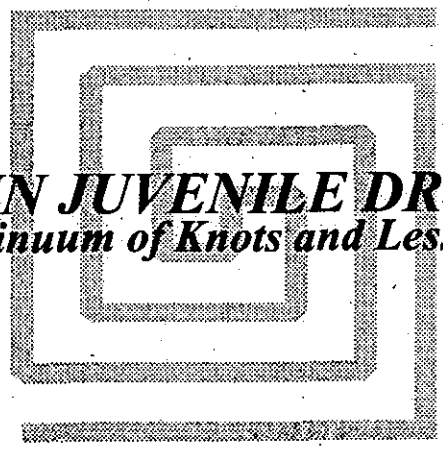
National Center for State Courts
3 4185 00011561 7

SJI State Justice Institute



SANCTIONS IN JUVENILE DRUG COURT:
A Continuum of Knots and Lessons

KFF
596
K66

SUPREME COURT OF FLORIDA
Office of the State Courts Administrator
December 1996

Koons, Judith E.

KFF
596
K66

SANCTIONS IN JUVENILE DRUG COURT: A Continuum of Knots and Lessons

rec'd
2-10-97

SUPREME COURT OF FLORIDA
Office of the State Courts Administrator
December 1996

Library
National Center for State Courts
300 Newport Ave.
Williamsburg, VA 23187-8798

This article was developed under Grant No. SJI-94-11H-A-291. The points of view expressed are those of the author(s) and do not necessarily represent the official position or policies of the State Justice Institute.

Acknowledgments

The drug court concept was created in 1989 when the Eleventh Judicial Circuit Court in Dade County, Florida, dedicated a judicial position to formulate and implement a plan to address the impact of substance abuse on the criminal justice system. With the blessings of the Supreme Court of Florida, Senior Judge Herbert Klein proposed the development of a judicially-led program combining criminal justice sanctions and drug abuse treatment for offender-addicts. Showing promising results, the drug court concept began to spread across Florida and the United States.

In 1992, the Office of the State Courts Administrator (OSCA) of the Supreme Court of Florida prepared and received a State Justice Institute grant to replicate the Miami drug court model in non-urban locations. The OSCA wished to explore the feasibility of the drug court concept in various jurisdictions and to develop a manual to guide the courts considering the option. The outcome was the development of two additional drug courts, one each in Escambia and Okaloosa counties in the Panhandle of Florida, and a manual, *Gearing Up Against Substance Abuse – Florida's Treatment-Based Drug Courts.* Work performed under that grant also disclosed the need for other research and planning projects to assist drug courts in Florida. In 1994, the State Justice Institute awarded continuation funding for the OSCA to develop a curriculum for training drug court teams. The OSCA prepared a comprehensive training curriculum, *Gaining Momentum – A Model Curriculum for Drug Courts*, and selected a portion of the curriculum for a drug court training conference in Naples, Florida, in June 1996. That conference was attended by seventeen drug court teams in Florida, including several newly constituted juvenile drug court teams and court representatives from Louisiana and Puerto Rico. With the emergence of juvenile drug courts, the OSCA has received requests for information in a number of areas, including legal issues. This article is an outgrowth of the Florida drug court conference and represents the effort of the OSCA to provide a survey of the law in an area seen as important to the development of juvenile drug courts. Many individuals and groups have participated with the OSCA in sheparding the growth of drug courts in Florida. The individuals noted below have been most actively involved in the production of this article.

Research and Writing:
Judith E. Koons, Esq.

Project Management:
Jennifer Dyer Wells
Janice Munsterman, SJI

Layout and Design:
Marcia Singleton
Tammy L. Galey

From 1984 to 1993, the number of juvenile and adult arrests made in Florida substantially increased. Adult arrests rose from 488,221 to 566,146, a 15.9 % increase over nine years. Juvenile arrests rose from 66,397 to 87,647, reflecting a 32 % increase over the same period.
–Florida Department of Juvenile Justice, 1994 Juvenile Justice Fact Book

Round and round the circle
Completing the charm
So the knot be unknotted
The cross be uncrossed
The crooked be made straight
And the curse be ended.
–T.S. Eliot, "The Family Reunion" (1939)

I. Introduction

Juvenile drug abuse and criminal activity are on the rise. Reflecting a trend with adults, an increasing number of juveniles is being introduced to illicit drugs and to the justice system. The number of juveniles arrested in Florida increased from 87,647 in 1993 to 102,275 in fiscal year 1994, a 17 percent increase in the span of one year.[1] Similarly, from 1992 to 1995, adolescent drug abuse doubled: from 5.3 percent to 10.9 percent of juveniles reported current drug use.[2]

In 1989, the criminal justice system responded to spiraling rates of adult drug abuse and criminal activity by developing drug court programs that combine drug abuse treatment with criminal justice sanctions for offender-addicts. The results were so encouraging that the drug court concept began being used in the juvenile system. As of October 1996, ten jurisdictions in the United States were operating juvenile drug courts and nine jurisdictions were planning or developing components of a juvenile drug court program.[3] Florida is a leader in the development of juvenile drug courts, reporting five juvenile drug courts.[4] The development of new judicial roles in an interdisciplinary terrain has been rigorous for adult drug courts. Drug courts in the juvenile justice system present a host of additional challenges.

Among the complexities facing juvenile drug courts are novel legal questions arising from the efforts of the justice system to meet competing, multi-dimensional needs of a society grappling with drug abuse by children. This article addresses the knot of issues at play in the continuum of sanctions used in juvenile drug court and begins to untangle them by identification and review. The lessons attending those knots may then become more available to courts exploring the juvenile drug court concept. After

summarizing the history of the juvenile justice system in Florida, the article will review the development of juvenile drug courts in the state. Then, in reviewing the use of sanctions in juvenile drug courts, the article will survey the law and facts regarding contempt and secure detention and will provide an assessment of factors bearing on waiver of procedural safeguards by juvenile contemners.

