. § 39.05(7)(a) (1981) reads: “If a petition has been filed alleging that a child has committed a delinquent act, the adjudicatory hearing on the petition shall be commenced within 90 days of the earlier of the following dates: . . .” (The remainder is identical to the rule).

27. A petition is the accusatory instrument equivalent to the adult information and is filed in the same fashion by the state attorney. *See* FLA. R. CRIM. P. 140(b) which reads: “The indictment or information upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.” The distinctive vocabulary used for juveniles further symbol-

Unlike the corresponding adult criminal speedy trial rule, the juvenile speedy trial rule does not distinguish between misdemeanors and felonies in setting time limits.²⁸ Nor is the juvenile rule invoked by defendant's demand.²⁹

There are several reasons why swift resolution of pending charges are especially important to this age group. Adolescents are in the midst of rapid developmental changes.³⁰ Any enforced delay during a critical stage of their learning process can have serious deleterious consequences on their ability to mature into responsible adults.³¹ It is well established that the efficacy of discipline is a function of its timing.³² Another forceful argument against unnecessarily prolonged exposure to the adjudicatory process is the strong influence that peers have on a child's behavior and the possibility of corruption due to association with delinquents in the system.³³ Where an *innocent* child is mistakenly held accountable for the delinquent act of another, the stigmatizing effect can be devastating unless corrected with all possible speed. Where a

izes the intent that they should not be treated as criminals nor dealt with by the process used for criminals. Other changes include: summons instead of warrant, finding of involvement or adjudication instead of conviction, disposition instead of sentence, community control instead of probation.

28. FLA. R. CRIM. P. 3.191(a)(1) (1981) provides a 90-day limit for misdemeanors and 180 days for felonies.

29. FLA. R. CRIM. P. 3.191(a)(2) (1981) requires a trial within 60 days upon motion by a defendant demanding it. This aspect of the juvenile rule is disadvantageous to those juveniles who have previously waived their speedy trial rights and now wish to proceed swiftly but have no procedural mechanism to reactivate them.

30. L. Kohlberg & R.B. Kramer, *Continuities and Discontinuities in Childhood and Adult Moral Development*, HUMAN DEVELOPMENT 12, 93-120 (1969).

31. *Id.*

32. R. Walters, R. Park & V. Cane, *Timing of Punishment and the Observation of Consequences to Others as Determinants of Response Inhibition*, J. EXPERIMENTAL CHILD PSYCHOLOGY, 2, 10-30 (1965).

33. In 1966, a study of peer influence was conducted by the behavioral research team of Costanzo and Shaw. They asked children to compare the lengths of a pair of lines, one line obviously longer than the other. All but one of the children were confederates of the investigators and were told to choose the incorrect line. The child who was not a confederate altered his own judgment, denying evidence of his senses, and agreed with the obvious incorrect judgment of the group to conform with his peers. P. Costanzo & M. Shaw, *Conformity as a Function of Age Level*, CHILD DEVELOPMENT 37, 967-975 (1966).

guilty child is appropriately held accountable for his own delinquent act, he is equally disserved by learning that justice may be thwarted by dilatory tactics.

The time in which the adjudicatory hearing must be held begins to run at the earlier of two events: when the child is taken into custody or when a petition is filed by the state attorney.³⁴ What constitutes "taken into custody" has been a source of confusion to prosecutors, defense lawyers and trial judges in determining the moment the speedy trial right is triggered. The Juvenile Justice Statute defines the phrase "taken into custody" as "the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law."³⁵ Notwithstanding the "plain" language of the statute, three district courts of appeal have reached disparate results when asked to determine when custody begins.

In *D.L.M. v. State*,³⁶ a nine-year-old child was seen emerging from a house that was burglarized. He was apprehended by the police, taken back to the house where he was identified by a witness, and then released to his parents. He was not formally arrested until thirty days later. The Third District Court of Appeal held that these facts did not constitute custody within the meaning of the rule.³⁷ Instead of using the definition set out by the juvenile statute, which might have led logically to the conclusion that the child had been in temporary physical control of one authorized by law, the court sought guidance from the committee note tracing the history of the Florida Rule of Juvenile Procedure pertaining to speedy trial. Finding that the present rule "evolved from the criminal speedy trial Rule 3.191, and looking to interpretations under that rule,"³⁸ the court determined that the actions of the police officers did not constitute "custody", since the criminal standard is defined as "arrest".³⁹

34. This occurs most frequently when a child was not apprehended at the time of the offense but a complaint was filed against him at a later date.

