

The Delinquency Process

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Biographical Information on Rob Mason

Rob Mason graduated in 1989 from the University of Florida College of Law and served as Associate Research Editor for the Law Review. He has been an Assistant Public Defender in Jacksonville, Florida since 1990 and is the Juvenile Justice Policy Analyst. He currently chairs the Florida Public Defender Association Juvenile Justice Committee and is on the Executive Committee for the Florida Bar Public Interest Law Section. He is a member of the Florida Bar, Florida Association of Criminal Defense Lawyers, American Bar Association Juvenile Justice Committee, American Civil Liberties Union, Southern Poverty Law Center, and both the Florida and National Association of Counsel for Children. Rob Mason has also been an adjunct professor at Florida State College at Jacksonville and Jones College, teaching Evidence and Criminal Law.

Rob Mason is a member of the Advisory Board for the Southern Juvenile Defender Center and has recently been appointed to chair the Florida Bar Committee for the Legal Needs of Children. He helped draft the *Florida Guidelines of Practice for Lawyers Who Represent Children in Delinquency Proceedings*. He's a current member and also past Chair of the Florida Juvenile Court Rules Committee. As Chair, he helped implement a court rule mandating that juveniles have a right to confer with counsel before making a decision whether to waive counsel. He also helped pass a rule opposing indiscriminate shackling of juveniles for court appearances. He drafted the court filings and response to comments for the rule, presented the rule to the Florida Bar Board of Governors for approval, and successfully argued it in front of the Florida Supreme Court.

Rob Mason has authored the chapter "Disposition in Delinquency Cases" in the Florida Bar Publication *Florida Juvenile Law And Practice*. He has testified on juvenile issues before committees of the Florida Senate and Florida House and has lectured nationally on Juvenile Dispositional Advocacy, Child Hearsay, Strategies for Sex Offenses, Effective Juvenile Representation, Contempt, and Right to Counsel. He has participated as an American Bar Association Panelist on Child Victims and also served as faculty at the National Juvenile Defender Leadership Summit. He is an active member of both the Advisory Committee for the Juvenile Justice Center at Barry University and also the Juvenile Indigent Defense Action Network, an initiative dedicated to improve the juvenile indigent defense system nationwide. The MacArthur Foundation has honored him as a 2010 Models for Change "Champion for Change".

Rob Mason currently co-chairs the Steering Committee for the Juvenile Detention Alternatives Initiative. He is on the Advisory Committee for the 4th Judicial Circuit Juvenile Assessment Center and serves on the Board of Directors for the SAMHSA System of Care Initiative and the Duval County Juvenile Justice Council. Rob Mason has also been the lead trial attorney for a number of delinquency appellate reversals, including the case of *J.R. v. State*, a case of first impression in Florida allowing a parent to remain in the courtroom during trial when they are a defense witness even after the rule of sequestration has been invoked.

Juvenile Delinquency Process

Children under the age of 18 who have been arrested or charged with a crime are first referred to juvenile court. The private attorney or assistant public defender's primary responsibility is to safeguard a youth's rights and liberties and to ensure that any intervention in the child's life is meaningful, productive and appropriate. The juvenile justice system is based on the premise that although children may violate the same laws as adults, due to their lack of maturity children need a different and separate response. The normal teenage years are years of trial and error, impulsive decision-making, and a struggle with peer pressure. Home life and neighborhood situations seriously influence developing children. Most youths who are arrested do not re-offend as adults. Intelligent intervention, supervision, detention and treatment usually can correct delinquent behavior.

The private attorney or assistant public defender has a constitutional and ethical duty to provide zealous legal representation to every juvenile client while maintaining client confidences. The representation is essentially the same as the representation of an adult client. i.e., the attorney's role is to advance the child's "expressed interests" and not the child's "best interests."

Arrests and "Taken into Custody"

Adults are arrested for law violations. The term used in juvenile court to describe an arrest is "taken into custody." Children taken into custody in Clay, Nassau, and Duval County are transported by the arresting police agency to the Jacksonville Juvenile Assessment Center (JAC), a centralized processing center.

At the JAC, the child will be evaluated on mental health or substance abuse issues and questioned regarding the child's life, family and peers, and even the

child's involvement with the charges. The answers the child gives at the JAC will be shared and used by many state agencies including the police and the State Attorney's Office. The information gathered at this intake stage is not admissible to the court pre-adjudication without written approval.