II. History of Florida's Juvenile Court System

The juvenile court concept has been with us for nearly one hundred years, having grown out of "dissatisfaction with a criminal court system that detained, tried, and punished children in the same manner as adults."[5] In Florida, separate juvenile courts for non-criminal cases were established in 1914, followed by the first juvenile correctional institution in 1915.[6] In 1951, the Florida Juvenile Court Act created chapter 39, Florida Statutes, and gave the juvenile court jurisdiction over dependency and delinquency cases. During the 1960's and 1970's, the juvenile justice goals were community-based intervention, minimal reinstitutionalization, and prevention.[7] Having failed to live up to those goals, juvenile statutes began undergoing revision. Florida's original Juvenile Court Act was not revised until 1973, when the chapter was divided into separate parts for dependency and delinquency proceedings. However, in 1978, chapter 39 was substantially amended and has been modified in each subsequent legislative session.

Changes in the juvenile justice system seem to cycle between and reflect the tensions marking the goals of social control and social welfare.[8] Reflecting dual themes of public safety and juvenile rehabilitation, as well as a trend from mega-institutions to community programs, juvenile justice law in Florida has undergone significant change over the past ten years. A complex interplay among the judicial, legislative, and executive branches has served as the dynamic basis for the creation of a plan for juvenile justice for the remainder of the century. The struggle and birthing pains of juvenile reform in Florida have been mighty.

Litigation and legislative debate in both the juvenile justice and child welfare areas spanned the 1980's. Child advocates spotlighted systemic weaknesses and pursued litigation on three fronts.[9] *Bobby M. v. Chiles*, filed in 1983, was a federal class action challenge to conditions at Florida's juvenile training schools.[10] Improvements were made to correct many of the practices, but those requiring a substantial dedication of resources were delayed.[11] *M.E. v. Martinez* highlighted the issues of therapeutic treatment for emotionally disturbed and developmentally disabled children in state custody.[12]

Children v. Chiles addressed inadequacies in the foster care system, including excessive time in foster care placement, unavailability of appropriate group homes and licensed foster homes, and delays where termination of parental rights was warranted.[13]

The legislative debate during the 1980's reflected law enforcement's concern with serious juvenile offenders. As characterized by Judge Dorothy Harris Pate:

> Continuous changes were made to detention criteria, and the number of cases waived to adult court increased rapidly. The lack of financial investment in the delinquency system, coupled with extensive legislative tinkering, resulted in overcrowded detention centers, shorter lengths of stay in programs, high recidivism rates, indiscriminate warehousing of youth in training schools, numerous lawsuits, losing youth to the adult correctional system, low moral of system personnel, and loss of public trust.[14]

The consent decrees entered in the *Bobby M.* case essentially called for wholesale reform of the juvenile justice delivery system. Necessary funding to support the consent decrees was not provided and problems continued to plague the juvenile justice system. In 1989, the legislature responded by creating the Juvenile Justice System Review Task Force. With the passage of the Juvenile Justice Reform Act of 1990, the legislature adopted provisions required by the *Bobby M.* consent decrees as well as many of the recommendations made by the Task Force. Budget shortfalls initially gutted the scheme of case management and continuum of care established in the legislation, but a special session in the spring of 1992 restored a floor of funding for the reforms. Revisions to chapter 39 were made at a furious pace from 1990 - 1994. Another massive reorganization in juvenile justice occurred in 1994, with the creation of a new Department of Juvenile Justice. With greater funding, the Department also was given tighter mandates to expand prevention, intervention, detention, and commitment services and to establish smaller, community-based assessment and treatment programs.[15]

III. The Development of Juvenile Drug Courts

In the midst of the flurry of legislative reform, an enabling statute for treatment-based diversionary juvenile drug courts was enacted. Adopted in 1993, the Delinquency Pretrial Intervention Program, set forth in section 39.0475, Florida Statutes, provides that juveniles charged with felonies of purchase or possession of controlled substances who have not previously been adjudicated for a felony are eligible for admission to a treatment-based program approved by the local court. A state attorney may object to admission and trigger a pre-admission hearing in cases where there is reason to believe

the child is a drug dealer. After completing the program, contemplated to extend longer than a year, the juvenile participants are eligible for dismissal of the pending charges.

Another statutory basis for juvenile drug courts is the Offender Referral statute, section 397.705, Florida Statutes, also adopted in 1993. Section 397.705(1) provides in pertinent part:

> If any offender, including but not limited to any minor, is charged with or convicted of a crime, the court or criminal justice authority with jurisdiction over that offender may require the offender to receive services from a service provider.... If referred by the court, the referral may be instead of or in addition to final adjudication, imposition of penalty or sentence, or other action.

The Supreme Court of Florida recently determined in *State vs. Dugan* that the statute "gives the trial court the discretion to dismiss the charges against an offender who successfully completes a drug treatment program."[16] In *Dugan*, two drug-abusing offenders were placed on probation and, after completing the drug court program, successfully moved to dismiss their charges over the objection of the state attorney.

Focusing on juvenile substance-abusers, section 397.706(4), Florida Statutes, also authorizes the court to "require juvenile offenders and their families to participate in substance abuse assessment and treatment services in accordance with the provisions of chapter 39 and may use its contempt powers to enforce its orders." Chapter 397, in conjunction with chapter 39, provides an additional source of authority for a juvenile drug court choosing to function in a post-adjudication setting.[17]

Believing that the traditional juvenile court has become a forum focusing more on the determination of guilt than on the mission of rehabilitation and that the prevalence and complexity of juvenile substance abuse may render the traditional juvenile justice system unable to address the problem effectively, proponents of juvenile drug courts have introduced enhancements to the juvenile court process. As described in a Preliminary Report of Juvenile Drug Courts prepared by the Drug Court Clearinghouse and Technical Assistance Project of American University, the measures developed by juvenile drug courts to enhance the juvenile court process include:

> (1) immediate intervention by the court and continuous supervision by the judge of the progress of the juvenile and his/her family; (2) development of a program of treatment and rehabilitation services that addresses *family* problems, not simply the child's; (3) immediate response by the court to the child's needs and situation

and to noncompliance by either the child or the family with the court's program conditions; and (4) judicial leadership in bringing together the school, treatment resources, and other community agencies to work together to achieve the drug court's goals.[18]

Driven by rehabilitative goals, these enhancements were borne out of the experience of adult drug courts and the expertise of leaders in the field of juvenile substance abuse. These components, unique to the juvenile justice system, raise novel legal questions. The following section will survey the issue of sanctions in juvenile drug courts.

