

Legal Advisor

Volume 18, Issue 6

June 2004



Jerry Hill

State Attorney

Important Bartow Phone #s:

Switchboard	534-4800
Misdemeanor Intake	534-4928
Misdemeanor	534-4926
Victim Assistance	534-4989
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse/Neglect	534-4857
Homicide Division	534-4959
On Call Pager	819-1526
Worthless Checks	534-4874
Juvenile Division	534-4905
Fax	534-4945

Witness Management:

Misdemeanor/Traffic	534-4021
Felony	534-4020

USING THE DETENTION RISK ASSESSMENT INSTRUMENT TO DETERMINE DETENTION STATUS IN JUVENILE CASES

by Tammy Glotfelty, Juvenile Division

When a child is taken into custody by law enforcement for a violation of the law, a warrant or capias, or a violation of a condition of the defendant's probation or aftercare supervision, that child may either be released to a parent, guardian, legal custodian or responsible adult, or may be delivered to the Department of Juvenile Justice (DJJ) to make a determination as to whether detention care is required. In the Tenth Judicial Circuit, the DJJ intake counselors are housed in the Juvenile Assessment Center (JAC). This article will address the types of juvenile detention status and the factors that determine where a child, who has been arrested, will be placed. This information will assist law enforcement in making an informed decision whether to place a child under arrest or to release the child.

DETENTION CARE

Florida Statute 985.03(18), defines detention care as the temporary care of a child in secure, non-secure, or home detention pending a court adjudication or disposition or execution of a court order. The most restrictive form of detention is secure detention, which is the temporary custody of the child who is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement. Non-secure detention occurs when a child is in a residential home in the community in a physically nonrestrictive environment under the supervision of DJJ pending adjudication, disposition, or placement. Finally, home detention allows a child to be released to the custody of his parent, guardian or custodian in a physically nonrestrictive environment under the supervision of DJJ. Home or non-secure detention can be with or without an electronic monitor/ankle bracelet, a decision left in the court's discretion.

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JULY 2004

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July 1

Kevin Kohl, Felony 1
Kathy Cotterill,
Misdemeanor Intake
Jessica McKnight, OPS

July 4

Caroline Johnson,
Felony Intake

July 7

Katie Peachee, Records

July 8

Monica Massey,
Misdemeanor

July 10

Gary Rice, Scoresheets

July 18

Amy Tolley, Felony 1

July 20

Mary Ann Henry, Front Desk

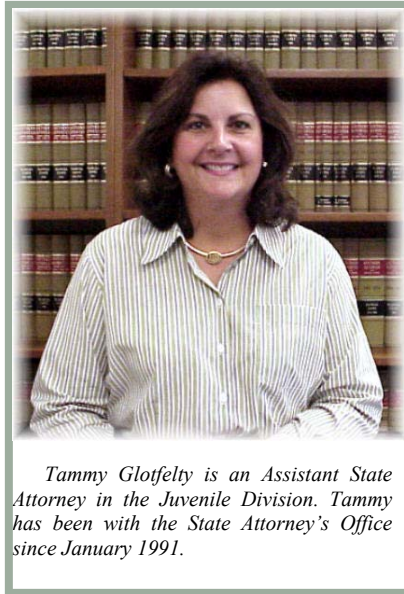
July 21

Christine Johnson,
Highlands County SAO

July 23

Staci Flanery,
Misdemeanor Intake

Happy Birthday!



Tammy Glofelty is an Assistant State Attorney in the Juvenile Division. Tammy has been with the State Attorney's Office since January 1991.

THE DETENTION RISK ASSESSMENT INSTRUMENT (DRAI)

The initial determination as to the detention status of a child is made by an intake counselor at the JAC after completing a "scoresheet" called the Detention Risk Assessment Instrument (DRAI). The DRAI provides threshold criteria and assists the intake counselor in compiling a score based on a child's present alleged offense and referral factors, including his history of failures to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle and community control status of the child at the time the child is taken into custody. In addition, a juvenile can now be screened on an underlying charge for which he is on supervision status with DJJ. The juvenile must be on probation, home detention, non-secure detention, conditional release, post commitment probation or commitment status for the underlying charge.

