

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 2218

INTRODUCER: Criminal Justice Committee and Senator Wise

SUBJECT: Juvenile Justice

DATE: March 25, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			CF	
3.			ED	
4.			GO	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

In July 2007, Governor Crist authorized the creation of the Blueprint Commission (commission) for the purpose of developing recommendations to reform Florida’s juvenile justice system. The commission met throughout the second half of 2007 and issued its report titled “Getting Smart About Juvenile Justice in Florida” in February 2008. This bill implements many of the commission’s 52 recommendations, including the following:

- Creates a Juvenile Justice Policy Research Institute within the Department of Juvenile Justice (DJJ) to provide technical assistance, best practices, and research assistance to the DJJ policymakers;
- Requires the public defender to provide legal representation to alleged delinquent youth at all stages of any delinquency court proceedings;
- Adds an additional risk factor under s. 394.492(4), F.S., “child or adolescent at risk of emotional disturbance” to include “being 9 years of age or younger at the time of referral for a delinquent act”;
- Requires that a youth committed to a high or maximum risk facility remain eligible for Medicaid;

- Creates community-based substance abuse intervention, evaluation, and treatment services in each judicial circuit for the purpose of diverting first-time misdemeanor drug offenders;
- Allows additional points to be assessed against a youth who is charged with a felony and has prior residential commitment;
- Allows for the commitment of a youth who is pregnant or a mother with an infant to a mother-infant program;
- Creates a transition planning team that is responsible for facilitating a comprehensive, multiagency reintegration of each youth into the community;
- Requires the DJJ to provide female only aftercare services to girls exiting residential programs;
- Requires vocational education to be offered in all residential programs as well as all day treatment programs;
- Requires the DJJ to conduct “outcome-based contracting” demonstration projects;
- Allows the DJJ to authorize the hiring of an offender who was formally in the juvenile justice system after 5 years of being crime-free (rather than the current 7 year requirement);
- Allows for the conditional hiring of an employee after a preliminary background screening;
- Requires the boards and councils to receive local discretionary grant funding to be disbursed through the boards and councils, subject to appropriation;
- Adds juvenile justice programs to the formula for allocation of the Florida Education Finance Program (FEFP), if the Legislature does not specifically determine the allocation for the FEFP;
- Requires the automation, validation, and revision of the Detention Risk Assessment Instrument;
- Creates a disproportionate minority contact task force and provides duties;
- Requires the DJJ to identify smaller service areas that provide a full continuum of services in each service area and to submit a report to the Governor, President of the Senate and Speaker of the House on any specific legislative recommendations;
- Requires the Governor to establish a task force to make recommendations to modify the current competency restoration process;
- Requires the Governor to establish a task force to do a DJJ role-delineation study; and
- Requires the DJJ and the Department of Children and Family Services (DCF) to select and work with a state university to calculate the return on investment on crime reduction through prevention and intervention programs with the goal of implementing cost-saving strategies.

This bill substantially amends the following sections of the Florida Statutes: 20.316; 27.51; 394.492; 984.03; 985.03; 409.9025; 985.125; 985.245; 985.441; 985.622; 985.644; 435.04; 985.664; and 1011.62.

The bill creates the following sections of the Florida Statutes: 985.165; 985.461; 985.495.

II. Present Situation:

Research Division-DJJ

Section 20.316, F.S, creates the DJJ. The Office of Program Accountability (OPA) serves as the research and planning division of the agency. The OPA reports directly to the Secretary of the DJJ. Program technical assistance and quality assurance are also responsibilities of the OPA.

Legal Representation

Under s. 27.51(1)(c), F.S., the public defender is required to represent an indigent youth who is alleged to be a delinquent youth pursuant to a petition filed before a circuit court. Section 985.033(1), F.S., provides that a youth shall be represented by legal counsel at all stages of any delinquency court proceedings under ch. 985, F.S., unless the right to counsel has been freely, knowingly, and intelligently waived by the youth. Legal counsel representing a youth who exercises the right to counsel must be allowed to provide advice and counsel to the youth at any time after the youth's arrest, including prior to a detention hearing when the youth is in secure detention.

