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From the Courts

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The How and Why of Juvenile Policies and Procedures

Written by: Tammy Glotfelty, Juvenile Division Director

As we begin a new year, I want to review a few policies of the State Attorney's Office Juvenile Division policies that frequently draw questions or are misunderstood by law enforcement officers. In researching the origin of each policy, my goal was to provide a reason and explanation for the policy with hopes this information will assist officers in dealing with the intricacies and differences that exist in juvenile cases.

AGE OF PROSECUTION AND COMPETENCY

Juvenile Division Director
Tammy Glotfelty

Age is obviously an important issue in juvenile cases, and we often receive calls asking whether a child under investigation is too young for prosecution. We are noticing an unfortunate trend as delinquent offenses committed by very young children are on the rise. Our attorneys have taken calls from law enforcement officers on children as young as five years of age, asking for clarification on the SAO policy regarding appropriate age of prosecution. Age of prosecution policy was established by our office in 2009, and was set forth in a Legal Advisor article written by then director, Deb Oates. A synopsis of her article follows:

The Circuit Court has original jurisdiction of all charges committed by children under the age of eighteen; however, there is no statutory minimum age for Juvenile Court. Prior to the formation of the Juvenile Court System in Florida, an infancy defense presumed that children ages 7-14 were incapable of forming criminal intent and precluded them from prosecution. It was up to the state to rebut that presumption. Children under the age of seven were conclusively presumed incapable of capacity to be culpable. In *State v. D.H.*, 340 So.2d 1163 (Fla. 1976), the Florida Supreme Court ruled that the defense of infancy was no longer valid in the State of Florida, as children were being considered for delinquency adjudication and juvenile sanctions instead of criminal prosecution and conviction. The Court found that the legislature did not intend for the common law presumption to operate in delinquency proceedings. Florida Statute 985.19, governs competency proceedings in juvenile court and states, as follows:

If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.

A competency determination is made by at least two but no more than three experts based upon evaluation of a child's mental condition. The need for nonresidential treatment or training or for involuntary commitment for residential competency training is included in the evaluation. The incompetence can be due to mental illness, intellectual disability, autism, and/or **age and immaturity**. Typically, children ten years of age and under are found incompetent after evaluation due to age and immaturity. Any child found incompetent who is facing a felony charge must receive either residential or outpatient competency training with the Department of Children and Family Services. A child facing a misdemeanor charge may only receive out-patient training. There have been a number of cases that involved a judge committing a juvenile charged with misdemeanor for residential treatment; however, appellate courts have consistently reversed those court orders.

The age of a defendant is relevant as there will be no competency training at all if incompetency is

found based upon age and immaturity. The court is required to have a review hearing every six months, and, if competency is not restored within two years, to dismiss the charge. As a result, charges brought against very young children cost thousands of dollars in evaluation costs, usually with no restoration, no services, and no conviction. For example, a child charged with a delinquent act when he is ten years old might become competent at the age of twelve simply by the act of aging, while an eight year old charged with a delinquent act would most likely not become competent even at the age of ten.

As a general rule in the juvenile system, defendants under the age of 10 are routinely evaluated for competency, and most are found incompetent due to age and immaturity. It is also important to note that many juvenile justice programs do not accept children less than 10 years of age. The State Attorney's Office in this circuit takes a very conservative approach and generally does not file petitions on children under nine years of age. However, we will continue our policy carefully considering all affidavits that come before us, especially in cases where "red flags" are present, such as fire-setting, animal cruelty, or violent acts with severe bodily injury to the victim. If you have a child that needs special consideration, please call 534-4904 and speak with Tammy Glotfelty, Division Director.

TAPED STATEMENTS IN JUVENILE COURT

There has long been confusion and misunderstanding of our policy on sworn, taped statements by law enforcement officers in juvenile cases. Those officers who have worked a juvenile case know that arrest cases involving home or secure detention move very quickly through the delinquency system. As a result, we ask that reports be submitted to our office within seventy-two hours of arrest.