A DJJ probation officer at the JAC conducts a detention risk assessment to determine whether the child can be legally detained before the first court hearing. The risk assessment is a point system in which points are assigned for each charge. The more serious the charge, the more points assigned. There are additional points for having a prior delinquency history with the juvenile justice system. Also significant is whether the juvenile was under any legal constraints at the time of the alleged offense.

DJJ calculates the "score" to determine whether the juvenile may be released or will be detained at the Juvenile Detention Center. Generally, if the child is taken into custody on a third degree felony charge of violence or any higher degree of felony, the child will be likely be detained and transported from the JAC to the Juvenile Detention Center, a temporary holding facility for juveniles comparable to jail in the adult system:

A detained juvenile is not entitled to bond, but will appear before a judge for a detention hearing within 24 hours.

Pre-trial Diversion Programs

When a child is taken into custody for the first or second time and the charge is relatively minor and non-violent, the State may offer to "divert" the child from formal court proceedings. These children would be "straight released" from the JAC and given a court date to appear. Diversion involves a contract in which the State agrees not to prosecute the child if the child agrees to meet certain

conditions. If the child fails to complete the diversion program requirements, the child can be brought back to court for further prosecution.

Detention Hearing

If the child is detained, the child will be taken before a judge within 24 hours for a detention hearing. The purpose of the detention hearing is for the judge to:

- Explain the nature of charges against the child;
- Determine whether the police had probable cause to take the child into custody;
- Determine whether the child's family can pay for an attorney, and if they cannot, appoint the Public Defender;
- Schedule a next court date; and,
- Determine whether the continued detention of the child is necessary.

If the judge determines that the child should remain detained, the judge generally has the three levels of detention security and supervision available: home detention, non-secure detention and secure detention. Pre-trial detention cannot exceed 21 days without a hearing or waiver. It should be noted that Duval, Clay, and Nassau no longer have non-secure detention available. However, the three counties have an option for the child to be released on Alternative To Secure Detention (ATSD). ATSD is only available for children that score for secure detention. These children will be released on intensive home detention that is very closely monitored. If the child violates ATSD the child returns to the Detention Center.

Juvenile Detention

A judge can order that a child be held in secure detention (a lock-up facility that is the juvenile justice system's equivalent of adult jail) if the child is assessed to be a risk to public safety. The child can be confined for up to 21 days (longer if the 21 days is waived) while awaiting judicial disposition of the charges. The judge also has the option to order ATSD, non-secure detention or home detention, which can also involve the use of electronic monitoring.

Home detention is similar to “house arrest” in the adult system. A youth can be placed in the home, the home of a responsible friend or relative, a dependency shelter or foster home setting. DJJ will make periodic face-to-face and telephone contact with the youth and the youth’s family and school personnel. The child cannot leave the home without special permission except to attend school or to work. In some cases the judge may require that the youth wear an electronic monitoring device.

Non-secure detention is an alternative with a home-like setting. Again, the judge may require the youth to wear an electronic monitoring device. The provider of the non-secure detention is responsible for ensuring that the youth receives adequate supervision and attends school, court and scheduled appointments. The provider also must supply proper food, shelter, medicine and recreational opportunities.

Secure detention is a jail-like facility operated by the DJJ. The judge may order secure detention for a youth depending on the charges, previous history, home and school assessments and public safety concerns.

Possible Transfer to Adult Court

The prosecutor may seek to have a child transferred to adult court. In that case, the prosecutor typically announces the State’s intent to “direct file” the child into adult court at the detention hearing. In Duval, Clay, and Nassau, the defense attorneys tend to “waive” the 21 day detention requirement in order to develop mitigation in an attempt to keep the case in juvenile court.

If a child is found guilty or pleads guilty in adult court and is sentenced as an adult, that child is forever considered an adult for future violations of state law. A

juvenile's case may be transferred to adult criminal court in three ways:

Indictment — The State can seek to have a grand jury indict juveniles of any age. Indictments are usually for offenses that are punishable by death or life imprisonment, and cases where the child is younger than 14 years old.