Children at Risk

Section 394.492(4), F.S., defines a "child or adolescent at risk of emotional disturbance" as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of certain specified risk factors. Currently, the DCF uses this definition to determine which youth to serve through the Comprehensive Child and Adolescent Mental Health Services Act.

CINS/FINS

Sections 984.03(9), F.S., and 985.03(7), F.S., define "children in need of services," as a youth who persistently runs away, persistently disobeys his or her parents, or is habitually truant. The definition excludes a youth who has an active referral to the DJJ for a delinquent act from being served by the CINS/FINS network, resulting in the CINS/FINS shelters being unavailable to this youth. These shelters provide short-term services such as crisis intervention, case management, counseling, clothing, food, and shelter on a 24-hour basis. (In FY 07-08, according to the DJJ, there were 578 individual youth, ages nine and younger, that generated 696 referrals to the department.)

Medicaid Eligibility

Section 409.9025, F.S., requires Medicaid eligibility to be suspended for any individual who is an inmate in the state's correctional system, county detention facility, or a municipal detention facility, and who was eligible for and received Medicaid benefits under ch. 409, F.S., immediately prior to being incarcerated. It further provides that upon release from incarceration, an individual continues to be eligible for Medicaid benefits until such time as the person is determined to no longer be eligible. It requires that, to the extent permitted under federal law, the time during which a person is an inmate cannot be included in any calculation of when the person must recertify his or her eligibility for medical assistance in accordance with this chapter.

Section 409.9025, F.S., also provides that Medicaid benefits may not be used to pay for medical care, services, or supplies provided during the inmate's incarceration, but clarifies that nothing

prevents the inmate from receiving medical assistance for inpatient hospital services outside the premises of the correctional institution, to the extent that federal financial participation is available for the cost of such services.

Diversion Programs

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program. Diversion is a process designed to keep a youth from entering the juvenile justice system through the legal process. Diversion programs include community arbitration, Juvenile Alternative Services Program (JASP), teen court, civil citation, boy scouts and girl scouts, boys and girls clubs, mentoring programs, and alternative schools.

Detention Risk Assessment Instrument

Section 985.245, F.S., requires a detention risk assessment instrument to be developed by the DJJ in agreement with representatives of various associations, including the state attorneys, public defenders, sheriffs, police chiefs, and circuit judges. All determinations and court orders regarding detention placements must be based on a risk assessment of the youth, except in the case of a youth charged with domestic violence. According to the DJJ, the current risk assessment instrument has been used since 1992, and it is in the process of being validated.

Mother/Infant Commitment Program

Section 985.441, F.S., governs the operation of commitment facilities. Currently, the DJJ operates a 20-bed mother/infant program in Miami-Dade County; however, there is no statutory provision for programs designed for pregnant girls or mothers with infants.

Post Residential Supervision

Post-residential supervision is the name given to programs, services, and strategies intended to assure a juvenile's successful transition from residential placement to life in the community. The DJJ provides three types of post-residential supervision: post-commitment probation, independent living, and community based supervision. Community based supervision, commonly called aftercare, encompasses two kinds of service delivery; facility-based day treatment and community supervision.

Vocational Education

Section 985.622, F.S., requires the DJJ and the DOE, in consultation with the statewide Workforce Development Youth Council, school districts, providers, and others, to develop a multiagency plan for vocational education in juvenile commitment facilities. According to the DJJ, vocational education in the juvenile justice programs is administered through the school districts.

Outcome-Based Contracting

According to the Report of the Blueprint Commission, "outcome-based" refers to "programs designed with the desired outcome in mind." The DJJ currently focuses more on compliance-based contracting.¹ The Blueprint Commission believes the use of outcome-based contracting

¹ Blueprint Commission Report, Note 1, at 46 (2008).

along with “evidence-based” practices will help ensure an “effective and accountable system” by identifying those programs that are successful.