DETENTION ADMISSION

A juvenile must meet at least one of the following detention criteria before being scored:

- 1) The juvenile is alleged to be an escapee or an absconder from a commitment program, a community control program, furlough, or aftercare supervision, or is alleged to have escaped while being lawfully transported to or from such

program or supervision;

- 2) The juvenile is wanted in another jurisdiction for an offense, which, if committed by an adult, would be a felony;
- 3) The juvenile is charged with a delinquent act of violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety;
- 4) A juvenile who is charged with committing an offense of domestic violence and does not meet detention criteria may be held in secure detention for up to 48 hours if a respite home or similarly authorized residential facility is not available.
- 5) The juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree, which does not involve a violation of Chapter 893 Florida Statutes (relating to controlled substances), or a felony of the third degree, which is also a crime of violence, including any such offense involving the use or possession of a firearm; or
- 6) The juvenile is charged with any second-degree or third-degree felony involving a violation of Chapter 893, Florida Statutes or any third-degree felony, which is not a crime of violence, and the juvenile:
 - a) Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 - b) Has a record of law violations prior to court hearings;
 - c) Has already been detained or has been released and is awaiting final disposition of the case;
 - d) Has a record of violent conduct resulting in physical injury to others; or
 - e) Is found to have been in possession of a firearm.
- 7) If a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in 790.001, F.S., including a

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violation of subsection 790.22(3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor MUST BE DETAINED in secure detention unless the State Attorney authorizes the release of the minor.

- 8) A youth delivered with a judicial order requiring detention care must be detained.
- 9) A youth may be placed into detention status for contempt of court. However, this requires a written court order. Also, pursuant with s 316.635, F.S., a juvenile traffic offender found to be in contempt of court for failure to appear or not performing court ordered sanctions for traffic violations, must be securely detained, unless a staff-secure shelter is available, if ordered by the court.
- 10) A youth is alleged to have violated the conditions of the youth's probation or conditional release supervision. The youth shall be placed on home detention with electronic monitoring and must be given a hearing within 24 hours of being taken into custody.
- 11) The youth is detained for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument and is scheduled for a hearing within 72 hours of being detained.

The case manager must straight release a juvenile who does not meet one of the above detention criteria as the child scores zero points on the "scoresheet."

RISK ASSESSMENT

If the juvenile meets at least one of the criteria listed in the Detention Assessment, the case manager continues the Risk Assessment portion of the DRAI, to determine a score for the juvenile. This section gives points for the most serious current offense. Under the "Tough Love" provisions, a juvenile can now be scored on a serious prior offense for which he is under DJJ supervision. Because a substantial portion of the juvenile's points (7-15) typically come from the most serious cur-

rent offense, it is important for the arresting officer to correctly charge the juvenile with the most serious offense for which there is probable cause. While the Assistant State Attorney may ask the court at a subsequent detention hearing to find probable cause on a more serious offense than that charged in the affidavit and to re-score the DRAI, some judges are reluctant to grant such a request. As a result, a juvenile, who would have been held in secure detention if properly charged in the affidavit, will be released. Other considerations include the juvenile's other current offenses and pending charges from separate and non-related events (2 points for each felony, one point for each misdemeanor, and 6 points for a prior felony arrest within the last 7 days), the juvenile's prior criminal history (1-4 points), and the legal status of the juvenile, e.g., commitment, detention or active probation (2-8 points).

Points are then added or subtracted depending on the aggravating or mitigating circumstances surrounding the juvenile. This grants discretion to the case manager to take into account relevant issues that are not scored in other parts of the Risk Assessment section and to assure that appropriate detention and release decisions are made. Law enforcement plays an important role in this portion of the DRAI, because, at this point in the case, the officer has usually had the most contact with the defendant, defendant's family, victim and witnesses. The juvenile's score on the Risk Assessment can be mitigated 1-3 points or aggravated 1-3 points based on the following factors:

MITIGATING

- 1) The juvenile suffers from an intellectual impairment which affects decision making.
- 2) The juvenile was coerced into taking part in the offense.
- 3) The offense was committed in a spontaneous, impulsive manner.
- 4) The victim suffered little or no physical injury.
- 5) The victim suffered little or no property loss.
- 6) The charge is more serious than the

**LEO
NEWS...**

Fort Meade Police Department

Officer Marcos Diaz of the Fort Meade Police Department will be retiring from law enforcement on June 28, 2004, after having served almost 15 years.