Waiver — A waiver motion is a request made by the prosecutor asking the juvenile court judge to transfer a child at least 14 years old to adult court. The judge conducts a hearing and reviews the child's history, the charge and potential for rehabilitation, then either grants or denies the prosecutor's request. The judge's decision is based on legal criteria, the facts of the case and the child's circumstances. These hearings are extremely rare because the legislature has greatly expanded the state's discretionary direct file ability.

A child of any age, with the consent of parent or guardian, can also request to be waived to adult court although this is extremely rare.

Direct File — There are two types of direct file: mandatory and discretionary. A direct file is a transfer to adult court by the prosecutor. The juvenile court judge has no authority to prevent the transfer and no hearing will take place. This means that these juveniles have been transferred without the benefit of a judicial hearing, so there has been no judgment by a neutral judicial officer that there are services in the adult system for them, or that they are inappropriate for services in a juvenile court.

Mandatory direct files stem from a state law requiring that for certain crimes a child 16 years and older be tried as an adult. Despite being "mandatory", the law allows children to remain in juvenile court if the state attorney has good cause to believe that exceptional circumstances exist that preclude the just prosecution of the child in adult court.

The discretionary direct-file law allows the prosecutor to file charges for certain crimes against a child 14 years or older in adult court. The decision to send a discretionary case to the adult court lies solely with the prosecutor. A judge cannot reverse a prosecutor's discretionary decision to direct file a case, even if the judge disagrees. The prosecutorial decision to direct file a discretionary case is non-reviewable and non-appealable. If the prosecutor chooses to direct file, the charging document will be filed in adult criminal court.

Filing of Formal Charges

If the case remains in juvenile court the prosecutor has the discretion whether to file formal charges. The charging document that formally accuses the child of a criminal violation is called a delinquency petition. The prosecutor may file the petition even if witnesses do not want to testify against the child or do not want the case to proceed.

In some parts of the state an arraignment in juvenile court is referred to as a "sounding." The sounding for a detained child must be held within 48 hours following the filing of a delinquency petition. A sounding is a hearing at which the judge informs the child of the formal charges in the delinquency petition and, if the child qualifies, appoints the Public Defender. At the sounding, the child typically enters a plea of not guilty and the case is set for an adjudicatory hearing (trial) or for a pre-trial conference. The adjudicatory hearing is the equivalent of a bench trial in adult court.

The defense attorney may file motions requesting the witness list, police reports, witnesses' statements, reports of experts and any other evidence in the case. The process by which the prosecution and the defense search for the facts of the case is called "discovery." The deposition of witnesses is a discovery tool for uncovering the facts. In a deposition, the prosecutor and defense counsel are

present to take the sworn statements of witnesses. Discovery depositions are very useful for both sides because it allows them to evaluate the strengths and weaknesses of the case prior to trial.

The defense attorney may speak with the prosecutor to get some idea of the prosecutor's evaluation of the case. Depending on the strength of the defense's case, the prosecutor may decide to dismiss all charges, offer a lesser sentence or drop some of the charges against the child in exchange for a plea of guilty or no contest to other charges.

In the vast majority of juvenile cases, there is no trial. Cases are disposed of by the prosecutor not filing charges, the case being dismissed or the client entering a guilty or no contest plea or completing a diversion program.

Guilty and No Contest Pleas

A client can change his plea of not guilty to either "guilty" or "no contest" at any time. A guilty or no contest plea can also be negotiated between the prosecutor, the defense attorney and the client. In exchange for the client's acceptance of the negotiated plea, the prosecutor may drop or reduce charges, or agree to a lesser sentence. If the prosecutor makes a plea offer, the defense attorney has an ethical duty to tell the client about the plea offer, even if the client has previously told the attorney that he wants to go to trial. The client has the right to accept or reject a plea offer.

Before accepting the guilty or no contest plea, the judge will question the client to make sure that the child understands his or her rights; that there was no improper pressure to accept the plea; that the client knows what he or she is doing; that the child voluntarily agrees to the plea, and that the evidence in the case supports a finding of guilt. The child is entitled to an attorney and is required by law to have one unless the child had a meaningful opportunity to consult with an attorney as to the decision to proceed without an attorney.

Additionally, a written waiver must be submitted to the court in the presence of a parent/legal guardian or attorney.