35. FLA. STAT. § 39.01(32) (1981).

36. 397 So. 2d 439 (Fla. 3d Dist. Ct. App. 1981).

37. *Id.* at 440.

38. *Id.*

39. FLA. R. CRIM. P. 3.191(a)(4) (1981) has an explicit provision defining custody as *arrest* or summons. Juvenile rules, however, differ in purpose and intent. See

The Fourth District Court of Appeal reached the same result using a different analysis in *State v. C.B.*⁴⁰ This was a consolidated appeal by the state seeking reversal of three juvenile dismissals where the juveniles were taken into custody but released the same day.⁴¹ Although the court looked first to the statutory definition of custody found in Chapter 39, it based its finding on a subsection of the statute in effect at that time which said, "the person taking the child into custody *and detaining the child* shall, within 3 days, make a written report to the appropriate intake officer, . . ." ⁴² From this language the court surmised that the legislature intended to limit speedy time application to cases where a juvenile was actually detained for a period of time rather than being released immediately after being taken into custody. That analysis is no longer valid in light of the legislature's deletion of those words in its 1981 revision of Chapter 39.⁴³

In *G.A. v. State*,⁴⁴ a juvenile shot and killed his mother. The First District Court of Appeal ordered the boy discharged, finding his custody effected by law enforcement officers who exercised temporary physical control by detaining him for questioning before he was released to a family member.⁴⁵ Instead of filing a delinquency petition the state attorney immediately sought, without success, a grand jury indictment for murder.⁴⁶ When the delinquency petition finally was filed, it was 26 days beyond the statutory custody limit which, as the appellate court ultimately found, attached at the time G.A. was first questioned.⁴⁷

FLA. R. JUV. P. 8.010 (1981) which mandates that the juvenile rules are to be used under the Florida Juvenile Justice Act (chapter 39).

40. 401 So. 2d 919 (Fla. 4th Dist. Ct. App. 1981).

41. *Id.* at 920.

42. FLA. STAT. § 39.03(2) (1979).

43. Effective July 1, 1981.

44. 391 So. 2d 720 (Fla. 1st Dist. Ct. App. 1980).

45. *Id.* at 723. The officer testified that G.A. would not have been allowed to leave the premises had he attempted to do so before the questioning was completed.

46. FLA. STAT. § 39.02(5)(c) (1981). An indictment can be returned against a child of any age who commits an offense punishable by death or by life imprisonment. The child is then tried and handled in all respects as if he were an adult. If the grand jury returns a no true bill or fails to act within 21 days, the juvenile court retains jurisdiction and may proceed as it would in any other case.

47. 391 So. 2d at 724.

The precise meaning to be given "custody" has not been illuminated by these cases; rather they illustrate the term's elusive nature. These diverse results suggest a case by case approach is necessary in determining the custody question, since investigatory questioning by police officers should not always be viewed as equivalent to custody. Nevertheless, the anxiety accompanying accusation by an authority figure and the unique vulnerability of minor children require strict interpretation of the definition set out by the legislature in Chapter 39 to assure that, in those instances where a child is under physical control of a law enforcement officer and is *not free* to leave at any time, the speedy provisions of the statutes and rules are activated.

The Juvenile Right to a Speedy Accusation

On a question certified to the Florida Supreme Court in *S.R. v. State*,⁴⁸ the court expressly ruled that timely filing of the charging instrument is a substantive right guaranteed juveniles by statute.⁴⁹ Commonly called the 45-day rule, this uniquely juvenile right,⁵⁰ closely re-

48. 346 So. 2d 1018 (Fla. 1977).

