

TGEGKGF.'94; 4235"36-65-5; .Vj qo cu'F0J cm'Ergtm'Uwr tgo g'Eqwtv

## **APPENDIX C**

**Proposed rule**

**Reasons for change**

**RULE 8.060. DISCOVERY**

**(a) Notice of Discovery.**

(1) [No change]

(2) Within 5 days of service of the child's notice of discovery, the petitioner shall serve a written discovery exhibit which shall disclose to the child or the child's counsel and permit the child or the child's counsel to inspect, copy, test, and photograph the following information and material within the petitioner's possession or control:

(A) A list of the names and addresses of all persons known to the petitioner to have information which may be relevant to the allegations, to any defense with respect thereto, or to any similar fact evidence to be presented at trial under section 90.402(2), Florida Statutes. The names and addresses of persons listed shall be clearly designated in the following categories:

(i) Category A. These witnesses shall include

(a) eye witnesses;

(b) alibi witnesses and rebuttal to alibi witnesses;

(c) witnesses who were present when a recorded or unrecorded statement was taken from or made by the child or codefendant, which shall be separately identified within this category;

(d) investigating  
officers;

(e) witnesses known  
by the petitioner to have any material information that tends to  
negate the guilt of the child as to the petition's allegations;

(f) child hearsay  
witnesses; and

(g) expert witnesses  
who have not provided a written report and a curriculum vitae  
or who are going to testify to test results or give opinions that  
~~will have to meet the test set forth in *Frye v. United States*, 293~~  
~~F. 1013 (D.C. Cir. 1923).~~

Amended to delete reference to the standard for witness  
testimony in *Frye v. United States*, because of adoption of the  
standard in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, in  
Chapter 2013-107, Laws of Fla.

(ii) Category B. All witnesses  
not listed in either Category A or Category C.

(iii) Category C. All witnesses  
who performed only ministerial functions or whom the  
petitioner does not intend to call at the hearing and whose  
involvement with and knowledge of the case is fully set out in a  
police report or other statement furnished to the defense.

(B)–(K) [No change]

(3)–(5) [No change]

(b)–(m) [No change]

#### **Court Commentary**

[No change]

**Proposed rule**

**Reasons for change**

**RULE 8.095. PROCEDURE WHEN CHILD BELIEVED  
TO BE INCOMPETENT OR INSANE**

**(a) Incompetency At Time of Adjudicatory  
Hearing or Hearing on Petition Alleging Violation of  
Juvenile Probation in Delinquency Cases.**

**(1)–(3)** [No change]

**(4) Child Found Incompetent to Proceed.**

If at the hearing provided for in subdivision (a)(2) the child is found to be incompetent to proceed, the child must be adjudicated incompetent to proceed and may be involuntarily committed as provided by law to the Department of Children and Family ~~Services~~ies for treatment upon a finding of clear and convincing evidence that:

(A) The child is mentally ill or ~~mentally retarded~~intellectually disabled and because of the mental illness or ~~retardation~~intellectual disability of the child:

(i)–(ii) [No change]

(B) [No change]

**(5)** [No change]

**(6) Commitment.** Each child who has been adjudicated incompetent to proceed and who meets the criteria for commitment in subdivision (a)(4) must be committed to the Department of Children and Family ~~Services~~ies. The department

Amended throughout rule to change Department of Children and Family Services to Department of Children and Families, conforming the rule to section 20.19, Florida Statutes, as amended by Chapter 2012-84, Laws of Florida.

Amended throughout rule to change mentally retarded to intellectually disabled and retarded or retardation to intellectual disability. Conforms the rule to Chapter 2013-162, Laws of Florida, which makes the same change in a number of statutes.

must train or treat the child in the least restrictive alternative consistent with public safety. Any commitment of a child to a secure residential program must be to a program separate from adult forensic programs. If the child attains competency, case management and supervision of the child will be transferred to the Department of Juvenile Justice to continue delinquency proceedings. The court retains authority, however, to order the Department of Children and Family ~~Services~~ies to provide continued treatment to maintain competency.

(A) A child adjudicated incompetent because of ~~mental retardation~~intellectual disability may be ordered into a program designated by the Department of Children and Family ~~Services~~ies for ~~retarded~~intellectually disabled children.

(B) A child adjudicated incompetent because of mental illness may be ordered into a program designated by the Department of Children and Family ~~Services~~ies for mentally ill children.

(7) [No change]

**(8) Treatment Alternatives to Commitment.** If a child who is found to be incompetent does not meet the commitment criteria of subdivision (a)(4), the court shall order the Department of Children and Family ~~Services~~ies to provide appropriate treatment and training in the community. All court-ordered treatment must be in the least restrictive setting consistent with public safety. Any residential program must be separate from an adult forensic program. If a child is ordered to receive such services, the services shall be provided by the Department of Children and Family ~~Services~~ies. The competency determination must be reviewed at least every 6

months, or at the end of any extended period of treatment or training, and any time the child appears to have attained competency or will never attain competency, by the service provider. A copy of a written report evaluating the child's competency must be filed by the provider with the court, the Department of Children and Family ~~Services~~ies, the Department of Juvenile Justice, the state, and counsel for the child.

(9) [No change]

(b) [No change]

**(c) Appointment of Expert Witnesses; Detention of Child for Examination.**

(1)–(3) [No change]

(4) For competency evaluations related to ~~mental retardation~~intellectual disability, the court shall order the Developmental Services Program Office of the Department of Children and Family ~~Services~~ies to examine the child to determine if the child meets the definition of ~~retardation~~intellectual disability in section 393.063, Florida Statutes, and, if so, whether the child is competent to proceed or amenable to treatment through the Department of Children and Family ~~Services~~ies ~~retardation~~intellectual disability services or programs.