When a client enters a guilty or no contest plea, he relinquishes certain rights, such as the right to:

- Investigate the case further
- Proceed to trial
- Have an attorney represent him at trial
- Compel the attendance of witnesses at trial
- Confront witnesses who testify against him
- Testify at trial
- Remain silent at trial
- Appeal

If the judge accepts the plea, the judge will then schedule the case for adjudication and disposition, i.e., sentencing.

Adjudicatory Hearing (Trial)

The child has a constitutional right to a trial if the child does not want to enter a plea. However, juveniles do not have the right to a jury trial. The adjudicatory hearing, or trial, is the fact-finding part of the case. Witnesses come before a judge to answer questions from the attorneys regarding the charges. The judge decides the credibility of the witnesses and the strength of their statements. The judge then decides whether the child is guilty. Just as in adult court, no one can be found guilty unless the prosecutor proves the charges beyond a reasonable doubt. The child does not have to testify or prove anything.

As in all trials, there can be opening statements, presentation of evidence, cross-examination and closing arguments. If the judge finds the child not guilty, the case is over and the child does not need to come back to court. If the judge finds the child guilty of committing the delinquent act, the judge can set a new date for the disposition (sentencing).

By law, a juvenile may be held 21 days prior to his adjudicatory hearing and up to 15 days following an order of adjudication.

Disposition Hearing (Sentencing)

A disposition hearing in the juvenile system is the same as a sentencing hearing in adult court. However, the judge in juvenile court cannot sentence a child to serve time in jail. In the adult system the focus of sentencing is punishment only. In the juvenile system the judge focuses on the child's needs and strengths and combines treatment with discipline. The judge generally orders DJJ to prepare a predisposition report (PDR), which includes information about the family, school, education, psychological and delinquent history of the child and recommendations for the judge to consider at disposition.

The judge has limited sentencing options. The judge can place the child on probation with various conditions and restrictions, such as imposing a curfew, requiring the child to write letters of apology, repaying the victim for any damages, performing community service hours, or attending mental health or drug counseling, etc. The judge can also commit the child to DJJ to be placed in a commitment program. The judge is required to follow the DJJ recommendation in the PDR unless there are legal reasons to exceed the recommendation. In cases in which the juvenile is accused of serious crimes, the judge can order the child to be held after disposition while awaiting placement in a residential treatment program.

Commitment Programs

Juveniles can be placed in either a non-residential (daytime only) or a residential (overnight programs) commitment program. Florida law provides guidelines for the judge to follow when deciding to place a child in a residential commitment program. The guidelines are based on risk levels, ranging from minimum to

maximum. The risk levels correspond to the degree of supervision the child requires — the higher the risk level the more intense the supervision. Each level provides education and treatment services. The five restrictiveness levels of commitment programs are minimum-risk non-residential, low risk, moderate risk, high risk, and maximum-risk. The period of time the child remains at any facility depends greatly on both the risk level decided by the judge and upon the child's progress.

Programs in higher restrictiveness levels are characterized by stricter physical security, closer supervision, and a longer length of stay. A juvenile placed in a commitment program is under the legal custody of DJJ. Additionally, the child may be placed on conditional release or post-commitment probation after completing the residential portion of the commitment.

After being committed to a particular program level, DJJ can transfer the child to a different or more restrictive program if the child is unable or unwilling to successfully complete the program.

Appeals

A client has no right to appeal a plea of guilty or no contest, except when the judge allows him to reserve the right to appeal a particular point of law. A client who is convicted at trial and wants to appeal the conviction must file a notice of appeal within 30 days of being sentenced and must advise the appellate court of the exact errors in the trial. The client or the defense attorney must convince the appellate court that the trial judge's errors affected the outcome of the case.