Background Screening

Section 985.644, F.S., outlines the DJJ’s contracting authority, its personnel standards, and its background screening requirements for providers, employees, volunteers, owners, and operators.

Section 435.04, F.S., prescribes Level 2 background screening standards. Under this chapter, for a period of seven years, the DJJ has no authority to provide an exemption to a person who is disqualified from employment based upon the results of their background screening. After seven years, the DJJ may grant an exemption hearing.

Boards and Councils

Section 985.664, F.S., authorizes the creation of a juvenile justice circuit board in each of the 20 judicial circuits and a juvenile justice county council in each of the 67 counties. Each county council appoints representatives to serve on the circuit board. The county councils and circuit boards serve as advisors to the DJJ, assisting in evaluating and awarding prevention and early intervention grant programs, including the community juvenile justice partnership grant program established in s. 985.676, F.S., and the proceeds from the Invest in Children license plate annual fees.

Florida Educational Finance Program (FEFP)

Section 1011.62, F.S., provides a funding formula for the Florida Educational Finance Program (FEFP) in the event that the Legislature does not make the funding allocations in the annual appropriations act or the implementing appropriations bill.

Disproportionate Minority Contract

Minority over-representation exists when the number of youth detained or confined in secure detention facilities, secure correctional facilities, or jails who are members of minority groups exceeds the proportion such groups represent in the general population. According to the Juvenile Justice Blueprint Commission, “the disproportionate representation of minorities exists for both males and females in Florida’s juvenile justice system...at every point in the juvenile justice system.”² Continuing, “in nine of the 20 circuits, more than 40% of the youth referred...are black. In seven circuits, more than 60% of youth are black.”³

According to the DJJ, it is implementing a coordinated Disproportionate Minority Contact (DMC) strategy through the creation of a DMC Task Force, which will work toward ensuring equal and fair treatment for every youth, regardless of their racial or ethnic background. The DMC Task Force consists of a volunteer group of juvenile justice stakeholders that will assist the department in bringing awareness and solutions to the issue of minority overrepresentation in the juvenile justice system.

² Report of the Blueprint Commission, “*Getting Smart About Juvenile Justice in Florida*,” p. 46 (2008).

³ Id.

Competency Restoration Process

Section 985.19, F.S, governs the process of determining a youth's competency to proceed in a juvenile delinquency case. Youth who have committed a misdemeanor and are deemed by the court as incompetent to proceed will likely be placed in a community treatment program to restore competency. However, youth who have committed a delinquent act or violation of law that would be a felony if committed by an adult and are deemed incompetent to proceed will likely be placed in an "incompetent-to-proceed program," (a residential treatment program overseen by the DCF).

Often these youth are assigned to secure detention pending placement in the incompetent-to-proceed program. The youth may wait in secure detention for weeks, waiting until an appropriate vacancy occurs. While detention may provide a secure setting in which to hold the youth, detention centers are not designed or equipped for long-term housing. They do not provide treatment programs; they do not allow for ongoing educational programs; and they do not provide the acute interventions most likely needed by a youth who is incompetent to proceed.

Once the youth has completed the program and his or her competency is restored, the youth is sent back to court to proceed with the delinquency hearing. The court may then return the youth to a juvenile justice residential facility to participate in a delinquency program. So, a youth deemed incompetent to proceed quite likely faces extended time in multiple programs, with a good chance some of it will be in a detention center with no access to substantial treatment.

III. Effect of Proposed Changes:

This bill implements many of the Blueprint Commission's recommendations, as follows.

Section 1 – Research Division – DJJ: The bill amends s. 20.316, F.S., by creating a Juvenile Justice Policy Research Institute within the DJJ to provide technical assistance, best practices, and research assistance. According to the DJJ, as a practical matter, this provision will result in renaming the current Office of Program Accountability to the Juvenile Justice Policy Research Institute.