49. *Id.* at 1019. The tangential issue of substantive versus procedural rights has significant impact on decisions reached when the statutes and the rules conflict. However, a discussion of this is beyond the scope of this note. See *M.G. v. State*, 404 So. 2d 420 (Fla. 1st Dist. Ct. App. 1980), *State v. L.H.*, 392 So. 2d 294 (Fla. 2d Dist. Ct. App. 1980), *S.M. v. State*, 398 So. 2d 496 (Fla. 3d Dist. Ct. App. 1980), *State v. G.B.P.*, 399 So. 2d 1123 (Fla. 4th Dist. Ct. App. 1981) and *P.L.H. v. Brownlee*, 389 So. 2d 649 (Fla. 5th Dist. Ct. App. 1980) for the diverse treatment given this question by the five district courts of appeal.

50. FLA. STAT. § 39.05(1)-(7) (1981) and FLA. R. JUV. P. 8.110(a)(1)-(3) (1981). There is no adult rule or statutory counterpart, nor is there a constitutional equivalent. The United States Supreme Court has held that the sixth amendment speedy trial right is inapplicable to the period prior to arrest or filing of formal charges, but that due process may still require dismissal if delay was purposeful and caused substantial prejudice to the defense. *United States v. Marion*, 404 U.S. 307 (1971). There are also some statutes of limitations on pre-arrest or pre-filing delays, e.g., 18 U.S.C. § 3282 providing a five year limit on the filing of federal charges. See also *U.S. v. MacDonald*, ___ U.S. ___, 102 S. Ct. 1497 (1982) reversing the Fourth Circuit Court of Appeals' dismissal based on violation of MacDonald's speedy trial rights under the sixth amendment (*MacDonald v. U.S.*, 632 F.2d 258 (1980)). This celebrated murder case involved an army doctor accused of killing his wife and two daughters. He was arrested but the charges were dismissed. Five years later the grand jury

lated to the speedy trial right, mandates dismissal with prejudice if a petition is not filed within 45 days of a specified event. Potential conflict exists since the *statute* triggers the timeclock's start when the child is "taken into custody";⁵¹ the juvenile *rules* require filing a petition within 45 days from the date the complaint is referred to the "intake office".⁵² The intake office is the Department of Health and Rehabilitative Services (HRS). HRS personnel are responsible for interviewing the juvenile with his parents or guardian and recommending appropriate disposition of the charge (i.e., judicial or non-judicial treatment) to the state attorney.

Conflict could be avoided if, as suggested before, the statutory "custody" provision is triggered once control over the child is effected by a law enforcement officer, despite immediate release of the child to his parent or guardian. This would logically resolve any remaining inconsistency since the *rule* would apply only to those clearly *non-custodial* situations. Both the rule and the statute permit a fifteen day extension upon motion by the state attorney.⁵³

Whether the 45-day rule applies to those 16 or 17-year-old juveniles charged by information directly in the criminal division of the circuit court remains unclear.⁵⁴ In *State v. Puckett*⁵⁵ the Second District Court of Appeal held that the 45-day rule did not apply to an information filed against a juvenile who was to be prosecuted as an adult. Puckett sought and won dismissal in the trial court, arguing that Florida Statute § 39.05(6), which requires timely filing of a juvenile petition, existed prior to Statute § 39.04(2)(e) which permits the state

indicted him; he was tried and convicted. Chief Justice Burger wrote that once charges are dismissed, the speedy trial guarantee is no longer applicable.

51. FLA. STAT. § 39.05(6) (1981).

52. FLA. R. JUV. P. 8.110(e) (1981).

53. FLA. STAT. § 39.05(6), as amended in 1981, substituted "for good cause shown" for the original wording "when in the opinion of the court additional time is justified because of exceptional circumstances." FLA. R. JUV. P. 8.110(e) (1981) retains the statute's original language.

54. FLA. STAT. § 39.04(2)(e)(4) (1981) gives the state attorney authority to file an information if in his judgment the public interest requires that adult sanctions be considered or imposed. For a discussion of this provision, see Comment, *Prosecutorial Waiver of Juveniles Into Adult Criminal Court: The Ends of Justice . . . Or the End of Justice?* *State v. Cain*, 5 NOVA L.J. 487 (1981).