IV. Sanctions: The Use of Contempt and Detention in Juvenile Drug Courts

A. The Factual Background

Drug courts use a "carrot and stick" approach to encourage recovery of participants and protect public safety. Innovative approaches have been essential to develop effective systems of rewards and sanctions for adult drug courts. Juvenile drug courts present a jumble of known and unknown challenges. Issues of developmental change, family support and dysfunction, peer primacy, adolescent invincibility, and non-responsiveness to authority present some of the known complexities. Unknown issues include the nature of adolescent substance abuse and the potential criminogenic effect of greater juvenile involvement in the justice system.[19] On the frontier of this new ground, juvenile drug courts are creating systems of graduated sanctions. One of the powers used by juvenile drug courts to administer sanctions is contempt. And, at the end of the continuum of sanctions employed by juvenile drug courts is the alternative of secure detention.

In the juvenile justice system in Florida, the use of secure detention to punish juvenile contempt has been the subject of tremendous debate. While the debate has raged, detention facilities have remained at or above capacity. In October of 1994, the 21 regional detention centers had a capacity of 1,427 and an average daily population of 1,851, for a 130% utilization rate.[20] At that time, Florida's capacity for home detention was 994 with an average daily population of 1,142 and a utilization rate of 115%.[21] With 148 allocated non-secure detention beds, capacity was at 72 beds and utilized capacity was at 35, for a utilization rate of 24%.[22] A similar picture is reflected in detention statistics for fiscal year 1995-1996: secure detention capacity is 1,489 beds, average daily population is 1,932 youths, home detention capacity is at 952, and non-secure detention capacity is 148 beds.[23]

Increased resources may be made available for detention and commitment. In its 1996 - 1997 budget request, the Department of Juvenile Justice has sought budget enhancements of $12 million for 200 additional detention beds statewide, $10.9 million for three 100-bed facilities, and $4.5 million for 345 additional moderate and high risk residential beds.[24] The Department also is seeking funding for assessment centers, a juvenile justice database, and services such as aftercare and local prevention and diversion projects.[25]

While juvenile drug courts in other jurisdictions sometimes use detention as a sentence and stay its operation during participation in drug court, that option does not seem compatible with the view in Florida that detention is the "temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order."[26] The next section will review the development of the law of contempt and detention in the juvenile justice system in Florida.

B. Survey of the Law of Contempt

Considerable legislative and judicial activity has taken place to clarify the questions of policy and power which attend the use of contempt by a juvenile court. The constitutional tension between the branches of government is reflected in two early decisions of the Supreme Court of Florida. In *Ex parte Earman*, the court affirmed that the judicial power vested by article V, section 1 of the constitution includes the inherent power to punish a contempt against the authority and dignity of the court.[27] However, in *Ex Parte Edwards*, decided some fifty years prior, the court had also acknowledged the authority of the legislature to restrict the far-reaching common law powers of the court by limiting the punishment that may be imposed for direct and indirect criminal contempt.[28]

Against this long-established legal backdrop, the juvenile justice reforms of the 1980s were adopted. In 1988, the legislature adopted reforms restricting the use of secure detention. Section 39.1105 (Supp. 1988) provided:

> The Legislature recognizes the need for a secure placement for certain youth alleged to have committed a delinquent act. The Legislature also recognizes that in order for detention to fulfill its intended role in the juvenile justice system, under the provisions of part I of this chapter, it must operate at the highest standards of effectiveness and efficiency. These facts underscore the need to reduce the overcrowding in detention, the need to reduce inappropriate placements in detention, the need for appropriate pre-adjudication services, the need for qualified, well trained staff, and a commitment to meet nationally recognized

> standards and practices. In achieving these goals, it is the intent of the Legislature that detention under the provisions of part I of this chapter be used only when less restrictive interim placement alternatives prior to adjudication and disposition are not appropriate. It is further the intent of the Legislature that decisions to detain be based in part on a prudent assessment of risk, and that decisions to detain be limited to situations where there is clear and compelling evidence that a child presents a danger to himself or the community, presents a risk of failing to appear, or is likely to commit a subsequent law violation prior to adjudication and disposition.

Consistent with this philosophy, the legislature also adopted section 39.0321, proscribing the use of detention as follows:

> A child alleged to have committed a delinquent act shall not be placed in secure detention for the following reasons:
>
> (1) To punish, treat, or rehabilitate the child.
> (2) To allow a parent to avoid his or her legal responsibility.
> (3) To permit more convenient administrative access to the juvenile.
> (4) To facilitate further interrogation or investigation.
> (5) Due to a lack of more appropriate facilities.

Since contempt powers in direct and indirect contempt cases are used to vindicate the authority of the court and to punish the participant, the 1988 legislation essentially prohibited juvenile court judges from punishing contempt by ordering placement of children alleged to be delinquent in secure detention.[29]

In 1990, the legislature clarified that this policy applied with even more breadth to dependent children and to all types of detention.[30] Section 39.1321 was revised and renumbered as section 39.043, as follows:

> (1) A child alleged to have committed a delinquent act or violation of law shall not be placed into secure, nonsecure, or home detention care for any of the following reasons:
>
> (a) To punish, treat, or rehabilitate the child;
> (b) To allow a parent to avoid his or her legal responsibility;
> (c) To permit more convenient administrative access to the juvenile;

(d) To facilitate further interrogation or investigation; or
(e) Due to a lack of more appropriate facilities.

(2) A child alleged to be dependent or in need of services shall not, under any circumstances, be placed into secure detention care solely for these reasons.

Two statutes were adopted in tandem with section 39.043: section 39.044, detailing the detention decision-making process and due process rights of juvenile contemners, and section 39.042, denoting detention considerations such as the child's presenting a substantial risk of not appearing.[31] The Preamble to the 1990 Act, section 39.002(4), also provided that, while the legislature found a need for secure placement for certain children, detention should only be used where less restrictive interim alternatives were not appropriate and where there was clear and compelling evidence of factors outlined in the foregoing sections.