**(d) Competence to Proceed; Scope of Examination and Report.**

(1) [No change]

(2) **Treatment Recommendations.** If the

experts find that the child is incompetent to proceed, they shall report on any recommended treatment for the child to attain competence to proceed. A recommendation as to whether residential or nonresidential treatment or training is required must be included. In considering issues related to treatment, the experts shall report on the following:

(A) The mental illness, ~~mental—retardation~~intellectual disability, or mental age causing incompetence.

(B) The treatment or education appropriate for the mental illness or ~~mental—retardation~~intellectual disability of the child and an explanation of each of the possible treatment or education alternatives, in order of recommendation.

(C)–(E) [No change]

(3)–(5) [No change]

**(e) Procedures After Judgment of Not Guilty by Reason of Insanity.**

(1) When the child is found not guilty of the delinquent act or violation of juvenile probation because of insanity, the court shall enter such a finding and judgment.

(2) After finding the child not guilty by reason of insanity, the court shall conduct a hearing to determine if the child presently meets the statutory criteria for involuntary commitment to a residential psychiatric facility.

(A) If the court determines that the

required criteria have been met, the child shall be committed by the juvenile court to the Department of Children and Family ~~Services~~ies for immediate placement in a residential psychiatric facility.

(B)–(G) [No change]



**Proposed rule**

**RULE 8.135. CORRECTION OF DISPOSITION  
OR COMMITMENT ORDERS**

(a) [No change]

**Reasons for change**

**(b) Motion to Correct Disposition or Commitment Error.** A motion to correct any disposition or commitment order error, including an illegal disposition or commitment, may be filed as allowed by this subdivision. The motion must identify the error with specificity and provide a proposed correction. A response to the motion may be filed within 15 days either admitting or contesting the alleged error. Motions may be filed by the state under this subdivision only if the correction of the error would benefit the child or to correct a scrivener's error.

**(1) Motion Before Appeal.** During the time allowed for the filing of a notice of appeal, a child, the state, or the department may file a motion to correct a disposition or commitment order error.

(A) This motion stays rendition under Florida Rule of Appellate Procedure 9.020~~(h)~~(i).

(B) [No change]

**(2)** [No change]

Amended to correct cross-reference to Appellate Rule amended in 102 So. 3d 451.

**Proposed rule**

**RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

**(a)–(h) [No change]**

**(i) Advising Parents.** At any hearing when it has been determined that reunification is not a viable alternative, and prior to the filing of the petition for termination of parental rights, the court shall advise the parent of the availability of private placement of the child with an adoption entity as defined in Chapter 63, Florida Statutes.

**Committee Notes**

[No change]

**Reasons for change**

Amended to conform rule to amendment of section 39.802(4)(d), Florida Statutes, as amended by Chapter 2012-81, Laws of Florida. This statute requires that at any hearing at which it is determined that reunification is not a viable option, and before commencement of a proceeding for termination of parental rights, the parents be advised of the availability of private placement of the child with a adoption entity under Chapter 63, Florida Statutes.

## **Proposed rule**

### **RULE 8.345. POST-DISPOSITION RELIEF**

(a) **Motion for Modification of Placement.** A child who has been placed in his or her own home, in the home of a relative, or in some other place, under the supervision or legal custody of the department, may be brought before the court by the department or any interested person on a motion for modification of placement. If neither the parents, the legal custodian, nor any appointed guardian ad litem or attorney ad litem object to the change, then the court may enter an order making the change in placement without a hearing. If the parents, the legal custodian, or any appointed guardian ad litem or attorney ad litem object to the change of placement, the court shall conduct a hearing and thereafter enter an order changing the placement, modifying the conditions of placement, continuing placement as previously ordered, or placing the child with the department or a licensed child-caring agency.

(1) In cases in which the issue before the court is whether a child should be reunited with a parent, and the child is currently placed with someone other than a parent, the court must determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

(2) In cases in which the issue before the court is whether a child who is placed in the custody of a parent should be reunited with the other parent upon a finding of

## **Reasons for change**

Amended to conform to creation of section 39.522(3), Florida Statutes, by Chapter 2013-21, Laws of Florida, which details determinations the court must make before reuniting a child and a parent from whose custody the child has been removed.

substantial compliance with the terms of the case plan, the court must determine that the safety, well-being, and physical, mental, and emotional health of the child would not be endangered by reunification and that reunification would be in the best interest of the child.

**(b)** [No change]

**Proposed rule**

**RULE 8.425. PERMANENCY HEARINGS**

(a) [No change]

(b) **Determinations at Hearing.**

(1)–(3) [No change]

(4) If the court approves a permanency goal of adoption, the court shall advise the parents of the availability of private placement of the child with an adoption entity, as defined in chapter 63, Florida Statutes.

(c) [No change]

(d) **Permanency Order.**

(1)–(2) [No change]

(3) If the court approves a permanency goal of adoption, the order approving this goal shall include a provision stating that the court advised the parents of the availability of private placement of the child with an adoption entity as defined in chapter 63, Florida Statutes, during the permanency hearing.

(34) [No change in text]

(45) [No change in text]

**Reasons for change**

New subdivisions (b)(4) and (d)(3) created to require notification to parents of the availability of private placement of a child for adoption under chapter 63, Florida Statutes, if the court approves a permanency goal of adoption. Conforms the rule to section 39.802(4)(d), Florida Statutes, as created by section1, Chapter 2012-81, Laws of Florida.

(~~5~~6) [No change in text]

(~~6~~7) [No change in text]

(~~7~~8) [No change in text]

**(e)** [No change]

**(f)** [No change]