55. 384 So. 2d 660 (Fla. 2d Dist. Ct. App. 1980).

attorney to file an adult information.⁵⁶ In reversing and reinstating the information, the appellate court reasoned by negative inference that since both statutes were amended in the same session,⁵⁷ if the legislature meant to include the filing of informations within the 45-day period it would have so specified.⁵⁸

In contrast to *Puckett*, the First District Court of Appeal in *I.H. v. State*⁵⁹ equated an information with a petition for purposes of the 45-day rule where a sixteen-year-old burglary suspect had successfully transferred his case from the criminal division back to juvenile court.⁶⁰ The juvenile appealed on the ground that no petition had been filed in the juvenile division within 45 days as required by statute and therefore, the court was without jurisdiction to hear the matter. The appellate court pointed out that "the information filed in adult court was authorized by statute and gave the adult court jurisdiction over the cause. By the same token, the transfer to juvenile court was authorized by the same statute and gave the juvenile court jurisdiction."⁶¹ The court held that while a juvenile has a substantive right to have the charge dismissed if it is *untimely filed*, the information could serve as the petition, though better practice would call for a petition to be substituted for the information.⁶² Since the information was filed against I.H. within a week after he was taken into custody, timeliness posed no problem, but it can be inferred that had it not been filed within the 45 days, the appellate court would have granted the dismissal.

56. *Id.*

57. Ch. 78-414, 1978 Fla. Laws 1334 amended FLA. STAT. § 39.05(6) to allow 45 days rather than the previous 30 days.

58. 384 So. 2d at 661.

59. 405 So. 2d 450 (Fla. 1st Dist. Ct. App. 1981).

60. On motion of a child, if he can show he has not previously been convicted of two delinquent acts, one of which is a felony, he must be returned to the juvenile court for prosecution. FLA. STAT. § 39.04(2)(e)(4) (1979). The 1981 revision of this subsection permits return to juvenile court only for those sixteen or seventeen-year-olds who are charged with a *misdemeanor* and do not have the prior record.

61. 405 So. 2d at 452.

62. *Id.* at 453. As this note went to press the Fourth District Court of Appeal decided *State v. D.C.W.*, No. 81-1699 (filed Sept. 1, 1982). The court held that the 45-day rule is not activated until the accused is transferred to the juvenile division. *Id.* *D.C.W.* involved a juvenile originally indicted on an offense that was later reduced making him eligible for juvenile court treatment.

The 45-day rule was not raised in *State v. Perez*,⁶³ where two juveniles were being held as adults on other charges but were re-arrested for the commission of a sexual assault at the Dade County jail. The information on this new charge was not filed until 90 days had lapsed. They moved for a discharge on the ground that as juveniles they had the right to be brought to trial within ninety days of their arrest.⁶⁴ The Third District Court of Appeal affirmed the discharge holding that the juvenile's speedy trial rights had vested, "and until such time as the State notifies a juvenile that he is to be considered as an adult as to certain charges, the juvenile has the right to rely on the statutes and the rules that protect him in the status of a juvenile."⁶⁵ Implicitly, the 45-day rule is one of those protections.

In view of *S.R. v. State*⁶⁶ it can be argued that until the juvenile court is divested of its jurisdiction over a juvenile, the state must not deny any juvenile substantive rights to which he is entitled. If this argument is accepted, the state must file an information on any juvenile to be prosecuted in adult court within 45 days of arrest or risk dismissal.

The Dismissal Sanction

The language in Chapter 39 and the Juvenile Rule pertaining to dismissal for violation of the speedy trial right are identical. Both provide:

If the adjudicatory hearing is not begun within ninety days or an extension thereof as hereinafter provided, the petition shall be dismissed with prejudice.⁶⁷

Neither the statute nor the rule require a motion by the defendant to activate this provision.⁶⁸ Thus, it appears not only to be mandatory, but

63. 400 So. 2d 91 (Fla. 3d Dist. Ct. App. 1981).

64. *Id.* at 94. They had not yet been found guilty of their other crimes which would activate section 39.02(5)(d) (stating that once a child is found guilty of a crime as an adult he shall thereafter be handled as an adult for subsequent crimes).

65. *Id.*

66. 346 So. 2d 1018 (Fla. 1977).