During his law enforcement career, Officer Diaz served as a patrol officer, and most recently a detective assisting other agencies in Polk County as well as Hardee, and Highlands County. Officer Diaz, thank you for your years of service to the citizens of Fort Meade and the Tenth Judicial Circuit.

Bartow Police Department:

Officer Chad Keen of the Bartow Police Department received one of six awards presented by the Florida West Coast Chapter of the American Society for Industrial Security in recognition of his handling of a domestic violence call.

Polk County Sheriff's Office:

Deputy William Joppian of the Polk County Sheriff's Office will be retiring in November 2004. He leaves after having served more than 25 years in law enforcement. We wish you well on your retirement and we thank you for your years of service to the citizens of the Tenth Judicial Circuit.

Congratulations to **PCSO Agriculture K-9 Deputy Shawn Stephenson** for being named the Florida Sheriff's Youth Villa "2004 Volunteer of (...continued on Page 4)

LEO NEWS...

Polk County Sheriff's Office:

(...continued from page 3)

the Year” in recognition of his extensive volunteer work with local members of the Girls Youth Villa located on US 60 in Bartow.

Along with this recognition, a magazine published by the Florida Sheriff's Youth Ranches called “The Rancher” also featured an article in the Spring Issue about Deputy Stephenson and the girls' work at the Villa.

2003 PCSO Awards Ceremony May 10th

Three “Members of the Year” were named during the 2003 PCSO Awards Ceremony held May 10th. *Civilian of the Year* went to **Eric Marlow**, chief mechanic, Fleet Maintenance Section. Other nominees in this category were Tom Cook and Paula Maney. *Detention Deputy of the Year* went to **Detention Deputy Alex Tamayo** and *Deputy of the Year* went to **K-9 Deputy Greg Goreck**. Other nominees in this category were D/S Jill Seymour and Robert Arndt.

Sheriff's Commendations: Thomas Brewin, Johnnie Wombles, Shawn Stephenson, Robert Clayton, Mallory Gene Smith, David Kuehl and Sheree Young.

Medal of Merit: Rickey Bucy

Meritorious Service Medal: Brett Hulverson, Eric Powers, Ronald Case, Jennifer Williams, Bobby Neil, Richard T. Wheeler, Donna Parker, William K. Lee, Melissa Calandros and Amy Thompson.

...CONTINUED FROM PAGE 3...

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facts indicate.

- 7) The juvenile was accompanied by an unrelated adult who obviously influenced the juvenile's involvement.
- 8) There has been a significant change in the juvenile's living circumstances subsequent to the offense, providing increased stability/supervision. The juvenile was a passive participant-may not have been directly involved when event occurred, but was present at arrest (i.e., juvenile picked-up after car was stolen, only a passenger).

AGGRAVATING

- 1) The juvenile's attitude shows a clear and present danger to the alleged victim or potential witnesses.
- 2) The offense appears to have been conducted in a well-planned, premeditated manner.
- 3) The victim suffered substantial physical and/or emotional injury.
- 4) Extreme cruelty was involved in the offense.
- 5) The juvenile has a history of absconding.
- 6) The juvenile threatened retaliation or acts directed toward the victim or witness with bodily harm.
- 7) The juvenile appears to have coerced others into involvement in the offense.
- 8) The juvenile has an extremely unusual amount of prior offenses.
- 9) The juvenile verbalizes that he will not appear for court hearing.
- 10) The offense was committed by a juvenile engaged in organized gang activity.
- 11) A weapon was used and is not included in the instant offense.
- 12) There are numerous other offenses attached to the instant offense.

Finally, a **mandatory** aggravating circumstance which adds 3 points to the juvenile's score is the illegal possession of a firearm.