The 1988 and 1990 statutes restricting the use of detention served as the basis for a consolidated appeal to the Supreme Court of Florida by six juveniles who were adjudicated in contempt and sentenced to detention.[32] Four of the juveniles in *A.A. v. Rolle* were dependent children adjudicated guilty of indirect contempt for violating orders to attend school or not to run away. Two of the juveniles were adjudicated delinquent and had been sentenced to secure detention for direct contempt of court. Writing for the Court, Justice Barkett recognized "that courts have both an inherent and a statutory power to make a finding of contempt," but that the sanctions to be used by the court could properly be limited by statute.[33] After surveying the statutes, Justice Barkett concluded that "secure detention facilities were not the facilities to be used to punish juveniles for contempt of court. Instead, the facilities were only to be used as a temporary measure to ensure the child's appearance in court or to protect the child or the public against increased safety risks."[34] The Court rejected two arguments posed by the state that the statutory prohibition only applied to pre-adjudication cases and the reasoning of a lower court that detention could be imposed for contempt where procedural safeguards were employed.[35] While noting the "frustration of judges" and "[t]he lack of adequate placement alternatives" as a "recurring daily problem in our juvenile system," the Court held that juveniles may not be incarcerated for contempt by being placed in secure detention.[36] Justice Harding concurred "with sadness" because:

> [O]nce again the children of this state have suffered neglect at the hands of the government. The legislature has deprived the courts of the option of detention in juvenile contempt proceedings, and has provided no effective alternative to meet the needs of children who are in contempt of court. ... [T]he court needs other

> programs or resources which can be used to exercise the court's contempt power. Group homes, marine institutes, confidence-building programs such as Outward Bound have been effective resources for the treatment of delinquents. ... Florida's juvenile justice system has never been given the opportunity to succeed because adequate funds have never been appropriated to achieve the dual goals of rehabilitating delinquents and protecting dependents.[37]

A strong dissent was offered by Justice Overton, who viewed the statutory construction as "effectively eliminating" the contempt power of the court and who proposed:

> The juvenile justice system already has substantial problems and, after this decision, the juvenile court will have no real means to protect itself from those who disregard its authority or disobey its orders. I suggest the legislature immediately address the problem and return to the judiciary in juvenile proceedings this important and necessary power.[38]

In 1994, the legislature responded by revising section 39.043 to remove the prohibition on the use of secure detention as a means of punishment. A new statute, section 39.0145, was also created that directly addressed sanctions as punishment for contempt of court. Observing that the court may use contempt to punish a child for interfering with the court, violating a provision of chapter 39, or violating a court order, the legislature stated its intent that "the court restrict and limit the use of contempt powers with respect to commitment of a child to a secure facility."[39] The standard set in section 39.0145(2) for use of detention for contempt was as follows:

> A child may be placed in a secure facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the child has already been sentenced to serve an alternative sanction but failed to comply with the sentence.

The legislature also created within each judicial circuit the position of alternative sanctions coordinator to serve under the chief administrative judge of the juvenile division of the circuit court and to "coordinate and maintain a spectrum of contempt sanction alternatives."[40] Upon a determination that a child has committed direct contempt or indirect contempt of a court order, the juvenile judge is encouraged to request the alternative sanctions coordinator to recommend the most appropriate available alternative sanction and to sentence the child to perform up to 50 hours of community service or another alternative sanction before ordering that the child be placed in a secure facility.[41]

In cases of direct contempt, the legislation permitted an "authorized sanction" to be imposed immediately.[42] Safeguards adopted for cases of indirect contempt were a hearing within 24 hours and, at the hearing, the following due process rights: right to a copy of the petition, to an explanation of the nature and consequences of the proceedings, to legal counsel, to confront and present witnesses, to have a transcript or record of the proceeding, and to appeal.[43] The court was advised to "review the placement of the child every 72 hours to determine whether it is appropriate for the child to remain in the facility."[44]

In what has been called "a respite from the frenetic pace of legislation"[45] shaping and re-shaping Florida's juvenile justice system, the 1995 legislative session resulted in modest revisions to chapter 39, including minor changes in language to section 39.0145. No changes were enacted in 1996 to the contempt statute, but the legislature modified one of the statutes relating to detention, section 39.044, to require court orders to include specific instructions directing the release of a child following the detention period and to mandate the placement in detention of all children who are adjudicated delinquent and awaiting placement in a residential commitment program.

Florida Rule of Juvenile Procedure 8.150 establishes the procedure governing contempt in juvenile cases. Direct criminal contempt may be punished summarily while indirect contempt is prosecuted on an order to show cause issued on the court's own motion or on an affidavit of a person having knowledge of the facts.[46] The order to show cause shall state the "essential facts" constituting the contempt and require the juvenile to appear at a specified time and place for a hearing. At the hearing, the juvenile is "entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his or her own defense."[47] The essential rights imparted in Florida Rule of Juvenile Procedure 8.150 parallel those in the criminal rule governing criminal contempt, Florida Rule of Criminal Procedure 3.840.[48]

C. Waiver of Procedural Safeguards

Important to the operation of a juvenile drug court is the ability to administer sanctions speedily upon a noncompliance. The question may arise, then, whether the procedural safeguards to notice and hearing set forth in cases of indirect criminal contempt are subject to waiver by a juvenile drug court participant. A fair reading of the caselaw in this area suggests that, while the procedural protections accompanying contempt proceedings are considered fundamental rights, those rights are subject to an express waiver that is knowing and voluntary.

A number of courts have required strict compliance with the procedural safeguards of Florida Rule of Criminal Procedure 3.840, failing which fundamental error has been found.[49] Consequently, courts have refused to presume waiver of the procedural protections of Florida Rule of Criminal Procedure 3.840 from inaction or silence.[50] In the absence of waiver, contempt convictions obtained in noncompliance with procedural safeguards have been overturned.[51] As a corollary, courts have upheld affirmative waivers of provisions of the criminal contempt rule.[52]

The substantive due process right to counsel has also been subject to waiver by contemners.[53] As Florida and federal courts have recognized, however, special issues are presented in questions of waiver by juveniles.[54] In *Fare v. Michael C.*, the U. S. Supreme Court adopted a totality-of-the-circumstances test to determine whether a juvenile has knowingly and voluntarily waived her rights to remain silent and to assistance of counsel.[55] The Court advised:

> The totality approach permits – indeed, it mandates – inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. ... Courts repeatedly must deal with issues of waiver with regard to a broad variety of constitutional rights. There is no reason to assume that such courts – especially juvenile courts, with their special expertise in this area – will be unable to apply the totality-of-the-circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved.[56]

Florida courts have approached waiver and contempt with the same caution. The Fifth District Court of Appeal reversed a conviction of indirect criminal contempt where the trial court's inquiry into waiver of counsel was inadequate.[57] In a case involving children in need of services, the court did not allow a contempt adjudication to stand where the "children appeared, apparently waived counsel and pled guilty to contempt of court."[58] In *A.L.B. v. State*, the court upheld the contempt conviction of a juvenile who had been adjudicated delinquent, placed on community control, and who subsequently was found guilty of contempt based on a petition that alleged a violation of community control.[59] In dissent, Judge Webster stated his view that the order to show cause was not on the trial court's own motion or upon affidavit of a person having knowledge of the facts and offered this second consideration:

> I am also troubled by the fact that the contempt power appears to have been used here, not to uphold the dignity and authority of the court, but because the community control officer and the trial court were dissatisfied with the dispositional alternatives available upon a finding that appellant had violated the conditions of his community control. ... Here, at the request of the community control counselor, and apparently out of a shared dissatisfaction with section 39.054(1)(a)3, Florida Statutes (Supp. 1994), which set forth the procedure for handling violations of community control, the trial court resorted to indirect criminal contempt and a sentence to secure detention, a dispositional alternative that would not have been available for a violation of community control. I question the appropriateness of such use of the contempt power.[60]

In the juvenile drug court setting, considerations guiding the use of contempt are attended by additional factors which deepen and widen the inquiry into the totality of the circumstances. Juvenile drug court participants are, uniformly, moderate- to severe-substance abusers.[61] Juvenile drug court, itself, is not adversarial but is founded upon therapeutic goals.[62] In many cases, juveniles have requested admission to the drug court. In addition, the sanctions administered by the court are undertaken not simply pursuant to a waiver, but often pursuant to a contractual request: the juvenile drug court participant often has entered into a contract, ratified by the court, agreeing to comply with conditions of participation and to sanctions imposed upon noncompliance. Therefore, in the totality of the circumstances, the therapeutic setting and goals of the juvenile drug court and the personal recovery goals of the juvenile and her family may be considered to add additional dimensions of voluntariness not present in other juvenile or criminal cases.[63] A caveat may rest where the juvenile has not consented to participation but has been enrolled by a parent or family member. Some conflict is apparent in the interplay between the effort to involve the family in the treatment of the child and the rights of juveniles to due process, privacy, and confidentiality.[64] In the coming years, issues of family involvement and confidentiality are among the knots that juvenile drug courts will creatively seek to unravel.

V. Conclusion

Juvenile drug courts function on the defining edge of juvenile justice law and policy. These courts have accepted the challenge for the justice system of responding to the social dilemma posed by juvenile substance abuse. It is an irony that, in the effort to respond on a humanitarian level to a problem affecting so many children, families, and communities, juvenile drug courts have also created new considerations of individual rights. Those will be weighed and sorted in a totality of circumstances which may rightly include factors characterizing juvenile drug courts.

As juvenile drug courts balance therapeutic and public safety goals, they will face innumerable problems and an equal number of opportunities. In fashioning responses, juvenile drug courts will bring forward new information and lessons. Some of the early lessons may already be noted. The two juvenile drug courts operating in Florida in 1996 show tremendous promise. Innovation and adaptation may be the operational themes for these early drug courts. Judge John T. Parnham, one of the leaders in the drug court movement in the United States and creator of one of the first juvenile drug courts, expresses the evolution of his judicial approach toward detention as follows:

> My philosophy toward extensive use of negative consequences is changing. While detention is appropriate at times, I believe a successful program for juvenile substance abusers requires more extensive use of positive incentives and intensive family participation. I am re-shaping our program to build in a reward-based system that will instill positive values in a child, teach effective decision-making, provide higher incentives for pro-social behavior, and provide positive motivation for family involvement.[65]

Sanctions for juvenile drug courts lie on a continuum. But the continuum of problems and lessons is not static. There is a teleology in this area of the law reflecting the problems of the past, proposing solutions for the present, and reaching into the future to create a new world of juvenile justice.[66]

NOTES

1. *See* FLA. DEPT. JUV. JUSTICE, 1995-1996 ANNUAL REPORT 8 (1996) (hereinafter 1995 ANNUAL REPORT). Of those 102,275 children referred to the Department of Juvenile Justice, 61,472 or 60 percent were first-time offenders. *Id.*

2. *Government Study Shows Teen Drug Use Has Doubled*, SUBSTANCE ABUSE LETTER 1 (Sept. 3, 1996, Pace Publications) (referring to annual National Household Survey of Drug Abuse released by the Department of Health and Human Services (HHS)). According to the HHS study, "current drug use" was defined as use during the preceding month. Another study reviewing annual drug use of adolescents reported that 29.5 percent of students in grades six through twelve acknowledged annual use of at least one illicit drug. *Teenage Drug Use Poll Finds Use Still Rising,* SUBSTANCE ABUSE LETTER 1, 6 (Oct. 2, 1996) (reviewing survey taken during the 1995 - 1996 school year by the National Parents' Resource Institute for Drug Education).

3. CAROLINE S. COOPER & SHANIE R. BARTLETT, JUVENILE DRUG COURTS: OPERATIONAL CHARACTERISTICS AND IMPLEMENTATION ISSUES 8 (1996) (project of Drug Court Clearinghouse and Technical Assistance Project of American University, supported by State Justice Institute and Office of Justice Programs, U.S. Department of Justice) (hereinafter JUVENILE DRUG COURT ISSUES).

4. The five courts reported in JUVENILE DRUG COURT ISSUES, *supra*, are Hillsborough, Escambia, Monroe, Broward, and Dade Counties. Other counties in Florida which are examining the drug court concept in the juvenile area include Bay and Duval Counties.

5. Dorothy Harris Pate, *History and Philosophy of the Juvenile Court, in* FLORIDA JUVENILE LAW AND PRACTICE 1-6 (The Florida Bar Continuing Legal Education, 4th ed. 1995) (hereinafter *Juvenile History*). Judge Pate is a senior circuit judge (retired) in Jacksonville.