67. FLA. STAT. § 39.05(7)(b) (1981); FLA. R. JUV. P. 8.180(b) (1981).

68. Compare with the 45-day rule. Both FLA. R. JUV. P. 8.110(e) (1981) and

automatic. Once the outer limit has expired a juvenile court has no choice but to discharge the defendant.⁶⁹

When the United States Supreme Court in *Barker v. Wingo*⁷⁰ set forth the four elements that are to be balanced against each other on a case by case basis in order to determine a defendant's constitutional right to speedy trial, it also lamented "the unsatisfactorily severe remedy of dismissal" when that right had been deprived.⁷¹ The Court went on to say: "This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free."⁷² In *Barker* the Court found that there had been no denial of speedy trial even though the delay had been well over five years.

Certainly the mandated dismissal in consequence of exceeding much stricter statutory or rule-determined limits for juveniles must trouble lower courts even more so. Nevertheless, the dismissal sanction, whether procedural or constitutional, serves the goal speedy trial is designed to effectuate—a system disposing of cases with reasonable dispatch. Although sometimes both prosecutors and defendants perceive speed as antagonistic to their interest,⁷³ there is the public's interest in maximizing the deterrent effect of prosecution⁷⁴ and in minimizing the considerable costs of lengthy pretrial detention.⁷⁵ Delay of justice also diminishes victims' respect for the judicial system, especially if victims perceive the slow process as concern for only the defendant. Victims

FLA. STAT. § 39.05(6) (1981) start with the words "On motions by or in behalf of a child. . . ."

69. Compare with FLA. R. CRIM. P. 3.191(d)(1) (1981) for adults which specifically provide for a motion for discharge. Moreover, subsection (d)(3) requires the trial court to make a complete inquiry of possible reasons to deny discharge.

70. 407 U.S. 514 (1972). See *State v. Bonamy*, 1982 Fla. Law Weekly 421 (5th Dist. Ct. App. Feb. 10, 1982) for Florida's application of the *Barker* guidelines.

71. *Id.* at 522.

72. *Id.*

73. This is often the situation where a defendant wants to wait and see the outcome of a co-defendant's separate trial, hoping for an acquittal so he may not be tried. *Barker* was such a case.

74. Footnote 8 in *Barker* referred to a 1968 estimate that over 70% of those arrested in Washington D.C. for robbery and released prior to trial were rearrested while on bail.

75. Overcrowded conditions and spiraling costs of running detention centers and holding facilities are nationwide problems.

and witnesses are further angered and inconvenienced when required to make repeated trips to court due to continuances and other delaying devices.

Waiver of Speedy Trial Rights

Presumably the harsh realities of the dismissal sanction have manifested in a liberalizing trend regarding exceptions to the speedy right. This is evident on both national⁷⁶ and state levels.⁷⁷ Generous interpretations of waiver, extension and exclusion provisions make the speedy countdown appear a flexible restraint. The exceptions are ambiguous in some situations, creating traps for the unwary. One potential pitfall in Florida's juvenile rules is misuse of its new waiver provision, which states simply: "In a delinquency proceeding the child may voluntarily waive his right to a speedy trial."⁷⁸

The waiver provision became effective January 1, 1981, and no appellate decisions have yet construed the rule. The only statutory reference to waiver of speedy trial is in the section of the Act entitled Hearings, which says in part: "The right to a speedy trial shall be governed by the provisions of § 39.05(7), but such right may be *voluntarily waived* by the child in accordance with the Florida Rules of Juvenile Procedure."⁷⁹ (Emphasis supplied). There is no corresponding provision in the rules of criminal procedure.⁸⁰

On its face the new provision would favor the conclusion that an affirmative act by the child is necessary to effectuate a waiver. The inclusion of the word *voluntary* should preclude any automatic or un-

76. See Speedy Trial Act Amendments Act of 1979, Pub. L. No. 96-43, 93 Stat. 327. For commentary on these amendments, see Misner, *The 1979 Amendments to the Speedy Trial Act: Death of the Planning Process*, 32 HASTINGS L.J. 635 (1981).

