Juvenile court judge, contempt powers

Number: INFORMAL

Date: March 27, 1996

The Honorable Janette Dunnigan
Circuit Judge, Twelfth Judicial Circuit
Post Office Box 1000
Bradenton, Florida 34205

RE: JUVENILES--CHILDREN--COURTS--CONTEMPT--JUVENILE JUSTICE, DEPARTMENT OF--HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF-authority of juvenile court judge to order secure detention for juvenile who has been found to be in contempt. s. 39.0145, Fla. Stat. (1995).

Dear Judge Dunnigan:

You ask whether a juvenile who has previously been adjudicated dependent may be found to be a "child in need of services." You also ask whether a juvenile court judge may use the court's contempt power to place in secure detention a juvenile found to be in need of services who fails to obey a court order entered in the "child in need of services" proceeding.

Your questions have arisen as a result of widespread frustration that juvenile court judges experience in dealing with juveniles who defy court orders. Regrettably, the Supreme Court of Florida and the Legislature have limited the use of one of the judges' most effective tools in handling such juveniles. This tool is the ability to hold a juvenile who refuses to obey the court in contempt and to exercise the courts' discretion in ordering a juvenile into secure detention to assure that the juvenile complies with the courts' orders.

While the Legislature has restricted the courts' contempt powers, it is free to reconsider its decision to limit the juvenile courts' options in these matters. This office supports the reinstatement of the courts' discretion so that judges may regain their traditional authority to enforce orders and to control their own courtrooms.

Section 39.01(12), Florida Statutes, defines "[c]hild in need of services" to mean

"a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Health and Rehabilitative Services for an adjudication of dependency or delinquency."[1]

In contrast, a "child who is found to be dependent" under the provisions of Chapter 39, Florida Statutes, is one whom the court finds

"(a) To have been abandoned, abused, or neglected by the child's parents or other custodians. (b) To have been surrendered to the Department of Health and Rehabilitative Services or a

licensed child-placing agency for purposes of adoption.
(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, or the Department of Health and Rehabilitative Services, after which placement, under the requirements of part V of this chapter, a case plan has expired and the parent or parents have failed to substantially comply with the requirements of the plan.
(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption and a natural parent or parents signed a consent pursuant to the Florida Rules of Juvenile Procedure.
(e) To have no parent, legal custodian, or responsible adult relative to provide supervision and care.
(f) To be at substantial risk of imminent abuse or neglect by the parent or parents or the custodian."[2]

Thus, the statutes exclude a juvenile who has been found to be dependent and is under supervision by the Department of Juvenile Justice or the Department of Health and Rehabilitative Services from being classified as a "child in need of services."[3]

Accordingly, a juvenile who has previously been adjudicated dependent may be found to be a "child in need of services" as defined in section 39.01(12), Florida Statutes, only if there is: no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Health and Rehabilitative Services for an adjudication of dependency or delinquency.

In *A.A. v. Rolle*,[4] the Supreme Court of Florida concluded that Chapter 39, Florida Statutes, did not authorize the placement of juveniles into secure detention for contempt of court. In response, the Legislature enacted section 39.0145, Florida Statutes,[5] which allows a court to punish any juvenile for contempt for interfering with the court or its administration, or for violating any provision of Chapter 39 or an order of the court relative thereto.[6] While the Legislature limited the courts' contempt powers with respect to commitment of a juvenile to secure detention, it recognized that a juvenile who has acted in contempt may be taken into custody and ordered to serve an alternative sanction or placed in a secure facility as authorized in section 39.0145, Florida Statutes.

Section 39.0145(2), Florida Statutes, specifically addresses the placement of a juvenile in a secure facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the juvenile has already been ordered to serve but has failed to comply with the sanction. The section provides:

"(a) A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility for 5 days for a first offense or 15 days for a second or subsequent offense, or in a secure residential commitment facility.
(b) A child in need of services who has been held in direct contempt or indirect contempt may be placed, for 5 days for a first offense or 15 days for a second or subsequent offense, in a staff-secure shelter or a staff-secure residential facility solely for children in need of services if such placement is available, or, if such placement is not available, the child may be placed in an appropriate mental health facility or substance abuse facility for assessment."

A "staff-secure shelter" is a facility for the temporary care and assessment of a juvenile who has been found to be dependent and who has violated a court order and been found in contempt of court, wherein the juvenile is supervised 24 hours a day by staff members.[7] The term "shelter" is defined as

"a place for the temporary care of a child who is alleged to be or who has been found to be dependent, a child from a family in need of services, or a child in need of services, pending court disposition before or after adjudication or after execution of a court order."[8]

In contrast "detention care" 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."[9] "Secure detention" is temporary custody while a juvenile is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.[10] A detention center or facility is defined as "a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law."[11]

Clearly, the Legislature has made a distinction in the placement of delinquent juveniles who have been held in contempt, and "children in need of services" who have been found in contempt and has directed that the former are the only ones who may be placed in a secure detention facility.[12] Where the Legislature has prescribed the manner in which something must be done, it effectively acts as a prohibition against its being done in any other manner.[13]

Accordingly, section 39.0145, Florida Statutes, currently limits juvenile court judges' discretion to exercise their contempt powers to order a "child in need of services" to be placed in a staff-secure shelter or a staff-secure residential facility. However, the Legislature should reconsider this limitation and restore what has been historically the inherent authority of the courts to enforce their own orders through the exercise of contempt powers. This office would support amendatory legislation to return control of the courtrooms to the juvenile court judges, allowing them to use the discretion they once enjoyed in handling juveniles who defy the orders of the courts.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] The section further provides that the child must be found by a court:

"(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Health and Rehabilitative Services;

(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to s. 232.19 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Health and Rehabilitative Services; or
(c) To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling."

[2] Section 39.01(14), Fla. Stat. (1995).

[3] *Cf.* ss. 39.0145(2)(a) and (b) and 39.0476, Fla. Stat. (1995).

[4] 604 So. 2d 813 (Fla. 1992).

[5] *See* s. 14, Ch. 94-209, Laws of Florida, and the act's preamble in which the Legislature expresses the need to enhance judges' effectiveness in enforcing their contempt powers. *See also* s. 39.002(4), Fla. Stat. (1995), wherein the Legislature's intent for the juvenile justice system as it relates to detention is stated as follows:

"(a) The Legislature finds that there is a need for a secure placement for certain children alleged to have committed a delinquent act. The Legislature finds that detention under part II [delinquency cases] should be used only when less restrictive interim placement alternatives prior to adjudication and disposition are not appropriate. The Legislature further finds that decisions to detain should be based in part on a prudent assessment of risk and be limited to situations where there is clear and convincing evidence that a child presents a risk of failing to appear or presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior; presents a history of committing a serious property offense prior to adjudication, disposition, or placement; has acted in direct or indirect contempt of court; or requests protection from imminent bodily harm.
(b) The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. herefore, the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior. . . ."

[6] Section 39.0145(1), Fla. Stat. (1995).

[7] Section 39.01(67), Fla. Stat. (1995).

[8] Section 39.01(64), Fla. Stat. (1995).

[9] Section 39.01(22), Fla. Stat. (1995).

[10] Section 39.01(22)(a), Fla. Stat. (1995).

[11] Section 39.01(23), Fla. Stat. (1995).

[12] *See also* s. 39.422(8), Fla. Stat. (1995), stating that "[a] child who is alleged to be from a family in need of services or a child in need of services may not be placed in a secure detention facility or jail under any circumstances."

[13] *See Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944) (controlling law's direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other manner).