The intake counselor should ask

law enforcement about information regarding mitigating or aggravating factors when a child is delivered to the JAC. In addition, the law enforcement officer is allowed to make a recommendation as to whether the juvenile should be released, or placed in non-secure or secure detention. This recommendation, as well as comments from the law enforcement officer, is included in a narrative section of the DRAI and is submitted to the judge at a juvenile's detention hearing. The judge relies upon this information in making the final determination as to the juvenile's detention status.

Once the DRAI is completed, if a juvenile scores 0-6 points, he is “straight released.” If the score is 7-11 points, the juvenile is placed on non-secure or home detention, and, if the juvenile receives a score of 12 or more points, he is placed in secure detention.

ON THE FAST TRACK

The greatest impact of placing a child in secure, non-secure, or home detention is the requirement that the State begin adjudicatory hearing or trial within 21 days from the date of the detention order. An exception has recently been granted that allows upon good cause shown an additional nine days extension for detention. Offenses that qualify for the additional nine days include a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. Because of the extreme time constraints placed upon juvenile cases, we request that a report be submitted to the SAO within 72 hours of making an arrest. Often, a child taken into custody at the beginning of the week has arraignment scheduled on Friday of that same week. It is most helpful to our office if the affidavit contain as much information about the offense, the victim, and the witnesses as possible, as many times we find it necessary to file charges prior to receiving a full report.

If you have any questions, or would like a copy of the DRAI, please feel free to call me at 534-4904, and, as always, our division is always happy to answer any questions or concerns you may have about juvenile issues as they arise.

...FROM THE COURTS...

CELL PHONE RECORDS MAY BE OBTAINED BY SUBPOENA.

The defendant was charged with trafficking in cocaine, conspiracy to traffic in cocaine, and possession of cocaine and filed a motion to suppress evidence. The facts on which the motion was based were that police obtained the defendant's cell phone records by an investigative subpoena. Using that information, they obtained a wiretap which provided evidence for the defendant's arrest. When he was arrested, police searched his vehicle inci-

dent to that arrest and found the evidence the defendant sought to have suppressed. The court denied the motion, and the defendant pled no contest. On appeal, the Fifth District affirmed, holding that the police did not violate the Fourth Amendment by obtaining the cell phone records through an investigative subpoena instead of a search warrant. *Figueroa v. State*, 29 FLW D876 (Fla. 5th DCA Apr. 8, 2004).

MANNER OF USE CAUSED POCKET KNIFE TO BE DEADLY WEAPON.

The defendant, a juvenile, was charged with aggravated assault. At his trial, the evidence established that he waved an open pocket knife at the victim in a school hallway and threatened to poke him in the chest. He was convicted as charged. On appeal, the First District affirmed, holding

that the defendant's display of the pocket knife and threat to poke the victim in the chest with it, provided sufficient evidence from which the trial court could find that the pocket knife was a deadly weapon. *J.M. v. State*, 29 FLW D1126 (Fla. 1st DCA May 10, 2004).

OCCUPANT CANNOT CONSENT TO SEARCH AFTER CO-OCCUPANT REFUSES CONSENT.

The defendant was charged with robbery with a firearm and filed a motion to suppress evidence. The facts on which the motion was based were that as part of the investigation of a robbery, the police arrested the defendant and drove him to his residence which was his grandmother's home where he had lived for several years. They asked him for consent to search his bedroom, but he refused. They then went to his grandmother and asked her for consent. They did not tell

her that the defendant had denied their request. She consented, and the search produced the evidence the defendant sought to have suppressed. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Fourth District reversed, holding that a joint occupant may not give a valid consent to search if the other joint occupant has already denied consent. *Shingles v. State*, 29 FLW D1149 (Fla. 4th DCA May 12, 2004).

ITEM TAKEN MUST BE IN VICTIM'S GRASP FOR DEFENDANT TO BE GUILTY OF ROBBERY BY SUDDEN SNATCHING.

The defendant was charged with Robbery by Sudden Snatching. At his trial, the evidence established that the victim was sitting in her car with her purse on the car seat beside her when the defendant whom she knew approached and asked to talk to her. He sat in the car, and they talked for about ten minutes. When he left the car he grabbed the

purse. The victim grabbed his pants, but he managed to get away. He was convicted as charged. On appeal, the Second District reversed and reduced the conviction to petit theft, holding that robbery by sudden snatching requires that the property taken be on the person of the victim. *State v. Floyd*, 29 FLW D1180 (Fla. 2d DCA May 14, 2004).