77. See Poulos & Coleman, *supra* note 6, at 378-79.

78. FLA. R. JUV. P. 8.180(c) (1981).

79. FLA. STAT. § 39.09(1)(a) (1981).

80. FLA. R. CRIM. P. 3.191(d)(2) (1981) and 1980 committee note 1 declare that the terms waiver, tolling, or suspensions have no meaning within the context of the section as amended. The section addresses extensions for a specified period of time. The juvenile rules retain the term "tolling" in one subsection only — when a child intends to plead insanity as a defense. FLA. R. JUV. P. 8.170(b)(2) (1981) provides that when a continuance is granted for the purpose of an examination it will "toll the speedy time rule."

knowing waiver of speedy time without the child's express acquiescence.⁸¹ It has been determined that silence or inaction by an adult defendant does not constitute waiver.⁸²

The accused (whether adult or juvenile) has no duty to bring on his own trial.⁸³ Nevertheless, the Fourth District Court of Appeal in *A.F. v. Nourse*⁸⁴ reluctantly discharged the juvenile when defense counsel stood by without objection to the setting of the adjudicatory hearing beyond the ninety-day limit. The court held it was bound by *Stuart v. State*⁸⁵ inasmuch as the Florida Supreme Court refused to equate waiver with defense's failure to point out that the trial date exceeded speedy limits.⁸⁶ Moreover, Judge Hersey, though concurring with the result reached by the majority in *A.F.*, expressed dismay: "Defense counsel, after all remains an officer of the court. . . . Counsel should not be encouraged to invite error . . . or acquiesce in error. Society, as well as an individual accused, has rights which merit our attention."⁸⁷ The new waiver provision may be more liberally applied in future decisions if Judge Hersey's displeasure with such defense tactics is shared among the judiciary.

The ramifications of waiver in the context of the defense motion for continuance are also unresolved. The Florida Supreme Court in *Butterworth v. Fluellen*⁸⁸ allowed an adult defendant's motion for continuance to be treated as a waiver of the speedy trial rule. The *Fluellen* court held that once the motion was granted, the limitation set out by the criminal rule was no longer applicable and only federal and Florida constitutional guarantees remained.⁸⁹ This ruling seems inappropriate for juveniles, however, since adults retain the right to demand trial within sixty days, a right unavailable to juveniles. The better practice would be for the trial court to cite a defense continuance as one reason

81. It cannot be presumed that the Florida Supreme Court would include the word without intending that it be given full force and effect.

82. *State v. Ansley*, 349 So. 2d 837 (Fla. 1st Dist. Ct. App. 1977).

83. *Dickey v. Fla.*, 398 U.S. 30 (1970).

84. 383 So. 2d 757 (Fla. 4th Dist. Ct. App. 1980).

85. 360 So. 2d 406 (Fla. 1978).

86. *Id.*

87. 383 So. 2d at 759.

88. 389 So. 2d 968 (Fla. 1980).

89. *Id.* at 970.

for extension of the time for speedy trial rather than as an automatic "voluntary" waiver by the juvenile.

The waiver provision is most appropriate when non-judicial actions, such as diversionary programs,⁹⁰ are employed to resolve minor infractions best settled out of court. If the infraction cannot be resolved in this matter the juvenile's charge should not be dismissed for lack of time to prosecute. Once the juvenile voluntarily waives speedy trial, the question arises as to whether a new ninety-day period starts to run⁹¹ or whether, under the *Fluellen* rationale, only the defendant's constitutional rights remain.

Extension of Speedy Time

Florida's juvenile rule and its juvenile statute substantially agree in their provisions for extending time:

The court may extend the period of time . . . on motion of any party, after hearing, on a finding that the interest of justice will be served by such extension. The order will recite the reasons for such extension. The general congestion of the court's docket, lack of diligent preparation, or failure to obtain available witnesses or other avoidable or foreseeable delays shall not constitute grounds for such extension.⁹²

These sections, ostensibly specific and straightforward in their mandatory language, have been the crux of numerous appeals.⁹³

90. See, e.g., FLA. STAT. § 39.0333 (1981) authorizing community arbitration as an alternative to judicial action.

91. This issue was settled for criminal defendants by the *Fluellen* court, but as stated earlier, adults retain their right under the Rules of Criminal Procedure to demand a trial within 60 days.

92. FLA. R. JUV. P. 8.180(d) (1981). FLA. STAT. § 39.05(7)(c) (1981) differs only in requiring a finding of good cause or that the interest of the child will be served.

