

RULE 8.100. GENERAL PROVISIONS FOR HEARINGS

Unless otherwise provided, the following provisions apply to all hearings:

(a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests.

(b) Use of Restraints on the Child. Instruments of restraint, such as handcuffs, chains, irons, straitjackets, cloth and leather restraints, or other similar items, shall not be used on a child during a court proceeding except when ordered by the court prior to the child's appearance in the courtroom in accordance with this rule. Instruments of restraint must be removed prior to the child's appearance unless after an individualized assessment of the child the court finds that:

(1) The use of restraints is necessary due to one of the following factors:

(A) to prevent physical harm to the child or another person;

(B) the child's history of disruptive courtroom behavior that has placed others in potentially harmful situations or that presents a substantial risk of inflicting physical harm or himself or herself or others as evidenced by recent behavior; or

(C) a founded belief that the child presents a substantial risk of flight from the courtroom; and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(3) In making a determination that the use of instruments of restraint is necessary, pursuant to subdivision (b)(1), the court shall consider:

(A) any past escapes or attempted escapes by the child;

(B) evidence of a present plan of escape by the child;

(C) a credible threat by the child to harm himself or herself or another person during court;

and (D) evidence of self-injurious behavior on part of the child;

(E) any other factor that is relevant in determining whether the use of instruments of restraint are necessary pursuant to subdivision (b)(1).

(4) The court shall provide the child's attorney an opportunity to be heard before the court orders the use of restraints. Counsel shall be appointed for this hearing if the child qualifies for such appointment and does not waive counsel in writing as required by rule 8.165.

(5) If restraints are ordered, the court shall make specific and individualized findings of fact in support of the order and the least restrictive restraints shall be used. Any restraints shall allow the child limited movement of his or her hands to read and handle documents and writings necessary to the hearing.

(6) Under no circumstances should a child be restrained using fixed restraints to a wall, floor, or furniture.

(c) Absence of the Child. If the child is present at the beginning of a hearing and during the progress of the hearing voluntarily absents himself or herself from the presence of the court without leave of the court, or is removed from the presence of the court because of disruptive conduct during the hearing, the hearing shall not be postponed or delayed, but shall proceed in all respects as if the child were present in court at all times.

(d) Invoking the Rule. Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing shall, exclude all other witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(e) Taking Testimony.

(1) Testimony at a Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless provided by law or these rules.

(2) Remote Testimony. Upon stipulation of the parties, or upon motion of a party for good cause shown, the court may permit a witness to testify at delinquency proceedings by contemporaneous video communication equipment

that makes the witness visible during the testimony to all parties, the judge, and any other necessary persons.

(3) Communication Equipment. Any equipment used must allow for the taking of contemporaneous video and there must be appropriate safeguards for the court to maintain sufficient control over the equipment and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice.

(4) Oath. If testimony is taken through video communication equipment, there must be a notary public or other person authorized to administer an oath that subjects the witness to prosecution for perjury upon making a knowingly false statement. The notary or other authorized person must be in the same location as the witness appearing remotely.

(5) Burden of Expense. The cost for the use of video communication equipment is the responsibility of the requesting party.

(ef) Continuances. The court may grant a continuance before or during a hearing for good cause shown by any party.

(fg) Record of Testimony. A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. The records shall be preserved for 5 years from the date of the hearing. Official records of testimony shall be provided only on request of a party or a party's attorney or on a court order.

(gh) Notice. When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

Committee Note

20 Amendment. This rule allows the parties to agree, or one or more parties to request, that the court authorizes presentation of witness testimony by contemporaneous video communications equipment. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. Determination of good cause is governed by the confrontation clause principles as established in *Harrell v. State*, 709 So.2d 1364 (Fla. 1998), and its progeny.