Section 2 – Legal Representation: The bill changes the timing of when the public defender is required to represent an indigent youth from when such youth is "alleged to be a delinquent child pursuant to a petition filed before a circuit court" to "at all stages of any delinquency court proceedings." This change requires the public defender to represent an indigent youth at any time after he or she has been arrested, including before a detention hearing.

Section 3 – Children at Risk: The bill amends the definition of "child or adolescent at risk of emotional disturbance" in s. 394.492, F.S., the Comprehension Child and Adolescent Mental Health Services Act, to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act." This change will allow those youth who qualify to receive treatment services through the community based care network.

Section 4 – CINS/FINS: The bill amends the definition of "child in need of services" in the CINS/FINS statute, s. 984.03(9), F.S., to include youth who are 9 years of age or younger who

have a delinquency referral. As a result, these youth will be able to receive CINS/FINS services even though an active referral to the DJJ exists.

Section 5 – The bill amends the definition of “child in need of services” in the juvenile delinquency statute, s. 985.03(7), F.S., to include youth who are 9 years of age or younger who have a delinquency referral. As a result, these youth will be able to receive CINS/FINS services even though an active referral to the DJJ exists.

Section 6 – Medicaid Eligibility: The bill amends s. 409.9025, F.S., inmate Medicaid eligibility, by adding to the statute, a juvenile who is committed to a high-risk residential or maximum-risk residential program. Thus, Medicaid eligibility will be suspended for these juveniles if they are eligible for and received Medicaid benefits under ch. 409, F.S., immediately prior to being incarcerated. After release, they will continue to be eligible for Medicaid benefits until such time as they are determined to be ineligible. And, to the extent permitted under federal law, the time during which a committed youth is incarcerated cannot be included in any calculation of when he or she must recertify eligibility for medical assistance. It will allow for Medicaid eligible youth who are in these secure residential programs to access Medicaid benefits for inpatient hospitalization while they are still committed. (Typically, the DJJ must pay for 100 percent of the inpatient hospitalization stays.)

Section 7 – Diversion Programs: The bill adds “the DJJ, counties, and municipalities” as qualified entities that may establish prearrest and postarrest diversion programs by amending s. 985.125, F.S. It also encourages the use of prearrest and postarrest diversion programs.

Section 8 – The bill creates s. 985.165, F.S., to provide community-based substance abuse intervention, evaluation, and treatment services in each judicial circuit, subject to appropriation, for youth whose first offense is a misdemeanor drug offense. In FY 07-08, the DJJ had 4,305 youth whose first offense was a misdemeanor drug offense. The bill does not seem to specify the entity responsible for providing these services. (Currently, the DCF provides community-based substance abuse treatment services through their community based care providers.)

Section 9 – Detention Risk Assessment Instrument: The bill amends s. 985.245, F.S., to provide that additional points will be assessed on the risk assessment instrument against a youth who is charged with a felony and who has a prior residential delinquency commitment. According to the DJJ, this provision will place more youth into secure detention, which has a potential negative fiscal impact on DJJ (as well as the non-fiscally constrained counties because they pay for approximately 80 percent of detention costs under s. 985.686, F.S.)

The bill requires the DJJ to have the risk assessment instrument independently validated as well as evaluated to determine if the instrument contributes to disproportionate minority contact. Under the bill, every 7 years the DJJ must review the population, policies, and procedures affecting the use of detention. Additionally, the bill revises the reviewing committee to include 2 new representatives from child advocacy organizations appointed by the DJJ Secretary.

Section 10 – Mother/Infant Commitment Program: The bill authorizes the court to commit a juvenile mother or expectant juvenile mother to the DJJ for placement in a mother-infant program by amending s. 985.441, F.S. The mother-infant program must be licensed as a

childcare facility under s. 402.308, F.S. The bill also requires the DJJ to adopt rules to govern this program.