93. See *C.S. v. State*, 390 So. 2d 457 (Fla. 3d Dist. Ct. App. 1980) (oral continuance does not extend speedy time. The court must have a finding with reasons cited and an order); *M.M. v. State*, 407 So. 2d 262 (Fla. 3d Dist. Ct. App. 1981) (lack of written order cannot be cured after time expires); *J.R.S. v. Hastings*, 374 So. 2d 559 (Fla. 4th Dist. Ct. App. 1979) (must enter order and cite reasons for extension); *R.L.P. v. Korda*, 380 So. 2d 1329 (Fla. 4th Dist. Ct. App. 1980) (oral continuance on the court's own motion does not extend speedy time); *M.B. v. Lee*, 318 So. 2d 1364 (Fla.

In clear, unequivocal language three actions are required of the trial judge: 1) that he conduct a hearing,⁹⁴ 2) that he make a finding of cause, and 3) that he issue an order reciting the reasons for extension. The language precludes justifying extensions for the normally avoidable reasons. By the specific language of both the rule and statute, extensions must be in the "interest of justice" or "the interest of the child."⁹⁵

Florida's Fifth District Court of Appeal appeared to reach the same conclusion in *M.B. v. Lee*.⁹⁶ In this case it was unclear whether the juvenile had made an oral motion for continuance, but the court stated that even if he had, he was still entitled to dismissal since the trial judge failed to enter an order reciting the reasons for extension.⁹⁷

As discussed earlier⁹⁸ it is an unsettled question whether the criminal or the juvenile procedural clock applies when juveniles are certified to be tried as adults. In *State v. Benton*⁹⁹ the Florida Supreme Court held that the criminal speedy time limitation of 180 days begins to run from the time a juvenile is taken into custody, regardless of when certification occurs or the juvenile court is divested of its jurisdiction.¹⁰⁰ The court has not determined the proper time limits for speedy trial in instances where juveniles successfully transfer cases from adult to juvenile court pursuant to Florida Statute § 39.04(2)(e)(4).¹⁰¹ At least three of Florida's five district courts of appeal have held that pendency in adult court should not be considered in determining the expiration of the ninety-day period.¹⁰²

5th Dist. Ct. App. 1980) (must enter a written order of extension and cite reasons even if it is a continuance by defendants).

94. See FLA. R. JUV. P. 8.220 on General Provisions for Hearings, particularly subsection (a) which requires the presence of a child, with two exceptions, and subsection (g) concerning reasonable notice. This rule would appear to prevent *ex parte* motions by the state for extending time.

95. See *supra* note 92.

96. 383 So. 2d 1364 (Fla. 5th Dist. Ct. App. 1980).

97. *Id.* at 1365.

98. See *supra* note 23 and accompanying text.

99. 337 So. 2d 797 (Fla. 1976).

100. *Id.* at 798.

101. As of July 1, 1981, this is possible only where the child is charged with a *misdemeanor* and can show he has not previously been found to have committed two delinquent acts, one of which is a felony.

102. *W.M. v. Tye*, 337 So. 2d 225 (Fla. 4th Dist. Ct. App. 1979); *State ex rel.*

The Fourth District Court of Appeal justified this exclusion of time by suggesting that without it, a juvenile defendant, aware that he did not meet the statutory requirement of certification as an adult, could sit back and wait until the ninety days neared expiration before moving the case back to juvenile court, resulting in inadequate time for the state to bring him to trial.¹⁰³ Notwithstanding the remote possibility defendants would choose this tactic, and concurring with the court's opinion that the legislature did not intend such procedural "game playing",¹⁰⁴ it is nevertheless unfair to exempt the portion of a juvenile's speedy rights the state consumes with paper-shuffling. It is unlikely that the juvenile could successfully return to juvenile court unless the state had originally filed an information erroneously.¹⁰⁵ An extension could be granted the state if the defendant is shown to be engaging in the procedural gamesmanship the Fourth District Court envisioned. The interest of justice would thus be served. This alternative comports with a literal reading of the statute and rules which dictate the appropriate procedure for extensions but do not provide for *exclusions* of time. The public interest in a speedy trial need not be overlooked by either prosecution or defense. Where counsel uses delay techniques purely for tactical advantage, the court's contempt power may be brought to bear upon the offending attorney.