6. *Id.* at 1-7.

7. *Id.* at 1-11.

8. *Id.* at 1-6.

9. For a summary of the cases challenging Florida's juvenile justice and child welfare systems, see Michael J. Dale, *Juvenile Law: 1992 Survey of Florida Law*, 17 NOVA L. REV. 335, 336-40 (1992). Since 1990, Professor Dale has provided an annual review of dependency and delinquency law.

10. *See Bobby M. v. Chiles*, No 83-7003 (N.D. Fla. July 2, 1987) (consent decree).

11. For a review of the *Bobby M.* litigation and implementation of the consent decrees, see Jodi Siegel, *Reforming Florida's Juvenile Justice System: A Case Example of Bobby M. v. Chiles*, 19 FLA. ST. U. L. REV. 693 (1991).

12. *See M.E. v. Martinez*, No. 90-1008-CIV-Kehoe (S.D. Fla. 1990).

13. *See Children v. Chiles*, No 90-2416-CIV-Kehoe (S.D. Fla. 1990); *see also Chiles v. Children*, 589 So. 2d 260 (1991) (statutes providing governor the authority to reappropriate state budget which was used to reduce operating budgets in light of the 1991 shortfall were unconstitutional by attempting to delegate legislative authority and to subject the judicial branch to legislative oversight).

14. *Juvenile History, supra* at 1-12.

15. *See* 1995 ANNUAL REPORT, *supra* at 8-15. Other significant provisions of the 1994 Act were authorization of the use of detention as punishment of contempt, recognizing the parental role to prevent delinquent behavior and the court's authority over parents of a child adjudicated delinquent, broadening the direct file discretion of the state attorney, and relaxing confidentiality restrictions to allow sharing of specified information among law enforcement, education, and juvenile justice agencies. *Juvenile History, supra* at 1-14.

16. *See State v. Dugan*, 21 Fla. L. Weekly S356 (Fla. 1996).

17. Florida is exploring various types of juvenile drug courts. The Thirteenth Judicial Circuit for Hillsborough County is implementing a pretrial diversion juvenile drug court program, led by Chief Judge Dennis Alvarez, while the First Judicial Circuit for Escambia County is exploring a post-adjudication model, led by Judge John T. Parnham. American University reports that most juvenile drug courts currently have a post-adjudication design due to the belief that more extensive authority is available to the court and a that greater range of options is available for the child in a post-adjudication program. AMERICAN UNIVERSITY, JUVENILE DRUG COURTS: A PRELIMINARY REPORT 2 (1996) (hereinafter PRELIMINARY REPORT).

18. *Id.* at 2 (emphasis in original).

19. Among experts in the field of substance abuse, some central understandings seem to have developed about addiction in adults. However, there remains a breadth of opinion about the nature of juvenile substance abuse, including whether the notion of addiction is

helpful or appropriate. In addition, some studies have been undertaken of the effectiveness of treatment and sanctions for juvenile offenders. Those "meta-analyses" challenge the claim that "nothing works" with juvenile offenders and "support the notion that rehabilitation can be effective." *See* OFFICE OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE, GUIDE FOR IMPLEMENTING THE COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS, 138 (1995) (hereinafter OJJDP GUIDE). In reviewing effective programs, one study reported by the Office of Juvenile Justice and Delinquency Prevention compared judicial with family and behavioral interventions. *Id.* at 146. In the Michigan State Diversion Project, similar proactive approaches were used within the various test groups, but the Court-Context group used a caseworker from the juvenile court to train and supervise student caseworkers. The study found that active approaches occurring outside of the juvenile justice system performed better than the control group approach but that the control group fared better than the court group. The study concluded that "active hands-on intervention of several kinds worked better than normal processing of offenders through the juvenile system, but only if they were thoroughly separated from the system." *Id.* at 147. The study provides some data regarding the criminogenic effects of the juvenile justice system and reflects the expanse of territory yet to be explored regarding effective interventions for juvenile offenders.

20. JUVENILE JUSTICE ADVISORY BOARD, 1994 ANNUAL REPORT & FACT BOOK 65 (1994) (hereinafter 1994 ANNUAL REPORT).

21. *Id.*

22. *Id.*

23. 1995 ANNUAL REPORT, *supra* at 13.

24. *Juvenile Justice Budget for 1996-97*, FLORIDA JUVENILE JUSTICE UPDATE 1 (May - June 1996).

25. The 1997 budget request of Department of Juvenile Justice includes $2.35 million for Assessment Center Renovation and Construction in three counties, $5.8 million for the Juvenile Justice Information System, $823,500 for Increased Intensive Aftercare Services, $900,000 for Non-Residential Treatment Slots, $775,000 for Minority Over-Representation Projects, $2.03 million for Local Prevention and Diversion Projects, $3.5 million for the After school Diversion Program, and $560,200 for PACE Expansion. *Id.* at 1. The Minority Over-Representation Project was developed to formulate an "effective strategy for reducing the disproportion number of minority youths in the juvenile justice

system." 1995 ANNUAL REPORT, *supra* at 25. PACE (Practical Academic Cultural Education) Center for Girls, Inc., is a non-residential program offering services to young women who have not succeeded in the public school system. *Id.* at 9. In the last five years, the number of young women referred to the juvenile justice system increased 55 percent. *Id.* at 26 - 27. Young women now represent 27 percent of all youths referred to the department. Significant needs exist in Florida for gender-specific residential and treatment programs. Except for the PACE Center for Girls, very few prevention services have been targeted at this population. PACE operates in nine districts and serves 220 girls daily. Since 1985, approximately 2,500 girls have been served. Of those, 93 percent do not enter or re-enter the juvenile justice system. *Id.* at 9.

26. *See* PRELIMINARY REPORT, *supra* at 3; *see also* FLA. STAT. § 39.01(22) (1996 Supp.) (definition of "detention care").

27. *Ex parte Earman*, 85 Fla. 297, 95 So. 755, 760 (1923).

28. *Ex parte Edwards*, 11 Fla. 174, 186 (Fla. 1867).