Section 11 – Post-Residential Supervision: The bill creates s. 985.566, F.S., to require the availability of a community-based interagency transition planning team for each youth leaving a residential commitment program. The DJJ maintains that it already provides for community-based community supervision of youth; it does not, however, include the concept of interagency teams.

Section 12 – The bill creates s. 985.495, F.S., by making it mandatory for the DJJ to have a female aftercare system for girls exiting residential programs. According to the DJJ, in fiscal year 2006-07⁴, there were 1,320 girls released from residential programs. Because of the small numbers, it may be difficult to implement, especially in the rural areas.

Section 13 – Vocational Education: The bill amends s. 985.622, F.S., to require vocational training which provides educational credits or nationally recognized certification that is available in all juvenile justice day treatment programs and residential commitment programs.

Section 14 – Outcome Based Contracting: The bill amends s. 985.644, F.S., to require the DJJ to conduct demonstration projects emphasizing the benefits of outcome-based contracting with critical interim performance standard requirements in lieu of compliance-based contracts. These projects are to be completed by December 31, 2010.

Section 15 – Background Screening: The bill amends s. 435.04, F.S., to authorize the DJJ to grant an exemption from employment disqualification for a youth who has successfully completed a DJJ program after being crime-free for five years (rather than the currently required seven years).

Section 16: The bill amends s. 985.644, F.S., to authorize the DJJ to conditionally hire a juvenile justice employee after successfully completing a preliminary background screening, but before completing the full background check, providing there is no direct contact with the youth.

Section 17 – Boards and Councils: The bill amends s. 985.664, F.S., to provide that, subject to specific appropriation, juvenile justice circuit boards and juvenile justice county councils will receive local discretionary grant prevention funds that they may allocate to meet their local communities' specific needs.

Section 18 – FEFP: The bill amends s. 1011.62, F.S., to include juvenile justice programs in the statutory funding formula for FEFP.

Section 19 – Disproportionate Minority Contact Task Force: The bill creates a new section requiring the DJJ to create a Disproportionate Minority Contact Task Force, specifying numerous duties. The task force must submit its report to the Governor, Senate, and House of Representatives by July 1, 2010. It also requires the DJJ to create pilot projects to reduce DMC

⁴ (FY 07-08 is not yet available)

within the juvenile justice system in each of eight selected counties over three years. The final report concerning the pilot projects is due January 1, 2012.

Section 20 – DJJ Service Areas Study: The bill creates a new section requiring the DJJ to identify service areas that promote the concept of community-based programs and recommend implementation to the Legislature. The bill suggests that a full continuum of services in each service area includes, but is not limited to, prevention, early intervention, supervision, and support services in the family, probation, residential, and aftercare. The DJJ must submit a report to the Governor, the Senate, and the House of Representatives by January 1, 2010. (According to the DJJ, it does not currently have a full continuum of services in each judicial circuit and the implementation of such a plan will have a significant fiscal impact.)

Section 21 – Competency Restoration Task Force: The bill creates a new section requiring the Governor to establish a task force to make recommendations to modify the current competency restoration process. The task force is required to submit its report to the Governor, Senate, and House of Representatives by January 1, 2010.

Section 22 – DJJ Role-Delineation Task Force: The bill creates a new section requiring the Governor to establish a task force to conduct a role-delineation study and to make recommendations regarding core competencies, professional curriculum, base rates of pay, and granting special risk retirement within the DJJ. The task force is required to submit its report to the Governor, Senate, and House of Representatives by January 1, 2010.

Section 23 – Crime Reduction/Prevention Study: The bill creates a new section requiring the DJJ, the DOC and the DCF to select and work with a state university to calculate the return on investment on crime reduction through prevention and intervention programs with the goal of implementing cost-saving strategies. The selected university is required to submit its report to each of the three agencies, the Governor, Senate, and House of Representatives by June 30, 2010.