Conclusion

Difficult and complex "speedy" dilemmas are too often left to trial court decision making on issues not adequately addressed by juvenile rules or statutes. Nowhere is there guidance as to what actions by juveniles constitute unexcused delay.¹⁰⁶ Nor is there a test of "continu-

Ortez v. Brosseau, 403 So. 2d 540 (Fla. 2d Dist. Ct. App. 1981); I.H. v. State, 405 So. 2d 450 (Fla. 1st Dist. Ct. App. 1981).

103. 337 So. 2d at 226.

104. *Id.*

105. *See supra* note 101. After all, the state is the record-keeper and should know if the juvenile's prior record meets the statutory requirement.

106. This possibility often arises when a juvenile fails to show for a hearing. But is any extension of time permitted without the presence of the defendant or defense counsel in light of the express provisions requiring his presence? *See supra* note 94.

ous availability” applicable to juveniles as there is for adults.¹⁰⁷ May the trial court discount speedy time lost to the state when a minor uses a false name or invalid address to evade service of summons?¹⁰⁸ A myriad of other questions remain unanswered.

Some courts justify applying adult criteria used in the criminal division where juvenile standards are nonexistent. As the Second District Court of Appeal stated in *State v. L.H.*,¹⁰⁹ “absent legislation, a juvenile’s rights are ordinarily similar to those of an adult.”¹¹⁰ In contrast, other courts steadfastly maintain the position that juveniles are a “distinct class of citizens”¹¹¹ requiring unique treatment.

Since the legislature has provided a statutory mechanism for certain classes of recidivistic juveniles considered appropriate candidates for adult treatment,¹¹² it seems inappropriate that courts arbitrarily substitute adult standards for *all* juveniles whenever explicit case or statutory authority is lacking.¹¹³ The children remaining within juvenile jurisdiction should not suffer the spillover effect resulting from public hysteria over a supposed teenage crime wave. Statistics do not justify it¹¹⁴ nor does essential justice permit it. A comprehensive statutory and

107. *See supra* note 19.

108. *See* *McKenzie v. State*, 378 So. 2d 1244, 1246 n.5 (Fla. 2d Dist. Ct. App. 1979) (inference that circumstances such as these would be viewed unfavorably to the defendant despite lapse of speedy time).

109. 392 So. 2d 294 (Fla. 2d Dist. Ct. App. 1980).

110. *Id.* at 296 (citing *Johnson v. State*, 314 So. 2d 573 (Fla. 1975)).

111. *See supra* note 18.

112. *See supra* note 23.

113. The Fifth District Court of Appeal held that the state had no appellate rights with respect to a dismissal on speedy trial grounds since there was no statutory authority for it. *W.A.M. v. State*, 1982 Fla. Law Weekly 186 (Fla. 5th Dist. Ct. App., Jan. 13, 1982). Significant in this holding is the court’s strict adherence to the principle of allowing the legislature to enact the laws and the courts to interpret them. Nevertheless, for much of the juvenile court’s day-to-day decisionmaking there is a woeful lack of legislative directives.

114. The Uniform Crime Reports accumulated by the United States Department of Justice from law enforcement agencies across the nation recently released these figures for the five-year period from 1976 through 1980: Murder arrests for persons over age 18 increased by 5%; murder arrests for persons under 18 increased by less than 1%; burglary arrests for adults rose by 15%; burglary arrests for juveniles went down by 11%; theft/larceny by adults jumped by 18%; theft/larceny by juveniles dropped 6%; arson by adults was up 34%; arson by juveniles was down 7%; motor

rule mechanism is needed. Until then, vigilance by the courts in maintaining a separation of adult and juvenile standards is the only way to prevent the further erosion of juvenile rights.

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vehicle theft by adults were up 12%; motor vehicle theft by juveniles went down 15%; overall property crime by adults increased 17%; overall property crime by juveniles decreased 8%. United States Department of Justice, Uniform Crime Reports 13, 21, 24, 196 (1980). (Gov't Class. No. J 1.14/7:980).