29. *E.g.*, *The Florida Bar v. Taylor*, 648 So. 2d 709, n.2 at 710 (Fla. 1995) (distinguishing between civil contempt which is used to coerce a party into complying with an order of the court and criminal contempt involving conduct that is calculated to embarrass, hinder or obstruct the administration of justice where the power is used to vindicate authority of court and to punish the offender). Direct contempt is an act committed in the presence of the court while indirect contempt is committed outside of the presence of the court. *E.g.*, *Pugliese v. Pugliese*, 347 So. 2d 422 (Fla. 1977). Judge Carolyn K. Fulmer of the Second District Court of Appeal has written an excellent summary of the law of contempt in the state. CAROLYN K. FULMER, CONTEMPT (1996). Judge John P. Kuder, Chief Judge of the First Judicial Circuit, has prepared a helpful and timely summary of the new juvenile contempt statute. John P. Kuder, *Contempt of Court [F.S. 39.0145]*, BENCH BOOK INSERT (1996).

30. Federal legislation, prohibiting the use of secure detention for nonoffenders and for juveniles charged with a status offense other than a hand gun or court order violation, may also have encouraged the 1990 reforms. *See* 42 U.S.C. § 5633(a)(10)(A) (requiring assurance of non-use of secure detention in state plan for juvenile justice and delinquency prevention formula grant).

31. The 1990 legislation also directed the development of a risk assessment instrument by representatives of the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, and the Public Defenders Association. FLA. STAT. § 39.042(3)(b)

(1990). The risk assessment instrument occupies a key role in recommendations and decisions made regarding placement of juvenile offenders. *See* FLA. STAT. §§ 39.044(1)(b) (1990) (detention recommendation based on risk assessment instrument), 39.042(3)(a) (1990) (all determinations and orders regarding detention based on risk assessment).

32. *A.A. v. Rolle*, 604 So. 2d 813 (Fla. 1992).

33. *Id.* at 815.

34. *Id.* at 816-817.

35. *Id.* at 817.

36. *Id.* at 818-819.

37. *Id.* at 819-820.

38. *Id.* at 820-821.

39. FLA. STAT. § 39.0145(1) (1994).

40. FLA. STAT. §§ 39.0145(3), (5) (1994).

41. FLA. STAT. §§ 39.0145(3), (4)(c) (1994).

42. FLA. STAT. § 39.0145(4)(a) (1994).

43. FLA. STAT. § 39.0145(4)(b) (1994).

44. *Id.*

45. *See* Michael J. Dale, *Juvenile Law: 1995 Survey of Florida Law*, 20 NOVA L. REV. 191 (1995).

46. Fla.R.Juv.P. 8.150(a), (b)(1).

47. Fla.R.Juv.P. 8.150(b)(4).

48. *See* Fla.R.Crim.P. 3.840 (note, however, Fla.R.Juv.P. 8.150 requiring service of order to show cause); *see also A.L.B. v. State*, 675 So. 2d 668 (Fla. 1st Dist. Ct. App. 1996)

(Webster, J., dissenting) (looking to cases interpreting Fla.R.Crim.P. 3.840 for guidance in construing Fla.R.Juv.P. 8.150).

49. *E.g., Hunt v. State*, 659 So. 2d 363 (Fla. 1st Dist. Ct. App. 1995) (order to show cause based on unsworn police report); *Giles v. Renew*, 639 So. 2d 701 (Fla. 2nd Dist. Ct. App. 1994) (order to show cause not served and failed to state essential facts).

50. *E.g., Hunt, supra* at 364 (noncompliance not waived by failure to object); *Hayes v. State*, 592 So. 2d 327 (Fla. 4th Dist. Ct. App. 1992) ("presuming waiver [of counsel] from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything else is not waiver" -- quoting the U. S. Supreme Court in *Carnley v. Cochran*, 369 U.S. 506, 516 (1962).

51. *See, e.g., May v. State,* 623 So. 2d 601 (Fla. 2nd Dist. Ct. App. 1993) (former Fla.R.Juv.P. 8.280 governed contempt proceeding; appellant deprived of procedural due process by virtue of violation of notice provisions of rule and substantive due process by denial of counsel); *see also Hunt, supra* at 364 (reversed without prejudice to initiating new proceedings in conformity with Rule 3.840).

52. *See Persoff v. Persoff*, 589 So. 2d 1007 (Fla. 4th Dist. Ct. App. 1991) (counsel waived order to show cause; not a case where defendant remained silent – affirmative waiver upheld); *compare Reins v. Johnson*, 604 So. 2d 911 (Fla. 2nd Dist. Ct. App. 1992) (contempt conviction failed to satisfy Rule 3.840; only an express waiver will estop from challenging on appeal); *see also Hollander v. Vetrick*, 675 So. 2d 1047 (Fla. 4th Dist. Ct. App. 1996) (in civil contempt case, no error in refusing to consider motion for criminal contempt where appellant had specifically waived the criminal contempt motion).

53. *See May, supra* at 603 (deprivation of substantive due process by denial of counsel); *see also In re Gault*, 387 U.S. 1, 33 - 34, 41 - 42 (1967) (rights to notice, counsel, confrontation, privilege against self-incrimination in juvenile proceedings; rights may be expressly waived).

54. *In re Gault, supra* at 55 ("special problems" may arise with waiver of self-incrimination with children; there may be "some difference in technique – but not in principle – depending upon the age of the child and the presence and competence of parents.").

55. *Fare v. Michael C.*, 442 U.S. 707 (1979).

56. *Id.* at 725 (citation omitted).

57. *Stermer v. State*, 609 So. 2d 80 (Fla. 5th Dist. Ct. App. 1992).

58. *Dept. of Juvenile Justice v. S.W.* , 647 So. 2d 1055 (Fla. 5th Dist. Ct. App. 1994).

59. *A.L.B., supra* at 668.

60. *Id.* at 672.

61. *See* JUVENILE DRUG COURT ISSUES, *supra* at 15 (reporting that most juvenile drug court programs "focus their resources upon children with moderate to severe addictions").