Section 24. The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:**Section 2. – Legal Representation:**

The Public Defenders may be impacted because of an increase in workload. Some circuits may be greatly affected and others may not. According to the Florida Public Defenders Association, in large circuits like the Fourth (Jacksonville), the Eleventh (Miami), the Thirteenth (Tampa), and the Seventeenth (Broward), there will probably be no impact because the common practice there is to appoint a public defender to almost all indigent youth. Other circuits that do not do this as a matter of course may have a significant increase in caseloads. However, this potential fiscal impact should be balanced against the likelihood that reversals on appeal in which a youth has not received legal counsel may decrease if the bill is passed.

Section 8 – First-time Drug Offender Diversion:

This section is subject to appropriation. However, according to the DJJ, in FY 2007-2008, there were 5,763 first time offenders involved with the DJJ for drug related offenses. The average cost to the state for substance abuse treatment services for youth is \$2,100. Pursuant to the proposed changes to s. 985.165, F.S., diversion of these youth from the justice system to treatment would result in an annual cost of \$12,102,300 (\$2,100 x 5,763 juvenile offenders). For FY 2009-2010, the projected budget needs of \$9,076,725 are based on 9 months to allow for implementation of expanded services through the DCF substance abuse services contracts statewide (beginning October 1, 2009), with an annualized impact of \$3,025,575.

Section 11 – Multi-agency Transition Planning Teams:

According to the Blueprint Commission Report, the cost to fund community-based interagency transition planning teams is \$1,000 per youth. In FY 2006-07, the DJJ released 7,117 youth from residential commitment programs. The recurring cost for this service is approximately \$7.1 million.

Section 13 – Vocational Education:

Requiring vocational training in all juvenile justice day treatment programs and residential commitment programs will likely have a significant impact on the school districts. (Waiting on a fiscal impact statement from the DOE.)

Section 19 – Disproportionate Minority Contact Task Force and Pilot Projects:

According to the Blueprint Commission Report, the cost to fund eight DMC pilot sites is \$3.6 million. There is no additional cost to create the task force according to the DJJ, as it is currently operational and paid for through the State Advisory Group.

Section 20 – DJJ Service Area Study:

If the purpose of this section is to direct the DJJ to study the fiscal and policy impacts of having a full continuum of services in each judicial circuit, this will have a minimal fiscal impact. However, if the purpose of this language is to direct the DJJ to begin creating the full continuum of services in each judicial circuit, this will have a significant fiscal impact on the DJJ. According to the DJJ, to be able to fund a full continuum of services in each judicial circuit will require a significant capital outlay as well as a restructuring of DJJ's internal operations.

Section 21 – Competency Restoration Task Force:

According to the DJJ, due to budget reductions, it will not be able to absorb the cost of the per diem for task force members. The calculation below assumes nine members, meeting once per month, at a rate of \$650 per meeting for each member. (On April 2, 2007, House staff wrote an analysis of the Governor's Illicit Drug Lab Task Force and assumed a \$650 per diem for each member for each meeting.) Nine members x 650 per member per meeting x 6 meetings = \$35,100.

Section 22 – DJJ Role-Delineation Task Force:

According to the DJJ, due to budget reductions, it will not be able to absorb the cost of the per diem for task force members. The calculation below assumes nine members, meeting once per month, at a rate of \$650 per meeting for each member. (On April 2, 2007, House staff wrote an analysis of the Governor's Illicit Drug Lab Task Force and assumed a \$650 per diem for each member for each meeting.) Nine members x 650 per member per meeting x 6 meetings = \$35,100.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 25, 2009:

- Deletes provisions relating to zero-tolerance policies.
- Deletes provisions relating to criminal history records.

- Deletes provisions relating to juvenile parole.

- Amends the definition of CINS/FINS to include youth 9 and under who have been referred to the DJJ.
- Includes the DJJ, counties, and cities as entities encouraged to start diversion programs.
- Requires a mother-infant program to be licensed as a child care facility.
- Adds two child advocates to the detention risk assessment workgroup and requires the risk assessment instrument to be reevaluated every seven years.

B. Amendments:

None.