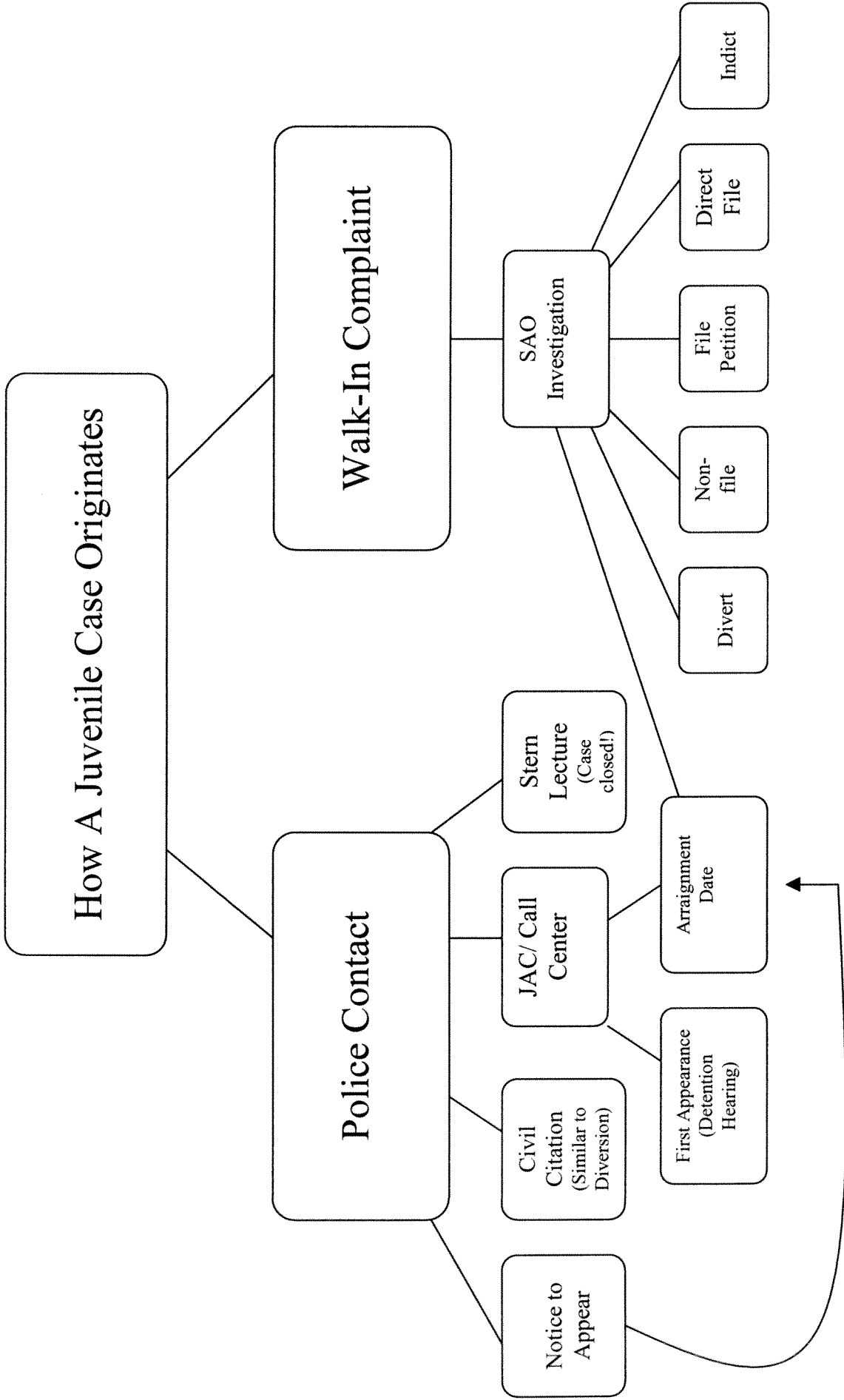
Some common errors are that the judge did not follow the law or that the client was prevented from exercising his constitutional rights. In rare cases, the judge may suspend the sentence pending a final decision by the appellate court. In Clay, Nassau and Duval county it's possible that the client may serve the entire sentence during the appellate process.

Sealing and Expunging Arrest Information

Sealing a criminal record involves making a person's criminal history inaccessible to the general public. However, city, county, state and federal government and agencies, including the police and military, will have access to and be able to review your criminal history records whether or not those records are sealed. Expunging a record involves the court ordered physical destruction or obliteration of a criminal history record or a portion of that record. It is very difficult to qualify to have a record sealed or expunged.

Sealing or expunging an individual's record may have no impact on private company or federal databases. The individual's record may still be available through private companies that previously purchase the information. As such, employers and the general public may still have access to these records.

The author wants to thank and acknowledge that much of the above has been modified from the excellent information compiled on the Miami Public Defenders web site. Thanks Carlos!



Courtesy of the Fourth Judicial Circuit Public Defender's Office, Rob Mason / Melissa Montoya