62. Adult and juvenile drug court programs demonstrate the application of therapeutic jurisprudence to drug-related cases in the criminal justice system. "Therapeutic jurisprudence" is a theoretical approach that describes the study of law as a "therapeutic agent, recognizing that substantive rules, legal procedures, and lawyer's roles may have either therapeutic or antitherapeutic consequences, and questioning whether such rules, procedures, and roles can or should be reshaped so as to enhance their therapeutic potential while not subordinating due process" or other normative principles. MICHAEL L. PERLIN, WHAT IS THERAPEUTIC JURISPRUDENCE?, 10 N.Y.L. SCH. J. HUM. RTS. 623 (1993). Therapeutic jurisprudence was originally limited to mental health and disability law with a research agenda in four areas: "(1) studying and minimizing the manner in which legal doctrine fosters psychological dysfunction; (2) determining how and whether the substantive law acts to promote intended therapeutic objectives; (3) studying and maximizing the therapeutic aspects of legal procedure independent of doctrine; and (4) examining the relationships between therapeutic objectives and the roles of judicial and legal actors." RICHARD L. WIENER, SOCIAL ANALYTIC JURISPRUDENCE AND TORT LAW: SOCIAL COGNITION GOES TO COURT, 37 ST. LOUIS U. L.J. 503 (1993). Drug courts are a new setting for the application of the theory, with an initial focus on the therapeutic aspects of court procedure as well as the roles of court personnel. *See* JEFFREY S. TAUBER, CALIFORNIA CENTER FOR JUDICIAL EDUCATION AND RESEARCH, DRUG COURTS: A JUDICIAL MANUAL 14-17 (1994) (discussing the drug court judge's role of "confessor, task master, cheerleader, and mentor, in turn exhorting, threatening, encouraging and congratulating the participant....").

63. Juvenile drug courts and alternative sanctions coordinators are exploring new ground and, as their experience unfolds, will be providing new information, including innovative approaches to sanctions and new alternatives to secure detention. In response to a legislative request, a report on the sanctions which have been developed in each of the circuits by the alternative sanctions coordinators is being submitted to the legislature in January of 1997 by the Office of the State Courts Administrator. THE OFFICE OF THE

STATE COURTS ADMINISTRATOR, SUPREME COURT OF FLORIDA, A REPORT TO THE LEGISLATURE ON JUVENILE ALTERNATIVE SANCTIONS COORDINATORS (Jan. 1997).

64. A helpful summary of the provisions of chapter 39 relating to power of the court regarding parents and guardians of delinquent children is as follows:

> The juvenile court obtains jurisdiction over parents and guardians of an allegedly delinquent youth when a child is taken into custody. *F.S.* 39.022(3)(b). Before the filing of a petition, the intake officer may request parents to participate in parenting skills training, conflict resolution, or other counseling and may consider the willingness of parents to do so when making the recommendation to file the petition. *F.S.* 39.047(5).
>
> Once a child is adjudicated delinquent, the court has jurisdiction over the parents or guardians for the purpose of ordering payment of restitution. *F.S.* 39.022(4)(c). ... Parents and guardians of children adjudicated delinquent may also be ordered to attend parenting classes, seek counseling, or receive other services the court deems appropriate. *F.S.* 39.0476. At disposition, the court may order parents or guardians to participate with the child in fulfilling a court-imposed sanction. *F.S.* 39.054(1)(g), (5). In addition to imposing sanctions on the child, the court may order parents or guardians to perform community service, if the court finds that the parents or guardians did not make a good faith effort to prevent the child from engaging in delinquent acts. *F.S.* 39.054(1)(I).
>
> If a child is placed in the custody of the department or another agency, parents may be assessed fees to pay for the cost of care. *F.S.* 39.054(2).

Claudia Wright, *Disposition in Delinquency Cases, in* FLORIDA JUVENILE LAW AND PRACTICE, 8-10 (The Florida Bar Continuing Legal Education, 4th ed. 1995).

In the area of confidentiality, chapter 397 provides that a minor acting alone has the legal capacity to voluntarily apply for and obtain substance abuse treatment. FLA. STAT. § 397.501(7)(e). Consequently, any written consent for disclosure, including client identifying information to the parent or guardian for the purpose of obtaining financial reimbursement, may be given only by the minor child voluntarily entering treatment. When the consent of the parent is required, the consent must be given by both the child and the parent or guardian. *Id.* Section 397.501(7) outlines seven exceptions to the consent requirement for disclosure of treatment records: to medical personnel in a medical emergency, to service provider personnel to carry out their duties, to agents of the Department of Juvenile Justice for research purposes, to personnel performing audits

or program evaluations, upon a court order issued on good cause, to law enforcement officers arising out of a crime on the premises, and to law enforcement officers relating to reports of suspected child abuse and neglect.

The conflict between the need for disclosure of treatment information and the imperative of safeguarding the privacy rights of the individual is the subject of judicial and academic inquiry. *See* Seth F. Kreimer, *Sunlight, Secrets, and Scarlet Letters: The Tension Between Privacy and Disclosure in Constitutional Law*, 140 U. PA. L. REV. 1 (1991). The issues become even more complex when the phenomenon of computerization of medical records is considered. Paul M. Schwartz, *The Protection of Privacy in Health Care Reform,* 48 VAND. L. REV. 295 (1995).

65. Telephone interview with Judge John T. Parnham, Pensacola, Fla. (Nov. 21, 1996).

66. Viewing law as "a bridge in normative space," connecting the world we have to a world we can imagine, legal scholar Robert Cover proposed that implicit in law is a teleology which entails "a generative capacity through which law not only generates new law but is also linked to – if it is not determinative of – the generation of new concepts of the worlds we strive to realize." Robert M. Cover, *Bringing the Messiah through the Law: A Case Study, in* RELIGION, MORALITY, AND THE LAW: NOMOS XXX 201, 202 (J. Roland Pennock & John W. Chapman, eds., 1988); *see also* Suzanne L. Stone, *In Pursuit of the Countertext: The Turn to the Jewish Legal Model in Contemporary American Legal History,* 106 HARV. L. REV. 813, 826 (1993) (interpreting Cover's view of the transformative and redemptive capacity of the law as both "deeply troubling and deeply hopeful.").

KFF 596 K66
SANCTIONS IN JUVENILE DRUG COURT: A CONTINUUM OF KNOTS AND LESSONS ---Koons

DATE	ISSUED TO

DEMCO 32-207

DATE	ISSUED TO

DEMCO