LEO NEWS...

Polk County Sheriff's Office:

Marshall Anderson Award: Michael Bass and Cassandra Kemp

Purple Heart: David Bell and Charles Hicks

Medal of Valor: Paul Kurtzweil, Lanny Walker, Robert Arndt, A. Lee Hardee, M. Nathan Manning, Brian S. Russell, Andrew McKee, Albert Marvin, Brad Gallagher and Shawnee McCawley.

Medal of Honor: Craig Powers

Lakeland President's Roundtable: Deputy Sheriff of the Year: Pilot Nat Manning, Honorable Mention to D/S Jerry Connolly & D/S Greg Goreck.

American Legion Post 8: Correctional Officer of the Year: Alex Tamayo; Deputy Sheriff of the Year: Brett Hulverson and Eric Powers; and Reserve Deputy of the Year: Reserve Lt. Beau Bowen.

Lakeland Optimist Club: Respect for Law Award to Deputy Justin Kranitz.

Sons of the American Revolution: Officer of the Year Commendation Medal to Detention Lt. Phillip Petote; Heroism Medal to deputy Robert Arndt.

Knights of Columbus: Public Safety Award to Deputy Robert Arndt.

Polk County Police Chiefs: Law Enforcement Officer of the Year to deputy Robert Arndt.



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Fax: (863) 773-0115

Highlands County

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Polk County

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Fax: (863) 534-4945

Child Support Enforcement

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Bartow, FL 33830
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Fax: (863) 519-4759

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Fax: (863) 499-2650

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TOP COPS

On a recent case, Polk County Sheriff's Office Detective Royce Adkins went out of his way to help me prepare for a very important motion. The basis of the motion to suppress was an unlawful entry into the defendant's home. When the case detectives entered the home, the defendant had an outstanding arrest warrant, however, the actual arrest warrant could not be located in the file. Detective Adkins made some phone calls and had a copy of the arrest warrant faxed to him. Without Detective Adkins' assistance getting this vital piece of information, I would not have been able to effectively argue the motion.

I would like to thank Detective Bass of the Auburndale Police Department for his help in trying to locate a victim. In this case, the defendant was charged with attempted murder. The victim had outstanding felony warrants and was avoiding my phone calls and service for subpoena. Although not the case agent, Detective Bass offered to assist me in locating the victim. Although attempts to locate the victim were unsuccessful, Detective Bass took time away from his case load to assist me. Thank you for your time and assistance.

ASA Harold Bennett, Felony Division 5

I would like to commend Detective Rod Dilling of the Lake Placid Police Department for going above and beyond the call of duty in securing evidence in the identity theft case against Paul Kearney. Mr. Kearney had been convicted of Grand Theft—Motor Vehicle in Highlands County last year under the name of Kenneth Powell. After the REAL Kenneth Powell in New Jersey discovered that he was listed as a convicted felon, Detective Dilling went to work. He kept in close contact with the State Attorney's Office and collected evidence of Mr. Kearney's on-going pattern of collecting false identities in Oklahoma, Texas, New Jersey, and now Florida. When Mr. Kearney appeared in court for a VOP in his Kenneth Powell case, he was arrested for felony False Name to Law enforcement and Identity Theft. That case is now pending, but it would have never seen the light of day without Detective Dilling's determination and tireless police work.

ASA David Ward, Highlands County SAO

We would like to recognize Sgt. Jimmy Harrison of the Hardee County Sheriff's Office. Sgt. Harrison notified our office immediately during an investigation of a vehicular homicide, and requested our assistance in interviewing the suspect, witnesses, and inspection of the crime scene. By notifying us of the investigation at its infancy, we were able to direct specific questions to the suspect, which supports our prosecution and limits possible defenses. Another advantage we gained was by speaking with witnesses at a fresh crime scene, which will enhance our ability to present this matter in court. We thank Sgt. Harrison and the Hardee County Sheriff's Office for making us part of their team during the investigation.

ASA John Kromholz and ASA Gary Ellis, Hardee County SAO