While the Felony Intake Division **requires** that sworn, taped statements be included in the felony packet in adult cases, the juvenile division does not have such a requirement. It is important to note, however, that there is no policy in the SAO Juvenile Division that prohibits or discourages taking sworn, taped statements of juvenile defendants, witnesses, or victims in juvenile cases. To the contrary, in a 1999 Legal Advisor article, Mike Cusick, Felony Intake Director, noted that "there is some confusion among officers as to when juvenile interviews can be taped." He laid out a general rule that "taped statements should be taken of juveniles," including victims, witnesses, and defendants. Major exceptions to this rule involve cases where the juvenile is the victim of sexual or physical abuse and is referred to CPT for interview, and cases that will be referred to a specialized division within the State Attorney's Office, such as Homicide, Special Projects, or Child Crimes. Under these circumstances, guidance should be obtained from an attorney in the respective division.

Juvenile Division attorneys are often pressed for time in preparing arrest and detention cases for trial. Sworn, taped statements are helpful to allow our attorneys to know objectively what was said by each victim, witness, and defendant in a case. We sometimes find that an officer's summary of an oral statement is, by human nature, subject to interpretation, and it is all too easy for the victim, witness, or defendant to claim at trial that the officer's notes are incorrect. The ability to prove verbatim what was said in the course of an interview through sworn, taped statements can mean the difference between a guilty and a not guilty verdict.

As a general rule, if you have a serious felony offense resulting in the arrest and secure or home detention of a juvenile, it is helpful to our attorneys and

encouraged by the State Attorney's Office to take sworn, taped statements of the victim, defendant, and witnesses. If you want the case to be considered for direct file to adult court, you should notify the Juvenile Division and, if approved, proceed with felony packet preparation.

ISSUING A NOTICE TO APPEAR IN JUVENILE COURT

In response to the increasing number of juveniles who failed to appear for non-detention or street arraignment hearings, the Juvenile Division, in 2012, implemented a policy for issuing a Notice to Appear (NTA). If a child failed to appear for court, the state was required to prove appropriate service of the summons upon the parent and child before the court could issue a pick-up order. Section 8.045 of the Florida Rules of Juvenile Procedure outlines the requirements of a juvenile notice to appear, as follows:

- Child's name and signature
- Name and signature of the parent or person to whom the child was released
- Address and phone number of child and person to whom released
- List of the offense charges with the number of counts
- Date of offense
- Time and place for appearance in juvenile court
- Officer's name

A typical NTA affidavit includes all of the above information. The child and parent or guardian should sign the NTA and must receive a copy, while the original and two copies are sent to the Juvenile Clerk's of Court. When the NTA is issued according to the statutory requirements, the court is **required** to issue a pick-up order if the child fails to appear.

While we have seen an increase in the number of NTA affidavits, many are issued with instructions to appear at the wrong location, date, or time. In order to assist officers in determining the appropriate location, date, and time to include in the NTA, we have a quarterly calendar that is posted at **www.SAO10.com**. Simply click on the "Juvenile Court Status" tab, refer to the date the NTA is issued, and assign the corresponding court date. Please note that **all Polk County juvenile court hearings are at the Bartow Courthouse**. Juveniles should not be sent to the Lakeland, Winter Haven, or any satellite courthouse. Please refer to the calendar each time you issue a NTA to avoid court holiday dates. The current NTA calendar is included at the conclusion of this article.

As always, if you have any questions or concerns about a juvenile case you are handling, please call our office at (863) 534-4904.

Arraignment Dates-Juvenile Delinquency

ALL DELINQUENCY ARRAIGNMENTS ARE AT THE BARTOW COURTHOUSE JUVENILE DIVISION—WEST ENTRANCE

NOTE** No Court on Monday, 1/20/14 (legal holiday) ****NOTE**

Date of Affidavit	January		February		March	
1	02/03/14	8:00 am	02/24/14	8:00 am	03/24/14	8:00 am
2	02/03/14	8:00 am	02/24/14	8:00 am	03/24/14	8:00 am
3	02/03/14	8:00 am	02/24/14	8:00 am	03/24/14	8:00 am
4	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
5	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
6	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
7	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
8	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
9	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
10	02/03/14	8:00 am	03/03/14	8:00 am	03/31/14	8:00 am
11	02/03/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
12	02/03/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
13	02/03/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
14	02/10/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
15	02/10/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
16	02/10/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
17	02/10/14	8:00 am	03/10/14	8:00 am	04/07/14	8:00 am
18	02/10/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
19	02/10/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
20	02/10/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
21	02/17/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
22	02/17/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
23	02/17/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
24	02/17/14	8:00 am	03/17/14	8:00 am	04/14/14	8:00 am
25	02/17/14	8:00 am	03/24/14	8:00 am	04/21/14	8:00 am
26	02/17/14	8:00 am	03/24/14	8:00 am	04/21/14	8:00 am
27	02/17/14	8:00 am	03/24/14	8:00 am	04/21/14	8:00 am
28	02/17/14	8:00 am	03/24/14	8:00 am	04/21/14	8:00 am
29	02/17/14	8:00 am			04/21/14	8:00 am
30	02/24/14	8:00 am			04/21/14	8:00 am
31	02/24/14	8:00 am			04/21/14	8:00 am

FROM THE COURTS...

SENDING THREAT IN VIOLATION OF F.S. 836.10 VIA FACEBOOK POSTING

The defendant posted a threat to kill or commit serious bodily injury against his cousin and her partner on his Facebook page. Another cousin of the defendant, who was a Facebook Friend of the defendant, viewed the post and passed the threat on to an uncle, who then passed the threat on to the victims. The defendant was charged with a violation of Section 836.10, Fla. Stat (making written threats to kill or do great bodily harm). The defendant moved to have the case dismissed, arguing that he never sent or procured another to send the threatening message to either victim. The court denied the defendant's motion to dismiss and he subsequently entered into a plea agreement, while reserving his right to appeal. On appeal, the First District affirmed the denial of the motion to dismiss, holding that the Facebook post constituted a "sending" under the statute. The court found that by "posting his threats… on his Facebook page, it is reasonable to presume that [the defendant] wished to communicate them to other Facebook users." *O'Leary v. State,* 38 FLW D633c (Fla. 1st DCA March 18, 2013).

SEARCH AND SEIZURE – VEHICLE STOP – CONSENSUAL ENCOUNTER

A deputy came upon a parked vehicle in the parking lot of a local bar at 3:30 a.m. The vehicle's motor was running and the lights were on. The driver of the vehicle was unresponsive to the deputy's attempts to wake him. After additional attempts to check on the driver, the deputy opened the vehicle door and immediately smelled the odor of marijuana. The vehicle was searched, the driver woke up and eventually made incriminating post *Miranda* statements. The defendant moved to have the evidence found during the search suppressed because the deputy opened the car door without the defendant's consent. The trial court denied the motion to suppress and the defendant entered a plea. On appeal, the Second District affirmed the denial, holding that the encounter was consensual because it was a welfare check. The opening of the vehicle door did not qualify as an investigatory stop, instead it was a continuation of the welfare check. *Dermio v. State,* 38 FLW D776a (Fla. 2nd DCA April 5, 2013).

STATEMENT OF DEFENDANT – INVOCATION OF RIGHT TO REMAIN SILENT

The defendant was arrested for her involvement in a shooting and was taken to the police station. At the station, the defendant was read her *Miranda* rights prior to being interviewed. During the interview, the defendant made statements informing officers she wanted to go home. The trial court granted the defendant's motion to suppress, finding that she implicitly reasserted her right to remain silent each time she told the officers she wanted to go home. The trial court supported its ruling by finding that the officers did not clarify the defendant's intent after she made the statements. On appeal, the Second District reversed the trial court, holding that the defendant's statement that she wanted to go home was merely an expression of stream of consciousness. Additionally, the court considered the context of the defendant's statements and determined that her words were not a clear, unequivocal, and unambiguous assertion of the right to remain silent. *State v. Sepanik,* 38 FLW D788a (Fla. 2nd DCA April 10, 2013).

http://www.sao10.com

Bartow Phone Numbers:

Switchboard	534-4800
Misdemeanor Intake	534-4927
Misdemeanor	534-4926
Domestic Violence	534-4861
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse	534-4857
Homicide	534-4959
On Call Phone	860-8243
Worthless Checks	534-4874
Juvenile	534-4905
Main Fax	534-4945
Witness Management Fax	534-4021
	534-4034

Officers can submit their vacation to Witness Management at the following email address:

witmanagement@sao10.com

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